

Report for the Preparation of the List of Issues on the
7th Periodic Report of the Government of Japan
based on Article 40(b) of the International Covenant
on Civil and Political Rights

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Part I Urgent Issue

1 Great East Japan Earthquake and Fukushima Daiichi Nuclear Disaster

(1) Background

The Human Rights Committee (“Committee”) issued the recommendations on the nuclear disaster in Fukushima such as cautious removal of the designation of evacuation areas in Paragraph 24 of the concluding observations on the sixth periodic report of Japan (“6CO”, and “4CO” for the concluding observations on the fourth periodic report and “5CO” for the concluding observations on the fifth periodic report).

(2) Implementation of Forced Return Measures for Evacuees

The Government lifted its evacuation orders in areas where radiation levels are 20 mSv/year and below by the end of March 2017. Along with this, the Fukushima Prefectural Government terminated all its free housing services for those who fled from outside the nuclear evacuation zone at the end of March 2017, and is also calling for evacuees from the evacuation zone to leave temporary housing and other facilities and to return to Fukushima.¹

Additionally, the Government will end monthly payments of compensation for evacuees from within the evacuation zone.

Yet, many of the evacuees still cannot decide whether to return out of anxiety over radiation exposure and their lives after returning to Fukushima.

The Government’s measures may result in indirectly forcing those who have been compelled into evacuation, whether within or from outside the evacuation zone, to return or migrate.

(3) Excessive Frequency of Thyroid Cancer among Children

The Government has not examined the exposure to radioactive iodine immediately after the Fukushima nuclear disaster. Fukushima Prefecture has been conducting the prefectural health survey solely on thyroid cancer among children.

The oversight committee of the health survey held in December 2016 revealed that children diagnosed with malignancy and suspected cases numbered over 180, many of whom have undergone thyroidectomy.

In its report the oversight committee recognized “the high prevalence of cancer in children”, but did not admit the causal correlation with the disaster. No assistance measure other than normal medical subsidies is consequently taken.

Although the oversight committee attributed its denial of the correlation to the exclusion of

¹ Resolution concluded at the Convention on the Protection of Human Rights on October 4, 2013. The International Commission on Radiological Protection (the “ICRP”) states in chapter 3.3 of the Commission’s Recommendations to the Protection of People Living in Long-term Contaminated Areas after a Nuclear Accident or a Radiation Emergency (Publication 111) that “[t]he reference level for the optimisation of protection of people living in contaminated areas should be selected in the lower part of the 1-20 mSv/year band recommended in Publication 103 (ICRP, 2007) for the management of this category of exposure situations. Past experience has demonstrated that a typical value used for constraining optimisation process in long term post-accident situations is 1 mSv/year”.

children aged 5 and below at the time of the accident from the screening, the 311 Children's Fund for Thyroid Cancer in Japan, a non-profit organization, found a child aged four at the time of the accident had undergone thyroidectomy. The child was subject to follow-up in the second screening, but thyroid cancer was found when the child had a checkup covered by health insurance. In fact, those who were subject to follow-up were not included in the report.

The State Party ("Japan") should:

- (i) Clarify the reasons for adopting the ICRP's 20mSv/year basis for lifting evacuation orders;
- (ii) Explain the measures to guarantee the housing and livelihood of many evacuees who may not be able to or want to return even after evacuation orders are lifted;
- (iii) Provide accurate information on the number of children with thyroid cancer in Fukushima, including children under follow-up;
- (iv) Explain the reasons for the high prevalence of thyroid cancer in children in Fukushima.

Part II General Issues

1 Covenant and Domestic Laws including Constitution

Japan has not clarified its stance on which provisions of the International Covenant on Civil and Political Rights (the “Covenant”) are directly applicable. Nor has it recognized violations of the Covenant as grounds for appeal to the Supreme Court, hence, the Supreme Court hardly judges the illegality pursuant to the Covenant.

Japan should:

- (i) Recognize the legally binding force of the provisions of Covenant in the domestic legal system, and should explain about its measures under examination to ensure the application and interpretation of the Covenant form part of professional training for judges, prosecutors and lawyers and that information about the Covenant is disseminated at all levels of the judiciary, including the lower courts.

2 Human Rights Education, Awareness-raising and Publicity

No professional trainings are provided as to the application and interpretation of the Covenant under the recommendation in Paragraph 6 of 6CO.

Japan should:

- (i) Explain what training programs for judges, prosecutors and lawyers are under examination to promote and establish the understanding of the direct applicability of the Covenant;
- (ii) Clarify how it disseminates to judges Committee’s general comments and concluding observations on the consideration of Japan’s reports pertaining to the Covenant, and provide the reasons if it has not disseminated them.

3 National Human Rights Institution

Although recommendations to establish a national human rights institution have been made repeatedly not only by Committee in paragraph 9 of 5CO and paragraph 7 of 6CO but also by other UN human rights bodies, no progress has been made yet.

Japan should:

- (i) Clarify the reasons for still not having established a national human rights institution pursuant to the Paris Principles;
- (ii) Provide a timeframe for its establishment.

Part III Reports on Specific Articles

Article 2: Obligation to Implement Covenant - First Optional Protocol to Covenant

Despite Committee's repeated recommendation to ratify the Optional Protocol since the third consideration of Japan's reports, no practical progress has been made. Japan states in its report that it is "making an internal study of various issues including whether it poses any problem in relation to Japan's judicial system or legislative policy, and a possible organizational framework for implementing the procedure if it were to accept it".

Japan should:

- (i) Explain specifically what it means by "problem in relation to Japan's judicial system or legislative policy" and "a possible organizational framework for implementing the procedure if it were to accept it";
- (ii) Provide the current status of the internal study and a timeframe for its introduction.

Article 3: Principle of Equality between Men and Women

1 Mechanisms for Promotion of Elimination of Gender Inequality

Committee is concerned about low representation of women in members of the Diet, positions equivalent to and higher than directors of ministries and management positions of private companies in Paragraphs 12 and 13 of 5CO and Paragraph 9 of 6CO. The Government's Fourth Basic Plan for Gender Equality solely enhances voluntary efforts of political parties, municipalities and companies, not adopting any temporary special measures, including statutory quotas. The Act on Promotion of Women's Participation and Advancement in the Workplace only provides the obligation to formulate and release action plans with numerical targets.

Japan should:

- (i) Clarify the reasons for not adopting temporary special measures;
- (ii) Clarify it is making any arrangement to adopt temporary special measures. If any, it should explain its detail.

2 Employment

Committee is concerned about reports that women earn on average 58 percent of the salaries received by men for equivalent work and represent 70 percent of the part-time workforce in Paragraph 9 of 6CO. The Government released the draft guideline for equal pay for equal work dated December 20, 2016, which raises the issue as to whether disparities between regular employees and non-regular employees in treatment such as wages are unreasonable, but it is not clear whether it takes gender disparity in wage into consideration.

Japan should:

- (i) Explain about its measures under examination to promote the recruitment of women as full-time workers and close the wage gap between men and women;
- (ii) Explain about its coordination for ratification of ILO Convention No. 111²;
- (iii) Explain about its concrete measures under examination to prevent women from leaving work upon pregnancy and childbirth;
- (iv) Clarify whether to have any plan to establish legislations or provisions, which currently do not exist, to prohibit and sanction sexual and “maternity harassment”. If not, it should explain the reasons.

3 Violence against Women

Committee criticizes Japan for still narrowly defining rape, failing to amend laws to prosecute rape and other sexual offences ex officio and setting the age of sexual consent which remains at the age of 13 in Paragraph 10 of 6CO. The articles related to the former matters of Penal Code were revised in July 2017. Japan also received Committee’s recommendation in the same Paragraph to ensure adequate protection of domestic violence victims.

Japan should:

- (i) Clarify the reasons for not explicitly criminalizing marital rape;
- (ii) Explain whether it considers the establishment of a welfare law which provides medium to long-term assistance for women who have suffered from domestic violence and measures to enable utilization of public shelters based on the victims’ will.

Article 6: Right to Life

Having long unequivocally declared its stance to demand the moratorium on death penalty, the JFBA adopted the Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty at the 59th Convention on the Protection of Human Rights held on October 7, 2016, in which it maintains Japan should aim at the abolition of death penalty by the year 2020 when the UN Congress on Crime Prevention and Criminal Justice will be convened in Japan.

1 Imposition of Death Penalty

- (i) Despite Committee’s recommendation in Paragraph 13(a) of 6CO to give due consideration to the abolition of death penalty or reduce the number of eligible crimes for capital punishment to the most serious crimes that result in the loss of life, Japan should clarify the reasons for not taking these steps.

2 General Treatment of Death Row Inmates

Committee notes with concern that death row inmates are still kept in solitary confinement before execution in Paragraph 13 of 6CO.

² Convention concerning Discrimination in Respect of Employment and Occupation (No. 111).

Japan should:

- (i) Clarify the reasons for the rule of solitary confinement for death row inmates as stated in Article 36(1) of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees which provides treatment of death row inmates shall be conducted in an inmate's room throughout day and night, except where it is deemed appropriate to conduct it outside of the inmate's room, and Article 36(2) which stipulates the room of death row inmates shall be a single room, which reverses the rule and exception of the international standard;
- (ii) Explain in detail about what situation is "deemed appropriate to conduct it outside of the inmate's room".

3 Criminal Procedures for Capital Cases

Japan should:

- (i) Clarify the reasons for not adopting a mandatory appeal system (an automatic appeal system) in capital cases as recommended in Paragraph 13(d) of 6CO.

4 Notice of Execution Schedule

Japan should:

- (i) Explain about problems with advance notice of an execution schedule in reference to Committee's concern in Paragraph 13 of 6CO that prior notice is not given;
- (ii) Explain about measures implemented to maintain the mental health of executioners of the death penalty.

5 Pardon

Japan should:

- (i) Clarify whether to have any criteria of pardon for death row inmates. If any criteria, it should explain the detail.

6 Mental Examination of Death Row Inmates

Committee is concerned that the mental examinations to determine whether persons facing execution are "in a state of insanity" are not independent in Paragraph 13 of 6CO.

Japan should:

- (i) Explain what positions of people determine whether death row inmates are in a state of insanity and what criteria are used for the determination.

Article 7: Prohibition of Torture and Ill-treatment

1 Detention of Undocumented Foreigners by Immigration Authorities

In Paragraph 19 of 6CO, Committee is concerned at the prolonged periods of administrative detention without adequate giving of reasons and without independent review of the detention

decision.

Japan should:

- (i) Explain the reasons for not introducing a regular judicial review system for continuation of detention;
- (ii) Explain what alternatives to detention have been examined since Committee's sixth consideration.

2 Inhuman or Degrading Treatment during Deportation

Despite Committee's concern expressed in Paragraph 19 of 6CO, Japan does not have any statutory regulations on the use of physical force during deportation. Deportation with the use of physical force had not been conducted in effect in response to the deportation case which resulted in death of a person in March 2010, but recently resumed in Japan.

Japan should:

- (i) Explain what regulatory measures against the use of the physical force it has considered to prevent inhuman or degrading treatment during deportation in light of the above-mentioned death case;
- (ii) Explain whether it has considered or will consider the implementation of measures such as establishment of statutory regulations and third-party supervision in the above consideration.

3 Protection against Return to Countries Where There is a Risk of Torture

Despite Committee's recommendation in Paragraph 19 of 6CO, Japan does not establish any clear procedures for recognizing people who are believed to be in danger of being subjected to torture in their home countries based on substantial grounds and granting a status of residence in Japan. In addition to the absence of protection criteria in the special residence permission system and procedural guarantee for those people, the immigration authorities have power to decide whether to grant special residence permission, which indicates specialty, neutrality or independence of review is not ensured.

Japan should:

- (i) Explain concrete procedures it implements for the protection against return to countries where there is a risk of torture since Committee's sixth consideration, and provide what it examined for procedural guarantee for foreigners.
- (ii) Explain what it examined for ensuring specialty, neutrality and independence of review regarding the above procedural guarantee for protection.

Article 8: Prohibition of Slavery and Forced Labor

1 Measures against Human Trafficking

With Committee's concern over the persistence of human trafficking in Paragraph 15 of

6CO, Japan received Committee's recommendation to enhance victim identification procedures, impose penalties that are commensurate with the seriousness of the acts committed and improve the current victim protection measures. However, due to growing sophistication of human trafficking, the efforts to provide remedies for victims or identify and prosecute perpetrators are not fully made.

Japan should:

- (i) Explain whether it provides all law enforcement officers with specialized training as to human trafficking investigation and identification;
- (ii) Clarify details of support programs for victims and concrete measures for restitution of damage envisaged therein.

2 Issue of "Comfort Women"

Not only Committee in Paragraph 22 of 5CO and Paragraph 14 of 6CO but also other UN human rights bodies pointed out the lack of remedies for "comfort women", and repeatedly recommended that Japan should restore victims' dignity and provide full reparation. Japan-Korea foreign ministers' meeting was held in Seoul on December 28, 2015, and agreed to permanently settle the issue of comfort women. Pursuant to the agreement, the Korean government established a foundation to provide assistance for former comfort women on July 28, 2015, and the Japanese government contributed one billion yen to the foundation on August 31, 2015. With public opinion divided over the issue in Korea, the statue of comfort women established before the Consulate General of Japan in Busan may rekindle the issue in both nations.

The JFBA has repeatedly issued statements calling for not making such remarks as harming the former comfort women's dignity.

Japan should:

- (i) Clarify whether it has any further plan to protect the dignity of the former comfort women and provide restitution. If any, it should explain legislation and measures in detail to be planned.

3 Technical Interns

Committee noted with concern in Paragraph 16 of 6CO that despite the legislative amendment extending the protection to technical interns, some of the interns remain in harsh labor conditions. Japan received Committee's recommendation to replace the current program with a new scheme that focuses on capacity-building pursuant to Paragraph 24 of 5CO. The Act on the Proper Implementation of Technical Intern Training for Foreign Nationals and the Protection of Technical Intern Training was enacted at the Diet in November 18, 2016, to strengthen the Government's supervision, but due to inadequate supervision over sending organizations of technical interns, it is questionable whether the act

can fully prevent illegal acts and violation of human rights. An overhaul of the system itself is mandatory to close the discrepancy between the purport of the technical intern program which aims at the transfer of Japan's advanced technology and the actual situation where the interns are used as cheap, unskilled labor.

Japan should:

- (i) Explain what it is examining, including the abolishment of the technical intern program and the establishment of a new residential status for accepting unskilled workers;
- (ii) Explain about what difficulties lie in the abolishment of the technical intern program and the acceptance of unskilled workers.

Article 9: Right to Liberty of Person

1 Detention of Suspects

(1) Bail System and Right to Appoint Defense Counsel

Despite Committee's indication of the absence of an entitlement to bail or a right to court-appointed counsel prior to the indictment in Paragraph 18 of 5CO and Paragraph 18 of 6CO, no progress has been made.

Japan should:

- (i) Explain about what it examined for the introduction of a preindictment bail system and clarify the status of the examination;
- (ii) Explain whether it examined a court-appointed counsel system available to all suspects immediately after an arrest;
- (iii) Clarify the reasons for still not introducing either of the systems above.

(2) Interrogation

See the section of Article 10.

2 Detention in Immigrant Facilities

See the section of Article 7.

3 Measures to Eliminate Discrimination against Hansen's disease

Thorough restitution has yet to be provided for the suffering caused by the Government's illegal measure to forcibly segregate Hansen's disease patients from the public. The Government also has failed to implement any steps for families of the patients who have faced severe discrimination and prejudice. Conducting a probe, the Supreme Court admitted it was false discriminatory treatment to designate all trials involving Hansen's disease patients to be done only in a special court within national sanatoriums and other facilities on grounds of the disease, and apologized for that conduct. However, it concluded that it did not violate the principle of open trial.

Japan should:

- (i) Explain what measures it examines to promptly apologize to Hansen's disease patients and their families and conduct measures to restore their dignity, provide reparation and redress and investigate actual damage, as well as to make living and medical levels of patients at national sanatoriums humanitarian;
- (ii) Explain whether judicial system related bodies which are courts, prosecutors and the Ministry of Justice (the "MOJ") intend to further investigate and examine the discriminatory treatment and what restitution will be provided for the wrong judicial procedures.

4 Hospitalization for Medical Protection

Committee recommended that involuntary hospitalization be corrected in Paragraph 17 of 6CO, but no specific solution has been realized yet.

Japan should:

- (i) Explain about its examination of explicit legislation which only allows hospitalization for medical protection as a last resort and measures for reducing a period of such hospitalization;
- (ii) Clarify the reasons for not having been able to establish Government-funded support by advocates who are independent from mental institutions.

Article 10: Treatment of Inmates and Detainees (and Articles 7, 9 and 14)

1 Violation of Right not to be Inappropriately Detained

(1) Substitute Detention System (*Daiyo Kangoku*)

Committee has repeatedly recommended a fundamental reform, including the abolishment of the substitute detention system since its third consideration, but the Government has no intention to change it at all. There are many reported cases of false confessions during police detention and prolonged interrogation.

Japan should:

- (i) Clarify the reasons for not abolishing the substitute detention system upon a major amendment of the Code of Criminal Procedure in 2016;
- (ii) Limit a period of police detention within 24-48 hours and determine a policy and clarify its implementation schedule to abolish the substitute detention system which allows continued detention of suspects at a police cell even after they are remanded in custody by court so that its pretrial detention will be conformed to the international minimum standard. It should report whether it is examining matters from (a) to (e) below as priorities, and if not, it should clarify the reasons:
 - (a) Setting a maximum period of detention at police cells to conform to the

international minimum standard;

- (b) Ensuring that counsels should be appointed immediately after suspects are arrested so that suspects and counsels can prepare for defense and that interrogation should be prohibited until legal advice is available, allowing counsels to attend the interrogations on the detained suspects, and establishing a system to allow detained suspects and their counsels to access to all police records, and at the same time, ensuring that adequate medical service are promptly provided to detained suspects during the detention;
- (c) Ensuring independence of external monitoring over detention by the police through measures such as appointment by prefectural police headquarters of lawyers recommended by bar associations to members of “the Detention Facility Visiting Committee”;
- (d) Establishing an effective complaint review mechanism that is independent of the prefectural public safety commissions to review complaints filed by detainees;
- (e) Abolishing the use of gags in detention facilities.

(2) Risk of Abusive Interrogation Methods

Due to the lack of legal regulations on interrogation, there is no end to false accusations resulting from forced confessions. Judges rarely determine confession is not voluntary. In the case of the murder of a 7-year-old girl in Imaichi City, Tochigi Prefecture, the court examined the video recordings where a police officer slapped the suspect in the face during the interrogation and where the suspect attempted suicide by jumping out of the window after the prosecutor pressed him into confession, accusing him of not making confession though he promised to do so if he could see his elder sister. Even with these video-recordings, the judges found him guilty, recognizing the voluntariness of his written confession.

Japan should:

- (i) Japan should clarify the reasons for not establishing statutory regulations of interrogation time and methods in spite of Committee’s repeated recommendations.

(3)-1 Suspect’s Right to Counsel - Court-Appointed Counsel and Attendance at Interrogation

The Code of Criminal Procedure was amended in 2016 to set forth that the court-appointed counsel system for suspects will be available by June 2018 for all cases where suspects are on remand.

However, the court-appointed counsel cannot be appointed during vulnerable hours of arrest, voluntary accompaniment and voluntary appearance, the latter two of which are de facto detention as opposed to the term “voluntary”.

Since neither police nor prosecutors allow attendance of defense counsel during interrogations, a suspect is at risk of being forced into false confession, being interrogated without legal aid.

Japan should:

- (i) Clarify the reasons for not granting the right to counsel at national expense until suspects are remanded in custody when amending the Code of Criminal Procedure in 2016 in spite of Committee's recommendation in Paragraph 18(b) of 6CO to ensure "all suspects are guaranteed the right to counsel from the moment of apprehension and that defense counsel is present during interrogations;
- (ii) Explain the reasons for not allowing the attendance of defense counsel during interrogations.

(3)-2 Suspect's Right to Counsel - Meetings with Counsel

Despite Committee's recommendation in Paragraph 18 of 5CO, there is no end to the infringement of the confidentiality of meetings between detained suspects and counsels.

A head of a penal institution has discretion to decide whether its officer attends meeting between death row inmates, convicts and their lawyers as to request for a retrial. The court's ruling which found such attendance illegal contributed to considerable improvement in practice, but some meetings are not allowed without the presence of an officer.

As part of the system, prison officers examine contents of all correspondence with lawyers, including one sent by lawyers. Because of their contents, many cases of correspondence are not allowed to be sent. In some cases, the institution side has refused to send or receive documents needed for defense if they are not prepared by counsels or suspects.

Furthermore, the institution side did not allow lawyers to take media equipment to an interview room which was intended to be used for photographing physical damage of suspects assaulted by law enforcement officers during investigation or for consulting by showing data stored in the equipment, and even halted their interviews. Moreover, there is an increase in cases of the institution's demanding disciplinary measures against those lawyers.

- (i) Without exceptions, communication with lawyers through correspondence should be kept confidential, and the institution side should not interrupt lawyers' taking media instrument to an interview room with them which is necessary for defense. Japan should explain the reasons for not being able to carry out a reform to conduct those measures.

(4) Electromagnetic Record of Interrogation

The electromagnetic record system which is to be implemented by June 2019 requires

sound and visual recordings of all interrogation processes in cases which are subject to the lay judge system and those of prosecutors' own investigation. However, this system can be applicable only to two to three percent of all detention cases. Interrogation can be conducted without detention and sound or visual recordings of interrogation before apprehension are not mandatory. This electromagnetic record system is considerably used in the above applicable cases and ones where difficulties are found in communication, including cases with intellectual disabilities. Also, it is gradually extending to other cases as well in the prosecution level. However, the system is not still fully utilized. Particularly in the police level it is not used except in the above applicable cases. As for suspects not detained, there are very few reported cases only in the prosecution stage where the sound and video recordings of interrogation were made.

Japan should:

- (i) Clarify the reasons for not videotaping interrogations of those who are not detained;
- (ii) Clarify the reasons for not videotaping interrogations at least in cases where those interrogated request video recordings, regardless of content of cases or whether detained or not.

2 Disclosure of Evidence

The amendment of the Code of Criminal Procedure in 2016 introduced a mechanism where a list of evidence possessed by the prosecutor is provided to lawyers for cases of pretrial arrangement proceedings (lawyers are granted the right to claim for pre-trial arrangement proceedings, but the court has the discretion to decide whether to apply pretrial arrangement proceedings to the cases). However, this does not obligate the disclosure of evidence, and no mechanism exists to give all evidence possessed by the police to the prosecutor.

At retrials of many false conviction cases, evidence which the police had not handed to the prosecutor led to the acquittal of those who had been wrongly convicted. The prosecutor does not disclose all of its evidence to defense counsel either at trials of ordinary procedures or at retrials.

At pretrial arrangement proceedings which are applied to a small fraction of cases such as those that are subject to the lay judge system, defense counsels have the right to request disclosure of "categorized evidence" and "claim-related evidence", but the prosecutor can consider the extent of the necessities for disclosure to prepare for the defense of the accused, and decides whether to disclose it. Disclosure of evidence in other cases is left to the prosecutor's discretion as well. The court can make a ruling regarding non-disclosure. However, the reality is according to the statistics in 2015, while ordering the disclosure only for three cases requested by the prosecutor, the court declined all the 28 cases requested by the

accused.

Japan should:

- (i) Clarify the reasons for not establishing a system where the police gives all evidence to the prosecutor;
- (ii) Clarify the reasons for allowing the prosecutor to decide even necessity of disclosure of evidence to defense counsels;
- (iii) Explain whether it plans to revise the current disclosure system, based on the fact that evidence which the police or the prosecutor had not disclosed proved the innocence of the accused in many false convictions.

3 Abolishment of Imprisonment with forced labor

The existing Penal Code provides the primary punishment is imprisonment with forced labor and imprisonment without forced labor is meted out only to small portion of crimes. However, the global standard of punishment is moving toward the abolishment of imprisonment with forced labor for prisoners.

Japan's punishment which is based on imprisonment with forced labor is contrary to the international human rights standard. The Committee on Economic, Social and Cultural Rights therefore calls on Japan to abolish forced labor under Article 6 of the International Covenant on Economic, Social and Cultural Rights (the ICESCR) in Paragraph 14 of the concluding observations on Japan's third report.

At the 59th Convention on the Protection of Human Rights held in 2016, the JFBA proposed the abolishment of imprisonment with labor, believing that labor should be provided as an opportunity to those who wish to work. It also suggested the introduction of a wage system to recognize a value of labor on the assumption that a monthly wage to be paid will be around tens of thousands of yen, deducting food and housing costs from an ordinary wage.

Japan should:

- (i) clarify whether to revise the Penal Code to abolish the current imprisonment with/without forced labor system and introduce a single form of confinement and adopt a wage system, discontinuing forced labor at prisons which violates Article 7 of the Covenant. If Japan intends to do so, Japan should explain its detailed plan.

4 Treatment in Penal Institutions

(1) Contact with the Outside World (Visits)

Since the enforcement of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees (the "Act on the Treatment of Inmates"), the legal designation of those who are allowed to visit inmates is wider than before. Initially, the visit system was more flexibly implemented since the enforcement of the act than before, allowing more visits by friends and acquaintances. However, it is now often implemented in a way to

permit visits only in limited cases. Visits are refused: due to the lack of “circumstances where the visit is necessary” if the visit can be replaced by an exchange of correspondence; and through the wide recognition of a risk of “causing disruption to discipline and order in the penal institution”, “hindrance to the adequate pursuance of correctional treatment for the sentenced person” and other factors.

Japan should:

- (i) Clarify the reasons for not extensively allowing as many visits as possible when requests are made to visit a sentenced person and for not permitting visits on weekends and holidays if a family resides far from the institution in order to guarantee an opportunity of visits;
- (ii) Clarify the reasons for not introducing any alternatives to visits such as a method of using the telephone and the videophone.

(2) Medical Care

The Act on Special Measures, etc. Concerning Concurrent Work and Working Hours of Medical Officers of Correctional Institutions was established on August 27, 2015. This is intended to address the chronic shortage of doctors for correctional institutions through the wide permission of concurrent work and the use of flextime.

However, even after the establishment of the act, the shortage of doctors has yet to be eliminated. The lack of necessary medical care for inmates also remains unsolved due to reasons such as the inadequate guarantee of inmates’ right to be treated as a patient and the absence of independence of medical care from the security section, with medical care at correctional institutions being regarded just as part of the institutions’ treatment, not as independent medical care.

Japan should:

- (i) Explain whether it plans to: receive doctors dispatched from external medical and other institutions; engage in exchanges between doctors at correctional institutions and external medical institutions; and provide trainings and other opportunities to learn medical technology at external medical institutions for doctors of penal institutions. If it has no such plan, it should explain the reasons.
- (ii) Clarify the reasons for not establishing a system where inmates who request a consultation with a doctor are allowed to see the doctor in principle, except where it is deemed apparently unnecessary.

(3) Solitary Confinement

The Act on the Treatment of Inmates stipulates the severe requirements for the isolation of inmates (treatment in a single-room throughout daytime and nighttime in Article 76(1)), and now enables inmates to file complaints against the solitary confinement. However, a new

form of solitary confinement which does not meet the requirements (isolation required for treatment) is extensively conducted. Some cases of solitary confinement have prolonged for more than a couple of years or even over ten years.

Japan should:

- (i) Provide statistics on those who are subject to treatment in a single-room throughout daytime and nighttime and isolation required for treatment;
- (ii) Explain whether it actively makes efforts to enable group treatment such as counseling, bathing, exercise and participation in recreational activities in groups in order not to prolong isolation required for treatment unnecessarily, and explain the reasons if it does not do so;
- (iii) Explain what measures the MOJ takes to reduce the practice of treatment in a single-room throughout daytime and nighttime.

(4) Complaint Mechanism

The Minister of Justice must consult the Review and Investigation Panel for Complaints from Inmates of Penal Institutions (the “Panel”) before rejecting petitions for review and reports of cases filed with the minister, and must make decisions on individual cases by respecting the Panel’s proposals to the maximum extent possible.

However, since the Panel has no regular staff at the secretariat, the Secretarial Division of the Secretariat for the Minister of Justice concurrently functions as the Panel’s secretariat. The Panel is thus virtually incapable of investigating on its own particularly if there are any disputes on factual matters. Furthermore, it is not guaranteed its independence.

Under the current complaint procedure, counsels are not even permitted to represent a claimant. Furthermore, since no mechanism exists in the complaint procedures to suspend the execution of a disciplinary action, the disciplinary action has been already executed during a process for review. Consequently, many complaints about disciplinary actions have been rejected as being moot.

Japan should:

- (i) Explain the reasons for not allocating regular staff for the Panel in order to effectively conduct its investigation;
- (ii) Explain the reasons for not establishing a system which includes the requirement of the Panel to consist of external experts and the MOJ’s obligation to follow the Panel’s opinions in light of the Panel’s lack of a legislative basis;
- (iii) Explain what measures are conducted in order to shorten a period from filing of a complaint to the Panel’s review.

Article 12: Right to Liberty of Movement

Committee reminds Japan that Article 26 of the Immigration Control and Refugee Recognition Act (the “Immigration Act”) is incompatible with article 12, paragraphs 2 and 4, of the Covenant and that the words “one’s own country” are not synonymous with “country of one’s own nationality” in Paragraph 18 of 4CO.

A certain progress was subsequently made toward the improvement of the liberty of movement; a special re-entry permit system commenced under Article 26-2 of the Immigration Act in July 2012.

Yet, there remains a problem for South and North Korean residents in Japan with special permanent resident status who have no passports issued by their own nation or who have only North Korean passports. Since they are deemed not to have a valid passport under this system, the special re-entry permit is not thus applicable to those people (Articles 2(v) and 26-2 of the Immigration Act and Article 23(2) of the Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan).

Japan should:

- (i) Japan should clarify the reasons for not granting a special re-entry permit to South and North Korean residents in Japan with special permanent resident status who have no passports issued by their own nation or who have only North Korean passports.

Article 13: Expulsion of Foreigners

Committee issued the recommendations in Paragraph 19 of 6CO which include the ones that Japan should: (a) take appropriate measures to guarantee that no foreign nationals are subject to ill-treatment during their deportation; (b) ensure that all persons applying for international protection are given access to appropriate legal assistance in all cases such as recognition of protection and application of the principle of non-refoulement³; and (c) use existing alternatives to administrative detention.

Yet, no progress has been made as to these recommendations.

Japan should:

- (i) Explain whether it plans to amend law to enforce the principle of non-refoulement for those who apply for the procedures for landing permission for temporary refuge;
- (ii) Explain the reasons for not granting a proper residency status for those who

³ The principle of non-refoulement is the principle of international instruments, pursuant to Article 33(1) of the Convention Relating to the Status of Refugees and Article 3(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that prohibit return of refugees and asylum seekers to a country where their life, body or freedom would be threatened.

apply for refugee recognition after their request for landing permission for temporary refuge was even declined;

- (iii) Explain why the rate of granting permission for provisional stay has been as low as about ten percent since the revision of Immigration Act in 2005;
- (iv) Provide the number of cases where since the introduction of the refugee examination counselors system, applicants were not granted refugee status due to the Minister of Justice's rejection of the counselors' judgment that that they should be recognized as a refugee, and explain the reasons;
- (v) Explain whether it is providing regular trainings for the counselors who have no former experience of determining the eligibility, and also explain the content, number and lecturers of those trainings and the number of participants if it does so;
- (vi) Clarify the reasons for not disclosing grounds of decisions for permitting or not permitting provisional release (Article 54 of the Immigration Act).

Article 14: Right to Fair Trials

1 Juvenile Proceedings

The Committee on the Rights of the Child called for ensuring that all children are provided with legal and other assistance at all stages of the procedure in Paragraph 54(e) of the second Concluding observations and Paragraph 85(d) of the third Concluding observations. In other words, it is necessary to guarantee assistance by lawyers in juvenile proceedings.

Japan revised the Juvenile Act in 2014 to expand the applicability of the court-appointed attendant system where a lawyer can be appointed to juvenile cases with the Government's fund, but it is still limited to detained juveniles who committed certain types of crimes, and is the court's discretion over deciding whether to appoint attendants.

Japan should:

- (i) Explain whether it intends to expand the applicability of the court-appointed attendant system at least to all detained juveniles;
- (ii) Explain whether it plans to adopt a mandatory court-appointed attendant system upon a request by a juvenile, not depending on the court's discretion.

2 Disclosure of Evidence to Defense Counsels

See the section of Article 10.2.

3 Protection of Rights of Crime Victims

- (1) Establishment of Government-funded Legal Aid for Crime Victims by Attorneys Immediately after Occurrence of Crimes

The victim participation system for criminal cases were established in June 2007 and the

court-appointed attorney system for victim participants in April 2008, respectively.

Yet, these systems do not lead to effective remedies for crime victims, since the victim participation system is not available immediately after crimes occur, and the court-appointed attorney system for victim participants has requirements of financial capabilities (the current assets of less than two million yen). Only the JFBA offers the legal aid service for crime victims which provides lawyers' support for persons of limited means immediately after crimes occur while there is no such system sponsored by the Government.

Japan should:

- (i) Explain what measures are currently under examination in order that crime victims can obtain government-funded legal aid immediately after the occurrence of damage from crimes;
 - (ii) Explain the reasons if it does not consider any such measures.
- (2) The Government improved the system for recovery of financial damage of crime victims (the Benefit System for Crime Victims) in July 2008 through such means as an increase in survivor benefits and disability benefits. However, there is still inadequacy in this system such as the restriction of payment for crime cases which occur within a family. In many cases, financial recovery is hard to obtain due to the difficulty gaining information of perpetrators' assets or the lack of their financial resources even if victims have title of obligation in compensation against perpetrators.

Japan should:

- (i) Explain whether to examine the introduction of a system where the Government covers damages for victims who have title of obligation in compensation, thereby being subrogated to their rights to reimbursement from the perpetrators.
- (ii) Explain the reasons if it has not examined such system.

Article 17: Respect for Privacy, etc.

1 Surveillance Cameras

Surveillance cameras may violate people's right to privacy. A facial recognition system the police started to introduce has a search function which easily identifies specific individuals from a vast number of surveillance camera images. Yet, Japan has no legislation to regulate the installation and operation of surveillance cameras by both public and private sectors or to utilize a facial recognition system; the police can use the cameras without any oversight mechanism.

Japan should:

- (i) Japan should explain what concrete measures are taken to prevent violation of the right to privacy by surveillance cameras.

2 National Identification Number System

The act to introduce the Identification Number System was established in May 2013, and the system started to be implemented in January 2016. However, this centralized management of a large volume of personal information through the introduction of the Identification Number System infringes on the right to control personal information. The Government continues to examine various measures to expand the use of identification number in the private sectors despite 66 cases of information leakage during the first half of FY2016, of which two serious cases were involved.

Japan should:

- (i) Explain how it takes due care to prevent wrongful violations of individual privacy by the act on the use of numbers to identify individuals in administrative procedures;
- (ii) Explain what measures are taken to prevent information leakage from the Identification Number System.

3 Third-party Organization

The Act on the Protection of Personal Information was revised in September 2015 to establish a mechanism where the Personal Information Protection Committee (the “PPC”), a third-party organization, supervises all handling of personal information in the private sector. However, it does not have the authority to supervise personal information owned by administrative bodies and independent administrative agencies in principle with some exceptions.

Japan should:

- (i) Clarify the reasons for not granting the PPC the authority to supervise personal information owned by administrative bodies and independent administrative agencies;
- (ii) Clarify how it takes due care so that personal information owned by administrative bodies and independent administrative agencies is properly handled.

Article 18: Freedom of Thought, Conscience and Religion

Committee recommends in Paragraph 22 of 6CO that restrictions on the fundamental human rights for the reason of “public welfare” should be imposed solely in accordance with the strict conditions under the Covenant. However, the freedom of thought and conscience has been continuously violated; teachers of Tokyo metropolitan high schools are ordered to stand and sing the national anthem which express the loyalty to the Emperor at graduation and other occasions, and as a consequence, students practically have to sing the anthem.

Japan should:

- (i) Explain how it takes due care in order not to violate teachers' freedom of thought and conscience by the Tokyo Metropolitan Board of Education's circular notice and school headmasters' order to stand and sing the national anthem;
- (ii) Explain what measures are taken to protect political activities of high school students in response to an expected move of high schools to establish a school rule to require students' political activities during time outside school, including after-school hours and holidays, to be notified in line with the lowering of the voting age for national elections;
- (iii) Explain how it takes due care in order not to violate students' freedom of thought and conscience along with the implementation of ethical education as a formal subject.

Article 19: Freedom of Expression

The State Secrecy Law threatens the freedom of expression and citizens' right to know due to factors, including: (a) an excessively broad applicability of information which government agencies can designate as secrets; (b) the absence of provisions in the law to clearly put immunity from criminal punishment for journalists and citizen activists; (c) the lack of provisions in the law to protect whistleblowers of specially designated secrets from criminal punishment; and (d) the inadequate mechanism to oversight the designation and cancellation of specially designated secrets. The problems with this law were widely covered in the report of the examination by the UN Special Rapporteur of Freedom of Expression, as well as in 6CO, but the law has been neither repealed nor fundamentally amended.

Japan should:

- (i) Explain the reasons for not stipulating that illegal acts of the Government should not be designated as secrets by law;
- (ii) Explain what measures are taken to guarantee the right to know and not to generate chilling effects on the press and citizens in light of the recommendations issued by the UN bodies.

The abovementioned Special Rapporteur also indicated that the Government may violate independence of Japan's broadcasters through abusing Article 4 of the Broadcast Act which demands political neutrality.

Japan should:

- (i) Explain the grounds for considering Article 4 of the Broadcast Act has the nature of legal binding;
- (ii) Explain its intention to abolish Article 4 of the Broadcast Act, and clarify the reasons if it does not have such intention.

Article 20: Prohibition of Discriminatory Remarks and War Propaganda

Although the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan was enforced in June 2016 after Committee's sixth consideration, it is no more than a conceptual law despite Committee's recommendation in Paragraph 12 of 6CO. The act does not provide any concrete measures for the elimination of discriminatory expression. Hate speech and other discriminatory actions are frequently observed even after its enforcement.

Japan should:

- (i) Explain any plan to continuously conduct similar investigation to the report on hate speech released on March 2016, and clarify the reasons if it has no such plan;
- (ii) Explain what concrete measures will be taken in order to eliminate discriminatory expression through such means as hate demonstration and posting on the Internet with a view to ensuring the effectiveness of Article 20 of the Covenant.

Article 21: Rights to Assembly (Public Demonstration)

The draft report by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression released in April 2016 pointed out the unnecessary restrictions on protest against the Diet and many arrests of those who protested against the construction of a US military base in Okinawa, and stated it remains committed to carefully following the situation in Okinawa. This situation still continues; rather a larger number of residents who protest against the construction of the military base in Okinawa are now arrested.

Japan should:

- (i) Explain whether to guarantee an opportunity of public demonstrations to protest against the Government's policies;
- (ii) Explain what improvement measures will be taken in response to the UN bodies' statement pointing out unnecessary restrictions on protest against the Government;
- (iii) Explain what measures and guidance are implemented to respect the freedom of expression, including public protests, and prevent excessive control.

Article 23: Rights concerning Family and Marriage

Committee pointed out in Paragraph 8 of 6CO the discriminatory provision of the Civil Code that prohibits women from remarrying in the six months following divorce, but even after its revision, the provision is still discriminatory, setting a 100-day wait for women to remarry.

Japan should:

- (i) Explain why it cannot abolish the remarriage ban period for women;
- (ii) Clarify the factors which prevent the introduction of a system allowing married

- couples to have different surnames;
- (iii) Explain why it considers married couples' having different surnames would damage the sense of family unity;
 - (iv) Explain what system it is considering in light of the current situation: the lack of comprehensive provisions of the Civil Code which can be a basis of dividing marriage property following a divorce; and the inadequate procedure to request disclosure of a spouse's economic status (property, salary, etc.) in a divorce procedure.

Article 24: Children's Rights

Japan should:

- (i) Explain the reasons for not repealing Article 822 of the Civil Code that "a person who exercises parental authority may discipline the child" which can be used as a ground of corporal punishment in spite of Committee's concern over corporal punishment of children in Paragraph 25 of 6CO;
- (ii) Explain about a relationship between Article 11 of the School Education Act which prohibits corporal punishment and the notice entitled "Guidance on Pupils and Students with Problematic Behaviors" issued on February 5, 2007, by the Ministry of Education, Culture, Sports, Science and Technology which permits corporal punishment in limited cases.

Article 25: Suffrage

1 Foreigners' Suffrage

Japan should:

- (i) Japan should clarify the reasons for not granting suffrage to foreign permanent residents despite the importance of their suffrage in local-level elections for realizing a society where multi-ethnicity and multi-culture coexist.

2 Inmates' Suffrage

Article 11(1)(ii) of the Public Offices Election Act provides that a person who has been sentenced to imprisonment or severer punishment until its completion do not have the right to vote or to be elected.

Based on this article, while a detainee awaiting a judicial decision has the right to vote and to be elected, inmates who are even released on parole are not given these rights until the completion of their sentences. The Osaka High Court ruled that the Public Offices Election Act provision which restricts inmates' suffrage without exceptions violates the Constitution on September 27, 2013.

Japan should:

- (i) Clarify the reasons for not granting inmates suffrage guaranteed for the people under the Constitution;
- (ii) Explain what it is examining to revise the Public Offices Election Act.

Article 26: Equality before Law

1 Treatment of Children Born Out of Wedlock

Despite Paragraph 28 of 5CO which recommends the removal of any provisions discriminating against children born out of wedlock from the legislation, Japan still retains a discriminatory provision for birth registration form in Article 49(2)(i) of the Family Registration Law.

Japan should:

- (i) Clarify its schedule for action to promptly repeal this discriminatory article.

2 Rights of Foreigners to Serve in Public Office (Conciliators)

Despite the continued proposals to appoint lawyers of foreign nationalities as a conciliator by bar associations in various locations from 2003 and also the precedents of conciliators of foreign nationals, the Supreme Court all refuses to appoint lawyers of foreign nationals on the grounds that conciliators exercise public authority. The Committee on the Elimination of Racial Discrimination recommends the appointment of foreign conciliators in Paragraph 13 of the concluding observations on the combined seventh to ninth reports of Japan.

Japan should:

- (i) Clarify the reasons for refusing to appoint foreign conciliators since 2003 despite the precedents.

3 Discrimination Based on Sexual Orientation and Gender Identity

Japan should:

- (i) Explain what concrete measures it is examining to eliminate discrimination against LGBT in light of the existence of discrimination in areas of employment and workplace, health care, education, renting of public housing and public life.

4 Establishment of a Comprehensive Antidiscrimination Law

Committee recommended in Paragraph 5 of 6CO that Japan “should give effect to the recommendations adopted by Committee that are contained in the present concluding observations, as well as those in its previous concluding observations.” In Paragraph 11 of 4CO, it is also concerned about the vagueness of the concept of “reasonable discrimination” which is incompatible with article 26 of the Covenant. However, no move to establish a general and comprehensive antidiscrimination law is observed in Japan.

Japan should:

- (i) Clarify the reasons for still not establishing a general and comprehensive antidiscrimination law;
- (ii) Explain what measures it is examining in detail to clearly define discrimination.

5 Reservation of Japanese Nationality

Article 12 of the Nationality Act stipulates a Japanese citizen who acquired the nationality of a foreign country through birth and who was born abroad shall retroactively lose Japanese nationality to the time of birth unless he/she indicates an intention to reserve Japanese nationality pursuant to the provision of the Family Register Act. A Japanese citizen who was born abroad and who acquired the nationality of a foreign country through birth retroactively loses Japanese nationality to the time of birth or does not own Japanese nationality from the time of birth unless submitting a notification to reserve Japanese nationality within three months from the date of birth.

- (i) Japan should explain the reasons for the different treatment in acquiring Japanese nationality between Japanese citizens who was born abroad and acquired the nationality of a foreign country through birth and those who was born in Japan and who acquired multiple nationality of Japan and foreign countries under Article 12 of the Nationality Act.

6 Issue of Foreign Nationals (Issue of Subsidies for Korean Schools)

The Minister of Education, Culture, Sports, Science and Technology issued the notice entitled “attention concerning the provision of subsidies for Korean schools” to governors of 28 prefectures where Korean schools are located, requesting a de facto suspension of subsidies to Korean schools. Also, Korean schools are excluded from the tuition support system for high school students. These measures are taken due to disputed issues of relationships between relevant organizations and North Korea, not objective problems found in their curricula.

Japan should:

- (i) Explain whether the failure to provide high school tuition support for Korean school students is inconsistent with the principle of the support system to ensure an equal educational opportunity for students of high schools and equivalent curriculum.

7 Measures for People with Disabilities

Japan should:

- (i) Explain about detailed changes brought by the implementation of new legislations (the Act for Eliminating Discrimination against Persons with Disabilities, the Comprehensive Support Act for Persons with Disabilities and the Act on Employment Promotion of Persons with Disabilities) since Committee’s sixth

consideration.

- (ii) Explain what action will be taken with a view to eliminating discriminatory thought based on eugenics in response to the murder of 19 people, including residents, at the care home for those with disabilities in Sagamihara City on July 26, 2016.

Article 27: Minorities' Rights

Japan should:

- (i) Japan should explain whether it started preparing for the revision of legislation to guarantee the Ainu's rights in response to the recommendation in Paragraph 26 of 6CO. If not, it should explain the reasons.

Part IV Others

1 Business and Human Rights

Japan should:

- (i) Explain what measures it is examining to prevent or alleviate a risk of involvement of human rights violations by multinational companies based in Japan through corporate activities or supply chains in countries with an inadequate or no legal safeguard to protect labor, environment and other human rights and to provide redress for victims of the violations. Clarify the reasons if it is not examining any measures;
- (ii) Clarify when and how a national action plan of business and human rights will be formulated.