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Japan Federation of Bar Associations

Japan Federation of Bar Associations Report on
Response to the Second Report of the Japanese
Government under Paragraph 1 of Article 19 of
the Convention Against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment

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Japan Federation of Bar Associations

JAPAN FEDERATION OF BAR ASSOCIATIONS

1-3, KASUMIGASEKI 1-CHOME, CHIYODA-KU, TOKYO 100-0013 JAPAN

TEL: +81 3 3580 9741 FAX: +81 3 3580 9840

Email: international@nichibenren.or.jp URL: www.nichibenren.or.jp

Articles 1 and 4

1. Please provide information on steps taken to incorporate into domestic law the definition of torture as contained in article 1 of the Convention, as recommended by the Committee in its previous concluding observations (CAT/C/JPN/CO/1, para. 10). In particular, please provide information on the definition of “mental torture” in the Penal Code and on the penalties for related acts. Furthermore, please indicate if the Penal Code of the State party covers acts of all types of public officials and individuals acting in an official capacity, including the situation of individuals acting at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity.

A. Explanation in the government report

In the reply by the Japanese government, the government admits that the Penal Code does not set forth provisions defining torture or metal torture, while it justifies lack of provisions defining torture and metal torture in the Penal Code, giving reasons that they can fall under categories of crime relating to public officials or general categories of crime in the Penal Code, and that those other than public officers can be punishable pursuant to the provisions of complicity.

B. Problems found in the government reply

However, only a theoretical possibility of punishment against torture and metal torture under existing laws cannot be considered as an effective means to prevent torture. In order that public officials and other citizens are clearly aware of the acts of torture prohibited with criminal punishment, the acts of torture, including mental torture, should be stipulated in distinction from other crimes.

Categories of crime such as Assault and Cruelty by Special public officers and Abuse of Authority Causing Death or Injury by Special public officers, which are considered to fall under typical acts of torture, can only be applied to those who hold a status of a public official in a restrictive meaning, and cannot be applied to those acting in an official capacity without such a status. The Japanese government states the application of the provisions of complicity, but in case that there is no act of public officials to be punished as a principal, those acting in an official capacity are not punishable pursuant to such categories of crime.

Please make the same recommendations to the State Party as Paragraph 10 of the previous concluding observations.

Article 2

2. In its previous concluding observations, the Committee expressed deep concern at the prevalence and systematic use of the Daiyo Kangoku substitute prison system for the prolonged detention of arrested persons (CAT/C/JPN/CO/1, para. 15). Please provide updated information on steps taken by the State party to address this concern. In particular, please provide information on steps taken to:
- (a). Implement the principle of separating functions of investigation and detention in practice, as stipulated in the Act on Penal and Detention Facilities and the Treatment of Inmates and Detainees. In this respect, please elaborate on the content of this Act regarding the separating of these functions.

A. Explanation in the government report

With regard to measures taken for a purpose of implementing the principle of separating functions of investigation and detention, the Japanese government report lists the following systems in order to conduct treatment with due consideration of human rights:

- A1. a system whereby the officials of the National Police Agency or Prefectural Police Headquarters regularly conduct inspections of detention facilities;
- A2. a system whereby the Detention Facilities Visiting Committee inspects detention facilities and issues a statement of its opinion with regard to detention services;
- A3. a system to deal with appeals filed by detainees.

The government report mentions specific measures as follows:

- A4. prohibiting investigators from entering detention facilities;
- A5. requiring the approval of the detention supervisor when having a detainee leave or enter a detention facility for investigation and having the detention supervisor record each exit or entry with the time of the detainee's going out of and entering the detention facility;
- A6. when an interrogation continues even after bedtime or mealtimes, having the detention supervisor request that the investigation supervisor consider discontinuing the interrogation;
- A7. making it a principle for detainees to have their meals within detention facilities and prohibiting investigators from allowing detainees to have meals in interrogation rooms, etc.;
- A8. transferring detainees on the detention supervisor's responsibility, and designating persons in the detention division (when it is impossible to make up the needed escort

system only from persons in the detention division, persons who belong to a division not responsible for investigations in principle) as escort officers and not allowing the designation of persons engaged in an investigation pertaining to the detainee as escort officers.

B. Problems found in the government reply

However, any of the measures indicated in the government report is not sufficient to thoroughly separate the functions of investigation and detention.

B1. Separating functions of investigation and detention is merely one of the many items to be inspected. The National Police Agency makes inspection once every few years, and Prefectural Police Headquarters do so merely about once a year. In addition, each inspection is carried out just for a few hours. It is therefore impossible to strictly inspect whether they actually comply with the principle of separating the functions of investigation and detention.

B2. In fact, the Boards of Visitors for Inspection of Police Custody rarely make comments focused on separation of investigation and detention. Some lawyers recommended by bar associations are not selected. In such case, there is no guarantee that members of the Boards are even aware of the issue of separating functions of investigation and detention. Furthermore, because of a very large number of detention facilities in each prefecture, the Boards can inspect a limited number of facilities for a year.

B3. The system to deal with appeals filed by detainees lacks effectiveness in terms of separating functions of investigation and detention. This is because only “Filing a Complaint” is permitted among three kinds of the system for appeals to file a complaint with regard to separating functions of investigation and detention. Neither the Public Safety Commissions of each prefecture nor even third parties other than police inspect handling of such appeals.

B4. With regard to each item of the specific measures listed in the report, only internal “instructions” are given when necessary, and sanctions for non-compliance are not provided.

”Request to consider discontinuing the interrogation” just literally means asking for considering discontinuance of interrogation, and has no legal force.

Furthermore, with regard to transfer duties by investigators, although the investigators

who are in charge of a suspect are only prohibited from transfer of that suspect, they are not prohibited from transferring other suspects (please refer to C. below)

B5. Besides the above, no new measures have been adopted to separate functions of investigation and detention.

C. Laws pertaining to separating functions of investigation and detention

Article 16.3 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that a detention officer shall not be engaged in criminal investigations related to such a detainee that is detained in the detention facility of the detention officer.

There are no other provisions but this article with regards to separating functions of investigation and detention. No provision prohibits investigators from engagement in detention duties.

If an investigator who is involved in investigation of a suspect takes charge of transfer of such suspect, the investigator will then become a detention officer upon the engagement of transfer duties, thereby being unable to be engaged in criminal investigations related to such suspect because of Article 16.3. The investigator, thus, cannot take charge of transfer of the suspect that the investigator is currently in charge of. However, police officers who belong to an investigation section are not legally banned from transfer and other detention services.

No legislative revisions have been made as recommended in Item 15 (a) of the previous concluding observations.

(b). Reduce the number of days detainees can be held in police custody to bring it in line with international minimum standards.

A. Explanation in the government report

The government report states that the period during which a detainee who is a suspect is arrested and detained at a detention facility is adequate and rational since strict judicial reviews are required and also the duration of detention is limited to a maximum of 23 days.

B. Problems found in the government reply

Although the concluding observations call on the government for reduction of the number of days detainees can be held in police custody because the maximum of 23 days detainees can be

held in police custody does not meet the international minimum standards, the government never thinks of the reduction at all, repeatedly stating in the report that the duration of 23 days is adequate and rational.

Holding a suspect in a police detention facility not in a detention center is for facilitating interrogations.

Police detention facilities are under control of the same organization as investigative authorities. Detention in such a police detention facility places greater stress on a suspect under interrogation than detention in a detention center.

For the purpose of obtaining confessions from interrogations under such stress, the government does not respond to the recommendation of the reduction of the number of days.

As a result, there is no end to the number of false confessions made against wills.

Please make a recommendation to the State Party on Item 15 of the previous concluding observations.

(c). Ensure that legal aid is made available for all detained persons from the moment of arrest, regardless of the categories of crimes with which they are charged.

A. Explanation in the government report

The government report merely gives description that the Code of Criminal Procedure guarantees the right for all suspects to obtain defense counsel, that the system was introduced whereby a court-appointed counsel is assigned, and that partial amendment was made in May 2009 for cases covered by the system to be expanded to the extent of necessary defense cases.

B. Problems found in the government reply

As explained in the government report, it is true that the Code of Criminal Procedure guarantees the right for all suspects to obtain defense counsel, but whether assistance from a lawyer can be actually gained is a separate issue.

Evidently, since May 2009, a court-appointed counsel can be assigned in cases where a suspect's punishment is the death penalty, life imprisonment with or without labor or imprisonment with or without labor for a maximum term of more than three years. However, this has not been expanded to all cases yet. Therefore, not all suspects are able to access to legal assistance, regardless of the categories of crimes with which they are charged.

The Subcommittee on the Criminal Justice System for a New Era under the Legislative Council of the Ministry of Justice, an advisory council of the Minister of Justice, started its deliberation in 2011, and, in the Fundamental Policy of a New Criminal Justice System Based on the Current Era (the “Fundamental Policy”) compiled in January 2013, decided to examine in detail the coverage of all cases where a suspect is detained for the system of court-appointed defense counsel.

However, access to a court-appointed counsel is made available not immediately after arrest, but only after a suspect taken to the court and decision of detention made by the court when 72 hours pass after arrest.

The Fundamental Policy also leaves room for examining the establishment of a system whereby legal aid is accessible at the time of arrest, but the system for obtaining a court-appointed counsel at the time of arrest is yet to be decided for detailed examination. There is no prospect for the establishment of such system yet.

As clearly shown above, it can hardly be said that legal aid has become available at the moment of arrest yet.

Please make a recommendation to the State Party to ensure that all detainees can access to court-appointed counsel at the moment of arrest, regardless of the categories of crimes with which they are charged, so that all detainees and their lawyers can promptly prepare for their defense.

(d). Ensure that detainees in pretrial detention have an effective access to defense counsel in practice and that defense counsel are present during interrogations.

A. Explanation in the government report

With regard to access to defense counsel, the government report only refers to Article 39 of the Code of Criminal Procedure which guarantees the right to an interview with a defense counsel, and, with regard to the presence of defense counsel during interrogations, merely indicates the problems seen from investigators.

B. Problems found in the government reply

B1. Access to defense counsels

As described in the government report, Article 39.1 of the Code of Criminal Procedure

theoretically ensures the right to an interview with a defense counsel. However, since Article 39.3 provides that investigative authorities such as public prosecutors may designate the date and time of the interview, a number of suits for damages are currently filed against the state over interference of the right to an interview with defense counsels. As shown above, the access is not guaranteed “anytime”, “immediately” and “on the spot”.

B2. Presence of defense counsels during interrogations

The presence of defense counsels during interrogations is not allowed at all. The problems listed in the government report are not backed up by verification. The Japanese government still maintains its total objection against realization of the presence of defense counsels during interrogations.

The above-mentioned Subcommittee on the Criminal Justice System for a New Era under the Legislative Council also discussed the issue of the presence of defense counsels during interrogations, but the investigation side strongly disagreed with the issue, insisting that the presence of defense counsels would interfere with interrogations. Since it would be difficult for the subcommittee to reach a conclusion, this issue was excluded from the agenda.

Please make a recommendation to the State Party to promptly establish a legal system to ensure that a defense counsel can be present during interrogations.

(e). Provide defence counsel access to all relevant materials in police records after indictment, in order to enable them to prepare the defence. In particular, please describe steps taken to address the concern at the power of prosecutors to decide what evidence to disclose upon indictment.

A. Explanation in the government report

The government report merely introduces the provision of the Code of Criminal Procedure which stipulates an opportunity provided for a defense counsel to inspect evidence for which a public prosecutor requests examination, and the 2004 revision of the Code of Criminal Procedure which expanded its disclosure relating to evidence of a certain category for cases subject to a pretrial arrangement proceeding.

B. Problems found in the government reply

Currently, no system ensures defense counsels can access to all relevant materials in police records after indictment. As mentioned in the government report, a provision to expand disclosure of evidence was added through the amendment of the Code of Criminal Procedure, but this only applies to cases subject to pretrial arrangement proceedings with reasons such as trials by lay judges. Furthermore, even in cases subject to pretrial arrangement proceedings, not all relevant materials in police records are accessible, and the disclosure is limited to evidence which meets conditions of disclosure set forth in the Code of Criminal Procedure. Because of this, in some cases, since public prosecutors refused disclosure of evidence which defense counsels requested in a pretrial arrangement proceeding, the matter had to be submitted for a court judgment, thereby resulting in a prolonged proceeding.

In the Fundamental Policy by the Subcommittee on the Criminal Justice System for a New Era under the Legislative Council as mentioned above, the subcommittee decided to discuss whether to introduce a system for issuing a list which includes such matters as a list of evidence public prosecutors hold, while the assumption still lies on the current system of limited disclosure. It also decided to examine whether to introduce a system for granting the right to request for conducting a pretrial arrangement proceeding to the accused or the counsel on the assumption of use of the procedures of disclosure of evidence.

However, in reality, defense counsels do not know what kind of evidence public prosecutors at all, and even a list of evidence that public prosecutors have is not disclosed. This situation falls far short of the previous recommendation by the Committee.

Please make a recommendation to the State Party to ensure a defense counsel can access to all relevant materials in police records, at least the list, after indictment.

(f). Ensure that persons in police custody have prompt access to appropriate medical care.
Please provide updated information on the number of cases detainees received medical services by doctors in 2007, 2008 and 2009.

A. Explanation in the government report

Detention facilities have no on-site medical care system. Neither physicians nor nurses work there.

Under such medical care system, some cases resulted in death from worsening of the conditions immediately after detention due to insufficient emergency care. Below are five death cases as far as reported from January 2012 to October 2012.

A1. Case 1

The Kanuma Police Station of Tochigi Prefecture failed to check with the doctor in charge about the condition of a then-30-year-old Chinese man in custody who died from diabetes at a detention unit of the police station in December 2011.

According to a section of detention administration, the police officer found the man unconscious at the detention unit at 8:15 in the morning of December 30, 2011. The man was taken to the hospital, but was confirmed dead that afternoon.

The Kanuma Police Station had known his diabetes, and provided him a medical examination by the police doctor. In case of chronic diseases, they usually check information on medical conditions and prescription of medication with a doctor in charge, but failed to do so about the man. (March 7, 2012 Jiji Press)

A2. Case 2

The Kikugawa Police Station of Shizuoka Prefecture announced on August 31, 2012, that a 62-year-old man, who was arrested and detained on suspicion of theft on August 20, 2012, died at a detention unit of the police station. The man was crouching down in the toilet and was unconscious at 11:00 in the morning of August 31. He was taken to the hospital by ambulance, but died at 12:45 that afternoon.

The man who was complaining of abdominal pain on the day of arrest took medicine for stomachache which the police station always had, and was expected to undergo a medical examination at an external hospital on the same day. The police station said that they took necessary actions, and that nothing was wrong with it, and is currently investigating the cause of the death. (September 1, 2012 Mainichi Shimbun)

The investigation by the Board of Visitors for Inspection of Police Custody of Shizuoka Prefecture found the death was caused by peritonitis. Peritonitis generally produces intense pain. It is suspected that the transfer to the external hospital was delayed.

A3. Case 3

A police officer of the Hannou Police Station of Saitama Prefecture found a 24-year-old man who was under detention lying unconscious at a detention unit of the police station at 4:30 in the morning of September 12, 2012. The man was taken to the hospital, but was confirmed dead about two hours later. The police station is investigating the cause of the

death in detail.

According to investigation by the Hannou Police Station, noticing a sound like vomiting in the time of sleep, the police officer rushed to the unit, and found the man lying with his mouth full of bubbles and not breathing. He had no external injury.

According to the police station, the man, who was complaining of lack of appetite three days before, was diagnosed as acute gastritis at a medical institution and was on medication. The police officer on duty checked his condition nearby approximately 30 minutes before his condition suddenly changed, but there was nothing in particular until shortly before that. (September 12, 2012 Sankei Shimbun)

A4. Case 4

The Iwata Police Station of Shizuoka Prefecture announced on September 23, 2012, that a 27-year-old woman in police custody at a detention unit of the police station from Kakegawa City who was charged with theft died. The cause of her death was reportedly an illness. According to the police station, the police officer was calling the woman at 3:00 in the afternoon of September 22, but since she did not respond to it, she was taken to the hospital and then was hospitalized.

The woman was arrested on suspicion of theft, and was under detention from August 2. Since she had symptoms such as vomiting after meals, the police station provided her a medical examination. The woman had no external injury, and there is a high possibility that she died of an illness. The detailed cause of her death is currently under investigation. (September 24, 2012 Mainichi Shimbun)

According to investigation by the Board of Visitors for Inspection of Police Custody of Shizuoka Prefecture, her weight was in the 20kg range due to anorexia. This poses a question as to reason to continue her detention.

A5. Case 5

A police officer of the Kizu Police Station found a 30-year-old accused man under detention unconscious in bed at 7:00 in the morning of October 4, 2012. He shortly died at the hospital he was taken to. According to the Kizu Police Station, he had suffered from heart disease, and had been taken to the hospital by ambulance three times in the past because of having an attack at the detention unit. Saying that it is likely that he died of the illness, the police station is hastily investigating the specific cause of the death. (October 4, 2012 Sankei Shimbun)

The common attribute seen in the above cases is that necessary medical treatment was not

provided at the right time even though their conditions required medical care.

Please make the following recommendation to the State Party.

1. Detention facilities should be also required to have full-time nurses by measures such as hiring a detention officer with a license of nursing. The government should examine placement of full-time doctors at a large-scale detention facility.
2. By enhancing a systematic cooperation with external medical institutions, a system should be established in order to prevent aggravation of diseases due to discontinuance of medical care, including termination of medication to be continued during a detention period.

(g). Adopt alternative measures to custodial ones at pretrial stage, as well as establish a pre-indictment bail system.

A. Explanation in the government report

The government's response was that since existing rules are sufficient, it finds it unnecessary to employ a pre-indictment bail system or any other alternatives to the existing measures.

B. Problems found in the government reply

B1. According to the government report, in principle, criminal investigation is done on a voluntary basis, and suspects are arrested and placed under the custody in extremely limited scopes.

Even though Article 197 of the Code of Criminal Procedure can be interpreted as a provision which sets forth the principle of voluntary investigation, in reality, it can hardly be said that detention is conducted in extremely limited scopes.

The suspects who were arrested accounts for 31.1% of all suspects, but excluding juridical persons, for cases disposed by public prosecutors (as for non-traffic penal code offenses and special act offenses excluding violations of road traffic related acts, juvenile cases are included) in 2011, but detention was requested for 93.1% of the suspects who were arrested. Taking into consideration that cases disposed by public prosecutors include minor ones, it can hardly be said that investigation is done on a voluntary basis.

B2. The government also insists that the arrest and detention of a suspect is conducted after

going through an advance review by a judge.

However, despite a slight increase seen in the number of rejection of detention requests made by public prosecutors in recent years, the rejection rate is still as low as 1.466% even in 2011.

Moreover, the government insists that a sufficient level of judicial review is conducted during a short pre-indictment detention period, and that there is also a release measure in cases where it is necessary.

The Code of Criminal Procedure provides that when the grounds or necessity of detention no longer exist, the court shall rescind the detention. It also stipulates that the court may, when it believes it to be appropriate, suspend the execution of detention. However, since a large number of requests are made to extend the period of detention and are easily accepted, many cases last up to 23 days from arrest to indictment, while very few cases of detention have been rescinded or suspended. The provisions are hardly utilized in practice.

- B3. In the light of the fact that once arrested and detained, a suspect is very likely to lose one's job which is a fundamental source of income, thus it is necessary to adopt alternative measures to custodial ones as well as to establish a pre-indictment bail system.

In the Fundamental Policy by the Subcommittee on the Criminal Justice System for a New Era under the Legislative Council as mentioned above, the subcommittee determined to examine whether to introduce an intermediate form of disposition between detention (custodial measure) and (no restriction on right to liberty).

The existing laws give only two choices: detention or not. Yet, in some cases, detention is not necessarily required while investigation on a voluntary basis which does not restrict liberty of actions at all may not be appropriate. Since detention should be used as the last resort, in those cases, it is necessary to introduce an intermediate form of system which can order requirements, including the specification of the residence and prohibition of contacts with particular persons and of access to particular places, and permits detention only in violation of those requirements.

Please make a recommendation to the State Party to adopt a system which takes an intermediate form of system between detention and non-restriction on liberty of actions, and to establish a pre-indictment bail system.
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3. The Committee and the Human Rights Committee expressed their deep concern at the large number of convictions in criminal trials based primarily on confessions, in particular in light of the lack of effective judicial control over the use of pretrial detention, as well as at the disproportionately high number of convictions over acquittals (CAT/C/JPN/CO/1, para. 16 and CCPR/C/JPN/CO/5, para. 19). Please provide information on measures taken by the State party to address these concerns.

A. Explanation in the government report

The response by the Japanese government shows it is not aware of any issues regarding the current conditions.

B. Problems found in the government reply

Despite the deep concern expressed in the previous concluding observations by the Committee and also by the Human Rights Committee, to date, no measures have not been taken at all. Thus, nothing has been changed in the conditions described in either of the concluding observations.

As the current conditions remain just as described in Paragraph 2(g) and 14(a) and (b), no measures have been taken to address the concern expressed by either of the committees.

Please make a recommendation to the State Party on Paragraph 16 of the previous concluding observations by the Committee and also as Paragraph 5 of the concluding observations by the Human Rights Committee.

4. In light of the Committee's previous concluding observations, please provide information on measures taken to guarantee the independence of external monitoring of police custody (CAT/C/JPN/CO/1, para. 15). In this respect, please elaborate on the composition and functioning of the Board of Visitors for Inspection of Police Custody.

A. Explanation in the government report

The government report provides information on: the composition and activities of the Boards of Visitors for Inspection of Police Custody; the contents of the opinions the Boards of Visitors for Inspection of Police Custody provided to the detention services managers; further improvement of the treatment of detainees through the measures taken by the detention

services managers in response to such opinions; availability of these opinions and the measures that have been taken by the detention services managers for public view on the website of each Prefectural Police Headquarters.

B. Problems found in the government reply

B1. Some Boards of Visitors for Inspection of Police Custody do not include an attorney recommended by bar associations.

The government report states that out of the 51 Boards of Visitors for Inspection of Police Custody nationwide, all Boards of Visitors for Inspection of Police Custody have had an attorney as a member.

However, since June 2007 when the Boards of Visitors for Inspection of Police Custody were established, it was only in fiscal 2010 that all Boards of Visitors for Inspection of Police Custody had an attorney as a member.

In fiscal 2011, receiving a request for recommendation of a lawyer, the Fukushima Bar Association recommended a lawyer as a member, but the Public Safety Commissions of Fukushima Prefecture did not appoint that lawyer, and, consequently, the Board of Visitors for Inspection of Police Custody of Fukushima Prefecture did not include a lawyer. In fiscal 2012, the Fukushima Bar Association did not even receive the request of the recommendation, and thus the Board of Visitors for Inspection of Police Custody of Fukushima Prefecture continues to have no lawyer as its member.

It is essential to have a lawyer who is experienced in practical affairs as a member of the Board of Visitors for Inspection of Police Custody in order to make a thorough inspection and to provide a statement of opinions pertaining to separating the functions of investigation and detention for which external monitoring is the most requisite. In addition, it is absolutely necessary to have a member recommended by bar associations in order to make the Boards of Visitors for Inspection of Police Custody a third-party board in a true sense, excluding arbitrary selection of members.

B2. Details of activities and opinions and way of public announcement

In fact, the activities such as inspection and interviews and provision of a statement of opinions by the Boards of Visitors for Inspection of Police Custody help improvement of treatment of detainees. However, some Boards of Visitors for Inspection of Police Custody fail to play the function of an external monitoring as a third party by doing such things as providing opinions from a standpoint of police. It is difficult to say that the

Boards of Visitors for Inspection of Police Custody fully functions as a whole.

One of the reasons for this lies in the fact that not all the Boards of Visitors for Inspection of Police Custody include a lawyer recommended by bar association. Another reason is an insufficient number of board members relative to the number of the detention facilities to be inspected. As a result, the board members have to spend their time inspecting detention facilities, and thus fall short of having discussion by holding a board meeting, reviewing files of documents and making full use of interviews relating to items which are hard to observe only through inspection of facilities.

The opinions provided by the Boards of Visitors for Inspection of Police Custody and the measures taken by the detention services managers are available for public view on the website of each Prefectural Police Headquarters, but it is very difficult to find some of them on the website. Additionally, there is no record available which collects a nationwide outline of the opinions and the measures.

Please make the same recommendation to the State Party on as Paragraph 15 of the previous concluding observations once again.

5. Please provide updated information on the State party's position on adopting an immediate moratorium on executions. Furthermore, please indicate if the following procedural reforms have been adopted or are under formal consideration to be adopted.

A. Explanation in the government report

The government clearly refuses to adopt an immediate moratorium on executions.

B. Problems found in the government reply

The government report states as one of the reasons for its refusal that “the majority of citizens in Japan consider that the death penalty is unavoidable for extremely malicious/brutal crimes”. However, since the public opinion poll conducted in 2009 which the government uses as the basis questions whether “the death penalty should be avoided unconditionally” or “in some cases, the death penalty cannot be avoided”, the methodology of this survey is inappropriate. Furthermore, the government fails to provide the basic information on the death penalty to the public. Additionally, stating the inhumanity in cases of resumption of suspended execution after the moratorium, the government denies inhumanity of making death row inmates live in

daily fear of execution without notifying the date of execution.

(a). Is the power of pardon, commutation and reprieve genuinely available to those sentenced to death? How many of such cases have taken place since the consideration of the State party's previous report.

A. Explanation in the government report

The government merely gives explanation of the system of a pardon, and fails to answer the question by the Committee directly.

B. Problems found in the government reply

There has been no case in which a person sentenced to death was granted a pardon surely since 2007 as mentioned in the government report and also ever since 1975 when there was the last case in which a pardon was granted. This fact shows that in practice, no pardon or commutation is granted.

The government reported that it is "not aware" of any cases in which an execution was suspended for a person sentenced to death. However, the execution is suspended by order of the Minister of Justice, and it is the matter of whether there was such case or not. Thus, there is no chance of the government being unable to ascertain the fact. Although it is not clear whether it is due to suspension of executions, there are alleged cases of de facto suspension of executions for the reason of insanity in which the death penalty has not been executed for a long time despite not having an appeal for a retrial or a request for pardon.

(b). Is a right to appeal mandatory for all capital cases?

A. Explanation in the government report

The government report states that although there is no mandatory appeal system for death sentences, the right to appeal is guaranteed.

B. Problems found in the government reply

As of October 2012, the death sentence was already handed down to 15 cases in the trials by lay judges (the lay judge system was established in 2009), three of which became final and

binding. All of these three cases became final and binding when the defendants withdrew an appeal. Since 1993, the death sentence of 30% and over of those executed became final and binding without the right to appeal being exercised to the end. Given this fact, it cannot be said that the above-mentioned right is practically guaranteed. Unless the mandatory appeal system is introduced, there is a risk this tendency will continue.

(c). Does a retrial procedure or a request for pardon lead to suspension of the execution?
Please elaborate on the status and content of the proposal launched by the Minister of Justice in September 2007 on streamlining procedures regarding executions. Would this allow for death row inmates to be automatically executed within six months of the end of their appeals process?

A. Explanation in the government report

According to the government report, although there is no system whereby a request for a retrial, an order for commencement of retrial, or an application for a pardon has had the effect of suspending an execution, where a request for a retrial is filed, the public prosecutor may decide to suspend the execution at his/her own discretion, and in addition, the court may also decide to suspend the execution at its own discretion when an order for the commencement of a retrial has been rendered. It also explains that the proposal launched by the Minister of Justice in September 2007 should not be taken to mean that the current law should be revised. The government avoids giving a clear answer as to the execution within six months after the judgment became final and binding, stating that the order of the execution of the death penalty is made after careful examination.

B. Problems found in the government reply

The judicial system of a retrial procedure and of suspension of the execution of the death sentence is explained just as in the government report. In reality, however, there has been no case in which where upon a request filed for a retrial by a person whose death sentence became final and binding, the public prosecutor decided to suspend the execution. Additionally, no order for commencement of retrial of cases involving the death sentence had been made for a long time since 1980s when four orders were made. Since then, the Nagoya High Court decided to commence a retrial of the Nabari poisoned wine case in 2005, but because another court rescinded the commencement of the retrial, the case is still pending.

The government's official view is that it takes Article 475.2 of the Code of Criminal Procedure which sets forth the execution within six months of the day on which the judgment becomes final and binding as a discretionary provision. Thus, it is clear that the order of the execution within six months is not mandatory.

(d). Is strict confidentiality of all meetings between death row inmates and their lawyers concerning retrial ensured?

A. Explanation in the government report

The government's response is that a staff member of the penal institution does not attend at 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, and that for visits by a lawyer to an inmate sentenced to death for whom an order of commencement of a retrial has yet to become final and binding, the warden of each penal institution makes determinations, including omitting the attendance of a staff member, in an appropriate manner on specific individual cases.

B. Problems found in the government reply

As mentioned in (c) above, there has been no case involving the death sentence in which the court's order of commencement of a retrial has become final and binding for more than 20 years in the past.

Even though the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that the attendance and other things do not take place when "there is a circumstance to be concluded that not having the attendance or the sound or video recording is appropriate in order to protect such legitimate interest of the inmate sentenced to death as arrangements for a lawsuit, and if such conclusion is deemed appropriate", the principle is a staff member of the penal institution attends even at visits by a retrial defense attorney to an inmate sentenced to death whose judgment became final and binding, and omitting the attendance of a staff member is an exception.

Please make a recommendation to the State Party to ensure that the State Party faithfully achieves the recommendation by the Committee in the first consideration of the report once

again.

6. Please indicate steps taken by the State party to establish an independent national human rights institution, in accordance with the Paris Principles.

A. Explanation in the government report

In September 2012, the Cabinet meeting approved the bill of the establishment of a human rights commission, thereby releasing the bill. This bill is praiseworthy for some improvement compared to the Human Rights Protection Bill submitted to the Diet in 2002.

JFBA strongly opposed to the Human Rights Protection Bill submitted in 2002 due to such problems as violation of freedom of speech and expression, and the bill was abandoned.

In 2008 when the UN Human Rights Council gave the recommendation to the Japanese government relating to the establishment of a national human rights institution, the government announced its intention to accept the follow-up.

It is laudable that the Japanese government fulfilled this announcement and actually progressed to the Cabinet decision of the bill.

However, the bill still has the problems to be solved, especially the one relating to independence of the human rights commission, as described below.

It is worthy of praise that the human rights commission is to be created as an administrative committee, but the concept of the regional offices is vague. It considerably lacks its independence, since personnel of the Legal Affairs Bureau under the Ministry of Justice are to be concurrently in charge of administration of the human rights commission. The bill is not clear in terms of a remedy system relating to human rights infringement by public authority.

B. Problems found in the government reply

B1. Eight or more regional offices of the human rights commission should be established nationwide, and the number of staff and budget should be sufficiently ensured as well.

B2. In case those in regional offices of the Legal Affairs Bureau under the Ministry of Justice are concurrently in charge of administration of the human rights commission, such personnel should be composed as an external institution of the Legal Affairs Bureau.

B3. The regional offices mentioned in (1) should be in charge of cases of human rights infringement by public authority.

B4. The regional offices of the human rights commission should provide guidance and

supervision of the personnel described in (2) who perform services of the human rights commission in each prefecture.

- B5. The obligation should be specified to ensure a public office cooperates in investigation by the human rights commission.
- B6. It should be clearly stated that the redress area includes the violation of the human rights guaranteed by international human rights conventions.

Please make a recommendation to revise the bill to maintain the independence of the human rights commission, and immediately establish a national human rights institution.

Article 3

- 7. With reference to the Committee's previous concluding observations and the request for clarification sent by the Rapporteur for Follow-up to Conclusions and Recommendations, please provide updated information on steps taken by the State party to incorporate the principle of nonrefoulement which constitutes the fundament of article 3 of the Convention into domestic legislation so as to ensure that asylum-seekers are not returned to countries where there are substantial grounds for believing that the individual to be returned would be in danger of being subjected to torture (CAT/C/JPN/CO/1, para. 14).

A. Explanation in the government report

Article 53 of the Immigration Control and Refugee Recognition Act ("ICRRA") which the government mentions in the report is not an effective system. Reasons are given below.

B. Problems found in the government reply

B1. Lack of the protection system

Article 53 of ICRRA sets forth the criterion of the destination of deportation given in a written deportation order upon determination of not granting a permission to stay in Japan. In other words, the provision is not relating to judgment of whether or not to permit to stay in Japan.

The judgment of whether or not to permit to stay in Japan is based on Article 61-2-2.2 of ICRRA in case a foreign national is a refugee recognition applicant, and on Article 50 of ICRRA for others. Neither of the provisions stipulates examination to be conducted as to whether there are substantial grounds for believing that the individual to be returned

would be in danger of being subjected to torture in a country of origin. In other words, the permission to stay is not guaranteed even for those who have substantial grounds for believing that the individual to be returned would be in danger of being subjected to torture in a country of origin.

Article 3 of the Convention is not adopted even as criteria of the refugee recognition procedures. (Please refer to Answer 4 to Question 9 (b)).

B2. Lack of the right to appeal

Article 53 of ICRRA does not recognize the right of a foreign national to apply for examination of the protection in accordance with Article 3 of the Convention. Application of Article 3 of ICRRA is left to the authorities.

The guidelines for examination of violations (released on March 2009), which was given by the Ministry of Justice as the code of conduct for officers in charge of the deportation procedures, do not stipulate any instructions of investigation and questioning in relating to danger of being subjected to torture in a country of origin.

B3. Lack of procedural guarantees

When the authorities examine the applicability of Article 3 of the Convention in accordance with Article 53 of ICRRA, there are no procedural guarantees for a foreign national to be examined. In other words, there is no system for the following matters: making an appeal through a representative; legal aid to obtain a representative; producing evidence by the foreign national or through its representative; the examining authorities' hearing from the foreign national; disclosure of documents used as grounds of the authorities' decisions. The examining authorities are composed of immigration officers with the power to decide deportation, and, thus, the examination totally lacks independence.

B4. Up to the present since the revision of ICRRA, there is no information on cases to which Article 53.3.2 of ICRRA applied, and thereby it is assumed there has been no such case.

Please make the following recommendations to the State Party.:

1. In the procedures of both refugee recognition and deportation, Article 3 of the Convention should be applied as criteria of examining whether to permit residence in Japan. Legal amendment should be made to clarify treatment of cases to which the applicability of the provision is determined.
2. In the examination of the above matters and also of the designation of deportation based on Article 53.3.2 of ICRRA, the government should ensure: the right to obtain a representative; legal aid

for obtaining a representative; guarantee of means and opportunities to produce evidence; establishment of procedural guarantees in such matters as disclosure of evidence; independence of the examining authorities.

8. Please indicate any requests for extradition received and provide detailed information on all cases of extradition, return or expulsion that have taken place since the previous report.

A. Information on cases of extradition, return and expulsion

A1. Case of death in the process of deportation and caution taken for deportation since then

In March 22, 2010, a man of Ghanaian nationality, then aged 45, died when immigration officers were controlling him in the process of deportation.

Although the man, who got married to a Japanese woman after overstaying, applied for an appropriate permission of residence with the Immigration Bureau, it rejected his application, thereby starting the deportation against his will.

The authorities announced the cause of his death was unknown.

The Public Prosecutors Office investigated the case on suspicion of assault by public officers which caused the death, but decided not to prosecute in July 2012. In fact, however, both the Public Prosecutors Office and the Immigration Bureau belong to the Ministry of Justice.

In the process of deportation, the immigration officers used a towel and a banding band of which either laws or internal regulations do not give grounds for use in order to detain the man. Although the immigration officers placed handcuffs on his legs, the internal regulations prohibited use of handcuffs on any other part of the body except for wrists.

His bereaved family requested disclosure of the record relating to the case to the Immigration Bureau, but the Immigration Bureau did not disclose the records although the court took compulsory measures (an order of preservation of evidence).

His bereaved family filed a suit for compensations, insisting the excessive use of control by the immigration officers resulted in his death. The suit is pending.

A2. Since the case mentioned above, neither investigation of the case by an independent agency nor preventive measures are under consideration. In addition, there is no information that the officers in charge of deportation were subject to disciplinary actions.

Please make the following recommendations to the State Party.

1. Investigation by a third-party agency and preventive measures should be considered in relation to the case of the death in the process of deportation in March 2010.
2. An independent authority from the Immigration Bureau should be promptly established to secondarily examine complaints relating to treatments in the process of deportation.
3. Until the above recommendations are achieved, the duties of the Immigration Detention Facilities Visiting Committee should include supervision of exercise of any physical force in the process of deportation.
4. Use of restraining devices and means and criterion of physical force in the process of deportation should be legislated. Excessive use of physical force should be prohibited.

9.

- (a). Please provide detailed information on steps taken to ensure due process in asylum applications and deportations proceedings, including access to counsel, legal aid and an interpreter.

A. Application process

A1. Unless it is acknowledged that an applicant is unable to prepare for a written application due to reasons such as illiteracy and physical disorder, only oral expression of the intention to seek asylum does not make them considered as a refugee recognition applicant without preparing for and submitting a written application in accordance with laws and regulations.

A2. No laws, regulations or internal regulations provide the obligation for public officers to immediately issue an Application for Recognition of Refugee Status for those who orally express their intention to seek asylum.

In the actual practice, when a foreign national expresses words of seeking refugee recognition at the airport, officers of the Immigration Bureau terminate the examination for landing permission, and order such foreign national to depart from Japan, and only issue an Application for Recognition of Refugee Status if the foreign national does not leave Japan.

A mother and a child from Congo who arrived at the Kansai International Airport on May

25, 2009, were orally told by an officer of the Immigration Bureau that the Japanese government rejected their application, and were ordered to depart from Japan on June 3, 2009. The mother was thrown into confusion. The second order to depart from Japan was issued on June 4, and the officer of the Immigration Bureau told them that the mother would be arrested and put into a prison after removing her from her daughter if they did not take a flight for Bangkok next day. The Immigration Bureau did not provide them an Application for Recognition of Refugee Status until an attorney had an interview with them on the same day.

- A3. The system for landing permission for temporary refuge is available, but this examination does not provide: the right to obtain a representative; the right to appeal against the decision of rejection; guaranteed means and opportunities to produce evidence; the disclosure system of documents that the authorities keep. Decision is made within a few days after the application. Under such conditions, the system is extremely disadvantageous for applicants, and, thus, very few cases are allowed for the landing permission for temporary refuge.

Some foreign nationals who expressed the words of seeking asylum had to leave for their home countries without applying for refugee recognition, giving up refuge upon receiving the order to depart from Japan as a result of the examination for landing permission.

B. Lack of improvement in the system

No improvements have been made against: exclusion of the refugee recognition procedures from the application of the act on legal assistance; no permission to obtain a representative in the primary examination of the refugee recognition procedures although the right to obtain a representative is granted in filing an appeal; requirement of translation attached to documents an applicant submits; no assurance of qualifications of interpreters that the examining authorities provide and cases in which some interpreters were unqualified.

C. Insufficient system of refugee recognition for children without guardians

- C1. In the refugee recognition procedures for minors, there are no other provisions which take being minors into consideration, except for Article 55.3 of the Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act which provides that when a foreign national is under 16 years of age, the father, mother, spouse and relatives may file

the application on behalf of the foreign national.

C2. Since those other than relatives may not file the application on behalf of asylum-seeking minors who are even under 16 years of age, it is difficult for them to apply for refugee status without the relatives who can cooperate. In addition, minors who are 16 years of age and older who seek asylum may not file an application through a representative.

No system ensures assignment of a representative and a helper in case a minor who seeks asylum has no legal guardian, and the Immigration Bureau does not take such measures, either.

D. Lack of record and verification of signs of torture

Even though refugee recognition applicants claim that they have been tortured and have physical signs of such torture, no doctor examines the physical signs of torture. No system is introduced to medically verify the claims by the refugee recognition applicants with the signs.

Please make the following recommendations to the State Party.

1. Officers of the Immigration Bureau should be obliged to promptly provide instructions on the refugee recognition procedures and to issue an application form for a foreign national who expresses the intention to seek asylum at the airport.
2. For refugee recognition applicants who are minors, the government should establish procedures which are appropriate for minors, including below.
In case a legal guardian is not in Japan, a substitute for a legal guardian or a representative should be assigned.
3. A system should be established to medically examine signs of torture.
4. The government should ensure due process in the procedures of asylum seeking and deportation, including access to lawyers, legal assistance and interpreters.

(b). Please describe measures taken to establish an entirely independent appeal mechanism to review decisions by immigration officials. In this respect, please indicate if refugee examination counselors are independently appointed and have the power to issue binding decisions.

A. Explanation in the government report

According to the Government report, third-party refugee examination counselors are appointed among candidates who “are of noble character,” “can make fair judgments about appeals,” and who can take a neutral position on various matters, such as legal professionals, academic experts, and personnel in the NGO.

However, those who are experts in relevant fields do not necessarily have expertise for the asylum processing.

A refugee examination counselor executes their duty on a part-time basis, provided 22,000yen a month for a reward, and takes care of one case per week. Training by UNHCR is provided only for a short period, and there is not sufficient training for the counselors. Some counselors over-estimate their knowledge and experience in their expertise and do not respect the knowledge offered by UNHCR. It is hard to improve their professional standard with this attitude.

B. The Level of Independence and Neutrality of the Refugee Examination Counselor

B1. There have been no measures to improve the independence of the refugee examination counselor system.

B2. In fact, some evidence shows that level of neutrality has deteriorated.

When teams of counselors have consultations, refugee inquirer, and personnel from the immigration authority have often been involved with the consultations, and made comments in the process.

It has been observed often that refugee inquirers make a report on behalf of the refugee examination counselors when they have consultations about the cases.

The Ministry of Justice review the cases after the submission of the report from the refugee examination counselors, and in many cases, asylum seekers are not informed of the results of their appeal for more than one year after the decision among refugee examination counselors was made. It is highly suspected that notice about their positive asylum decision has been delayed.

B3. Inquiry Capacity of Refugee Examination Counselor

The country of origin information that counselors base their judgment upon is limited to the data offered by the refugee inquirer and asylum seekers, and no independent investigative body does any further research. Legal professionals are rarely designated as an agent for an asylum-seeker, and in most cases, counselors make their judgment based on the information provided by the immigration authority.

An asylum seeker and their agent are not informed of the contents of the information provided to the counselors regarding their appeal.

C. The Legal Binding Force of the Decision Made by the Counselors

While refugee examination counselors make an advisory opinion to grant special permission for residence (complementary form of protection) to an asylum seeker, the Minister of Justice makes a different judgment with regard to these appeals in some cases.

D. Criteria for Complementary Form of Protection

Special permission for residence (Immigration Law, Article 61 Clause 2-2) which functions as a complementary form of protection does not have a criteria for judgment in legislation. Therefore, the review of the case to examine whether the case comply with Article 3 of the Convention is not required.

Review for special permission for residence is guaranteed at the initial screening for the application for a refugee status, but when a foreign national has an objection to the denial of recognition of their refugee status, whether there is a review or not shall be at the discretion of the refugee examination counselor and Minister of Law. At the initial screening, petitioners do not have the right to designate their agents, thus the review process for special permission for residence put them in a disadvantaged position.

E. Decrease in the rates of those who have been granted asylum

The number of foreign nationals who have been given refugee status was 21 in 2011, and seven of them were given refugee status through the initial screening, and 14 of them were given refugee status after the review of their objection to the denial of recognition of their refugee status. The ratio of those who were given refugee status among those who have made an application, including cases withdrawn during the initial screening was 0.33%, and recorded one of the lowest ratios.

The ratio of those who were given refugee status among those who have made an objection to the denial of recognition of their refugee status, including cases withdrawn during the review of their objection was 1.6%, and recorded one of the lowest figures since the third-party refugee examination counselor system was introduced in 2005.

As for the country of origin, a disproportionate number of people from Myanmar has been given refugee status, which account for more than 80% of those who have been given refugee status, and it is almost impossible for people with other nationalities to be granted recognition

of refugee status.

Please make the following recommendations to the State Party.

1. The State Party should enhance training conducted by UNHCR in order to improve the professional standard of refugee examination counselors.
2. Refugee inquirer and other personnel from the immigration authority should not be present and should not make a comment in the consultation among refugee examination counselors.
3. A country of origin information provided to refugee examination counselors should be given from an independent body, and should be disclosed to the petitioners themselves.
4. Opinion for special permission for residence submitted by refugee examination counselors should be respected.
5. In regard to the procedure of examining refugee status, the review must be conducted based on the Article 3 of the Convention when determining whether or not the petitioner is given resident status. In addition, legal reform is required to clarify how cases shall be treated when they meet the criteria provided in the Article 3 of the Convention.
6. In the review process, the following should be ensured: the rights to designate the agent; legal assistance for the designation of the agent; the method and opportunity to present argument and evidence; implementation of the system for the disclosure of the evidence; independence of the examination body.

(c). Please provide information on steps taken to guarantee access to judicial review for all asylum-seekers. In this respect, please indicate steps taken to address the reports of rejected asylum-seekers being deported immediately before they could submit an appeal against the negative asylum decision.

A. Explanation in the government report

The government report declares that those applicants whose applications for recognition of refugee status have been denied may file an objection to the decision, thus their rights for a fair trial and legal process is given due consideration. It is also claimed that the measure of forced deportation is only taken after having followed all the necessary procedures over a reasonable period of time. However, there is no legislation to support this.

B. Problems found in the government reply

B1.

The Ministry of Justice and JFBA reached an agreement in 2011 that the decision on forced deportation will be informed two months before the deportation where cases are undertaken by the attorney. However, there is no guarantee that the decision will be informed where cases are not undertaken by the attorney.

B2. Exclusion from Legal Aid Act

Administrative procedures for recognition of refugee status and the cases regarding non-regular stay of foreign nationals are excluded from the scope of legal assistance in the Legal Aid Act. As a matter of fact, most applicants for the recognition of refugee status have no designated agent.

Please make following recommendations to the State Party.

1. The Legal Aid Act should be amended to expand their scope to include administrative procedure and cases regarding non-regular stay of foreign nationals.
2. When a foreign national's application for the recognition of refugee status is denied, and they are to be deported during the period when they can still file an objection, they should be informed of this decision even in cases where attorney has not been designated as an agent.

(d). Please indicate if the State party has made public the information concerning the requirement for detention after the issuance of a written deportation order.

A. Explanation in the government report

A1. The Government report states that "The Immigration Act principally requires detention," "The purpose of detention at the Immigration Centre is to prohibit residence and activity in Japan." However, there is no such provision in the legislation. It should be interpreted that there must be certain situations that require detention. In addition, it is not appropriate to detain foreign nationals for the purpose of prohibiting their residence and any activity in Japan, as it could lead to a detention of a foreign national that lasts an unreasonably long period of time.

A2. The Government report states that it is difficult to set a unified standard for provisional

release. However, as there are many immigration laws that set forth a certain limit for the detention period, it is not appropriate if the Government fails to set any standard for this period.

The Government report also makes a list of consideration for deciding whether provisional release will be granted or not. Nevertheless, “escape, or a potential risk for violation of conditions given at the time of provisional release” is merely one of the constituents of the matter of consideration. That is, even when there is no “potential for violation of the conditions given at the time of provisional release,” the detention of the person concerned may continue, and this is problematic.

B. Problems found in the government reply

- B1. There is no investigation as to whether there is a potential for the escape of a detainee before the detention. They are placed at the detention centre even when there is no potential risk for escape.
- B2. When an application for provisional release is denied, it is merely mentioned that “there is no ground for granting the provisional release,” and no concrete reasons for their decisions are provided.

Please make the following recommendations to the State Party.

- 1. The State Party should set a limit for the period of stay at the detention centre after forced deportation order is issued.
- 2. If there is no reason that requires the detention of a person, such as potential risk for escape, they should not be detained after the forced deportation order is issued.
- 3. When decisions are made regarding the application for the provisional release, concrete reasons for the decisions should be provided.

Articles 5 and 7

10. Please indicate if the State party exercises universal jurisdiction for acts of torture. Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaging its own prosecution as a result. If so, please provide information on the status and outcome of

such proceedings.

A. Explanation in the government report

There is no direct reply to this question regarding the universal jurisdiction for acts of torture. It is stated in the government report that there is no case where the State Party has rejected a request for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaging in its own prosecution as a result. However, the State Party has not replied whether there was any request for extradition for such a case.

B. Information about the actual condition

B1. There is no provision which allows universal jurisdiction for acts of torture in the Penal Code in Japan. The article that corresponds to universal jurisdiction in the Penal Code is the provision for crimes committed outside Japan in Article 2. However, a crime equivalent to an act of torture is not included as a crime under this article. Provisions for punishment for crimes equivalent to acts of torture are limited to Crimes Committed within Japan (Article 1), and crimes committed by Japanese nationals (Article 3), crimes committed against Japanese nationals (Article 3-2), and crimes committed by Japanese public officials outside Japan (Article 4).

B2. As explained in the Government report, the Penal Code in Japan shall also apply to anyone who commits outside the territory of Japan those crimes prescribed under the Penal Code which are governed by a treaty even if committed outside the territory of Japan (Article 4-2), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is included among these Treaties. Nevertheless, there is no provision in the Penal Code to penalize the act of torture itself, doubt still remains as to whether the act is punishable according to the provisions in the Conventions in its practical application.

Please make a recommendation to the State Party to fully implement the obligations stipulated in Article 5 and Article 7 of the Convention.

Article 10

11. In light of the Committee's previous concluding observations, please provide information on steps taken to ensure that all materials related to education curriculum of law

enforcement personnel, and in particular investigators, are in conformity with the Convention and are made public (CAT/C/JPN/CO/1, para. 22).

A. Explanation in the government report

It is claimed that human rights education is promoted actively at the police academy and on-the-job training at the police department, and various human rights issues around the world is part of its education programme. It is also explained that human rights education is conducted in accordance with Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Government publicizes the related materials on educational curriculum for police officers at the National Police Agency website, and for public prosecutors at the Ministry of Law website.

B. Problems found in the government reply

Part of the human rights training has been conducted in corporation with a bar association and specialists in international human rights law, and it is acknowledged that some part of the programmes can be highly valued in terms of their contents. However, there is some room for improvement as a whole as described in the following.

Information on the educational programme for police officers publicized on the National Police Agency website merely declares that they have trainings for police officers, but the content of the education has not been released, and the specifics of what programmes are conducted at what stage are unknown.

In regard to the information on educational programme for public prosecutors, the content of the education has not been released, and the specifics of the program are unknown.

Trainings are conducted by the officials within the institution rather than inviting a visiting lecturer, mainly focusing on a classroom lecture, and most of the trainings are not based either on behavioural science nor social psychology.

It is inappropriately mentioned during the training for police officers that “if you make a mistake of behaving violently toward the inmate, you will lose your job, so be careful not to be affected by temporary emotions.”

C. Awareness of Human Rights among Law Enforcement Officials

83 police officers and police officials were disciplined in the first half of 2012. It was the worst in number of cases for the first half of the year, and 27 more compared with previous year. A number of successive scandals take place at the police stations across the country.

- C1. Two murders of women in Nagasaki prefecture in December, 2011 took place when Police officers from a Chiba Narashino station postponed investigating a suspected case of an assault and stalking.
- C2. A police officer at Osaka Prefectural station was arrested for quasi rape when he assaulted a woman after making her to drink alcohol.
- C3. A sexual harassment case of a female police officer by several male police officers was brought to light in 2012.

Such successive cases of violence against women should not be considered merely as lack of understanding, but rather human rights violation against women, and it is clear that awareness for human rights is not sufficient among law enforcement officials.

Please make the following recommendations to the State Party.

1. The State Party should ensure that public prosecutors have lectures and training to let them fully acquaint themselves with the significance of human rights with special focus on torture, children's rights and women's rights. The State Party should also ensure that all the materials related to educational curriculum on human rights are released.
2. The State Party should release the contents of the training, syllabus, and curriculum of the training.
3. It is required to improve the training programmes on human rights so that it includes perspectives from behavioural science and social psychology, as well as role-play to make the training more effective.
4. The State Party should set up a Committee formed by external examiners, who continually review the contents of the training.

12.

- (a). Please provide information on further educational programmes developed and implemented by the State party to ensure that all categories of law enforcement personnel, as well as judges, prosecutors and immigration officials are regularly trained in the human rights implications of their work, with a particular focus on the provisions of the Convention and on prevention of torture as well as on the rights of children and women in this respect.

A. Explanation in the government report

The government report states that human rights education has been conducted for law enforcement officials with a particular focus on the provision of Convention or prevention of torture as well as on the rights of children and women. Nevertheless, it is not clear what measures are taken to ensure that they are regularly trained, and the specifics of the educational programme have not been released.

B. Human rights training mentioned in the government report are not sufficient from the point of view of preventing torture.

There was a case where A (a teacher) chased and grabbed the appellee of the final appeal (pupil), and shouted at the boy, saying “Never do it again,” grabbing boy’s chest with his right hand and pushing the boy against the wall. In regard to this case, the Supreme Court 3rd Petit Court ruled that “it is a direct exercise of force against the pupil, yet it has been conducted for the purpose of education.... It is not to say that there was nothing inappropriate, however, considering its objective, manner of its force exercised, and duration of time, it is considered that it remained within the parameter of educational discipline, and does not correspond to corporal punishment defined in the provision of the Article 11 of the Fundamental Law of Education”. Thus, the State Party allows direct exercise of power.

The background to this ruling is the lack of sufficient understanding about the prevention of torture and so forth among judges.

The assistant judge was arrested on suspicion of filming up a woman's skirt on a train in August, 2012.

Training currently conducted is not sufficient from the point of view of human rights education and prevention of torture.

Please make a recommendation to the State Party on further educational programmes developed and implemented by the State party to ensure that all categories of law enforcement personnel, as well as judges, prosecutors and immigration officials are regularly trained in the human rights implications of their work, with a particular focus on the provisions of the Convention and on prevention of torture as well as on the rights of children and women in this respect. In addition, please make a recommendation to the State Party to ensure that all documents related to educational programme are released.

(b). What measures have been undertaken to ensure that all relevant personnel receive specific training on how to identify signs of torture and ill-treatment? Please indicate whether the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) effectively has become an integral part of the training provided to physicians? How many physicians have received such training?

A. Problems with the Government Report

It is problematic that the contents of the training/guidance are not clearly indicated, and training for medical personnel should be regularly offered regardless of their years of experience.

Please make recommendations to the State Party to ensure that education on the significance of human rights are fully included in the training of medical personnel, and all the documents related to the contents of the educational curriculum are released.

(c). Furthermore, please indicate if the State party has developed and implemented a methodology to evaluate the implementation of its training/educational programmes, and its effectiveness and impact on the incidence of cases of torture and ill-treatment. If so, please provide information on the content and implementation of such methodology as well as on the results of the implemented measures.

A. Explanation in the government report

The Government Report explains that they revise the training programme based on questionnaires, reports and examination of the participants, and continually updates the contents to make it more effective.

B. Problems found in the government reply

It is preferable to have a third party evaluation to examine whether trainings are effective or not as well as evaluating questionnaires distributed among the participants. In order to do that, specific information about the educational programmes that is currently not available in public need to be released.

Please make a recommendation to the State Party to disclose all the documents related to educational programmes on human rights.

Article 11

13. Please provide information on any new interrogation rules, instructions, methods and practices as well as arrangements for custody that may have been introduced since the consideration of the last periodic report. Please also indicate the frequency with which these are reviewed.

A. Explanation in the government report

The Government of Japan's response only notes that police and prosecutors implemented and began applying internal regulations in April 2008, which they report only as being 'promoted in a timely and accurate' manner.

B. Problems found in the government report

Police and prosecutors have implemented the internal regulations indicated in the Japanese government report. However, each regulation is kept in check only by internal personnel post-hoc. There is no system in place involving an external third-party check.

Please make a recommendation to the State Party to enforce verification by an institution that includes an external third party in line with legal regulations concerning interrogation.

14.

(a). Please provide updated information on steps taken to ensure that the interrogation of detainees in police custody or substitute prisons is systematically monitored by mechanisms, such as electronic and video recording of all interrogations, and that detainees are guaranteed access to and the presence of defence counsel during interrogation as well as that recordings are made available for use in criminal trials. In this respect, please elaborate on the content and implementation of the guidelines for conducting interrogations issued by the National Police Agency in January 2008.

A. Steps taken by the Government of Japan

A1. The government report contains the following information regarding audio/video recording of the interrogation of suspects in police or prosecutor custody:

a1. The police compiled the “Policy on Ensuring Propriety of Examination in Police Investigations” in January 2008 in order to take steps to make interrogation techniques in investigations more appropriate. The Policy includes (1) enhanced supervision, (2) stricter control of examination time, (3) other steps for ensuring propriety of examination, and (4) raising awareness of those involved in investigations. In line with this policy, the police have swiftly and steadily implemented several measures, such as the establishment of a system for the supervision of interrogations by a department other than the investigative department by the setting of new internal rules, promotion of stricter management of the hours of interrogation by the internal rules and making it possible for those outside to be aware of the status of the interrogation, including the installation of two-way mirrors in all interrogation rooms. Moreover, in order to examine measures that contribute to the effective/efficient proof of whether a confession has been made voluntarily at citizen judge trials, the police introduced, regarding cases subject to citizen judge trials, a trial run of audio/video recording of part of the interrogations of suspects by police officials, which is recognized as appropriate to the extent that the function of interrogation is not damaged, in five prefectures in September 2008. Since April 2009, the trial has been conducted extensively by all prefectural police. Trial audio/video recordings of interrogations had been implemented in 719 cases as of the end of December 2010.

a2. The police compiled the “Policy on Ensuring Propriety of Examination in Police Investigations” in January 2008 in order to take steps to make interrogation techniques in investigations more appropriate. The Policy includes (1) enhanced supervision, (2) stricter control of examination time, (2) other steps for ensuring propriety of examination, and (4) raising awareness of those involved in investigations. In line with this policy, the police have swiftly and steadily implemented several measures, such as the establishment of a system for the supervision of interrogations by a department other than the investigative department by the setting of new internal rules, promotion of stricter management of the hours of interrogation by the internal rules and making it possible for those outside to be aware of the status of the interrogation, including the installation of two-way mirrors

in all interrogation rooms. Moreover, in order to examine measures that contribute to the effective/efficient proof of whether a confession has been made voluntarily at citizen judge trials, the police introduced, regarding cases subject to citizen judge trials, a trial run of audio/video recording of part of the interrogations of suspects by police officials, which is recognized as appropriate to the extent that the function of interrogation is not damaged, in five prefectures in September 2008. Since April 2009, the trial has been conducted extensively by all prefectural police. Trial audio/video recordings of interrogations had been implemented in 719 cases as of the end of December 2010.

A2. JFBA information supplement

Currently, some sections of interrogations are being video recorded by the police and prosecutors. Until March 2011, for citizen judge trials and only in instances where a confession was made (or disadvantageous facts were acknowledged), they were recording only the section after the confession had been made.

B. On March 31, 2011, the “Committee for Considering the Future of Prosecution”, which was set up by the Ministry of Justice as a result of the incident involving evidence tampering by the investigative team of the Osaka District Public Prosecutors’ Office in 2010, announced a proposal called “Towards the Revitalisation of Prosecutors” (hereinafter referred to as “the Proposal”). The Proposal claims that the extent of audio/video recording of interrogations “must be expanded in the future by adjusting the prosecutors’ operations and legal systems”. Further, for some of the cases the investigative team deals with, it states that “every effort should be made to carry out, as much as possible, audio/video recordings on a wide scale”.

On the basis of this, on April 8 of the same year, the Minister for Justice issued a directive to the Prosecutor General, as a general order under Article 14 of the Public Prosecutors’ Office Act, to implement “trial” audio/video recordings of the “whole process” of interrogations of suspects by investigative teams, interrogations of suspects by special criminal divisions in independent investigations cases, and public prosecutor interrogations of “suspects with communication capability issues due to intellectual disability”.

However, in terms of actual administration, exceptions will be made in cases where the suspect does not want to be recorded, where privacy cannot be maintained, or where the search for truth is obstructed.

From November 2012, recordings will begin of cases involving suspects who are believed to have low or no ability to assume responsibility for their actions as a result of psychological impairment.

Indeed, according to the “Verification of Audio/Video Recordings of Interrogations by Prosecutors” announced by the Supreme Public Prosecutor on July 4, 2012, of 2465 citizen judge trials, for example, only 399 had the whole process recorded. It was a long way off from all cases being fully recorded.

In addition, concerning police interrogations, in March 2012, in response to the proposals set out in the February 2012 Concluding Remarks of the “Study Group Endeavouring to Improve Investigation Methods and Interrogation”, led by the Chairman of the National Public Safety Commission, the National Police Agency made the decision to expand the interrogation audio/video recording trials, and interrogation audio/video recording for citizen judge trials began on April 1, 2012. However these are not yet whole process recordings. The scope of these recordings is limited to “those that will not detract from the interrogation function. Regardless of the stage of investigation, whether it be while the suspect in custody is having his or her apology statement taken or being interrogated, or whether it is before or after the suspect has been referred, an appropriate stage of investigation and verification must be carefully selected and the necessary amount of audio/video recording can be carried out”.

In addition, regarding police interrogations, audio/video recording trials began on May 1, 2012 for “mentally disabled suspects who have language communication problems or who are thought to be too accommodating or suggestible towards the interrogator”. The extent of these recordings is “those that will not detract from the interrogation function”, to be carried out “as broadly as possible”.

According to the verification results of police interrogation audio/video recording trials announced by the National Police Agency police in December 2012, the audio/video recording trials carried out between April and September 2012 for citizen judge trials were, on average, only 21 minutes long. The audio/video recording trials carried out between May and September 2012 for mentally disabled suspects were, on average, only 27 minutes long.

The “Basic Plan for a New Criminal Justice System Suited to the Era”, created by the Ministry of Justice Legislative Council special committee on the new era criminal justice system indicates, with regards to audio/video recording of interrogations, a system whereby “audio/video recording of the whole interrogation process is, in principle compulsory, except for extenuating circumstances”. Also indicated is the proposal to “leave the extent of the audio/video recording up to the discretion of the interrogating officer”. Also explained is that,

with citizen judge trial “custody incident” as a central concern, specific reviews are being carried out concerning the structure of the system and the extent of target cases is also being considered.

As mentioned in 2 (d), the presence of defence counsel is completely unaccepted.

C. Regarding the contents and enforcement situation of the guidelines concerning interrogation enforcement released in January 2008 by the National Police Agency:

C1. Under regulations covering monitoring for the purpose of optimizing the interrogation of suspects, the following list comprises actions by interrogators when dealing with a suspect during an interrogation that are deemed to be cases for monitoring.

- a. Touching the body, except for when it is inevitable
- b. Using physical strength directly or indirectly (except for cases as described in 1.)
- c. Unfairly making the suspect maintain one position or movement
- d. Providing favours, or making promises to do so
- e. Behaviours or words that clearly disregard human respect

C2. In addition, both activities listed below, if prior approval from the Superintendent General, the Chief of Prefectural Police Headquarters and the Chief of the Area Headquarters (hereinafter referred to as the Chief of Police), or the police station chief has not been attained, fall within the definition of cases requiring monitoring. The regulations will therefore apply to this behaviour.

- a. Interrogating a suspect between the hours of 10pm and 5am the following day.
- b. Interrogating a suspect for more than 8 hours in a single day.

Furthermore, an Interrogation Supervisor is established at the Metropolitan Police Department and the Prefectural Police Headquarters, or the Area Headquarters, to be in charge of interrogation monitoring. When a suspect makes a complaint regarding the above mentioned behaviour deemed to require monitoring, the Interrogation Supervisor will perform research and report duties.

This system is enforced by the police, but has not spread adequately. It is difficult, therefore, to say that the system is being used to its full potential.

According to an announcement by the National Police Agency in March 2011, there were 1,678,000 interrogation cases in 2010. There were 474 complaints filed regarding the

interrogations, 31 cases that looked into Regulation 10 and 30 cases that were “behaviour requiring monitoring”.

Please make a recommendation to the State Party. to allow the presence of a defense counsel and implement measures to make interrogations visible. Do this for not only suspects, but for unsworn witnesses as well.

(b). Please indicate if the State party has taken other alternative measures to ensure that interrogations of suspects are in accordance with the Convention as well as if it has adopted strict rules concerning the length of interrogations, with appropriate sanctions of non-compliance. Please also elaborate on the internal document of the Ehime Prefectural Police, which included guidelines to “weaken” suspects who deny charges through long hours of questioning in order to gain confessions. Please elaborate on any steps taken after the disclosure of this document.

A. Explanation in the government report

The Government of Japan’s response only notes that, in order to pursue steps to make interrogation more appropriate, the “Policy on Ensuring Propriety of Examination in Police Investigations” were compiled in January 2008, and that in accordance with these guidelines, internal regulations have been established and put into operation, and that measures to make interrogations visible have been, in some areas, increasingly enforced, at the discretion of the interrogator. Furthermore, regarding prosecutors, the report only notes that audio/video recordings of interrogations have been put into effect in some areas, at the discretion of the interrogator.

B. Problems found in the government report

Despite the fact that audio/video recording of the whole process of interrogation is a requirement to meet the criteria of the Convention against Torture, as noted in Paragraph 14 (a), recordings are still at the experimental stage and not yet in full-scale operation.

Regarding the duration of interrogations, according to the Government of Japan report, prior approval must be obtained from the chief of police or the leading investigator in cases where the suspect is to be interrogated between the hours of 10pm and 5am or for more than 8 hours in a single day. However, the fact that it is possible with approval from the leading investigator

means that this is an extremely mild regulation. Also, regarding interrogations that take place during the typical 23 day period of custody between arrest and prosecution, when interrogations continue for 8 hours each day, this can be classified as prolonged. Such interrogation regulations cannot function as prohibition measures against weakening the suspect for the purpose of gaining a confession.

As per the National Police Agency's "Investigation Methods and Interrogation Improvement Program" of March 2012, every effort will be made to "systemize interrogation techniques by adopting psychological and other methods, beginning with strategies of questioning and persuasion that are effective in gaining truthful statements, mechanisms that engender false statements and measures etc. to prevent this, while maintaining the appropriateness of interrogation", as well as to "expand practical training in order to improve interrogation techniques". In December of the same year, the agency compiled an instructional book called "Interrogation (Basic Edition)" that compiles psychological information about interrogation, and is moving forward with interrogations that apply psychological methods.

The basic interrogation method described in the instructional book is, as written in the actual book, "not to focus attention on suspects who deny or refuse to answer". According to the book, interrogation methods of suspects who deny or are silent, or those with particular characteristics etc. will be managed gradually and systematically.

Also, Ehime prefectural police internal data is the same as that submitted at the first round of examinations. The interrogation guidelines included in this internal data reflect the common sense of police who carry out interrogations and are a good indication of how Japan's police officers think about interrogation. There have been no fundamental changes since the National Police Agency set down the policy on ensuring propriety of investigations.

For the purpose of changing the common sense of police officers who carry out this type of interrogation, we are dubious about the speed with which the aforementioned book "Interrogation (Basic Edition)" will infiltrate. If the whole interrogation process is not being audio/video recorded, it is difficult to verify whether or not a confession is false, and also whether or not inappropriate interrogations are taking place of suspects who deny or refuse to answer.

<p>Please make a recommendation to the State Party to ensure that interrogation of suspects meets the requirements of the Convention by adopting strict rules, including appropriate sanctions against non-compliance, to regulate the duration of interrogation in particular.</p>

15. In light of the Committee's previous concluding observations, please indicate if the rules and provisions on the statute of limitations are reviewed to bring them fully in line with the State party's obligations under the Convention, so that acts amounting to torture and ill-treatment, including attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations (CAT/C/JPN/CO/1, para. 12).

A. Explanation in the government report and problems found in the report

- B.** The response by the Government of Japan to this question was that in April 2010, the statute of limitations was abolished for crimes causing death which are punishable by death penalty, and that the statute of limitations was extended from 10 years to 20 years for crimes of assault and cruelty causing death by special public officials and crimes of abuse of authority causing death by special public officers. These abolitions and extensions of the statute of limitations are limited and do not directly target torture or ill-treatment.
- C.** Apart from limited types of crimes, namely, those crimes causing death which are punishable by death penalty, the statute of limitations remains in place for torture and ill-treatment.
- D.** Also, the Government of Japan has provided no response to the issue referred to by the Committee in Paragraph 19 regarding the victims of sexual abuse during World War II and whether or not Japan has investigated or prosecuted perpetrators of the sexual slavery.
- E.** Actually, the Government of Japan is not conducting such an investigation or prosecution. In 1994, Korean victims brought a suit against the perpetrators of sexual violence to the Tokyo District Public Prosecutors' Office, but it was not accepted by the public prosecutor. The reason for the prosecutor not accepting the suit was not clear, but we believe one of the reasons was the statute of limitations prescribed in the Penal Code at the time.

In light of the inadequacies of the abolition and extension of the statute of limitations, please make the same recommendation to the State Party on as Paragraph 12 of the previous concluding observations.

16.

- (a). Please indicate if an independent authority has been established to review complaints on treatment in immigration detention facilities, as recommended by the Committee in its previous concluding observations (CAT/C/JPN/CO/1, para. 14).
- (b). In its comments to the Committee's previous concluding observations, the State party stated that "the Immigration Bureau of the Ministry of Justice is in the process of collecting information on the operation statuses of the penal facility visiting committees and on overseas case examples, and conducting surveys and research in order to consider the pros and cons and whether to establish a third-party treatment monitoring system". Please provide updated information on status of this process and on the outcome.

A. Explanation in the government report

In response to this question, the Government of Japan stated that the "Immigration Detention Facilities Visiting Committee" was established in July 2010, and had been active since then and that "In order to secure the independence of the Committee, immigration officials do not attend interviews conducted by members of the Committee with detainees, etc. unless requested to do so by the Committee. Regarding opinions/proposal from detainees, etc. dropped into proposal boxes, the committee members open the proposal boxes and collect documents directly. Detainees, etc. are able to express their opinions or proposals directly to the Committee without going through immigration officials."

B. Problems found in the government report

However, the following points within the report are problematic:

- B1. There are only two Immigration Detention Facilities Visiting Committees (hereinafter "Visiting Committee") established—East Japan and West Japan (Article 59-3 of the Ordinance for Enforcement Immigration Control and Refugee Recognition Act). Not only is the designated space expansive, committee members work part-time (Article 61-7-3, paragraph (4) of the Immigration Control and Refugee Recognition Act), and the fees are low. As a result, in most cases, detention facility inspections are carried out only once a year. These inspections only last a few hours, and are limited to listening to an explanation from someone in charge and talking with a number of detainees.
- B2. The report does not disclose the names of committee members, let alone clarify the criteria for appointment to the Visiting Committee.

- B3. Detention facility inspections are set down in advance to a schedule created by the Immigration Bureau official serving as secretariat, and detention facilities are notified. Inspections without prior notice are not carried out, nor are they envisaged for the future.
- B4. Immigration Bureau officials are not present at interviews, but not all those who request an interview with a committee member are necessarily granted one.
- B5. When opinions and proposals dropped into the proposal box are written in a foreign language, they are translated by Immigration Bureau officials so the contents are disclosed to the bureau.
- B6. Committee members express their views to the director of immigration detention facilities just once a year. These views have no binding power. Detention facilities that receive instruction often simply respond with, “we will take that into consideration”, and make no improvements.
- B7. The aim of the Visiting Committee is set out as “to contribute to the proper administration of the immigration detention facilities” (Article 61-7-2, paragraph (2) of the Immigration Control and Refugee Recognition Act). Under the law, the committee is supposed to be able to express its opinions not only about treatment, but also about the administration of provisional release, but the Immigration Bureau official serving as secretariat explains to committee members that their official duties are limited to treatment.
- B8. As outlined in the answer to paragraph 8, on March 22, 2010, there was an incident whereby a death was caused by an immigration official’s restraining actions during a forcible deportation. However, the appropriateness of the use of physical force during deportation is not part of the Visiting Committee’s official duties.

Please make the following recommendations to the State Party..

1. An authority that makes secondary investigations into appeals regarding treatment in immigration detention centers and treatment during deportation should be established independently from the Immigration Bureau without delay.
2. Until “1” is implemented, for the time being, the following steps should be taken.
 - (1). Visiting Committee member names, affiliations and the criteria for committee appointment should be disclosed.
 - (2). In order to improve Visiting Committee member activities, personal and material steps should be taken. Specifically, instead of posting one Visiting Committee member each on the East and West Visiting Committees, one should be posted in each regional immigration bureau. Remuneration for the work carried out by

committee members should be improved.

- (3). It should be made clear that official duties of Visiting Committee members are not limited to treatment, but extend widely to include administration of detention facilities.
- (4). The use of force when deporting should be included in the official duties of Visiting Committee members.

17.

- (a). With reference to the Committee's previous concluding observations, please provide updated information on steps taken to establish an independent mechanism, with authority to promptly, impartially and effectively investigate all reported allegations of and complaints about acts of torture and ill-treatment from both individuals in pre-trial detention in police facilities or penal institutions and inmates in penal institutions (CAT/C/JPN/CO/1, para. 21). In this respect, please indicate if such mechanism has adequate resources and staff, and has full access to all relevant information in order to effectively discharge its mandate.
- (b). Please provide information on measures taken to ensure that the rights of inmates to complain can be fully exercised. Do these measures include the guarantee that inmates may avail themselves of legal representation to file complaints and are entitled to a protection mechanism against intimidation of witnesses, and a review of all rulings limiting the right to claim compensation?

A. Explanation in the government report

The government's report is not a response to the questions. It is an explanation of the existing system, related to the questions.

B. Problems found in the government report and information about actual conditions

B1. The Penal Institution Visiting Committee

The Penal Institution Visiting Committee was not implemented for the direct purpose of seeking relief for the rights and interests of a particular detainee in an individual case, but in reality, as a result of meetings with detainees or opinion/proposals put into the proposal box, when opinions about administration are put forth to the penal institution head, there

are often requests for relief for individual cases. Each institution is different, but each month tens of opinions/proposals, sometimes more than 100, are dropped into the proposal box and Visiting Committee members are struggling to respond to these.

In this way, there have been cases where treatment in the facility has improved as a result of a request for improvement and the Visiting Committee taking up proposals and showing the contents to the institution head.

However, those examples of improvement are limited, and there has been no improvement regarding legal affairs administrative problems that are beyond the discretion of the institution head, and the current situation has reached a roadblock.

B2. Study Group on Review of Appeals Filed by Inmates of Penal Facilities

The Study Group on Review of Appeals Filed by Inmates of Penal Facilities is a provisional mechanism established within the Ministry of Justice until a national human rights institution is formed. The Study Group members are made up of outside experts so in the sense that third party ideas are introduced, the team is a third party mechanism.

However, the secretariat comprises MOJ officials so there is a problem with its independence. Also, the Study Group has neither independent authority for conducting investigations nor independent staff, and because the Study Group's decisions are not legally binding, it lacks effectiveness.

In light of the requirement to establish an independent mechanism with authority to conduct prompt, impartial and effective investigations, in September 2012, a bill to establish a human rights committee was approved by the Cabinet. This bill provides the vision for a human rights committee with authority to conduct investigations.

However, this bill is unclear about the establishment of local offices. The fact that officials from regional legal affairs bureaus affiliated with the MOJ are to also serve on the human rights committee is highly problematic in terms of independence.

B3. System for making appeals concerning detention facilities

The Study Group discussed in B2 does not exist for police detention facilities. The public safety commission has problems with impartiality and only a small number of members, so it cannot operate as a neutral and effective institution.

Please make a recommendation to the State Party to promptly establish a truly independent national human rights institution.

(c) Please provide detailed statistical data, disaggregated by the crime committed, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions as well as on any compensation provided to victims.

No comment

Article 14

18.

(a). Pursuant the Committee's previous concluding observations, please provide information on steps taken to ensure that all victims of acts of torture or ill-treatment can exercise fully their right to redress, including compensation and rehabilitation (CAT/C/JPN/CO/1, para. 23). Please elaborate on the rehabilitation services established in the State party.

A. Explanation in the government report

Firstly, the Japanese government report explains the system for claiming state compensation for a public servant's actions and the system for claiming compensation under the Civil Code for a citizen's actions.

Secondly, the report explains the appeal system under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, which includes procedures for claim for review, reclaim for review, case reporting to the superintendent of the regional correctional headquarters, case reporting to the Minister of Justice and the filing of complaints.

Thirdly, the report explains that, in relation to detention by the Immigration Bureau, detainees can avail themselves of free legal consultation with counsel regarding their treatment and can file a lawsuit, and also that the Immigration Detention Facilities Visiting Committee was established in 2010 and that detainees can avail themselves of free legal counsel.

B. Problems found in the government report

The system for claiming state compensation for a public servant's actions, the system for claiming compensation under the Civil Code for a citizen's actions and the system whereby a detainee of the Immigration Bureau can file a suit regarding their treatment have been in existence prior to the last round of examinations. Furthermore, the effectiveness of the appeal

system under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees as well as the Immigration Detention Facilities Visiting Committee remains questionable.

Therefore, since the last round of examinations, there have been no steps taken to ensure that all victims of acts of torture or ill-treatment can exercise fully their right to redress.

For example, there is a case of an asylum seeker who was a torture victim displaying abnormal behavior while in detention. This detainee's relatives alleged that the abnormal behavior was a result of torture-induced PTSD. Despite the existence of a medical certificate diagnosing PTSD, the Japanese government deemed the detainee's behavior in question to be simply a response to confinement and continued to keep the detainee in detention.

Also, with regards to this case, although the Japanese government granted a provisional release after legal counsel filed a complaint, it did not establish medical or rehabilitation measures for the asylum seeker in question.

Please make the same recommendation to the State Party on as Paragraph 23 of the previous concluding observations once again, as well as the recommendation that in cases where it is likely that an asylum seeker is a torture victim, detention should be discontinued.

(b). Please provide data on the number of requests for compensation made, the number granted, and the amounts ordered and those actually provided in each case.

A. Explanation in the government report

The government report only notes that, with regards to penal institutions, the number of cases in which a lawsuit for damages was filed and the number of cases where a court ordered compensation to be paid. Apart from one case related to the detention facilities of the Immigration Bureau, the report makes no mention of compensation amounts ordered or those actually paid.

B. Problems found in the government report

In reality, even in cases where violence by a penal institution officer is recognised by the courts, in general, the amount of compensation is extremely low.

Furthermore, there are cases where the State will avoid providing compensation by invoking the statute of limitations in spite of the fact that illegal execution of duties are recognised. On October 26, 2012, the Osaka High Court rejected a claim for damages compensation by a

former detainee because the ten year statute of limitations period had expired. After being released, the former detainee filed a complaint that while serving time in Nagoya Prison, s/he suffered from acute kidney failure after being tightly bound with leather handcuffs (which are now banned). At the first instance, Osaka District Court ordered the State to pay compensation on the grounds that filing a complaint while inside the penal institution would have been impractical so the starting point of the statute of limitations was upon release from prison. However, Osaka High Court rendered the decision that the detainee engaged in written exchanges with bar associations so it could not be argued that filing a claim while serving time was impractical.

Please make a recommendation to the State Party to provide details of data and background information on the number of requests for compensation made, the number granted and the amounts ordered and actually provided in each case.

19. In its previous concluding observations, the Committee expressed its concern that the State party's continued failure to prosecute anyone responsible and to provide adequate rehabilitation for victims of World War II sexual abuse fosters continuing abuse and re-traumatisation for these victims (CAT/C/JPN/CO/1, para. 24). Please provide information on steps taken to address this concern. Has the State party taken effective legislative and administrative measures to provide official compensation to all survivors of war time abuse, to investigate and prosecute perpetrators of sexual slavery, as well as to provide education to students and the general public to address the discriminatory roots of sexual and gender-based violence? Please provide information on steps taken by the State party to refute publicly.

A. Explanation in the government report

Regarding steps taken in response to these concerns, the government notes that it has humbly accepted the fact that it caused substantial damage and pain to people in many countries, particularly in Asian countries, by colonial rule and invasion, and has expressed its feelings of deep remorse and feelings of sincere apology in the past, that it is aware that the comfort women issue is an issue that has been a grave affront to many women's honour and dignity. It notes it has expressed feelings of sincere apology and remorse to former comfort women through the issuance of a letter from the Prime Minister and in a speech by the Chief Cabinet

Secretary (1993), and that as the issues of compensation, property and the right to claim have already been legally solved in relation to the parties to the Convention, the government determined that it was appropriate to take action through the “Asian Women’s Fund,” which was established through the cooperation of Japanese citizens and the government, in order to aim at a realistic remedy for former comfort women who had already grown old. The government states it has been following up on the projects of the said fund since its dissolution in 2007.

B. Problems found in the government report

B1. The concluding remarks to the previous Committee examination asked the Government of Japan whether or not it had taken legal and administrative steps towards public compensation, as the relief provided in the form of “atonement money” from the Asian Women’s Fund was inadequate. The Government of Japan report does not respond to this question at all but repeats its previous answers.

B2. The prosecution of those criminally responsible

With regards to the prosecution of the perpetrators of sexual abuse, and those who perpetrated sexual slavery, the Government of Japan states that those who have died cannot be prosecuted, and that even if some are still alive, it is not possible to penalise a crime for which penalties hadn’t been established at the time committed; further even if there had been penalties established at the time, because of the statute of limitations, the Government of Japan has not criminally prosecuted these criminals from World War Two.

B3. The fostering of on-going abuse and re-traumatization of victims

There are common discourses in circulation that deny the facts of harm or that insult victims. A particularly common discourse is that “there was no coercion”, “they were prostitutes who worked of their own free will”. In 1993, the Government of Japan, via a statement by the Chief Cabinet Secretary, admitted Japanese military involvement in the system of sexual slavery and apologized for the grave affront to the victim’s honour and dignity. However, the fact-denial movement is running repeated campaigns to revise the Chief Cabinet Secretary’s statement. The Government of Japan neither refutes nor sanctions these discourses, but allows them to run. In this way, it inflicts on-going emotional pain on and fosters the re-traumatization of victims.

B4. Legal and administrative steps for appropriate compensation

The Government of Japan established the Asian Women's Fund and carried out projects to provide "atonement money" to victims through private fundraising. However, this "atonement money" did not come from government funds, so lacked the significance of state compensation for victims, and many of the victims thus refused to accept "atonement money". Furthermore, Korea, the Philippines, Holland, Indonesia and Taiwan were the only countries targeted by the project, and also, the fund is now dissolved.

The Committee requested the Government of Japan to take state-led legislative and administrative measures separate from this fund, and asked for the results of these measures. But, to date, the Government of Japan has not attempted to take any form of legislative or administrative steps. On the contrary, it is conducting "follow-up projects" that target only the victims who accepted money from this fund.

B5. Education

Accounts of the "comfort woman" issue in all middle-school textbooks have already disappeared. While secondary-school textbooks retain mention of the issue, in secondary schools whereby subjects are electives, all students do not necessarily learn history. While one could argue that the contents of text books are the decision of the author, it is safe to say that the current situation is a result of Ministry of Education, Science, Sports and Technology administration not welcoming the inclusion of this issue in text books. While the issue is not taught in compulsory education, and fact-denial discourses spread unchecked throughout society, most people in the general public have no opportunity to know the truth of this issue.

B6. The Japanese military "comfort women"

On August 30, 2011, the Korean constitutional court made a first decision that, regarding the issue of the war-time military comfort women's individual right to claim compensation from the Japanese government, the Korean government's failure to hold diplomatic talks with Japan is "an infringement of the basic human rights of the victims and violates the constitution". In response, on September 1, Cho Seyeong, head of the Northeast Asia office of the Korean Ministry of Foreign Affairs and Trade, told the Japanese diplomatic minister that Japan needs to respond proactively. It was reported that Japan's response was that the issue had "already been legally resolved", indicating a stance unwilling to enter consultation.

Also, on December 17 of the same year, Korean President Lee Myung-bak visited Japan

and firmly requested a resolution on the comfort women issue, to which Prime Minister Noda Yoshihiko iterated the government's stance that the issue had already been legally resolved, at the same time, adding, "I hope, going forward, to think hard about the issue from a humanitarian point of view".

Subsequently, on August 27, 2012, it was reported that the Korean government decided to refer the solution to a Japanese arbitration committee and that an official from the Ministry of Foreign Affairs and Trade had stated that "the timing will be decided after consultation with support groups". The Government of Japan should fulfill its legal obligations by entering dialogue with the Korean government immediately, and, as quickly as possible, acknowledging legal responsibility, creating victim relief legislation, apologizing to the victims, taking steps to reinstate their dignity as humans, providing monetary compensation and establishing an investigative body to reveal the truth.

Please make the following recommendations to the State Party.

1. Make a clear apology to the victims again and provide them with public-funded compensation.
2. Make the contents of the 1993 Chief Cabinet Secretary statement known to the public, and through education and publicity educate the current and future population accurately about the facts and ensure that intent to avoid repeating past mistakes is a common understanding in society.
3. Fulfill legal obligations by entering dialogue with the Korean government immediately, acknowledging legal responsibility, creating victim relief legislation as promptly as possible, apologizing to the victims, taking steps to reinstate their dignity, providing monetary compensation and establishing an investigative body to reveal the truth.

Article 15

20.

- (a). Please provide detailed information on the inadmissibility of confessions extracted by torture or ill-treatment provided in article 319(1) of the Code of Criminal Procedure and its enforcement and implementation in practice, as requested by the Rapporteur on Follow-up.

A. Explanation in the government report

The Japanese government report only notes that, in line with Article 38(2) of the Constitution, the practice of the prosecutorial authority is in proper operation in accordance with Article 319(1) of the Code of Criminal Procedure.

B. Problems found in the government report

Notwithstanding the provisions of paragraph 1 of Article 319 of the Code of Criminal Procedure, in practice, there are hardly any instances where the inadmissibility of confessions has been verified by applying Article 319.

As the presence of legal counsel is not permitted in Japan, there is a high danger of inadmissible confessions being made as a result of illegal interrogations. In addition, as the whole interrogation process is not audio/video recorded, if the defendant challenges the admissibility of a confession at the investigation stage of a case of an illegal interrogation, s/he has no valid way of proving it. As a result, in court, the statement of a defendant who to have undergone illegal interrogation will come up against the testimony of an investigator who alleges to not have conducted such an interrogation resulting in a continuing he-said, she-said battle. In cases like these, judges tend to believe the investigator's testimony, so even if a confession is obtained through an illegal interrogation, there is high likelihood of it being accepted as evidence.

Please make a recommendation to the State Party to allow the presence of defence counsel in interrogations and enforce visualization of the whole process of interrogation. Also, we request you recommend, in accordance with legal regulations concerning interrogation, the enforcement of constant review by mechanisms including external third parties.

(b). Please provide updated data on the number of complaints of alleged ill-treatment during interrogations and of the use of torture to extract confessions, the number of these cases that went to trial, and the outcomes of the trials, including information on the kinds of punishments meted out and compensations offered to victims.

A. Explanation in the government report

The Japanese government report only notes that in the period between June and September 2010, there were 141 cases of interrogation appeals by suspects or their legal counsel.

B. Problems found in the government report

The report only points out the number of cases of interrogation appeals made by suspects or their legal counsel between June and September 2010. However, since the previous examination, a succession of cases where innocent people have made confessions as a result of being interrogated have been uncovered, but there are no cases of penalties being passed down on interrogators who gained false confessions.

When a person from whom a false confession was extracted is found innocent, there is a system in place to provide a certain amount of compensation, as per the Criminal Compensation Act. But if the suspect is not prosecuted against or held in custody, s/he cannot receive this compensation. Therefore, suspects have to file a claim themselves to request state compensation.

Please make a recommendation to the State Party to submit a more detailed report which includes the kinds of compensations supplied to victims, in all cases where ill-treatment was used to extract a false confession during interrogation.

Article 16

21.

(a). In light of the Committee's previous concluding observations, please provide information on steps taken to improve the conditions of detention in landing prevention facilities and immigration detention centres, inter alia, by addressing the allegations of violence and the lack of access to proper health care (CAT/C/JPN/CO/1, para. 14). Information should also be provided on steps taken to ensure that minors are kept separate from adult detainees in these facilities.

A. Explanation in the government report

A1. The government report makes no specific mention of access to health care. There are in fact no specific measures for improvement.

A2. Regarding detention of minors, the Immigration Bureau's proactive stance to not detain minors, since 2011, is as the government report notes.

This was also influenced by negotiations that began in 2010 between JFBA and the Ministry of Justice regarding detention. However, immediate provisional release is

unusual, and frequently, between a few days and a week is required until release.

Also, there are no systems or standards for systems, decreed by law, for custody of minors, and there are no dedicated detention facilities appropriate for the special characteristics of minors.

B. Current situation of access to health care

There is no system of health care in several detention facilities. And in cases where health care systems exist, the doctors are public servants or contract doctors affiliated with the detention centre. They are not independent of the detention centre and are not primary physicians to the detainees.

Article 22 of the Standard Minimum Rules for the Treatment of Prisoners, as approved by the United Nations Economic and Social Council, demands that medical services at prisons be organised within a framework of a close relationship with the general health administration of the community or nation. However, there is no such framework.

Furthermore, there is no system to make all detainees undertake a medical examination on entrance to prison. Medical examinations are limited to when a prison authority decides it is necessary (Article 8 of Regulations for Treatment of Detainees). Also a hospital doctor decides whether or not medical treatment at a hospital outside the prison is required, and because that doctor is not in residence, symptoms that begin at night-time or on holidays cannot be treated immediately. And, when detainees request to see a hospital doctor, or request an outside hospital consultation, even when they are told they require on-going treatment by an outside hospital doctor, in many cases permission is not granted, or they are made to wait over a week, or not granted approval unless they pay themselves. Also, interpreting is not guaranteed at any medical consultation.

C. Separation of minors from adults

C1. Case example

A male born in April 1990 arrived in Japan on July 25, 2006. He was denied entry at the airport and applied for refugee status on July 28. He was in custody until April 16, 2007. During that period he was detained with adults in a mixed community cell. He told his

refugee examination counsellor, “I am currently detained with other foreigners and am terrified”, but was ignored.

At a later date, at the prosecution, it was clarified that the Immigration Bureau had notification of the rule that minors are not placed in cells with adults. The state argued that the reason this rule was not followed for the boy in question was that “there was consent from the person himself”.

C2. Since 2011, we have received no information of instances of minors being detained with adults in mixed community cell which we assume to indicate an improvement in administration as a result of the warning about the aforementioned notification. However, there are no facilities for minors. When minors are detained, they are placed in cells designed for the solitary confinement of adults.

D. Verbal abuse

On August 4, 2011, a Higashi Japan Immigration Centre officer said to a prisoner, “Bullying foreigners is fun. Bullying [name of aforementioned prisoner] is especially fun”. Although the detainee requested an apology, there was no response. As a result of NGO protest, a representative issued an apology in September and the officer who made the statement was moved to a different department.

Please make the following recommendations to the State Party.

1. Improve access to health care in departure waiting facilities and detention centre and guarantee medical consultations at outside hospitals and interpreting for consultations.
2. Specify the separation of minors from adults in detention in laws and regulations, and establish appropriate detention centres for minors.

(b). Please describe steps taken to address the concern about the length of detention for rejected and case-pending asylum-seekers. Statistical information should also be provided on the length of detention for asylum applicants in 2008 and 2009, disaggregated by age, gender, nationality, and location of detention. Furthermore, please

provide information on the number of applicants in 2007, 2008 and 2009 who benefited from the special considerations of age, health conditions, and other humanitarian reasons and have been provisionally released despite pending deportation orders.

A. Explanation in the government report and problems

The government report notes that as of July 2010, the number of long-term detainees has been decreasing as a result of efforts to avoid prolonged detention of detainees who are yet to be deported after the passage of a considerable period of time after the issuance of a deportation order. These efforts consist of the Immigration Bureau verifying and examining the necessity and reasonableness of provisional release with respect to each fixed time period, and flexibly utilizing the system of provisional release according to the circumstances of individual detainees.

However, the length of the ‘fixed time period’ is not disclosed, and neither are the results of the verification and examination of the necessity and reasonableness of provisional release. Statistics related to detention periods have not been disclosed on an on-going basis, so the decrease in long-term detainees cannot be verified. There is no clear evidence that indicates the decrease in number of long-term detainees.

Statistics provided by the government report in Attachment 3 only indicate the number of provisional release cases and are not cases that benefited from the special consideration of age, health conditions or other humanitarian reasons. The number of cases of release after almost one year of detention was also included.

B. Current situation of detention periods and release criteria for the weak

B1. Provisional release is not granted even for detainees with poor health.

The United Nations Special Rapporteur on the human rights of migrants reported that, “Many of the detainees I met suffered from various diseases, in some cases very serious, and the majority complained about not receiving adequate health care. They had not been allowed to continue the medication they had been taking before they were detained, and were given light medication instead, which was seriously compromising their health and possibility of recovering. For example, a detainee suffering from diabetes reported he was only given painkillers and his condition had worsened tremendously.”

(A/HRC/17/33/Add.3). Before meeting with the Special Rapporteur, this detainee who was suffering from diabetes had not been granted provisional release, but was released

immediately after the meeting.

There was the 2011 case of the detention of a 3-month pregnant woman with serious morning sickness.

In this way, there are many cases where provisional release is not approved even when there is a health condition that would warrant release.

B2. Between one and three months have been spent on the provisional release investigation.

B3. Hunger strike

In April, May and on August 13, 2012, at the Higashi Japan Immigration Centre (capacity of 700 prisoners), some of the detainees submitted a request to immigration that contained, among other things, a request to stop long-term detention. In addition to this, the detainees complained about the non-disclosure of reasons for non-approval of provisional release, the fact that on-going detention for more than 6 months was common and that the security deposit (normally 200000 yen) was too expensive for an indigent person.

The response from the prison was a mere verbal response that there are rational reasons for long-term detention.

Dissatisfied with immigrations' handling, on August 20, of a total 350 detainees, approximately 120 male and female detainees from approximately 20 countries, began a hunger strike in demand for, among other things, provisional release for long-term detainees. (N.B. This meant refusing facility meals, not refusing all food.)

Immigration did not respond and the detainees concluded their hunger strike on August 31. Subsequently, on September 7, immigration responded to the points about long-term detention and the disclosure of reasons for non-approval, but in both cases, the response was simply that current treatment is rational.

Please make the following recommendations to the State Party.

1. Enforce a time limit to ensure detention after the issuance of a deportation order is not prolonged.
2. As a rule, prisoners who are minors, guardians/care-givers to minors, pregnant, those who require hospitalisation because of serious injury or illness and other weak people should

not be detained, or should be released from custody.

22. Please indicate if the State party has abolished the use of gags at police detention facilities, as recommended by the Committee in its previous concluding observations (CAT/C/JPN/CO/1, para. 15).

A. Explanation in the government report

As indicated in the government report, the use of gags in detention facilities without protection rooms has not been abolished.

B. Problems found in the government report

As of April 1, 2012, in the 1,226 police detention facilities in Japan, there are 427 protection rooms in 391 of them. Compared to the Government of Japan April 1, 2010 report, this is an increase of 50 facilities and 57 protection rooms.

In this way, the installation of protection rooms is progressing but the percentage of facilities with protection rooms is only just under 32 per cent. Therefore, even now, there are approximately 45 cases a year of gag usage.

As outlined in the government report, a doctor's opinion of the detainee's medical condition is sought when a gag is used. However, a doctor never performs a consultation. The detention services manager simply relays the detainee's condition to and receives advice from a doctor on the telephone, so it is not possible for the doctor to give advice based on an accurate grasp of the detainee's condition.

When detainees are placed in protection rooms, and when detention in the protection room is renewed, medical opinion is sought from a doctor too, but this is also simply taken care of on the telephone, thus not serving its function as a health condition check.

The government report claims that the abolition of the use of gags in detention facilities without protection rooms is inappropriate. However, even if a detainee in a detention centre without a protection room was to continue shouting in a loud voice, the non-use of gags should be fully enforced as a regulation by making every effort to calm the detainee down by, among other things, separating the detainee from other detainees. Also, face-to-face surveillance of movements should be enforced to prevent accidents when gags are used. Furthermore, there have been reports of cases of suspected abuse of protection room usage in detention facilities

where new protection rooms have been installed, raising a new matter of concern.

Please make a recommendation to the State Party on paragraph 15 of the previous concluding observations, and also recommend against the arbitrary use of protection rooms.

23.

(a). In light of the Committee's previous concluding observations, please describe steps taken to improve conditions in places of detention to bring them in line with international minimum standards, and in particular to address overcrowding (CAT/C/JPN/CO/1, para. 17).

A. Explanation in the government report

The government report explains the improvement of detention capabilities as a result of the proliferation of new penal institutions.

B. Problems found in the government response

Detention capabilities have improved but there has not been a corresponding increase in the number of staff working at the facilities. In some cases, in order to meet the demand for staff in the newly created facilities, the number of staff working at existing penal institution has decreased.

In Japan, the number of inmates per prison officer (a value found by dividing the average number of detainees in all penal facilities on one day by the total number of staff) continues to be higher than other countries, at 4.04 in 2009 and 3.88 in 2010.

Also, with regards to women, overcrowding continues, with the occupancy rate of convicted criminals at 120.3% (2010). The number of inmates per prison officer in female prisons is 4.86, well exceeding the overall figure (2010).

Despite a situation like this, the government is planning to cut back on employing new staff.

Please make a recommendation to the State Party to take necessary measures to guarantee an adequate number of staff to correspond to the number of detainees in penal institutions.

(b). In this respect, please elaborate on the content and implementation of the “Law concerning penal institutions and the treatment of sentenced inmates” and its amendments. Information should also be provided on the impact and effectiveness of these measures in improving detention conditions.

A. Explanation in the government report

The path to the amending the Prison Act and the main contents of the Penal and Detention Facilities Act are as explained in the government report. However, there are major problems with the implementation status of the new law, as we will outline in the following paragraph. Also, review of the law was planned for five years after the implementation. While the review itself was carried out, the law was not consequently amended.

B. Problems found in the government response

B1. Clarification of detainee rights and obligations

The government states that the requirements and procedures for discipline are in place. However, according to the law, “the warden of the penal institution or a staff member designated by him/her may, if necessary to maintain discipline and order in the penal institution, give instructions to inmates with regard to their life and behavior.”, and if these instructions are not obeyed, the inmate may be disciplined. Therefore, discipline requirements are not always clear.

B2. Improvement of treatment for detainee’s reintegration into society

The number of detainees who are subject to work or improvement guidance appropriate for the characteristics of a prisoner is increasing, but still limited. Also, the number of those who go outside prison or stay overnight outside is remarkably low, and the government has introduced electronic surveillance devices to improve enforcement. This is a major problem because it means that those who were able to go outside or stay outside overnight without an electronic device until now need to attach one.

B3. Guarantee of detainees’ standard of living

The current situation of health, hygiene and medical care in penal institutions remains dire. There is a serious shortage of medical staff, in particular doctors. As of April 2010, there

are 12 institutions nation-wide without a full-time medical doctor. In order to lighten the workload of doctors, even when a detainee requests a medical consultation, an assistant nurse makes a decision regarding the necessity of a consultation and its urgency. These assistant nurses are prison officers who obtained their qualifications from medical prison. Therefore, there is a tendency for them to prioritize security over medical necessity. In February 2012, there was an incident at Toyama Prison whereby a prison officer noticed that a male detainee in his 70s was delirious, but left him alone, deciding it was not an emergency. Subsequently, it was confirmed that the detainee died at the hospital where he was rushed in an emergency.

Also, room heating and air-conditioning is only installed in a small portion of the institutions, and even where they are installed, they are mostly not in operation in detainee rooms. As a result, particularly in single rooms (including protection rooms), there is high risk of heat stroke in summer and hypothermia in winter. At Kobe Detention Center, in January 2006, just prior to the enforcement of the Penal and Detention Facilities Act, an un-sentenced male (29) froze to death. This man had complained of suffering from the cold and a poor physical condition for more than 10 days prior to his death, and despite barely being able to move the day before his death, the prison doctor's diagnosis was that it was nothing abnormal. He was subsequently left in a room with an outside-facing window slightly open, and froze to death in sub-zero temperatures the following morning. This incident led to the bereaved family filing a case for damages against the state, which was ruled in favor of the plaintiff. After the court decision, the MOJ issued a notification regarding prevention of hypothermia, but the poor living environment of detainees has not changed, and the health care system has not been reviewed.

B4. Guaranteeing and improving contact with the outside world

The extent of outside world contact has expanded according to the law, but in reality it is not functioning as per the law. Even for those with visiting rights, if the facility authorities decide that an exchange of letters should serve the purpose, permission to visit may be denied. For example, even for people who are planning to employ the detainee after release, unless release is imminent, visitation is not permitted. Also, there is widespread

treatment that limits visitations and the receipt of letters by excessively emphasizing the maintenance of discipline and order and obstructions to the enforcement of appropriate correctional treatment of detainees.

B5. Establishing a system for appeals

The type of behavior suitable for review claims is limited (for example, you cannot claim for review into rejections of visitation or delivery and purchase of articles) and on top of that, claims must be made within 30 days. As a result, many appeals are rejected on the grounds of being unlawful. Furthermore, an appeal against disciplinary confinement, as a form of discipline, is not effective as, once the disciplinary period is over it is rejected on the basis that there is no interest in the claim.

B6. Guaranteeing transparency of prison administration

There are instances of failure to disclose medical records or provide necessary information to the Penal Institution Visiting Committee. It is also extremely common for the institution head to use his or her discretion to say that the Visiting Committee's opinions cannot be accommodated. Furthermore, there are some Visiting Committees which do not provide opinions, and there is a major difference between activities of committees.

Please make a recommendation to the State Party to take steps to ensure enforcement of the law's contents, and at the same time consider reviewing legislation so as to comply with international minimum standards.

(c). Please indicate if the use of restraining devices is strictly monitored and if the State party has adopted measures to prevent these devices from being used for punishment. In this respect, please provide information on the use of a new type of handcuffs and straitjackets to restrain prisoners.

A. Problems found in the government report

The content of officer training is not clear in the government report. Also, the beginning of

video recording with portable video cameras is often delayed so it is unclear whether or not the use of restraining devices is strictly monitored.

Also, there is a time limit on the use of straitjackets, but no such limit on Type II handcuffs. There is no information in the government report on the average length of time Type II handcuffs are used. It is also unclear how often the Type II handcuffs were used in front of the body or behind the body. Usage time must be very strictly regulated when they are used behind the body, but there is no data to indicate strict management.

Please make a recommendation to the State Party to enforce strict monitoring of the usage of Type II handcuffs and the length of time they are used either in front or behind the body.

24. With reference to the Committee's previous concluding observations, please provide information on steps taken to provide adequate, independent and prompt medical assistance to all inmates without undue delay (CAT/C/JPN/CO/1, para. 17). In this respect, please indicate if the jurisdiction over prison medical administration has been placed under the Ministry of Health.

A. Explanation in the government report

The government report notes that the transfer of the medical department of penal institutions to the Ministry of Health, Labour and Welfare has not been implemented due to a number of problems, including the problem of securing doctors, the necessity of maintaining a framework that ensures the provision of medical treatment within institutions from the perspective of securing the custody of inmates and protecting privacy and the necessity of maintaining a framework that ensures the prompt handling of emergency cases by securing doctors who can attend to penal institutions in times of emergency, but that efforts have been made to secure medical staff, including doctors, and to improve medical facilities so as to ensure that adequate medical treatment is provided to inmates. Moreover, measures have been taken to have inmates attended to or admitted at an outside medical institution if necessary.

B. Problems found in the government report

The failure to transfer the medical department to the Ministry of Health Labour and Welfare is as outlined in the government report. However, it is not as though this has been decided as a result of open debate within government institutions. The current situation has simply been

allowed to continue.

Within this type of framework, cases of inappropriate medical care have been pointed out by Penal Institution Visiting Committees from several regions. For example, there is the example of a prisoner who died on the night of February 5, 2012 at Toyama Prison after a sudden change in his condition. It took an hour from the time the prison officer noticed the change in the prisoner until the medical specialist official was contacted. It then took a further hour to request emergency transportation from the fire department.

This prisoner was suffering from high blood pressure, diabetes and a stroke prior to entering prison and after entering was being treated with dietary restrictions and medication. The prisoner's condition deteriorated obviously in December 2011, and was sent urgently to an outside medical facility after losing consciousness as a result of hypoglycemia. The prisoner also collapsed in their room and sustained a contusion to the back of the head that required suturing. In late January 2012, the prisoner lost the ability to eat independently as a result of aftereffects of the stroke and became dependent on others to consume food. The Penal Institution Visiting Committee for this prison gave a damning assessment in their report, dated April 16, 2012, stating that the delayed response to the prisoner's worsened condition in this sort of situation reflects a serious problem inherent in the facility's medical care framework itself.

On the other hand, almost all prisons using the half public, half private PFI (private financial initiative) and prisons like Nagano and Tsukigata prisons in remote areas where securing a full-time medical doctor is difficult refer their prison medical care to regional medical institutions. This medical care now corresponds to general medicine, with the same quality and cost, which falls under the jurisdiction of Ministry of Health, Labour and Welfare. It is only one section, but this is a situation where the recommendations of the Committee against Torture have been implemented.

Bar association investigations of the situation at these facilities revealed a dramatic decrease in the number of complaints by detainees regarding medical treatment and an increase in the medical budgets of facilities like these. Results like these support our concern that the facility medical care in most other government-run penal facilities are not administering necessary treatment to detainees because of budget deficits and cannot provide adequate care, and this results in risks to the health and lives of detainees.

Let us consider the points raised by the government as reasons that transferal is difficult. Regarding the point about conducting medical treatment inside the facility, treatment can still be carried out inside the facility if it is entrusted to an external party, and the examples of PFI

penal institutions are in fact doing that. Regarding the point about requiring medical staff to attend penal institutions immediately in medical emergencies, this too can be dealt with by incorporating it into regional emergency medical treatment. These things considered, the government's explanation for being unable to transfer jurisdiction is unreasonable. The transfer of the medical department to the Ministry of Health, Labour and Welfare is a policy that will certainly require an increase of the government budget, but in order to protect the lives and health of inmates, it is an urgent policy and the only choice to improve the grave situation of prison medical care.

Please make a recommendation to the State Party to promptly transfer the medical department of penal institutions to the Ministry of Health, Labour and Welfare.

25.

(a). Pursuant the Committee's previous concluding observations, please indicate if the State party has amended its legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards (CAT/C/JPN/CO/1, para. 18). In particular, does the amended legislation include a time limit for solitary confinement, require a prior physical and mental examination as well as provide access to complaints mechanisms against decisions imposing solitary confinement upon persons serving sentences?

A. Explanation in the government report

The government explains that the isolation system is being strictly enforced in accordance with legal requirements, isolation disposition is subject to complaint, and in order to ensure appropriate use of the system, monitoring by high-ranked bureaus and visits by the Penal Institution Visiting Committee are being carried out.

B. Problems found in the government report

B1. Problems with the isolation system itself

Under the new isolation system, the number of people subject to isolation is certainly limited to a small number.

However, with regards to the point that a doctor's medical opinion is sought at least once

every three months, the requirement is simply to hear a doctor's opinion; a medical examination is not a requirement. Also, on-the-spot inspections and visits by the Visiting Committee are not systems that specialize in monitoring the appropriateness of isolation implementation.

Furthermore, the government declares that it is inappropriate to set an upper time limit on isolation, but when the negative repercussions on the mind and body of detainees brought about by isolation itself are considered, continued use of unlimited isolation on the basis of its necessity must be avoided.

B2. Problems with isolation outside the law

With regards to the degree of constraints applied to lifestyle and actions within a penal facility, prisoners designated "Category-four" of the "restriction categories" are, as a rule, treated in their rooms. The difference between category-four prisoners and isolation prisoners is that the former can exercise and bathe with other prisoners, and they are given opportunities to be kept with other prisoners twice a month. The major problem here is that, unlike isolation prisoners, they cannot make an appeal by claiming for review.

This point was included in the first examination's recommendations, but the only revision made since those recommendations was to increase the number of opportunities to be kept with other prisoners from once to twice a month.

The government is making efforts to abolish round-the-clock solitary confinement and as of October 10, 2010 4.4% of prisoners are categorized as Category-Four. We believe this includes prisoners who, despite requiring specialist medical treatment for mental disability in ordinary circumstances, continue to be designated Category-Four and fail to receive proper treatment. In cases like this, psychological symptoms deteriorate and solitary confinement is continually prolonged.

On 21 January, 2013, the Wakayama Bar Association brought a case against Wakayama Prison to not implement "de facto isolation" on the grounds that it amounts to a violation of basic human rights in that it was a violation of the prisoner's character and integrity, and dignity as a human. The prisoner involved in this prosecution had, between March 9, 2005 and June 3, 2010, spent a total of 1736 days of her 1913 day criminal sentence in round-the-clock solitary confinement (90.75%).

Please make the same recommendation to the State Party as paragraph 18 of the previous concluding observations.

(b). Please provide information on steps taken to systematically review all cases of prolonged solitary confinement, through a specialized psychological and psychiatric evaluation, with a view to release those whose detention can be considered in violation of the Convention. Information should be provided on the number of cases that have been reviewed and how many detainees have been released from solitary confinement as a result of such review.

No comment

26. Please provide updated information on measures taken to improve the conditions of detention of persons on death row, in order to bring them into line with international minimum standards. In particular, please provide information on steps taken to ensure that:

(a). The death row inmates and their families are duly notified of the time of their Execution.

A. Explanation in the report

The government report states that notification of execution prior to the day of execution is not given to death row inmates or their families because it might have a negative impact on the emotional stability of the inmate or inmate's family and could inflict even more serious anguish.

B. Problems found in the government response

Notification of execution prior to the day of execution was carried out in Japan until 1972. It is thought that the impetus for the change in practice was the suicide of a prisoner who had been notified of his execution. We believe that the current practice did not start because of humanitarian consideration, but rather to avoid suicide and ensure execution is carried out.

Also, because prior notification is not given, there are continuing incidences of death row inmates, who in the process of preparing petitions for retrial, are put to death before making official claims. With this in light also, same-day notification is deeply problematic.

Please make a recommendation to the State Party to make operational changes so that death row inmates, their families and legal counsel receive prior notification of their execution time.

(b). There are no limitations on number and persons of visitors to the death row inmates.

A. Explanation in the government report

The government report responds that, pursuant to the spirit of the law, appropriate judgments are made on a case-by-case basis.

B. Problems found in the report

While the report notes that appropriate judgments are made on a case-by-case basis, in actual fact the extent of permission for contact with the outside world is limited to between 3 and 5 visitors. This amounts to nothing less than a de facto upper limit on the number of visitors permitted. In addition, there have been repeated complaints that in cases where, for some reason or another, a visitor for whom permission has already been granted cannot visit, approval is not granted to applications for visits from a different third party.

Please make a recommendation to the State Party to abolish the practice of strict regulation of death-row inmates' contact with the outside world.

(c). Death row inmates are not held in solitary confinement for extended periods of time.

A. Explanation in the government report

The government report states that solitary confinement for death-row-inmates is the general rule, and that permission can be granted to death-row inmates, in some cases, to interact with each other therefore this type of treatment is not deemed a human rights violation.

B. Problems found in the government response

Legally, there are regulations to provide that permission can be granted for interaction between death-row inmates, but there is not one example where this has actually been applied. All death-row inmates are kept in complete isolation.

To continue confinement of an inmate in complete isolation from other human beings inside a solitary cell, apart from 30 minutes to exercise and 15 minutes to bathe a day, until execution is carried out is nothing short of inhumane treatment.

Please make a recommendation to the State Party to abolish the general rule of round-the-clock solitary confinement of death-row inmates.

(d). A more human approach is adopted with regard to the execution of persons at an advanced age or with mental disabilities.

A. Explanation in the government report

The government report states that being of advanced age itself neither falls under grounds for suspension of the execution of death penalty nor falls under reasons for which a pardon is deemed reasonable, and that after careful consideration of the inmate's mental condition, if the inmate is deemed not to be in a state of insanity, the execution will be carried out.

B. Problems found in the government's response

As recommended by the Committee at the first examination, there is still no reliable system for identifying insane inmates. As explained in paragraph 5, although the government states that it is not aware of cases where the execution of death penalty has been suspended, there is in fact a case where a de facto suspension of execution is suspected. We presume that in this case a death-row inmate is in a state of insanity because of severe mental illness.

On the other hand, there have been cases where the death penalty has been carried out while the inmate was suspected of possibly being in a state of insanity. One cannot say that regulations on suspending the execution of the death penalty for the insane are being appropriately applied.

Also, accessing one's own medical records is not permitted for any prisoner, including those on death-row. Therefore, neither death-row inmates themselves, nor their families or their legal counsel can know for certain the medical treatment the inmate receives from the penal institution. Also, it is in effect impossible for an external doctor independent of the penal institution to visit the death-row inmate and examine his or her mental condition. From these perspectives as well, it is impossible to verify whether or not accurate and careful consideration is being made on the inmate's mental condition.

Please make a recommendation to the State Party to review the grounds for suspension of execution of the death penalty and also create a system of determining whether or not there are

grounds for suspension of the death penalty by a third party that is independent of the administrative institution.

27. In light of the Committee's previous concluding observations, please provide information on steps taken to ensure effective and thorough judicial control over detention procedures in public and private mental health institutions CAT/C/JPN/CO/1, para. 26).

A. Explanation in the government report

The Government of Japan response notes that, with regards to restrictions on activity within mental hospitals and detaining hospital patients, procedures that are duly sensitive to human rights are guaranteed pursuant to the Act on Mental Health and Welfare for the Mentally Disabled.

B. Problems found in the government response

However, the government report is limited to an explanation of the current Act on Mental Health and Welfare for the Mentally Disabled and is not based on results of research into the actual situation. And regarding "steps taken to ensure judicial control", there have been absolutely no new steps taken since the previous committee's concluding observations. The report simply explains again the pre-existing system.

The "psychiatric review board", pursuant to the current Act on Mental Health and Welfare for the Mentally Disabled is a system that was established in 1987, but it has been criticized for, over the last 25 years, failing to fulfill its function to improve hospital discharge and treatment. That is to say, the psychiatric review board in each local municipality is comprised of part-time committee members, of whom, only one (the minimum required) is a legal expert, and the legal expert does not even serve as committee chair. As a result, there is an absence of framework and capabilities to "ensure judicial control", as requested in the previous concluding observations.

In order to request a reversal of a decision for compulsory hospitalization, it is possible to file an appeal pursuant to the Administrative Appeal Act and possible to file a lawsuit pursuant to the Administrative Case Litigation Act. However, requests for appeals are filed not to judicial institutions, but to the Ministry of Health, Labour and Welfare, acting for the nearest higher administrative agency, such as the governor in the prefecture where the disposition occurred, and as the right of the petitioner to participate in hearings while in hospital is not recognized, it

is all but ineffective.

Further, only the decision for compulsory hospitalization is subject to filing an appeal or filing a lawsuit; subsequent improvement in symptoms is not considered. According to administrative agency interpretations, based on examinations by the psychiatric review board, ordering public or private hospital management to discharge patients amounts to Adverse Disposition so hospital management can claim for review (file an appeal) under the Administrative Appeal Act, but regarding notifying patients about a decision which approves the actual situation of hospitalization, this is not acknowledged as administrative disposition, but simply as an actual act, so cannot be appealed against (page 426, Edition 3, Act on Mental Health and Welfare for the Mentally Disabled). According to this interpretation, with regards to the decision to turn down a patient request to be discharged from hospital, there is no way to file an appeal.

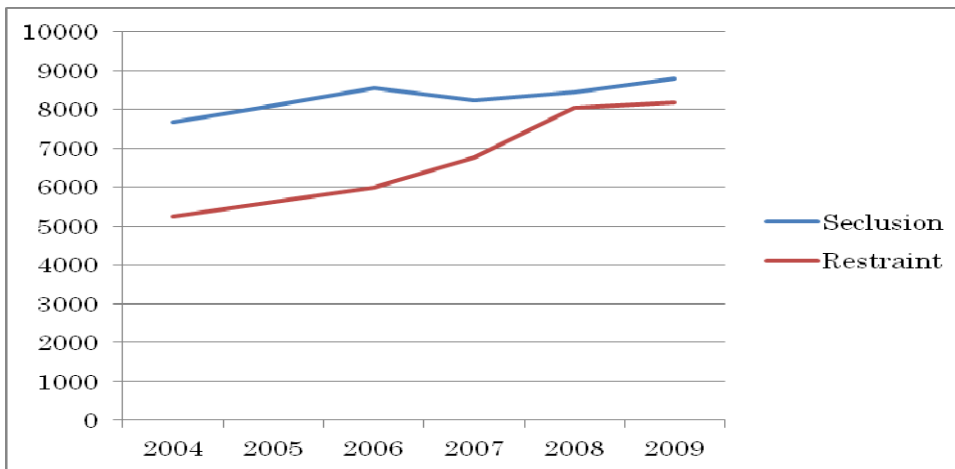
Regarding procedures pursuant to the Habeas Corpus Act, as noted in paragraph 24 of the Human Rights Committee's concluding observations to its examination of the Japanese government's fourth report, as per Article Four of the Habeas Corpus Rule the requirements for a writ of habeas corpus are significantly limited and in incidents of petitions made by the mentally disabled, the Supreme Court makes decisions in accordance with this (Supreme Court Civil Case Digest, Vol. 25, No. 4, p.435). In defiance of the Human Rights Committee's recommendations, the Japanese government and the Supreme Court (the Establishment of the said Rule is by the said Court) have made no improvements in this area.

As outlined above, there is no effective way to seek a judicial remedy for patient appeals that are based on seeking hospital discharge, particularly if symptoms have improved after prolonged hospitalization.

Furthermore, as there is no system to guarantee publicly funded legal counsel or representation for these procedures, the situation is one in which it is impossible to "ensure judicial control".

B1. Information supplement and problem notification regarding actual situations and specific examples.

The number of seclusion and restraint cases is increasing year to year.



The graph depicts the change in the number of seclusion and restraint cases per day at psychiatric facilities based on a Ministry of Health, Labour and Welfare annual survey of patients nation-wide, taken on June 30, as a reference date. It is clear from this graph that seclusion and restraint cases are increasing year to year.

There is a correlation between the number of seclusion and restraint cases and the number of stationed medical staff, and seclusion and restraint is carried out so that a small number of staff can manage patients.

It is acknowledged that fewer medical staff are stationed for psychiatric care than for general medical care, particularly in specialist psychiatric hospitals, and so the reason there is so much utilization of seclusion and restraint is that patients are being managed by a small number of staff.

Furthermore, it is a system whereby when seclusion and restraint are utilized the reason for it is announced only to the patients themselves, but seen from the situation of the mentally disabled person, this does not adequately fulfill the function of a rights protection system.

Also, the medical record that describes the foundation for the decisions to seclude and restrain and records follow-up is a mere formality, and cannot be judicially verified post hoc. Often the records simply contain ticks placed next to stylized items that describe the reason for seclusion and restraint, or words such as “self-harm” inscribed with a rubber stamp. Many of the medical records do not enable post hoc investigation into the specific words and actions or situations at the time, and these records are tolerated.

B2. The failure of the psychiatric review boards

In 2009 there were a total of 1085 board members on psychiatric review boards in all

municipalities nation-wide. Of that figure, 611 board members were doctors and 237 were lawyers, so the composition of the boards is skewed towards medicine. In the same year, there were 294 cases of requests for treatment improvement and 1249 requests for hospital discharge. Compare this with the fact that of the approximate 330,000 inpatients, 72,000 were deemed to not require medical care but could not be discharged because of inadequate societal resources, and that there are more than 17,000 cases of seclusion and restraints per day, and we can see that are extremely few appeals made to the psychiatric boards.

Also, according to results of an examination of the actual conditions of reviews carried out by the psychiatric review boards in each prefecture, there was only an approximate five per cent chance of approval of appeals in cases where patients made appeals to the psychiatric review board to request treatment improvement or hospital discharge. With regards to review of the periodical medical condition reports submitted by each hospital to the psychiatric review boards a mere 0.08 per cent recommended revising status of hospitalization from involuntary on the basis of self-harm to another status; 0.004 per cent recommended revising status of hospitalization from involuntary on the basis of lack of ability to make decisions to another status, and 0.003 per cent advised that continued hospitalization was unnecessary.

From what is outlined above, it cannot be accepted that the psychiatric review boards are, via judicial control, containing seclusion and restraint or discouraging unreasonable hospitalization.

Please make following recommendations to the State Party.

1. Make the psychiatric review boards a permanent mechanism with full-time legal board members and ensure it is a quasi-judicial board presided over by a legal expert who serves as chair.
2. Legislate a system of publicly funded legal counsel and representation, announce that it is possible to request publicly funded legal counsel and representation in cases of involuntary hospitalization and seclusion and restraint, and ensure that the right to publicly funded legal counsel and representation in cases of mandatory measures is protected.
3. Raise the number of doctors and nurses in hospital wards where seclusion and restraint is

carried out to no lower than the standard for general medical treatment.

28.

(a). In light of the Committee's previous concluding observations, please provide information on steps taken to prevent all forms of violence against women, including domestic violence and gender-based violence, as well as to promptly, effectively and impartially investigate all allegations of torture or ill-treatment with a view to prosecuting those responsible (CAT/C/JPN/CO/1, para. 25). In this respect, please describe steps taken by the State party to facilitate the reporting of such violence and provide protection and appropriate care for victims, including, inter alia, access to safe houses, shelters and psychosocial assistance.

A. Explanation in the government report and Problems found in the government reply

The Government of Japan report asserts that the Convention does not cover violence by private individuals (Item 1). The Convention, however, addresses the failure of the State party to prevent violence and protect the victims of violence, which renders the Government of Japan interpretation invalid.

The report also fails to deal with the Committee's questions regarding 1) preventative measures to combat such violence (Item 5), 2) the prompt, effective and impartial investigation of allegations of violence, given the Government of Japan's erroneous interpretation of torture (Item 4), and 3) the provision of data about compensation. The Government of Japan is not making an effort to acquire information about compensation.

B. Domestic violence

B1. The Government of Japan is promoting, through its Third Basic Plan for Gender Equality, measures that will establish a foundation for preventing and eradicating violence against women. However, it fails to mention any numerical goals pertaining to the eradication of incidences of spousal homicide, injury and assault.

B2. The Ministry of Internal Affairs and Communications report entitled "Policy Assessment regarding the Prevention of Spousal Violence: Evaluation and recommendations" (published on May 26, 2009) pointed out inadequacies in the quality of support in various

areas such as victim protection, the promotion of employment to encourage self-reliance, securing housing, and schooling for children.

a. Promotion of effective reporting and consultation system

a1. Of the 27 prefectures surveyed, 15 had not, since the legislation was passed, implemented training for medical personnel to encourage reporting.

a2. Regarding the operation hours of telephone consultation services, 21 of the 46 support centers surveyed (46%) had not extended their hours of availability to include holidays and evenings.

b. Victim protection and improving self-reliance

There is no data available showing the impact on victims of employment support offered by public employment agencies, etc.

c. Housing support

An examination of the enforcement of the policy of offering public housing priority to victims reveals that of the 54 entities surveyed, some were not implementing the measure (2) or were only partly doing so (37). Of the 323 applications made for priority housing in 2006, victims were living in such housing in only 46 cases, resulting in their low tenancy rate at 14% (based on data from 19 entities with an understanding of the situation).

d. Children's schooling

d1. Some Boards of Education do not offer guidance or advice to schools regarding collecting information about the children's new schools and residences (13 out of 27 prefectural boards and 8 out of 27 municipal boards).

d2. The standard method for determining the need to limit access to the Basic Resident Register differed among the 27 municipalities surveyed. Some municipalities required police opinion, even in the case of a direct consultation or protective order being issued.

e. An overwhelming majority of protective orders were petitioned by the victims, including those with the support of Spousal Violence Counseling and Support Centers. An improvement in legal assistance with attorneys (lawyers) is necessary.

f. Under the existing Domestic Violence Prevention Law, in the case of one party being evicted or not allowed contact, there is no system in place to order that party

to pay the living expenses arising from the marriage and bringing up children, or medical costs. Further improvements in the Domestic Violence Prevention Law are needed to protect the victims and end domestic violence.

- g. Non-Japanese victims of domestic violence are afraid of losing their status of residence if they flee from their husband's violence and become separated. Regarding Articles 22-4(1)(7) of the Immigration Control and Refugee Recognition Act and 25-13 of the Draft Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act (Revocation of Status of Residence), while non-engagement for over six months in activities allowing for the status of residence as spouses of Japanese nationals or permanent residents of Japan may be cause for revocation of that status, "cases in which the foreign national has a justifiable reason for not engaging in the activities while residing in Japan" are excluded when determining revocation. There is concern, however, that non-Japanese spouses who are domestic violence victims (usually the wife) and who are forced to live separately from the husband, and those not responsible for breakdown of the marriage, may have their status of residence revoked. Further, such spouse requires a certain amount of time to obtain a divorce and formulate a new life plan, but without the security of being able to remain in Japan during this period, a non-Japanese spouse cannot undergo divorce proceedings and may be disadvantaged in the divorce.

C. Sex crimes/sexual violence such as rape

C1. Measures to encourage reporting

According to a 2011 survey on violence between men and women by the Gender Equality Bureau of Japan's Cabinet Office ("Cabinet Office survey"), only 3.7% of those forced into sex by a person of the opposite sex consulted the police about it. We can surmise that an even lesser percentage reported the incident to the police (filed a complaint).

While the factors behind the hesitation to file a complaint are thought to include a fear of secondary harm from those involved in the criminal investigation/trial, the invasion of privacy and the psychological burden, the measures to encourage reporting are inadequate

C2. Measures to provide protection and appropriate care

The consultation services available for victims of sexual violence are extremely inadequate.

a. Telephone consultations

A 24-hour telephone consultation service (for matters including sexual violence) was implemented from February to March 2011 under the Cabinet Office budget, but has not been resumed since.

b. One-Stop Support Center

The UN Handbook for Legislation on Violence against Women (“Legislation Handbook”) recommends the establishment of Rape Crisis Centers (with the same concept as One-Stop Support Centers) using State funding. However, although the Government of Japan’s 2011 Second Basic Plan for Crime Victims includes a measure that promotes the establishment of One-Stop Support Centers for sex crime victims, the Government of Japan’s involvement is only indirect and extremely inadequate e.g. creating and distributing the “Guidebook for Setting Up and Running a One-Stop Support Center” (already distributed), raising awareness among medical institutions, and providing information about medical institutions willing to cooperate.

Regarding the target number of support centers, the Legislation Handbook recommends “one rape crisis center for every 200,000 women,” but the Government of Japan Guidebook merely states that it is desirable that at least one One-Stop Support Center per prefecture be established as a local service. This is a low number for goal setting.

Currently, there are three hospital-based centers with one run by a private group (Osaka) and two by prefectures (Ehime and Saga), and four non-medical institution based counseling centers with one run by a prefecture (Hokkaido), and three by private groups (two in Tokyo, one in Okinawa). The reality is that it is hard to set these centers up without financial backing from the government.

c. There is a lack of financial backing for nongovernmental organizations that offer support for victims of sexual violence.

D. Pornography

In its examination of Japan’s 2009 periodic report, the UN Committee on the Elimination of Discrimination against Women expressed concern at the normalization of sexual violence in the State party as reflected by the prevalence of pornographic video games and cartoons featuring rape, gang rape, stalking and the sexual molestation of women and girls. The

Committee also noted with concern that these video games and cartoons fall outside the legal definition of child pornography in the Act Banning Child Prostitution and Child Pornography, and strongly urged the State party to ban the sale of video games or cartoons involving rape and sexual violence against women.

The Government of Japan's 2010 Third Basic Plan on Gender Equality mentions the stricter enforcement of the current laws regulating pornography, but many opinions were submitted even in the process of formulating this plan that pertained to the appropriate regulation of pornography, opposing it on the grounds of freedom of expression, and leading to an inability to create effective regulations.

The reality is that there are reports of harsh sexual violence and forced filming at pornography production sites, and sexual photographs and images are being circulated of victims doing things against their will. Pornography is also being shown in workplaces and public places, and more than a few perpetrators of sex crimes have said that they were influenced by pornography. The current Act Banning Child Prostitution and Child Pornography only targets images depicting an actual subject who is 17 years old or less. Pornography depicting a non-existent subject or subject who is 18 years or older, or where the sexual organs are hidden, are exempt from the regulations. Even the possession of such pornography is not illegal, and is excluded from criminal punishment.

Furthermore, regarding the sexual exploitation of children, including child trafficking, child prostitution and child pornography, there is a lack in government departments able to head the planning, drafting and enforcement of such measures, as well as organize related activities, and no monitoring, supervising or reporting mechanisms for enforcement exist.

Please make the first three recommendations below be restated and also that the fourth recommendation below be issued to the State Party.

1. The Committee Against Torture's previous concluding observations
2. The Human Rights Committee's recommendations regarding Japan's 2007 periodic report
Increase the amount of damages awarded to victims of domestic violence and child allowance for single mothers, execute court orders for damages and child support, and, as with support given to victims with special needs such as non-Japanese nationals, reinforce long-term rehabilitation programs and rehabilitation facilities.
3. CEDAW's recommendations regarding Japan's 2009 periodic report
The Committee regards violence against women as a violation of women's human rights, and requests the State party to fully implement General Recommendation No. 19

regarding efforts towards eliminating all forms of discrimination against women. The Committee requests the State party to strengthen efforts to raise awareness about the various forms of violence that are not being acknowledged, including spousal violence. The Committee requests the State party to strengthen efforts to eliminate violence against women, expedite the issue of protective orders, and set up a free 24-hour hotline for female victims of violence. The Committee also requests the State party to offer high quality support services for women, including migrants and socially vulnerable women, so that they may lodge complaints and demand protection and redress, and through this, guarantee that women do not have to feel resigned to violent treatment and abuse. From this perspective, the State party should establish the measures necessary for encouraging spousal violence and sexual violence to be reported. The Committee requests the State party to run comprehensive awareness raising programs nationwide for groups of socially vulnerable women.

4. Establish, using state funding, a One-stop Support Center through which victims of sexual violence are provided prompt access to comprehensive services that include pregnancy tests, emergency contraception, abortion, STD testing and treatment, the treatment of injuries, post-injury precautions, counseling and support related to the investigation, and legal assistance.

- (b). Please provide information on steps taken to ensure that all victims can claim redress before courts of law, including victims of violence by foreign military personnel stationed on military bases. This information should include the number of requests made, the number granted, and the amounts ordered and those actually provided in each case.

A. Problems found in the government reply

The Government of Japan's response simply states that the pertinent regulations exist under the Act concerning State Liability for Compensation, Civil Code and Japan-US Status-of-Forces Agreement, and does not address the question from the standpoint of whether victims are actually being ensured adequate redress. Regarding statistics, the Government of Japan simply states "none" without mention of how this situation will be improved upon in the future.

B. Japan-US Status-of-Forces Agreement

B1. Acts done in performance of duty

According to Article 18(5) of the Japan-US Status-of-Forces Agreement, claims arising out of acts or omissions of members or employees of the US armed forces done in the performance of official duty, or out of any other act, omission or occurrence for which the US armed forces are legally responsible, and causing damage in Japan to third parties, other than the Government of Japan, shall be dealt with by Japan. The procedure entails that: 1) The victim files a claim for damages against the Government of Japan, 2) The Government of Japan awards damages to the amount determined, whether by settlement or adjudication, and 3) Where the US alone is responsible, the amount awarded or adjudged shall be distributed in the proportion of 25 percent chargeable to Japan and 75 percent chargeable to the US. Where both are responsible for the damage, the amount shall be distributed equally between them.

If, however, the US alone is responsible, and 25 percent of the damages is chargeable to Japan, it becomes easy for differences in opinion to emerge regarding this actual allotment, and there is strong criticism regarding the irrationality and unfairness of this, such as that Japan should in many cases shoulder the entire cost.

For example, in terms of damages awarded in a suit against five US bases around Japan (including Kadena and Futenma) regarding loud sounds being emitted, the Government of Japan has paid the entire amount of 22.094 billion yen, including delinquent charges. The US, however, has not paid the amount required because “There is a difference in the views of Japan and US regarding the allotment and the matter has not yet been settled.” (Okinawa Times, March 10, 2011).

Ultimately, there is a strong possibility that the Government of Japan (i.e. taxes) will fund the full compensation amount, with the result akin to granting immunity to the offenders and resulting in a failure to prevent such damage from taking place.

B2. Acts done not in the performance of duty

According to Article 18(6) of the Japan-US Status-of-Forces Agreement, 1) Based on the victim’s request, the Government of Japan shall consider the claim and assess compensation to the claimant and prepare a report, 2) Having received this report, the US government shall then decide whether they will offer an ex gratia payment, and 3) If the victim consents to this payment, the US government will make the payment directly.

Although there are at least 1,500 cases a year of unlawful acts carried out by members of the US armed forces and their families according to the claims for damage filed to the

Ministry of Defense alone, no more than 3% of them result in compensation paid by the US government under Article 18(6) of the Japan-US Status-of-Forces Agreement, and there is criticism that victims are being forced into accepting this situation (Memorandum on questions of Tokushin Yamauchi, member of the House of Councilors of the Japanese Diet, April 17, 2008). The Government of Japan, however, has not clarified what the actual number of incidents and accidents carried out by members of the US armed forces are, nor what actual compensation payments have been made. The Government of Japan states (in response to abovementioned memorandum), “We do not have a grasp of all incidents and accidents caused by US soldiers.”

There was also an incident in 1995 of a young girl being raped, and to improve the operation of the Status-of-Forces Agreement, the Government of Japan began providing ex-gratia payments the following year to make up for the gap between the amount of damages determined (which requires a court decision) and the amount paid by the US government. According to the Government of Japan, seven such payments were made up until 2008. There were reports, however, that the amount of compensation paid by the US government was very small (15% in some cases) compared to the amount determined by the court, and that it was extremely difficult in the first place to pinpoint the offending US soldier and win a claim for damages. In some situations, even with a conviction resulting in a criminal case, the US government has not paid compensation moneys because the victim failed to file a claim to the Government of Japan under Article 18(6) of the Status-of-Forces Agreement. It is suspected that there are problems with access to the system.

In February 2008, a 14-year old junior high school student was raped by a US soldier in Okinawa. The victim could not be protected, the charges were dropped, and the case was thrown out. The victim was unable to claim for damages and has not received any redress (including consolation moneys or ex-gratia payments). Further, on October 16, 2012, a girl was raped and injured by two US marines in the central part of the Okinawan mainland. Although the men were arrested and charged, there are no prospects for compensation.

The Government of Japan says that it is dealing with the matter as appropriate under Article 18(6) of the Status-of-Forces Agreement and with the improved operation of the agreement, but it is impossible to say that the victims are receiving fair redress.

Please make recommendations to the State Party to revise the Japan-US Status-of-Forces
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Agreement to make it more effective in providing redress for victims and dealing with the indemnity liability of the perpetrators of crimes, as well as to improve the system to make it easier for victims of violence caused by foreign military personnel in Japan to use.

(c). Please elaborate on the training programmes in place for law enforcement officials and the judiciary to ensure that they are fully familiar with relevant legal provisions and are sensitized to all forms of violence against women as well as to the rights and needs of victims.

A. Law enforcement officials

As stated in the Government of Japan's report, there does indeed seem to be a certain extent of training and education being implemented for police and so on, but it is difficult to say whether it is actually producing adequate results. Incidents of police or court officials perpetrating violence against women (sexual violence etc.) are often reported. Furthermore, this is not just an issue regarding individual personnel - there are many problems in terms of institutional response. In some cases, the response given to incidents of violence against women such as domestic violence and stalking is lukewarm, resulting in harm to the victim. In November 2011, for example, the Chiba Prefectural Police postponed receiving a stalker report, during which time two people were murdered. The police response was called into question. In August 2012, the National Police Agency issued a notice about steadily implementing policies based on its "Measures to Realize in the Full Spirit of Police Reform," but this has not guaranteed their complete understanding and use on the ground.

B. The judiciary

According to the "Report on the Survey Results regarding the Operation of the Protective Order System" published by the JFBA's Committee on Equality of Men and Women on October 12, 2010, there are many cases of courts dismissing or recommending the withdrawal of protective orders, or refusing to accept them, even when past violence is evident from medical records, for example.

As for "fear of further serious harm," in some cases, petitions for protective orders were dismissed due to consideration given to statements of regret or written oaths submitted, or memoranda stating that "If contact is necessary, it must be through a lawyer" (with a lawyer being appointed for the other party). Yet such promises were broken within days of the

decisions being made.

In one case, a restraining order for a child was withdrawn and the judge stated, “A junior high school student can avoid being approached by the other party on his/her own.” The child was later ambushed relentlessly at school. In the case of requests for such restraining orders, there is a tendency for courts to demand independent evidence that the child is being followed.

The petition was denied in another case with the victim being told by the judge that the violence was caused by her infidelity. Consideration was given to the motive for the violence and fault on the part of the victim.

In terms of restraining orders for families, a mother escaping with her family to her parental home was told by the judge that a restraining order could not be issued for relatives.

These operational problems can be perceived as due to an insufficiency in basic understanding of domestic violence on the part of the relevant judges and court clerks.

In reality, there are many rape trials that take place with proof of the victim’s resistance being demanded, or secondary harm resulting from the investigation and trial.

There should thus be thorough training provided for judges and court clerks, as well as local government authorities dealing with incidents of domestic violence and rape. Professional training on the structure of domestic violence and rape, as well as their impact on victims, is essential.

In order to ensure sensitivity to all forms of violence against women as well as to the rights and needs of victims, please make a recommendation to the State Party to improve their training programs for police personnel, judges and court clerks and to make them more specialized.

(d). Please provide information on the impact and effectiveness of these measures in reducing cases of violence against women. Statistical data should also be provided on the number of complaints relating to violence against women, and on the related investigations, prosecutions, and sanctions, as well as on protection provided to victims.

According to Supreme Court statistics, the average period for hearing a protective order-related case is 12.6 days, but in one case, a dismissal was made three months and one week after the petition was filed. There is a problem with the lack of promptness in such hearings.

A leveling out or decrease in the number of cases of temporary protection at Women's Consultation Offices and court protection orders can be observed, but when compared to the number of actual consultations and survey outcomes, a strong possibility emerges that rather than there being less actual harm taking place, the proper protections available are decreasing. Furthermore, the number of arrests for bodily harm fluctuates at around 1,000 cases per year, but this number is too low. It can be inferred that many such incidents do not result in arrests being made.

Although there is an increasing trend in the number of stalking cases, the anti-stalker law is applied in few.

As previously stated, there are few consultations or reports made to police for crimes of sexual violence, and it can be inferred that many such incidents do not result in arrests being made.

1. Please make the following recommendations to the State Party. Establish measures to make the systems regulating protective orders and stalkers easier to use so that delays do not result.
2. Establish measures to make it easier for victims to report crimes of sexual violence.

29. Please indicate measures taken to broaden the scope of the definition of rape in article 177 of the Criminal Code to include incest, sexual abuse other than actual sexual intercourse, as well as rape of men. Furthermore, please provide information on steps taken to remove the burden of victims to prove resistance against the assault as well as to eliminate the requirement of the victim's complaint in order to prosecute crimes of sexual violence.

A. Explanation in the government report

The Government of Japan's response does not deal with the Committee's request to broaden the scope of the definition of rape in Article 177 of the Criminal Code and repeal the requirement of formal complaint from the victim in order to prosecute.

B. The crime of rape

There has been no amendment whatsoever regarding the crime of rape (Article 77 of the Criminal Code) or repeal of the requirement of formal complaint from the victim in order to prosecute under Article 180. There has hardly been any reduction made in the victim's burden. The Cabinet decision in 2010 regarding the Third Basic Plan for Gender Equality stated that it

would “consider the penal provisions for sex crimes, such as by re-examining the crime of rape (changing the requirement of formal complaint from the victim, raising the age of consent to sexual intercourse, reconsidering the elements constituting the crime),” but did not indicate a deadline or concrete direction. This has indeed been one of the topics under discussion since 2011 by the Expert Panel on Violence against Women of the Gender Equality Council, which was established under the Basic Law for a Gender-Equal Society. A report was issued in August 2012 based on the panel’s discussions but a concrete amendment bill has not yet been drafted.

Incest (provided it is vaginal intercourse) is excluded from the application of Article 77 of the Criminal Code. However, as there is no particular substantive or procedural law that penalizes incest, charges must, in principle, be brought by the victim or a relative. As the majority of victims are very young and their relatives cannot be counted on to do this, as a matter of practice, it is hard for incest to be subject to criminal procedure. Although not a situation of incest, in a case where the perpetrator was the boyfriend of the victim’s mother, the Kanazawa branch of the Nagoya High Court dismissed a case on July 3, 2102 because the victim was regarded as lacking legal capacity to bring charges (she was 10 years and 11 months old at the time of the lawsuit). The same problem as that with incest arose – the victim was too young and her mother could not be counted on to bring charges. People do not prosecute their spouse for rape, apart from in a situation of failed marital relations.

The Criminal Code establishes the age of 13 as the age for sexual consent, as well as that males/boys cannot be victims of rape. Although the government’s expert panel is re-examining these matters, it has still not led to a concrete bill being drafted.

In principle, crimes of sexual violence require the victim’s formal complaint in order to prosecute. Although it is difficult in reality for victims to bring criminal procedures because of this, there is a view to maintain the requirement in order to protect the victim’s privacy. The Government of Japan has not managed to be convincing about this, based on the reality of the victims.

Regarding the burden on victims to prove resistance against the assault, first, from the perspective of the human rights of the victim, sexual conduct that is carried out against a person’s will should be treated as a crime. Under the law, the victim’s resistance is not a requirement for an act to constitute rape. The reality, however, is that in many cases, proof is being demanded of resistance that clearly demonstrates the victim’s lack of consent to sexual conduct. Such application diverges from the reality that resistance is not even possible for many victims. Also, no amendments have been made to require the perpetrator to prove that

there was consent, or to render a coercive situation as sufficient proof. Despite the victim having to repeat her explanation of what happened in criminal procedures from the time of the investigation up to the trial, and that there are provisions in the Rules of Criminal Procedure regulating interrogation content and methodology, the victim bears a heavy burden, with virtually unrestricted cross-examination in court done by criminal lawyers with the aim of impeaching the victim's credibility, for example. Further, as the lay-judge law (enforced in 2009) contains no special exemption for cases of sexual violence, some such incidents come under the system through the law's automatic determination of statutory penalty. The emotional burden on the victim is even bigger in this situation.

There are, however, systems in place to protect victims in criminal cases, such as when a guardian or counselor escorts the witness (witness escort), a partition screen is set up between the witness and the accused or courtroom audience (witness shielding), or the witness is interrogated in a separate room with a video monitor link to the judges, prosecutors and lawyers (witness interrogation through video link).

Please make the same recommendation to the State Party on as paragraph 25 of the concluding observations from the Committee's previous examination. The JFBA also requests that the Government of Japan be issued recommendations to: re-examine its measures regarding the sentencing of perpetrators of domestic violence and the arrest and prosecution of those violating protection orders (a Human Rights Committee recommendation); abolish the Criminal Code requirement that the victim bring the charges for the crime of sexual violence; define sex crimes to include crimes that violate the rights of women to enjoy physical security and dignity; and raise the penalty for rape and establish a separate crime for incest (CEDAW recommendations).

30.

(a). With reference to the Committee's previous concluding observations, please provide information on steps taken to combat trafficking in persons (CAT/C/JPN/CO/1, para. 25). In this respect, please indicate if the State party has restricted the use of entertainment visas and closely monitors the issuance of visas for internship and trainee programmes. Please describe steps taken to ratify all relevant international treaties, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

A. Explanation in the government report

The Government of Japan report states that it drew up an Action Plan to Combat Trafficking in Persons in 2004 which it revised in 2009, but does not mention anything in response to the various problems that NGOs have pointed out regarding the plan and concrete measures based on it.

Regarding foreign trainees and technical interns, the Government of Japan report states, “We have not received any reports of particularly terrible incidents that would be considered human trafficking or forced labor under international standards.” Although NGOs have repeatedly reported such terrible incidents to the Government of Japan, it has not responded properly to them.

Regarding the Committee’s concluding observations mention of “victims of trafficking being treated as illegal immigrants and deported without redress or remedy,” the Government of Japan report responds, “This is not the case.” The government response, however, says no more than that “The government protects people acknowledged as victims of human trafficking by, for example, issuing special permission to stay in Japan.” The reality is that those not acknowledged by the government are being forcibly deported without any redress or remedy, even if they are victims of human trafficking.

B. Human trafficking for labor exploitation

B1. The Government of Japan originally created human trafficking measures aimed at countering the “sexual exploitation of non-Japanese women in the sex industry” as a main policy objective, paying no attention to the issue of human trafficking for labor exploitation. Since about 2006, however, it became clear through NGO efforts that some foreign “trainees” and “technical interns” in Japan were being forced to work under poor conditions. Those in the Government of Japan charged with dealing with human trafficking measures knew about the problem, and although the 2009 revisions to the Action Plan do not specify the issue of trainees and technical interns, they clearly express measures countering labor exploitation that include them in policy objectives.

Today, about three years later, no human trafficking cases for the purpose of labor exploitation have been exposed in factories or farms, for example (combined with sexual exploitation). The Government of Japan is apathetic towards exposing this issue.

B2. Foreign trainees and technical interns

In 2009, Japan’s immigration law was revised to establish the visa status of “technical

intern.” It stipulated that labor laws come into operation two months (at the time) after training, strengthened support for the guidance and overseeing of companies by bodies prohibiting the collection of guaranty moneys and penalties for breach of contract, and increased the length of time that a company is prohibited from taking on interns due to unfair practices from three to five years (enforced in 2010).

The substantive problems of the foreign trainee and technical intern system, however, have not been addressed, such as the huge gap between the aim of the foreign technical intern system (“to transfer skills and knowledge to developing counties and contribute to capacity building for their economic development”) and the fact that the system is used to solve labor shortages in local small and medium sized businesses. Also problematic are the existence of relationships that are extremely controlling (e.g. one’s visa is attached to a particular hosting organization), the difficulty of regulating sending organizations abroad, and the structural weaknesses in the supervisory and support functions of domestic supervising bodies.

The trainee and technical intern system should be abolished.

B3. Immigration and immigration bureau-related policies

Human trafficking is intimately connected to the movement of people in the context of economic disparity. From the perspective of preventing human trafficking, the number of people tempted into participating in the exploitative transport of humans could decrease considerably if they were able to acquire legitimate visas and work under decent labor conditions.

Under current immigration laws, however, visas that allow work are limited to people with prescribed qualifications and experience (“unskilled labor” is rejected), and other than people of Japanese descent and those married to Japanese nationals, it is difficult for non-Japanese nationals to acquire legitimate work visas.

In the first place, the Government of Japan’s policies on the intake of immigrants have not necessarily been clear. According to the Liberal Democratic Party and the Keidanren’s Recommendations on Accepting Non-Japanese Workers (2006-2008), as well as the Fourth Basic Plan for Immigration Control of the Ministry of Justice (March 2010), there is a certain consensus regarding the acceptance of “non-Japanese nationals working in specialized/technical fields,” but the same cannot be said of foreigners not falling in this category.

In creating a new system for the intake of foreign workers, there is a need to consider the

protection of human rights, such as guaranteeing basic worker's rights, prohibiting discriminative treatment, guaranteeing the freedom to choose one's workplace, preventing mediation by brokers etc., prohibiting mediation by the first host organization that may lead to intermediary exploitation, allowing family members to accompany workers, and raising awareness on the relevant issues among employers and Japanese workers.

C. Human trafficking for sexual exploitation

C1. The "Entertainer" visa was originally for performers such as singers and dancers. It was, however, used for a long time to make women entertain customers in sex-related businesses (including forced prostitution). Regarding Filipina women in particular, the entertainment experience requirement to "have a qualification recognized by a foreign country or local public organization, or an equivalent public or private body (clause 3)" was employed among those set by the Ministry of Justice Ordinance. Combined with illegitimate authorization by the Philippine government and the tacit approval of the Government of Japan, the entertainer visa became a major means for human trafficking. Responding to criticism, the Ministry of Justice amended its Ministerial Ordinance on the entertainer visa in March 2005 to clarify the career requirements for foreign entertainers (abolishing clause 3). A further amendment was made in June 2006 to tighten the eligibility requirements for managing a contracting agency (e.g. no past criminal record for human trafficking or immigration law violations). The number of new foreign entrants through the entertainer visa dropped sharply from about 135,000 in 2004 to 27,000 in 2010.

As the transport and acceptance of women through the entertainer visa became difficult, human traffickers then began to employ other visa categories such as "Spouse of Japanese National" and "Permanent Resident." There are business operators for mediating marriage to Japanese men, and gaining recognition as the child of a Japanese national, as well as adopting with a Japanese national. It is possible that quite a few of these are heinous organizations that transport women for the purpose of sexual exploitation.

C2. Above all, the Government of Japan's measures to suppress demand for sexual exploitation are weak.

The demand for sexual exploitation is overwhelmingly male, but there is a social consciousness that is tolerating it (or, to go further, that criticizes intolerance of it). Laws and social systems have a great impact on the formation of consciousness and codes of

conduct.

The current laws regarding sexual exploitation contain certain regulations if the person exploited is 17 years old or under (under 18). Rape, indecent assault, prostitution, human trafficking for the purpose of prostitution and child pornography, furnishing child pornography, and creating, possessing or transporting child pornography for the purpose of sale, are prohibited under the Criminal Code and other laws and subject to penalty. Possession of child pornography without the purpose of furnishing it to others (“simple possession”) is not, however, subject to penalty, and is not even illegal. There are almost no regulations regarding the sexual exploitation of those 18 years old or over (the conditions for constituting the crimes of rape and indecent assault are very restrictive, as is their operation), and such acts are virtually unhindered.

The 2009 Action Plan to Combat Trafficking in Persons states that the Government of Japan’s main preventative measures are to prevent potential victims from entering the country by strengthening visa screening and immigration procedures, and comprehensive residence management through measures to counter unauthorized labor. As part of its basic infrastructure for comprehensive measures, it mentions raising awareness about human rights through creating and distributing materials and preventing prostitution through school education, as well as about issues that employers and people who fuel demand for sexual exploitation should be made aware of. It is difficult to say, however, that such measures are being adequately implemented.

Please make the following recommendations to the State Party.

1. Regarding human trafficking for labor exploitation
 - i. Abolish the trainee and technical intern system.
 - ii. In creating a new system, consider the protection of human rights, such as guaranteeing basic worker’s rights, prohibiting discriminative treatment, guaranteeing the freedom to choose one’s workplace, preventing mediation by brokers etc., prohibiting mediation by the first host organization that may lead to intermediary exploitation, and allowing family members to accompany workers.
2. Regarding human trafficking for sexual exploitation

Re-examine pornography regulation laws, as well as the Anti-Prostitution Act and the Entertainment Business Act.

(b). Please indicate if the State party effectively enforces the criminal laws in this regard. In this respect, please provide updated information on the implementation and impact of the National Plan of Action to combat trafficking in persons of December 2004, the revisions of the relevant laws and regulations in the Penal Code as well as the Immigration Control and Refugee Recognition Act.

A. Explanation in the government report

The Government of Japan amended the Criminal Code, Immigration Act, and Law for Punishment of Organized Crimes in 2005, and the Law on Control and Improvement of Amusement Businesses in 2006. Stricter controls of shameless brokers and employers were enforced, and the fact is that a certain level of improvement has resulted from the measures. Refer to (d) below regarding the implementation status and impact of the National Action Plan to Combat Trafficking Persons (revised in 2004 and 2009).

B. Problems found in the government reply

B1. Regarding the question of whether the 2005 Criminal Code amendment makes all acts of human trafficking as defined under Article 3 of the Human Trafficking Protocol as subject to criminal punishment, there has been indication that it does not (US Department of State Trafficking in Persons Report 2012). This issue, however, needs consideration.

There are regulations other than the Criminal Code that penalize human trafficking and related acts, but their adequacy needs consideration (e.g. whether the regulations pertaining to pornography, prostitution and the facilitation prostitution are sufficient).

Furthermore, NGOs and other bodies have reported many cases of labor exploitation, as well as claims for redress being admitted and findings of death from overwork being made. There has not been a single case, however, of an arrest, indictment or conviction resulting for human trafficking for the purpose of labor exploitation. The reason for this must be clarified.

B2. The Government of Japan is implementing training for police and immigration personnel on methods for the criminal investigation and acknowledgment of human trafficking, yet there is hardly any training offered to prosecutors and judges. It is also unclear whether the current training content is more conscious of the rights and needs of the victims.

Japan is lagging behind in measures to counter human trafficking for the purpose of labor exploitation, yet it is unclear whether training for labor standards inspectors is being

implemented.

Please make the following recommendations to the State Party.

1. Consider whether current laws, including the Criminal Code, can be applied in all cases of human trafficking. In particular, investigate why human trafficking for the purpose of labor exploitation is exempt from criminal punishment.
2. Implement training on methods for the criminal investigation and acknowledgment of human trafficking aimed at all law enforcement personnel, including prosecutors, judges and labor standards inspectors, and not just police and immigration personnel. The content of such training must be more conscious of the rights and needs of victims.

(c). Please provide information on measures taken to address the concern that the protection for victims of trafficking remains insufficient in practice.

A. Explanation in the government report

The Government of Japan mentions the protection of female victims of trafficking through Women's Consultation Offices, and that the necessary budgetary provisions have been made for the various measures. It does not, however, clarify what these amounts are. Furthermore, although NGOs have identified several victim protection-related problems, no reference has been made to them.

B. Problems found in the government reply

B1. Since 2004, the Government of Japan has provided temporary protection for victims of human trafficking in Women's Consultation Offices, which also commission privately run shelters to offer protection, given that they are more experienced in supporting such victims. There is a need, however, for prefectures to bear the cost of commissioning these shelters. They used be asked to provide temporary shelter for victims quite frequently, but there has been a sharp drop in frequency since.

Women's Consultation Offices work hard to protect victims. They are, however, the only public shelters available for women (and their young children) to go to for protection for a variety of reasons, including domestic violence. There are always a lot of women (and their children) there, and everything, including counseling and legal assistance offered by

lawyers, is conducted, in principle, in the Japanese language (no resident interpreters are present). Almost all human trafficking victims there are non-Japanese nationals, but with the differences in language and living habits, the reality is that hardly any concrete measures are being implemented to help them recover and to prevent the same thing from happening again. The victims simply receive food, clothing and shelter and wait there until they can return to their home countries.

- B2. The Japan office of the International Organization for Migration (“IOM”) assists in the victim’s return to the sending country, and once home, the local IOM office assists the victim there. The governments of sending countries and NGOs have indicated, however, that they are not given the information necessary to assist in victim protection. There is a need to work in close cooperation with the support organizations in the victim’s home countries, paying sufficient respect to the wishes and privacy of the victim.
- B3. There are problems with the criteria by which the Government of Japan defines a “victim.”
- a. The methods for transport (e.g. international marriage, recognition, and abuse of legitimate visa) and exploitation (e.g. using psychological controls instead of physical confinement) in cases of human trafficking are becoming considerably shrewder. The standards used to evaluate the response to such shrewdness are not shared among the various relevant authorities. If a victim does not correspond to the image of “a woman who is confined and coerced into prostitution,” she may not be acknowledged as a victim. There are many cases where despite police uncovering the situation and an investigation resulting in the acknowledgment of the woman as a victim, the prosecutor whom she is then referred to does not recognize this. The victim is then prosecuted (and convicted). Further, there may be situations where immigration officials are first to learn of the situation and the woman is treated as a “victim” and not prosecuted, yet not referred elsewhere.
 - b. A broader understanding of policy application is needed to protect victims and prevent harm. There are times when it is not easy to determine if the act in question is one prescribed under Article 3 of the Human Trafficking Protocol. If, however, it is determined that it is not, from the perspective of protecting human rights, the case may still require protection or support as appropriate in that particular situation. A proper response may help to prevent further harm, including human trafficking. Articles 9(4) and (5) can be construed as indications to this effect.

In reality, there are situations when it is not easy to recognize the existence of “exploitation.” The measures implemented by the Government of Japan may reduce human trafficking when it takes the form of confinement, but there is a danger that it will increase in forms involving more lenient confinement and influence peddling.

It is thus necessary to help those who do not fall under the definition of a human trafficking victim yet need protection and support from a human rights perspective.

In “How to Handle Cases of Human Trafficking (Measures to protect the victim)” (Liaison Conference among Relevant Ministries on Measures to Counter Human Trafficking, July 1, 2010), the Government of Japan stated, “Even if the relevant ministries... learn that a person who is at first regarded a possible victim of human trafficking is later determined to not be so, the situation of and human rights of the victim must be given due consideration.” This demonstrated movement in this direction. In terms of concrete cases, however, it is unclear how such consideration is being demonstrated.

B4. Measures available for protecting male victims are unclear.

Please make the following recommendations to the State Party.

1. Collect information about, analyze and verify cases to establish methods for properly acknowledging victims of human trafficking. Even if a person cannot be acknowledged as a victim, respond to the situation to provide protection as appropriate.
2. Establish facilities to protect and support human trafficking victims and allocate staff with adequate understanding and experience, as well as who can respond in multiple languages.
3. Confiscate illegal proceeds from offenders to create a fund to support victims, and allow victims to actually receive damages and unpaid wages. Implement the necessary support measures to do this, including legal amendments. This is also useful for the prevention of human trafficking.

(d). Please provide information on the impact and effectiveness of these measures in reducing cases of trafficking. Please provide data on the number of persons trafficked to and in transit through the State party. Statistical data should also be provided on the number of complaints relating to trafficking, and on the related investigations, prosecutions, and

sanctions, as well as on protection provided to victims.

A. Explanation in the government report

The report states the number of people acknowledged by the Government of Japan as victims, and the number of investigations of what it has determined to fall under the crime of human trafficking. It does not, however, take into account the number of people or cases that the Government of Japan has known of yet not acknowledged as falling under the definition of human trafficking.

B. Problems found in the government reply

The opening statement of the Government of Japan's 2009 Action Plan mentions gaining a "thorough understanding of the current situation" and that "through various activities (e.g. Immigration Bureau procedures, police patrols of adult entertainment businesses and rule enforcement, protection efforts for female victims of trafficking by Women's Consulting Offices, and the collection of information from foreign embassies, NGOs, lawyers, etc.), the institutions concerned will make efforts to understand and analyze the working conditions of non-Japanese women and workers, cases of trafficking in persons, and the current situation of broker organizations in Japan and abroad, as well as promote efforts to share information among related organizations that may lead to the identification of cases of human trafficking."

Today, about three years later, information has not been shared with the relevant organizations and NGOs. There is also a need to accurately understand the current situation in Japan in order to verify the impact of existing measures and promote more effective ones for the future, yet the Government of Japan does not have a plan to implement a survey for the ascertainment of such information.

Please make the following recommendations to the State Party.

1. Share information with the relevant organizations and NGOs.
2. Implement a survey to ascertain the current situation.

Article 16

31. Please provide information on steps taken by the State party to prohibit corporal

punishment in the home.

A. Prevention of corporal punishment in the home

A1. The Government of Japan response asserts that Article 16 of the Convention does not cover violence by private individuals, such as domestic violence. Article 16, however, covers the prevention of acts committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, and is not limited in application to the prohibition of such acts. It has the same aim as Article 2 of taking effective legislative, administrative, judicial or other measures to prevent acts of torture.

A2. The former Civil Code allowed those with parental authority to exercise disciplinary measures to the extent necessary and enter children into disciplinary institutions. The Child Abuse Prevention Law allows disciplinary measures to be taken, regardless of whether the child’s dignity is affected, as long as due care is exercised as appropriate.

The Civil Code was amended on April 1, 2012, and although it clarified that parental authority must be exercised with regard for “the child’s interests,” it did not clarify whether such authority had to respond to the rights of the child.

Article 14 (1) of the Child Abuse Prevention Law, which permits the exercise of parental authority, still applies today.

[Reference text]

(Note: Underlined sections added as amendments)

Civil Code Article 820

A person who exercises parental authority holds the right, and bears the duty, to care for and educate the child to serve the interests of the child.

Civil Code Article 822 (1)

A person who exercises parental authority may discipline the child to the extent necessary to care for and educate the child according to article 820.

Child Abuse Prevention Law Article 14 (1)

The person who exercises parental authority shall take due care for the appropriate discipline of the child.

B. Measures to prevent corporal punishment in schools

B1. In Japan, the abuse referred to in the stipulation that “No one shall be allowed to abuse a child” does not refer to all forms of corporal punishment and degrading treatment but is

limited to acts prescribed under Article 2 of the Child Abuse Prevention Law. This, however, is not enough to abolish all forms of corporal punishment and degrading treatment of children.

- B2. In January 2009, the Government of Japan's Education Rebuilding Council raised (in response to the problem of bullying) the issues of "executing what laws provide in terms of firmly guiding children with antisocial behavior (including violence), and re-examining the issue of reporting."

In an announcement to the entire country, the Elementary and Secondary Education Department Chief of the Ministry of Education, Culture, Sports, Science and Technology, responded on February 5, 2009, under the title "Guiding Students with Problem Behavior": "If problem behavior actually occurs, take resolute action using measures available under existing laws, including suspension and disciplinary action, with due educational regard, in order to make the school feel safe." It cited the precedent of the Tokyo High Court in April 1, 1981 to revise the existing rule "In no case is corporal punishment acceptable," where the court stated: "Regarding acts with the outward appearance of corporal punishment as being unacceptable disciplinary action under the School Education Law, this is not something that was originally anticipated by the law" (quoted on page 47 of the concluding observations of the UN Committee on the Rights of Children). This changed things so that the disciplinary action of students in the form of corporal punishment is deemed different from the corporal punishment referred to in the rule "In no case is corporal punishment acceptable."

An April 28, 2009 ruling by the third petty bench of the Supreme Court (referred to in para. 35) supports the Ministry of Education's point of view.

- B3. Whether at home or in schools, the present situation regarding the corporal punishment of children in Japan deviates significantly from the recommendations of the UN Committee on the Rights of the Child in their concluding observations upon examination of Japan's third periodic report to "Explicitly prohibit corporal punishment and all forms of degrading treatment of children in all settings by law, including the home and alternative care settings" (paras. 47-49, among others) and "Undertake communications programmes, including campaigns, to educate... on alternative, non-violent forms of discipline." (paras. 48, 49).

Regarding the degrading treatment of children through corporal punishment in schools, the only government documents publicly available are those indicating the number of

school personnel reprimanded for carrying out corporal punishment. This is a major obstacle in the Convention's effectiveness in preventing corporal punishment. Attached as an appendix are statistics for the last ten years.

Please make a recommendation to the State Party to take effective legislative, administrative, judicial or other measures in all settings, including the school, the home and alternative care settings, to prevent all forms of violence that harm the dignity of the child, including corporal punishment.

Other issues

32. Please indicate which steps have been taken by the State party to accept the competence of the Committee under article 22 of the Convention as well as to ratify the Optional Protocol to the Convention, as recommended by the Committee in its previous concluding observations (CAT/C/JPN/CO/1, para. 27).

A. The JFBA's opinion on the current situation

Since 2007, the JFBA has been lobbying concerned government ministers and relevant bodies of the Ministry of Foreign Affairs and the Ministry of Justice to establish special internal committees in order to promptly realize the ratification of the optional protocols to the ICCPR and CEDAW on individual complaints, and the declaration on the individual complaints procedure under Article 14 of ICERD, as well as Article 22 of CAT.

As a result of this lobbying, these ministries (which if such ratifications and declarations are made would be charged with handling those matters) have asserted upon contact with the JFBA that they are fully prepared to respond if the government decides to do it. Nonetheless, with the constant Cabinet reshuffling, the Government of Japan has not yet realized this. Under the Japanese system, if the declaration to receive individual complaints is made under Article 22 of CAT, it will not require Diet approval, and can be executed immediately if approved by the Cabinet.

There is no information available as to whether the government has considered the matter of ratifying the optional protocols to the conventions.

Please make a recommendation to the State Party to demonstrate its intent to declare consent

under Article 22 of the Convention Against Torture without delay and to undergo the relevant procedures necessary.

33. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these measures have affected human rights safeguards in law and practice and how it has ensured that those measures taken to combat terrorism comply with all its obligations under international law. Please describe the relevant training given to law enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, whether there are complaints of non-observance of international standards, and the outcome of these complaints.

A. Measures taken by the Government of Japan

The Government of Japan reports the following as measures taken in response to terrorist threats:

- A1. In December 2004, the Government of Japan Headquarters for the Promotion of Measures Against Transnational Organized Crime and Other Relative Issues and International Terrorism adopted the Action Plan for Prevention of Terrorism, through which it would 1) amend laws to make it a requirement for foreigners to submit their fingerprints and other identification information during landing examinations, and 2) enact the Law for Partial Amendment of the Immigration Control and Refugee Recognition Act (Law No. 43 of May 24, 2006), which contains provisions on grounds for the deportation of foreign terrorists.
- A2. In December 2008, the Action Plan for the Realization of a Society Resistant to Crime 2008 was adopted by a meeting of Cabinet ministers responsible for anti-crime measures. The action plan, based on past achievements of the Headquarters for the Promotion of Measures Against Transnational Organized Crime and Other Relative Issues and International Terrorism, incorporates measures for dealing with the “threat of terrorism,” and the relevant authorities are promoting various measures based on it.
- A3. Regarding the relevant training given to law enforcement officers, the Government of Japan states that broad efforts to improve the understanding of human rights are being made, for example: 1) various training is given to judges taking up new duties or posts every year, among which some pertain to the protection of international human rights.

Judicial research is also being carried out on topics such as the confiscation of proceeds from organized crime, with the results of the studies collated and distributed to each of the judges; and 2) Various training is given to prosecutors, correction officers and immigration bureau personnel based on their length of experience in the job, among which some are lectures on the themes of international human rights conventions and human rights issues surrounding other related conventions.

B. Problems found in the government reply

B1. The December 2004 Action Plan for Prevention of Terrorism referred to by the Government of Japan is the most comprehensive action plan it has in this area, but not everything in it is being implemented. Worth noting is the section “Terrorism Prevention Measures Requiring Continued Study,” which mentions 1) Legislation on Basic Policy for Terrorism Prevention Measures, 2) System to Designate Terrorists and Terrorist Organizations, and 3) Further Measures to Freeze Terrorist Assets. There is a fear that such measures may conflict with the basic human rights of citizens, in particular freedom of assembly (Constitution of Japan Article 21 (1)). There must, therefore, be careful discussions about these measures. They must not be institutionalized hastily.

The Headquarters for the Promotion of Measures Against Transnational Organized Crime and Other Relative Issues and International Terrorism published a paper entitled “Promotion of Measures to Counter the Finance of Terrorism” in June 2012 regarding number 3 above, stating the following: “3. The issue regarding companies in Japan cutting off ties with terrorist is one of extreme importance in being able to prevent and eradicate international terrorism, and a crucial matter for companies from the perspective of social responsibility. Efforts will be made by the relevant authorities to improve the effectiveness of measures to counter terrorism financing in related industries and businesses by, for example, and taking into account the specific nature of the businesses, incorporating provisions in contracts and dealings that prohibit transactions with certain designated people. It will also make further progress in countering terrorism financing in our country by raising public awareness of the issues and ensuring that information is promptly shared upon becoming aware of transactions with certain designated people.” With the statewide promulgation of the Organized Crime Exclusion Ordinance, however, although it stipulates that contracts and other dealings should include clauses prohibiting companies from doing transactions with antisocial forces (including organized crime groups), the notion of “terrorist” is vague, We must say, therefore, that it is not

necessarily clear whether they are included under it. Public awareness of the issue requires future assessment.

B2. The Government of Japan states mentions the adoption in December 2008 of the Action Plan for the Realization of a Society Resistant to Crime by a meeting of Cabinet ministers responsible for anti-crime measures. It must be stated that no progress has yet been made on it.

B3. The Government of Japan report mentions training provided for judges, and prosecutors, correction officers and immigration bureau personnel, but it must be stated that their human rights education remains inadequate.

In particular, the current situation is that hardly any training is being implemented regarding international human rights. Training conducted by international human rights scholars and lawyers with deep insight into the field should be offered, yet is not at all. It must be stated that Japan is lagging extremely behind on this matter compared to abroad.

B4. There are no particular examples in Japan regarding the number and types of convictions under such legislation, nor the legal remedies available to persons subjected to anti-terrorist measures.

Regarding the system to designate terrorists and terrorist organizations and the strengthening of measures to freeze terrorist assets currently being considered by the Government of Japan, as there is a fear that these might conflict with the basic human rights of citizens, in particular freedom of assembly (Constitution of Japan Article 21 (1)), please make a recommendation to the State Party to further its discussions with a careful consideration for human rights guarantees, and to not be hasty in institutionalizing such measures.

34. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

No comment

35. Please provide detailed relevant information on the new political, administrative and other

measures taken to promote and protect human rights at the national level, that have occurred since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated to it, its means, objectives and results.

A. Explanation in the government report

Despite the consultation system available under the Legal Affairs Bureau, violations of the rights of children occur frequently in Japan. Prime examples can be seen in terms of suicides resulting from bullying.

In 2011, a junior high school student in Shiga prefecture committed suicide. It was reported that it was because of being bullied by classmates, and it became a serious social problem. There has been no end to child suicides thought to result from bullying.

This demonstrates that even if violations of the rights of children occur, a framework for offering redress does not function, ultimately leading to the worst possible outcome of the children committing suicide.

Given the current situation where the rights of children are frequently being violated, please make a recommendation to the State Party to create a system that offers redress to children for all forms of human rights violations, and to establish the various measures necessary to protect the rights of children.

36. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2007, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.

A. Explanation in the government report

A1. An incident was uncovered in 2009 involving violent acts against several children in a juvenile detention center (Hiroshima Reform School) by an instructor there. Five instructors were indicted for the crime of "assault and cruelty by special public officers." All were found guilty as charged.

A2. Based on the above incident, the Council to Consider the Issue of Juvenile Corrections was established (as mentioned in the Government of Japan report) and discussions ensued. The first concrete proposal it made was the development of appropriate treatment that

would respect the dignity of the child, and, more concretely, strengthening the regulating functions in the facility and ensuring transparency in administration, for example.

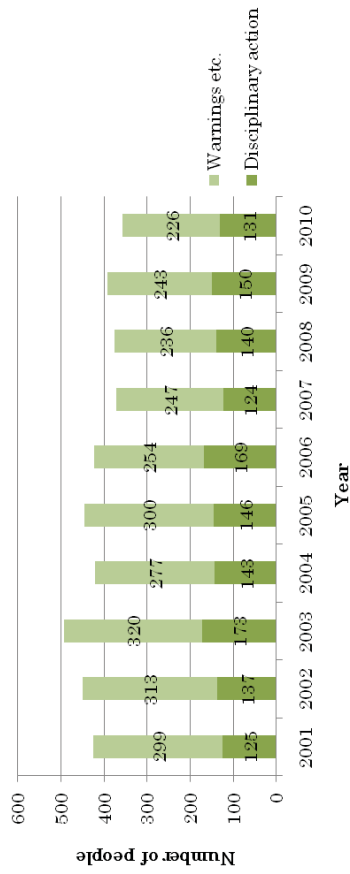
A3. After receiving these suggestions, in March 2012, a cabinet decision was made to enact amendments to the Juvenile Training School Law and the Detention Home Law, and both bills have been submitted to the Diet.

Both incorporate provisions that are based on the above recommendations, such as the establishment of external inspection committees for the facilities, and the creation of a system that allows children to file for relief directly to the Minister of Justice.

In September of the same year, however, the Diet rejected both of the bills. That is to say, efforts to improve the regulation of juvenile corrections as mentioned in the Government of Japan report are currently at a standstill.

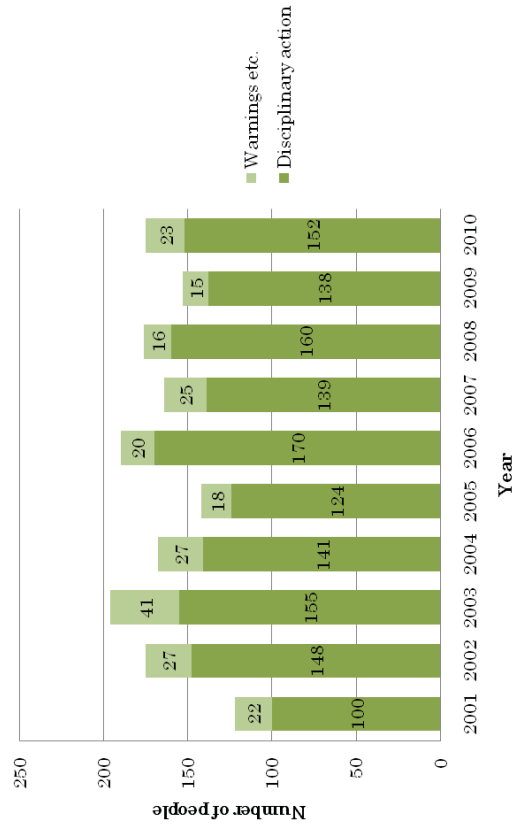
<p>Please make a recommendation to the State Party to establish all measures necessary (e.g. legislation) to ensure that children are treated appropriately in reform school and detention homes so that their dignity is protected.</p>
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Shifts in disciplinary actions etc. for corporal punishment over last ten years



Source: Ministry of Education, Culture, Sports, Science and Technology

Shifts in disciplinary action etc. for acts of obscenity etc. over the last ten years



Source: Ministry of Education, Culture, Sports, Science and Technology