

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

July 16, 2015

Japan Federation of Bar Associations

## **Introduction**

In the concluding observations on the second periodic report of Japan, the Committee against Torture requested that the Government of Japan provide follow-up information regarding the recommendations contained in paragraphs 10, 11, 15, and 19 of the concluding observations. The Government of Japan prepared follow-up information on the above stated paragraphs and paragraph 23, submitted the same date March 13, 2015 to the Committee against Torture, and the final version of the document was published as of April 22, 2015.

The JFBA expresses its opinion on the response by the Government of Japan as follows:

### **Paragraph 10**

**The Committee reiterates its previous recommendations (para. 15) that the State party:**

- (a) Take legislative and other measures to ensure, in practice, separation between the functions of investigation and detention;**

#### **Comments by Japanese Government**

2. Concerning complete separation between the functions of investigation and detention, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereinafter referred to as the "Penal and Detention Facilities Act") provides that detention officers shall not engage in criminal investigations of those detainees who are detained in the detention facilities supervised by such detention officers. Also, the National Public Safety Commission's Rules of Criminal Investigation prohibits investigators who are engaged in criminal investigations related to a detainee from being involved in the treatment of such detainee.

3. Japanese police have always treated detainees with consideration with regard to human rights. As part of such consideration, detainees are treated by those detention officers that belong to the general affairs (administration) division, which is not engaged in investigation, and investigators are prohibited from controlling the treatment of detainee in order to ensure separation between the functions of investigation and detention. In particular, the Penal and Detention Facilities Act, enforced in June 2007, clearly stipulates the principle of separating the functions of investigation and detention. The act also establishes a system by which a Detention Facilities Visiting Committee, consisting of external third parties, visits detention facilities, interviews detainees, and presents its opinions to the detention services managers. The act furthermore establishes complaint mechanisms and ensures that detainees are treated in the same manner as unsentenced inmates awaiting trial at penal institutions with respect to the serving of meals, the handover of money and goods by their visitors, the provision of medical care, visitation, the sending/receipt of letters, and other treatment, and that human right education is given to detention officers.

4. Based on the facts described above, the substitute detention system in Japan, under which suspects are detained at police detention facilities instead of penal institutions controlled by the Ministry of Justice, does not raise the possibility of abusing the human rights of detainees. Thus, in Japan, adequate detention administration is ensured with due consideration of their human rights.

As clarified in the comment by the Government of Japan, complete separation between the

functions of investigation and detention is not expressly stated in the Penal and Detention Facilities Act. In fact, the Act merely prohibits the investigators engaged in the investigation of a specific detainee to be involved in the treatment of the detainee. Therefore, it does not prohibit a police officer engaged in the investigation to participate in escorting or other detention services.

The Committee's recommendation was that an organization completely different from the organization in charge of investigation should be in charge of detention services concerning a detained suspect, and no improvements corresponding to this recommendation have been made.

In jail, an interrogation for a long duration may produce false confessions; by being held in custody within the police facility, the police may flexibly control the length of interrogations throughout the day.

The pressure from the fact of being held in custody within the agency in charge of the investigation itself could produce false confessions.

In addition, the reality is that detention is being used to obtain confessions; or to acquire information on the suspect through a cellmate.

In March 2008, Fukuoka District Court Kokura Branch found that a female defendant charged with murder and arson, etc., was not guilty on the issues of murder and arson ("Hikinoguchi Case"). The main issues for the case involved the admissibility as evidence the trial statement by a cellmate of the accused in a Daiyo Kangoku (substitute prison) who claimed to have heard a "confession of a crime" to the effect that the accused committed arson after murdering her own older brother. The cellmate was a party detained at the same Daiyo Kangoku as the accused (Fukuoka Prefecture Kitakyushu Water Police Station Detention Cell). When the accused was transported to the detention branch after the first charge and subsequently rearrested for the crime of forcible obstruction of business and detained at a Daiyo Kangoku (Fukuoka Prefecture Yahatanishi Police Station Detention Cell), the cellmate was rearrested and detained at the same Daiyo Kangoku. Thereafter, the cellmate was not transported to a detention branch after being charged, and continued to be held in custody at the Daiyo Kangoku. The capacity for the female detention cell at the Daiyo Kangoku was two persons, and for over two months until the accused was transported to the detention branch, the accused and the cellmate were detained at the Daiyo Kangoku by themselves. During the period, the cellmate was seldom interrogated about the alleged facts concerning herself, and mainly had hearings on the circumstances concerning the status of statements by the accused, for which the record of statement was prepared.

The ruling stated that through such method the police "could be said to have used the Daiyo Kangoku to intentionally make the accused and the cellmate share the cell for the purpose of obtaining investigative information through the cellmate, and the police cannot avoid criticism that the detention at the Daiyo Kangoku was used for investigation," and criticized that "(the accused) can be said to have been placed in the same conditions as being interrogated by the investigative agency through the cellmate, and it must be said that the detention in a cell which should be essentially separated from interrogation was abused for criminal investigation."

This case is a typical example of the investigative unit and the detention unit acting as one in using the Daiyo Kangoku to obtain a confession from the accused. So long as suspects continue to be detained at Daiyo Kangoku controlled by the police, such abuse cannot be avoided.

As is clear from the Hikinoguchi Case, due to the lack of a limit on the duration a suspect can be held in detention at a Daiyo Kanogoku, the above-stated cellmate continued to be detained in the same cell as the accused after being charged, and worked at the beck and call of the investigator.

As stated in the next paragraph, the lack of maximum duration of confinement by the police is also a problem. An investigative agency can, by repeating arrest and detention, for a period far exceeding 23 days, subdivide the case against a suspect and continue confinement in the Daiyo Kangoku through repeated re-arrest and re-detention. It is clear that such investigative method would not have been possible if the maximum duration of police confinement was set at two or three days.

**(b) Limit the maximum time detainees can be held in police custody;**

**Comments by Japanese Government**

5. In order to conduct investigation to fully reveal the true facts of cases while guaranteeing the human rights of suspects, the Code of Criminal Procedure of Japan requires, with regard to the detention of suspects prior to indictment, that strict judicial examinations be carried out at every stage of arrest, detention, and extended detention, and that the duration of custody be limited to a maximum of 23 days (see Note below). These provisions of the code are considered adequate and rational.

(Note) In the cases of crimes related to insurrection, crimes related to foreign aggression, crimes related to foreign relations and the crimes of disturbance, the detention period can be exceptionally extended for up to 15 days and as a result the maximum duration of custody is 28 days.

Duration of custody is 23 days for each case, and by repeating this, it can be extended many times longer.

The U.N. Human Rights Committee has stated as follows in the General Comment No.35 on Article 9 of the International Covenant on Civil and Political Rights adopted in 2014.

In paragraph 33, it states that "while the exact meaning of 'promptly' may vary depending on objective circumstances, delay should not exceed a few days from the time of arrest. In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing, any delay longer than 48 hours must remain absolutely exceptional and be justified only under certain circumstances. Longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill treatment. Laws in most State parties fix precise time limits, sometimes shorter than 48 hours, and those limits should also not be exceeded. An especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles." In the notes, it has clearly determined that four or five days of police custody is "not prompt," citing 1128/2002, *Marques de Morais v. Angola*, para. 6.3; 277/1988, *Terán Jijón v. Ecuador*, para. 5.3 (five days not prompt); 625/1995, *Freemantle v. Jamaica*, para. 7.4 (four days not prompt).

In paragraph 36, it states "once the individual has been brought before the judge, the judge must decide whether the individual should be released or remain in custody for additional investigation or to await trial. If there is no lawful basis for continuing the detention, the judge must order release. If additional investigation or trial is justified, the judge must decide whether the individual should be released (with or without conditions) from further criminal proceedings with regard to the pending matter because detention is not necessary .... In the view of the Committee, detention on remand should not involve a return to police custody, but rather to a separate facility under different authority, where risks to the rights of the detainee can be more easily mitigated."

It is indicated here that the Daiyo Kanogoku system is a practice that is absolutely

unacceptable to the Human Rights Committee, in the form of a General Opinion.

Based on the interpretation of the Article 9 of the International Covenant on Civil and Political Rights stated in the General Opinion No.35, the Daiyo Kangoku system in Japan is:

- (i) Contrary to the opinion of the Human Rights Committee in that it takes the arrested person 72 hours, which is over 48 hours, until such person is brought before a judge;
- (ii) Clearly violates Article 9, paragraph 3 of the Covenant in that after being brought before a judge, such person can be returned to a police station instead of a jail, where interrogation is continued, the duration of which may extend up to 20 days.

The comment by the Government of Japan which repeats the same opinion as before and do not indicate any positive response despite being clearly requested to abolish the system by two treaty organizations, i.e., the Committee against Torture and the Human Rights Committee is extremely regrettable.

- (c) Guarantee all fundamental legal safeguards for all suspects in pretrial detention, including the right of confidential access to a lawyer throughout the interrogation process, and to legal aid from the moment of arrest, and to all police records related to their case, as well as the right to receive independent medical assistance, and to contact relatives;**

#### Comments by Japanese Government

The right of confidential access to a lawyer

6. The accused or the suspect in custody is guaranteed the right to have an interview with counsel or prospective counsel upon the request of a person entitled to appoint counsel without any official being present (Article 39, paragraph (1) of the Code of Criminal Procedure).

The right to legal aid from the moment of arrest

7. The Code of Criminal Procedure guarantees every suspect the right to appoint counsel (Article 30, paragraph (1) of the Code of Criminal Procedure). In addition, there is a system under which, if a suspect detained in connection with a case punishable by the death penalty, life imprisonment, or imprisonment with or without work for a maximum period of more than three years is unable to appoint counsel because of indigence or other reasons, the court appoints counsel for the suspect (Article 37-2 of the Code of Criminal Procedure). An amendment that would expand cases eligible for the court-appointed counsel system to include all cases in which the suspect detained is planned to be submitted to the Diet.

There are cases where the interrogating agency violated the right to confidential communication despite the guarantee of confidential communication with the suspect/accused in detention.

Examples of state compensation suits include a case where the investigator conducted an investigation on the contents of an interview between counsel and the suspect and prepared written statements in an organized manner; a prosecutor preparing a written statement by investigating the contents of the interview and requested investigation of evidence at trial; a letter to counsel being seized by searching the detention cell of the accused; forcing voluntary submission of letters exchanged with the counsel; and seizing e-mails of counsel sent to the family of the accused reporting the contents of the interview with the accused to use for

interrogation and preparation of a written statement to request investigation of evidence at trial.

The right to legal aid from the time of arrest is not guaranteed. It is true that there is a plan to introduce a court-appointed counsel system for all cases in which the suspect is detained. However, as a court-appointed counsel system does not exist for approximately 72 hours from arrest until detention, legal aid is not guaranteed to all suspects for this period. A court-appointed counsel system sponsored by the state should be expanded to include this period. At present, the period between arrest and detention is covered by a system where the bar association sends an attorney for the initial interview at the expense of the bar association (on-duty counsel system), and by the JFBA providing support for attorney expenses until detention for cases that meet certain requirements where the suspect has difficulty paying the attorney expenses (criminal suspects defense support system).

**Comments by Japanese Government**

Access to all police records related to their case

8. It is inappropriate to guarantee suspects the right on the disclosure of evidence in the investigation stage considering the possibility of concealment or destruction of evidence, and therefore, the recommendation requiring that the suspect's right to the disclosure of evidence be guaranteed during pretrial detention is unacceptable. (We understand that the previous recommendation by the Committee against Torture was different from this recommendation in that it was not about pretrial detention but about the stage after indictment.)

With respect to cases referred to the pretrial conference procedure by the court (0.6% of all criminal cases), a system to disclose a list of evidence upon request of the accused and counsel, and a right to request a pretrial conference procedure for cases not referred to pretrial conference procedure has been proposed by the Legislative Council of the Ministry of Justice, and a bill has been submitted to the Diet. However, it is not applicable to cases involving retrial and prior to indictment.

**Comments by Japanese Government**

Medical measures for detainees

9. With regard to medical measures for detainees, the Penal and Detention Facilities Act provides that doctors assigned by the detention services managers shall conduct health examinations at the frequency of about twice a month and that when detainees are injured or sick, necessary medical measures shall be taken including the prompt provision of medical treatment by a doctor at public expense. By conducting medical examinations of detainees about twice a month, it is possible to know the health conditions of detainees in detail and to ensure them an opportunity to receive medical treatment as necessary at an appropriate time.

These provisions have been applied in actual cases.

Police custody facilities do not have full-time doctors, and private sector doctors are providing medical services under contract with the police. This medical service is provided free of charge.

However, as the medical system is insufficient, cases where the detainee has died due to delay in treatment have been reported. In many cases, the state was ordered to pay

compensation.

Recently, on February 5, 2015, a 65-year-old male detainee suddenly died at the detention center after a week in detention. In addition, on November 20, 2014, a 24-year-old male detainee was reported to have suddenly died at the detention center. The causes of these sudden deaths remain unexplained. Attorneys have received many claims that the detention centers lack medical systems, and that previously used medication cannot be continued. The lack of medical systems and independent procedures for investigating the cause of death are significant problems.

**Comments by Japanese Government**

The right to contact relatives

10. Suspects in detention are guaranteed the right to have an interview with, or to send or receive documents, including letters or articles from persons other than counsel, including their relatives (Article 80 and Article 207 of the Code of Criminal Procedure). However, when there is probable cause to assume that the suspect in detention may flee or conceal or destroy evidence, the court may prohibit the suspect from having an interview with persons other than his/her counsel (Article 81 of the Code of Criminal Procedure). The latter provision was introduced because it is inappropriate to allow a suspect to meet his/her relatives in cases where there is probable cause to assume that the suspect may flee or conceal or destroy evidence by having an interview with his/her relatives.

A prosecutor may, for about twenty percent of all detention cases, request the court for a decision to prohibit an interview with counsel pursuant to Article 81 of the Code of Criminal Procedure in case evidence may be concealed or destroyed.

For cases without a prohibition on interviews, interviews with persons other than counsel will be limited, for example, to once a day for fifteen minutes. Furthermore, in Japan, telephone communication is limited to certain communication with counsel.

Therefore, detained suspects cannot have necessary communication with family members, which may lead to difficulty in maintaining family relationships, or hinder the exercise of the right to a defense by the suspect.

**(d) Consider abolishing the Daiyo Kangoku system in order to bring the State party's legislation and practices fully into line with international standards.**

**Comments by Japanese Government**

11. In Japan, it is required that necessary investigations be completed and the decision whether to indict or release the suspect be made in as short period of time as possible after the suspect is arrested. The substitute detention system, in which suspects can be detained in detention facilities instead of penal institutions, is operated as a system indispensable to conducting criminal investigations in an appropriate and prompt manner and helpful for the convenience of suspects to have an interview with their counsel, family members, etc.

Therefore, abolishing the substitute detention system is considered unrealistic at present.

12. In cases where suspects or the accused is detained at detention facilities, as stated in paragraphs 4 and 5 of the Reply by the Government of Japan to the list of issues adopted by the Committee against Torture concerning the second periodic report (CAT/C/JPN/2), they

are treated in an appropriate manner with due consideration of their human rights.

Abolition of the Daiyo Kangoku system is not such a difficult administrative issue considering the financial conditions of the Government of Japan and occurrence of crime.

Maintaining a system that may violate human rights on the grounds of investigative needs and financial reasons is impermissible to begin with.

Recently, occurrence of crime in Japan is decreasing noticeably, and existing police stations are sufficient as detention facilities in most regions. In addition, the police have recently been building large detention facilities in many districts, and the Daiyo Kangoku system can be easily abolished simply by transferring the jurisdiction over these facilities to the Ministry of Justice.

**Paragraph 11**

**The Committee reiterates its previous recommendations (para. 16) that the State party take all necessary steps to in practice ensure inadmissibility in court of confessions obtained under torture and ill-treatment in all cases in line with article 38(2) of the Constitution, article 319(1) of the Code of Criminal Procedure as well as article 15 of the Convention by, inter alia:**

- (a) Establishing rules concerning the length of interrogations, with appropriate sanctions for non-compliance;**

***Comments by Japanese Government***

13. The Japanese police have the following rules:

Interrogation late at night or for long durations must be avoided except when there are inevitable reasons (in force since April 2008);

Prior approval must be obtained from the Chief of Prefectural Police Headquarters, etc., when the interrogation of the suspect is to be carried out between the hours of 10 p.m. and 5 a.m. the next day or when the interrogation of the suspect is to be carried out over eight hours in a single day (in force since April 2009).

14. In the cases described in the latter rule, the Chief of Prefectural Police Headquarters, etc., who is asked for approval, determines the necessity, reasonableness, and appropriateness of approval for each case, comprehensively taking into account the outline of the case, state of interrogation, state of deposition, prospect of the investigation and circumstances surrounding the suspect, etc. If the interrogation of the suspect has been carried out between the hours of 10 p.m. and 5 a.m. the next day or if the interrogation of the suspect has been carried out over eight hours in a single day without prior approval, the supervising division that is not involved in investigation takes certain steps, including the suspension of interrogation.

Please note that in Japan, there are peculiar issues with the procedures until the confession which is used excessively in criminal procedures is presented before court.

In Japan, counsel is not permitted to attend the examination of the suspect, and the suspect cannot receive necessary support from counsel to protect him/herself when forced to confess.

Furthermore, the "confession" is presented as evidence to the court as a document prepared pursuant to the words and context selected by the investigator (this is referred to particularly as the "Record of a Statement"), so the judge sees the confession in expressions that differ



from the actual confession made by the suspect.

In addition, late night or long hours of interrogation is permitted when there are inevitable reasons, allowing wide spread late night and long hours of interrogation at the discretion of the police.

That such long interrogations as eight hours per day is permitted is a problem to begin with, and if the system that allows up to eight hours of interrogation day after day for the course of the detention period could extend to a maximum of 23 days, the situation where there is no end of involuntary confessions will not improve in any way. As the Committee has pointed out, the period and hours of interrogation should be strictly limited.

**(b) Improving criminal investigation methods to end practices whereby confession is relied on as the primary and central element of proof in criminal prosecution;**

**Comments by Japanese Government**

15. In the recommendation, the committee indicates that there exist “practices whereby confession is relied on as the primary and central element of proof in criminal prosecution.”

However, this statement is not correct. Prior to criminal prosecution, the public prosecutor collects as much objective evidence as possible and properly evaluates the admissibility of such evidence. Also, the credibility of confessions is examined cautiously in light of the objective evidence. Following these precise investigations, the public prosecutor institutes prosecution only where there is a high probability of achieving a conviction.

The most significant problem with Japanese criminal procedure is its excessive dependence on confessions. For example, in the PC Remote Control Case which occurred in 2012, sufficient investigation for evidence was not conducted, and two of the four suspects who had their computers hacked and became subject to mistaken arrest were forced to make false confessions. This case specifically indicated anew that the Japanese police interrogation method is operated in an environment that could easily produce false confessions.

The Himi Case in 2002 involved a wrong charge based on a false confession, but the truth was not revealed at trial, and the suspect was incorrectly sentenced to three years penal servitude.

Because of such reality that could be deemed to be a practice, the Minister of Justice called on the Legislative Council of the Ministry of Justice to “deliberate on how to develop substantive criminal law and procedural law, including by reviewing the modality for investigation and trial that is excessively dependent on interrogations and statements of confession, and the introduction of an audiovisual recording system of interrogations of suspects” (2011 Consultation Article 92), and as a result of a review that took three years, a proposal that sought to visualize interrogation was made by the Legislative Council.

\* Himi Case

In a decision dated March 9, 2015 for a law suit seeking damages brought by falsely accused Hiroshi Yanagihara who was arrested following an unlawful investigation, charged and forced to serve approximately two years of imprisonment, Toyama District Court ordered the Toyama Prefecture (police) to pay approximately 19,660,000 yen. Claims against the state (prosecutor) were dismissed.

The decision pointed out that “there were illegalities with the police investigation, such as creation of false confession at interrogation.” Albeit being aware that Yanagihara was unable to make statements for key parts of the case, the Toyama Prefecture police investigator applied strong psychological pressure to create false confession. The decision

stated that the statement by Yanagisawa that he "does not own the same size shoes as the footprints at the crime scene" and the result of the search at Yanagihara's residence were not taken as seriously due to the excessive focus on the victim's testimony.

**Comments by Japanese Government**

16. Under the Code of Criminal Procedure of Japan, if confession is the only evidence against the accused, the accused will not be convicted and therefore it is impossible for the court to convict the accused solely based on his/her confession. Further, it is impossible for the public prosecutor to institute prosecution solely based on confessions.

The provision in the Code of Criminal Procedure of Japan that the accused will not be convicted if a confession is the only evidence cannot be said to be sufficiently effective in avoiding overemphasis of confessions and preventing erroneous decisions in actual criminal suits. The provision is interpreted to mean that evidence other than the confession is not required to prove the identity of the offender and the suspect; therefore, in a case where the accused is disputing that he/she is the offender, it is clear that the confession is the decisive evidence in reality.

Among the recently revealed false accusation cases, Ashikaga case, Fukawa case, and Hakamada case involved erroneous convictions due to emphasis on confessions, and the Government's comment indicates that there have been no reviews or reflections on these series of erroneous decisions.

The Code of Criminal Procedure of Japan adopts the corroborative rule; however, the reality is that if there is a confession, even in cases where other evidence is weak and doubtful, the suspect is easily indicted, and is more likely to be found guilty.

We would like to seek the Committee to confirm with the Government of Japan on the ratio of guilty verdicts for cases with confessions, and the ratio of guilty verdicts for cases where there was a confession that was withdrawn and disputed at the trial stage.

**Comments by Japanese Government**

17. In May 2011, for the purpose of establishing a new criminal justice system in keeping with the times, the Minister of Justice called on the Legislative Council of the Ministry of Justice to deliberate on how to develop substantive criminal law and procedural law, including by reviewing the modality for investigation and trial that is excessively dependent on interrogations and statements of confession, and the introduction of an audiovisual recording system of interrogations of suspects. After the deliberation, the Council returned a report to the Minister in September 2014. The report requests, as a measure to "change the practice excessively dependent on interrogations and moderate and diversify evidence-gathering methods," the introduction of the audiovisual recording system of interrogations of suspects, a prosecutorial agreement system for cooperation in investigations and trials (see Note below), and a testimonial immunity system along with streamlining of wiretapping, et cetera. The Ministry of Justice plans to submit to the Diet a bill to develop legal systems based on the report.

The JFBA has long requested the introduction of an audiovisual recording system for interrogations; however, this issue became an actual topic of discussion only after the former Director-General of Ministry of Health, Labour and Welfare who was accused of a crime of drafting and executing a false signed official document was acquitted. Subsequently, the

prosecutor in charge forged evidence, etc., which lead to the shared understanding that the state of prosecution must be reviewed, and erroneous decisions and convictions must be prevented. The audiovisual recording of the entire process of interrogations is likely to become a system albeit partially, and is expected to lead to appropriate interrogation and resolution of excessive dependence on confessions.

However, in "The Bill on Partial Revision of the Code of Criminal Procedure, etc.," the scope of audiovisual recording is limited to cases subject to lay judge trials and cases initiated by the public prosecutor. This is extremely limited, to less than 3% of all criminal cases. Considering that many false confessions are created at the police interrogation stage; and that many false accusations are occurring in cases other than those subject to lay judge trials including the former Director-General of Ministry of Health, Labour and Welfare's case, Shibushi case, PC remote control false accusation case, and molester false accusation case, the scope should be expanded/developed to include interrogations of suspects and witnesses for all cases.

The prosecutorial agreement system for cooperation in investigations and trials is to be newly introduced, and as the risk of leading has been pointed out, vigorous consideration must be given for determining the credibility of statements made by related parties.

With respect to wiretapping, as wiretapping is an investigation method that breaches the confidence of communication and individual privacy, the concern over violation of human rights and abuse of the system cannot be overcome. In operating the system, whether or not the supplementary and organizational requirements have been strictly interpreted and operated must be checked vigorously, and establishment of an independent third party agency must be considered where necessary.

#### **Comments by Japanese Government**

18. The National Police Agency is also enhancing investigation methods including the effective operation of DNA profiling and the DNA database for criminal investigations and the expansion of interception of electronic communications in order to promote measures to properly deal with crimes that have become more sophisticated and complicated with the advancement of technology and to enable appropriate proof based on objective evidence.

Note: Under the prosecutorial agreement system for cooperation in investigations and trials, a public prosecutor may have proffer session and enter into agreements with suspects and his/her defense counsels, when necessary for investigation or prosecution of another person, that the prosecutor will not prosecute the suspect for specific offences, recommend a specific punishment to the court, et cetera in return for the suspect or the accused providing testimonial and other cooperation.

Cases where the results of DNA profiling and wiretapping are the decisive evidence are limited. To resolve excessive dependency on confession, improving the operation of the entire criminal procedure is critical.

It is clear that increased wiretapping will enhance investigative measures; on the other hand, large numbers of communications unrelated to crimes will be included within the scope of wiretapping, and there are concerns over undue violation of privacy rights. In particular, if the crime of conspiracy that the Government is seeking to establish is included in the scope of wiretapping, it will involve significant violation of human rights. In addition, it has been pointed out that the prosecutorial agreement system creates the risk of "drawing in," i.e., pointing out an innocent third party as an accomplice under the incentive of avoiding criminal

prosecution through plea bargaining.

**(c) Implementing safeguards such as electronic recordings of the entire interrogation process and ensuring that recordings are made available for use in trials;**

**Comments by Japanese Government**

19. The prosecutors' office is making positive efforts to make audiovisual recordings of the interrogation process to the furthest extent possible, including the recording of the entire process, in the cases listed below, in which the suspect is in custody, unless certain circumstances exist, such as that the demand for trial is not likely to be made.

Cases subject to lay judge trials;

Cases involving a suspect, etc., who has difficulty in communicating due to intellectual disability;

Cases involving a suspect whose criminal competency is suspected of having been diminished or lost due to mental disability, etc.;

Cases in which the public prosecutor initiated the investigation and arrested the suspect;

In addition, based on past results, from October 1, 2014, the prosecutors' office has started a new trial of the audiovisual recordings and made further positive efforts, in the cases in which it is considered necessary to use audiovisual recordings in the interrogation of suspects in custody for incidents such that the demand for trial is likely to be made, and in the cases in which it is considered necessary to use audiovisual recordings in the interrogation of the victims and witnesses to the incidents such as that the demand for trial is likely to be made.

20. The number of cases in which the audiovisual recording of interrogations has been implemented is as follows.

(a) Trial implementation of audiovisual recording in cases subject to lay judge trials  
Over one year from the year before last April until last March:

Recording implemented: 3,836 cases (implementation rate approximately 98.6%)

Recording not implemented: 56 cases

Among those, the number of cases in which a demand for trial has been finally made on the charge subject to lay judge trials is as follows:

Recording implemented: 1,363 cases (implementation rate approximately 99.2%)

Recording not implemented: 11 cases

In 2,893 cases out of the total 3,836 cases for which recording has been implemented, an audiovisual recording of the entire process of interrogation by the public prosecutor has been made. (The recording rate of the entire process is 75.4%.)

(b) Trial implementation of audiovisual recording in cases involving a suspect, etc. who has difficulty in communicating due to intellectual disability

Over one year from April of the year before last until last March:

Recording implemented: 1,082 cases (implementation rate approximately 98.6%)

Recording not implemented: 15 cases

In 685 cases out of the total 1,082 cases for which recording has been implemented, an audiovisual recording of the entire process of interrogation by the public prosecutor has been made. (The recording rate of the entire process is 63.3%.)

(c) Trial implementation of audiovisual recording in cases in which the public prosecutor initiated the investigation and arrested the suspect

Over one year from April of the year before last until last March:

Recording implemented: 123 cases (implementation rate approximately 100%)

Recording not implemented: 0 cases

In 95 cases out of the total 123 cases in which recording has been implemented, an audiovisual recording of the entire process of interrogation by the public prosecutor has been made. (The recording rate of the entire process is 77.2%.)

(d) Trial implementation of audiovisual recording in cases involving a suspect whose criminal competency is suspected of having been diminished or lost due to mental disability, etc.

Over one year from April of the year before last until last March:

Recording implemented: 2,759 cases (implementation rate approximately 98.1%)

Recording not implemented: 53 cases

In 1,349 cases out of the total 2,759 cases for which recording has been implemented, an audiovisual recording of the entire process of interrogation by the public prosecutor has been made. (The recording rate of the entire process is 48.9%.)

21. At the trial, the prosecutors' office requests the examination of the DVD, etc. of the audiovisual recording of interrogations as proof of the voluntary nature and credibility of the statement. In addition, if the defense counsel makes a request for the disclosure of a DVD, etc., of the audiovisual recording of interrogations as evidence, the prosecutors' office disclose such DVD, etc., as evidence to the defense counsel following the procedure prescribed by the law.

22. As noted in paragraph 17, the bill that obliges audiovisual recording of all the process of interrogations of suspects is planned to be submitted to the Diet.

23. The police have been implementing the audiovisual recording of interrogations on a trial basis since September 2008. In the five years and seven months since the start of trial implementation to March 2014, recording were made for 7,651 cases subject to lay judge trials (the implementation rate for FY2013 was approximately 93.7%), and, in one year and eleven months from May 2012 to March 2013, recordings were made in 2,023 cases involving a suspect with an intellectual disability. (The implementation rate for FY2013 was approximately 98.0%.) (The number of cases from April 2014 to December 2014 is currently being calculated.)

The number of cases stated in the Government report as seeking visualization is very limited among all cases. Audiovisual recording of interrogations at the Public Prosecutors Office is increasing by operation; however, interrogations of suspects and witnesses who are

not arrested or detained should also be visualized.

Audiovisual recording by the police remains extremely insufficient.

**(d) Informing the Committee of the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence based on article 319(1) of the Code of Criminal Procedure.**

**Comments by Japanese Government**

24. There are no statistics available on “the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention that were not admitted into evidence.”

25. Among the cases subject to lay judge trials (cases of crimes punishable by the death penalty or life imprisonment or imprisonment without work and cases of intentionally committed crimes resulting in the victim’s death that are punishable by imprisonment with or without work for a minimum term of no less than one year), the number of cases in which the voluntary nature of the confession was disputed; the audiovisual recording medium of the interrogation of the accused was admitted into as evidence; then, after the examination of that evidence, the request to examine the written statement of the accused as evidence was dismissed as its voluntary nature was questionable, was: 0 in 2008; 2 in 2009; 0 in 2010; 0 in 2011; and 1 in 2012.

**Paragraph 15**

**In light of the previous recommendations made by the Committee (para. 17), the Human Rights Committee (CCPR/C/GC/32, para. 38) as well as the communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.1, paras.515 ff), the Committee urges the State party to ensure that death row inmates are afforded all the legal safeguards and protections provided by the Convention, inter alia, by:**

**(a) Giving death row inmates and their family reasonable advance notice of the scheduled date and time of the execution;**

**Comments by Japanese Government**

26. Regarding the notification on the execution of the death penalty, inmates sentenced to death are to be notified of their execution on the day it is to be performed. This is because, if inmates sentenced to death are notified of their execution before the day it will occur, their peace of mind may be negatively affected and the notification could inflict excessive pain on them, etc.

27. In addition, if the families, etc., of inmates sentenced to death are notified in advance of the execution, it would cause unnecessary psychological suffering to those who have received the notification. If the family, etc. of an inmate sentenced to death who has received such a notification visits the inmate and the inmate comes to know the schedule of his/her execution, similar harmful effects may occur. Therefore, we consider that the current method of addressing the situation is unavoidable.

28. After the execution of an inmate, the person who has been designated in advance by the inmate sentenced to death (it is possible to designate a family member or an attorney, etc.) is to be promptly notified pursuant to laws and regulations.

Spending an extended period of time not knowing when the execution will be carried out will create significant mental anxiety to inmates sentenced to death. According to a survey of inmates sentenced to death by a member of the Diet, 60% of respondents wished to have advance notice<sup>1</sup>. Psychological damage to the family members who must face sudden execution without being given an opportunity for a final visit is also significant.

Furthermore, inmates sentenced to death who are preparing to request a retrial or apply for pardon will be unilaterally deprived of the opportunity to seek relief. In August 2014, after the last deliberation by the Committee, an inmate sentenced to death who was preparing to request a retrial was executed.

**(b) Revising the rule of solitary confinement for death row inmates;**

**Comments by Japanese Government**

29. At penal institutions, it is necessary to secure the custody of inmates sentenced to death and to pay attention so as to ensure that inmates sentenced to death can maintain their peace of mind. Article 36 of the Penal and Detention Facilities Act provides that the treatment of an inmate sentenced to death shall be conducted in a single room throughout day and night, and also provides that no inmate sentenced to death shall, in principle, be permitted to make mutual contact even outside of the inmate's room.

30. However, Article 36 of the said act provides that an inmate sentenced to death may be permitted to make contact with another inmate sentenced to death if it is deemed instrumental to helping the inmate sentenced to death maintain peace of mind. Thus, we do not consider such handling an abuse of human rights.

31. Moreover, so as to save inmates sentenced to death from suffering from isolation, penal institutions have arranged opportunities such as counseling and religious teachings provided by nongovernmental volunteers, consultation by staff members, and, if necessary, watching television and video programs in order to help the inmates maintain peace of mind.

A considerable number of inmates sentenced to death suffer damage to their mental stability from being deprived of making contact with others and continuously being kept in solitary confinement.

As of June 1, 2015, eight full years from implementation of the Penal and Detention Facilities Act, there are 130 inmates sentenced to death. However, to date, there has been no case of inmates sentenced to death being permitted to make mutual contact pursuant to Article 36, paragraph 3 of the Act.

**(c) Guaranteeing effective assistance by legal counsel for death row inmates at all stages of the proceedings, and the strict confidentiality of all meetings with their lawyers;**

<sup>1</sup> Result of survey by member of the House of Councilors, Mizuho Fukushima (reported on Chugoku Shimbun, December 29, 2012)

Comments by Japanese Government

32. The Penal and Detention Facilities Act provides that a penal institution official shall, in principle, accompany visits to an inmate sentenced to death. However, measures such as the presence of an official are not taken for visits by a counsel to an inmate sentenced to death for whom the court's order of commencement of a retrial has become final and binding, since the provisions of the law on unsentenced persons (the accused, in criminal cases) apply mutatis mutandis thereto.

33. For visits to an inmate sentenced to death for whom an order of commencement of a retrial has yet to become final and binding by a lawyer who represents the inmate in the procedure for a retrial, an official shall not attend unless there is a special circumstance under which such visit is likely to cause a disruption of discipline and order in the penal institution or if there is a strong need for the official to accompany the visit in order to grasp the feelings of the inmate sentenced to death. The warden of each penal institution, therefore, makes determinations in an appropriate manner on specific individual cases.

34. With regard to the letters sent and received by an inmate sentenced to death, a penal institution official shall examine them. As for the letters sent and received between an inmate sentenced to death and a lawyer who is asked to represent such inmate in a civil lawsuit concerning the treatment that such inmate received, certain considerations are given, such as that letters are examined within the limit necessary for ascertaining that they are such letters as specified above unless there is a special circumstance under which it is deemed likely to cause the disruption of discipline and order in the penal institution.

35. With regard to the letters sent and received between a counsel and an inmate sentenced to death for whom the court's order of commencement of a retrial has become final and binding, the provisions of the law on unsentenced persons apply mutatis mutandis and certain considerations are given, such as that letters from a counsel, etc., are examined within the limit necessary for ascertaining that they are such letters as specified above.

The Government argues that if there is a strong need for the official to accompany the visit in order to grasp the feelings of the inmate sentenced to death, a special circumstance exists for the official to accompany visits to an inmate sentenced to death by a lawyer who represents the inmate in the procedure for retrial. However, the need for grasping the feelings of the inmate itself is not a reason for accompanying a visit. A Supreme Court decision on December 10, 2013 also found that "unless there is a special circumstance under which the confidential visit is deemed likely to cause the disruption of discipline and order in the penal institution, or if there is a strong need for the official to accompany the visit in order to grasp the feelings of the inmate sentenced to death based on the intention of the visit," it is unlawful for an official to accompany such visit. Since this ruling, the Ministry of Justice has stopped making an official accompany visits in principle, however, for example, it continues to have an official uniformly accompany visits by counsel for retrial and an inmate sentenced to death for Aum Shinrikyo related cases, ignoring the intent of the inmate sentenced to death wishing a confidential visit.

The government also refers to examination "within the limit necessary for ascertaining that they are" such letters as specified. However, it takes the position that to ascertain whether or not letters are such letters as specified, it must read such letters. Therefore, the confidentiality of letters is not guaranteed under any circumstances.



**(d) Making available the power of pardon, commutation and reprieve in practice for death row inmates;**

**Comments by Japanese Government**

36. Grounds for the suspension of an execution are insanity and pregnancy, and the execution is suspended in those cases.

37. An inmate sentenced to death may file an application for a pardon (special pardon, commutation of sentence, or remission of execution of sentence), at any time, with the warden of the penal institution to which he/she is committed. The warden of a penal institution who has received such an application has to file a petition for a pardon with the National Offenders Rehabilitation Commission, established in the Ministry of Justice, without fail. Thus, the inmates sentenced to death are provided with an opportunity for pardon in the same way as other inmates.

38. The procedure for filing a petition for examination of pardon is stipulated in the Pardon Act and the Ordinance for Enforcement of the Pardon Act. Therefore, the transparency of such procedures is ensured.

39. There has been no case in which an inmate sentenced to death was granted a pardon since 2007. During this period, however, several inmates sentenced to death filed applications for a pardon and each time the warden of the penal institution filed a petition for a pardon. We understand that, in each case, the National Offenders Rehabilitation Commission carried out deliberate examination on whether giving a pardon was appropriate and made a proper conclusion.

Not to mention since 2007, there have been no cases of pardon (commutation of sentence) being granted for an inmate sentenced to death after a case in 1975.

Examination by the National Offenders Rehabilitation Commission is held behind closed doors, and an inmate sentenced to death is not given an opportunity for a hearing or to submit evidence.

**(e) Introducing a mandatory system of review in capital cases, with suspensive effect following a death penalty conviction in first instance;**

**Comments by Japanese Government**

40. The right to appeal and the right to final appeal are guaranteed in all criminal cases in Japan, not limited to capital cases (Article 372 and Article 405 of the Code of Criminal Procedure).

41. In Japan:

(1) Based on the principle of warrant and strict evidence rules that are employed in court practice as well as the three-tiered judicial system, a conviction is confirmed through a carefully managed process throughout investigation and trials;

(2) For final and binding judgments, relief systems are in place including retrial and extraordinary appeal to the Supreme Court, which function effectively in preventing

misjudgment; and

(3) An execution is carried out after careful examination regarding the presence of cause for retrial. In this way, capital punishment is carried out extremely carefully in Japan under a rigorous system and therefore there is no need for a mandatory appeal system.

Whether or not to appeal a ruling is ultimately determined by the intent of the accused; therefore, if the accused does not exercise the right to appeal, the judgment becomes final. Of the 102 inmates sentenced to death who were executed between 1993 and 2014, 29 were those whose sentence became final without trial by the Supreme Court.

Since the introduction of lay judge trials in 2009, there have been 23 cases by May 2015 where a death sentence was given in a lay judge trial. Of these, in four cases, the accused has withdrawn his/her appeal and the judgment has become final and binding.

The requirement for commencing a retrial is extremely strict, and since four death sentences were overturned and acquitted at retrial in the 1980s, there have been no cases of commencement of retrial for death sentence cases. In March 2014, Shizuoka District Court ruled for commencement of retrial for Iwao Hakamada; however the state has appealed to the high court arguing that he is guilty, and as of May 2015, a conclusion has not been reached at the high court.

There are no examples of inmates sentenced to death being relieved by extraordinary appeal.

**(f) Ensuring an independent review of all cases when there is credible evidence that death row inmate is mentally ill. Furthermore, the State party should ensure that a detainee with mental illness is not executed in accordance with article 479(1) of the Code of Criminal Procedures;**

**Comments by Japanese Government**

42. Article 62, paragraph (1) of the Penal and Detention Facilities Act provides that in cases in which an inmate is injured or suffering from disease, the warden of the penal institution shall promptly provide him/her with medical treatment by a doctor who is on staff at the penal institution, along with other necessary medical measures. At penal institutions, due care and careful consideration are always given to the inmates sentenced to death, and efforts are made to determine the physical and mental conditions of inmates sentenced to death, including regular medical examinations and the opportunity to receive medical treatment by a doctor outside the institution as necessary.

43. With respect to the death penalty, Article 479 of the Code of Criminal Procedure provides that "where the person who has been sentenced to death is in a state of insanity," the execution shall be suspended by order of the Minister of Justice, and appropriate procedure is taken in accordance with this provision.

44. We intend to continue our efforts to be fully aware of the health conditions of inmates sentenced to death, including their mental conditions, and to properly deal with each case.

The comment by the Government of Japan refers to Article 479 of the Code of Criminal Procedure, and states that appropriate procedure is taken in accordance with this provision. However, it does not clarify what the "appropriate procedure" is at all. Not to mention, there have been no examples where an execution was stayed by application of this provision.

Medical services at penal institutions are controlled by the warden of the penal institution, and are not independent from the operation of the penal institution. Therefore, no independent examination is being given to an inmate sentenced to death with mental illness.

**(g) Providing data on death row inmates, disaggregated by sex, age, ethnicity and offence;**

**Comments by Japanese Government**

45. As of January 27, 2015, of the inmates sentenced to death by final and binding judgments, 123 are male and 6 are female.

46. The composition by age group is as follows.

Aged 80 or over:	6
Aged 70 or over and below 80:	14
Aged 60 or over and below 70:	34
Aged 50 or over and below 60:	34
Aged 40 or over and below 50:	24
Aged below 40:	17

47. Six inmates sentenced to death by final and binding judgments were foreign nationals. No statistics are available on composition by ethnicity.

48. Sixty-six such inmates committed homicide, and 63 inmates committed robbery-homicide. (Those who committed both homicide and robbery-homicide are counted among those that committed robbery-homicide for which a heavier statutory penalty is imposed.)

**(h) Considering the possibility of abolishing the death penalty.**

**Comments by Japanese Government**

49. Whether to retain or abolish the death penalty is an important issue that affects the basis of the criminal justice system in Japan. It should be considered carefully from various viewpoints, such as the realization of justice in society, with sufficient attention given to public opinion.

50. The majority of citizens in Japan consider that the death penalty is unavoidable for extremely malicious/brutal crimes. In light of the current situation that shows no sign of decline in brutal crimes, it is unavoidable to impose the death penalty on persons who have committed extremely brutal crimes and bear heavy criminal responsibility, and therefore abolishing the death penalty is not appropriate.

The comment by the Government of Japan continues to refer to the support for death penalty by citizens as the grounds for maintaining the death penalty system.

In a public opinion survey conducted in 2014, when asked "which opinion do you agree with concerning the death penalty system," 9.7% chose "death penalty should be abolished," whereas 80.3% responded "death penalty is inevitable". On the other hand, when asked "if a 'life imprisonment' without parole is to be newly introduced, do you think death penalty should be abolished, or do you think death penalty should not be abolished even if life

imprisonment is introduced?," 37.7% responded "death penalty should be abolished," and 51.5% responded "death penalty should not be abolished." This indicates that the public opinion may change if the government proactively provided information and opportunities for discussion to the public. However, the government does not try to broadly offer information on the death penalty system to the public.

Moreover, the government states that the fact brutal crimes are not declining is another ground for maintaining the death penalty system. However, the number of recognized murders has been declining each year from 2009, and the lowest record since the end of World War II was renewed in 2013. The number increased from the previous year in 2014; however, the number of murder per population of 100,000 is one of the lowest in the world.<sup>2</sup>

**Paragraph 19**

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

- (a) Publicly acknowledging legal responsibility for the crimes of sexual slavery, and prosecuting and punishing perpetrators with appropriate penalties;**
- (b) Refuting attempts to deny the facts by government authorities and public figures and to re-traumatize the victims through such repeated denials;**
- (c) Disclosing related materials, and investigating the facts thoroughly;**
- (d) Recognizing the victim's right to redress, and accordingly providing them full and effective redress and reparation, including compensation, satisfaction and the means for as full rehabilitation as possible;**
- (e) Educating the general public about the issue and include the events in all history textbooks, as a means of preventing further violations of the State party's obligations under the Convention.**

**Comments by Japanese Government**

51. The Government of Japan has no intention of denying or trivializing the comfort women issue. With regard to the comfort women issue, Prime Minister Abe, in the same manner as the Prime Ministers who preceded him, is deeply pained to think of the comfort women who experienced immeasurable pain and suffering beyond description, which has been repeatedly expressed.

The Government of Japan states that it has no intention of trivializing the comfort women issue, and a sincere commitment is required on this point.

**Comments by Japanese Government**

52. Recognizing that the comfort women issue was a grave affront to the honor and dignity of a large number of women, in fact, the Government of Japan, together with the people of Japan, seriously discussed what could be done to express their sincere apologies and remorse to the former comfort women. As a result, the people and the Government of Japan cooperated and together established the Asian Women's Fund (AWF) on July 19, 1995 to

<sup>2</sup> [http://www.unodc.org/documents/gsh/pdfs/2014\\_GLOBAL\\_HOMICIDE\\_BOOK\\_web.pdf](http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf)

extend atonement from the Japanese people to the former comfort women. To be specific, the AWF provided "atonement money" (2 million yen per person) to former comfort women in the Republic of Korea, the Philippines and Taiwan who were identified by their governments/ — authority and other bodies and wished to receive it. As a result, 285 former comfort women (211 persons in the Philippines, 61 persons in the Republic of Korea, 13 persons in Taiwan) received funds. Moreover, in addition to the "atonement money", the AWF provided funds for medical and welfare support in those countries/area (3 million yen per person in the Republic of Korea and Taiwan, 1.2 million for the Philippines), financial support for building new elder care facilities in Indonesia, and financial support for a welfare project which helps to enhance the living conditions of those who suffered incurable physical and psychological wounds during World War II in the Netherlands. The Government of Japan provided a total of 4.8 billion yen for programs of the fund and offered the utmost cooperation to support programs for former comfort women, such as programs to offer medical care and welfare support (a total of 1.122 billion yen) and a program to offer "atonement money" from donations of the people of Japan. In terms of the Fund's activities in the ROK, "atonement money" of 2 million yen, donated from the private sector, and 3 million yen for medical and welfare projects, which was from government contributions (for a total of 5 million yen per person), were provided to a total of 61 former comfort women in the Republic of Korea up to the end of the Fund's activities. In addition, when the atonement money was provided, the then Prime Minister (namely, PM Ryutaro Hashimoto, PM Keizo Obuchi, PM Yoshiro Mori and PM Junichiro Koizumi), on behalf of the Government, sent a signed letter expressing apologies and remorse directly to each former comfort woman (see the attachment). While the AWF was disbanded in March 2007 with the termination of the project in Indonesia, the Government of Japan has continued to implement follow-up activities of the fund.

53. As mentioned above, the Government of Japan would like to call attention again to the efforts of the "Asian Women's Fund (AWF)", on which the Government and the people of Japan cooperated together to establish so that their goodwill and sincere feelings could reach the former comfort women to the greatest extent possible, and as a result, our feelings were transmitted to many of them. With regard to the AWF, the former comfort women who had received or wanted to receive benefit from the project from the AWF were subject to "harassment" by certain groups in the Republic of Korea. In addition, the former comfort women who had already received benefit from the project from the AWF would no longer be eligible for the "Life-Support Fund", which was established by the Government of the Republic of Korea with the aim to provide money to the former comfort women. We regret that not all of the former comfort women benefitted from the project from the AWF owing to these circumstances. (Among the approximately 200 former comfort women in the Republic of Korea who were identified by the Government of the Republic of Korea, ultimately only 61 received benefit from the AWF.) In this regard, we consider that the efforts of the "Asian Women's Fund" should be recognized appropriately. We call your attention to the fact that Japan started the support project to the former comfort women through the AWF ahead of that of the Republic of Korea.

AWF conducted atonement activities in the Philippines, the Republic of Korea, Taiwan, the Netherlands, and Indonesia. However, in the Republic of Korea and Taiwan where atonement activities were conducted, the majority of women identified as "comfort women" refused the activities by AWF. Furthermore, activities were not conducted for victims in countries/regions other than the above, including China and Taiwan. In Indonesia, atonement activities did not address individuals. Therefore, it cannot be said that the activities of AWF has resolved all

issues concerning "comfort women."

Haruki Wada, former Executive Director of AWF, assessed that the "Asian Women's Fund can be appreciated for having achieved certain success in the Philippines and the Netherlands; however, in the Republic of Korea and Taiwan, it cannot be said to have achieved its purpose as people who received the atonement money were less than a third of identified and registered victims," "The announcement of number of recipients in the Republic of Korea means that the Government of Japan recognizes that the atonement activities in the Republic of Korea has not ended" (excerpt from September 2014 issue of "Sekai" magazine, Iwanami Shoten), and stated that "the measures taken by the Government of Japan through AWF must be said to have left some unresolved issues" (Asian Women's Fund News No.28).

The comment by the Government of Japan states that it established the Asian Women's Fund and conducted activities, and continued to implement follow-up activities of the fund after its termination. However, the comfort women issue still has unresolved parts.

In addition, the comment by the Government of Japan states that the Government and the people of Japan transmitted the goodwill and sincere feelings to many of the former comfort women. However, as stated above, there are countries and regions where the AWF activities were not conducted, and in light of the fact that the majority refused the activities of AWF even in countries and regions where activities were conducted, it cannot be said to have been transmitted to many of them.

Furthermore, the comment by the Government of Japan states that the former comfort women who had received or wanted to receive benefit from the project from the AWF were subject to "harassment" by certain groups in the Republic of Korea, and that they would no longer be eligible for the "Life-Support Fund" which was established by the Government of the Republic of Korea as the reason why not all of the former comfort women were able to receive the benefit of the AWF project. However, it should be noted that the Government of Japan refused to apply government contribution to "atonement money" and that there are criticisms by former comfort women and support organizations against the stance of the Government of Japan that it is making the responsibility of the state ambiguous by emphasizing the moral responsibilities and denying the legal liabilities.

#### *Comments by Japanese Government*

54. The Government of Japan has sincerely dealt with issues of reparations, property and claims pertaining to the Second World War, including the comfort women issue, under the San Francisco Peace Treaty, which the Government of Japan concluded with 45 countries, including the United States, the United Kingdom and France, and through bilateral treaties, agreements and instruments. The issues of claims of individuals, including former comfort women, have been legally settled with the parties to these treaties, agreements and instruments. In particular, the Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea stipulates that "problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, ... have been settled completely and finally." (Article II (paragraph 1)). In addition, on the basis of the Agreement, Japan provided 500 million US dollars to the Republic of Korea and more than 300 million dollars credit to the private sector. The amount of 500 million US dollars provided from the Government of Japan was 1.6 times as much as the State budget of the Republic of Korea at that time. The above-mentioned "Asian Women's Fund" was established as an effort of goodwill on the part of Japan, although this issue had been legally settled with the parties to the above-mentioned treaties,

agreements and instruments.

The comment by the Government of Japan states that the Asian Women's Fund was established as an "effort of goodwill by Japan" assuming that the claims of individuals against Japan has been "legally settled" by the San Francisco Peace Treaty and bilateral treaties.

Article II, paragraph 1 of the "Agreement Between Japan and the Republic of Korea Concerning the Settlement of Problems in Regard to Property and Claims and Economic Cooperation" ("Japan-Korea Claims Agreement") states that the issue of "claims" by Korean nationals against Japan have been completely and finally resolved. However, the Government of Republic of Korea has stated that "inhumane unlawful acts" such as the comfort women issue is out of scope of Article II, paragraph 1 of the Japan-Korea Claims Agreement, and expressed an opinion that the former comfort women's claims for damages against Japan has not become extinct. The Supreme Court of Korea has indicated the same decision as the Government of Republic of Korea in the case involving forced mobilization (Supreme Court ruling dated May 24, 2012).

Furthermore, the Supreme Court of Japan has ruled in a case involving a Chinese former comfort woman's claim for damages against Japan (Supreme Court Second Petty Bench ruling on April 27, 2007. "Supreme Court Comfort Women Ruling" hereinafter) that the meaning of "'waive' ... other claims of Allied Powers and their nationals" "does not mean to make the claims substantially extinct, and only makes them lose power to make a judicial appeal based on such claims."

This logic of the Supreme Court Comfort Women Ruling is applicable to Article II of the Japan-Korea Claims Agreement, and if Japan voluntarily provides money to victims, it is deemed legally permissible for the victims to receive such money.

In fact, the Supreme Court of Japan in a case where the Chinese victim who was forcefully recruited filed a suit to claim individual damages against a Japanese corporation (Nishimatsu Construction Co., Ltd.) (Supreme Court First Petty Bench ruling on April 27, 2007. "Nishimatsu Ruling" hereinafter), stated that voluntary measures to be taken by the obligee with respect to individual and specific claims are not prevented under the framework of the San Francisco Peace Treaty, and that "relevant parties are expected to make efforts to relieve the damages incurred by the victims of this case, etc."

Under the logic of this Supreme Court ruling, it is legally permissible for Japan to pay "atonement money" from government funds to individual "comfort women," and it is desirable for relief of the victims. However, the Government of Japan, in relation to the AWF, has not applied funds from the national treasury as a resource for atonement money to individual former comfort women.

#### Comments by Japanese Government

55. On this occasion, it should also be pointed out that there are one-sided claims which lack any corroborative evidence in the reports by the United Nations Special Rapporteurs as well as in the criticisms and recommendations from treaty bodies. For instance, such reports have referred to the testimony of Seiji Yoshida, as the "only witness" to the "forceful recruitment of comfort women" along with the figure of "200,000 comfort women." The major newspaper in Japan, which has proactively reported the issue of comfort women, retracted articles, in August 2014, based on "testimony judged to be a fabrication that was provided by the late Seiji Yoshida about forcibly deporting comfort women from Jeju Island, South Korea" and apologized for "publishing erroneous articles" related to him. It also admitted to its confusion

between comfort women and women volunteer corps "that were mobilized to work at munitions factories and at other locations during the war" which seemed to be the basis of the figure of "200,000 comfort women".

56. Within the materials found during the investigations by the Government of Japan since the early 1990s, which were already published, no descriptions were found that directly indicated any so-called forceful deportation of women by the military or the Government of Japan. Nor was there any evidence of there being "200,000 comfort women." This figure spread due to the confusion, admitted by the Japanese newspaper, between comfort women and women volunteer corps, and lacks any corroborative evidence. It is very regrettable that these false information provide the essential basis for United Nations reports and recommendations.

57. The Government of Japan requests that Japan's efforts be correctly recognized by the international community, based on a correct awareness of the facts.

The comment by the Government of Japan states that there are one-sided claims which lack any corroborative evidence in reports by UN Special Rapporteurs as well as in criticisms and recommendations from treaty bodies ("UN Special Rapporteurs Report" hereinafter), and points to (i) the testimony of Seiji Yoshida ("Yoshida Testimony" hereinafter); (ii) the figure of "200,000 comfort women;" (iii) contents of a retracted report by a major newspaper in Japan (Yoshida Testimony); (iv) confusion between comfort women and women volunteer corps; and (v) lack of evidence on forceful recruitment.

However, the comfort women issue lies in that the recruitment, transport, and management, etc. of the victims who became comfort women were conducted generally against their will through sweet talk and coercion, etc., and that they were forced to perform acts of a sexual nature while their freedom was restricted, is a significant violation of human rights. The UN Special Rapporteurs Report recognizes the substance of the comfort women issue based on various materials and testimonies.

Even if it refers to the number of victims who were deemed to be former comfort women ((ii)), the above-stated substance of the comfort women issue will not be denied depending on such figure.

In addition, although the Coomaraswamy Report refers to the testimony by Seiji Yoshida (paragraph 29), it also refers to the opinion of a historic researcher who objects to the publication by Seiji Yoshida. The Coomaraswamy Report is not solely based on the testimony of Seiji Yoshida; rather, it is based on a number of other research results by historians. Therefore, the content of the UN Special Rapporteurs Report is not denounced just because there is reference to Seiji Yoshida ((i)).

With respect to (v), written materials indicating any forceful deportation of comfort women were not confirmed only for deportation in the Korean Peninsula. In other countries and regions including China and Philippines, written materials indicating forceful deportation do exist, and written materials that indicate that the recruitment, transport, management, etc. of victims in the Korean Peninsula also exist were conducted against their will through sweet talk and coercion also exist. To begin with, the important point on the comfort women issue is that regardless of the form of recruitment, transport, and management, etc., that they were forced to perform acts of sexual nature while their freedom was restricted, is a significant violation of human rights. The lack of material indicating forceful deportation does not deny the substance of damages to the former comfort women and that it was a significant violation of human rights, and it does not denounce the UN Special Rapporteurs Report.

Furthermore, (iii) and (iv) are not grounds for the UN Special Rapporteurs Report.

None of the above stated (i) to (v) pointed out by the Government of Japan can provide



grounds for denouncement of the UN Special Rapporteurs Report.

**Comments by Japanese Government**

58. Throughout history, women's dignity and basic human rights have often been infringed upon during the many wars and conflicts of the past. The Government of Japan places paramount importance on and is committed to doing its utmost to ensure that the 21st century is free from further violations of women's dignity and basic human rights.

59. Lastly, the Government of Japan considers that it is not appropriate for this report to take up the comfort women issue in terms of the implementation of State Party's undertakings under the Convention as this Convention does not apply to any issues that occurred prior to Japan's conclusion thereof (1999). With regard to the expression "sexual slave" used in the Committee's concluding observations concerning Japan's report, the Government of Japan has considered the definition of "slavery" stipulated in Article 1 of the Slavery Convention, concluded in 1926, and finds that it is inappropriate to consider the comfort women system as "slavery" from the perspective of international law at the time.

The comment by the Government of Japan states that reference as "slavery" is inappropriate; however, in light of the living conditions of the former comfort women, it may be interpreted to fall under Article 1. (1) of the Slavery Convention. Furthermore, as the comfort women system is a system centering on forcing sexual acts, the use of the phrase "sexual slave" being used in international society to indicate the substance of the comfort women cannot be said to be inappropriate.

In international society, there has been reference to the matter in the 1993 Vienna Conference, 1996 Coomaraswamy Report, 1998 McDougall Report, and 1994 International Law Commission Final Report, etc. In various UN organizations including the Committee on the Elimination of Discrimination against Women, opinions have been expressed that the conditions that comfort women were subjected to were sexual slavery.

**Paragraph 23**

**The State party should explicitly prohibit corporal punishment and all forms of degrading treatment of children in all settings by law.**

**Comments by Japanese Government**

60. This is a factual error regarding this issue, as corporal punishment is prohibited under Article 11 of the School Education Act (see Note below).

Note: School Education Act

Article 11 - The principal and teachers may discipline their pupils or students when deemed necessary for educational purposes and as specified by the Minister of Education, Culture, Sports, Science and Technology, provided, however, that corporal punishment is prohibited.

Article 11 of the School Education Act is not sufficient for providing the prohibition requested by the Committee.

Firstly, on the setting where it should be prohibited, the concluding observations stated "in all settings" considering that in Japan, corporal punishment, etc. is not clearly prohibited by

law in family and other alternative protective environments.

Therefore, merely stating that Article 11 of the School Education Act clearly prohibits corporal punishment in schools does not provide a response to the issue pointed out by the Committee. The fact that corporal punishment, etc. is not clearly prohibited by law in households and other alternative protective environments has not changed at all.

Secondly, on the behavior to be prohibited, the concluding observations include not only "corporal punishment" (any punishment in which physical force is used and intended to cause some degree of pain, discomfort or sense of humiliation (UN Committee on the Rights of the Child, General Comment No. 8)), but also "all forms of degrading treatment of children." On the other hand, Article 11 of the School Education Act merely states "provided, however, that corporal punishment is prohibited," and does not clearly prohibit "all forms of degrading treatment of children." The provisions of Article 11 of the School Education Act are insufficient on this point also. Furthermore, the Civil Code and the Child Abuse Prevention Act allow appropriate disciplinary punishments and the degree of acceptable corporal punishments in certain cases does not respond to the recommendation on clear prohibition of corporate punishment by the Committee.

In addition, in Japan, although corporal punishment was prohibited in 1947 by the School Education Act, situations where teachers, officials and other staff workers of schools have been sanctioned for corporal punishment have been repeated, and there is no end to cases where a child has died from corporal punishment, or a child commits suicide due to corporal punishment (Japan Federation of Bar Associations, March 19, 2015 "Opinion Paper Requesting Eradication of Corporal Punishment and Other Cruel or Degrading Form of Punishment against Children"). That the prohibition by law lacks effectiveness is also a problem.

This indicates that Japanese society continues to accept corporal punishment, etc., and that Article 11 of the School Education Act referred to by the Government of Japan cannot possibly function sufficiently as a brake, and has not been a force to reform such view. Therefore, it is highly necessary to implement the suggestion in the concluding observation to clearly prohibit corporal punishment and all forms of degrading treatment of children in all settings by law.