

JFBA/17/13

March 11, 2013

Japan Federation of Bar Associations

## Japan Federation of Bar Associations

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

January 18, 2013

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## Foreword

1. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) considered the second periodic report of Japan on the implementation of the International Covenant on Economic, Social and Cultural Rights and adopted the concluding observations with 31 paragraphs of recommendations based on 23 paragraphs of concerns on August 31, 2001. More than ten years later, many of these recommendations have unfortunately not been implemented. Furthermore, Japan has in fact regressed in some areas relating to social, cultural and economic rights during its long-protracted recession, with newly emerged problems including the widening gap of social inequality, an increase in non-permanent workers, and an increase in the unemployed and low-income earners.
2. In addition, the Great East Japan Earthquake of March 11, 2011, caused the death and disappearance of a huge number of people and the destruction of housing and other buildings. Moreover, the Fukushima Daiichi Nuclear Disaster induced the meltdown of the fuel rod of the reactor, raising the INES level to seven, the maximum value. The large-scale radiation leak, estimated at 770,000 terabequerels, resulted in a 20 km exclusion zone around the plant and forced eviction of many residents who are still living in provisional housing ever at present. Thus, the disaster has caused a serious impairment of the rights guaranteed by the Covenant including the rights to work, food and housing, health, and education.
3. The Japan Federation of Bar Associations (JFBA) is a federation which all attorneys in Japan are obligated to join. The objective of the JFBA is to protect and promote human rights in Japanese society, and from this point of view, the JFBA has been making a strenuous effort to implement international human rights treaties in Japan, and has been encouraging the government to take steps towards ratification of optional protocols, to implement an individual complaints mechanism and to set up a human rights mechanism. The JFBA was actively involved in the consideration of the above-mentioned second periodic report of the Government of Japan under Articles 16 and 17 of the Covenant, by submitting its own report. It also released a statement from the President of the JFBA urging the Government to implement the recommendations contained in the Concluding Observations. The JFBA has been monitoring the state of progress with regard to the implementation of the recommendations, and has been making efforts to promote economic, social and cultural rights in Japan until the present. The JFBA devoted all its efforts at the time of Great East Japan Earthquake, offering free legal consultations for those affected by the earthquake at evacuation centers and other places to their problems of double debts and to achieve neutral and fair compensation for the victims.
4. In the light of the full implementation of the Covenant, the third periodic report of Japan is to be considered by the CESCR in an attempt to identify problems and solutions in Japanese society. To contribute to CESCR's consideration of the third periodic report of Japan, the JFBA wishes to present its opinions as stated below.

## Discussion by Article of the Covenant

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### **Article 1 - Right of Self-Determination**

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
  2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
  3. *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*
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### **A. The Ainu**

#### **A.1 Proposed Recommendations for the Concluding Observations**

5. The State Party and the Hokkaido Government should make concrete effort to improve the social status of Ainu people, and should guarantee the rights of Ainu to receive education in their own language at schools and in other contexts. <sup>1</sup>

#### **A.2 Reasons**

##### a Historical Background

6. The Ainu are a people indigenous to areas in northern Japan, and whose native language is the Ainu language. Since the Meiji Era, under the policies of the Japanese Government, “Wajin” (referring to Japanese) began to settle and develop the land. As a result, the unique customs and culture of the Ainu came to be negated.

##### b Present situation

- b.1 ”Indigenous Rights” of the Ainu People are not yet Recognized.

7. On May 14, 1997, 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” was enacted and promulgated, but this law does not recognize “indigenous rights” in the legal sense, thereby making the law simply a means for the promotion of Ainu culture.

##### b.1 Necessity of Guaranteeing the Cultural Rights of the Ainu

8. The report prepared by the Advisory Panel of Eminent Persons on Policies for the Ainu People indicated the following: the Ainu People are indigenous people; it is important to expand and increase the opportunities to learn Ainu language and culture; the percentage of welfare benefit recipients among the Ainu is approximately 2.5 times the national average; and the percentage of Ainu children who proceed to enter university is about half the national average.

However, the report did not refer to the right to self-determination, nor present strategies on how to expand and increase “opportunities to learn Ainu language and culture.”

9. In July 2008, indigenous communities from around the world gathered in Hokkaido to organize the “Indigenous Summit – Ainu Mosir 2008,” to make recommendations to the G8 member countries. In particular, the organizing committee of the Summit made their “recommendations to the Japanese Government,” urging the Japanese Government to make official apologies for their past policies towards Ainu in explicit wording, and to adopt the Ainu language as an official language to be taught in the compulsory education system.

## **B. Okinawan Issues**

### **B.1 Proposed Recommendations for the Concluding Observations**

- a The State Party should make concrete advances in reducing the military bases in Okinawa. <sup>2</sup>
- b The State Party should guarantee the rights of local residents to file a complaint to the court so that they can exercise their rights to claim compensation for damages when they suffer harm caused by the activities of US military forces.

### **B.2 Reasons**

#### a Historical Development

10. In Okinawa, a unified dynasty was established in the 15th century and a unique culture different from 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 began to be integrated into the state Shinto religion, and were replaced with a Shinto shrine and gateway. Thus, the cultural integration of Okinawa into Japan began. During World War II, Okinawa became the battlefield for the worst fighting in Japan, with the loss of one quarter of the total Okinawan population.

#### b Present Situation

##### b.1 Concentration of Military Bases

11. 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 around the military bases, especially in Okinawa prefecture, including: noise produced by takeoff and landing of the aircrafts, aircraft and helicopter crashes, environmental destruction and contamination, harm and damage to people’s daily life, sexual assaults and traffic accidents caused by US military and civilian personnel, and hindrance to local development.

##### b.2 Japan-US Status-of-Forces Agreement

12. 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 the Japan-US Status-of-Forces Agreement is based on the premise that Japan cannot excise primary



jurisdiction on crimes committed by members of the US military in Japan (excluding business transactions and employment contracts) has been a major hindrance in securing the lifestyles and human rights of civilians in Okinawa and protecting the environment of Japan.

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**Article 2 - Treaty Entrenchment and Non-Discrimination**

1. *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. General comment on its implementation.*
2. *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
3. *Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*

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**A. Legal Characteristics of the Covenant and its Functions****A.1 Proposed Recommendations for the Concluding Observations**

13. The State Party should regard the legal characteristics of the International Covenant on Economic, Social and Cultural Rights not only as a political obligation, but also as a legal obligation which has a normative effect, and should actively adopt them in legislative and administrative processes.<sup>3</sup>

**A.2 Reasons**

14. The interpretation of the provision on the faithful observance of international treaties (Article 98, clause 2) in the Japanese Constitution has been based on the premise that international law and domestic law form a unity. It is understood that the international treaties ratified by the State Party are incorporated and have effect automatically in domestic laws. Therefore, there is almost no question that the Covenant has legally binding force as part of domestic law.
15. The Covenant can be applied as the legal ground for revocation and for compensation claims at the national court. There is no reason, in particular, to deny the immediate application of the principle of non-discrimination and other rights which are suitable for judicial ruling (general comment 3, 9).
16. Nevertheless, courts in Japan generally deny the normative effect of the Covenants. For example, in a decision by the Supreme Court (known as the Shiomi Case Supreme Court Decision), the Court ruled based on Article 2 clause 1 of the Covenant that "[Article 9 of the Covenant] confirms that for signatory States the right to social security is a right protected through a State Party's social policy, and declares that the State Party has a political

responsibility to actively promote social security policies to realize these rights. It does not, however, confer immediate and specific rights on individuals."

17. Furthermore, the Covenant can be applied not only for judicial remedy in court cases, but also as a guideline for the interpretation of the relevant domestic legislation including substantive law. However, there is little mention about the Covenant not only in the judiciary but also in politics and public administration.
18. In this regard, in the Concluding Observations of the second periodic report of Japan, the Committee on Economic, Social and Cultural Rights<sup>4</sup> showed concern that "the State party does not give effect to the provisions of the Covenant in domestic law in a satisfactory manner, despite the fact that many of its provisions are reflected in the Constitution. The Committee is also concerned that provisions of the Covenant are not sufficiently taken into account in the process of legislation and policy formulation, and are rarely mentioned in legislative or administrative proposals or in parliamentary debates. The Committee further expresses concern about the fact that judicial decisions generally do not make reference to the Covenant, on the mistaken ground that none of its provisions has direct effect. It is a further matter of concern that the State party endorses that position, thereby contravening its obligations under the Covenant". The understanding of the Covenant Japanese courts, is still far from that of international standard.

## **B. The Principle of Prohibition on the Retrogressive Measures**

### **B.1 Proposed Recommendations for the Concluding Observations**

19. The State Party should respect the principle of prohibition on the retrogressive measures especially in the field of social security.

### **B.2 Reasons**

20. Based on Article 2, para. 1 of the Covenant, the State Party "needs to take steps to gradually achieve "full realization of the rights recognized in the present Covenant. Therefore, it is against the intent of Article 2 para. 1 of the Covenant if there are setbacks for the realization of human rights due to measures and policies that the Government has taken. In this regard, the Committee on Economic, Social and Cultural Rights states in General Comment 3 that "any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources".
21. The State Party has abolished the system of increasing benefits for the elderly who live on welfare, and is currently considering lowering benefits. We strongly request the Government not to take such measures which are against the principle of the prohibition on retrogressive measures.

## **C. Teaching and Training Programs on Human Rights**

### **C.1 Proposed Recommendations for the Concluding Observations**

22. The State Party should improve lectures and teaching programs on human rights in the judiciary and for law enforcement officials.<sup>5</sup>

### **C.2 Reasons**

23. The Committee on Economic, Social and Cultural Rights recommended<sup>6</sup> in the Concluding Observations of the second periodic report of Japan that the State Party improve teaching and training programs on human rights for judges, prosecutors and lawyers in order to enhance their knowledge, awareness and application of the Covenant. However, there is hardly any lectures or training for judicial professionals and law enforcement officials in this regard in reality, and even when some training programs are offered, they are not based on the documents and manuals published by the UN organizations or other international organizations, and it must be said that the education and training on the international human rights standard is far from sufficient. Improvement and expansion of the curriculum on international human rights law is urgently required at the Legal Research and Training Institute and law schools.

## **D. Government Responsibility toward Human Rights Infringements Caused by International Cooperation and International Activities of Private Entities such as Corporations**

### **D.1 Proposed Recommendations for the Concluding Observations**

- a We request the Government to take concrete measures to realize the proportion of ODA against GNI at 0.7% in accordance with Japan's international commitment.
- b The State Party should place great importance on the realization of human rights as the main issue in their efforts for international cooperation, and should take measures accordingly.
- c The State Party should consider effective measures to restrict the overseas economic activities of the private sector, individual persons and corporations that cause human rights violations.

### **D.2 Reasons**

24. The Japanese Government's budget for ODA has continued to drop, remaining at around 0.2% to Gross Domestic Product (GDP) (0.18% in 2009 according to the OECD DAC documents). This figure is much lower than the ratio of 0.7% that Japan has promised to achieve as an international commitment (such as the Monterrey Consensus), and the Government has not presented a concrete path to achieve this goal.

25. The Government does not place much importance on the human rights of individuals in the local community of the recipient country in their ODA policy, and much more focus is placed on the amount of aid donated to the recipient country and its national interest. As a result, this

may undermine the impartiality of international cooperation, and may lead to widening inequality in the recipient country. There is mention of human rights in the Government's ODA Charter, but it is not set as a specific goal to fulfill the interest and needs of the local people in the recipient country.

26. Moreover, the activities of private corporations are not based on the UN guidelines for the respect of human rights in business activities, and have triggered human rights infringements and environmental destruction, and created poverty and disparities in developing countries.

## **E. Issue of Unratified Major International Conventions**

### **E.1 Proposed Recommendations for the Concluding Observations**

- a The State Party should ratify those optional protocols that stipulate the individual complaint mechanism, including that to Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, to the International Covenant on Civil and Political Rights, to the Convention on the Elimination of All Forms of Discrimination against Women and others, as well as declaring to accept the individual complaint mechanism stipulated in the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention for the Protection of All Persons from Enforced Disappearances.<sup>7</sup>
- b The State Party should place great emphasis on the dissemination and implementation of the present Concluding Observations, make concrete plans for implementation, and establish mechanisms for monitoring and evaluation.

### **E.2 Reasons**

- a It is of significant importance for the Government to ratify Optional Protocols and International Human Rights Treaties that stipulate the individual complaint mechanism, in order to meet the obligation to respect, protect, and fulfill human rights set forth in the Covenant in the judiciary and society at large.
- b The Government continues to flout economic, social and cultural rights as well as the Concluding Observations issued by the Committee. There has been a lack of political will in the Government to implement the recommendations issued by the Committee, and it has not followed a process of implementation, monitoring and evaluation in the light of the recommendations. It remains a matter of debate whether the Concluding Observations have legally-binding force or not; however, a lack of mechanism for implementation means nothing other than disregard or refusal to the Government's obligation as a State Party to the Convention.

## **F. Civil Legal Aid System**

### **F.1 Proposed Recommendations for the Concluding Observations<sup>8</sup>**

- a The Government should provide civil legal aid to all natural persons including non-Japanese nationals who reside in Japan regardless of their resident status and domicile based on the Comprehensive Legal Support Act.
- b Administrative procedure with regard to refugee certification (including the procedure to appeal against the decision to exclude), forced deportation, and the revocation of resident status should be supported by the civil legal aid system based on the Comprehensive Legal Support Act.

## F.2 Reasons

27. According to the Comprehensive Legal Support Act, the civil legal aid system is intended for Japanese or non-Japanese nationals having domicile in Japan and duly residing in Japan (hereinafter, “nationals and others”), and reimbursement of monetary aid is basically required. Thus, the scope of aid under the system widely excludes those cases that clearly need legal aid: (i) those without Japanese nationality are not eligible for civil legal aid under the Act unless they duly reside in Japan, and/or have work authorization, and (ii) administrative procedures are not covered under the Act whether intended for Japanese nationals or non-Japanese nationals, thus irregular migrants cannot receive legal aid for immigration procedures (procedures regarding forced deportation, procedures regarding the revocation of resident status) or refugee status procedures. For this reason, immigrant women married to Japanese who have lost their legal status of residence while fleeing from domestic violence (hereinafter “DV”) are not eligible for legal aid. Also, irregular migrants cannot receive support from the civil legal aid system for the following cases: lawsuits against unpaid wages, compensation for damages caused by tort (including occupational injuries, traffic accidents, and human rights violations at detention facilities or immigration bureaus). Administrative litigation is covered by the civil legal aid system, however, suits filed by irregular migrants are not (including lawsuits against the revocation of refugee status, lawsuits against forced deportation etc).
28. As refugee status procedures are not covered by the civil legal aid system, the JFBA currently provides assistance at its own expense; however, this should fundamentally be assisted by support from the state. The table below shows the number of consultations received by the JFBA:

		2007	2008	2009	2010
Refugees	Number of Consultations	67	171	585	570
	Expenditure(yen)	20,472,105	28,058,840	44,177,235	38,662,136
Non-Japanese Nationals	Number of Consultations	182	493	774	1026
	Expenditure(yen)	16,739,960	54,656,090	83,488,098	91,367,912

29. Nevertheless, in the light of the obligation of the State to guarantee the right of access to the court, equal rights, and effective measures for judicial remedy for the violation of human rights, legal aid should be offered to these irregular migrants through public funding.
30. As mentioned above, administrative procedures are not covered under the Act, thus irregular migrants cannot receive legal aid for refugee status procedure and immigration procedures (including procedures regarding forced deportation, and procedures regarding revocation of resident status). However, as there are occasions where foreign nationals who apply for these procedures have resident status, the consequences of these procedures could have great impact on their lives, leading to a serious restriction to their lives as a result of detention or deportation. Therefore, there is a substantial need for a legal assistance for them.

## **G. Discrimination against Buraku**

### **G.1 Proposed Recommendations for the Concluding Observations**

31. The State Party should interpret that discrimination against Buraku is included in “descent” in the definition of discrimination in Article 1 Clause 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, following the recommendation from the Committee.

### **G.2 Reasons**

#### **a Historical Development**

32. Buraku refers to the residential area of people who have historically been discriminated against, despite the fact that they are ethnically indistinct from other Japanese. Even though the discriminatory categorization of Buraku under the feudal social status system was officially abolished in 1871, they continued to occupy a low position economically and socially. After World War II, with the implementation of the Government’s Dowa Measures the social capital of Buraku improved, but the economic and social disparities between Buraku residents and those of other areas have not yet been dissolved.
33. A series of Dowa Measures reached the end of their term in 2002, and activities by the State Party towards Buraku were terminated.

#### **b Current Situation and Recommendations of the Committee on the Elimination of Racial Discrimination (CERD)**

34. While the Government of Japan has indicated its view that Buraku discrimination is not included in the grounds of discrimination prohibited by the International Convention on the Elimination of All Forms of Racial Discrimination, CERD regrets the interpretation of discrimination by the Government, and has urged it to adopt a comprehensive definition of racial discrimination in conformity with the Convention. Considering the fact that the Dowa issue is yet to be resolved, there is still sufficient grounds for the recommendation issued by the Committee on the Elimination of Racial Discrimination.

## **H. National Human Rights Institutions**

### **H.1 Proposed Recommendations for the Concluding Observations<sup>9</sup>**

- a The National Human Rights Institution should appropriately be established under the Cabinet Office, rather than within the jurisdiction of the Ministry of Justice in order to guarantee the independence of the Commission.
- b In order to guarantee the independence of the National Human Rights Institution, a system should be designed to secure adequate human resources and budget.
- c The Government should have enough manpower at a regional level, or should at least have enough personnel who belong to the Commission, and are able to direct and supervise staff at the regional offices.
- d It should also be provided that concerned administrative organs are duty-bound to cooperate with the Commission in cases of violations by themselves.
- e It should be provided that the National Human Rights Institution has the function of providing human rights relief, legislative and policy recommendations and human rights education according to the Convention or other established human rights standards.

### **H.2 Reasons**

35. According to the Government report, the Government submitted the Human Rights Protection Bill to the Diet in 2002. It is stated that this Human Rights Protection Bill is in compliance with the Paris Principles, and the Government continues to review the bill.
36. The Government submitted another Human Rights Protection Bill to the Diet on November 19, 2012. However the Bill was not passed due to the dissolution of the Diet.
37. It is difficult to predict when legislation on the establishment of a human rights institution will be enacted. However, it may not be long until when such law will be enacted, considering all the efforts towards its establishment that have been made by NGOs including the JFBA, recommendations issued by international treaty bodies such as the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, as well as strong international pressure. The Human Rights Protection Bill that was dropped this time will be a good starting point for the establishment of a National Human Right Institution.
38. The JFBA wish to present our evaluation of this bill to contribute to the consideration of the review by the Committee.

### **H.3 Strengths of the Draft Bill**

- a It has expanded the scope of legal remedy from “discrimination and abuse” in the previous bill to human rights violations in general.
- b Human rights violations by public authorities are subject to remedy.
- c The Commission will be under the jurisdiction of the Ministry of Justice legislatively; however, it is regarded as a Commission defined in Article 3 of the National Government Organization Law, which allows more independence from the Government’s authority.



- d Provisions which could have been used to infringe the freedom of expression, or freedom of media have been eliminated.

#### **H.4 Shortcomings of the Draft Bill**

- a There are only five members in the Commission, and it is expected that staff at the Legal Affairs Bureau under the Ministry of Justice will be transferred to the Secretariat of the Commission. There will not be enough manpower or budget provided, which is necessary for the Commission to address and decide on human rights issues from all over the country and in various fields.
- b The chief of the local Legal Affairs Bureau (which is under the Ministry of Justice) would be in charge of region cases, and it is suspected that independence from the Ministry of Justice may not be guaranteed.
- c It is not clearly stated that the scope of human rights relief covers all human rights violations stipulated in international human rights treaties which Japan has ratified or acceded to, such as the International Covenant on Economic, Social, and Cultural Rights, and that the Committee will make legislative and policy recommendations in the light of international human rights standards.
- d Relief mechanisms for human rights violations caused by judicial and administrative procedures is not clearly established, and it is not clearly stated that the public authorities are duty-bound to cooperate with the Commission in cases of violations by themselves.

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### **Article 3 - Equal Rights of Men and Women**

*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.*

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#### **A. Definition of Discrimination**

##### **A.1 Proposed Recommendations for the Concluding Observations**

- a Comprehensive legislation which prohibits discrimination against women including the following points, should be enacted.<sup>10</sup>
  - a.1 Discrimination against women is a violation of human rights.
  - a.2 Provision for the definition of discrimination that includes indirect discrimination against women.
  - a.3 Prohibition of all forms of discrimination against women including indirect discrimination.
  - a.4 Provision for punitive measures for acts in violation of the provisions for prohibition of discrimination against women.
- b The Government limits the forms of indirect discrimination prohibited in the Equal Opportunity Law, as revised in April 2007 to only three listed in the ministerial ordinance; the Government should instead state make these as a list of examples. Additionally, the guidelines that stipulate that legal decisions shall be made according to the employment management category system set forth in Equal Opportunity Law should be eliminated.<sup>11</sup>

##### **A.2 Reasons**

- a Necessity for a Comprehensive Law which Prohibits Discrimination against Women
39. The Convention on the Elimination of All Forms of Discrimination against Women clearly defines discrimination against women in Article 1, whereas there is no such definition in domestic legislation in Japan, thereby many cases of discrimination against women remain unaddressed. In addition, sexist remarks have been repeatedly made by those who are in official positions, namely politicians.
40. In the Concluding Observation adopted after the consideration of the sixth periodic report of Japan in 2009, the United Nations Committee on the Elimination of Discrimination against Women (hereafter Committee on the Elimination of Discrimination against Women) showed concern in this regard, and also at the absence of direct and clear incorporation of the Convention and of a specific definition of discrimination against women in accordance with Article 1 of the Convention within the Japanese Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (hereafter, Equal Opportunity Law). The Committee called on the State Party to take urgent steps to incorporate the Convention

and a definition of discrimination against women, as contained in Article 1 of the Convention, fully into domestic legislation and to report on progress made in this regard in its next periodic report. <sup>12</sup>However, the Government has not responded to this request.

b Necessity for the Revision or the Elimination of the Provision of Equal Opportunity Law that Preserves Indirect Discrimination

b.1 The Equal Opportunity Law, revised in 2007, prohibited indirect discrimination with regard to the following three conditions as listed in the ministerial ordinance where there is no legitimate reason: 1) the application criteria concerning body height, weight or physical capacity when recruiting or hiring workers: 2) in the case of the employer adopting a dual career ladder system, requiring workers to accept future transfers with a change of residence when recruiting or hiring workers: or 3) requiring workers to have experiences of job relocation when deciding their promotion.

Thus, the forms of indirect discriminations prohibited in the Equal Opportunity Law are limited only to those listed in the ministerial ordinance. As a result, the significance of this provision has been reduced, as it cannot deal with complicated cases effectively. The Government should specify cases of indirect discrimination as a list of examples rather than limiting them to cases listed in the ministerial ordinance, and each case should be dealt with in accordance with the guidelines. In addition, with regard to remuneration, direct discrimination as well as indirect discrimination should be prohibited, and the Government should make clear that such discrimination is to be subject to remedy under the Equal Opportunity Law.

b.2 Problems with the Dual Track Employment System, and Reasons for Removing the Provisions which Stipulate that Legal Decisions shall be made according to Employment Management Category.

41. The dual track employment system, in particular, has caused de facto discrimination against women in employment.

42. The dual track employment started to be implemented mainly in major companies including financial institutions around the time of the establishment and enforcement of Equal Opportunity Law in 1986. The gender-segregated management system prevalent before the enforcement of Equal Opportunity Law was changed, and a system comprising a career-track course and a non-career track course, which were managed separately, was introduced. At the time of the enforcement of Equal Opportunity Law, the Ministry of Labour (now the Ministry of Health, Labour and Welfare) issued a guideline which stipulated that decisions with regard to direct discrimination shall be made in accordance with employment management category. Thus, the gender-segregated management system prevalent before the enforcement of the Equal Opportunity Law merely changed its form to a dual-track employment system comprising a career-track course and a non-career track course, resulting in the gender-based management system and indirect discrimination against women being preserved as the difference between management categories.

43. The Ministry of Health, Labour and Welfare has provided the “Guidelines on Ways for Employers to Take Appropriate Measures with Regard to Matters Provided for under the

Provisions Concerning the Prohibition, etc. of Discrimination against Workers on the Basis of Sex” (Ministerial Notification No. 614 of MHLW) based on Article 10, para. 1 of the Equal Opportunity Law. In this guideline, it is stipulated that decisions with regard to direct discrimination shall be made in accordance with “employment management category”.

44. Therefore, the gender-segregated management system which was prevalent before the enforcement of the Equal Opportunity Law changed its form to a dual-track employment system comprising a career-track position and a non-career track position, and cases of discrimination against women are regarded as the difference in “employment management category”, resulting in the de facto gender-segregated management system being preserved.
45. The Committee on the Elimination of Discrimination against Women expressed its concern that the “employment management category” in this guideline may provide leeway for employers to introduce a track-based system which discriminates against women.
46. The State Party should incorporate provisions for a definition of indirect discrimination in the Equal Opportunity Law, and prohibit indirect discrimination, as well as removing the provisions which stipulate that decisions with regard to direct discrimination shall be made in accordance with employment management category. The Government should revise the ministerial ordinance which limits indirect discrimination prohibited under Equal Opportunity Law to three conditions, and state cases of indirect discrimination as a list of examples.

## **B. Gender Equal Society**

### **B.1 Proposed Recommendations for the Concluding Observations**

47. The State Party should implement temporary special measures including legislation to increase the representation of women in politics, public administration, judiciary, education, research and all other areas of public life in order to realize a gender equal society.<sup>13</sup>

### **B.2 Reasons**

48. The Committee on the Elimination of Discrimination against Women urged the Government to adopt temporary special measures to increase the representation of women in decision-making positions at all levels in its Concluding Observations in August, 2009,<sup>14</sup> and the Committee requested the State Party to provide, within two years, detailed written information on the implementation of the recommendations. The Japan Federation of Bar Associations conducted a study called the “JFBA Report on the Japanese Government’s Follow-up to the Concluding Observations of the Committee on the Elimination of Discrimination against Women” in July, 2011, and submitted it to the Committee.
49. According to the Report, the representation of women in decision-making positions is low in all areas of public administration, the private sector, and education and research. The Government, in the Third Basic Plan for Gender Equality, set a modest numerical target for increasing the proportion of women in leadership positions to at least 30% by 2020 in all fields of society. However, some of the numerical targets are set too low, and no specific are

set out measures for achieving the numerical targets. The plan does not include the adoption of national legislation on temporary special measures, such as a quota system for MPs, parliamentary candidates, public officials, positions in education and research, and managerial position in that private sector, and there is no system for prioritizing companies for public procurement. The plan merely states that the Government will introduce an award system as an incentive for taking temporary special measures, and will “request” individuals and organizations to introduce such measures. The Government thus misunderstands its obligations under the Convention, especially its obligations under Article 2, subparagraph (e), and has not taken appropriate measures toward individuals or organizations.

50. In the previous Concluding Observations of the Committee on Economic, Social and Cultural Rights<sup>15</sup>, and the Human Rights Council<sup>16</sup>, concern was expressed with regard to ensuring greater equality between women and men in decision-making positions, but these issues have been insufficiently addressed.
51. Please refer to the “JFBA Report on the Japanese Government’s Follow-up to the Concluding Observations of the Committee on the Elimination of Discrimination against Women” for more details on the current situation regarding participation of women in the decision-making process, and temporary special measures to enhance their participation in the decision-making process.

## **C. Disadvantaged Position of Women in the Labor Market**

### **C.1 Proposed Recommendations for the Concluding Observations**

- a The Government should make it a priority to achieve de facto gender equality in labour market.
- b Dismissal of women and limited term employment for women on the grounds of pregnancy and childbirth is widespread, although it is against the law. The Government should take measures to prevent the illegal dismissal of women on the ground of pregnancy and childbirth, eliminate vertical and horizontal occupational segregation between women and men, and take concrete measures to close the wage gap between women and men, including special temporary measures.<sup>17</sup>
- c While consolidating the system for effective implementation and monitoring, and establishing the services for legal remedy including legal support and case management, the Government should impose effective punitive measures against discrimination against women such as sexual harassment in the workplace in both the public and private sectors.<sup>18</sup>

### **C.2 Reasons**

- a In the review of the sixth periodic report, the Committee on Elimination the Discrimination against Women shows concern about the disadvantaged situation of women in the labor market, as reflected in the significant vertical and horizontal occupational segregation between women and men. The Committee is particularly concerned that the “employment management

category” in the Administrative Guideline under the Equal Opportunity Law may provide leeway for employers to introduce a dual track-based system which discriminates against women. It also expresses concern about the persistence of a very high gender-based wage gap of 32.2% in hourly earnings among full-time workers, an even higher gender-based wage gap among part-time workers, the predominance of women in fixed-term and part-time employment and illegal dismissal of women due to pregnancy and childbirth. The Committee also expresses concern regarding the inadequate protections and sanctions within existing labor laws. In particular, the Committee is concerned about the absence in the Labor Standards Law of a provision recognizing the principle of equal pay for equal work and work of equal value in accordance with the Convention and ILO Convention No. 100. The Committee also expresses concern at widespread sexual harassment in the workplace and the fact that although the legislation includes measures to identify companies that fail to prevent sexual harassment, there are no punitive measures to enforce compliance beyond publicizing the names of the offending companies. The Committee is further concerned at the lengthy legal processes regarding employment issues, which are difficult for women to accept, and which impede them from obtaining redress in the courts, as provided for under Article 2 (c) of the Convention. Three years has passed since the recommendation was issued, yet there has been hardly any improvement in this regard.

- b According to the survey conducted by the Gender Equality Bureau Cabinet Office in 2011, while women’s participation in policy and decision-making has increased as a whole, the increase remains minimal. The ratio of female representatives in the Diet is, as of December 2011, 10.9% for the Lower House (10.9% in the previous survey), and 18.6 % for the Upper House (18.2% in the previous survey). Among management-level government officials, as of January, 2010, females account for 2.4 % (2.2% in the previous survey). Among managerial posts at private companies (at the section chief level), in 2010, females account for 7.0% (7.2% in the previous survey). In the judicial field, as of 2011, among public prosecutors, females account for 14.1 % (13.6% in the previous survey); among judges, females account for 17.0% (16.5% in the previous survey); and among attorneys, females account for 16.9% ( 16.3% in the previous survey). Among doctors, in 2010, females account for 18.9% (18.1% in the previous survey); among dentists, in 2010, females account for 20.8% (19.9% in the previous survey). The ratio of females among researchers, in 2011, is 13.8% (13.6% in the previous survey).
  - c Ratio and remuneration of female part-time workers
52. The number of female workers and their ratio in the entire workforce are on the increase: female workers numbered 23,290,000 in 2010, accounting for 42.7% of the total workforce (54,620,000).
  53. Nevertheless, the wage level of female workers subsequently remains at low levels. If the wage level of general male workers is 100, wage level of general female workers remains around 60, with the wage level of female part-time workers at around 45. The difference in remuneration between female workers and male workers remains severe, and has in fact

growing in recent years.

54. The increase in non-permanent employment is a background factor of de facto discrimination against women in the workplace, including wage discrimination. The proportion of female workers employed on a non-permanent basis was 31.9% in 1985 (part-time and casual workers: 28.4%; dispatched workers, contract workers, temporary workers and others: 3.5%; full-time employees: 68.1%), but rose to 53.8% in 2010 (part-time and casual workers: 41.2%, dispatched workers, contract workers, temporary workers and others: 12.6%, full-time employees: 46.2%), and now account for the majority of workers. Wage levels were set with the gender-biased understanding that women's wages are to supplement the household budget, and this idea still affects the wage level of women at present.
  55. Equal treatment of non-permanent workers has not been established under the law. The Act on Improvement etc. of Employment Management for Part-Time Workers prohibits discrimination against part-time workers who meet certain conditions but since these conditions are extremely narrow, it has only been possible to realize the equal treatment of a limited number of part-time workers, and the equal treatment of those in other forms of non-regular employment is not guaranteed under the law.
  56. The Third Basic Plan for Gender Equality does not establish clear numerical targets or a time schedule for dealing with the wage gap between men and women or reducing the high ratio of non-permanent female workers. Recruitment strategies to increase the ratio of permanent workers, legislative revisions to ensure the equal treatment of non-permanent workers, and the total elimination of indirect discrimination including the dual-track system, have not been included.
  57. In May 2010, the Ministry of Health, Labour and Welfare formulated and established a "Work Analysis and Work Evaluation Implementation Manual" relating to part-time workers. However, the comparison targets were extremely limited the manual is remarkably incomplete and insufficient as an objective analysis and evaluation of employment, and there is a danger that the effect will be to rationalize discrimination.
  58. It is necessary to set numerical targets, grant effective incentives, disclose gender disparities, take radical measures, and revise the legislation.
- d Among 23,301 consultations which were dealt with at prefectural Labour Department Equal Employment Bureaus in 2009, 11,898 cases were related to sexual harassment, which was the highest in number, and accounted for more than half of the consultations. Furthermore, 3,654 cases of consultation were related to unfair treatment on the grounds of pregnancy and childbirth. Sixty-two percent of women, including those who were subjected to illegal treatment, retired voluntarily or were forced to leave their jobs around the time of childbirth due to a lack of conditions favorable to continuing work after childbirth (2005 statistic), thus the creation of favorable conditions for women to continue working after childbirth is urgently required.
  - e With regard to the Article 11 "Employment Management Measures Concerning Problems Caused by Sexual Speech or Behaviour in the Workplace" under the Equal Opportunity Law,

“behaviour based on stereotypical attitudes towards gender roles” should be included in the definition of sexual harassment. A Sexual Discrimination Remedy Board independent from the Government should be established in each prefecture for the remedy of sexual discrimination including sexual harassment, and the Government should consider the introduction of sanctions such as suspension from bidding and payment of levies against employers in cases of violation of the provision for the prohibition of discrimination against women.

f Response to the List of Issues 5

59. The ratio of part-time workers in Japan was 17.6% in 2006, and while this is slightly higher than the OECD average, it is of an average level internationally. However, there is a significant gender gap, with the ratio of part-time workers among men being 8.7% whereas their female counterparts amount to 30.5%.
60. In regard to remunerative differences between women and men, women’s wages remain at around 70% of men’s.
61. With regard to cases treated under Equal Opportunity Law, the number of consultations received at the prefectural Labour Department Equal Employment Bureaus in 2011 was 23,303. Among these cases, 12,228 were related to Article 11 (sexual harassment), which was highest in number among the consultation. Next highest in occurrence were 3,429 cases related to Article 9 (unfair treatment on the grounds of marriage, pregnancy and childbirth), and 3,169 cases were related to Articles 12 and 13 (Maternal Health Care).
62. Some of the major concerns include; the dual track system based on de facto gender-segregation; the low ratio of women participating in the labor market; in particular, the low ratio of women continuing to work after the birth of their first child (38%); the difficulty of reconciling work and family (see Article 7); tax benefits and other benefits for single-earner households; the low rate of men participating in childrearing and household affairs; and the delay in expanding and strengthening social services including home and community care.

**D. Strengthening the Function and Authority of the National Machinery for the Advancement of Women (currently the Gender Equality Bureau Cabinet Office)**

**D.1 Proposed Recommendations for the Concluding Observations<sup>19</sup>**

63. The State Party should make efforts to realize the recommendations set forth in para. 26<sup>20</sup> of the Concluding Observation of the Committee on the Elimination of Discrimination against Women for the sixth periodic report of Japan.

**D.2 Reasons**

64. The Government has declared that “the realization of a gender equal society will create a livable society for both women and men, and it should be a top priority task that the Government as a whole has to undertake.” However, there is serious doubt as to whether the Government is treating this as their top priority task. There is no national machinery for the advancement of women that has appropriate mandate at present.



65. The Government has established the Gender Equality Bureau, and has appointed a Minister for Gender Equality and Social Affairs, yet it lacks the mandate and appropriate financial and human resources to perform its functions. In addition, the Minister in charge of gender equality is not dedicated solely to this portfolio, but also often holds other portfolios, and may not specialize in the issues concerned. The “Liaison Conference for the Promotion of Gender Equality” remains the Government’s vehicle for advertisement. In the Concluding Observations of the Committee on the Elimination of Discrimination against Women for the sixth periodic report of Japan, the Committee showed concern that “the Gender Equality Bureau of the Cabinet Office, which serves as the secretariat for the national machinery for gender equality, lacks the mandate and appropriate financial resources to perform its functions (para. 25)”. The Committee recommended that “the State party further strengthen its national machinery for the advancement of women, including by clearly defining the mandate and responsibilities of its various components, in particular between the Minister of State for Gender Equality and Social Affairs and the Gender Equality Bureau, and enhancing coordination among them, as well as through the provision of financial and human resources “(para. 26).

**E. Abolition of Discriminatory Legislation within the Civil Code on Marriage (including Discrimination against Illegitimate Children), the Penal Code, and the Anti-Prostitution Act**

**E.1 Discriminatory Civil Code on Marriage (including Discrimination against Illegitimate Children)**

a Proposed Recommendations for the Concluding Observations

66. The State Party should revise or eliminate discriminatory provisions in the Civil Code, including the six-month waiting period required for women but not men before remarriage, and fulfill the obligation as a State Party to international human rights law such as the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women, and should make a sincere and serious response to the international community.<sup>21</sup>

b Reasons

67. Since an outline of revision for the Civil Code was submitted in February 1996, there has been very little progress with regard to legal reform of discriminatory family law by the Government. The Government uses public opinion surveys to explain the lack of progress; however, the progress of legal reform relating to human rights should not be deterred due to public opinion. On February 14, 2011, a lawsuit for State compensation was filed for illegality of the inaction of the State in delaying the legal reform to revise the provision on the compulsory single surname for married couples, and this case is still pending. In this lawsuit, the Government repeated its arguments such as, “the Convention is non-self-executing,” and “the Convention only obliges the State Parties to establish or maintain domestic systems with

a certain level or contents concerning designated matters but does not confer any rights on individuals.” Furthermore, the Government employed the an argument that, “Article 750 of the Civil Code cannot be interpreted as violating the Convention.”

68. The Minister of Justice and Minister of Gender Equality took a stance to amend the discriminatory provisions in the Civil Code, and eliminate discrimination against children born outside marriage regarding share of inheritance, after the change of administration to Democratic Party in 2009. However, since both the Minister of Justice and Minister of Gender Equality have resigned from office, the Government no longer intends to submit the bill to amend the Civil Code.
69. Recommendations from international treaty bodies have been ignored in the Government’s reports. The Committee on the Elimination of Discrimination against Women recommended on November 4, 2011 that the State Party provide, within one year, additional information on: actions taken with respect to preparation and adoption of legal provisions for (i) allowing for the choice of surnames for married couples; (ii) equalizing shares in succession between children born within marriage and children born outside marriage; and (iii) abolishing the six-month waiting period required for women but not men before remarriage. In the “additional information regarding the response by the Government of Japan on the Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDAW/CO/6)” issued on November 5, 2012, the Government stated that the Cabinet has not submitted the draft law that amends part of the Civil Code as recommended by the Committee, since “there are various opinions concerning these issues in the Government and among the public and it is still necessary to continue to deepen public discussion of these issues”. However, the Government’s position of waiting in order “to deepen public discussion on these issues” means nothing other than refusal of their obligation as a State Party to the Convention, and such a claim is unacceptable.

## **E.2 Discriminatory Provision in the Penal Code and Anti-Prostitution Act**

- a Proposed Recommendations for the Concluding Observations
  - a.1 The State Party should abolish Article 212 of the Penal Code, which penalizes abortion, immediately.<sup>22</sup>
  - a.2 The Government should show clearly how they will revise the future policy on prostitution, including the amendment and abolishment of Article 5 of the Anti-Prostitution Act which penalize prostitutes (mostly women) in effect by penalizing persons who “solicit” prostitution, following para. 39<sup>23</sup> of the Concluding Observations of the sixth periodic review of Japan by the Committee on the Elimination of Discrimination against Women.<sup>24</sup>
- b Reasons
  70. In addition to the discriminatory provisions in the Penal Code and Family Registration Act mentioned above, there exist other discriminatory legislations which include: (i) Penal Code 212, which penalizes women who have an abortion, and Penal Codes 213 and 214, which penalize those who are involved with abortion, and (ii) Article 5 of the Anti-Prostitution Act,

which penalizes women who solicit prostitution (the purchase and sales of sex).

71. Article 2 (g) of the Convention on the Elimination of All Forms of Discrimination against Women calls for the State Party “to repeal all national penal provisions which constitute discrimination against women”.
72. However, in Japan, there is a provision in the Penal Code which penalizes abortion. Article 212 of the Penal Code stipulates that “when a pregnant woman carries out abortion on herself by the use of drugs or any other means, imprisonment with labor for not more than 1 year shall be imposed”. In the Concluding Observations of the sixth periodic report of Japan, the Committee on the Elimination of Discrimination against Women recommended that “the State Party 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>25</sup>In the Interim report prepared by the Special Rapporteur of the Human Rights Council, Anand Grover, on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, it is stated that barriers arising from criminal laws and other laws and policies penalizing abortion must therefore be “immediately” removed in order to ensure full enjoyment of the right to health.<sup>26</sup>
73. “The act of soliciting for purposes of prostitution in a way that is exposed to the public” is prohibited on pain of penalty in the Anti-Prostitution Act, but there is no punishment for persons who purchase sexual services. In the Concluding Observations of the sixth periodic report of Japan, the Committee on the Elimination of Discrimination against Women expressed concern that “prostitutes are subject to prosecution under the Anti-Prostitution Act, while their clients do not face punishment”. The Committee called on the State Party “to take appropriate measures to suppress the exploitation of prostitution of women, including by discouraging the demand for prostitution”. It also urged the State Party “to take measures to facilitate the reintegration of prostitutes into society and provide rehabilitation and economic empowerment programs for women and girls exploited by prostitution”.<sup>27</sup>
74. Nevertheless, the Government has not taken effective measures to redress the situation. It is stated in the Third Action Plan for Gender Equality that “with the low birth rate and progress in science and technology, as the legal structures on abortion and assisted reproductive technologies should be considered from many points of view among the public, the Government plans to obtain information for the discussion, if needed.” On the other hand, the Committee on the Elimination of Discrimination against Women pointed out that “the obligations undertaken under the Convention by the State Party upon ratification should not be solely dependent on the results of public opinion surveys, but on its obligations to align national laws in line with the provisions of the Convention, as it is a part of its national legal system”.<sup>28</sup>The Government’s position of offering “to consider the matter from many points of view” stated in the Third Basic Plan means nothing other than refusal to implement the Convention and a lack of political will on the part of the Government on these issues.
75. As to prostitution, the Third Basic Plan for Gender Equality only states that “the Government

may consider amendment of the Anti-Prostitution Act”, yet it does not mention any specific measures for discouraging the demand for prostitution.

76. Thus, the Japanese Government has maintained a negative attitude toward changing the legislation on abortion and prostitution.
77. In the “Written Information Submitted for the Summary of the Human Rights Situation in Japan to be Prepared by the United Nations Office of High Commissioner for Human Rights”, the JFBA stated that “repeal of the provision that penalizes women who have had abortions was recommended in the Concluding Observations of the CEDAW on Japan’s sixth periodic report. Concerns have also been raised about the fact that the Anti-Prostitution Act makes prostitutes subject to prosecution, while customers are not penalized. These discriminatory provisions against women should be immediately revised or abolished. However, the Government has made virtually no consideration of these issues. The Government should revise or eliminate these provisions immediately.” The JFBA has been working hard to achieve these goals.

## **F. Minority Women**

### **F.1 Proposed Recommendations for the Concluding Observations**

78. The Government should conduct a comprehensive survey on the situation of minority women including indigenous Ainu women, Buraku women, Zainichi Korean women, and needs to collect information and statistical data especially on education, employment, health, social welfare, and exposure to violence. The results of the survey should be incorporated into concrete plans and policies to promote the rights of minority women.

### **F.2 Reasons**

79. The historical relationship between the status system, assimilation policy for indigenous people, and Japanese colonialism has not been taught sufficiently at school, and many people do not know about the effects of these policies and history on the present. In particular, there is little understanding about what difficulties women face when they belong to the social groups affected by these policies and history. Hardly any research or surveys have been conducted to reveal the needs and actual situation of minority women who have been placed in a disadvantaged position due to their social and historical background, and there is a lack of policy or programmes for them based on such information and statistical data in both women’s policy and human rights policy. The Government has collected no statistical data about Ainu, Buraku, or Zainichi Korean women.
80. In the Concluding Observation of the sixth periodic report of Japan (2009), the Committee on the Elimination of Discrimination against Women “regrets the lack of information and statistical data about the situation of minority women in the State party, who suffer from multiple discrimination based on gender and ethnic origin, both in society at large and within their communities. The Committee further regrets the absence of any proactive measures,

including a policy framework for each minority group, to promote the rights of minority women. The Committee urges the State party to take effective measures, including the establishment of a policy framework and the adoption of temporary special measures, to eliminate discrimination against minority women. To this end, the Committee urges the State party to appoint minority women representatives to decision-making bodies. The Committee reiterates its previous request (A/58/38, para. 366) that the State party include information on the situation of minority women in Japan, especially with regard to education, employment, health, social welfare and exposure to violence, in its next periodic report. In this context, the Committee calls upon the State party to conduct a comprehensive study on the situation of minority women, including indigenous Ainu, Buraku and Zainichi Korean , and Okinawan women “(para. 51).

81. Nevertheless, there is no mention of minority women or any policy for minority women in the Government’s administration, and there is no government office which deal with the issue specifically. The words “Ainu” and “Dowa Problem” (referring to Buraku communities) were marginally mentioned in the Third Basic Plan for Gender Equality endorsed by the Cabinet in 2010, but this presents no specific measure or policy for them.

## **G. Sexual Minorities**

### **G.1 Proposed Recommendations for the Concluding Observations**

82. Appropriate measures, including legislation, should be taken to eliminate discrimination based on gender orientation and gender identity.

### **G.2 Reasons**

83. In Japan, there is no legislation to justify discrimination based on sexual orientation and gender identity. At the same time, since 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, sexual minorities often face bullying. They are often forced to resign their job or dismissed from their job due to lack of understanding for the discrimination. Their access to medical services are often hindered due to lack of understanding about sexual orientation and gender identity, thus they experience difficulty in exercising their social, economic and cultural rights, and are often excluded in education and employment. The social welfare system and procedures for protecting victims of domestic violence are designed for heterosexual persons, thus sexual minorities are excluded from utilizing the system. Due consideration should be given for those with gender identity disorders who are confined in penal institutions, and they should be treated with due respect for their gender identity.
84. According to research conducted by Hidaka Yasuharu, Associate Professor at the Department of Nursing of Takarazuka University, who has made proposals to the Government regarding the prevention of suicide and AIDS, “(In Japan), 6.5% of homosexual and bisexual males

(hereafter gay and bisexual males) have contemplated suicide, and 1.5% of them have attempted suicide. This shows much higher risks for suicide compared with heterosexual persons”. Professor Hidaka’s research clearly shows the difficulties that sexual minorities have to face in their lives.

## **H. Overcoming Gender Stereotypes**

### **H.1 Proposed Recommendations for the Concluding Observations**

85. The Government should take the following measures to eliminate negative stereotypes about the roles and responsibilities of women and men.
  - a The Government should improve its efforts and take proactive and sustained measures to eliminate stereotypical attitudes about the roles and responsibilities of women and men, through awareness-raising and educational campaigns.
  - b The Government should speedily complete a revision of all educational textbooks and materials to eliminate gender stereotypes.<sup>29</sup>
  - c The Government should take measures, including the criminalization of verbal violence, to ensure that Government officials do not make disparaging remarks that demean women and contribute to the patriarchal system which discriminates against women.

### **H.2 Reasons**

86. The Government has not taken concrete measures to eliminate negative stereotypes about women and men, and stereotypical attitudes about roles of women in the family and in society.
87. It is worth noting that stereotypical attitudes towards roles and responsibilities of women and men (i.e., “men should work outside, and women should look after the family”) have found more acceptance recently among young women, although this attitudes had continued to lose popularity until recently. Acceptance of gender stereotypes overlooks the fact that stereotypical gender roles may hinder the exercise and enjoyment of human rights for women, and the Government is failing to fulfill their obligation to redress the situation.
88. In the Concluding Observations of the sixth periodic report of the Government of Japan, the Committee on the Elimination of Discrimination against Women expressed its concern “at the reported “backlash” against the recognition and promotion of women’s human rights in the State party, despite the persistence of inequality between women and men”. It continued to be concerned “at the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and in society in Japan”. The Committee noted that “this persistence is, inter alia, reflected in the media and in educational textbooks and curricular materials, all of which influence women’s traditional educational choices and contribute to the unequal sharing of family and domestic responsibilities, resulting in their disadvantaged situation in the labor market and their underrepresentation in political and public life and decision making positions”. The Committee was further concerned that “stereotypical attitudes are particularly prevalent in the media, where women and men are

often depicted in a stereotyped manner and that pornography is becoming increasingly prevalent in the media. The over-sexualized depiction of women strengthens the existing stereotypes of women as sex objects and continues to generate girls' low self-esteem". The Committee expressed 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". The Committee called upon the State Party "to further enhance its efforts and to take proactive and sustained measures to eliminate stereotypical attitudes about the roles and responsibilities of women and men, through awareness-raising and educational campaigns". The Committee recommended that "the State party encourage the mass media to promote cultural change with regard to the roles and tasks considered suitable for women and men". The Committee requested the State Party "to enhance the education and in-service training of the teaching and counseling staff of all educational establishments and at all levels with regard to gender equality issues, and to speedily complete a revision of all educational textbooks and materials to eliminate gender stereotypes". The Committee urged the State Party "to take measures, including the criminalization of verbal violence, to ensure that government officials do not make disparaging remarks that demean women and contribute to the patriarchal system which discriminates against women". It also urged the State Party "to strengthen its strategies to combat pornography and sexualization in the media and advertising and to report the results of the implementation in its next periodic report". It called on the State Party "to take proactive steps, including through encouraging the adoption and implementation of self-regulatory measures, to ensure that media production and coverage are non-discriminatory and promote positive images of girls and women, as well as increase awareness of these issues among media proprietors and other relevant actors in the industry".

89. The Government should take these recommendations seriously, and should further enhance its efforts to take proactive and sustained measures to eliminate stereotypical attitudes about the roles and responsibilities of women and men.

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## **Article 6 - Right to Work**

1. *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
  2. *The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*
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### **A. Non-permanent Employment**

#### **A.1 Proposed Recommendations for the Concluding Observations**

- a In August 2012, a law was adopted that regulates and sets certain limits to fixed-term contracts for the first time. The law should, however, clearly stipulate that labor contracts should in principle be concluded for indefinite terms, and that fixed-term labor contracts could be permitted only in exceptional cases, in which there are reasonable grounds.
- b Dispatch workers (workers who are employed by and paid wages by human resource agencies, but are dispatched to different companies to work) work under different chains of command in the workplace from that of their employers, and therefore the responsibilities of both become ambiguous. The principle of direct employment (the system in which workers work under direct chain of command of the employer) should be promoted.
- c The principles of equal pay for work of equal value, as well as for equal treatment, are not established between regular and non-permanent employees (part-time workers, fixed term contract workers, dispatch workers and others), and non-permanent workers find it difficult to make a living from their pay. This inequality should be corrected.

#### **A.2 Reasons**

- a Increase in Non-permanent Employment
  90. The proportion of non-permanent workers (part-time workers, fixed-term contract workers, dispatch workers and others) in the entire labor force is growing each year, from 16.4% in 1985, 26.0% in 2000 to 34.3% in 2010 (Ministry of Internal Affairs and Communications, “Labor Force Survey”). At present, one third of the workforce is in non-permanent employment.
  91. The status of non-permanent workers is unstable, and even though they may be doing the same work as regular workers, their wages and other labor conditions are kept at less favorable levels. In 2010, the average monthly salary for regular employees was 311,500 yen whereas that for non-permanent employees was 198,100 yen (Ministry of Health, Labour and Welfare,



Basic Survey on Wage Structure, 2011)

b Laws and Regulations regarding Non-permanent Employment

92. In August 2012, the first law regulating fixed-term contracts was adopted. Its contents include provisions that require employers to conclude an indefinite-term labor contract on application from the worker, who has concluded a five-year fixed-term contract, if the employer intends to continue to employ him/her (a transfer from fixed-term to indefinite-term contract). It also includes explicit provisions of the legal principle of limitations to non-renewal of contracts, which has been established by jurisprudence (in certain cases, the determination of the validity of the termination of labor contracts at the end of the contract term may be subject to the same criteria as dismissals). These and other provisions are some of the positive aspects of the law. However, the regulation is insufficient, as it includes exceptions, such as in cases where a worker is re-employed under a fixed-term contract after a certain period after the termination of the previous contract; in such cases, the five-year rule will not apply.
93. Regarding dispatch labor, the “Law concerning the Adequate Management of Labor Dispatch and Improvement of Work Conditions of Dispatch Workers” was amended on March 8, 2012. There was some progress, such as (1) the prohibition in principle of dispatch of day-laborers, (2) the provision treating the business entity to which the worker is dispatched as the party that proposed the labor contract, in cases of illegal dispatch (however, this provision will enter into force three years after the amendment has been in force). However this does not mean that the instability of dispatch labor has been solved.
94. For part-time labor, the “Revised Law concerning Improvement of Employment Management of Part-time Workers” entered into force on April 1, 2008, but the scope of part-time workers protected by the law is extremely limited, and the Law was criticized in that it would not be much help in improving the working conditions of part-time workers. Currently, there are discussions for further amendment, but the scope of application of the Law should be broadened so that part-time workers would no longer be made to work for unfairly low wages or under unfavorable working conditions. The principles of equal pay for work of equal value and of equal treatment should be further realized.
95. Furthermore, part-time workers’ wages are low, and they face a larger burden of social security fees, causing many to hesitate to join the social insurance schemes. A social security system, in which part-time workers are not disadvantaged, should be considered.

**B. Measures for the Unemployed**

**B.1 Proposed Recommendations for the Concluding Observations**

96. The State Party has adopted a very narrow definition regarding data on unemployment and on measures for the unemployed. The definition as well as the scope of the measures should be expanded.

**B.2 Reasons**

97. In Japan, an officially unemployed person, or a “completely unemployed” person is someone who satisfies the three conditions, which are (1) having no job, and has not worked even for a little while during the survey period, (2) being able to start work as soon as there is a job, and (3) having been actively seeking work, or was preparing to start a business during the survey period (including cases, in which he/she was waiting for the outcome of past job searching activities). People who have worked for one hour during the last week of the month and received payment, or who help with the housework, or who have lost the will to look for work and have given up (for example, NEETs: not in education, employment or training) or who have sufficient unearned income, and therefore no need or will to work are thus not defined as “completely unemployed” and therefore will not appear in the unemployment statistics.
98. Based on this definition, there were 1.27 million women (4.6%) and 2.07 million men (5.4%) who were completely unemployed (as a ratio) in 2010.
99. However, for example, counting someone who has worked for an hour at the end of the month as an employed person does not reflect the actual situation. The category of “helping with the housework” is likely to include a considerable number of people without work. A considerable number of people who are not looking for work, because they have given up temporarily, but have not completely lost the will to work are thought to be among those not in education, employment or training (NEETs) as well. If such “hidden unemployed” people were included, the actual unemployment rate would be substantially higher.
100. The job-opening-to-application rate is declining, while the jobless rate is increasing to over 10% among senior high school graduates and over 20% among university graduates. The increase in the number of unemployed youth is striking. The problem is that many leave their work voluntarily, and the rate of those leaving employment after a short period is high.

## **C. Ensuring Equal Employment Opportunities for People with Disabilities**

### **C.1 Proposed Recommendations for the Concluding Observations**

- a The status of people with disabilities working in sheltered employment should be recognized as workers.
- b Discrimination based on disabilities should be prohibited in all matters pertaining to any form of employment (including recruitment, hiring and employment conditions, continuation of employment, promotion as well as safe and healthy working conditions).
- c Provision of reasonable accommodation in the workplace to people with disabilities should be ensured.
- d In applying the employment quota system, which is the current system of hiring people with disabilities, the Government (Ministry of Health, Labour and Welfare) should desist from counting non-permanent employment as permanent employment.

### **C.2 Reasons**

- a The Sheltered Employment of People with Disabilities as Labor

101. The forms of employment for people with disabilities can be separated into general employment and sheltered employment. Within the former, the worker's basic human rights are protected as workers, and they are considered to be covered by the Labor Standard Act, the Minimum Wages Act and other labor protection laws. However, in the latter, workers are not recognized as such, and their status is that of objects of social protection.
102. Therefore, the rights to industrial action or to collective bargaining are not recognized, and many are made to work for pay below minimum wages. Under these circumstances, people with disabilities are deprived of the prerequisite to live subjectively as members of society by earning an income through their own labor, because of their disabilities. Changing this basic structure is of immediate importance.
- b Prohibition of discrimination and reasonable accommodation
103. Discrimination should be prohibited in all matters regarding employment such as recruitment, hiring, continuation of employment, promotion and working conditions. Reasonable accommodation necessary for people with disabilities should be provided as a matter of course.
- c The employment quota system and the inclusion of non-permanent workers with disabilities in employment statistics
104. Article 38 of the "Law for Employment Promotion etc of Persons with Disabilities" provides for the duty of national and local governments to employ "permanent employees" and Article 43 provides for the duty of private enterprises to hire "permanent workers." Since the Law requires "permanent (employment)" the "permanent employees" or "permanent workers" would have to be interpreted as regular employees or workers. However, the Ministry of Health, Labour and Welfare has told enterprises and government organs that non-permanent employment would be sufficient. It is clearly inappropriate for the State itself to suggest that non-permanent employment will suffice where permanent employment for people with disabilities is required.

## **D. Right to Work for Non-Japanese Nationals**

### **D.1 Proposed Recommendations for the Concluding Observations<sup>30</sup>**

- a The State Party requires "civil servants engaging in exercise of public authority or in participation in the formation of public intent" to hold Japanese nationality in order to be hired. However, it should allow hiring of non-Japanese nationals in general national and other civil service positions, as well as promotion of those who are hired at the same level as Japanese nationals, unless there would be substantial difficulties in the performance of work when non-Japanese nationals are hired in those positions.
- b The Supreme Court should change its practice of not appointing non-Japanese as civil and family affairs conciliation commissioners as well as judicial commissioners for the reason of exercise of public authority. It should appoint a qualified person equally, regardless of nationality.

## D.2 Reasons

- a Government employees include both national and local government employees. The Constitution, the National Public Service Act and the Local Government Employee Act do not require Japanese nationality for such employment. However, in the case of national government officials, the National Personnel Authority rules state, that “people who do not hold Japanese nationality may not take the employment examination.” In the case of local government officials, the former Ministry of Home Affairs (currently the Ministry of Internal Affairs and Communications) rules state that “in light of the commonly understood principles of law regarding government officials, individuals who do not have Japanese nationality may not be appointed to civil servant positions in which they would wield public authority, or would be involved in determining the policies of a local government body.” The Supreme Court has upheld both positions. Moreover, in practice, the scope of the area, in which “they would wield public authority, or would be involved in determining the policies of local government body” is given an unreasonably broad interpretation. The right to be employed in public service for non-Japanese nationals is being violated and those already in public service are being discriminated regarding promotion without reasonable grounds.
- b Civil and family affairs conciliation commissioners, in particular, play a mediating role to solve civil and family disputes by facilitating discussions to arrive at an agreement. Conciliation commissioners, who are also attorneys, are appointed by the Supreme Court based on the recommendations of the Bar Associations. Judicial commissioners assist the courts in the proceedings before Summary Courts, seeking to reach settlements of disputes. They play a role in facilitating communications between the parties. Judicial commissioners, who are also attorneys, are appointed by the District Courts based on the recommendations of the Bar Associations.
- c The Supreme Court rules relating to conciliation commissioners provide that those who are qualified to be appointed are persons, who are “qualified to be attorneys, possessed of expert knowledge which is useful for the settlement of civil or family affairs disputes, or possessing considerable knowledge and experience in social life, and are between forty and seventy years of age”. There is absolutely no indication regarding the holding of a particular nationality. The provisions for judicial commissioners are the same. In fact, from January 1974 to March 1988, Cho Yuchu (Chang Yu-chung), a lawyer of the Osaka Bar Federation, who held nationality of the Republic of China, had been appointed a civil affairs commissioner. However, the Supreme Court allowed the Kobe Family Court to refuse the Hyogo Bar Federation’s recommendation to appoint a non-Japanese lawyer as a family affairs commissioner in October 2003. Since then, the Sendai and the Tokyo Bar Federations have recommended non-Japanese lawyers as family affairs commissioners or judicial commissioners in March 2006, and in 2007, four Bar Federations, Sendai, Tokyo, Osaka and Hyogo have recommended five such lawyers as commissioners. All were refused. Thus, the Supreme Court has not exercised its authority, and maintained its position of allowing the

refusals.

Refusing to appoint conciliation and judicial commissioners on grounds of nationality has no basis in law, and must be seen as a violation of the rule of law. For attorneys in particular, there is no requirement of a specific expertise. They are considered to have the necessary expert knowledge in resolution of disputes as professionals in solving legal disputes, which has nothing to do with nationality.

- d In particular, there are many non-Japanese, including special permanent residents, such as Koreans and those from other areas colonized by Japan who later lost Japanese nationality with the official notice issued when the Treaty of San Francisco went into effect, as well as their descendants, and other foreign residents, living in Japan as members of the society. Many of them would have the opportunity to avail themselves of the conciliation system in Japan, and in many of their cases, it would be beneficial to have commissioners, who have knowledge of the unique cultural backgrounds of these peoples, be involved in the process. Similarly, there are many cases, in which foreigners become parties in court cases involving judicial commissioners. It is a natural conclusion to allow non-Japanese conciliation and judicial commissioners to be involved equally in cases with Japanese conciliation and judicial commissioners.
- e Regarding teachers in public elementary, junior and senior high schools, non-Japanese nationals holding special permanent residence and other permits are hired, but their promotion to management positions is not permitted. There are no reasonable grounds or legal basis for not allowing non-Japanese teachers, who are engaged in the normal course of educating pupils to be promoted to management positions in public schools.

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## **Article 7 - Right to Just and Favourable Conditions of Work**

*The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:*

- (a) Remuneration which provides all workers, as a minimum, with:
    - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
    - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;**
  - (b) Safe and healthy working conditions;*
  - (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays*
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### **A. Work-life Balance**

#### **A.1 Proposed Recommendations for the Concluding Observations**

- a The Government should take measures to realize equal pay for work of equal value, to resolve wage disparities between regular and non-permanent workers, and to improve the situation surrounding stable employment and prolonged working hours so that both women and men can live a fulfilling life with a better balance between work and family life.
- b The Government aims to increase the ratio of men taking childcare leave to 13% by 2020, but this target implies that even in ten or twenty years time, women will not be released from the burden of family responsibilities. It is necessary to take further measures to achieve work-life balance for both women and men.<sup>31</sup>
- c The Government should expand measures for economic support for child rearing by reducing the cost for child care and by other means.

#### **A.2 Reasons**

105. An increasing number of people opposes the perception that “husbands are expected to work outside the home, while wives are expected to take on domestic duties”. In a 1979 survey, 72.6% of respondents supported (“completely agree” and “rather agree” are hereafter combined to “agree”) the perception of gender roles, and 20.4% (“completely disagree” and “rather disagree” are hereafter combined to “disagree”) opposed it; however, in the 2004 survey, respondents opposed to the perception outnumbered those who agreed to it for the first time, and in 2009, those who supported the perception accounted for 35.9%, whereas those

who opposed it accounted for 55.1%. Moreover, when dividing the respondents by gender, the results of the 2002 survey showed that women against the traditional perception of gender roles outnumbered those who support it for the first time, whereas it was in the 2009 survey that the same trend was observed for men for the first time (Public Opinion Poll on a Gender-Equal Society (October 2009), the Cabinet Office). However, the results of the 2009 survey showed that those who support this perception and those who oppose this perception both accounted for nearly 40%, and 36.6% of women in their 20s support this perception. Thus, a stereotypical perception of gender roles still persists.

106. In comparison with other countries, Japan is the country in which the ratio of those who support this perception is highest, and ratio of those who oppose this perception is the lowest. The ratio of those who state “because it is good for children’s development” as their reason to support the perception is high among both men and women. It is worth noting that more women cite the reason “because I would like to follow such a gender role personally” as a reason to support the perception among all age groups. Due to the strongly stereotypical perception of gender roles, it is not easy for either women or men to achieve their desired balance between work, family life, community and personal life as has been promoted in the Government’s policy.

107. In December 2007, the Government of Japan formulated the “Charter for Work-Life Balance” and “Action Policy for Promoting Work-Life Balance”. In June 2010, a “Council of Executives of Public and Private Sectors to Promote Work-Life Balance” consisting of representatives from economic and labor circles, local authorities and related ministries revised both the Charter and the Action Policy to incorporate the new concept of “decent work”, and set numerical targets for 2020. During the same period, the Government made active efforts in putting its policies into practice. It revised the Labor Standards Act, as well as the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave. Awards for good practices were announced, and the “Change! Japan” campaign was launched in order to build momentum. According to the Charter, a work-life balanced society is: (i) a society in which people can achieve economic independence through work, (ii) a society in which people have time to lead healthy and fulfilling lives, and (iii) a society in which people have various working and lifestyle choices. Realization of such a society is essential for people to have decent lives in which they can achieve work-life balance, work with enthusiasm, fulfill family responsibilities, take time for personal development, and participate in local community activities.

108. However, the current state of our society makes it difficult for women to become economically independent. Feminization of poverty is increasing due to lower wages and unstable employment of female workers. The proportion of employees who work 60 or more hours per week is 10.8%, and the rate of paid annual leave consumption is 47.7%, which illustrates that both men and women have their time overwhelmingly consumed by work. The ratio of men who take childcare leave is 1.72%, and time spent by men with children less than six years old on child-rearing and household duty was an average of 60 minutes per day. Family

responsibilities are still very much taken care of by women. For both men and women to have a fulfilling family and social life, equal pay for work of equal value must be realized, and wage disparities between regular and non-permanent workers must be corrected. Unstable employment and long working hours must also be improved. In addition, men's active involvement in child and family care must be promoted, and measures to enhance childcare and the nursing assistance system, as well as economic assistance to supplement childcare costs, are required.

109. We have all learned lessons from the Great East Japan Earthquake and nuclear plant incident of March 11, 2011. One of the things learnt was that we cannot live without clothing, food and housing. To have a humane life, not only these three needs must be met, but people must also be able to find purpose in their work, to take care of family responsibilities, and to play a role as a member of their local community. It is a pressing issue for the Government to enhance the Labor Standards Act as well as the livelihood support system, in cooperation with the private sector, for the Japanese people to achieve a balanced life, especially those women in hardship.
110. Please refer to the JFBA's Opinion and Rationale for Article 6 and Article 7 regarding measures for the issue of equal pay for work of equal value, wage disparities between regular and non-permanent workers, and unstable employment and long working hours.

## **B. The Elderly, Minimum Wage and Occupational Injury**

### **B.1 Proposed Recommendations for the Concluding Observations**

- a The government should guarantee ongoing employment to employees who are over 60 years of age and wish to continue their employment in the same workplace.
- b The government should raise the minimum wage, to rectify the "inverted situation" where the state welfare benefits are higher than the minimum wage.
- c The government should expand the scope of occupational injury claims covered by Industrial Accident Insurance, and all workers, irrespective of their form of employment, should be eligible for compensation for occupational injury and illness.

### **B.2 Reasons**

- a Securing Employment for Workers over 60 years old
111. The Law concerning Stabilization of Employment of Older Persons requires employers either to raise the retirement age, or abolish the retirement age, or introduce a continued employment system (a system in which companies continue to hire those who wish to work after they reach 60 years old). Many companies have chosen the continued employment system. However, employers were allowed to establish criteria for evaluating whether a particular employee should be offered employment or not, subject to labor-management agreement, and this has resulted in people being denied reemployment through ill-defined criteria.
112. The Law concerning Stabilization of Employment of Older Persons was revised in August 29, 2012, and will come into effect on April 1, 2013. According to the new amendment, employers



who have adopted a continued employment system will not be allowed to establish criteria for evaluating whether a particular employee should be offered continued employment or not.

113. Nevertheless, this amendment does not mandate the raise of the retirement age (60 years of age at present), and employers will be permitted to transfer employees eligible for continued employment to a subsidiary, parent company, and other affiliated companies. In addition, a gradual phase-out of the conditions will be permitted over a period of 12 years from the enforcement of the amended Act for employees that are eligible to receive the national pension. Furthermore, as it is not clear how cases will be treated where there is an act in violation with the provisions of the law, it is questionable whether this revision will function effectively. It is necessary to continue to observe whether stable employment will be secured for employees over 60 years of age.

b Raise in Minimum Wage

114. The Minimum Wages Act, which was revised in July 2008, calls for setting the minimum wage by factoring in coordination of the minimum wage and welfare benefits (civil minimum) so that workers can maintain the minimum standards of healthy and cultured living.

115. The national average for minimum wage is 744 yen in fiscal 2012, and the minimum wage is 837 yen in Tokyo, the highest rate among all prefectures. The monthly salary would be only 147,312 yen even when a person works 8 hours a day, 22 days a month with the Tokyo rate. On the other hand, welfare benefits for a standard household (a couple and one child) in major cities such as Tokyo are 162,170 yen (Government Report Table 12).

116. The fact that a person can earn less than what one can receive through welfare benefits is problematic, and a substantial rise in the minimum wage is urgently required.

c Coverage for Occupational Injury Benefits

117. According to Table 8 in the Government report, there is a decrease in the numbers of occupational injury cases, but this does not mean that the actual number of occupational injury cases is declining. Industrial Accident Insurance is aimed at all workers, and applies to all companies that employ workers. However, some companies are not enrolled in the Industrial Accident Insurance scheme, and even some enrolled companies do not treat such cases as work-related injuries, sometimes regarding them as injuries or illness unrelated to work. More and more people are working under service contracts or consignment contracts, as companies can reduce the cost for insurance if they hire a person under these contracts. Therefore, some of the actual cases of work-related injuries are not included in the statistics.

118. The Ministry of Health, Labour and Welfare issued an official notice in September 2007 that those who perform transportation operations using motorbikes or bicycles may be considered workers in Industrial Accident Insurance even when they work under service contracts, taking their actual working conditions into consideration. This can be applied to employees in the construction industry and other transportation businesses. The Government should expand the coverage of Industrial Accident Insurance regardless of type of contract or type of employment.

## **C. Non-Japanese Nationals**

### **C.1 Right to Work of Non-Japanese Nationals Who Work without Authorization**

#### **a Proposed Recommendations for the Concluding Observations**

119. Non-Japanese nationals who work without authorization (non-Japanese nationals without resident status or non-Japanese nationals who have resident status but not work authorization), are in an extremely vulnerable position, and are often unable to negotiate with their employers even in cases where they fail to receive their basic wages for fear of being reported to the immigration authorities, and being faced with forced deportation as a result. Japanese nationals and non-Japanese nationals with work authorization usually contact the Labour Standards Inspection Office for advice should such situation occur, but non-Japanese nationals without work authorization cannot make inquiries for such cases. Although the Government is aware of this situation, it has done little to publicize the provisions of the Labour Standards Act and the role of the Labour Standards Inspection Office. This situation represents a violation of Article 7 of the Covenant, which mandates the right to just and favorable working conditions; as well as Article 2(1) of the Covenant, which requires signatory states to respect human rights.<sup>32</sup>

#### **b Reasons**

120. Even non-Japanese nationals without work authorization are obviously entitled to the protection of wages from previous employment under Japanese domestic law. Unauthorized employment is prohibited, however, and may result in forced deportation should it come to the attention of the relevant office. This results in illegally employed non-Japanese nationals being placed in an extremely vulnerable position where they must resign themselves to inferior employment conditions such as low wages, long working hours, failure to receive overtime payments that are provided for under the Labour Standards Act, and sometimes non-payment of even their basic wages.

121. While the Labour Standards Inspection Office would normally be contacted for guidance insofar as such cases constitute violations of the Labour Standards Act, the Immigration Control and Refugee Recognition Act (Article 62, Section 2) includes a compulsory reporting provision for public employees that states the following: "Any official of the Government or of a local public entity shall, if he/she comes to have knowledge of a foreign national set forth in the preceding paragraph (a foreign national for whom there is a reason to consider to be subject to deportation) in the execution of his/her duties, must report such information." In this regard, No. 41 of October 31, 1989 (a notice from a Labor Standards Bureau Chief from the Ministry of Labour that was circulated to the prefectural directors of local Labour Standards Bureaus) stated the following: "Within the process of handling declarations, etc., it is possible that you may become aware of foreigners who are illegally employed. The approach of the labour standards supervisory body, however, is that of first correcting the legal violation by working to provide assistance to the individual in question with regard to the legal rights pertaining to labour standards. In principle, therefore, this does not involve

contacting the immigration authorities.” However, this internal notice, which was circulated among labour standards inspectors, remains relatively unknown.

122. Additionally, Article 28 of the revised Employment Measures Act (law no. 26, 2011) required employers to confirm the names, status of residence, length of stay, etc. of non-Japanese nationals upon hiring them, or when they left the company; and then report such information to the Ministry of Health, Labour and Welfare. As a result, non-Japanese employees who do not have work authorization often remain in fear of being directly reported to immigration authorities, and consequently remain in an extremely vulnerable position vis-à-vis their employers with respect to matters of employment contracts, etc. Therefore, non-Japanese nationals without work authorization are unable to receive guidance from the Labour Standards Inspection Office even if their employers are in violation of the Labour Standards Act, and they must consequently continue to suffer in silence amidst substandard working conditions, lack of wage payment, etc.
123. Although the Government is aware of this situation, it has done little to publicize the fact that there is no obligation to make a report to immigration authorities with respect to non-Japanese nationals who seek assistance regarding Labour Standards Act regulations, Labour Standards Inspection Office guidance, legal rights regarding labor standards, etc. This situation represents a violation of Article 7 of the Covenant, which mandates labor rights; as well as Article 2(1) of the Covenant, which requires signatory states to respect human rights.

## **C.2 Labor Problems of Non-Japanese Industrial Trainees**

### **a Proposed Recommendations for the Concluding Observations**

124. Consideration should be given toward abolishing the Industrial Training and Technical Internship Programs and creating a new system in their place. This should include the creation of a status of residence that admits less skilled workers, as well as serious consideration regarding the pros and cons and the existing capacity in this regard. Such inquiries must also substantially guarantee the human rights of non-Japanese nationals in the country, protecting their basic labor rights and prohibiting discriminatory treatment in this regard. Consideration must be provided, moreover, toward the creation of a system directed toward a multi-ethnic and multi-cultural society, including measures wherein non-Japanese nationals are able to enter the country and remain here together with their families.

### **b Reasons**

- b.1 The Industrial Training and Technical Internship Programs invite mainly non-Japanese nationals from developing countries, focusing upon the cultivation of human resources and aiming to make contributions toward international society. In this regard, the revision of the immigration law in 1989 began to include “training” as an allowable status of residence. Another revision of the same law occurred in July 2009, when this policy was continued through the “technical training” status of residence. In practice, however, numerous problems became exposed wherein trainees in this category were unjustly and illegally exploited as low-paid laborers, with rampant human rights violations occurring, such as forced confiscation

of travel and banking documents, forced savings, etc. This situation has brought fierce criticism upon Japan, both domestically and from overseas.

During the fiscal year from April 2011 through March 2012, 20 cases were reported wherein technical trainees died from causes including on-the-job accidents or work-related injuries/illness, an extremely high number in comparison with non-Japanese nationals in other status of residence categories, as well as in comparison with other laborers in general.

- b.2 The only reported purpose for the on-the-job training system is that of the overseas transfer of Japanese technology, with the pros and cons of admitting less skilled laborers remaining yet to be discussed since the program's inception. A system of on-the-job training whose stated purpose is that of technical acquisition remains unable to deviate from the framework wherein specific trainee host institutions are identified, and a status of residence is conferred upon trainees with the understanding that they will then achieve certain on-the-job training results. The resulting system has been fundamentally characterized by a relationship between worker and host institution that is akin to slave and master. As a result, the system whose stated purposes are those of transferring Japanese technology overseas and providing technical training should be abolished. The goal of admitting less skilled workers should then be made clear, and it should be discussed whether or not to create a system wherein an equal relationship shall be maintained between laborer and employer. Various legislation regarding labor relations shall also be actively put into practice. In addition, a simple system to carry out non-practical business training and public training should be carried out in accordance with the system's original purpose.
- b.3 By abolishing and then drastically re-envisioning the existing on-the-job training system, and then utilizing the training policy in accordance with its original purpose, the admittance of less skilled laborers would not be able to take place in the same way as under the present system. At this point, it would then also become necessary for the Government and the industrial sector to decide whether or not to admit less skilled laborers and other non-Japanese workers, and if so, how many and through which type of system. With regard to the creation of a new status of residence category for less skilled laborers, the pros and cons and scale should similarly be reviewed. Furthermore, in view of the fact that the existing on-the-job training system was enacted and put into practice via an announcement from the Minister of Justice rather than through debate in the Diet, the revision of this law and enactment of a new system in this regard should be conducted through parliamentary discussion. Such debate should not be restricted to the matter of securing less skilled laborers, moreover, but must also be held from the standpoint of guaranteeing the human rights of non-Japanese nationals.
- b.4 Should the admittance of less skilled laborers be permitted, provisions for the guarantee of human rights for non-Japanese nationals must accompany the following:
  - i. In addition to full utilization of legislation regarding labor relations, a system must be established that will effectively guarantee basic labor rights.
  - ii. A system must be created that allows for laborers to freely change jobs.
  - iii. Sufficient measures must be taken to eliminate the possibility of malicious brokers

intervening on the side of the countries of origin. To do so, bilateral agreements should be considered to create a system that would require the countries of origin to take responsibility with regard to this process.

- iv. Insofar as Article 6 of the Labour Standards Act effectively prohibits intermediary exploitation, a system should not be utilized wherein any intermediary organization is utilized other than direct employers.
- v. The intent of various human rights treaties should be studied, such as Article 23 of the International Covenant on Civil and Political Rights and Article 9 of the Convention of the Rights of the Child. In addition, the system of admitting less skilled workers should include provisions for their families to accompany them. The Government should aim to realize a multi-ethnic, multi-cultural society by establishing an organization to oversee policies pertaining to non-Japanese nationals, which shall be tasked with promoting necessary measures in this regard.

**Article 8 - Freedom of Association and Right to Strike**

1. *The States Parties to the present Covenant undertake to ensure:*
  - (a) *The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
  - (b) *The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;*
  - (c) *The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
  - (d) *The right to strike, provided that it is exercised in conformity with the laws of the particular country.*
2. *This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.*
3. *Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.*

**A. Labor Unions**

**A.1 Proposed Recommendations for the Concluding Observations**

125. Civil servants’ rights to organize, to collective bargaining and to industrial action should be recognized to the fullest extent possible. In particular, the right to organize as well as to collective bargaining of firefighters and prison staff should be recognized.

**A.2 Reasons**

a Limitations of the Basic Labor Rights of Civil Servant

	Right to organize	to	Right to collective bargaining	Right to industrial action
			Right to collective agreement	

National	Clerical workers	○	△	×	×
	Members of the Self-Defense Force, Police Force, Maritime Safety Agency, Criminal Justice Facilities	×	×	×	×
	Non clerical workers	○	○	○	×
Local	Clerical workers	○	△	×	×
	Members of the Police Force, fire-fighters	×	×	×	×
	Non clerical workers	○	○	○	×

#### ILO Recommendations

126. On November 20, 2002, the meeting of the Governing Body of the ILO adopted the interim report of the Committee on Freedom of Association, recommending the right to establish voluntary associations (labor unions) in criminal justice facilities (prisons, and detention facilities). The recommendation takes a severe view of the Japanese public service system as a whole from the perspective of basic labor rights, and strongly calls for protection of the right to organize based on ILO Conventions No. 87 and 98 for firefighters and prison personnel at the beginning of the report. According to the ILO, the right to organize for prison personnel is recognized in many countries, while the countries in which the right is denied, such as Cameroon, Malaysia, Mexico, Nigeria, Pakistan, Sri Lanka and Swaziland, are in the minority.

127. The Japanese Government's reasons for the denial of the right to organize for fire fighters and prison personnel were the effect on their duties when workers went on strike. However, the right to organize and the right to industrial action are separate rights. The ILO Convention allows restrictions on the right to industrial action for prison personnel, but not on the right to organize. As the prison system is being reformed according to international human rights standards, the protection of the basic labor rights including the right to organize for the employees, as well as the right to collective bargaining based on international labor standards must be established.

#### b Wage Reduction for National Public Servants

128. The deprivation of civil servants' rights to industrial action is often rationalized by the National Personnel Agency's recommendation system as an alternative system. However, wage reductions that went beyond the Agency's recommendations were made in fiscal 2012 and 2013.

129. On February 29, 2012, the "Act for Revision of National Public Service Salaries and Special Exceptions" was adopted, to retroactively implement the recommendation of the National Personnel Agency of fiscal 2011, reducing civil servants' pay by an average of 0.23% as of April 2012, and further cutting an average of 7.8% in 2012 and 2013.

130. The reason for this pay reduction was the “need to respond to the serious fiscal situation of this country and to the Great Eastern Japan Earthquake.” However, when pay reductions are executed beyond the recommendations of the National Personnel Agency, the Government can no longer justify the lack of the right to industrial action by saying that workers’ rights are protected as they have the recommendation system.



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## **Article 9 - Right to Social Security**

*The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.*

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### **A. Provisions to Prohibit Discriminatory Treatment in Domestic Laws (based on Disabilities)**

#### **A.1 Proposed Recommendations for the Concluding Observations**

- a An anti-discrimination law should be enacted, and the UN Convention on the Rights of Persons with Disabilities (CRPD) should be ratified speedily.
- b An analysis of concrete facts of what constitutes discrimination against people with disabilities should be conducted in various areas such as labor, education, transportation, housing, services, the judicial system and the right to political participation, based on the views of the people with disabilities themselves, and the results should be published.
- c In order to ensure the effectiveness of the anti-discrimination law, an organ for providing remedies should be established at the same time as the legislation.

#### **A.2 Reasons**

- a Necessity for the Enactment of an Anti-Discrimination Law

- 131. The adoption of the Americans with Disabilities Act in the United States in 1990 triggered a wave of anti-discrimination legislation across the world. This led to the adoption and entry into force of the CRPD.
- 132. The Japanese Government supported adoption of the CRPD, but has not yet ratified it. This is because people with disabilities in Japan themselves questioned the appropriateness of ratifying the Convention before the required domestic laws were in place. In that sense, the Government should swiftly reform and legislate domestic laws that involve the core of the CRPD. It is Japan's obligation to international society to do so.
- 133. The core domestic laws include the three laws, namely the Basic Law for Persons with Disabilities, the Integrated Welfare Service Law for Persons with Disabilities, and the Law Prohibiting Discrimination against People with Disabilities. Of these, although the Basic Law for Persons with Disabilities, and the Integrated Welfare Service Law for People with Disabilities have been amended, the reform has not taken fully into account the recommendations of the Council of Disability Policy Reform. People with disabilities themselves, therefore, are not satisfied with the amendments.
- 134. As for the final anti-discrimination law, a draft is to be discussed during the regular Diet session in 2013, but there are concerns about what the Government draft would contain, even after the recommendations from the above Council. However, a prompt political resolution

based on the views of people with disabilities is hoped for so that the ratification of the CRPD will not be further delayed.

b Clarification of Concrete Criteria regarding What Constitutes Discrimination Against People with Disabilities

135. The CRPD defines discrimination against people with disabilities as including the three categories of “direct discrimination,” “indirect discrimination” and “violation of the duty to provide reasonable accommodation.” All three forms should be included, and there is a need to ascertain the contents separately for areas such as labor, education, transportation, housing, services, the judicial system and the right to political participation, based on the views of people with disabilities themselves.

136. Regarding the “duty to provide reasonable accommodation,” it is necessary to adjust reasonable contents of such duties in consideration of the interests of the duty bearers and achieve a balance. Chiba Prefecture has the experience of legislating an anti-discrimination ordinance (Ordinance for the Development of Chiba Prefecture where People with and without Disabilities Live Together at Ease) by putting together the views of various groups of people. It is necessary to learn from their methods and collect people’s views by conducting hearings around the country and other measures.

c Establishment of an Organ to Provide Redress

137. In order to guarantee the effectiveness of the anti-discrimination law, it is necessary to establish an organ that can investigate and judge a case when there is a communication regarding discrimination from a person with disabilities or a related person. There is an anti-discrimination clause in the Basic Law, but the provision is not applicable to concrete cases in court. It merely indicates the direction of state policies. Therefore, there is a need to explicitly prohibit discrimination, and establish an organ to provide redress.

## **B. Social Security of Retirees under 65 Years Old**

### **B.1 Proposed Recommendations for the Concluding Observations**

138. Under the current circumstances, in which the retirement age is not raised from 60 years of age, measures should be undertaken to ensure the income of the elderly until 65 years of age, when the provision of basic old age pension benefits starts, and to stabilize their lives.

### **B.2 Reasons**

139. The Committee on Economic, Social and Cultural Rights recommended in its Concluding Observations of the review of the second Report of Japan that, “as the age of eligibility for the public pension system gradually increases from 60 to 65 years, the State Party undertake measures to secure social security benefits for those retiring before the age of 65.” However, under the current situation, as a general rule, the provision of pensions benefits starts at the age of 65. Since the only payment available from age 60 is that from the early payment system of the pension scheme, the amount is insufficient, and there is a huge disparity in the level of

living standards between retirees who under 65, and those who are 65 or older. The third Report of December 2009 does not mention any improvement in this respect.

## **C. Problems of Low Pensions and Persons without Pensions**

### **C.1 Proposed Recommendations for the Concluding Observations**

140. The Government should take effective measures to respond to the issue of low pensions and persons without pensions.

### **C.2 Reasons**

141. The public pension system in Japan is a National Pension scheme with universal coverage. Any resident can join the National Pension, which forms the bottom tier of a two-tier system. However, those who do not satisfy the requirements to receive benefits for reasons such as non-payment of insurance premiums will not receive any benefits. Due to the decline in the payment rate of the insurance premiums, the number of those without a pension or receiving low pension benefits is expected to rise. According to the calculations from the payment records by the Social Security Agency, there were around 407,000 persons (172,000 men and 234,000 women) of 65 years or older who were not qualified to receive the old-age basic benefits as of April 2004. The range of the income per month of people receiving only the basic pension benefits (approximately 2.39 million men and 6.6 million women) shows that 33% of women receive 30 to 40 thousand yen, indicating that more women receive low pension benefits than men. Many women receive only the basic pension benefits and the amount is small.

142. Since there are more female part-time workers, expanding the scope of the Employees' Pension scheme to part-time workers should lead to an improvement in the amount of pension women receive. With the law adopted in August 2012, the Employees' Pension scheme should apply to non-permanent workers who satisfy certain requirements as of 2016. However, the coverage is still insufficient, and this does not provide a fundamental solution to the issue of persons without pensions.

143. It is presumed that the proportion of women is high among elderly resident Koreans, who are ineligible for pension benefits because the Japanese Government has not taken any remedial measures.

## **D. Income Gap between Men and Women, including the Pension Gap**

### **D.1 Proposed Recommendations for the Concluding Observations**

- a A minimum guaranteed pension should be included in the public pension system.
- b The de facto gender inequality that exists in the pension system should be improved as much as possible.

## D.2 Reasons

- a The public pension system requires all Japanese nationals 20 years of age or older and under 60 to join, but the pension system they join differs according to their employment and other grounds. The benefit amount for the old age basic pension depends on the period of contributions to the scheme, and for the Employees' Pension and Mutual-Aid Pension schemes (covering workers in private companies and government employees), on the period of joining as well as the average standard remuneration amount (the average amount of remuneration during the period) when they were working.
- b The average pension amount received by women is 844,000 yen, which is only 46% of the 1.817 million yen received by men. More than 70% of women receive benefits of less than 1 million yen, and the older the recipients, the number of those receiving less than 500,000 yen increases (according to the Survey on Pension Recipients, 2006). Among pension recipients of the Employees' Pension scheme, which covers company employees, the average amount received by men is 2,174,710 yen, while women receive 1,272,931 (data from fiscal 2007). This is because many of the generation of women receiving old age pensions today worked for fewer years than men, and were paid less. The discrimination they faced while they were working caused the pension benefit gap. Yet, no remedial measures are being taken.
- c In the National Pension scheme, even when a person pays the full premium for the whole qualification period of 40 years, the basic old age pension (an annual amount of 788,900 yen as of 2011) would fall below the amount of the standard livelihood assistance of a model elderly household (where both members of the couple are elderly) (approximately 120,000 to 150,000 yen per month). The amount of disability benefits is also low. There has been an increase in the number of people who fall into arrears (36.1% in fiscal 2007) or are exempted from paying insurance premiums (the exemption rate is around 19%), for reasons including the high cost of premiums or low income. As a result, there has been an increase in the number of people who lose some or all of their earning abilities due to old age, disabilities or death, who are not eligible for pensions because they have not fulfilled the requirements, or who receive an insufficient amount. After the Second World War, the standard family structure in Japan was considered to be one in which the male, a regular employee in a seniority based, life-long employment system, was the major breadwinner. He would live with his wife, who stayed at home and did the housework, and with his children and elderly parents, who were all dependent on his earnings. The National Pension scheme was based on this premise, and the system was created to include the wife, who stayed at home, as a Category 3 beneficiary of the scheme without having to pay the premium. This system led to a structure in which it was more advantageous for the wives not to work in private companies, or work in low paid part-time jobs and maintain the Category 3 beneficiary status, instead of working and paying a high Employees' Pension premium. As a result, on reaching the age of 65, the husbands receive the Employees' Old Age Pension with the added extra amount, while the wives receive only the basic old age pension, leading to the income gap. Even in cases where the wives worked and had joined the Employees' Pension scheme, because of the wage gap between men

and women, there would be a gap in the premiums and the receivable benefit amount. The pension gap between men and women will not be resolved until men and women are treated equally at work, and join pension schemes on equal terms.

## **E. Pensions and Other Matters for Non-Japanese Nationals**

### **E.1 Proposed Recommendations for the Concluding Observations**

144. Regarding pensions and benefits under the “Law for Assistance to the Wounded and Sick Retired Soldiers, the Bereaved and Others,” the non-payment of benefits to non-Japanese nationals who served in the Japanese military forces but whose nationality had changed after their home countries became independent, on grounds of lack of Japanese nationality, is a violation of Article 9 and Article 2 of the Covenant and should be corrected promptly.<sup>33</sup>

### **E.2 Reasons**

- a During the Second World War, people from the Korean Peninsula, which was under Japanese colonization, were considered to have Japanese nationality. Some of these people served in the Japanese military forces, but after Korea gained independence in April 28, 1952, when the Treaty of San Francisco went into force, they were considered to have lost their Japanese nationality.
- b The Public Officers’ Pension Act stipulated that the loss of Japanese nationality was grounds for extinction of the right to receive a pension. In a case in which a national of the Republic of Korea who had served in the Japanese military and was injured requested annulment of the dismissal of an increased pension, the court held that the nationality requirement limiting the assistance to Japanese nationals was reasonable in view of the nature of the right to a pension, as the funds for the benefits would be borne by the state, that it is the state’s duty to protect its nationals, and that it was not a violation of Article 26 of the Covenant, (Tokyo District Court, July 31, 1998, *Hanrei Jihou* No. 1657 p. 43) Violation of the CESCRC was not raised in this case.
- c The purpose of the “Law for Assistance to the Wounded and Sick Retired Soldiers, the Bereaved and Others” is to provide assistance to members and staff of the military forces or their remaining families in cases of injuries, disease or death sustained during service in the spirit of state compensation. Like the Public Officers’ Pension Act, it also has a nationality requirement, and benefits will not be provided for those who have lost their Japanese nationality. There have also been a number of judicial cases regarding this law, but in all cases, the requirement was ultimately considered legal (Osaka Appeals Court, October 11, 1995, and others). The Osaka Appeals Court held on September 10, 1999 that the equality principle under the CESCRC did not prohibit distinctions based on reasonable grounds. On October 15, 1999, the same Court referred to the Human Rights Committee’s view expressed in General Comment No. 18 that the prohibition of discrimination in Article 26 of the CCPR was not limited to rights provided for in the CCPR, and held that the rights under the CESCRC could not

be considered to be the same as those under the CCPR. It further stated that the Japanese Courts were not legally bound by the Comments of the Human Rights Committee or by those of the Committee on Economic, Social and Cultural Rights in their interpretation of the CCPR or CESC.R.

- d The pension benefits under the Public Officers' Pension Act should be seen as compensation for the public service rendered, and later changes in nationality should have no consequences on the payment of the benefits. The Human Rights Committee, in its Comment after the examination of the third Japanese Report in November 1993 noted clearly that "persons of Korean and Taiwanese origin, who served in the Japanese Army and who no longer possess Japanese nationality are discriminated against in respect of their pensions." The "Law for Assistance to the Wounded and Sick Retired Soldiers, the Bereaved and Others" provides assistance as state compensation, as mentioned above; therefore, changes in nationality of the recipients should also be of no consequences. These provisions in the laws, as well as the treatment based on these provisions that denies payment to those whose nationality changed after the Second World War are violations of Article 9 and Article 2 paragraph 2 of the Covenant.

## **F. Non-Japanese Nationals and National Health Insurance**

### **F.1 Proposed Recommendations for the Concluding Observations**

- a The non-payment of old-age pension to resident Koreans over 60 years of age as of April 1, 1986 is a violation of Article 9 and Article 2 paragraph 2 of the Covenant. The State Party should pay such pension to the above resident Koreans, as it has paid Japanese nationals who were over 50 years of age at the time the National Pension scheme was created.
- b The non-payment of disability pension benefits to resident Koreans with disabilities who were over 20 years of age as of January 1, 1982 is a violation of Article 9 and Article 2 paragraph 2 of the Covenant. The State Party should pay such pension to the above resident Koreans with disabilities as it has paid Japanese nationals with disabilities who were over 20 years of age at the time the National Pension scheme was created.

### **F.2 Reasons**

- a The third Report of Japan merely quotes from the second Report, Parts 1 and 2, and does not mention anything else in its comment regarding general provisions. Parts 1 and 2 of the second Report note that the nationality requirement had been deleted from the National Pension scheme, but does not mention which non-Japanese nationals can join the scheme or whether they would be treated equally to Japanese when they join
- b The Japanese Government adopted a temporary measure at the commencement of the National Pension system for Japanese nationals who were aged 35 or older on November 1, 1959 to shorten their contribution period, as they would not have been able to fulfill the requirement of having contributed for 25 years before reaching the age of 60. For Japanese nationals who

were over 50 years of age on April 1, 1961, the Government introduced a measure to pay old-age welfare pension benefits from the age of 70 even if they had not joined the national pension, so that no one would be left without coverage. Similar measures were implemented for the people of Okinawa, when Okinawa was reverted to Japan.

- c However, when the nationality requirement was abolished in 1985, there were many people with permanent or long-term residence status who were unable to fulfill the eligibility requirement of having joined the scheme for 25 years. However, since no measures were adopted to shorten the required qualification period, there are in fact many resident non-Japanese nationals who have not been able to join the National Pension system.

## **G. Social Security for Unemployed People**

### **G.1 Proposed Recommendations for the Concluding Observations**

145. The employment assistance and social welfare systems should be improved so that those who are unemployed will not suffer difficulties in living, and can swiftly transfer to the next job.

### **G.2 Reasons**

146. Unemployed people can find new, decent work only when their livelihoods during the time of unemployment are sufficiently ensured. For that purpose, radical reform is needed of employment insurance, which is a system of livelihood security during unemployment. Specifically, the scope of those eligible for employment insurance must be widened, and at the same time, types of employment that do not fall within the scope of eligibility must be strictly limited to rare exceptions. Also, living standards during the time of unemployment must be ensured by measures such as relaxing the conditions for receiving unemployment benefits, increasing the benefit amount and extending the period for receiving benefits.
147. Further, an unemployment assistance system must be created for people in their working years to support living and housing costs as well as an employment support system, so that people such as new graduates who are ineligible for employment insurance, self-employed people who have closed their businesses, or unemployed people who have lost their eligibility for unemployment benefits, would not find themselves in difficulty and be compelled to take jobs that they are unwilling to take.
148. To participate in the labor market at an early stage, it is not enough for individuals to look for work on their own. The Government must establish a jobseeker-oriented job placement system and an employment assistance system, as well as an accessible and effective vocational education and training system.
149. Currently, support measures called the “second safety net” are in place for unemployed people (part of which was taken over by the Job Seeker Support Act), but there are problems, such as strict conditions for use, and the fact that contact offices are split between local government offices and social welfare councils, making it confusing and difficult to apply. Also, some provisions are not benefits but loans, and people who are unable to repay these loans may end

up receiving public assistance after becoming “indebted.”



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## **Article 10 - Right to Family**

*The States Parties to the present Covenant recognize that:*

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.*
- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.*
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*

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## **A. Violence against Women**

### **A.1 Sexual Violence against Women**

- a Proposed Recommendations for the Concluding Observations
  - a.1 A number of recommendations have been made with regard to the crime of rape: there should be an emphasis on consent when deciding whether it is rape or not, incest and marital rape should be defined explicitly as crimes, punitive measures should be implemented for the rape of men, and the State should raise the age of sexual consent from its current level of 13 years. The Government should examine the situation with regard to these issues, including a review of the constituent elements for the crime of rape and punitive measure for this crime.
  - a.2 Careful consideration should be made whether to eliminate the requirement for complaint from the victim as a constituent component of the crime of rape.
  - a.3 There should be special educational programs based on the gender perspective for judicial professionals dealing with rape cases such as judges, public prosecutors, investigators, and attorneys.
  - a.4 The government should publish the number of cases of marital rape which have resulted in a guilty verdict, and consider applying strict legislation to cases of marital rape.
  - a.5 Regarding the problem of focusing on the victim's previous sexual history during criminal proceedings, the introduction of effective measures including rape shield law and other legislation should be considered in addition to the regulations in the Control of

Court Proceedings in the Code of Criminal Procedure and the Code of Criminal Procedure itself.

- a.6 There should be proactive measures to reduce the burden on rape victims when they are required to prove their resistance against the assault. In order to protect the privacy of the victims and reduce their burden, proactive measures should be taken when cases go through the lay judge system.
  - a.7 The Government should improve the support system for victims of sexual violence. In particular, support for male (child) victims of sexual violence should be strengthened.
  - a.8 The Government should establish a special shelter for victims of sexual violence.
  - a.9 An “emergency telephone counseling service for victims of spousal and sexual violence” was set up by the Government for a short period in 2011. The Government should consider the way in which they utilize the results of analysis of this project, including whether the service should be resumed and/or be provided in the long term, and take concrete measures based on the analysis.
- b Reasons
- b.1 Regarding sexual crime in Japan, there are still many problems with substantive law provisions, procedural law, and protection of victims. Many perpetrators of sexual crimes are not punished appropriately, and the support system for victims is far from sufficient. The Committee on Economic, Social and Cultural Rights recommended in previous Concluding Observations that the State Party should strictly apply its domestic legislation and implement effective sanctions on persons responsible for violence against women in general. However, many perpetrators of this type of crime still remain unpunished, and the actual number of cases of sexual crime is unknown.
  - b.2 Issues regarding Substantive Law (mainly in relation to the Penal Code)
150. The Committee on the Elimination of Discrimination against Women expressed concern in its review of the periodic report of 2009 that under the Penal Code, the crime of sexual violence is prosecuted only upon complaint by the victim and is still considered to be a crime against morality. The Committee further remained concerned that the penalty for rape remains lenient and that incest and marital rape are not defined explicitly as crimes under the Penal Code. The Committee recommended that the State Party should eliminate in its Penal Code the requirement of the victim’s complaint in order to prosecute crimes of sexual violence, and to define sexual crimes as crimes involving violations of women’s rights to bodily security and integrity, to increase the penalty for rape and to include incest as a specific crime. In the Concluding Observations of the 4th and 5th periodic reports, the Committee on the Elimination of Discrimination against Women expressed concern that the penalty for rape is relatively lenient and that incest is not defined explicitly as a crime under the Penal Code. The Committee urged the State Party to increase the penalty for rape and include incest as a specific crime in its penal legislation, and implement policies in accordance with the Committee’s general recommendation 19, in order to prevent violence. However, no initiative was taken as of the following 6th periodic report from the State Party with regard to these

issues.

151. In the Concluding Observations of the Human Rights Committee in 2008, the Committee expressed 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. The Committee recommended that 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. The Committee also showed concern about the low age of sexual consent, which is set at 13 years for boys and girls, and recommends that 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..
152. Similarly, the Committee on the Rights of the Child expressed concern in its review of the periodic report in 2004 that the minimum age of sexual consent (13 years) is low. It also showed concern that the Penal Code maintains a narrow definition of rape as an act committed by a male against a female. The Committee recommended that the State Party should raise the minimum age of sexual consent, and amend legislation on sexual exploitation and abuse to ensure equal protection for boys and girls.
153. Nonetheless, since then, only the crime of gang rape has been added as an amendment to the Penal Code with regard to the crime of rape. In the Third Basic Plan for Gender Equality endorsed by the Cabinet in 2010, it is stated that the Government shall “examine” a review of the constituent elements of the Penal Code, and the report submitted in 2011 by the Committee of Specialists on Violence against Women set up by the Government shows a similar indication. However, there have been no amendments regarding the constituent elements of the crime of rape since then.
154. In the Concluding Observations of the 4th periodic review, the Human Rights Committee expressed concern that “the Committee is troubled that the courts in Japan seem to consider domestic violence, including forced sexual intercourse, as within the normal sphere of married life”. The Committee on the Elimination of Discrimination against Women also remained concerned that “marital rape is not defined explicitly as a crime under the Penal Code”. Regarding this point, there is no article in the Penal Code to exclude marital rape from the definition of rape. Nevertheless, marital rape has not been prosecuted in most cases in reality, apart from in special circumstances such as that the marriage had already ended.
155. The interpretation of “assault or intimidation” as a constituent element for the crime of rape (Penal Code, Article 177) mostly relies upon the judgment of the Supreme Court, which stipulates “a level that makes it extremely difficult for the victim to resist against the act”. However, it has been pointed out that above-mentioned interpretation of “assault and intimidation” makes it very difficult to prosecute cases of sexual assault performed against the victim’s will, and criticisms have been made that the scope of interpretation to establish the

crime of rape is too narrow.

c Procedures

156. Regarding the protection of victims of sexual assault in criminal proceedings, the Human Rights Committee, for example, expressed concern about reports that perpetrators of sexual violence frequently escape just punishment or receive light sentences, and that judges often unduly focus on the sexual past of victims and require them to provide evidence that they have resisted the assault. The Committee recommended that the State remove the burden on victims to prove resistance against the assault, and prosecute rape and other crimes of sexual violence *ex officio*.

157. In its consideration of reports submitted by States parties under Article 12-1 of the “Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography”, the Committee on the Rights of the Child welcomed measures in place to protect the rights and interests of child victims and witnesses in criminal justice procedures. However, the Committee expressed concern that victims of crimes do not receive adequate support and assistance throughout the criminal and judicial processes. In particular, the Committee expressed concern at the inadequacy of formal arrangements to limit the number of times children are required to testify and that the use of video evidence is not accepted in lieu of oral testimony during criminal proceedings. The Committee recommended that the State Party urgently review, in consultation with experts in the field, its procedures for the provision of support and assistance to child victims who are witnesses, with a view to ensuring that children are not subjected to additional trauma as a result of being required to testify repeatedly and consider, to this end, the use of video evidence rather than oral testimony in such proceedings.

158. With regard to support for victims, it is stated in the Third Basic Plan for Gender Equality in 2010 that appropriate use of the current system, including the protection of personal information of the victims in criminal justice procedures, should be emphasized. However, this does not mention the necessity for legal reform to improve the criminal and judicial procedures and the support system for victims of sexual violence, and the Government’s plan has not made any outstanding achievement in this regard. Protection of victims of sexual crime is included in the Second Basic Plan for Crime Victims, but it does not promote legal reform, nor has the Government’s plan made any significant progress. Forensic evidence collected at medical institutions cannot be used as admissible evidence unless police are involved with the collection of the evidence, and there are expectations for the introduction of new legislation to resolve these issues.

d Other Issues

159. Sixty to seventy percent of victims of sexual violence have no one to turn to for advice, help or support.

160. The Human Rights Committee expressed concern that there is a lack of doctors and nurses with specialized training related to sexual violence, as well as a lack of support for non-governmental organizations providing such training. The Committee recommended that

the State should also introduce mandatory gender-sensitive training regarding sexual violence for judges, prosecutors, police and prison officers.

161. The Committee against Torture recommended in their Concluding Observation that the State Party should take measures to provide education to address the discriminatory roots of sexual and gender-based violations, and provide rehabilitation measures to the victims, including steps to prevent impunity of perpetrators. It also recommended that the State Party should adopt preventive measures to combat sexual violence and violence against women, including domestic violence and gender-based violence, and promptly and impartially investigate all allegations of torture or ill-treatment with a view to prosecuting those responsible. The State Party was also encouraged to implement training programs for law enforcement officials and the judiciary to ensure that they are sensitive to the rights and needs of victims, to establish dedicated police units, and to provide better protection and appropriate care for such victims, including, *inter alia*, access to safe houses, shelters and psychosocial assistance. It is also recommended that the State Party should ensure that all victims can claim redress before courts of law, including victims of crimes committed by foreign military personnel stationed on military bases.
162. An emergency telephone counseling service for victims of spousal and sexual violence was set up by the Government for a limited period of February and March 2011, and this can be highly valued in this regard. Nevertheless, there has been no continuity for the project, no long-term support for victims, nor any liaison or cooperation with medical institutions and the police, which are all necessary to carry out such projects.
163. The provision of One-Stop Centers for victims would reduce the burden for the victims to visit various institutions and being asked to talk about their situation repeatedly. However, the establishment of One Stop Centers has been delayed, as pointed out in the Third Basic Plan for Gender Equality in 2010 and in the report submitted by the Committee of Specialists on Violence against Women set up by the Government, and only one Center has been set up since 2010.

## **A.2 Sexual Harassment**

- a Proposed Recommendations for the Concluding Observations
  - a.1 Equal Opportunity Law needs to be amended to include a provision which prohibits sexual harassment in explicit wording.<sup>34</sup>
  - a.2 An organization should be established to rescue victims promptly and appropriately, and the system should be improved and expanded.<sup>35</sup>
  - a.3 Urgent clarification of actual situations of sexual harassment at workplaces, in academic, medical, social welfare, sporting environments and all other areas in society throughout Japan is required.
  - a.4 National and local Governments should guide individual schools to take measures such as establishing complaint handling sections, implementing training targeted at teachers and staff, and gender-equal contents of educational curriculums.

b Reasons

b.1 Among 23,303 consultations at prefectural Labour Department Equal Employment Bureaus in 2011, 52.5% of the consultations were related to sexual harassment. Sexual harassment is pervasive, occurring not only in the workplace, but also in education, medical institutions, social welfare facilities and almost all other social settings.

b.2 There is no legislation which prohibits sexual harassment explicitly in Japan. Dispute settlements are conducted in the manner stipulated in the Equal Employment Opportunity Law: advice, recommendation, and dispute mediation from the Director-General of the Labour Department Bureau; advice, guidance and recommendation from the Minister of Health, Labour, and Welfare; and publicizing the names of the companies that fail to prevent sexual harassment, dealing punitive measures for false reports or failure to report.

When sexual harassment involves acts that fall within the scope of the crimes of rape and indecent assault, it shall be punished under Criminal Code. Otherwise, there is no punishment for the act of sexual harassment per se. Furthermore, only a few among many perpetrators receive punishment. There are several reasons for this: in many cases, victims are reluctant to file a lawsuit against the perpetrator for fear of prejudice from others and revenge from the perpetrator; even if victims file a lawsuit, perpetrators are often immune from prosecution due to bias or prejudice held by the investigative authorities; there is not enough care and consideration for victims during criminal trials, and victims often have to face prejudice from judicial professionals, including judges and defense attorneys.

Victims are often forced to remain silent, and even when they file a civil damage suit, it is difficult to receive legal redress. Furthermore, this rarely acts as a sanction for the perpetrator due to its lengthy process, low compensation, and difficulty for victims to prove evidence for the case.

b.3 Sexual harassment is made possible by the underlying inequality and disparity in power relationships between men and women in every area of society. Therefore, an educational program on human rights to eliminate sexual harassment at schools and in social education is a must.

Nevertheless, in reality education for human rights is insufficient, and there is even a backlash against the gender-free education policy from around the year 2000 that was applied to sex education, contents of domestic science textbooks, and implementing class rolls that do not segregate female children from male children. It is becoming increasingly difficult to have the opportunity to learn to respect for individuals and value people's lifestyles.

**A.3 Issue of "Comfort Women"**

a Proposed Recommendations for the Concluding Observations

a.1 The State Party should hold talks with countries involved and should acknowledge legal responsibility for the "comfort women" issue as soon as possible.

a.2 The State Party should acknowledge legal responsibility for the "comfort women" issue and restore the damage that has been made to the relationship of trust with human rights bodies as soon as possible through: legislation for compensation for the victims; apology to the victims;

restoration of the victims' honour and dignity, including monetary compensation; and establishment of an investigative body to clarify the actual situation.

b Reasons

164. In the third periodic report submitted by State parties, the Japanese Government rejected Recommendation 18 made by the Human Rights Council, stating that it is not appropriate for the “comfort women” issue to be brought up in the review of the country report. The Human Rights Committee<sup>36</sup> 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 Committee on the Elimination of Discrimination against Women made further recommendation to urgently endeavour to find a lasting solution to the situation of “comfort women”.<sup>37</sup> Thus, various human rights bodies have been issuing recommendations on the issue for over ten years. Japan has stood as a candidate for membership of the Human Rights Council, and has pledged to take up a leading role for defending human rights, and faithfully observe international law on human rights. Considering the pledge the Government has made, the issue of “comfort women” should be regarded as a fundamental issue that cannot be avoided, and the Japanese Government should attempt to make a final resolution on the issue once and for all, in accordance with the international effort to eliminate violence and discrimination against women.
165. The constitutional court of South Korea decided for the first time on August 30, 2011 that “it constitutes violation of the human rights of the victims, and it is unconstitutional” for the Korean Government to make no tangible effort to settle disputes with Japan over the latter’s refusal to compensate Korean women mobilized as sex slaves during its 1910-45 colonial rule of the Korean Peninsula. Following the court decision, the Director-General of North East Asia of the Korean Ministry of Foreign Affairs, Cho Se-Yong, officially requested the Minister of Japan at the Japanese embassy in Korea to start negotiation over the issues, while Japan declined to hold talks on the issue, maintaining that the issue was settled in the 1965 agreement
166. South Korean President Lee Myung-Bak arrived in Japan on December 17, 2011, and urged Prime Minister Yoshihiko Noda on 18th December to place priority on resolving the long-standing issue of compensation for women forced into wartime sex slavery. In their talks Noda said that the “comfort women” issue has already been “settled,” but added that efforts are being made from a “humanitarian standpoint”.
167. The Japan Federation of Bar Associations and the Korean Bar Association issued a joint statement and a proposal regarding the “comfort women” issue, titled “Proposal for Final Resolution of the Japanese Military “Comfort Women” Issue” in December 2010, and it was proposed that the Japanese Government should: (i) pass legislation to restore the dignity and honor of victims, including compensation, (ii) establish a public institute to thoroughly investigate the extent of the problem, and (iii) raise awareness on the issue, and make the truth about the problem known to the general public through education and campaign. Through immediate talks with the Korean Government, the Japanese Government should take legal

responsibility for the “comfort women” issue as soon as possible, and restore the damage that has been made to the relationship of trust with human rights bodies through: acknowledgement of legal responsibility for the “Comfort Women” issue; legislation for compensation for the victims; apology to the victims; restoration of the victims' honour and dignity, including monetary compensation; and establishment of an investigative body to clarify the actual situation.

168. See “Proposal for Final Resolution of the Japanese Military “Comfort Women” Issue”, December 2010, for more details.

## **B. Employment of the Elderly**

### **B.1 Proposed Recommendations for the Concluding Observations**

169. It is necessary to take measures to prevent discrimination in recruitment on grounds of age.

### **B.2 Reasons**

170. In Japan, the Law concerning Stabilization of Employment of Older Persons was amended in 2004. Discrimination in recruitment and hiring on grounds of age was prohibited as a general rule. Furthermore, with the 2006 amendment, employers were required to either raise the retirement age, introduce a continuous employment system, or abolish retirement age<sup>38</sup>. As a result, stabilization of employment for the elderly over 65 years of age was attained, and support for re-employment of the elderly was strengthened.<sup>39</sup> In addition, public employment offices provide employment support for the elderly including provision of information on job offers, and consultations regarding employment.<sup>40</sup>

171. However in reality, job offers submitted to public employment offices (known as “Hello Work”) have unjustifiable age limits, and discrimination on grounds of age is continuing.

## **C. Damage to the Consumer and Adult Guardianship**

### **C.1 Proposed Recommendations for the Concluding Observations**

172. Adult guardianship should be reformed to become a more user-friendly system in order to prevent fraudulent transactions and scams against elderly persons whose ability to make judgment is insufficient.

173. In addition, the Government should take measures to discover and prevent cases of wrongdoing by adult guardians through strengthening supervision and inspection of adult guardians by family courts and by other means.

174. Furthermore, the State Party should take measures to train layperson adult guardians (i.e., guardians appointed from family members, or other non-professionals).<sup>41</sup>

### **C.2 Reasons**

175. A system of adult guardianship was adopted in Japan in 2000. Adult guardianship is a system



in which a person is appointed to act juristically (as a guardian) on behalf of a person whose ability to make judgments has declined, due to dementia (a state of declining cognitive abilities due to postnatal organic disorder in the brain, such as Alzheimer's disease) or other reasons. The guardian will conduct juristic acts to protect persons whose ability to make judgments is insufficient, and who are at risk of becoming victims of consumer society.

176. It is estimated that the number of elderly people requiring guardians is high in Japan's ageing society. However, there are many elderly for whom guardians are not appointed, and who fall victim to fraudulent transactions and scams.

177. Moreover, with the increase in number of the elderly, it is clear that there will be a necessity for people available as guardians in the community as part of social services so that elderly people can live in their communities with support from each other. Moreover, with the increase in number of the elderly, it is clear that there will be a necessity for people available as guardians in the community as part of social services so that elderly people can live in their communities with support from each other. Therefore, training and supporting layperson guardians is crucial. National and local Governments, however, have no capabilities or funds to conduct such training or support, and currently, the training and support of layperson guardians are showing almost no progress. with support from each other. Therefore, training and supporting layperson guardians is crucial. National and local Governments, however, have no capabilities or funds to conduct such development or support, and currently, the development and support of layperson guardians are showing almost no progress.

178. Guardians are also in a position to manage the property of their wards. Recently, numerous cases of misappropriation of the ward's property and other wrongdoings by the guardians have been discovered. It is estimated that such abuses are widespread.

179. In the third periodic reports by the State Party issued in December, 2009, the Government does not mention adult guardianship, but it is now over 10 years since the implementation of the system, and there are a number of problems such as those mentioned above. The JFBA Collection of Basic Policies dated June 16, 2010, (1-3) recommends that adult guardianship be reformed to become a more user-friendly system.

## **D. Elderly Abuse and Adult Guardianship**

### **D.1 Proposed Recommendations for the Concluding Observations**

180. National and local Governments should take measures to identify abuse of the elderly, and in particular, towards the effective implementation of the Abuse of Elderly Act, should establish a procedure to handle cases when notification is received. Careful consideration needs to be taken when dealing with the elderly depending on the types of abuse they have suffered (physical abuse, financial abuse, and psychological abuse).<sup>42</sup>

### **D.2 Reasons**

181. In the third periodic report by the State Party issued in December 2009, the Government

makes no reference to abuse of the elderly, and there has been little progress with regard to prevention of such abuse. As there have been many cases in Japan of elderly people receiving nursing care who were subjected to physical, financial and other forms of abuse because of their vulnerable status, the Act on the Prevention of Abuse of Elderly Persons and Support for Persons Giving Care to Elderly Persons (hereinafter, the Abuse of Elderly Act) was enacted in November 2005. The Act stipulated the duty of the State, among other parties, regarding the prevention of abuse of the elderly.

182. However, especially with regard to identifying elderly persons who have been abused, many victims do not in fact report the abuse, and it is estimated that many cases of abuse of the elderly are left undiscovered.

183. Under the Act, local Governments are responsible for taking preventive measures, but it is said that in reality, many authorities are not aware of the measures, or fail to implement them, and official responses from local authorities are insufficient. Furthermore, there is a large regional gap with regard to these responses. It is necessary to secure and develop human resources with cross-jurisdictional support from the national and local Governments.

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## **Article 11 - Right to an Adequate Standard of Living**

1. *The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. General comment on its implementation.*
2. *The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*
  - (a) *To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*
  - (b) *Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.*

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## **A. Public Assistance for Non-Japanese Nationals**

### **A.1 Proposed Recommendations for the Concluding Observations**

184. The treatment by the State Party of non-Japanese nationals who are settled in Japan, such as permanent residents, spouses of Japanese nationals, spouses of permanent residents and long-term residents, by which public assistance benefits are provided only within the framework of administrative budgetary measures, denying non-Japanese nationals' legal right to receive benefits and not applying any public assistance, including emergency medical care, to foreigners who are not long-term residents or who do not have resident status is a violation of Article 11 paragraph 1 and Article 2 paragraph 2 of the Covenant. The State Party should recognize the application of public assistance on an equal basis with Japanese nationals as much as possible, regardless of residence status.<sup>43</sup>

### **A.2 Reasons**

- a On October 25, 1990, at the regional block conference for public assistance consultations officers organized by the Ministry of Health, Labor and Welfare, the Ministry instructed the local Governments orally to limit the scope of application of the Public Assistance Act to non-Japanese nationals to only those with permanent and long-term residence status. The Ministry stated that for other non-Japanese nationals, public assistance and emergency medical assistance would not apply. Moreover, public assistance for non-Japanese nationals is

recognized only within the scope of administrative budgetary measures and not as a legal right. As a result, even when non-Japanese nationals are receiving public assistance, they are unable to go to court or to submit an administrative complaint to contest a refusal or discriminatory payment. Furthermore, when non-Japanese nationals residing in Japan face difficulties due to unforeseen accidents, such persons are not eligible for any public assistance.

- b Regarding public assistance for non-Japanese nationals, however, the Fukuoka District Court, in its judgment on November 15, 2011, referred to Social Bureau Notification No. 382 dated May 8, 1954 and the later ratification of the Convention relating to the Status of Refugees as well as the Diet debates related to the ratification, and held that the Government had recognized that public assistance provisions were applicable to non-Japanese nationals within a certain scope, as far as there were no obstacles in relation to the Immigration Control Act, and that the Government had obligations under international and domestic public laws towards these non-Japanese nationals. Therefore, it was a matter of course that non-Japanese nationals were eligible for public assistance based on the Public Assistance Act. However, the Government is contesting the decision, and the case is pending at the Supreme Court.
- c The position of the Ministry of Health, Labour and Welfare denying application of public assistance to non-Japanese nationals, and not recognizing the legal eligibility for public assistance even for permanent residents, spouses of Japanese nationals, spouses of permanent residents, long-term residents and other non-Japanese nationals who are settled in Japan, is a violation of Articles 11, 12 and 2 paragraph 2, and should be corrected promptly.

## **B. Public Assistance for Persons Applying for Refugee Status**

### **B.1 Proposed Recommendations for the Concluding Observations**

185. The State Party's prohibition of persons who are recognized as refugees but are not qualified to work under the Immigration Control and Refugee Recognition Act from working until the decisions regarding their recognition are issued, while taking no measures to support their livelihood, is a violation of the right to an adequate standard of living under Article 11 of the Covenant. The Government should either allow the applicants to work, or ensure their livelihood through public assistance.<sup>44</sup>

### **B.2 Reasons**

186. It is not unusual for decisions on refugee status to take several years in Japan. Many of the applicants are not qualified to work under the Immigration Control and Refugee Recognition Act, and there are some that have no legal residence permit, having overstayed their permit, or having been smuggled into the country. Such applicants are not qualified to work, therefore cannot work under Article 19 of the Immigration Control Act. Yet the Government has not taken any public assistance measures in particular during the application period. The Refugee Assistance Headquarters, a private organization, may in some cases provide support to the

- applicants, but the amount is limited to 1,500 yen per day. This is not paid from public funds, and the Immigration Bureau staff do not even tell the applicants about the assistance. Therefore, the provision of assistance is almost unknown to most applicants for refugee status.
187. Furthermore, in Japan, when the authorities believe there are substantial reasons to suspect that a non-Japanese national has grounds to be deported under Article 39 of the Immigration Control Act, the non-Japanese national would be interned, and there are many cases of non-Japanese nationals, who have applied for refugee status and are waiting the decision, having been interned. Even when they are provisionally released, they are required to have a guarantor as a condition of their release. Few people are willing to be guarantors, as they would not be able to look after the economic wellbeing of the applicants, who are not qualified to work. As a result, there are non-Japanese nationals who continue to be interned while their refugee applications are being processed.
188. Prohibiting people applying for refugee status from working, while not providing assistance for their livelihood until the Government's decision on the application is issued, is a violation of the right to an adequate living standard under Article 11 of the Covenant.

## **C. Forced Evictions**

### **C.1 Proposed Recommendations for the Concluding Observations**

189. The number of cases of forced eviction through execution by proxy of homeless people, as well as the circumstances that these were executed in should be surveyed, so that it can be verified whether there was a need or emergency, whether adequate alternative housing was provided, and whether actions were taken in accordance with appropriate procedures.

### **C.2 Reasons**

190. Many cases of forced eviction by public authorities are conducted in the form of execution by proxy. Execution by proxy allows administrative organs to evict and remove homeless people from parks and other public places without a court decision. Therefore it is a separate system from eviction under the Civil Provisional Remedies Act.
191. For people who are evicted through execution by proxy, there may be some notifications, opportunities for hearings and procedures for suspension of execution available, but it is in fact impossible to prevent eviction through these procedures. Therefore, in the current situation, the necessity for eviction is leniently approved and evictions are conducted even when the provision of alternative housing is insufficient.
192. Execution by proxy is conducted by local Governments, who manage the parks and other public places. Thus, if local Governments were required to report on the matter, it should be possible for the national Government to find out the numbers of cases and the circumstances of forced evictions. The Government should clarify the situation regarding forced evictions, so that it can verify the necessity and appropriateness of the procedures, and make corrections to any problems.

## **D. Transition from Homelessness to Residential Living**

### **D.1 Proposed Recommendations for the Concluding Observations**

193. For people who are in a state of homelessness, and who cannot return to residential living by themselves, appropriate housing and support should be provided based on the principle of residential protection under the Public Assistance Act.

### **D.2 Reasons**

194. The Public Assistance Act stipulates in Article 30 that “public assistance will be provided at the residence of the recipient”, setting forth the principle of protection at one’s residence. However, when a homeless person applies for public assistance, in many cases, they are forced to live in an institution. As a result, there are some who cannot adapt to living in groups in small facilities, and go back to living on the streets. There has also been a rise in “poverty businesses”, which attract homeless people by calling themselves “institutions”, make these homeless people live in apartment buildings, have them apply for public assistance and then confiscate most of the benefits under the name of meals and other expenses.

195. The implementation of the Public Assistance Act should be improved by providing protection at residences for those who can lead a residential life, and providing appropriate assistance to those who need it, while strengthening the regulation of malicious businesses.

## **E. Public Housing Measures**

### **E.1 Proposed Recommendations for the Concluding Observations**

196. The housing policy should be strengthened based on the understanding that “the right to adequate housing” is a basic human right, so that all households can obtain appropriate stable housing not just by promotion of home-ownership, but through use of public housing and private rental housing.

### **E.2 Reasons**

197. In Japan, securing housing has been considered to be a matter left to the individual’s own effort, and recently, the tendency to view housing not as a “right” but a “market” matter has gained strength. As a result, many people in poverty who cannot bear the burden of paying rent are increasingly losing their homes, becoming homeless, including “net-café refugees” (people without homes, who spend the night in internet-cafés operating 24 hours) or people sleeping outdoors. However, housing is the most fundamental basis for a person to conduct his/her social life as a human being. Therefore, there is a need to change policy into one that treats housing as a social security matter to be ensured by the State.

198. Specifically, based on the understanding that “the right to adequate housing” is a basic human right, the standard of housing security should be clarified, taking into account: (1) physical

standards (area, facilities, safety, etc.), (2) cost (tenancy cost based on the ability to bear the cost) and (3) access (location, etc.), and for those people whose housing cannot satisfy these standards, universal measures should be put in place, in which the state will ensure appropriate housing.

199. Moreover, the policy of providing incentives for home-ownership should be changed, public housing should be increased, diverse forms of rentable social housing should be developed, while a system to provide a housing allowance for people with low income (rent support), as well as a system to provide public guarantees for rent for those who cannot find guarantors should be created, in order to strengthen public support for the private rental housing market with sufficient stock.

## **F. Housing Policy for the Elderly, People with Disabilities and Others**

### **F.1 Proposed Recommendations for the Concluding Observations**

- a In lifetime rental accommodation contracts for the elderly, cancellations by the lessor should be restricted by, for example, requiring stricter grounds for justification of cancellations by the lessor. Moreover, the conditions for live-in spouses and others to continue to use the accommodation should be eased.<sup>45</sup>
- b The setting of the lump sum admission fee, which is paid when an elderly person moves into the accommodation, repayment standards and periods for private retirement homes or rental housing for the elderly should be improved so that they do not constitute unreasonable conditions due to the circumstances of the facility operators. It should be explicitly stipulated that the legal nature of advance payments are as deposits that cover only rent and service fees.
- c In order for people with disabilities to secure housing to live an independent life in the community, policies should be implemented so that conclusion of housing sales or rental contracts will not be denied, restricted, or treated unfairly for reasons of disabilities. Furthermore, active policies should be implemented to secure housing for people with disabilities in both public and private housing.

### **F.2 Reasons**

- a According to the third Government report, the Japanese Government has been able to ensure the right to adequate housing by adopting laws to secure stable housing for the elderly. However, there is an urgent necessity to devise support measures regarding housing for people who need care and those with disabilities, and there is a need to radically strengthen support measures and the system that meet the housing needs of affected people.

For rental accommodation for the elderly, the “Act on Securement of Stable Supply of Elderly Persons' Housing” created a new system of life-long rental accommodations, in which elderly people can rent accommodations for the rest of their lives. This is a rental contract for life, under which the elderly person can rent an accommodation, made barrier-free (modified for the elderly, such as removing difference in floor levels), approved by the Prefectural Governor,

as long as the lessee is alive, and which ends when he/she dies. The system provides an environment in which the elderly person can live in peace until he/she dies. However, under the same law, the lessor may cancel the rental contract when excessive expense is incurred due to deterioration or damage to the housing (Article 58 paragraph 1 subparagraph 1) and it is made possible for the lessor to pass the blame for neglecting the maintenance and management of the housing onto the lessee. The status of the lessee is unstable; therefore the lessor's right to cancel should be restricted.

The same law stipulates that in cases where the lessee dies, a spouse or a family member who is 60 years of age or older, and who was living with the lessee, can conclude a life-long contract with the lessor only when the remaining spouse or family member applies to continue to live in the same housing within a month of the lessee's death. (Article 62 paragraph 1). However, having only a month after the death of the lessee to express the intent to continue to live in the accommodation is too short, and this amounts to deprivation of the opportunity to conclude the rental contract for family members who do not know about the system. The application period must be extended or changed so that the remaining family member can inherit the contract unless he/she expresses the intent not to continue living in the housing.

- b Regarding private retirement homes, many institutions charge admission fees. As the Ministries of Health, Labour and Welfare as well as Land, Infrastructure, Transport and Tourism have no clear standards, this amount differs by institution, and there have been many disputes regarding high lump sum payments.

In particular, disputes occur frequently regarding the amounts to be returned at the time tenants leave the institution. Under the Act on Social Welfare Service for Elderly amended in 2011, institutions were required to limit the lump sum admission fees and other advance payments to rent and service fees, and to show the calculation criteria explicitly in writing. They were also required in principle to return the full amount when tenants leave within 90 days of moving in. However, the Ministries of Health, Labour and Welfare as well as Land, Infrastructure, Transport and Tourism have issued a guideline, which distorts the concept that the advance payments are deposits, by presenting a formula in which part of the admission fees may be used as a mutual fund (Ministry of Health, Labour and Welfare Memorandum dated November 22, 2011). The institutions for the elderly may receive (a: one month rent) × (b: the expected number of months the tenant will stay) + (c: the amount the entity operating the service accommodation for the elderly receives in cases where the contract continues beyond the expected number of months the tenant will stay). This means that the institution may receive the amount c, exceeding the amount for rent and services, and may not be required to return the amount c. Therefore, it should be explicitly stated that advance payments are limited to rent and service fees, and the obligation to return the sum must be clearly stated. Furthermore, as many institutions do not take any preservative measures to ensure implementation of the obligation to return advance payments, the Ministries should instruct all institutions to take preservative measures

- c When people with disabilities try to buy, build or rent housing to live in (including group



homes, and housing with care services), in many cases, they are denied from entering contracts, restricted, or treated unfairly. This situation has become a factor preventing people with disabilities from living independently in their communities. These cases are discrimination based on disability, and a law prohibiting discrimination should be adopted.

Moreover, there have been protest movements around the country by local residents against construction of group homes and residential institutions for people with disabilities, due to prejudice towards disabilities and lack of knowledge. In this respect, policies to promote understanding among local residents should be actively implemented by providing correct information on disabilities and creating a forum for dialogue.

## **G. Global Warming Issues**

### **G.1 Proposed Recommendations for the Concluding Observations**

- a The State Party should maintain the target of decreasing CO<sub>2</sub> levels by 25% from 1990 levels by 2020, as declared by the then Prime Minister Hatoyama. It also must set the CO<sub>2</sub> reduction rate for 2050 to at least 80% from 1990 levels, and should adopt specific reduction schedules after 2013, when the first commitment period under the Kyoto Protocol will conclude. It should also introduce, as early as possible, an emission trade system with a view to regulating the total volume of emissions, as well as a carbon tax according to CO<sub>2</sub> emission levels with consideration for people on low incomes.
- b The State Party should set an ambitious target to introduce renewable energy, and should further improve conditions for expanding renewable energy for that purpose. Also, to promote expansion of renewable energy and measures on the demand side at an accelerated pace, the State Party should implement reform of the electricity system, including liberalizing the electricity industry and separating the generation and transmission of electricity.

### **G.2 Reasons**

200. The Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report revealed that unless industrialized nations as a whole cut greenhouse gas emissions by 25% of the 1990 level by 2020 and by 80% by 2050, there would be serious negative consequences for the world. It is necessary to stipulate these targets in a legally binding form, and to swiftly adopt legal provisions to take economic measures, such as an emissions trading system with a view to regulating the total volume, and a carbon tax according to CO<sub>2</sub> emission levels.
201. The then Prime Minister, Yukio Hatoyama declared at the UN Special Summit on Climate Change in September 2009 that Japan would reduce emissions by 25% from 1990 levels by 2020.
202. However, following the Great East Japan Earthquake on March 11, 2011, the situation in which there have been calls from members of the Government for exemption from non-compliance measures in case of failure to achieve the 6% reduction obligation under the Kyoto Protocol, as well as for a review of the 25% reduction target, is deeply troubling.

203. To achieve both a reduction in global warming gases and prevention of nuclear plant accidents, a transition from fossil fuels and nuclear power generation to renewable energy is essential. In this regard, the Act on Renewable Energy was adopted in August 2011. However, in order to disseminate the use of renewable energy, setting concrete and ambitious introduction targets, as well as detailed purchase prices according to the size and form of renewable energy facilities, are essential. Various measures to raise energy efficiency, such as combined cycle gas power generation, promotion of community heating and cooling systems and heat insulation regulations in buildings must be hastened.

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**Article 12 - Right to Highest Attainable Standard of Physical and Mental Health**

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*
2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*
  - (a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
  - (b) *The improvement of all aspects of environmental and industrial hygiene;*
  - (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
  - (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

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**A. Medical Care System****A.1 Restrictions of Access to Medical Care due to Insufficiency in the Medical Care System****a Proposed Recommendations for the Concluding Observations**

- a.1 The State Party should create and improve the regional medical care system, so that anyone can access necessary and adequate medical care in any area of Japan.
- a.2 The State Party should improve the current situation, which has been indicated as a “collapse of medical care,” particularly in emergency and perinatal care. It should prepare and implement measures at once to prevent situations in which patients are turned away from one medical institution after another.

**b Reasons**

204. Currently, access to medical care is restricted in the State Party, due to inadequacy of the medical care system, with a shortage in the number of doctors and nurses, as well as medical care institutions, among other factors.
205. According to a survey by the Ministry of Health, Labour and Welfare, the number of doctors per 1,000 people is 2.15 (as of end 2008), which is lower than the average of 3.1 among the OECD countries (2007 to 2008 statistics), placing Japan 27<sup>th</sup> among 30 developed countries.
206. In rural areas, in particular, there is a marked shortage of doctors, and in some cases, patients have to go to other prefectures for medical care. Because of the shortage of doctors, the small number of doctors who are registered bear excessive workloads, become exhausted and as a result often leave their workplaces, creating a vicious cycle of further shortage of doctors and hospitals. Among departments, the extent of staff shortages is high in rehabilitation, emergency medicine and obstetrics. Because of this, there have been many detrimental effects, such as numerous media reports of cases of emergency patients being turned away from one medical facility after another.

## **A.2 Restrictions of Access to Medical Care due to Economic Reasons**

### **a Proposed Recommendations for the Concluding Observations**

- a.1 The State Party should improve the current situation in which people are falling into arrears in payments of health insurance premiums by measures such as lowering the insurance premiums.
- a.2 The State Party should investigate individual cases of arrears of health insurance premium payments, and when the reason is due to poverty, remedial measures should be taken swiftly. The State Party should immediately plan and implement policies so that being without an insurance card would not hinder a patient from receiving a doctor's consultation, even temporarily.

### **b Reasons**

207. Access to medical care is also restricted by economic reasons in the State Party. The health insurance system started in 1961. It is now an established system as a national health insurance system with universal coverage, in which a certain proportion of the medical costs would be borne by the treasury so that everyone can access medical care on an equal basis. However, in recent years, because of the prolonged recession and changes in the employment situation, the number of people falling into arrears in the insurance premium payments has been increasing. Insurance cards will not be issued for those who have not paid for a year or more, and they would have to pay 100% of the medical costs, at least at the start of treatment. For those in an economic situation in which they have fallen into arrears in their insurance payments, paying 100% of the medical costs is usually difficult, and as a result, they may refrain from receiving treatment.

208. Such delays in payment are a notable phenomenon in schemes such as the municipality-controlled national health insurance scheme, in which the insured party themselves will have to pay the full premiums; unlike the employees' health insurance, in which the employers bear half of the premium fees. According to the 2009 survey by the Ministry of Health, Labour and Welfare, the proportion of income paid to insurance premiums by people insured with municipality-controlled national health insurance schemes was 9.4% on average. This means that someone with an income of 1 million yen would be paying 100,000 yen for premiums. With such figures, it is only natural that so many people would be falling into arrears.

## **A.3 Patients' Rights in Medical Care**

### **a Proposed Recommendations for the Concluding Observations**

- a.1 The State Party should adopt a law stipulating the rights of patients.
- a.2 The above law should have at its core the protection of the following rights of all people.
  - i. The human dignity of the patient shall not be violated at any time.
  - ii. The patient has a right to receive safe and high quality medical care on an equal basis.
  - iii. The patient will not be discriminated against on grounds of disease or disabilities

- iv. The patient's right to consent to, choose or refuse any medical act he/she may receive, after being fully informed, will be effectively protected.
  - v. The patient will have the right to participate in normal social life and conduct a normal private life to the extent that is possible.
  - vi. The State and local Governments have the responsibility to implement policies to protect the above rights.
- b Reasons
209. Medical care is indispensable for all people, but because of the inadequate medical care system and economic reasons mentioned above, access to medical care is restricted in the State Party. Furthermore, even when patients can access medical care, the situation is not such where it can be said that the patient can consent to, choose or refuse the medical treatment he/she is receiving.
210. Namely, although the principle of informed consent has spread in the medical profession, it is still a mere formality, and in many cases patients have no alternative except to accept the medical treatment without fully understanding the conditions.
211. Moreover, the right to self-determination in medical care is not established. In the present situation, we have not reached the stage in which a law on "the right to die" such as choosing death with dignity, or a form of refusing medical treatment, can be legislated. Currently, a union of Diet Members is looking towards drafting a law on suspension of life-prolonging measures in cases of near-death conditions. However, it is necessary to legislate the right to self-determination of patients in medical care firmly in law, and to discuss thoroughly and concretely the issue of dying with dignity, taking into account various situations and perspectives, before such a law can be legislated.
212. There are further situations in which the patients' normal social life is restricted beyond what is necessary because of their status as patients, such as the inadequate education system for children staying in hospitals, and "social hospitalization" (in which patients are kept in hospitals even when they require no treatment) for patients with psychiatric illness.
213. In order to improve the current situation in medical care within the State Party, the existing paternalistic thinking in medical care must change. Patients should be seen as subjects of medical care and not as objects, and medical care policies should be implemented from the perspective of the protection of rights. The rights of patients, which should be the basic concept for that purpose, should be made explicit as the first step.

#### **A.4 Harmful Effects of Medicine**

- a Proposed Recommendations for the Concluding Observations
  - a.1 The State Party should amend the Pharmaceutical Affairs Law and should explicitly put in writing the State's obligation to ensure safety of medicines.
  - a.2 In order to realize citizens' rights to receive information regarding the safety and effectiveness of medicines and drugs, the State Party should implement in full the public disclosure procedures based on Act on Access to Information Held by Administrative Organs, as well as

establish and improve systems to fulfill the duty to actively provide information both from the State and pharmaceutical companies.

- a.3 The State Party should create a complaint system in which citizens can notify the State of the danger of certain medicines and drugs, and request emergency orders such as for suspension of sales or recall of the product. It should also create a system requiring the State to respond in writing after investigations within a certain period.
- a.4 The State Party should create an organization independent from the Ministry of Health, Labour and Welfare, with the participation of citizens and victims of harmful effects of medicines, which would monitor and assess the pharmaceutical administration in order to prevent the recurrence of harmful effects of medicine.

b Reasons

- 214. There is a history of cases of harmful effects of medicine in the State Party, such as those due to thalidomide, subacute myelo-optico neuropathy (SMON), chloroquine, the transmission of HIV/AIDS or hepatitis C through contaminated blood products, and Creutzfeldt Jakob disease caused by use of infected instruments.
- 215. Since the last examination by the Committee on Economic, Social and Cultural Rights (2001), the collective judicial action by hepatitis C patients started in 2002, and the “Act to Provide Remedies for Patients of Hepatitis through Contaminated Blood Products” was adopted in 2008. However, although there were assumed to be 10,000 victims of hepatitis, the law has been applied only to over 2,000
- 216. The fact that such incidents continue shows that there is a structural defect in the State’s system to prevent harm caused by medicine.
- 217. First, in order to remove the defects in the prevention system, as a starting point, it must be explicitly written in the Pharmaceutical Affairs Act that the State has a duty to the citizens to ensure the safety of medicines, and clarify where the responsibility lies. This is because the Act has the purpose of ensuring the safety and effectiveness of medicines as well as protecting the life and health of the citizens.
- 218. Although the State and pharmaceutical companies possess various information regarding the safety and effectiveness of the medicines, the disclosure of such information to citizens is extremely insufficient. In preventing recurrence of harm by medicines, it is crucial that information regarding medicines is actively disclosed and made public, and the State must swiftly and broadly adopt and improve the laws, including amending the “Act on Access to Information Held by Administrative Organs.”
- 219. History shows that in cases of harmful effects of medicines, the damage has often increased because even when citizens had pointed out the risks early on, the State failed to respond quickly. This happened in the thalidomide case, in which warnings were issued by academics, but the State avoided making these warnings public because it would “confuse the consumers”. Therefore, the creation of a complaint system by which citizens can notify the State of the dangers of medicines, and request emergency orders such as for suspension of sales or recall, is extremely important in the prevention of recurrence of harm by medicines.

220. Regarding the approval system for medicines and safety measures after the medicines enter the market, the establishment of an independent organization which can monitor and assess pharmaceutical administration would be the key to building an effective system for preventing harm caused by medicines.
221. In this regard, there have been numerous discussions in examination committees and public advisory organs in Japan, and recommendations have been gathered calling for the establishment of a third-party organization which has independence, expertise and mobility, and to provide it with the authority to gather information and to make recommendations.
222. Meanwhile, the Ministry of Health, Labour and Welfare is preparing a draft bill to establish a “third party organization” within the Ministry, which has no provisions regarding the authority to investigate, make recommendations on safety, or to appoint members from victims of harmful effects of drugs, citizens or lawyers, no independence, no competence or authority to monitor, and is third party in name only. If this draft is to succeed, the past recommendations will lose their effect, and fulfillment of the purpose of preventing recurrence of harm by medicines will be at risk..
223. The Japanese Government should swiftly begin to establish an effective and independent organization, and implement various effective policies to realize the prevention of recurrence of harm by medicines.
224. Since the last examination (2001), the Supreme Court has confirmed the judgment recognizing the State’s responsibility in causing infection with the hepatitis B virus in a number of people estimated to be more than 400,000, from re-use of syringe needles in mass vaccinations and other uses. Although there had been numerous studies and reports pointing out the dangers of the re-use of syringes and other implements, it continued for several decades, creating an astonishing number of victims.
225. Harm caused by vaccinations, like the hepatitis B case, is not in the category of harm caused by medicines; however, it shares a common structure, in which the danger is pointed out but is neglected for a long period. Policies similar to those recommended in this section should be formulated for aspects of medical care administration other than those regarding harmful effects of medicine.

## **A.5 Issues Regarding Suicides**

- a Proposed Recommendations for the Concluding Observations
- a.1 The State Party should conduct a radical review of the labor law system and policy, which is expanding the use of non-permanent employment; improve social security, which should provide a safety net; as well as implement measures against suicides caused by overwork.
- a.2 The State Party should conduct as a national project a thorough study on the specific causes of suicide, clarify the background of the “health issues” that are thought to be major causes and motivations, and use the results in the preparation of a detailed policy on suicide prevention.
- a.3 The State Party should build a network for suicide prevention, bringing together lawyers, medical care professionals, welfare workers and others, and play a central role in it.

b Reasons

226. The number of suicides in the State Party has continued to be at an abnormally high level of more than 30,000 per year for 14 years since 1998. Since the Government started collecting statistics in 1978, the level had been around 20,000, but the number rose suddenly to above 30,000 in 1998.
227. According to the World Health Organization (WHO), the rate of death by suicide (the rate per population of 100,000) in Japan was 8<sup>th</sup> among countries whose data was available since 2000. This is the highest rate among the G7 countries.
228. The Japanese Government adopted the Basic Act for Suicide Prevention in 2006. The Law did not see suicide simply as a personal matter, but explicitly stated that measures should be taken as a social effort, with the understanding that there were social factors behind suicide.
229. In 2007, the Government prepared the Fundamental Policy Measures for Suicide Prevention and indicated the basic recognition that many suicides were the result of being “driven to death” rather than voluntary acts. It raises the clarification of the situation of suicide, prevention of suicide by social efforts, and relieving the pain of the bereaved families as the main policy focus.
230. In this way, the position of the State Party is basically correct. However, the above efforts by the Japanese Government have yet to achieve success, and the number of suicides has remained high since then.
231. The structural factors in employment in the State Party are behind the continuing high suicide rate. Recently, structural reform policies leading to deregulation were promoted in the State Party, due to economic globalization and increasing international competition. Because of the amendments of the Worker Dispatch Act and the Labor Standards Act, the previous Japanese employment style based on life-long employment and seniority has changed into one of non-permanent employment. As a result, the number of working poor has increased, and this has caused a hike in demands on the social security system, which had been weak from the beginning, although this weakness had not manifested under the traditional Japanese employment style. Thus, the State Party has now promoted a policy of restraining social security, such as by cutting benefits under the employment insurance, and reducing childcare allowances. Meanwhile, regular employees have been required to work excessively, and because they could not refuse long working hours when the employment situation was unstable, cases of death or suicides caused by overwork increased. Such changes in the social structure can be considered to be behind the continuing high level of suicides.
232. Economic factors also play a large role. The year 1998, when the number of suicides suddenly rose to above 30,000, was when previously unimaginable rapid economic changes occurred such as the collapse of major financial institutions in the prolonged recession after the bursting of the economic bubble. The worsening economic conditions hit the employment situation directly, and companies cut wages, limited the numbers of recruits, and restructured their workforces. As a result, the remaining employees were compelled to work longer hours.
233. Suicide can be seen as a situation in which the “right to life”, the ultimate right among the



rights to health, is violated. Therefore, the most important measure in responding to suicide is to improve the economic situation, and to radically change the social structure. Without such efforts, a substantial drop in the number of suicides cannot be expected..

234. Meanwhile, in planning detailed measures against suicide, it is necessary to study and analyze in concrete detail the causes and motivations for suicide. While providing care for the bereaved families, briefings should be conducted to learn from the families, friends and acquaintances about the deceased's conditions prior to death. A method of psychological autopsy should be used to clarify the causes and motivations of suicide. Such studies should be conducted as a national project.
235. In fact, Finland has implemented such a project, and has cut the number of suicides by 30% in 10 years.
236. Since suicide has diverse and complex causes, in planning the specific policies after conducting such a study, the administrative organizations should build a network that brings together professionals and professional organizations, such as lawyers, medical care professionals and welfare workers, while playing a central role.
237. As mentioned above, measures against suicide in the State Party require a dual approach consisting of fundamental efforts to improve the social structure and the specific efforts of planning preventive measures for individual suicides.

## **B. Psychiatric Care**

### **B.1 Proposed Recommendations for the Concluding Observations**

- a Psychiatric care in the State Party should be immediately improved. Measures should aim for the protection of the human rights of people with mental disabilities, and adequate psychiatric care policies. Medical care that is based in local communities and is directly connected to the places where the patients are living, that can be accessed voluntarily any time, anywhere, and has the personnel and physical systems in place, so that appropriate levels of care is ensured, should be at the basis of psychiatric care policies.
- b The exceptions in the Medical Care Act, which can only be seen as remnants of an age when hospitalization was the main form of treatment (for example, psychiatric departments have 1 doctor per 48 patients while other clinical departments have 1 per 16) should be abolished for private hospitals as well.
- c A survey by the Ministry of Health, Labour and Welfare indicated that there were 70,000 people who were "socially hospitalized": who do not require hospitalization, but continue to stay because they cannot leave. Psychiatric care in local communities should be improved and strengthened, including the creation of personnel and physical infrastructure in order to solve the issue of "social hospitalization".
- d In order to break from hospitalization-centered care and to achieve promotion of smooth social rehabilitation as well as continuation of medical care in local communities, personnel systems including occupational categories such as the Social Reintegration Coordinator under the

Medical Treatment and Supervision Act should be strengthened, along with the various facilities that support social rehabilitation.

- e National and public mental health and welfare research institutions must be established around the country. These should play a key role, as well as act as coordinators in promoting psychiatric care and ensuring emergency psychiatric care in local communities. Such institutions should also be responsible for research, education and awareness-raising.

## **B.2 Reasons**

238. Psychiatric care in Japan, unlike the trend in other countries, has continued to be hospitalization-centered. The number of hospital beds in psychiatric departments in Japan has been at roughly 350,000 since around 1960, whereas the number of beds has decreased by more than half in other countries, such as the United States, the United Kingdom and Germany in the past 40 years. Furthermore, the average period of stay in hospitals is less than 20 days in these countries, while in Japan, in recent years, it is more than 300 days. These figures show that psychiatric care in Japan is hospitalization-centered.
239. Psychiatric care in other countries has been able to shift from hospitalization to outpatient treatment, because the psychiatric care in local communities was strengthened in these countries. The initiative in Italy (Trieste), in particular has attracted attention, and such efforts in other countries should be analyzed in Japan in order to improve psychiatric care in local communities.
240. Hospitalization-centered care segregates people with mental disabilities, maintaining the effect of protective custody and results in unfair violation of the dignity of patients with psychiatric illnesses. As Article 14 paragraph 2 of the Convention on the Rights of Persons with Disabilities stipulates, “the existence of a disability shall in no case justify a deprivation of liberty”; thus there is a need to reform the system towards disallowing forced (involuntary) hospitalizations as much as possible
241. Moreover, the Ministry of Health, Labour and Welfare is currently considering amending the provisions on hospitalization for medical care and protection, which is a form of forced hospitalization. Furthermore, there is a possibility that the consent of the guardian, which is one of the current requirements for hospitalization, may be deleted, making hospitalization possible with the decision of a single designated doctor. Since this would lead to a relaxation of requirements for forced hospitalization and an increase in the number of patients hospitalized involuntarily, the JFBA has adopted a recommendation that includes proposals to have two designated doctors to make the decision, and effective review by the psychiatric review board at the time of admission to the hospital.
242. A new initiative in psychiatric care in Japan is care by a team of professionals from different fields under the Medical Treatment and Supervision Act. The Act itself is an additional system of forced hospitalization, and should be promptly abolished, as it is an unfair restriction of the human rights of patients with mental disabilities. However, initiatives such as medical care by teams should be introduced broadly into general psychiatric care. If general medical care

could be improved in this way, the Medical Treatment and Supervision Act would become unnecessary.

243. The “exception for psychiatric departments” is an exception allowing psychiatric departments to maintain only a third of the number of doctors per patient required by other clinical departments. This exception has been abolished recently for public hospitals, but it has been kept intact for private hospitals, which provide the majority of psychiatric care in Japan. The exception has been maintained because abolishing it would inflict an adverse effect on the management of private hospitals. Thus, it merely serves to protect the management of psychiatric hospitals, while sacrificing patients with mental disabilities, and should be abolished immediately.
244. Furthermore, the system of Social Reintegration Coordinators has been newly created under the Medical Treatment and Supervision Act. The Coordinator is a qualified psychiatric social worker attached to the probation office, and will coordinate the environment for social reintegration based on the condition of the patient (the target person under the Act). The Coordinator has the role of watching over the patient receiving treatment as an outpatient, in ways such as by securing housing separate from that of the patient’s family, setting up a support system for going to hospital, and coordinating the visiting nurse service to the patient’s home.
245. For patients in the recovery period, such a system may be effective for monitoring medication management so that their conditions do not regress, and should be established broadly in the local community psychiatric care system in the form of coordinators to promote discharges from hospitals.

## **C. Medical Care in Detention Facilities**

### **C.1 Medical Care and Health Issues in Detention Facilities under the Criminal Justice System, and under Immigration Control**

#### **a Proposed Recommendations for the Concluding Observations <sup>46</sup>**

246. The State Party should ensure a system in which detainees in criminal justice facilities as well as immigration control centers can promptly receive appropriate medical treatment. For this purpose, it should strengthen organizational cooperation with external medical institutions, and should quickly begin the creation of a system to prevent deterioration of health due to suspension of medication or discontinuation of medical care while the patient is in detention.
- b Reasons**
- b.1 The medical care system in detention facilities under the criminal justice system is inadequate, with no doctors or even nurses being employed in the facilities. As a result, there have been some cases in which detainees lost their lives after their conditions deteriorated because of insufficient response in emergency situations immediately after being detained in the facilities. There have been at least four cases of death reported between January and October 2012 (the cases of detainee deaths caused by deterioration of condition due to chronic disease and other

causes in the detention facilities of Kanuma Police Station in Tochigi Prefecture, of Kikukawa Police Station in Shizuoka Prefecture, of Iino Police Station, Saitama Prefecture, and of Kizu Police Station in Kyoto Prefecture.)

- b.2 A case at a detention facility of an immigration control center was also reported in which a woman who was detained at the facility in June 2011 did not receive adequate treatment at the center. She had difficulty eating, possibly due to psychogenic reaction, and because she was unable to receive appropriate treatment in outside hospitals she rapidly lost weight, leading to further deterioration of her conditions.
- b.3 Many of the criminal justice and immigration control detention facilities do not have medical care systems, and even when they do, the doctors are public servants attached to the detention facility, or those working under contracts. They are not independent of the facilities, and are not acting on behalf of the detainees

Article 22 of the Minimum Standard Rules for the Treatment of Prisoners requires that the medical services should be organized in close relationship to the general health administration of the community or nation, but currently there are no such organizations.

Although treatment at medical institutions outside of detention facilities is possible in some cases, the decision whether to allow such treatment or not is made by the doctors or officials of the detention centers. These doctors are not present around-the-clock at the facilities, so they are not able to respond immediately when detainees fall ill at night or during holidays. With facility officials, there is the problem that they may not be able to make appropriate decisions.

Further, sometimes detainees' requests to receive treatment by the facility doctors or other personnel may not be accepted, or they may be made to wait for more than a week. When they request treatment at hospitals outside of the facilities, and a decision is made that continued treatment by outside hospital doctors is appropriate, in many cases, such treatment may not be allowed, or detainees may have to bear the costs. Interpreters are also not necessarily provided.

- b.4 The UN Special Rapporteur on the Human Rights of Migrants wrote in his report after his visit to Japan in March 2010, "(M)any of the detainees that the Special Rapporteur met suffered from various diseases, in some cases very serious, and the majority complained about not receiving adequate health care. They had not been allowed to continue the medication they had been taking before they were detained, and were given light medication instead, which was seriously compromising their health and possibility of recovering. For example, a detainee suffering from diabetes reported he was only given painkillers and his condition had worsened tremendously." (A/HRC/17/33/Add.3)

## **C.2 Protection of the Standard of Living of the Prison Inmates**

### **a Proposed Recommendations for the Concluding Observations**

- 247. The State Party should immediately review and improve the standard of living and the medical system for prison inmates.

b Reasons

248. The situation of hygiene and medical care in prisons is serious. The shortage of medical staff, doctors in particular, is serious, and as of April 2010, there are 12 facilities around the country that do not have a full-time doctor. To alleviate the burden on the doctors, even when there is a request for medical care by the inmates, the assistant nurses will decide on the necessity and urgency of the situation. The assistant nurses in this case are prison officers who have obtained the qualification in the medical prison. Therefore, there is a tendency for security issues to take precedence over medical necessity. In February 2012, a prison officer in Toyama Prison noticed that an inmate in his 70s was feeling faint, but since it was decided not to be an emergency, he was left unattended. Later, his death was pronounced at the hospital he was transported to.

249. Furthermore, air conditioning in the cells is provided in only a very few facilities, and even when it is provided, it is rarely used in the cells that the detainees live in. As a result, there is a high risk of heatstroke in the summer and hypothermia in the winter, particularly in single room cells (including protection rooms). In January 2006, just before the Act on Penal Detention Facilities and Treatment of Inmates and Detainees entered into force, a male detainee on remand (29 years old) froze to death at the Kobe detention center. He had complained more than 10 days before his death about suffering from the cold and poor health. He could hardly move by the day before he died, but nevertheless, the doctor at the facility diagnosed that nothing was wrong. Later, he was left in the cell, where a window to the outside was partly open. He froze to death the next morning, when the temperature fell below zero. In this incident, his family filed suit against the state to claim compensation, which was upheld in the final judgment. After this judgment, the Ministry of Justice issued a notice on the prevention of hypothermia, but the poor living conditions for inmates have not changed, and the medical system has not been reviewed.

**D. Induced Abortion**

**D.1 Proposed Recommendations for the Concluding Observations**

- a The requirement of the consent of the patient's spouse for induced abortions under Article 14 of the Maternal Protection Act should be reviewed for certain cases, such as domestic violence.
- b The situation of sterilization procedures conducted on people without their consent for "hereditary diseases" and other reasons under the former Eugenic Protection Act should be clarified, and the victims should be awarded apologies and compensation.

**D.2 Reasons**

250. The Maternal Protection Act stipulates the requirement of the consent of the patient's spouse for justifying induced abortion, and this requirement constitutes an obstacle to the access of necessary medical care for women. In particular, for women whose relationship with their

spouse is deteriorating or who are taking shelter due to domestic violence and other reasons, consulting their spouses to obtain this consent is not realistic. This may lead to their missing or delaying the timing for abortions, and is a violation of the health and human rights of women. Moreover, the cost of induced abortions is exceedingly high, and the method used in early abortions is almost entirely limited to curettage, a method that is not promoted by the WHO, and which places burdens on women physically, mentally and economically. Medical abortions using orally administered drugs have not been approved, and there is a huge social stigma surrounding induced abortions.

251. As pointed out by the Human Rights Committee, clarification of the situation of involuntary sterilization conducted on people without their consent for “hereditary diseases” under the former Eugenics Protection Act, and apologies and compensation to the victims, have remained in limbo and have not been implemented.

## **E. Framework for the Promotion of Reproductive Health**

### **E.1 Promotion of Sexual and Reproductive Health**

a Proposed Recommendations for the Concluding Observations <sup>47</sup>

a.1 The Government should promote comprehensive sex education that encompasses reproductive health, including contraception, abortion rights, and rights to self-determination for pregnancy and reproduction for adolescent girls and boys.

The Government should take specific measures to ensure that reproductive health education is included in the regular curriculum at school.

a.2 The Government should create a favourable environment for maternal healthcare.

The Government should take measures to increase the number of doctors and midwives in obstetric care, and all efforts should be made to meet the needs for prenatal emergency care.

### **E.2 Reasons**

252. After protests from a number of MPs, course materials for sex education were removed from junior high schools, and sex education at a school for disabled children was strongly criticized by the school board and members of the Metropolitan Assembly. Thus, there have been major setbacks for sex education in Japan. In the Third Basic Plan for Gender Equality endorsed in 2010, it was stated that the State Party “will implement developmentally appropriate sex education in schools”. However, objectives and concrete plans were not given.

253. In the recommendations from the Committee on the Rights of the Child, it is stated that the State Party should ensure the inclusion of reproductive health education in the school curriculum and fully inform adolescents of their reproductive health rights, including the prevention of teenage pregnancies and sexually transmitted infections, including HIV/AIDS, and ensure that all programs for prevention of HIV/AIDS and other sexually transmitted diseases are easily accessible to adolescents. The Committee on the Elimination of Discrimination against Women recommended in its Concluding Observations for the 6th

review of the periodic report from Japanese Government that the State Party should promote sexual health education targeted at adolescent girls and boys. It also recommended that the State Party should ensure access to sexual health information and all services, including those directed at termination of pregnancy, for all women and girls.<sup>48</sup> However, the Japanese Government dismisses the importance of sex education, and due to resistance from conservatives, sex education is retrogressing, and the health of young people, especially young girls, is under threat.

254. While Japan is now in a situation with a widening economic gap among its citizens, it is becoming increasingly difficult for low-income earners to deliver a baby safely, thus a disparity among people can be observed even at the time of childbirth. Prenatal care is increasingly subsidized by Government funding, but in some areas is not free of charge, and fees vary considerably from place to place. Only 86.9% of women report their pregnancy before 11 weeks of pregnancy, and many pregnant women rush to the hospital or clinic just before childbirth without having had any prenatal check-ups previously. There is a considerable number of women who confirm their pregnancy at hospital but do not visit the hospital afterwards for prenatal check-ups, presumably due to financial reasons. Pregnant women can deliver a baby free of charge or for a small cost by using the childbirth subsidy system if they are from low-income households; however, some hospitals do not treat women with childbirth subsidies, as they tend not to visit the hospital for prenatal check-ups for financial reasons, which increases medical risk at the time of the childbirth.
255. The system for prenatal emergency care has not been developed sufficiently, and in 2006 there was a case of a pregnant woman who died due to being unable to find a hospital that could give her specialist treatment with all the necessary facilities and equipment. Some prefectures do not have a Prenatal Healthcare Center with all the facilities and personnel required to treat pregnant women with higher medical risk, and there are only 89 General Prenatal Healthcare Centers across the country.
256. Some hospitals have closed their obstetrics/gynecology departments in recent years, and the number of hospitals is unevenly distributed across regions. The number of doctors and midwives in obstetric care is also insufficient, and the ratio of female doctors is below 20%. In particular, the number of doctors in obstetric care is decreasing, for reasons that include an increase in medical lawsuits and the demanding nature of their work. As the number of medical facilities offering obstetric care decreases, some pregnant women deliver babies at hospitals or clinics in remote locations, and some hospitals limit the number of deliveries by using an appointment system. Thus, the situation surrounding childbirth in Japan has become severe.

## **F. Remedies for Victims of Pollution**

### **F.1 Proposed Recommendations for the Concluding Observations**

- a The Ministry of the Environment should amend the current standard for certifying patients

with Minamata disease in order to recognize “patients with only sensory disturbances as patients of Minamata disease, when it cannot be denied that those symptoms are due to effects of methylmercury using assessment of past residence records.” Furthermore, the period of deciding whether a person is eligible for remedies as a victim of Minamata disease (Article 7 paragraph 2 of the “Law concerning with Special Measures for Compensation of Minamata Disease”) should not be limited to 3 years, but should be applied flexibly to suit the purpose of the Law.

- b The level of benefits under the Act on Asbestos Health Damage Relief should be brought in line with the levels of industrial accident insurance and of the Act on Compensation, etc. of Pollution-related Health Damage.
- c A new system of remedies should be created based on the “Polluter Pays” principle for victims of air pollution due to automobile exhaust fumes and other reasons.

## **F.2 Reasons**

- a Fifty years have passed since the official recognition of Minamata disease, but there is still no prospect in sight for complete redress of the damage. The Law concerning with Special Measures for Minamata Disease set the time limit for application for remedies to July 31, 2012, even though there were still many patients in the process of applying. Moreover, the Government’s criteria for certification of patients remains stricter in comparison with those indicated in the court cases, and there is concern that there may be many victims who will not be able to apply on time, or cannot be certified, and therefore will not be able to receive remedies. Further, since the remedies system is structured to relieve the State of responsibility and to place the burden on the polluting company Chisso Co., if the company ceases to exist, there may be many victims who will not receive remedies.
- b The Act on Asbestos Health Damage Relief was adopted in 2006 for damages caused by asbestos, but the amount of benefits remain at far lower levels compared to those for industrial accident insurance or under the Act on Compensation, etc. of Pollution-related Health Damage.
- c Pollution due to particulates (PM2.5) or NO<sub>2</sub>, caused mainly by automobile exhaust fumes, continues at serious levels exceeding the environmental standards. Under these circumstances, people continue to suffer from bronchial asthma and other diseases caused by pollution. A large-scale epidemiological survey conducted by the Ministry of Environment also revealed a relationship between the increase in patients of these diseases and the pollution caused by PM2.5. A new system for remedies for victims based on the “Polluter Pays” principle is needed.

## **G. Regulation of Chemical Substances and Related Matters**

### **G.1 Proposed Recommendations for the Concluding Observations**

257. Regarding hypersensitivity to chemical substances, the State Party should: (1) vest the



administrative guidelines and other rules with legally binding force, (2) expand the scope of chemical substances covered by the regulation, (3) prioritize regulation for public and other facilities, and (4) regulate products that are sources of pollution.

258. Furthermore, the precautionary principle as well as producer responsibility should be strengthened regarding regulation of chemical substances. The precautionary principle is the principle in which, when there is a threat of health damage or destruction of the ecosystem - even when the risk caused by the chemical substance is scientifically uncertain - the chemical substance would be banned, or appropriate regulation including limitations in the use of the substance, and introduction of lower risk alternatives would be required by law, or promoted through economic incentives with appropriate timetables. The strengthening of producer responsibility requires producers to ascertain and provide information on the chemical substances contained in their products for the appropriate management of the process from production to disposal, report data regarding safety within a certain period on existing substances under production, and ban production and use of the substance when safety cannot be proven.

## **G.2 Reasons**

259. As a result of continued failure by the State Party to satisfy many of the environmental standards established to prevent pollution, measures to protect the health of people and the environment from harmful chemical substances that cause serious environmental damage, such as hormone disrupting chemicals and dioxin, have not yet been taken.

260. The values in the guideline on the indoor concentration of chemical substances issued by the Ministry of Health, Labour and Welfare and other instruments are just guidelines and have no legally binding force. For the vast majority of chemical substances, toxicity and other characteristics are as yet unknown, and in many cases it is difficult to identify substance that cause problems. However, at present, the Ministry of Health, Labour and Welfare has established standard values of indoor concentration for only 13 chemical substances. Regulated substances under the School Sanitation Standard and the Building Standards Law are also limited. Children, patients who are hypersensitive to chemical substances, as well as other people who are sensitive to chemical substances, sometimes suffer negative health effects even when the concentration is below the standard level. The current standard values do not give any considerations to such people.

261. The Air Pollution Control Act and other laws regulate outdoor air pollution. The requirements under these regulations, however, apply only to major facilities that discharge large volumes of emissions. Emission control in other facilities depends on voluntary efforts.

## **H. Waste Materials**

### **H.1 Proposed Recommendations for the Concluding Observations** <sup>49</sup>

a In order to ensure funding for measures against illegal waste disposal, the obligations of

business operators discharging waste should be strengthened and clarified, a system should be established in which the industry as a whole reimburses the funds to counteract illegal disposal, or a mandatory insurance for waste treatment operators should be introduced.

- b The category of “stable-waste landfill” should be abolished, and the construction and maintenance management standards for waste processing facilities should be strengthened, such as the regulation of construction and operation of controlled final landfill site from the perspective of the protection of water sources.
- c There should be a major overhaul of the laws, focusing on a thorough review of the Waste Management and Public Cleansing Law, the Basic Act for Establishing a Sound Material-Cycle Society, and various other recycling laws, in addition to the establishment or strengthening of concrete obligations for business operators to control waste discharge as well as concrete obligations to restrict and control the use of hazardous substances. There should also be an obligation for producers of certain products to collect the products free of charge at the time of disposal for reuse.

## **H.2 Reasons**

262. The “Act on Special Measures concerning Removal of Environmental Problems Caused by Specified Industrial Wastes” was adopted in 2003 after the cases of illegal industrial waste disposal in Teshima and Aomori Iwate. Under the Act, the national Government subsidizes around 60% of restoration costs, and the initial intention was to solve all major incidents of illegal waste disposal in the country within 10 years (the period was extended by another 10 years after the amendment in 2012). However, the Government initially managed to allocate a budget of only 100 billion yen, and in the end, around half of the budget amount was required to deal with just the Teshima and Aomori Iwate cases. Since there were many similar cases around the country, restoration, including removing all waste, for all illegal disposal cases that have been discovered would have required over one trillion yen.
263. Regarding stable-waste landfill sites (waste sites limited to the “5 stable waste” types such as disposable plastic, that may simply be a hole in the ground without water insulation facilities), since it is impossible in reality to separate the “5 stable waste” types from other materials in waste for disposal in landfill, many waste sites are causing environmental pollution in the surrounding areas. In Chikushino City, Fukuoka Prefecture, an employee of a waste treatment operator died as a result of the hydrogen sulfide that was produced by the waste.
264. For a complete solution of the waste materials issue, it is important not to produce waste in the first place. Although the current legal structures regarding resource-recycling and waste management adopt waste production (discharge) reduction as an ideal, they do not ensure its effectiveness, as they place almost no concrete duties on business operators and other entities, but rely on voluntary efforts to reduce waste production.
265. The Great East Japan Earthquake in March 2011 generated a huge volume of rubble, and the accident at the Fukushima No. 1 Nuclear Power Plant caused by the earthquake created a large volume of waste contaminated by the radioactive materials emitted into the environment. Such

waste material should be processed appropriately, but that should not lead to a neglect of the ideal of controlling waste production.

## **I. Conservation of Water Quality**

### **I.1 Proposed Recommendations for the Concluding Observations**

- a Restrictions on constructions of facilities such as golf courses and waste disposal sites should be introduced in water source areas.
- b In planning for construction of water resource development facilities such as dams or estuary barrages, overestimated demand forecasts should be revised, and the actual social trends including decreasing population should be taken into account when reviewing the plans.
- c Discharge of wastewater from industrial plants including hazardous materials into sewers should be prohibited, and the size of the sewage treatment facilities should be appropriate to the characteristics of the area. Furthermore, the Sewerage Act and other laws related to sewage treatment should include provisions guaranteeing public participation.

### **I.2 Reasons**

266. Hazardous substances from golf courses, waste disposal sites and other places flow into water sources such as rivers, while trichloroethylene used in high technology industry facilities and dry cleaning is polluting the groundwater. Recently, chloronitrofen (CNP) used in herbicides has been suspected of causing gallbladder cancer, and there is concern that health damage from water pollution is becoming a reality.

267. The water quality of tap water from dams and estuary barrages is often very poor. However, construction plans of dams and estuary barrages are based on unreasonably overestimated forecasts of population and economic scale, ignoring reality, despite decreasing population and consumption rate (volume of water used by one person per day, volume of water supply per industrial output).

268. The water quality of bodies of water for public use, such as rivers, is low (approximately 80% in rivers), as assessed by the rate of compliance with the chemical oxygen demand (COD) (or biochemical oxygen demand, BOD for rivers) tests, which are major indices on water quality. The improvement of water quality has not progressed. One of the major reasons for this is the domestic wastewater discharged through daily activities such as cooking, washing and bathing. However, the improvement of the sewerage system as a countermeasure for domestic wastewater has made little progress, despite the huge investment (over 4 trillion yen annually). One factor is that water quality improvement has become too independent on state subsidies, and as a result of the lack of public participation, the size of the sewage treatment facilities, including treatment areas and capacity, have become excessive and not suited to the characteristics of the area, leading to high construction costs.

## **J. Protection of Natural Environment t**

### **J.1 Proposed Recommendations for the Concluding Observations**

- a Provisions on the rights to environment and to enjoy nature should be explicitly stipulated in the Basic Environment Act.
- b To prevent deterioration of the natural environment by development, there should be a legal system for mitigation methods that preserve the natural environment by avoidance, minimization and compensation of the environmental impact of the development, in that order of precedence. Development plans such as the reclamation work on Awase Tideland and other important wetlands as well as the surrounding areas should be suspended.<sup>50</sup>
- c In formulating and reviewing public works projects, effective procedures for public participation should be guaranteed by methods such as legislating a law that explicitly stipulates the right to public participation.
- d The environmental impact assessment should be improved in the following areas.
  - d.1 In environmental impact assessment procedures, preparation and publication of alternative proposals should be legally required.
  - d.2 The construction of waste disposal facilities or projects related to capture and storage of carbon dioxide should be covered by the environmental impact assessment procedures.
  - d.3 Regarding post-project survey procedures after the environmental impact assessment, concrete provisions such as those increasing the thoroughness of information disclosure and accountability, protecting the due process for public participation including communication on revisions and complaints, and enabling supervision by independent organs should be stipulated. Furthermore, a system should be created to enable implementation of corrective measures even after the start of a project if the results of the post-project survey show an error in the environment impact assessment
- e A draft bill should be prepared that allows collective or group action by environmental organizations.

### **J.2 Reasons**

- a Under the current laws and jurisprudence as well as the administrative procedures in Japan, the rights to environment or to enjoy nature are not recognized as rights of the people.
- b To prevent deterioration of the natural environment by development, mitigation methods that preserve the natural environment by avoidance, minimization and compensation of the environmental impact of the development, in that order of precedence, are extremely effective but are not required by law. The prospects of suspending development plans that destroy the environment such as the reclamation work on Awase Tideland and other important wetlands, as well as the surrounding areas, are not yet in sight. For example on October 15, 2009, the Naha Branch of the Fukuoka Court of Appeals upheld the decision of the Naha District Court to order a ban on all future public spending related to the Awase Tideland Reclamation Project except for research expenses. Although the judgment became final, Okinawa Prefecture and

City continue to pay expenditures, and development works have restarted on October 14, 2011.

- c In formulating and reviewing public works projects, since there is no general system guaranteeing effective public participation procedures, public works projects are planned and executed even when there are questions such as on the necessity of the contents of the project, without adequate verification through public participation of the necessity for public works that can cause environmental destruction. Therefore, regarding planning and review of large-scale public works projects, a basic law on public works that stipulates effective procedures for public participation, including the provision of the public's right to participation, needs to be formulated to guarantee procedures for effective public participation.
- d The Environmental Impact Assessment Act was partially amended on April 22, 2011. However, even after the amendment, the provisions regarding the preparation of the draft Environmental Impact statement (Article 14 paragraph 1 (7) b) or the statement itself (Article 21 paragraph 2 (1)) require only the inclusion of "measures for protecting the environment", and no proposals regarding alternative measures. Moreover, the procedures regarding the "scoping document", which defines the scope of the impact assessment, do not even require the inclusion of "measures for protecting the environment" (Article 5) or other provisions that may provide a basis for consideration of alternative measures. Therefore, regarding public works projects that may cause environmental destruction, such as those mentioned above, there are no opportunities for the public to be informed and to discuss sufficient alternatives.  
Furthermore, construction of radioactive waste disposal facilities, and projects related to capture and storage of carbon dioxide are not covered by the current Act, but the risks of environmental destruction from these projects are high.  
In order to ensure the credibility and effectiveness of post-project surveys, thorough disclosure of information, accountability, as well as revision and complaint procedures are necessary, in addition to the establishment of procedures such as those for protection of due process for public involvement or supervision by independent organs. Moreover, there is a need to improve procedures to enable implementation of corrective measures such as suspension orders or restoration orders even after the start of the project, if the results of the post-project survey show an error in the environmental impact assessment, including errors in the implementation of measures for protecting the environment.
- e Further, under the current procedures for legal action in environmental administrative cases, despite the broadening of the standing to sue in the text of the law after the amendment of Article 9 of the Administrative Case Litigation Act, there have been many cases in which judicial control could not be exercised because the plaintiff's claims were dismissed for lack of standing. An example can be found in the judgment of the Tokyo District Court on May 29, 2008 (the so-called "Mitsui Sports Ground Environment Case").

## **K. Urban Environment**

### **K.1 Proposed Recommendations for the Concluding Observations**

- a The current laws and regulations regarding urban planning and construction should be radically revised, and an integrated legal system for urban matters should be formulated on the use of land, construction, urban transportation and landscape, including the following issues.<sup>51</sup>
  - a.1 The legislation should have the purpose of creating and maintaining a sustainable urban area, and protecting the right to continue living in comfort and mental wellbeing. It should cover all matters related to urban areas including use of land, construction, urban transportation and landscape, and should provide an integrated response to these issues.
  - a.2 The protection of the global environment, protection of the landscape, protection of urban green areas, transition from an automobile-dependent society, consideration for children, the elderly, people with disabilities and others, vitalization of the local economy and local community and other such ideas should be explicitly included as basic principles. Drafting of urban planning, regulations and standards, examination of development and construction should be conducted according to these principles.
  - a.3 Local autonomy should be expanded so that local governments can decide on their own regarding the contents and procedures for urban planning, regulation and standards as well as examination procedures for individual construction and development projects.
  - a.4 The procedures for administrative appeal and judicial review should be radically revised to protect prompt and subjective public participation in formulating contents and procedures for urban planning, regulation and standards, as well as examination procedures for individual construction and development projects as the public's right, and to guarantee the right to continue living in comfort and mental wellbeing.
- b A basic law on transportation, which explicitly stipulates people's right of movement should be legislated, and a concrete quantitative target should be set regarding the proportion of public transportation in transportation in general, in order to improve public transportation.

### **K.2 Reasons**

269. The current City Planning Act and the Building Standard Law do not have the purpose of creating or maintaining sustainable urban areas. They also do not uphold the protection of the global environment, protection of the landscape, protection of urban green areas, transition from an automobile-dependent society, consideration for children, the elderly, people with disabilities and others, and the vitalization of the local economy or local community as basic principles. Instead, there have even been some cases in which regulations taking into account such principles adopted by the local governments on their own were found to be unlawful. The powers of local governments are very much restricted.

270. Moreover, the procedures for the approval of urban planning and development works under the City Planning Act, as well as for the recognition and approval of construction under the Building Standards Act, do not guarantee public participation as a right. Further, the City

Planning Act does not have the power to create rights or duties, and judicial review is not possible at the decision stage of the plan. The Government, moreover, has continued to take measures to “deregulate,” such as removing basement floors, common corridors and stairways from the floor area ratio calculations, and relaxing the slant line regulation by sky factor, and thereby exacerbated the problem.

271. In this way, the right to live in a pleasant living environment is not protected under the current urban and construction laws and regulations.

272. Unlike in Europe, Government support for public transport is lacking in Japan, and as a result, particularly in regions other than the three major urban areas, the rate of automobile use among all means of transportation has increased from 40.5% (1987) to 56.4% (2005) on weekdays, and from 52.4% (1987) to 72.6% (2005) on weekends and holidays. Automobile use is becoming excessive. Further, as a result, elderly people who do not live in large urban areas and who have difficulties driving often face problems in their daily lives, such as being unable to go shopping.

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## **Articles 13 & 14 - Right to Education**

### *Article 13*

1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*
2. *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*
  - (a) *Primary education shall be compulsory and available free to all;*
  - (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
  - (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*
  - (d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*
  - (e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*
3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*

*No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

### *Article 14*

*Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years,*



*to be fixed in the plan, of the principle of compulsory education free of charge for all.*

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## **A. Right to Education for Children without Japanese Nationality, and Children with Roots Outside Japan**

### **A.1 Proposed Recommendations for the Concluding Observations** <sup>52</sup>

- a The refusal to recognize the qualifications of students and graduates of schools and universities that impart an education that enables non-Japanese residents of Japan to preserve their native language and the culture of their country and ethnic group, who have completed education equivalent to the compulsory education, secondary education and university education set forth in Article 1 of Japan's School Education Law, and the refusal to allow such students to take legally-sanctioned public employment certification exams and university entrance exams, violates Articles 6 and 13 and Article 2, paragraph 2 of the Covenant.
- b In regard to the application of various policy measures, such as accreditation of qualification for graduates to take entrance examinations to higher educational institutions, issuance of financial assistance for school attendance and tax incentives for charitable contributions, Japan should not disadvantageously discriminate against schools for non-Japanese nationals, and no exception should be made without rationale.
- c Regardless of whether the child or her/his legal guardian has official status of residence in Japan or not, the right to education, including admission to public schools, should be guaranteed to all children of non-Japanese nationals.

### **A.2 Reasonss**

- a While non-Japanese nationals living in Japan are deemed to possess the right to enjoy the language of their own ethnic group or nation, as well as other cultural rights, public elementary and secondary schools and universities established under Japan's School Education Law do not offer an education that sufficiently promotes the language and culture of the ethnic group or nationality of such non-Japanese nationals. It is also considered impractical for private schools established pursuant to said Law to provide education sufficient to maintain the language and culture of the ethnic group or nationality of non-Japanese nationals, considering the time required to teach the curriculum required in order to be approved under the law. As of August 2008, there are more than 210 schools for non-Japanese nationals in Japan, including both national schools and international schools such as Korean schools, Chinese schools, South Korean schools and German schools. Most remain accredited as miscellaneous schools, and are not accredited as formal educational institutions set forth in Article 1 of Japan's School Education Law.
- b Furthermore, because the Japanese Government does not recognize the quality of the schools for non-Japanese nationals referred to herein and deems them to be the same level as various technical schools, despite the fact that the education provided by such non-Japanese schools is equivalent to the compulsory education and high school education offered by Japanese

schools and is in no way inferior to a Japanese public school education, public subsidies provided by local Governments to non-Japanese national schools offering the equivalent of compulsory education and high school education are no more than ten percent of the subsidies provided to Japanese private schools that provide an equivalent education. Consequently, children and students who receive an education that maintains the language and culture of their nationality or ethnic group are not able to receive compulsory education free of charge, and the salaries and other benefits received by the teaching staff of these schools are less than half of the amount that teachers responsible for equivalent education in Japanese schools obtain. In one recent example in 2000 (a Korean school in Nagoya, Aichi Prefecture), salaries to the teaching staff were in arrears.

- c Furthermore, the State Party takes discriminatory measures against specific schools for non-Japanese nationals compared to other schools for non-Japanese nationals.

For example, whilst tax incentive programs for charitable contributions for public benefit, such as the Specified Contribution Program and Specific Public Benefit Corporation Program, are applied to European schools, American schools and international schools, Korean schools and Chinese schools are excluded.

In April 2010, Japan introduced Financial Assistance for School Attendance Programme. Schools for foreign nationals are also applicable, but out of all the schools for foreign nationals that are accredited as miscellaneous schools, Korean Schools continue to remain solely excluded from the programme.

- d To ensure the right of a child to receive education, the State Party had allowed children of migrants without official status of residence in Japan to enter public schools as long as they were officially registered as aliens.

However, due to the new immigration system introduced in July 2012, migrants without official status of residence have lost the means to obtain official identification in Japan. As a result, children of migrants without official status of residence are denied entrance to Japanese public schools

## **B. Right to Education**

### **B.1 Proposed Recommendations for the Concluding Observations** <sup>53</sup>

- a For elementary and secondary education, the Government should include within its criteria of free educational expenses not only tuition and textbooks, but also all other expenses such as other payments to school, transportation fees and extracurricular activity expenses.
- b For upper secondary education, the Government should take steps to ensure that private schools are also tuition-free in line with tuition-free measures taken for public schools.
- c For tertiary education, the Government should try to reduce the financial burden on parents.
- d The Government should expand its scholarship programs, and in particular,

grant-type scholarships should be issued.

## B.2 Reasons

273. In the State Party, primary education equates to elementary school, lower secondary education equates to junior high school, upper secondary education equates to high school, and tertiary education equates to university.

274. In 1979, when the Japanese Government ratified the International Covenant on Economic, Social, and Cultural Rights, it reserved the right not to be legally bound by Paragraph 2 (b) and 2 (c) of Article 13, which sets forth the progressive introduction of free education. However, on 11 September, 2012, this reservation was withdrawn. Japan will now be legally bound to realize the progressive introduction of free education. This is a great accomplishment.

275. Currently, tuition and textbooks are free during primary education and lower secondary education in Japan. Furthermore, tuition for upper secondary education has been made free at public schools, and an equivalent amount to this tuition is distributed to private schools by the Government.

276. Yet, Japan's public expenditure on education against GDP and total public expenditure is much less than that of other OECD countries, and stands at the lowest level. This is due to the fact that a large volume of expense is supported by private expenditure. 31.9% of total educational spending is paid by private expenditure, but this does not include a significant amount of other outside-school educational expenses which are a burden to Japanese households. A disparity remains between educational expenses for upper secondary education provided at private and public schools.

Table 1 Proportion of public expenditure on education of GDP and total public budget in select OECD countries

(% )	As a share of GDP			As a share of total public budget		
	All Education	Primary, Secondary and Post Secondary, Non-tertiary	Tertiary	All Education	Primary, Secondary and Post Secondary, Non-tertiary	Tertiary
Japan	3.6	2.7	0.5	8.9	6.4	1.8
OECD Average	5.4	3.7	1.1	13.0	8.7	3.1
United States	5.3	3.9	1.0	13.1	9.3	3.0
France	5.8	3.8	1.3	10.4	6.8	2.4

OECD, *Education at a Glance 2012*

Table 2 Relative proportions of public and private expenditure on educational institutions for all levels of education

(%)	All Levels of Education		Tertiary Education	
	Private Sources	Public Sources	Private Sources	Public Sources
Japan	31.9	68.1	64.7	35.3
OECD Average	16.0	84.0	30.0	70.0
United States	28.0	72.0	61.9	38.1
France	9.8	90.2	16.9	83.1

OECD, *Education at a Glance 2012*

277. According to the biennial “Survey of Household Expenditure on Education per Student” conducted by the Ministry of Education, a significant amount of educational expenses are paid by households even when a child attends public school from elementary level. However, no measures have been introduced to curb the increase in household educational spending.

Table 3 Household expenditure on education (per annum)

Elementary		Lower Secondary		Upper Secondary (Full time)	
Public	Private	Public	Private	Public	Private
304,093	1,465,323	459,511	1,278,690	393,464	922,716

MEXT, *Survey of Household Expenditure on Education per Student*

278. In Japanese fiscal year 2012, 30.4% of students attended private schools for upper secondary education. There are not enough public schools to accommodate all students, and private schools have become one option. It cannot be justified that such a large percentage of students are burdened by high educational expenses.

Table 4 Upper secondary education n

	Total	Public Schools	Private Schools	Proportion of Private Schools
No. of Schools	5,022	3,703	1,319	26.3%
No. of Students	3,355,509	2,336,635	1,018,874	30.4%

MEXT, *School Basic Survey 2012 (Preliminary Figures)*

279. The financial burden on households for tertiary education is notably high. According to an OECD survey conducted in 2009, tuition for higher education in Japan is costly, and 50.7% of

tertiary education spending was borne by households.

280. Notwithstanding the high financial burden on households for higher education, only 33% of students receive public loans or grants. Furthermore, most students in Japan receive loans rather than grants, and the majority borrow loans with interest.

Table 5 Distribution of financial aid to students

(%)	Receive public loans only	Receive scholarships/grants only	Receive both public loans and scholarships/grants	Receive neither public loans nor scholarships/grants
Japan	33	1	0	67
United Kingdom	37	8	50	6
United States	12	27	38	24

OECD, *Education at a Glance 2012*

281. Japan Student Services Organization (JASSO) is the institution responsible for distributing most scholarships in Japan. To be eligible to receive a scholarship from JASSO, a student must be financially unable to enter a tertiary education institution. This means that students with difficult financial circumstances will be further burdened with a large amount of debt before their entry into the workforce. Furthermore, in most cases, loans are lent with interest. As a result, the percentage of people who are financially unable to repay their debt is increasing. To avoid further burdens on students with financial difficulties, the Government should expand its scholarship program, including expansion of the grant-type scholarship program.

Table 6 Reasons for non-repayment

Responses 3,917

Reason	No. of Persons	Percentage(%)
Borrower is receiving medical treatment	262	6.7
Borrower is still in education (including repeated years)	56	1.4
Borrower has low income	1,087	47.8
Repayment of other loans	762	19.5

borne by the borrower		
Increase in the total arrearage amount	1,087	27.8
Financial difficulty of parent(s)	1,479	37.8
Financial difficulty of spouse	201	5.1
Medical treatment of family	287	7.3
Was busy and forgot	84	2.1
Other	259	6.6

JASSO, 2010 Survey on Attribution of Borrowers in Arrears of Scholarship Loans s

## C. Education for Children with Disabilities

### C.1 Proposed Recommendations for the Concluding Observations

- a In principle, children with disabilities should have the right to be raised together with children without disabilities.
- b Children with disabilities should not be discriminated against at educational institutions.
- c Lack of rational care for children with disabilities should be considered discriminatory.

### C.2 Reasons

- a In Japan, within the framework of the general education system, children with disabilities were excluded from educational spaces as “exempt from school attendance”. Educational opportunities were ensured after the Government made “Schools for the Intellectually Disabled, the Physically Disabled and the Health Impaired” compulsory via policy. Although this simply created an educational environment for children with disabilities separate to that of other children without disabilities, the Government deemed that the Schools for the Intellectually Disabled, the Physically Disabled and the Health Impaired (now called Schools for Special Needs Education) provided an “adequately caring” environment. However, regardless of disability, children possess the right to grow up together with other children of the same age group, born in the same community. Academic attainment may vary, but the nature of education is to draw out skills and potential from children so that they can realize themselves as individuals, and the right to grow up together as human beings should be accepted from standpoints other than that of academic education. Internationally, inclusive education was promoted in the 1994 UNESCO Salamanca Statement and Framework for Action on Special Needs Education. The United States made it a principle to educate children with disabilities together with children without disabilities in the Individuals with Disabilities Education Act (IDEA) in 2004. The Japanese Government should also comply with such an international standard..
- b Any discrimination, exclusion and other unfair treatment based on a child’s disability are against the “inclusive” philosophy and should be prohibited at all educational stages,

including entrance, class formation, graduation, lessons, excursions and participation in school events.

- c Denial of entrance to school institutions on the grounds of disability is a serious discrimination against children with disabilities. Such discrimination includes denial of the entrance of a younger brother with a disability to the same school as his elder brother; or accepting the younger brother but placing him in the “Special Needs Education Class”, prohibiting him from swimming together with other students or denying his participation in the sports festival, etc. Such treatment is unacceptable. Making parental escort a prerequisite, or limiting participation in events and classes, is also discriminatory treatment.
- d Moreover, rational care for children with disabilities at educational institutions is necessary. The non-provision of care should be considered discriminatory in principle. For example, in classes, means of communication should be ensured according to individual needs (sign language or communication in writing for students with hearing impairments). Similar care should be taken during selection of textbooks and teaching materials. If a student requires assistance, additional staff should be secured.

# Special Report – Great East Japan Earthquake and Japan’s Nuclear Energy Policy

## A. Background of the Special Report

### A.1 Background of the Special Report - Great East Japan Earthquake and Fukushima Daiichi Nuclear Power Plant Accident -

#### a Great East Japan Earthquake

a.1 On March 11, 2011, at 14:46 (Japan time), a magnitude 9.0 earthquake occurred off the coast of Sanriku in the Tohoku region (hereafter referred to as the Great East Japan Earthquake). After the earthquake, seven waves of tsunami hit the Tohoku region, flooding an area of approximately 561km<sup>2</sup>.

a.2 As of September 2012, the total number of deaths and missing persons caused by the earthquake and tsunami is approximately 18,600 (Cabinet Office Extreme Disaster Management Headquarters, *FY2011 (2011) Tohoku Region Pacific Ocean Earthquake (Great East Japan Earthquake)*, September 25, 2012).

Across the nation, 129,428 buildings have been reported as fully destroyed, 265,300 buildings as half destroyed, and 727,294 building as partially damaged, but the precise number is not known as some areas sank under water after the tsunami.

### A.2 Fukushima Daiichi Nuclear Power Plant Accident

a There are fifteen nuclear reactors alongside the Pacific Coast of the Tohoku region, including the six of the Fukushima Daiichi Nuclear Power Plant operated by the Tokyo Electric Power Company.

There are a reprocessing plant, uranium enrichment factory, high-level radioactive waste storage facility and low-level radioactive waste storage facility at Rokkasho Village in Aomori Prefecture.

b Of these facilities, off-site power sources were damaged by the earthquake and the emergency diesel-generator was damaged by the tsunami at Reactors 1, 2, 3 and 4 of the Fukushima Daiichi Nuclear Power Plant. After loss of all the power sources, cooling functions of the reactors and the spent nuclear fuel storage pools were paralyzed. Consequently, radioactive substances were discharged into the environment.

b.1 At Reactor 1, on March 11, the water level of the nuclear reactor dropped and nuclear fuel was exposed, leading to meltdown. Most fuel melted down and fell to the bottom of the pressure vessel. It is presumed that molten fuel created holes in the bottom of the pressure vessel, and fuel leaked through these holes into the reactor container. On March 12, an attempt was made to vent gas and steam to lower pressure inside the reactor container. However, a hydrogen gas explosion occurred at the reactor building, and the reactor facility was destroyed.

b.2 At Reactor 2, pressure inside the reactor container also rose. On March 13, an attempt was made to vent gas and steam, but on March 14, the water level of the nuclear power reactor dropped and nuclear fuel was exposed, which led to meltdown. It is presumed that an



explosion occurred near the suppression chamber on March 15. Most of the nuclear fuel melted down and fell to the bottom of the pressure vessel. It is presumed that the bottom part of the pressure vessel was damaged by molten fuel, and part of the molten fuel fell further to the bottom of the reactor container through the holes created by the damage.

- b.3 At Reactor 3, nuclear fuel also began melting down on March 13 after the water level of reactor dropped and nuclear fuel was exposed. Over March 13 and 14, several attempts were made to vent air and steam, but on March 14, most of the nuclear fuel fell to the bottom of the pressure vessel. A hydrogen explosion occurred at the reactor building, and reactor facilities were damaged. It is presumed that the bottom part of the pressure vessel was damaged, and some of the molten fuel fell further to the bottom part of the reactor container through the holes created by the damage.
- b.4 Reactor 4 was undergoing a routine inspection and was not in use during the disaster, but the water temperature of the storage pool for spent nuclear fuel escalated. At 6 a.m. on March 15, a hydrogen gas explosion occurred at the reactor building, causing damage to the reactor facility.
- b.5 Water was poured into Reactors 1, 2, and 3, but as the pressure vessels and reactor containers were damaged, large quantities of radiation-contaminated water leaked out and are now being stored on site. Reactors 1, 2, 3, and 4 are still being cooled down using the water circulation and water injection cooling system.
- c According to the June 2011 press release of the Nuclear and Industrial Safety Agency, the total amount of radioactive substances discharged by the Fukushima Daiichi Nuclear Power Plant accident into the air is estimated at 770,000 terabecquerels ( $10^{12}$ ).  
According to the October 2011 press release of the Japan Atomic Energy Agency, estimated total amount of radiation discharged by the Fukushima Daiichi Nuclear Power Plant accident into the sea, including radiation fallout, was 15 quadrillion ( $10^{15}$ ) becquerels.  
The Fukushima Daiichi Nuclear Power Plant accident is considered as “Level 7 (major Accident)” which is the most serious on the International Nuclear Events Scale (INES).
- d In April 2011, the State Party designated the area within 20 km of Fukushima Daiichi Nuclear Power Plant as an Evacuation Area, and prohibited entry into the area. Furthermore, the Government designated areas where the estimated radiation dose is more than 20 mSv as a Specially Designated Recommended Evacuation Area, and issued evacuation orders to people residing in those areas.  
The total area of the Evacuation Area and Specially Designated Recommended Evacuation Area is approximately 1,100 km<sup>2</sup>. Approximately 85,000 residents were ordered by the Government to evacuate, and have been displaced from their homes. Even in areas where the Government did not issue an evacuation order, many residents have voluntarily evacuated to avoid their exposure to radiation.
- e The Great East Japan Earthquake was an unprecedented multi-faceted disaster with the combination of earthquake, tsunami and nuclear disaster. It not only caused grave damage to the affected areas, but also made a huge impact on the Japanese society and economy, and

continues to threaten the basic human rights of many people.

## **B. Livelihoods of Disaster Victims**

### **B.1 Background**

a.1 After the massive seismic movement and tsunami of the Great East Japan Earthquake, many buildings were either destroyed or swept away. Furthermore, due to the Fukushima Daiichi Nuclear Power Plant accident, thousands of people lost their families, lost livelihood environments such as homes, workplaces and schools, and were forced to flee to other areas.

According to the Cabinet Office Extreme Disaster Management Headquarters, as of September 25, 2012, 329,777 people remain displaced across the nation (including those staying at evacuation centers and those staying with families, friends, in public housing and temporary houses).

According to “2011 Tohoku Region Pacific Ocean Earthquake Damage Flash Report (No. 767)” (November 1, 2012) published by the Disaster Provision Main Office of Fukushima Prefecture, the number of people displaced outside Fukushima Prefecture is 59,031 and the number of evacuees staying at temporary houses in Fukushima Prefecture is 98,995.

a.2 Distribution of food, water and other necessary items to disaster victims was not sufficient. There are various other issues, such as livelihood support and job referral for those who became unemployed, the influence of interruption of school classes, and the question of whether those displaced by radioactive contamination can return home.

a.3 Insufficient health maintenance for women and the vulnerable, and nursing care of elderly persons during the emergency phase were reported

a.4 Those who were forced to evacuate as a consequence of the Great East Japan Earthquake and the Fukushima Daiichi Nuclear Power Plant accident fall under the category of “internally displaced persons” defined under the “Guiding Principles on Internal Displacement” as persons who have been forced to leave their homes as a result of or in order to avoid the effects of natural or human-made disasters.

Principle 11 stipulates internally displaced persons’ rights to be protected against infringement of personal dignity such as gender-based violence.

Principle 18 stipulates internally displaced persons’ rights to adequate standards of living. It requests the authorities in charge to assure adequate food, drinking water, basic shelter and housing, clothing, medical services and sanitation facilities. It also requests that special efforts are to be made to ensure full participation of women in planning and distribution of these basic supplies

Principles 3 and 19 stipulate the rights of children, women, persons with disabilities and the elderly to receive treatment and services that meet their special needs.

## **C. Ensuring the Rights of Victims - Detail**

### **C.1 Livelihood and Employment Support for Disaster Victims**

- a Proposed Recommendations for the Concluding Observation
  - a.1 The State Party and affected local governments should make the following efforts to improve living conditions at temporary houses.
    - i. To continue distribution of food, daily necessities and medical services for disaster victims staying at temporary houses until they are self-sufficient.
    - ii. To establish a remission system of water and electricity expenses to those that are unable to afford them.
    - iii. To improve livelihood environment by measures such as establishment of medical institutions and nursing care service institutions within temporary housing complexes.
    - iv. To provide additional personnel to prevent isolation of disaster victims.
    - v. To monitor living conditions and take measures to improve the livelihood environment at temporary housing.
    - vi. If defects in construction are found, to take drastic measures to find out the cause and prevent recurrence.
  - a.2 The State Party should either provide grants for livelihood recovery or lump sum payments for temporary home visits.
  - a.3 The State Party should expand and reinforce the consultation capacity of public employment security offices and the Labour Standards Bureau in the affected areas, as well as Labour Bureaus of prefectural governments across the nation in order to enhance supervision and direction of business owners. It should also promote partnership with experts from the local Bar Associations to expedite legal relief.
  - a.4 Counseling functions of public employment security offices in the affected areas needs to be strengthened. In addition to increasing deployment of experts and employment support, a framework should be established to provide thorough care to the disaster victims.
  - a.5 To fully meet the needs of evacuees staying in remote areas, the State Party and local governments should compile a national list of disaster victims, and actively share information to understand the precise whereabouts of disaster victims. Information on evacuation sites should be disclosed to service provider organizations working for the public benefit.
  - a.6 The State Party should provide necessary assistance to those families that were forced to evacuate and live apart in order to maintain their household. Local governments that host evacuees should make every effort to provide housing, create employment opportunities and refer jobs.
- b Reasons
  - b.1 As a result of the Great East Japan Earthquake and Fukushima Daiichi Nuclear Power Plant accident, thousands of people lost their livelihood and employment environments.
  - b.2 Thousands of people still live in temporary houses. Temporary housing is a part of first-aid

measures provided as disaster relief. All possible measures should be implemented to assist victims of disasters who are unable to secure minimum standards of living and to make sure that assistance does not end when they relocate to temporary housing.

As most temporary housing for victims of the Great East Japan Earthquake is built at inconvenient places away from their original domicile, it is essential to ensure that living conditions are met. In the International Covenant on Economic, Social and Cultural Rights Article 11 Paragraph 1, the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living condition is recognized. This right should also be ensured at temporary housing.

- b.3 Distribution of goods, financial assistance such as grants to support living expenses and transportation costs for temporary home visits are necessary for the victims to recover their livelihoods.

Article 23, paragraph 1, item 7 of the Disaster Relief Act prescribes “granting or lending of funds, appliances and materials necessary to set up one’s living and businesses”, which allows both distribution of cash support, as well as granting or lending of appliances necessary for living. However, without any rational grounds, the Act has not been applied and no action has been taken for a long time, causing delay in the recovery of livelihoods as well as businesses.

Furthermore, cash assistance should be provided to residents who were forced to evacuate from their homes as a consequence of the nuclear power plant accident.

- b.4 Adequate employment support is necessary in order to promote recovery of the livelihoods of disaster victims. Reinforcement of the consultation framework and counseling capacity of public employment security offices, and supervision and direction of business owners should be promoted, as well as strengthening partnership with experts from local Bar Associations to expedite legal relief.
- b.5 Many disaster victims of the Fukushima Daiichi Nuclear Power Plant accident evacuated to remote locations. Those evacuees are likely to lose contact with the local governments of their places of origin, and may risk isolation or experience disruption of assistance. Families of evacuees tend to live apart, and are in need of assistance to maintain their households. Therefore, information on evacuees should be collected and shared amongst local governments and organizations that serve the public benefit. Assistance should be provided to families who are living apart from each other in order to maintain their livelihoods. Local governments that host evacuees should make every effort to provide housing, create employment opportunities and refer jobs.

## **C.2 Ensuring Rights of Women, Children, Elderly Persons and Persons with Disabilities**

### **a Proposed Recommendations for the Concluding Observations**

- a.1 The Government should create evacuation centre guidelines that incorporate a gender-equal perspective.
- a.2 Reconstruction plans and disaster management plans should be drafted based on outcomes of interviews with disaster victims who include women, elderly persons, children, non-Japanese

nationals, persons with disabilities and sexual minorities, and organizations that support them, as well the results of thorough analysis of factors that created disparities in the damage situation.

- a.3 Domestic Violence Consultation and Assistance Centers should be expanded in the affected areas. Furthermore, a Women's Centre that could handle various issues such as medicine, child rearing, elderly care, labor and law should be established, and its functions strengthened.
- a.4 In regard to community rebuilding, reconstruction of medical facilities, elderly care facilities and child care facilities should be prioritized. The State Party should provide financial assistance as deemed necessary.

b Reasons

- b.1 After the Great East Japan Earthquake, a lack of measures to ensure privacy, lack of space for women and child care, of understanding on the specific needs of women, women's access to various consultation spaces, and an excessive burden regarding cooking on women were reported. It became clear that evacuation centers need to be improved by incorporating a gender-equal perspective.
- b.2 A lack of concern towards victims who are especially vulnerable to the impact of the disaster, such as elderly persons, children, non-Japanese nationals, persons with disabilities and sexual minorities was also evident. These disaster victims require special attention as they may risk becoming persistently disadvantaged after the reconstruction.

On June 21, 2012, the "Statute on Protection and Support for the Children and other Victims of Tokyo Electric Company Nuclear Power Plant Disaster" was passed and enacted by the House of Representatives. Medical expenses for children and pregnant mothers who were affected by the accident will be exempted or reduced using national financial resources. Furthermore, the Government will guarantee lifelong health checks for children who may have been exposed to radiation. The Government will also be responsible for assistance to children who were separated from their families as a consequence of the accident, as well as the return of voluntary evacuees. However, as the current evacuation standard designated by the Government is an annual radiation dose of 20 mSv, in order to be eligible to receive assistance, zones need to be exposed to radiation over this "fixed standard". This "fixed standard" should be revised and adjusted to the public dose limit of 1 mSv designated by the International Commission on Radiological Protection (ICRP). Disaster victims should not be further separated from the general public.

Reconstruction plans and disaster prevention plans should be drafted based on outcomes of interviews with victims and organizations relating to women, elderly persons, children, non-Japanese nationals, persons with disabilities and sexual minorities, as well as on the results of thorough analysis of factors that created disparities in the damage situation.

- b.3 In the affected areas, many people, regardless of age, are exposed to severe stress due to the change of environment and fear towards future. An increase in incidents of spousal violence, violence against women and child abuse during the process of and after reconstruction are feared. Therefore, Spousal Violence Counseling and Support Centers should be expanded in

the affected areas. Furthermore, a Women's Center that could handle various issues such as medicine, child rearing, nursing care of the elderly, labor and law should be established and its functions strengthened.

- b.4 In the affected areas, burdens on women regarding medical, elderly nursing care and child care may become excessive. Therefore, in regard to community rebuilding, reconstruction of medical facilities, elderly nursing care facilities and child care facilities should be prioritized. The State Party should provide financial assistance as necessary.

### **C.3 Assistance to the Elderly and Persons with Disabilities**

#### **a Proposed Recommendations for the Concluding Observations**

- a.1 Information on evacuees who are elderly and require nursing care as well as persons with disabilities should be collected through individual visits in order to thoroughly understand their living and health conditions. Collected information should be shared amongst concerned institutions and required assistance should be duly provided.
- a.2 Medical care, nursing care and psychological care should be fully provided to elderly and persons with disabilities. In order to realize this, assistance frameworks should be established in the affected areas. Special attention should be provided to elderly persons who are living alone.

#### **b Reasons**

- b.1 Amongst the victims, many elderly and persons with disabilities remain unregistered on the list of persons who require assistance. In cases where people evacuated to areas far away from their domiciles, it is difficult to find out their whereabouts and living conditions at the evacuation sites. For this reason, assistance to meet various needs, ranging from material to psychological needs, is not well provided and a considerable number of people are isolated and exhausted.

In the previous Concluding Observation, a recommendation was made that either psychiatric or psychological treatment<sup>54</sup> should be provided to elderly persons affected by the Hanshin Awaji Great Earthquake who are living alone in order to improve community service<sup>55</sup>. As a consequence of the earthquake, tsunami and nuclear disaster caused by the Great East Japan Earthquake of March 11, 2011, many elderly persons lost their family members, relocated from their domiciles and were forced to live alone.

It is also essential to avoid the isolation of victims, and to build a community assistance framework in order to prevent solitary death and alcoholism of victims staying at temporary houses and public housing.

To provide required assistance, information on evacuees who require nursing care and persons with disabilities should be collected through individual visits in order to comprehend their living and health conditions. Collected information should be shared amongst concerned institutions and necessary assistance should be duly provided.

The Government created the "Guideline on disaster evacuation assistance to persons who require nursing care during disaster emergencies" in 2006, but almost no local governments

collected information on persons who require nursing care before the Great East Japan Earthquake, and the safety of persons with disabilities was also unchecked.

- b.2 Furthermore, in the affected areas, the elderly and persons with disabilities may suffer deteriorating health or psychological damage due to the change of environment, fear regarding their livelihoods and isolation from their communities. Medical care, nursing care and psychological care should be duly provided to elderly persons and persons with disabilities. To achieve this, an assistance framework should be built within communities.

## **D. Response to the Fukushima Daiichi Nuclear Power Plant Accident and Nuclear Power Policy – General Remarks**

### **D.1 Previous Concluding Observation of the Committee (2001)**

- a In the Concluding Observation of the Committee on Economic, Social and Cultural Rights (September 24, 2001), the Committee raised its concern that safety regulation of Japan's nuclear power facilities are of "C. Principle subjects of concern" and made the following remarks.

282. "The Committee is concerned about reported incidents in nuclear power stations and the lack of transparency and disclosure of necessary information regarding the safety of such installations, and also the lack of advance nationwide and community preparation for the prevention and handling of nuclear accidents."

- b In addition to the above comment, the Committee gave the following advice and requested the State Party in "E. Suggestions and Recommendations":

283. "49. The Committee recommends increased transparency and disclosure to the population concerned of all necessary information, on issues relating to the safety of nuclear power installations, and further urges the State party to step up its preparation of plans for the prevention of, and early reaction to, nuclear accidents."

### **D.2 Related Report in the 2009 Report of the Government of Japan**

- a The State Party responded to the Committee in its "Third Periodic Report by the Government of Japan under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (December 2009)", as follows<sup>56</sup>.

#### **a.1 Transparency and Safety**

284. "To obtain the understanding of citizens and residents of areas in which nuclear power installations are located, the Government recognizes that it is important to give them full explanations and to hear their opinions concerning the safety of nuclear power.

285. The Government has used various opportunities and the media to make appropriate disclosures of information concerning the safety of nuclear power.

286. The Nuclear and Industrial Safety Agency of the Ministry of Economy, Trade and Industry has assigned local public-relations officers for nuclear power safety to key areas of nuclear power installations. They explain the safety regulations governing nuclear power to local public entities, assemblies, and residents in the areas of nuclear power installations, and

work to strengthen the systems of information disclosure by actively producing and distributing pamphlets. The Government will continue to do its utmost to enhance the understanding among the public of nuclear power safety regulations, and intends to instruct the operators of nuclear power installations to ensure that they should disclose information and give clear explanations to outsiders about safety.”

a.2 Preparation of plans

287. “The Basic Disaster Management Plan, which is based on the Disaster Countermeasures Basic Act, Japan’s fundamental law concerning disasters, contains a section on dealing with accidents at nuclear power installations, which prescribes, as a basis for tackling nuclear-power-related accidents, the actions that need to be taken to prevent the occurrence and escalation of accidents and to recover from them.

288. Based on the Basic Disaster Management Plan, relevant ministries and agencies have formulated Disaster Management Operating Plans, while prefectures and municipalities have produced Local Disaster Management Plans. These plans place the affairs under the jurisdiction of relevant ministries and agencies and specify the actions to be taken within the prefectures and municipalities concerned.

289. Pursuant to the Act on Special Measures for Nuclear Disasters, operators of nuclear power installations have formulated a Disaster Management Operating Plan for each installation, which prescribes the action to be taken to prevent nuclear-power-related accidents, respond to emergencies, and deal with the aftermath of nuclear-power-related accidents.”

a.3 However, the Great East Japan Earthquake in March 2011 which triggered the Fukushima Daiichi Nuclear Power Plant accident revealed that overall the Japanese Government’s measures, ranging from safety regulation of nuclear power, prevention of accidents, information disclosure to nuclear disaster management, were extremely insufficient. Thus, the concerns of the Committee became a reality.

**E. Response to Fukushima Daiichi Nuclear Power Plant Accident and Nuclear Power Policy – Details**

**E.1 Monitoring and Information Disclosure on the Status of Radioactive Contamination [related to Article 12-2(b) of the Covenant]**

a Proposed Recommendations for the Concluding Observations

a.1 The State Party should continue to monitor the levels of radiation contamination extensively throughout land and sea. It should also establish a system to continue monitoring of marine products.

In particular, the Government should not delay in conducting a more detailed and in-depth monitoring survey in Fukushima Prefecture and its neighboring Prefectures.

a.2 As regards disaster victims’ decision-making on whether to evacuate from their domiciles, stay or return, the Government should provide accurate information on current contamination levels, decontamination plans, and adequate prediction of mid- to long-term shifts in the



contamination levels taking into account wind, rain and other possible transfer of radioactive substances.

- a.3 Concerning the decision on when to lift the designation of the Evacuation Areas, the State Party should set up a third-party organization comprised of independent scientists and local representatives who have no ties to the nuclear power industry. The relationship between the third-party organization and the authorities should be legally clarified.
- a.4 The State Party should fulfill its responsibilities set forth in the Law, and newly establish a legal system to make it obligatory to record minutes of all the discussions on the nuclear power plant accident.

b Reasons

- b.1 Radioactive contamination of air, soil, river and ocean by the Fukushima Daiichi Nuclear Power Plant accident spread over a wide area, and there are concerns about its long-term effects.

In order to decrease public exposure dose and facilitate residents from contaminated areas in deciding whether to evacuate, stay or return, the Government of Japan must accurately survey and monitor the contamination levels of the environment, and disclose accurate information on the proliferation of radiation, conditions of contamination and future projections.

However, the monitoring system was not sufficient during the Fukushima Daiichi Nuclear Power Plant accident.

- b.2 In June 2012, the “Statute on Protection and Support for the Children and other Victims of Tokyo Electric Company Nuclear Power Plant Disaster” was enacted. Article 6 of the Statute sets forth that the State Party shall continue its radioactive material monitoring survey, make the survey more in-depth and detailed than at present, project future contamination levels, and disclose results of surveys and projections in a timely manner.

- b.3 However, the detailed monitoring surveys and future projections of radioactive contamination of the environment as requested by the Statute are not carried out in reality. Therefore, disclosure of survey results is insufficient, and is not reflected in the proposal regarding public exposure and decision-making of evacuees in rebuilding their livelihoods

In particular, the ocean and rivers are not monitored comprehensively.

- b.4 During the Fukushima Daiichi Nuclear Power Plant accident, estimated levels of radioactive contamination calculated by the System for Prediction of Environment Emergency Dose Information Network System (SPEEDI) were not promptly made public. Criticisms were raised that this delay increased public exposure to radiation. Preparation for future nuclear power plant accidents is insufficient.

- b.5 The decision regarding cancellation of the designation of the Evacuation Areas is an important factor related to the return of evacuees, as it will heavily affect their safety and recovery of livelihood. Such a decision should not be distorted by administrative decisions whose objective is to maintain local population numbers.

To supplement the accuracy of such an important decision, the State Party should set up a third-party organization comprised by independent scientists and local representatives who

have no ties to the nuclear power industry, and legally clarify the relationship between the third-party organization and the authorities.

- b.6 All the Government's discussions on the nuclear power plant accident should be disclosed to its people. As a prerequisite of disclosure, minutes of meetings must be kept.

However, regarding the Fukushima Daiichi Nuclear Power Plant accident, it became apparent that minutes were not recorded during important emergency management meetings that the Government held every day after the accident. Without these minutes, it is not possible to analyze the Government's response to the accident, or to improve future responses in case of another similar accident. Furthermore, it is not possible to analyze who was responsible for what after the earthquake. This violates the objective of the Public Records and Archives Management Act.

## **E.2 Health Checks and Health Management of the Public [related to Article 9, Article 12-2(b) of the Covenant]**

- a Proposed Recommendations for the Concluding Observations

- a.1 The State Party should conduct health control surveys and provide free medical services to check the external and internal radiation exposure of disaster victims who live in the areas where the public radiation dose exceeds 1 mSv per annum.

Moreover, it should be made clear that the objective of these measures is not to "remove health concerns", but rather "prevention, early detection and treatment of detrimental effects on health"

- a.2 The following improvements should be made before the health control survey of disaster victims is implemented.

- i. As much as possible, the target population should be surveyed face to face and interviewed in detail.

- ii. Detrimental effects of radiation exposure should not be limited to cancer and leukemia, and no remarks should be overlooked. As a minimum, blood tests, urine tests and whole-body counter exams should be carried out on all those who wish to be examined. In such cases, the detection limit should be set as low as possible.

- iii. Thyroid gland tests should not be limited to a supersonic wave test, but blood and urine should also be tested

- iv. For pregnant and nursing mothers, breast milk should be tested, and a follow-up study on newborns should be conducted.

- v. An appropriate comparative group should be selected.

- a.3 The State Party should acknowledge that disaster victims have the right to know their own radiation exposure dose. If a victim requests, the Government should measure internal exposure dose using equipment such as a whole-body counter, and use the obtained data to calculate the total accumulative dose up to now. Such data should be disclosed to the disaster victims and all the expenses should be borne by the Government.

- a.4 While the privacy of each disaster victim should be sufficiently respected, the results of health

control surveys should be widely made available to academic institutions. The Ministry of Education, Culture, Sports, Science and Technology and the Ministry of Health, Labour and Welfare should immediately cancel their circular dated May 16, 2011 entitled “Conducting surveys and researches in the affected areas”. Furthermore, the results of health control surveys conducted by prefectures should be made widely available for medical and academic research, and survey opportunities should be given to multiple organizations.

b Reasons

b.1 Radioactive contamination from the Fukushima Daiichi Nuclear Power Plant accident spread across a vast area, and its effects may continue for a long period.

It cannot be denied that residents who were exposed to radiation after the nuclear power plant accident may suffer from health damage. As the State Party had promoted development of nuclear power, it must prevent, promptly discover and treat any detrimental effects on the health of residents.

To do so, the Government has the obligation to adequately estimate the levels of external and internal exposure to radiation, and assess levels of radiation dose based on effective testing. Based on such an assessment, epidemiologic health surveys, life-long health checks and health control of the public, especially children who are most at risk of being affected by radiation, are necessary. These measures must take into account a long-term perspective and possible delayed effect

Proposed measures were incorporated in Article 13 of the “Statute on Protection and Support for the Children and other Victims of Tokyo Electric Company Nuclear Power Plant Disaster” which was enacted in June 2012

However, in this Statute, the objective of these measures is set forth as “to promptly remove the health fears of disaster victims related to external and internal exposure to radiation”, which may cause misunderstanding that the main goal of the proposed measures is to remove “fears” rather than to “prevent detrimental effects on health”.

Furthermore, the specific measures set forth in the Statute are yet to be realized. Appropriate actions should be taken at earliest possible timing. Also, the criteria of the zones eligible for aid are yet to be decided. Eligibility should be judged based on the advice of the ICRP that proposes the dose limit for exposure of the public to radiation as 1 mSv per annum. All areas where more than 1 mSv of radiation were detected should be made eligible to receive assistance under the Law.

b.2 Large volumes of internal exposure were detected in nuclear power plant workers who only approached the Fukushima Nuclear Power Plant area after the accident, and were not engaged in any tasks inside the plant. This fact suggests that residents of the area may have been internally exposed to similar levels of radiation. Nevertheless, internal exposure of residents has mostly not been tested.

Therefore, the State Party should cooperate with local governments, and using equipment such as whole-body counters, measure levels of internal exposure of infants, pregnant women and outdoor workers who resided in the areas where radioactive materials spread. Using this

collected data, levels of exposure to radiation at the time of the accident should be estimated. The results should be disclosed to the disaster victims concerned, and all expenses should be borne by the State Party.

- b.3 Currently, Fukushima Prefecture is carrying out a “Health Control Survey of the People of the Prefecture”. However, many questions are being raised on the adequacy of the survey, as its objective is “to remove health concerns and to promote the long-term health of the people of Fukushima”, illnesses other than cancer and leukemia are not included in the test, and the precision of the test is not sufficient to ascertain the actual conditions of internal exposure.
- b.4 On May 16, 2011, the Ministry of Education, Culture, Sports, Science and Technology and the Ministry of Health, Labour and Welfare released a circular entitled “Survey and research in the affected areas” to related testing and research organizations as well as universities. This circular requested organizations to thoroughly coordinate with local governments in the affected areas, and strictly avoid duplication of health checks and research on disaster victims. This indirectly requests organizations to refrain from conducting any health surveys other than the Health Control Survey for the People of the Prefecture conducted by Fukushima Prefecture. Consequently, academic, scientific and third-party surveys of any independent nature are restricted. This is not favorable in terms of ensuring impartiality of the survey and from an academic standpoint. There are undeniable risks of governmental control of information on the effects of radiation exposure of the public, as well as restriction of publicly available health surveys.
- b.5 In Article 13 of the “Statute on Protection and Support for the Children and other Victims of Tokyo Electric Company Nuclear Power Plant Disaster” which was enacted in June 2012, the State Party sets forth that it will take necessary measures to estimate radiation exposure doses, and assess the results of effective radiation dose testing. It also sets forth that the State Party will take necessary measures regarding the detrimental effects of radiation on health, such as by conducting regular health checks on disaster victims. Lifelong health checks should be ensured at least to all the children who resided in the areas where a certain amount of radiation was detected. Medical expenses (excluding injuries and illnesses that are not related to radiation exposure caused by the Fukushima Daiichi Nuclear Power Plant accident) should be deducted for children and pregnant women.

However, it is inadequate that the objective of these measures is laid out in the Statute as “early removal of health concerns of disaster victims related to external and internal exposure to radiation”.

Specific measures based on this Statute are yet to be implemented. Appropriate measures should be implemented as soon as possible. As criteria of areas to which the Statute should be applied are also undecided, the following criteria should be applied.

- i. All areas of Fukushima Prefecture, regardless of exposure dose
- ii. All areas outside of Fukushima Prefecture where the additional accumulative exposure dose over one year after March 11, 2011 is estimated to be more than 1 mSv (this designation can only be made based on air dose. Initial exposure including internal

exposure dose after the accident should be appropriately estimated and zones that meet the above criteria should be additionally designated)

- iii. For those victims who reside or resided in areas other than those mentioned above, there should be measures to guarantee eligibility based on exposure dose after the accident as well as regional exposure conditions.

### **E.3 Health Checks and Health Management of Workers who were Engaged in Radiation-exposed Labor [related to Article 7, Article (b) of the Covenant]**

#### **a Proposed Recommendations for the Concluding Observations**

- a.1 Specific measures should be implemented to accurately and swiftly provide information to workers on the long-term risks of working in a radiation-exposed environment and security measures against exposure.
- a.2 Health conditions of workers engaged in radiation-exposed work should be monitored in the long term.
- a.3 In cases where workers engaged in radiation-exposed work wish to receive health checks related to radiation exposure or receive medical treatment for illnesses that could have been caused as a consequence of exposure to radiation, the State Party should implement assistance measures such as abolishing medical expenses or providing financial support.
- a.4 The State Party should track down workers who have not received any exposure dose checks, as well as any missing names and contact information of workers who worked in a radiation-exposed environment after the Fukushima Daiichi Nuclear Power Plant accident.
- a.5 Criteria for industrial accident compensation insurance should be established for illnesses related to radiation-exposed work.

#### **b Reasons**

- b.1 Directly after the occurrence of Fukushima Daiichi Nuclear Power Plant accident, many workers were engaged in radiation-exposed work in order to stabilize the situation. Long-term support for health management (including testing) is required to maintain the health conditions of workers who worked in a radiation-exposed environment. Necessary expenses should be borne by the Government.
- b.2 On March 14, 2011, the Government raised the legal limit of radiation exposure (effective dose) of workers engaged in emergency response from 100 mSv per annum to 250 mSv per annum (this was reverted to 100 mSv on December 16, 2011). However, in July 2011, it was identified that six workers were exposed over the raised limit of 250 mSv of radiation.
- b.3 Careless management of radiation exposure of workers who worked in order to stabilize the emergency situation has also been questioned. Many workers' exposure does has not been measured, and the contact information of many workers is missing. A follow-up survey is required in order to make health maintenance services available to such workers.

### **E.4 Discrimination and Prejudice against Evacuees [related to Article 2-2 of the Covenant]**

a Proposed Recommendations for the Concluding Observations

290. The State Party and Fukushima Prefecture should cooperate and implement specific measures to expand the psychological care of the people of Fukushima and to prevent social discrimination against them<sup>57</sup>.

b Reasons

b.1 Due to the extensive contamination of the Fukushima region by the Fukushima Daiichi Nuclear Power Plant accident, there were reports of bullying and discrimination against the people of Fukushima by people living in other prefectures. The contamination will remain for a long time, and there are concerns that such discrimination may spread further. For example, children who were forced to evacuate were being bullied at their new locations, or evacuees were refused from hotel accommodation. Cases of discrimination based on groundless prejudices are reported in the news.

b.2 In June 2012, the “Statute on Protection and Support for the Children and other Victims of Tokyo Electric Company Nuclear Power Plant Disaster” was enacted. Article 2 of the Law sets forth as its principle that “All supportive measures taken shall be ensured that they will not evoke ungrounded prejudices against the victims of the TEPCO nuclear disaster”.

However, no specific measures have been implemented to prevent such prejudices.

**E.5 Decontamination [Article 11, Article 12- 2b) of the Covenant]**

a Proposed Recommendations for the Concluding Observations

a.1 The decontamination process is of a nature that does not decrease the actual amount of existing radioactive materials, but merely transfers radioactive materials from one place to another. The substantial limitation of environment cleanup by the current decontamination method should be acknowledged, and decontamination should only be carried out after appropriate prevention measures are implemented to prevent further pollution of the environment through the decontamination process, as well as countermeasures against exposure of workers.

a.2 In Special Decontamination Areas (Restricted Areas and Deliberate Evacuation Areas), the long-term numerical target of measures against environmental pollution discharged by the accident should be an additional annual exposure dose of less than 1 mSv.

a.3 It should be acknowledged that decontamination of Special Decontamination Areas (Restricted Areas and Deliberate Evacuation Areas) will take a very long time, and lifting of the designation should be done cautiously.

a.4 As regards areas where a decontamination plan has been developed, the living zones of children should be taken special consideration, and the estimated additional exposure dose for children per annum should be decreased to less than 1 mSv (air dose 10 cm above ground surface) by the end of March 2014. Affected zones should be continuously monitored as they may be repeatedly contaminated, and if radiation is detected, the area should be duly decontaminated.

a.5 Participation of local residents is essential in drafting and finalizing decontamination plans.

Related information should be promptly disclosed to the public.

- a.6 As regards incineration used to decrease radiation-contaminated waste, the capacity and performance of incineration facilities should be appropriately tested and assessed. Based on the principle of public disclosure and participation, residents should have access to the decision-making process regarding incineration policy.
- a.7 Criteria for the selection of decontamination service providers should be set, and only those service providers that have received appropriate training or certification should be allowed to provide the service. These criteria should include items such as prevention of environmental pollution, labor safety and hygiene control, effectiveness of decontamination, expense, and technical and economic ability of service providers.
- a.8 The expense required to implement decontamination should primarily be borne by Tokyo Electric Power Company, but practically, the State Party should take responsibility to secure expenses and conduct research on means of decontamination.

b Reasons

- b.1 Vast areas of land (soil), forest, river and ocean were contaminated by radioactive materials discharged from the Fukushima Nuclear Power Plant. As a result, the living environments of people as well as production environments for agriculture and fishery were damaged. Many people were forced to evacuate, and terminate or abandon their production activities.
- b.2 As regards waste, soil and other materials contaminated by radioactive materials discharged by the Fukushima Daiichi Nuclear Power Plant accident, the “Act on Special Measures concerning the Handling of Environment Pollution by Radioactive Materials Discharged by the Nuclear Power Station Accident Associated with the Tohoku District–Off the Pacific Ocean Earthquake that Occurred on March 11, 2011” was concluded in August 2011, in which the responsibilities of the State Party and roles of local governments regarding disposal and decontamination (removal of contaminated soil, fallen leaves and branches, accumulated mud in waterways, and prevention of proliferation of such contamination) were set forth. In November of the same year, the Government announced its basic policy on countermeasures based on the Act.

According to the Act, the Minister for Environment will take into account the conspicuousness of pollution and other factors to designate “Special Decontamination Areas”, and other areas where decontamination is required as “decontamination planned areas”. As for “Special Decontamination Areas (Restricted Areas and Deliberate Evacuation Areas)”, the Government will draft and implement a decontamination plan. Furthermore, regarding “decontamination planned areas”, heads of prefectures, cities, towns and villages will be assigned to develop and implement decontamination plans.

Regarding the waste contaminated by radioactive substances from the accident, the Minister for the Environment will take into account the level of radiation dose and designate “waste from designated zones” and “designated waste”. Such waste will be disposed of by the State Party, and other waste will be disposed according to the Waste Disposal Act.

- b.3 On the other hand, there are concerns about the proliferation of environmental contamination

in the course of transfer, incineration and final disposal of waste contaminated by radioactive substances.

The decontamination process is of a nature that does not decrease the actual amount of existing radioactive materials, but merely transfers radioactive materials from one place to another. There are substantial limitations to environmental cleansing by decontamination. Thus, there are concerns about the effectiveness of decontamination, feasibility, and further proliferation of environmental contamination in the course of the decontamination process

Questions are being raised regarding exposure risks of workers and residents in the course of decontamination and disposal of waste.

Sufficient prevention measures against environmental pollution and exposure of workers should be taken before the implementation of decontamination in order to prevent further contamination or human exposure to radiation.

To do so, the Government should license and verify service providers by establishing strict criteria to assess their waste incineration ability and the appropriateness of decontamination service providers.

- b.4 Needless to say, the scale of the contaminated area and volume, the aforementioned issues regarding environmental contamination in the course of waste processing and decontamination, delays in the construction of interim storage spaces for removed soil and rubble and storage facilities are hampering the processing and decontamination of waste contaminated by radioactive substances.

It should be acknowledged that decontamination is a long-term process. Realistic goals should be set for the decontamination of Special Decontamination Areas (estimated additional annual exposure dose should be less than 1 mSv), and lifting of area designation should be carried out cautiously.

In particular, numerical targets should be made stringent for the living zones of children.

- b.5 When developing and implementing decontamination plans or disposing of waste, information should be disclosed to the public and residents should have access to the decision-making process.
- b.6 As regards use of contaminated waste (ash, etc.) for landfill, the Government has set a standard in which it approves the disposal of waste at controlled disposal sites if the cesium density is below 8,000 becquerels per kilogram, and even if the cesium density is between 8,000 becquerels and 100,000 becquerels per kilogram, the Government will acknowledge disposal of the waste on the condition that it is specially treated. Nevertheless, before the accident, if the level of cesium-137 contained in the waste was above 100 becquerels per kilogram, waste was stored at a low-level radioactive waste processing facility for a long period. Therefore, even taking into account the state of emergency, to permit landfill of waste which is above the previous clearance level at general waste final disposal facilities (controlled final disposal sites) is unacceptable. In particular, during transfer and storage, any waste above 8,000 becquerels per kilogram may radiate more than 1 mSv per annum, which is the public radiation exposure limit.



## **E.6 Compensation for Damage**

### **a Proposed Recommendations for the Concluding Observations<sup>58</sup>**

#### **a.1 Contents of the Compensation for Damage**

- i. Regarding compensation for damage related to the Fukushima Daiichi Nuclear Power Plant accident, appropriate compensation should be paid if causality between the accident and damage can be acknowledged with consideration of individual specific conditions.
- ii. As regards psychological damage to evacuees, the current compensation amount and criteria are too low. Either the amount should be increased or an appropriate amount should be calculated based on the period of evacuation.
- iii. Termination of compensation to the evacuees who resided in the Emergency Evacuation Preparation Area or Designated Evacuation Recommended Areas should be abolished. As for payment of compensation for business damages or incapacity, the irregularity of the accident should be taken into consideration and such payment should not be terminated for the time being.
- iv. Not only the asset value of real estate located inside the zone, but also movable property left inside the buildings of the No-return Area, No-residence Area and Areas being Prepared for the Lifting of the Evacuation Order, and the buildings in the No-residence Areas and Areas being Prepared for the Lifting of the Evacuation Order, should be treated as totally damaged, and compensation amounts should be based on repurchase price if requested by disaster victims.
- v. Criteria of compensation for evacuation from areas other than designated Evacuation Area (voluntary evacuation) should be fully revised. At minimum, all the residents from areas where more than 1.3 mSv (0.6 mSv per hour, above 5.2 mSv per annum) of radiation was detected in March should be made eligible to apply. For those areas where additional annual exposure dose exceeds 1 mSv, at least children, pregnant women and their family members should be made eligible.
- vi. In cases where a disaster victim is either a person with disability, an elderly person or suffers from chronic illness, uniform application of same criteria to these persons should not be tolerated, and appropriate compensation should be paid in accordance with the condition of damage suffered by each individual.
- vii. It should be acknowledged that decontamination of the Special Decontamination Area (Evacuation Area and Deliberate Evacuation Area) will take a very long time. Taking into account that the lifting of area designation should be done cautiously, various means should be considered, such as recovery of damage through relocation of livelihood spaces, including communities, or reconstruction of office buildings, or issuance of disaster compensation that will assist the early recovery of agriculture, forestry and fishery and other businesses.

#### **a.2 Damage Compensation Procedure**

291. As regards the Nuclear Power Damage Compensation Dispute Reconciliation Center, a new

Act incorporating the following stipulations should be enacted to ensure its independence from the Government as a semi-legal organization.

- i. Arbitration against the accused entity should be made statutory to the Center's reconciliation proposal. Victims will not be bound by the arbitration, and unless Tokyo Electric Power Company takes the case to the court within certain time frame, settlement should be considered concluded as proposed by arbitration. In addition, it should be made clear that Tokyo Electric Power Company must respect the submitted proposal and unless the proposal significantly lacks rationale, the Company must accept it.
- ii. Decisions by the Centre should be made in accordance with the law, case law, and guidance issued by the government panel addressing disputes over compensation for the nuclear accident. However, it should be made clear that the Government's compensation guidelines, such as compensation damage criteria, are not legally binding.
- iii. Based on the rule of certified ADR prescribed in the Act on Promotion of Use of Alternative Dispute Resolution (ADR Act), claims to the Centre should be invested with the legal effect of nullification of extinctive prescription.
- iv. As regards the positioning of the Centre within the Government, rather than placing it under the Ministry of Education, Culture, Sports, Science and Technology, which is partially responsible for nuclear power related administration, it is appropriate to place it under the Cabinet Office, which would enable the Center to have a certain independence from all the Ministries and Agencies.

If a disaster victim has a disability, information dissemination and execution of rights should be appropriately assisted based on the nature of their disability.

b Reasons

- c Compensation for damage caused by the Fukushima Daiichi Nuclear Power Plant accident is stipulated in the Act on Compensation for Nuclear Damage. An interim guideline and its annex (hereafter, "interim guideline") on the scope of compensation have been released by the government panel addressing disputes over compensation for the nuclear accident.

So far, application and payment of damage compensation has been made in accordance with the interim guideline. There is room for improvements regarding the scope of compensation and contents of compensation such as payment standards. Procedural problems such as the application procedure or the time-consuming process of dispute reconciliation are also indicated.

b.1 Contents of Compensation Damage

- i. If a particular damage was not listed in the interim guideline, but causality between the damage and the nuclear accident can be acknowledged, appropriate compensation should be paid in accordance with individual status.
- ii. As regards psychological damages of evacuees, there are criticism that current compensation amount or standard is too low and do not reflect realities of evacuation. For example, the monthly payment for psychological damage to evacuees from the No-residence Area or No-return Area is set at 100,000 yen per person, but this is too low.

If the evacuation period is prolonged, compensation should be increased. The total compensation paid for psychological damages and evacuation expenses to evacuees from zones outside the Evacuation Area (voluntary evacuees) is too low. The fixed amount for evacuees other than children and pregnant women, a total of 80,000 yen, lacks rationality. In accordance with the period of evacuation, appropriate monthly payments must be paid to compensate for psychological damage.

- iii. In accordance with the period of evacuation, appropriate monthly payments must be paid to compensate for psychological damage. In the interim guideline, the termination date of compensation for evacuees from former Emergency Evacuation Preparation Areas or evacuees from the Designated Evacuation Recommended Area were decided without prior consultation with other stakeholders. Although individual status will be taken into account and the termination date of compensation payments related to sales damage and incapacity will be rationally decided, the termination date should not be fixed considering the special nature of the accident.
- iv. As regards compensation for assets, the interim guideline prescribes that all the asset value of real estates inside the No-return Area should be acknowledged as fully damaged. Not only that, taking into account the special nature of the nuclear power plant accident and the long time taken, movable property left inside the buildings of No-return Areas, No-residence Areas, Areas being Prepared for the Lifting of the Evacuation Order, and buildings in such areas should be considered as fully damaged if victims wish, and compensation should be made based on repurchase price..
- v. The range of compensation amount and eligibility criteria for evacuees from areas other than the Evacuation Areas are too vague in the interim guideline. All residents who lived in areas where more than 1.3 mSv (0.6 mSv per hour, over 5.2 mSv per annum) of radiation was recorded in March should be made eligible to apply. For areas where additional annual exposure dose exceeds 1 mSv, at least children, pregnant women and their families should be made eligible.
- vi. Sufficient verification and consideration have not been made for damages unique to persons with disabilities, elderly persons and persons with chronic illness. Even if the details of damage were the same, the scale of damage tends to be greater, more grave and complex for such persons. If a disaster victim is a person with disability, an elderly person or suffers from chronic illness, appropriate compensation should be paid in accordance with individual status of damages. Uniform application of the same compensation criteria to these persons should not be tolerated, and appropriate compensation should be paid in accordance with individual needs.
- vii. Compensation for community reconstruction is not indicated in the interim guideline. Nevertheless, it should be acknowledged that decontamination of the Special Decontamination Areas (Restricted Areas and Deliberate Evacuation Areas) will take a very long time, and the decision to lift area designations should be made cautiously. Taking into account these issues, recovery of damage by reconstructing livelihood spaces,

including relocation of communities or reconstruction of offices, or issuance of damage compensation that would allow recovery of livelihood, including maintenance of communities as well as the early recovery of agriculture, forestry, fishery and business activities, should be considered.

#### b.2 Damage Compensation Procedure

- i. Currently, disputes against Tokyo Electric Power Company over compensation for damage are conducted through the Nuclear Power Damage Compensation Dispute Reconciliation Center (hereafter referred to as the “Center”), which is an out-of-court dispute reconciliation procedural institution set up within the Government panel addressing disputes over compensation for the nuclear accident under the jurisdiction of the Ministry of Education, Culture, Sports, Science and Technology.

However, when evaluating the current state of dispute settlement at the Center, there are incidents that may raise doubts about how Tokyo Electric Power Company is responding to the issue, such as delaying settlements by not promptly responding to arraignment or rendering an account, or taking a stubborn position which results in settlement with lower compensation.

In order to change such situations, promote appropriate and speedy settlement, relieve disaster victims, fulfill rights, and ensure protection, new legislation reflecting the opinions of the JFBA should be passed to empower the Center as an independent semi-legal institution both in name and in reality.

- ii. Disability of disaster victims should not be used as an excuse for failure to disseminate information to them regarding the application process for receiving damage compensation or difficulty in guaranteeing their execution of rights. To respond to the characteristics of various disabilities, application forms and directions should be prepared with *kana* phonetic characters alongside *kanji* characters, in braille, in audio, in electronic data etc., and if necessary, visits and assistance in person should be provided.

### **E.7 Prevention of Further Environmental Pollution [Article 12-2(b) of the Covenant]**

#### a Proposed Recommendations for the Concluding Observations

292. Without delay, means to prevent further pollution of the sea and groundwater should be implemented, and an underground shield should be constructed at the Fukushima Daiichi Nuclear Power Plant.

#### b Reasons

293. Radioactive materials continue to leak out from the Fukushima Daiichi Nuclear Power Plant to the sea, and it is feared that radiation-contaminated water may pollute the groundwater.

### **E.8 Revision of Nuclear Disaster Management Measures**

#### a Proposed Recommendations for the Concluding Observations

a.1 Unless the nuclear disaster management plans of the local governments of municipalities in the areas surrounding nuclear power plants are revised, and disaster prevention plans of

nuclear power operators are duly revised, operation of existing nuclear reactors should not be permitted (including resumption of operation).

- a.2 The opinions of residents must be reflected in the nuclear disaster management plans of local governments of municipalities in the areas surrounding nuclear power plants. When nuclear power operators are drafting their disaster prevention plans, the opinions of residents and local governments (all local governments located within 80 kilometers of nuclear power installations) should be well reflected.

- b Reasons

- b.1 Using the lessons learned from the Fukushima Daiichi Nuclear Power accident as stated in the Report of the Japanese Government to the IAEA, the Nuclear Power Regulation Authority revised its nuclear disaster management guideline. The Government also revised the nuclear disaster chapter of its Basic Disaster Management Plan. Revision of plans related to nuclear disaster prevention will be carried out by local governments of municipalities where nuclear power plants are located.
- b.2 Unless adequate disaster management plans reflecting lessons learned from the Fukushima Daiichi Nuclear Power Plant accident are developed by local governments of municipalities in the areas surrounding nuclear power stations, and preparations are made accordingly, nuclear power stations should not be operated (including resumption of operation).
- b.3 When local governments are drafting disaster management plans, related information should be widely disclosed to local residents, who have the strongest interest in the matter, and their participation in the decision-making process should be guaranteed.

When nuclear power operators draft their nuclear disaster prevention plans, not only residents, but also local governments that hold a responsibility to protect their residents should be consulted and their opinions should be reflected. Regarding this, the revised Enforcement Order of the Act on Special Measures concerning Nuclear Emergency Preparedness makes it obligatory for nuclear power operators to hold prior consultation with heads of the city, town or village where a nuclear power station is located, as well as heads of prefectures that are located within 30 kilometers of the nuclear power installation, and have prepared designated regional nuclear disaster prevention plans. Taking into account the scale of damage left by the Fukushima Daiichi Nuclear Power Plant accident, this scope is insufficient.

## **E.9 Revision regarding safety regulation**

- a Proposed Recommendations for the Concluding Observations

- a.1 The Nuclear Regulation Authority must have independence and impartiality in its authority, budget and selection of personnel, and must disclose its information and be managed as a truly effective safety regulatory institution.
- a.2 In order to establish an independent regulatory administration that can win trust from the people under the newly founded Nuclear Regulation Agency, the members of the Nuclear Regulation Authority should be selected from persons who have no ties to organizations promoting nuclear power policy. Similarly, as regards selection of staff members of the

Nuclear Regulation Agency, exceptions should not be accepted in the so-called “no-return rule”, which should be strictly observed.

a.3 Using the lessons learned from the Fukushima Daiichi Nuclear Power accident, guidelines on earthquake-proof safety, multiple damage, severe accidents, and decrepitude of facilities and machinery, should be revised to enhance counter-measures. Furthermore, backfitting (the act of making existing nuclear power facilities compliant to safety regulations in the new guidance) policy should be strictly observed.

a.4 Until compliance with the new guideline is confirmed, existing nuclear power facilities should not be approved to resume operations.

b Reasons

b.1 The Fukushima Daiichi Nuclear Power accident made it evident that previous safety tests and safety regulations were insufficient. There is an urgency to drastically review and revise the guidelines on safety assessment, regulation and regulatory institutions

b.2 As regards safety guidelines, the report by the IAEA’s Fukushima Daiichi Nuclear Power Plant accident investigation team, which was published in June 2011, points out the insufficiency of the anti-tsunami defense in depth measures and the inadequacy of the counter-measures for severe accidents in case of simultaneous occurrences of accidents at multiple power plants. The report also points out that safety regulations and guidelines should be updated based on lessons learned from the Fukushima Daiichi Nuclear Power accident.

b.3 The National Diet’s Investigation Committee on the Accident at the Fukushima Nuclear Power Stations of Tokyo Electric Company requested in its report published on July 5, 2012 that a new regulatory institution should be established. The report made a recommendation that the organization should “be independent from 1) other governmental organizations promoting nuclear power, 2) nuclear power operators, 3) politics, and establish a command and order system, authorization and service process to enhance its surveillance capacity”.

b.4 Based on lessons learned from the accident at the Fukushima Daiichi Nuclear Power Plant, on 20 June 2012, the Act on Establishment of the Nuclear Regulation Authority was enacted. The Nuclear Regulation Authority was established as new nuclear safety regulatory organization and the Nuclear Regulation Agency was founded as its secretariat.

However, there are criticisms regarding the selection of members of the Authority to the effect that some members are interested parties of the nuclear power operators.

It can be assessed that in regard to the selection of staff members of the Nuclear Regulation Agency, the so-called “no-return rule” (prohibition of staff members returning to their Ministries and Agencies of origin) was prescribed. However, there is a proviso that during the first five years, exceptions will be accepted based on motivation and aptitude of the staff, which suggests that the rule may be invalid. Exceptions should not be allowed and the “no-return rule” should be strictly observed.

b.5 The Law on the Regulation of Nuclear Source Material, Nuclear Fuel Material and Reactors (hereafter referred to as “Nuclear Reactor Regulation Law”) was revised in June 2012, following the enactment of the Act on the Establishment of the Nuclear Regulation Authority.

It can be assessed that a backfit system was introduced (a system which allows orders to be issued to nuclear power operators to either stop, remodel or repair nuclear reactor facilities built for power generation, if location, structure or facility of approved nuclear reactor facilities are not compliant with the certifying standards that reflect the latest knowledge. If an order is violated, certification may be cancelled or an administrative order may be issued to halt operation for a period of less than one year) with this Law.

However, the Law that includes a backfit system prescribes that when deemed necessary, appropriate measures should be taken based on the results of quick analysis of its implementation. Depending on how it is operated, the backfit system itself could be substantially invalid.

Regarding the backfit system, it should be strictly observed.

To enhance countermeasures based on lessons learned from the Fukushima Daiichi Nuclear Power Plant accident, guidelines on safety and earthquake resilience, multiple damages, counter-measures to severe accidents, and decrepitude of facilities and machineries should be revised. Furthermore, the backfit system (to make existing nuclear power facilities compliant with the safety regulations prescribed in the new guideline) must be strictly observed.

- b.6 Until compliance with the new guideline can be confirmed, operation of existing nuclear power facilities should not be permitted.

#### **E.10 Shift in the Nuclear Energy Policy**

##### **a Proposed Recommendations for the Concluding Observations**

- a.1 New and additional construction of nuclear power plants (including those in the process of planning and construction) should be terminated, and nuclear fuel cycle facilities such as reprocessing factories and fast-breeder reactors should be immediately abolished.
- a.2 Of the existing nuclear power plants, 1) Fukushima Daiichi and Daini Nuclear Power Plants, 2) plants which may suffer damage from projected large-scale earthquakes, and 3) plants that had been operating for more than thirty years, should be immediately abolished.
- a.3 All nuclear power plants other than those above should be abolished as early as possible within the next ten years. Until they are abolished, safety standards should be widely and nationally discussed. Unless a plant is compliant with such safety standards, operation should not be approved (including resumption of suspended nuclear power plants).
- a.4 The core of the future energy policy should be the promotion of renewable energy, energy saving and efficiency of energy use.

##### **b Reasons**

- b.1 The Fukushima Daiichi Nuclear Power Plant accident made it evident that safety of nuclear power plants cannot be assured against natural phenomenon, especially earthquakes and tsunami, which frequently occur in Japan. It also made it clear that once an accident occurs at a facility such as a nuclear power plant, radiation contamination has a grave and widespread impact on the natural environment and people's livelihoods. Even without any accidents, there are serious problems such as exposure of workers or pollution caused by thermal drainage.

If reprocessing and plutonium-thermal power generation are further promoted, it is feared that the damage would be more serious.

Nuclear power plants and nuclear fuel cycle policy have problems, the solutions to which are yet to be found both technically and socially, such as the processing of radioactive waste. They possess a structure that will force dangers on the future generations.

b.2 The State Party should immediately withdraw from such an energy policy that is dependent on the deeply problematic nuclear power. It should shift its energy policy towards one that places at its core the promotion of renewable energy, energy saving and energy efficiency. Specific measures should be promoted in this regard.

b.3 On September 14, 2012, the Government compiled a new energy policy proposal (“Innovative Strategy for Energy and Environment”) whose framework includes prohibition of new and additional construction of nuclear power plants, strict application of stipulated rules regarding the “forty-year limitation of operation” and “mobilization of all possible policy resources to such a level as to even enable zero operation of nuclear power plants in the 2030’s”.

However, this policy proposal was not endorsed by the Cabinet. Therefore, it does not specifically promise an end to reliance on nuclear power plants. While it does not approve new and additional construction of nuclear power plants, the Minister for Economy, Trade and Industry, approved resumption of suspended construction of nuclear reactors. Early abolishment of reactors and resumption of construction are clearly in contradiction to each other, which shows that the Government’s policy is not fixed.

In August 2011, the “Act on Special Measures Concerning Procurement of Renewable Energy Sourced Electricity by Electric Utilities” was enacted. However, to make purchase of renewable energy functionally effective as a system, it is essential for the Government to set an appropriate purchase price and purchase period, as well as evade refusal of electricity connection.

### **E.11 Export of Nuclear Power Plants**

a Proposed Recommendations for the Concluding Observations

294. The State Party should immediately cease its export policy of nuclear power plants, as it causes unsolvable grave human rights violations and environmental problems to partner countries and their neighboring countries. The State Party should not enter any cooperation that would lead to use of nuclear power such as supply of nuclear substances, materials, facilities and technologies, or offers of labor.

b Reasons

295. The State Party had promoted export of nuclear power plants in its policy, and has concluded nuclear power agreements with Russia, Jordan, the Republic of Korea and Viet Nam. It is in the process of concluding agreements with India, South Africa and Turkey.

296. However, the Fukushima Daiichi Nuclear Power accident is yet to be brought to an end, and decontamination measures are not complete. Detailed cause analysis of the accident is still ongoing. It has become clear that prevention of nuclear disasters, safety regulations, disaster



prevention measures and post-accident measures were insufficient.

297. The Fukushima Daiichi Nuclear Power accident made it evident that once a nuclear accident occurs, the effects of the contamination are grave. Exporting nuclear power plants would put partner countries and their neighboring countries at risk of complicated environmental problems that may cause unsolvable and grave human rights violations, especially violations of the rights of partner countries' citizens to health, hygiene and environment, which are prescribed in the International Covenant on Economic, Social and Economic Rights

298. In October 2012, a national vote on construction of nuclear power plants was conducted in Lithuania, where a Japanese company had been working on a sales order of construction of a nuclear power plant. Approximately 60% of the voters voted against the construction. This outcome reflects how seriously the Lithuanian people viewed the consequence of the Fukushima Daiichi Nuclear Power Plant accident.

(END)

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<sup>1</sup>Japan Federation of Bar Associations (JFBA), "Declaration on Action for Human Rights 2009" November, 2009, <http://www.nichibenren.or.jp/en/document/statements/year/2009/20091100.html>

<sup>2</sup>JFBA, Declaration on Action for Human Rights 2009, op.cit, November 2009

<sup>3</sup> JFBA, Report of JFBA Regarding Second Periodic Report by the Government of Japan under Articles 16 and 17 of the International Covenant on Economic, Social, and Cultural Rights, 2 March 2001, [http://www.nichibenren.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/society\\_report\\_2\\_en.pdf](http://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/society_report_2_en.pdf)

<sup>4</sup> JFBA, Report of JFBA Regarding Second Periodic Report by the Government of Japan under Articles 16 and 17 of the International Covenant on Economic, Social, and Cultural Rights, op.cit, 2 March 2001, Para.10

<sup>5</sup> JFBA, Report of JFBA Regarding Second Periodic Report by the Government of Japan under Articles 16 and 17 of the International Covenant on Economic, Social, and Cultural Rights, op.cit, 2 March 2001

<sup>6</sup> Report of JFBA Regarding Second Periodic Report by the Government of Japan under Articles 16 and 17 of the International Covenant on Economic, Social, and Cultural Rights, op.cit, 2 March 2001

<sup>7</sup> JFBA, Declaration on Action for Human Rights 2009, op.cit, November 2009

<sup>8</sup> JFBA, Declaration on Action for Human Rights 2009, op.cit, November 2009

<sup>9</sup> JFBA, Statement on the "Outline of the Bill being Considered on the Establishment of a Human Rights Commission" Released by the Minister, the Senior Vice Minister and Parliamentary Secretary of the Ministry of Justice, 13 January 2012, <http://www.nichibenren.or.jp/activity/document/statement/year/2012/120113.html>

<sup>10</sup> JFBA, Update Report on Issues and Questions from the committee on the Elimination of Discrimination against Women with regard to the Sixth Periodic Report of the Japanese Government, May 2009, para.17, 2, [http://www.nichibenren.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/woman\\_report\\_6\\_update\\_en.pdf](http://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/woman_report_6_update_en.pdf)

<sup>11</sup> JFBA, Report by the JFBA on the "Sixth Periodic Report on the Implementation of the Convention on the Elimination of all Forms of Discrimination against Women Japan", 20 October, 2008, para.299, [http://www.nichibenren.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/woman\\_report\\_6\\_en.pdf](http://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/woman_report_6_en.pdf)

<sup>12</sup> Committee on the Elimination of Discrimination against Women (CEDAW), Concluding Observations on the Sixth Periodic Report of the Government of Japan (CEDAW/C/JPN/CO/6), 7 August 2009, para.15, 16, 21, 22

<sup>13</sup> JFBA, Report by the JFBA on the "Sixth Periodic Report on the Implementation of the Convention on the Elimination of all Forms of Discrimination against Women Japan", op.cit, 20 October, 2008, para.116-128

<sup>14</sup> CEDAW, op.cit. (CEDAW/C/JPN/CO/6), 7 August 2009, para.28

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