

Report of JFBA Regarding the Seventh Periodic Report
by the Government of Japan
based on Article 40(b) of
the International Covenant on Civil and Political Rights

Date: July 16, 2020

Japan Federation of Bar Associations

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I. Precedents and Training Programs referring to Provisions of Covenant (Paragraph 1)

1. Reply

(1) Precedents referring to Provisions of Covenant

Treaties concluded by Japan, including ICCPR (“Covenant”), have domestic legal effect and the self-executing substantive provisions of Covenant can be applied by courts. There are few precedents, however, which upheld individual rights based on Covenant and in particular, the Supreme Court has never recognized any violation of Covenant. Japanese courts are not only extremely negative regarding the application of Covenant¹, but also have repeatedly denied Covenant’s supremacy over national law and made wrong interpretations, for example, in cases of deportation².

(2) Training Programs for Judges and Prosecutors

Regarding training for prosecutors, training including international human rights treaties (“IHRTs”) are provided at a certain frequency, but their specific contents are not clear or distributed materials have not been published. For judges, training for interpretation and application of Covenant are provided by university professors at a certain frequency³.

¹ Judgment of the Tokyo District Court as of April 18, 2016 (Case No.: (*wa*) No. 687 of 2014)

In the case where the legality of a work order issued by a school principal and given to school teachers and staff members to sing the national anthem was in question, the Tokyo District Court held, “there are no grounds for understanding that the degree of the guarantee of human rights (under Constitution) is lower than that provided for in Article 18 of the ICCPR (conversely, Article 18 of the ICCPR provides for higher degree of the guarantee of human rights than that under Constitution);” “determination whether it is recognized as a violation of Article 18 of the ICCPR is not different from determination whether it is recognized as a violation of Article 19 or Article 20 of Constitution and if it is recognized as not in violation of Article 19 or Article 20 of Constitution, it is understood that the fact is not recognized as violating Article 18 of the ICCPR.”

In this regard, the court of appeal dismissed the appeal as it did not recognize violation of Covenant (Judgment of the Tokyo High Court as of April 26, 2017 (Case No.: (*ne*) No. 2657 of 2016)).

² Judgment of the Osaka District Court as of November 29, 2019 (Case No.: (*Gyo-u*) No. 143 of 2017)

Parents of the children were Peruvian and both illegal residents, but had stayed in Japan for over 20 years and two children had been living in Japan for more than 10 years since they were born in Japan, and both were high school students at the time of judgment. As the father was deported to Peru in 2016 and the mother and children were also ordered to be deported, they brought litigation to seek remedy, however, the Osaka District Court held, “a state is not obliged to accept foreign nationals under the international customary law;” provisions of Article 17, etc., of Covenant “does not restrict legal deportation procedures for foreign nationals under the domestic laws of a Japan;” and the interests protected by Covenant, etc., “are only considered within the framework of residence system of foreign nationals under the Immigration Act” and did not accept their petition. Many precedents repeated similar holdings, including the judgment of the Tokyo District Court as of January 19, 2018 (Case No.: (*Gyo-u*) No. 156 of 2017), etc.

All of these precedents are contrary to the established interpretation of Covenant, indicated in the General Comment 15 (paragraph 5), *Winata and Li v. Australia* (Communication No. 930/2000) of the Human Rights Committee, mistakenly not understanding the binding force of Covenant on state parties.

³ Based on the information disclosed by MOJ and the Supreme Court as of March 25, 2018.

2. Recommendations

Japan should ensure that information of Covenant is disseminated across every tier of the judicial system by further enhancing training programs for judges and prosecutors concerning application and interpretation of Covenant.

II. Individual Communications Procedure (Paragraph 2)

1. Reply

In 2010, the Government of Japan (“GOJ”) launched Division for Implementation of Human Rights Treaties in the Ministry of Foreign Affairs (“MOFA”), an organ to introduce an individual communications procedure. More than 9 years have passed since the establishment of the Division, however, there has been no change in the previous attitude of GOJ, which claims to consider issues including problems in relation to judicial or legislative systems, etc., and no progress has been made.

In some cases, arguments on violation of IHRTs, including Covenant, are not considered at all in judgments. If the individual communications procedure is accepted, domestic courts must fully consider violations of the rights under IHRTs, as Committee may consider the case after domestic court proceedings, thus facilitating to ensure the rights under IHRTs in the domestic courts.

2. Recommendations

Japan should ratify the First Optional Protocol immediately as there are no rational reasons to delay ratification.

III. Article 97 of Constitution (Paragraph 3)

1. Reply

The current Constitution places maximum value on the guarantee of fundamental human rights, based on deep reflections on the pre-war system which caused human rights violations and the War.

Article 97 of Constitution is provided in “CHAPTER X. SUPREME LAW” and, as the provision to constitute grounds for supremacy of Constitution provided for in Article 98 of Constitution, confirms that fundamental human rights as inherent rights acquired as a result of struggles of people and they are eternal, inviolable and universal.

If Article 97 of Constitution is removed, the concept of fundamental human rights as inherent rights and “individual” as the subject of forming state and society will be

denied, which will eventually lead to a radical change in the philosophy of the guarantee of fundamental human rights.

In the draft amendment of Constitution by the Liberal Democratic Party⁴ in power (“LDP Draft Amendment of Constitution”), in addition to removal of Article 97 of Constitution, it refers to the text of “public interest and public order” as a principle of restricting human rights. As to “public interest and public order” clause, there is no guarantee that definition of “public order” will be interpreted strictly in compliance with Covenant, and together with the introduction of “public interest,” an extremely broad principle of restriction of human rights, there is a danger to recognize a broad principle of restriction of human rights such as external national security, national interest and maintaining social order, beyond the inherent restrictions imposed by “public welfare” on fundamental human rights.

2. Recommendations

Japan should not remove Article 97 of Constitution and introduce “public interest and public order” clause as this would deny the modern human rights philosophy of inherent rights, significantly retracting constitutionalism, and enabling a broad restriction of human rights by making a mockery of fundamental human rights⁵.

IV. National Human Rights Institutions (“NHRI”) (Paragraph 4)

1. Reply

In 2012, the Cabinet prepared “Human Rights Commission Establishment Bill” and submitted it to the Diet, but the bill was abandoned due to dissolution of the Diet and there has been no specific action since that time up until now.

GOJ has come under repeated recommendations by treaty bodies to establish NHRI in compliance with the Principles related to the Status of National Institutions for the Promotion and Protection of Human Rights (“Paris Principles”).

In particular, under “CRPD” ratified by Japan, establishment of an institution to promote, protect and monitor implementation of the Convention in line with Paris

⁴ Liberal Democratic Party, “Draft Amendment of the Constitution of Japan” (determined as of April 27, 2012)

https://www.jimin.jp/policy/policy_topics/pdf/seisaku-109.pdf

⁵ JFBA, “Opinion Opposing Denial of the Basic Principles of Respecting Fundamental Human Rights under the Constitution of Japan and Restrictions of Fundamental Human Rights by the ‘Public Interest and Public Order’ Clause” (February 20, 2014)

https://www.nichibenren.or.jp/document/opinion/year/2014/140220_6.html

Principles is required of state parties, and in Optional Protocol of “CAT” which Japan also ratified, establishment of the National Prevention Mechanism (NPM) is required, but Japan has not ratified Optional Protocol and there is no institution corresponding thereto.

2. Recommendations

Japan should set out a timeframe for early establishment of NHRI independent from the government in compliance with Paris Principles.

V. Comprehensive Anti-discrimination Laws (Paragraph 5)

1. Reply

In April 2016, “Act for Eliminating Discrimination against Persons with Disabilities,” in June 2016, “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” (“Hate Speech Elimination Act”), and in December 2016, “Act on the Promotion of the Elimination of Buraku Discrimination” were enacted, but hate speech and demonstrations and discriminatory expressions on the Internet against “Persons from Outside Japan” have continued⁶. Discrimination, etc., against gender minorities and indigenous people who are not included in each of the above-mentioned legislation remains. GOJ’s position is that it is not necessary to adopt a comprehensive anti-discrimination act because it can be handled by existing laws⁷. However, existing laws are limited in scope, and since these measures related to discrimination which does not identify individuals and organizations and hate crimes are insufficient, and

⁶ Mainichi Newspapers, “Hate speech demo in Kawasaki met with hundreds-strong counter-protest” (July 16, 2017)

<https://mainichi.jp/articles/20170717/k00/00m/040/017000c>

BuzzFeed News “‘Hate goes unchecked on the Internet’ What was changed in 2 years from the enactment of Hate Speech Act” (May 31, 2018)

<https://www.buzzfeed.com/jp/kotahatachi/no-hate>

⁷ GOJ argues, “if the honor of specific individuals or organizations is publicly infringed and credibility is impaired, a crime of defamation will be applied under Penal Code and if discriminatory acts were committed against private persons, compensation for damages by tort under Civil Code can be claimed.”

List of issues in relation to the combined fourth and fifth reports of Japan and Replies of Japan to the list of issues, Question 3.2

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fJPN%2fQ%2f4-5%2fAdd.1&Lang=en (English original)

<https://www.mofa.go.jp/mofaj/files/000430028.pdf> (Japanese provisional translation)

Tenth and Eleventh Combined Periodic Report by GOJ under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, Paragraph 101 through 107

<https://www.mofa.go.jp/mofaj/files/000272983.pdf> (English original)

<https://www.mofa.go.jp/mofaj/files/000272984.pdf> (Japanese provisional translation)

they focus on ex post facto responses due to absence of provisions prohibiting discrimination, it is necessary to enact comprehensive anti-discrimination legislation prohibiting discrimination itself.

2. Recommendations

Japan should urgently enact comprehensive anti-discrimination legislation that addresses discrimination, including in the private sector, and prohibits direct and indirect discrimination and multiple forms of discrimination.

VI. Discrimination against Children Born out of Wedlock (Paragraph 5)

1. Reply

In Family Register Act, Article 49, paragraph 2, item 1, the provision which obligates to write “whether a child is born in or out of wedlock” in registration of birth still exists.

As for the purpose of this provision, it has been explained that such entry has a certain rationality as there is a difference in the share of inheritance, etc., between a child born in wedlock and a child born out of wedlock, but since Civil Code, Article 900, item 4, proviso, which provided for discrimination in inheritance between a child born in wedlock and a child born out of wedlock, was removed due to amendment of Civil Code in 2013, the above provision stating “whether a child is born in or out of wedlock” should be urgently removed.

Civil Code, Article 787, proviso provides that a child born out of wedlock may not bring an action for affiliation against a parent if 3 years have passed since the death of the parent, which remains as discrimination against a child born out of wedlock.

2. Recommendations

Japan should:

- (1) Remove Family Register Act, Article 49, paragraph 2, item 1, which requires to write whether the child is born in or out of wedlock in registration of birth; and
- (2) Remove Civil Code, Article 787, proviso.

VII. Racial Discrimination, Hate Speech and Hate Crime (Paragraph 6)

1. Reply

- (1) Racial discrimination and hate speech have not been eliminated even after 2016 when the Hate Speech Elimination Act was enacted. Demonstrations calling

for exclusion of Korean residents take place frequently and hate speech is prevalent on Internet. While tension in political relationship between Japan and the Republic of Korea (“ROK”) has intensified, antforeign rhetoric and discrimination and hostility toward Koreans living in Japan have continued to spread. In addition, GOJ encourages racial discrimination by having accepted notification of establishment of a political organization named as “Party Aiming Japan without Koreans” submitted to the election administration commission.

- (2) Regarding (a): There is no law that prohibits propaganda encouraging racial discrimination. Only when hate speech is directed at (a) specific person(s), tort liability under Civil Code, defamation and libel under Penal Code can be imposed.
- (3) Regarding (b): As there is no law that prohibits disseminating publicly propaganda encouraging racial discrimination to an unspecified number of people, demonstrations disseminating such propaganda are not regulated. During a hate demonstration⁸ (“Hate Demo”) and street publicity, even when discriminatory speech and behavior of participants are directed at (a) specific person(s) and fall under elements of such crimes of Penal Code as intimidation, defamation and libel, and thereby such speakers could theoretically be arrested at the site for committing such acts, police officers assigned to the site only continue policing in silence without ever cautioning the speakers.
- (4) Regarding (c): A survey on hate speech has not been conducted since publication of survey results in March 2016 and effect of the Hate Speech Elimination Act, enacted in June 2016, has not been examined. To the knowledge of JFBA, GOJ has no plans to continue similar surveys in the future.
- (5) Regarding (d): Although human rights training is offered for judges, prosecutors and police officers, such details as time and content have not been published. There is no information regarding training focused on hate crimes being conducted.
- (6) Regarding (e): There is no law that imposes heavier punishment on hate crimes. GOJ has not published any statistics on hate crimes, including the number of occurrences and judgments and it is unknown whether the Government takes statistics.

2. Recommendations

⁸ Refer to demonstrations disseminating propaganda advocating racial superiority or hatred.

Japan should:

- (1) Enact comprehensive legislation on racial discrimination, including provisions prohibiting hate speech;
- (2) Stop excessive restrictions on freedom of expression and freedom of movement of citizens protesting Hate Demo at the site of a Hate Demo;
- (3) Continuously conduct surveys on hate speech; and
- (4) Take statistics of hate crimes and provide training for judges, prosecutors and police officers who enforce and apply laws related to hate crimes.

VIII. LGBTI (Paragraph 7)

1. Reply

Japan has no national law specifically prohibiting discrimination based on sexual orientation and gender identity. While equality before law is provided for in Constitution, there is no precedent by the Supreme Court holding that discrimination based on sexual orientation and gender identity is strictly prohibited.

Although the Act on Securing, Etc., of Equal Opportunity and Treatment between Men and Women in Employment was enacted, the Act merely imposes an obligation on employers to make effort and lacks provision holding discrimination against women illegal.

Measures to reduce the suicide rate of LGBTI persons are not sufficient.

Marriage between persons of the same gender under laws is not permitted.

There has been no amendment to the law regarding a change of gender under laws.

Transgender persons are detained according to gender under existing laws and although there are government guidelines regarding treatment of detainees in criminal detention facilities, hormone treatment is not provided, and remains as treatment based on gender under laws.

2. Recommendations

Japan should:

- (1) Enact anti-discrimination legislation prohibiting discrimination based on sexual orientation and gender identity which is comprehensive in its application context including employment, education, medical care, welfare and legal services, and strengthen awareness, including education for those who are engaged in administrative, legislative and judicial branches of

government among others, investigate discrimination based on sexual orientation and gender identity, harassment and stigmatization and implement proper measures to prevent them;

- (2) Regarding housing services publicly operated by municipalities, remove restrictions of qualifications applied to same-sex couples;
- (3) Strengthen measures for reducing suicide rate of LGBTI persons;
- (4) Promptly amend related laws to permit same-sex marriage under laws;
- (5) Explain whether legal requirements for gender change under laws such as loss of reproductive organs or reproductive ability, gender reassignment surgery and unmarried status are in compliance with Covenant; and
- (6) Provide transgender detainees in criminal detention facilities with measures for alleviating pain arising from the discrepancy between gender identity and treatment available to the extent possible.

IX. Equality between Men and Women (Paragraph 8)

1. Reply

(1) Remarriage prohibition period

Due to the amendment of Civil Code enacted on June 1, 2016, the remarriage prohibition period imposed on women was shortened to 100 days from the dissolution or rescission of her previous marriage as of June 7, 2016, and even during the above period, marriage registration submitted within the 100-day period shall be accepted if a medical certificate from a doctor certifying the following is attached: [1] the woman became pregnant after the date of dissolution or rescission of her previous marriage; [2] the woman was not pregnant during a certain period after that date; or [3] the woman gave birth after that date.

However, it cannot be regarded as minimum restrictions to establish the remarriage prohibition period only for women.

Due to amendment of Civil Code as of June 13, 2018, the minimum marriage age for both men and women was unified to 18 years old.

(2) Optional Dual-Surname System

No progress has been made. Article 750 of Civil Code, which imposes the same surname of spouses infringes on the individual dignity guaranteed by Article 13 and 24 of Constitution, freedom of marriage guaranteed by Article 24 and 13 and equal rights guaranteed by Article 14 and 24 and also against CEDAW, Article

16, paragraph 1. In addition, public awareness regarding the optional dual surname system has been changing⁹.

(3) Political Participation of Women

On May 23, 2018, the Act on Promotion of Gender Equality in the Political Field was enforced, but the effect is insufficient.

Even after enforcement of the Act, the participation rate of women in the political field is still low¹⁰. In the election of the House of Councilors, held in July 2019, the number of female candidates was 104 persons, 28.1% of all candidates, which was a record high¹¹, but still accounts for less than 30%. As of October 2019, there are three female ministers and two female governors, and the average percentage of female members in prefectural assemblies stands at 10.1%, which is still low¹².

2. Recommendations

Japan should:

- (1) Abolish the remarriage prohibition period for women¹³;
- (2) Introduce the optional dual-surname system immediately; and
- (3) Make effective the monitoring system that evaluates the progress of the Basic Plan for Gender Equality to improve and activate the National Machinery for the Advancement of Women.

X. State of Emergency Clause (Paragraph 9)

1. Reply

⁹ In “Public Opinion Poll on the Family Legal System” published by the Cabinet Office in February 2018, responses supporting the introduction of “the optional dual-surname system” reached 42.5%, a record high and responses stating that it would be unnecessary to introduce such a system was 29.3%, a record low, where responses supporting the introduction of the optional dual-surname system exceeded the responses that it would be unnecessary. In particular, among women between 18 and 49 years old, responses supporting the introduction exceeded 50%.

¹⁰ Gender Equality Bureau, Cabinet Office, “2019 Map of Women’s Participation in the Political Field” (October 2019)

http://www.gender.go.jp/policy/mieruka/pdf/map_josei_2019_color.pdf

¹¹ NHK website, “Upper House Election: Will participation of women in politics progress?” (Pay attention here!)” (July 18, 2019)

<http://www.nhk.or.jp/kaisetsu-blog/300/371312.html>

¹² Op. cit., 10

¹³ JFBA “Statement by the President Requesting Abolition of the Remarriage Prohibition Period and Introduction of the Optional Dual-Surname System” (Jun 13, 2018)

https://www.nichibenren.or.jp/document/statement/year/2018/180613_2.html

The state of emergency clause in the LDP Draft Amendment of the Constitution, does not recognize the necessity for newly enacting measures related to wars, etc., and large-scale natural disasters, and rather there is a strong concern that it would infringe on rights under Covenant because it uses ambiguous language such as “if it is deemed to be particularly necessary” and “in accordance with the law” for requirements to declare a state of emergency and there is no provision of fundamental human rights that cannot be restricted even in a state of emergency.

2. Recommendations

Japan should not establish a state of emergency clause referred to in the LDP Draft Amendment of the Constitution ¹⁴ .

XI. Crime of Conspiracy (Paragraph 9)

1. Reply

Such constituent elements provided for in the Act on Punishment of Organized Crimes and Control of Crime Proceeds (“Conspiracy Law”) as “organized crime groups, “planning” and “preparatory acts” are ambiguous and do not satisfy the legal stability and predictability required of punitive laws, which is the basis for the strong opposition by JFBA against enactment of the Act.

As 277 crimes included in the Law include many crimes unrelated to terrorism and organized crime, there is great concern that Article 9, Article 14 and Article 19 of Covenant could be infringed upon.

In deliberations within the Diet on Conspiracy Law, it was explained that organized crime groups are not limited to groups which routinely repeat crimes. It was also explained that the Law is applicable to acts regarding preparation even if they are daily activities without any specific danger as compared with preparatory acts under crimes of preparation.

JFBA has continued activities of monitoring the status of enforcement of the Law until repeal of the Law, and in October 2017, JFBA adopted at the 60th Convention on the Protection of Human Rights a resolution requesting a strengthening of human

¹⁴ JFBA “Opinion Opposing the Introduction of the Provision Regarding National Emergencies into the Constitution of Japan” (February 17, 2017)

https://www.nichibenren.or.jp/en/document/opinionpapers/20170217_3.html (English)

https://www.nichibenren.or.jp/document/opinion/year/2017/170217_3.html (Japanese)

rights guarantees under a surveillance society¹⁵, including repeal of the Act on the Protection of Specially Designated Secrets (“SDS Act”) and crimes of conspiracy, and conducted other activities¹⁶.

2. Recommendations

Japan should repeal or entirely revise the Conspiracy Law.
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XII. Violence against Women, including Sexual and Domestic Violence (Paragraph 10)

1. Reply

- (1) Response to delays in the issuance of protection orders, investigation and prosecution of reports of domestic violence

There has been no particular progress.

- (2) Domestic violence (“DV”) against migrant women

If a victim of DV who is a migrant woman or a minority is evacuated from a spouse who is the assailant, there is a possibility that resident status may be revoked by falling under the paragraph of “residing for six months or more without continuously engaging in activities as a person with the status of a spouse” and “not notifying the Minister of Justice of their new place of residence within 90 days” of the Immigration Control Act. Even in cases ascribable to a Japanese spouse such as disappearance or abandonment, etc., resident status may be subject to revocation and resident status may not be necessarily guaranteed in the process of dissolution of the marriage, including divorce mediation and litigation, etc.

- (3) Amendment of Penal Code

Due to amendment of Penal Code, enforced as of July 13, 2017, the crime of rape was changed to a “crime of forcible sexual intercourse” and such acts similar to sexual intercourse including anal and oral sex, which were previously punishable as a crime of forcible indecency, are now punishable as rape. and male victims are now also included. In addition, “crime of forcible indecency and quasi forcible

¹⁵ JFBA “Resolution Calling for Enhancing Guarantee of the Right to Privacy and the Right to Know, and the Promotion of Information Disclosure to Realize a Democratic Society that Secures Respect for the Individual” (October 6, 2017)

https://www.nichibenren.or.jp/en/document/statements/2017_2.html (English)

https://www.nichibenren.or.jp/document/civil_liberties/year/2017/2017_2.html (Japanese)

¹⁶ As other activities, JFBA held a speech lecture of Mr. Joseph Cannataci, a special rapporteur on the right to privacy of UN Human Rights Council, “Symposium Opposing Crime of Conspiracy and Protecting the Right to Privacy” (October 2, 2017)

indecentry,” “crime of forcible sexual intercourse, etc., and quasi forcible sexual intercourse, etc.,” are now prosecuted without complaint. Furthermore, the minimum statutory penalty of “crime of forcible sexual intercourse” has been raised¹⁷. The age of sexual consent was not amended. There are arguments on whether to widen the requirements of assault and intimidation for “crime of forcible sexual intercourse.”

(4) Forcible Sexual Intercourse, etc., in Marriage

There has been no particular progress.

Where DV occurs in the form of sexual abuse or sexual intercourse against the spouse’s will, it is highly unlikely that an offender is punished by the crime of forcible sexual intercourse because the offender and victim are in a marital relationship. Even if a victim reported victimization, secondary victimization may occur as the investigating authority may have mistaken preconceived notions that the crime of forcible sexual intercourse shall not be recognized in the case of a married couple or couple in a common-law marriage.

2. Recommendations

Japan should:

- (1) Remove from the subject of revocation of resident status for not only DV, but also migrant women, etc., who are “residing for six months or more without continuously engaging in activities as a person with the status of a spouse” in the case ascribable to Japanese spouses, and clarify the criteria for guarantee residence during the period of mediation and litigation, etc.
- (2) Strengthen laws and provide training for investigating authorities to provide proper protection for the victims of DV, including sexual abuse and forcible sexual intercourse.

XIII. Death Penalty (Paragraph 11)

1. Reply

Japan maintains death penalty system and continues to execute death penalty without having taken action to abolish death penalty or measures to limit the scope

¹⁷ Before the amendment of Penal Code, which was enacted on July 13, 2017, JFBA published “Opinion on Improvement of Penalties on Sexual Crimes” as of September 15, 2016 and expressed its opinion that regarding anal and oral sex which had been punishable as a “crime of forcible indecentry,” the minimum statutory penalty of crime of forcible sexual intercourse should be imprisonment of 3 years.

https://www.nichibenren.or.jp/document/opinion/year/2016/160915_4.html

of application of death penalty. Japan does not consider review of execution method of death penalty, arguing that hanging is not a cruel punishment.

Solitary confinement is imposed on death row inmates and the time and date of execution of death penalty are not notified in advance to death row inmates and their families.

There is no distinction between death penalty cases and other cases, and such measures have not been implemented to strengthen legal safeguards, prohibit use of evidence obtained from confessions, guarantee the right of confidential communication, or ensure a mandatory and effective retrial system. Requests for retrial or pardon have no effect on a stay of execution.

It is suspected that persons with serious psychosocial and intellectual disabilities continue to be subjected to death penalty and Japan has not introduced an independent mechanism to review the mental health of death row inmates.

JFBA requests Japan, to abolish death penalty¹⁸, improve treatment of death row inmates, ensure full video recording of interrogations, establish a full evidence disclosure system, ensure a mandatory appeal system and amendment of the retrial law in order to respect fundamental human rights. In addition, in order to realize abolition of death penalty, JFBA requests to promptly suspend execution of death penalty and introduce life sentences in place of death penalty (provided, however, that concurrently adopting the system that exceptionally enables a reduction of indefinite imprisonment mainly by the judgment of the courts, where rehabilitation of the person has progressed in addition to the passage of a certain period of time)¹⁹.

2. Recommendations

Japan should ratify the Second Protocol to Covenant and abolish death penalty.

For the period until abolition of death penalty, Japan should at least suspend execution of death penalty immediately and abolish long-term solitary confinement to improve detention conditions, as well as establish the full

¹⁸ JFBA “Declaration Calling for Reform of the Penal System including Abolition of the Death Penalty” (October 7, 2016)

<https://www.nichibenren.or.jp/en/document/statements/161007.html> (English)

https://www.nichibenren.or.jp/document/civil_liberties/year/2016/2016_3.html (Japanese)

¹⁹ JFBA “Basic Propositions on Abolition of the Death Penalty and on Introducing Alternative Punishment and Instituting a Judicial Proceeding System for Commutation” (October 15, 2019)

https://www.nichibenren.or.jp/en/document/opinionpapers/20191015_2.html (English)

https://www.nichibenren.or.jp/document/opinion/year/2019/191015_2.html (Japanese)

evidence disclosure system, introduce the mandatory appeal system and improve systems related to requests for retrial.

XIV. Disclosure of Evidence (Paragraph 12)

1. Reply

Japan has not implemented any proper measures for the high rate of convictions dependent on confessions and unfair convictions.

Due to amendment of the Code of Criminal Procedure (“CCP”) in 2016, prosecutors are now required to disclose the list of evidence only for cases which were put into a pretrial arrangement proceeding. However, disclosure of the list of all evidence held by investigating authorities is not required. The list of evidence only indicates types of evidence and as it is permitted to be submitted while specific content is unknown, it is difficult for the defense to know the content of evidence.

Once the case is put into a pretrial arrangement proceeding, defense counsels or the accused may request disclosure of evidence to a certain extent²⁰. However, there are many cases where evidence is not disclosed in the pretrial arrangement proceeding despite claims for disclosure made by defense counsels²¹, which is different from the system in which disclosure of evidence requested by prosecutors for investigation is mandatory. In CCP of Japan, there is no provision for disclosure of evidence, except for cases put into a pretrial arrangement proceeding and evidence requested by prosecutors for investigation, and in fact, only part of the evidence permitted by prosecutors is disclosed under the control of court proceedings by judges. Cases tried by citizens’ judges require the pretrial arrangement proceeding, but in other cases, it is not required. Due to amendment of CCP in 2016, the right of request for the pretrial

²⁰ Provided, however, that the total number of cases put into the pretrial arrangement proceeding is limited. For example, the total number of the accused put into the pretrial arrangement proceeding in 2018 was 1,255 persons, which is only 2.3% of the total number of 54,862 persons in the concluded cases in the same year (Judicial Statistics of 2018, Criminal Cases “Table 39: Total number of persons in cases concluded for the ordinary first instance – By the implementation status of the pretrial arrangement proceeding and inter-trial arrangement procedure and by collegiate, sole and degree of confession before all the district and summary courts”).

<https://www.courts.go.jp/app/files/toukei/639/010639.pdf>

²¹ In 2018, claims for disclosure of evidence were made for a total of 75 cases under CCP, Article 316-26, paragraph 1, out of which courts rendered decisions of rejection in 53 cases (Judicial Statistics of 2018, Criminal Cases “Table 17: Number of new acceptances by type in criminal miscellaneous cases – All courts and the Supreme Court, all high courts, district and summary courts”).

<https://www.courts.go.jp/app/files/toukei/617/010617.pdf>

arrangement proceeding was granted to defense counsels, but courts will not necessarily refer the case to the pretrial arrangement proceeding at the request of defense counsels. The number and percentage of cases which were actually put into the pretrial arrangement proceeding out of the cases requested by defense counsels have not been published.

In the Koto Hospital Case, retrial of which was decided in 2018 and the defendant was declared to be not guilty in April 2020, a significant amount of evidence had not been disclosed until the decision to commence retrial was made²².

The end result is that not all evidence on the side of the prosecution side is disclosed to the defense.

2. Recommendations²³

Japan should ensure that all evidence collected by the police shall be sent to prosecutors and prosecutors shall disclose such evidence and all evidence collected by prosecutors to defense counsels^{24,25}.

²² In the Koto Hospital Case, at the time of request for retrial, a total of 349 pieces of evidence were retained by prosecutors and in addition, 113 pieces of evidence were retained at the police station without being sent to the prosecutors' office. The defense requested disclosure of the total 462 pieces of evidence after a request for retrial and more than 130 pieces of evidence were disclosed intermittently by the closing of retrial. In the retrial, while it was said that acquittal was certain as prosecutors gave up their attempt to prove new evidence, the prosecution still did not disclose more than 400 pieces of evidence.

²³ In the Concluding observations of the Human Rights Committee on the fifth periodic report submitted by Japan (CCPR/C/JPN/CO/5), Paragraph 19, it is stated, "It (Japan) should also acknowledge that the role of the police during criminal investigations is to collect evidence for the trial rather than establishing the truth, ensure that silence by suspects is not considered inculpatory, and encourage courts to rely on modern scientific evidence rather than on confessions made during police interrogations."

In the concluding observations of the Committee against Torture on the initial report of Japan (CAT/C/JPN/CO/1), a grave concern was expressed as "the limited access to all relevant material in police records granted to legal representatives, and in particular the power of prosecutors to decide what evidence to disclose upon indictment." Concluding observations of the same committee on the second periodic report of Japan (CAT/C/JPN/CO/2) recommended to "guarantee all fundamental legal safeguards, including the right of access to all police records related to their case."

²⁴ JFBA, "Report on the 6th Periodic Report of the Government of Japan based on Article 40 (b) of the International Covenant on Civil and Political Rights ~ Proposed Recommendations and their Background Circumstances that should be Included in the Concluding Observations to be Prepared by the Human Rights Committee ~" (March 19, 2014)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep6_ICPR140612.pdf (English, p. 128)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep6_ICPR_ja140612.pdf (Japanese, p. 129)

²⁵ JFBA, "Report for the Preparation of the List of Issues on the 7th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights" (July 24, 2017)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep7_ICPR_en.pdf (English, p. 17)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep7_ICPR_ja140612.pdf

XV. Video-recording of Interrogation (Paragraph 12)

1. Reply

Pursuant to amended CCP 2016, in limited cases tried by citizen's judges and prosecutor's independent investigation cases, including death penalty cases, it is required to video-record interrogations (interrogations under arrest and detention only) and the percentage of cases in which video-recording of interrogations is required is less than 0.3% of all cases in which prosecutors and the police officers conduct interrogations²⁶²⁷. Video-recording is not required for interrogations before official arrest even the suspect is under physical restraint. Moreover, investigating authorities stated their view that interrogations during detention of those cases, in which video-recording is required, after indictment are not subject to video-recording as they are voluntary interrogations²⁸. Exceptions to video-recording are machine breakdowns (56 cases in 2018; the same shall apply hereinafter), cases related to the designated organized crime groups (140 cases) and refusal of recording (117 cases). Number of cases above were announced by the National Police Agency. Cases related to the designated organized crime groups are never treated as subject to recording at the police station. It is provided in the law that this system is to be reviewed 3 years after 2019, in which the amended law came into force with respect to video-recording. Videos recorded by investigators are not disclosed to the defense during an investigation, but disclosure is required before trials at the request of the defense.

2. Recommendations

CPR_ja.pdf (Japanese, p. 16)

²⁶ JFBA website "Video-recording of Interrogations (Committee of Video-recording of Interrogations)" <https://www.nichibenren.or.jp/activity/human/criminal/recordings.html>

²⁷ Out of the number of arrests by the police in 2018, criminal offenses totaled 309,409 cases, special criminal offenses, excluding violation of the Road Traffic Act totaled 90,811 cases, traffic offenses totaled 419,166 cases, minors and pupils in violation of the laws totaled 6,969 cases, the total number of cases accepted by the prosecutors' office was 1,163,011 cases and grand total was 1,990,000 cases. To the above, cases tried by citizens' judges were 1,044 cases and the prosecutor's independent investigation cases were 115 cases. Regarding cases tried by citizens' judges, the number of such cases at the investigation stage can be assumed to be double of the indicted cases. Therefore, the percentage of the cases which were required to be video recorded to the total number of cases was 0.23%.

²⁸ In the Imaichi Case, where interrogations were conducted in 2014, before the amended act came into force, interrogation time amounted to at least several hundred hours and during the detention after indictment that was filed 16 months after the first arrest, the suspect was interrogated again by investigators. Out of which, only records of 81 hours were disclosed to the defense counsel.

Japan should improve its system to the video-recording of all processes of all interrogations of suspects whether or not they are under arrest or detention, and establish a system of audio and video-recording of the processes of interrogations of unsworn witnesses²⁹³⁰.

XVI. Full Implementation of Court-appointed Lawyers (Paragraph 12)

1. Reply

From June 2018, if suspects in criminal cases are detained, all suspects can request appointment of a court-appointed attorney. Where a juvenile, for whom a court-appointed attorney is appointed at the suspect stage, is referred to a family court, only if the person falls under crimes punishable by imprisonment with or without work more than three years and if the family court recognized the necessity of appointment of a lawyer, a court-appointed lawyer is appointed.

There is a problem that in the case of a juvenile, for whom a court-appointed attorney is appointed at the suspect stage, support from a court-appointed lawyer after being referred to a family court cannot be received.

2. Recommendations

Japan should establish a system appointing court-appointed lawyer to all juveniles who are physically restrained by the decision of custody to refer to a juvenile classification home³¹.

XVII. Radiation Exposure (Paragraph 13)

1. Reply

About 9 years have passed since the accident at Fukushima Daiichi Nuclear Power Plant. A large area is still contaminated by radioactive substances. Any of the options of continuation of evacuation, return and residing should be fully respected, but GOJ discontinued providing housing to evacuees and the Fukushima Prefectural

²⁹ JFBA, “Opinion on ‘Visualization of Interrogations’” (July 14, 2003)

https://www.nichibenren.or.jp/document/opinion/year/2003/2003_31.html

³⁰ JFBA, “Opinion concerning the Establishment of the New Criminal Justice System (No.1)” (June 14, 2012)

<https://www.nichibenren.or.jp/en/document/opinionpapers/20120614.html> (English)

https://www.nichibenren.or.jp/document/opinion/year/2012/120614_2.html (Japanese)

³¹ JFBA “Opinions Calling for Early Realization of Full Implementation of the Court-appointed Attendant System” (February 16, 2018)

<https://www.nichibenren.or.jp/document/opinion/year/2018/180216.html>

Government (“FPG”) brought a suit demanding residents continuing evacuation leave the evacuation site buildings without taking any support measures for such residents.

The number of cases of the development of thyroid cancers and suspected cases, which were ascertained by the Fukushima Health Management Survey by FPG reached 218 persons by July 2019. The report by FPG recognizes, “although the thyroid cancer detection rate in the Full-scale Screening (second examination) is slightly lower than that in the first examination, it was still higher by several tens of times.” Evaluations on this figure by experts differ and UN Scientific Committee considers it is difficult to regard it as the effect of radiation, but on the other hand, some experts state that the causal relationship cannot be denied as the figure was greater than the number of expected cases of development before the accident. Under such circumstances, GOJ and FPG deny the causal relationship and have not implemented any support measures, except for medical expense subsidies.

For leukemia and other cancers other than thyroid cancers, official surveys have not been conducted and their actual conditions remain unknown.

With regard to radioactive exposure, which has emerged as a new issue in recent years, the radioactive exposure of fishermen by thermonuclear testing around Bikini Atoll in 1954 can be cited³².

2. Recommendations

<p>Japan should conduct a more comprehensive health survey of the residents affected by the accident at Fukushima Daiichi Nuclear Power Plant and implement support measures for medical care and living based thereon.</p>

³² In 1954, the United States repeated thermonuclear testing several times in the Pacific Ocean, around Bikini Atoll and many fishermen, including those on Daigo Fukuryu Maru were exposed to radiation. In 1955, GOJ received consolation money of \$2 million (then equivalent to ¥720 million) and made a political settlement not to prosecute the legal liability of the United States. From the above consolation money, ¥5,500,000 was paid to the radio officer of Daigo Fukuryu Maru and a total ¥44,000,000 was paid to 22 other members of crew as compensation, but only a small amount of the compensation for the disposal of tuna, etc., was paid for crew other than those of Daigo Fukuryu Maru and compensation money was not paid for each fisherman.

GOJ did not disclose the fact and related records of radioactive exposure of fishermen other than those of Daigo Fukuryu Maru until September 19, 2014.

The fishermen brought litigation to file a claim for state compensation, arguing they have suffered from cancers and leukemia, which were suspected to be related to radioactive exposure and lost opportunities for receiving necessary treatment due to concealment of the fact, etc., of radioactive exposure of persons other than Daigo Fukuryu Maru for many years. On July 20, 2018, the Kochi District Court and on December 12, 2019, the Takamatsu High Court rendered a judgment respectively dismissing the claim and both judgments indicated that they had to hope for further consideration from the legislative and administrative branches of government.

XVIII. Forced Sterilization (Paragraph 14)

1. Reply

The Now-defunct Eugenic Protection Act (“EPA”) provided that eugenic surgery and artificial abortion could be carried out on those who have hereditary diseases, Hansen’s disease and mental disabilities, etc. Not only eugenic surgeries conducted without the consent of the person, but also eugenic surgeries and artificial abortion with the consent of the person infringe on the right of self-determination of the subject and the reproductive health and rights contained in the right to pursuit of happiness under Article 13 of Constitution and the right to be treated equally under the law (Right of Equality), which is guaranteed to all persons by Article 14, paragraph 1 of Constitution.

On April 24, 2019, “Act on the Payment of Lump-Sum Compensation to People who Underwent Eugenics Surgeries based on the EPA”³³ was enacted and a monetary lump-sum of ¥3,200,000 (uniformly) was determined to be paid to those who underwent eugenic surgery during the period while EPA existed. However, the Act does not include compensation for artificial abortion and notification to individual victims who are recognized by the government was not specified. There has been no precedent recognizing criminal liabilities of offenders.

In order to recover the dignity of victims, which has been trampled on for many years, Japan should admit its own liability, apologize to victims and implement measures to completely recover damages³⁴³⁵.

2. Recommendations

Japan should expand the scope of compensation to include artificial abortion as a target for compensation and give individual notification to victims in consideration of their privacy, and implement measures to realize complete recovery of damages to victims.

³³ https://elaws.e-gov.go.jp/search/elawsSearch/elaws_search/lsg0500/detail?lawId=431AC1000000014

³⁴ JFBA, “Opinion on the Legislative Measures for Compensation for Eugenic Surgeries and Artificial Abortion, etc., under the Former Eugenic Protection Act” (December 20, 2018) https://www.nichibenren.or.jp/document/opinion/year/2018/181220_2.html

³⁵ JFBA, “Statement by the President on Enactment of the Act on the Payment of Lump-Sum Compensation to People who Underwent Eugenics Surgeries based on the Former Eugenic Protection Act” (April 24, 2019)

<https://www.nichibenren.or.jp/document/statement/year/2019/190424.html>

XIX. Mental Health (Paragraph 15)³⁶

1. Reply

With reference to the previous concluding observations (Paragraph 17), Japan has implemented no legal measures and no effective operational measures have been implemented.

(1) Status of the Law and Practices related to Involuntary Hospitalization, etc.

The numbers of hospitalized persons and involuntarily hospitalized persons for general psychiatric care³⁷ have decreased very little³⁸ while the number of persons newly hospitalized involuntarily has increased³⁹. The admission rate for hospitalization has increased in judgments under “Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity” (Medical Treatment and Supervision Act, “MTSA”)⁴⁰. The period of hospitalization under MTSA was initially targeted within 18 months but this has been extended⁴¹.

Isolation and physical restraints for general psychiatric care have continuously increased and, compared to 2003 and 2018, isolation increased by 1.6

³⁶ As a recent indication on this issue by a convention institution other than the Human Rights Committee, there are Concluding Observations of the Committee against Torture on the 2nd periodic report submitted by Japan (CAT/C/JPN/CO/6), Paragraph 22.

³⁷ Refers to medical care under the Act on Mental Health and Welfare for the Mentally Disabled (hereinafter referred to as “Mental Health Welfare Act”).

³⁸ In 2014, the total number of hospitalized persons was 290,406 persons (out of which those who have been hospitalized for more than 5 years were 101,169 persons), out of which involuntarily hospitalized persons were 133,427 persons (out of which those who have been hospitalized for more than 5 years were 41,732 persons) and in 2018, the total number of hospitalized persons was 280,815 persons (out of which those who have been hospitalized for more than 5 years were 90,733 persons), out of which involuntarily hospitalized persons were 132,424 persons (out of which those who have been hospitalized for more than 5 years were 39,179 persons) (Figures as of June 30 of each year in the Mental Health and Welfare Data).

It is reported that persons who have been hospitalized for more than 50 years totaled 1,773 persons as of June 30, 2017 (Mainichi Shimbun, “Over 1,700 patients stayed over 50 years at mental wards nationwide : Nationwide Mainichi survey” (August 2, 2018)

<https://mainichi.jp/articles/20180821/k00/00m/040/127000c>

³⁹ The number reported for hospitalization for medical protection (hospitalization under the Mental Health and Welfare Act, Article 33) was 170,079 cases in 2014 and it was 185,654 cases in 2017 (Report on Public Health Administration and Services)

⁴⁰ According to the judicial statistics, it was 54.9% in 2006, a year following the enforcement of the Act, but it has gradually increased to 75.9% in 2017.

⁴¹ In the Health and Labour Sciences Research ~ Study of Improvement of Medical Treatment and Supervision Act of 2014 and Collaboration among Related Organizations, for the assumed period of hospitalization, the results indicated that the mean was 750 days and average was 925 days in the 2014 survey.

times and physical restraint increased by 2.51 times⁴² and there were cases where patients died from physical restraint⁴³.

(2) Status of the Law and Practices related to Abuse

Establishment of a committee to minimize restrictions on activities has been made mandatory in general psychiatric hospitals since 2004, but these are merely internal organizations and judging from the fact that the number of cases of isolation and physical restraint are increasing, these organizations are considered unfunctioning.

(3) Status of Legality Review of Hospitalization and Restrictions on Activities

Effectiveness of reviews by the Psychiatric Review Board (“PRB”), which examines the legality of hospitalization and restrictions on activities, has not improved, and the hospital discharge acceptance rate, etc., by reviews remains extremely low. There was a case where PRB permitted continued hospitalization, but UN Working Group on the Arbitrary Detention has not accepted the legality of hospitalization⁴⁴.

There is still no system, in which advocates are appointed for persons with mental disabilities subjected to involuntary hospitalization and restrictions on

⁴² In the 2003 survey, isolation out of all hospitalization cases totaled 7,741 cases and physical restraints totaled 5,109 cases and in the 2018 survey, isolation out of all hospitalization cases totaled 12,364 cases and physical restraints totaled 12,828 cases (Figures as of June 30 of each year in the Mental Health and Welfare Data). It should be noted that the number of physical restraints in 2018 includes the number of isolation and physical restraints).

⁴³ Mainichi Shimbun, “Kanagawa, a NZ man died from cardiopulmonary arrest at a hospital; the bereaved family appealing prohibition of long-term restraints” (May 30, 2018, Tokyo, evening edition)

<https://mainichi.jp/articles/20180530/dde/041/040/035000c>

Nihon Keizai Shimbun, “‘a woman died from physical restraint;’ the bereaved family brought a lawsuit against the psychiatric hospital” (July 18, 2018)

<https://www.nikkei.com/article/DGXMZO33121170Y8A710C1CZ8000/>

Asahi Shimbun, “‘Died from improper physical restraint;’ the bereaved family brought a lawsuit against the psychiatric hospital (August 27, 2018)

https://www.asahi.com/articles/ASL8W36HVL8WPJLB002.html?iref=pc_ss_date

⁴⁴ A man, who committed theft, was subject to involuntary hospitalization because of the risk of self-harm and harm to others based on the report of a police officer for the reason that the man had a mental illness, and the man made a request for discharge from the hospital to the Tokyo Metropolitan Government, but PRB did not admit this request. It was reported that the man communicated thereafter to UN Working Group on the Arbitrary Detention, the Working Group determined that the man was unlikely a risk to commit self-harm or harm to others at the time of his arrest and concluded that the involuntary hospitalization without legal grounds violated the Universal Declaration of Human Rights, etc., and “it is apparent that it was discrimination as it was conducted based on a mental disorder” (Nihon Keizai Shimbun “Involuntary hospitalization is ‘unjust, make compensation’ the UN sent a statement of opinions to the Government of Japan” (June 3, 2018)

<https://www.nikkei.com/article/DGXMZO31312690T00C18A6CR8000/>

activities in order to obtain proper support at public expense or any other effective means to be used. The situation remains the same in which persons with mental disabilities subjected to hospitalization and restrictions on activities cannot bring objection appropriately and effectively⁴⁵.

In adjudications on continuation and discharge from hospitals, etc., during hospitalization and hospital visits and requests for improvement of treatment under MTSA, as there is no system in which defense counsels are necessarily appointed at public expense and there are few cases where defense counsels are appointed, persons who are hospitalized and visiting hospitals cannot make effective arguments in adjudication.

2. Recommendations

Japan should:

- (1) Revise the requirements for forced hospitalization so that they are limited only as a last resort and for the minimum required period;
- (2) If forced hospitalization or isolation and restraints are conducted, guarantee the right to appoint a defense counsel, a legal professional free of charge, and revise the system so that a review of objection shall be made at an authority with the substance of independent and permanent quasi-judicial authorities;
- (3) Implement measures to revise the use of isolation and physical restraint as a measure of last resort when all other alternatives for control have failed, for the shortest possible time, under strict medical supervision⁴⁶;
- (4) Revise the system so that a committee to minimize restrictions on activities is established in an organization independent from hospitals; and
- (5) Amend the Act on the Prevention of Abuse of Persons with Disabilities and Support for Caregivers (Disabled Persons Abuse Prevention Act) so that hospitals are included in the Act.

XX. Abolition of Substitute Detention System (*Daiyo Kangoku*) (Paragraph 16)

1. Reply

Daiyo Kangoku was recognized as substitute detention facilities under the Act on

⁴⁵ We can understand from the fact that the percentage of request for review to PRB is only 0.03% of those who were under involuntary hospitalization.

⁴⁶ Concluding observations of the Committee against Torture on the second periodic report of Japan (CAT/C/JPN/CO/2), paragraph 22 (e)

Penal Detention Facilities and the Treatment of Inmates and Detainees of 2006 (Inmates Treatment Act, “ITA”) contrary to criticisms in and outside of Japan. There were no measures implemented to ensure that Japan is in full compliance with Article 9 and Article 14 of Covenant.

2. Recommendations

Japan should abolish <i>Daiyo Kangoku</i> ⁴⁷⁴⁸⁴⁹⁵⁰⁵¹ .

XXI. Alternative Means for Pre-indictment Detention (Paragraph 16 (a))

1. Reply

There is no system of bail at the stage of arrest and detention before indictment and no alternative means. It is very rare that a request for arrest warrant is rejected⁵², request for detention is rejected⁵³ or detention is revoked. In fact, if a prosecutor requests an extension of detention, in most cases, extension of detention is granted. Japan has never considered establishing a system of bail or any other alternative

⁴⁷ JFBA, “JFBA Report to the Third Periodic Report of Japan on the ICCPR (1)” Chapter 2-5 (December 1991)

⁴⁸ JFBA, “Alternative Report to the Fourth Periodic Report of Japan on the International Covenant on Civil and Political Rights,” Chapter 3, (September 1998)

https://www.nichibenren.or.jp/activity/international/library/human_rights/liberty_report-4th_jfba.html

⁴⁹ JFBA, “Alternative Report to the Fifth Periodic Report of Japan on the International Covenant on Civil and Political Rights” (December 2007)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep5_ICPR.pdf (English, p. 145)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep5_ICPR_ja.pdf (Japanese, p. 114)

⁵⁰ JFBA, “Report on the 6th Periodic Report of the Government of Japan based on Article 40 (b) of the International Covenant on Civil and Political Right ~ Matters and their Background Circumstances that should be Included in the List of Issues to be Prepared by the Country Report Task Force” (May 9, 2013)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep6_ICPR.pdf (English, p. 96)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep6_ICPR_ja.pdf (Japanese, p. 97)

⁵¹ Op. cit., 25, etc.

⁵² According to Judicial Statistics of 2018, Criminal Cases, “Table 15: Categories of Results of Warrant Case and the Number of Persons by Type of Warrant – All Courts and All High, District and Summary Courts,” the total number of requests for arrest warrant was 90,212 cases a year, but the number of cases in which requests for arrest warrant were rejected was only 57 cases. The percentage of rejections of arrest warrants is only 0.06%.

⁵³ According to Judicial Statistics of 2018, Criminal Cases, “Table 15: Categories of Results of Warrant Case and the Number of Persons by Type of Warrant – All Courts and All High, District and Summary Courts,” the total number of cases of request for detention was 100,897 cases a year and the number of rejections of requests for detention warrants was 6,169 cases, which means the percentage of rejections of requests for detention is only 6.11%.

means for detention.

2. Recommendations

Japan should establish a pre-indictment bail system⁵⁴.

XXII. Right to Presence of a Defense Counsel (Paragraph 16 (b))

1. Reply

GOJ does not have any intention of establishing a law providing for the presence of defense counsel during interrogations of suspects. There are actual circumstances where police officers and prosecutors refuse the presence of defense counsels by reason that there is no law specifying the right to the presence of defense counsels during interrogations even if defense counsels or suspects make a request for presence. JFBA requested GOJ at the 62nd Convention on the Protection of Human Rights to legislate a law requiring the presence of defense counsel during interrogations if defense counsels or suspects make a request for presence⁵⁵.

2. Recommendations

Japan should guarantee and specify in a law the right of the presence of defense counsels during interrogations⁵⁶.

XXIII. Court-appointed Defense Counsel System (Paragraph 16 (c))

1. Reply

A suspect can appoint a court-appointed defense counsel only after execution of a decision of detention and generally limited to suspects whose means are less than ¥500,000. Through the on-duty attorney system and suspect defense support system operated by bar associations, suspects may receive support of defense counsels before execution of a detention warrant, but these systems are not financed from the national treasury. In many cases, investigating authorities do not explain to suspects about the existence of these systems and their content.

2. Recommendations

Japan should ensure that court-appointed defense counsels can be appointed

⁵⁴ Op. cit., 25 (Japanese, p. 12, English, p. 13), Op. cit. 50 (Both Japanese and English, p. 66)

⁵⁵ JFBA “Declaration Calling for the Establishment of the Right to Have the Assistance of Counsel: Counsel’s Presence at Interrogation Changes the Criminal Justice System” (October 4, 2019)

https://www.nichibenren.or.jp/en/document/statements/2019_1.html (English)

https://www.nichibenren.or.jp/activity/document/civil_liberties/year/2019/2019_1.html (Japanese)

⁵⁶ Op. cit., 24 (Japanese, p. 79, English, p. 78)

from the time of arrest.

XXIV. Time Limits for Interrogation (Paragraph 16 (d))

1. Reply

There is no law providing for restrictions on the length of interrogations of suspects and the interrogation methods, but in the National Public Safety Commission Rules (2008), No. 4 “Rules for Supervision of Proper Interrogations of Suspects,” certain interrogation methods are provided as acts subject to supervision and in Code of Criminal Investigations, Article 168, paragraph 3, certain time limits for interrogations are provided. There are no penalties imposed on violating officers, however, and is a lack of effectiveness in limiting the time for interrogations⁵⁷.

2. Recommendations

Japan should establish effective legal regulations in compliance with Covenant with respect to time limits for interrogations of suspects⁵⁸.

XXV. Penal Detention Facilities Visiting Committee, etc. (Paragraph 16 (e))

1. Reply

ITA provided for the Penal Institution Visiting Committee and the Detention Facilities Visiting Committee due to the 2006 amendment, but these Committees are mandated to make recommendations on improvement of treatment in facilities and are not organizations that directly guarantee proper interrogations. At the present time there is no independent administrative review mechanism to conduct immediate, fair and effective investigations of complaints about torture and abuse during interrogations and GOJ has no intention to establish a new third-party institution with such authorities.

2. Recommendations

Japan should establish an independent administrative review mechanism to conduct immediate, fair and effective investigations of complaints about torture

⁵⁷ As for the duration time of interrogations by investigators, police and prosecutors’ office have not published statistics, but according to investigations by Minami-Nippon Shimbun, Kagoshima Prefectural Police carried out 441 interrogations exceeding 8 hours a day, which is generally prohibited by the National Police Agency, for the period from 2012 to 2014 and some interrogations exceeded 15 hours a day.

⁵⁸ Op. cit., 24 (English, p. 110, Japanese, p. 112), Op. cit., 50 (Both English and Japanese, p. 67)

and abuse during interrogations⁵⁹.

XXVI. Handcuffs and Waist Ropes (In relation to Paragraph 16)

1. Reply

As detained suspects and defendants are handcuffed and leashed when they enter and leave courtrooms, they are seen by courtroom observers and judges. Such treatment is degrading and infringes on the right to the presumption of innocence. Such practices should be corrected immediately.

2. Recommendations

Japan should not generally use handcuffs and waist ropes for suspects and defendants in courts and should improve practices so that the suspects and defendants wearing handcuffs and waist ropes shall not be seen by litigants including judges and courtroom observers.

XXVII. Rights of Inmates (Paragraph 17)

1. Reply

(1) For around-the-clock solitary confinement, “isolation” was restricted due to amendment of ITA of 2006. On the other hand, substantive around-the-clock solitary confinement, which is not “isolation” under the law, has been conducted in many cases, and such circumstances as deviating from the law has continued. For around-the-clock solitary confinement which deviates from the law, only an ineffective system for filing complaints without a time limit for response is recognized, which is a situation where inmates cannot request a system for filing complaints that is granted to inmates who are under disposition of isolation under the Act, and such situations have not improved at all.

(2) The number of cases of around-the-clock solitary confinement itself is decreasing, but in fact, the percentage of inmates who are subject to solitary confinement for an extended period of time is increasing. While there are no statistics on the number of inmates with mental disabilities, as many cases of detention reaction have been reported on long-term detained inmates, we assume there are not a few inmates who have developed mental illnesses due to detention

⁵⁹ For insufficiency of the Penal Institution Visiting Committee and the effective administrative review system, refer to Op. cit., 49 (English, p. 151, Japanese, p. 118), Op. cit., 50 (English, p. 94, Japanese, p. 95).

reaction.

- (3) Under the new Act, the number of doctors has increased, but medical care is not independent from the security system and problems have not been resolved. The number of doctors is still inadequate and there exists the situation where inmates cannot receive a medical examination even if they request one because a practical nurse determines whether a medical examination is necessary. The number of external medical care services has not increased. In January 2018, while the East Japan Adult Correctional Medical Center, a new medical prison was opened, there was a case where suspension of a sentence of an inmate who had a very short time to live was not permitted. Notwithstanding provisions of UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), inmates have not yet been granted access to their medical records.
- (4) For consultations on treatment and defense counsel for retrial, interviews without the presence of an officer are operationally permitted. On the other hand, for other consultations, an officer is present in interviews even by former defense counsels. In addition, letters from defendants and inmates are censored even if they were sent to defense counsels. In the case where a letter sent to an inmate from a defense counsel was censored, action for damages against the government was brought, arguing illegality of censorship, but the court found that censorship by the prison was legal⁶⁰.
- (5) As standards for parole of inmates serving life sentences is too abstract and it is uncertain for inmates what the goal should be, and in addition, as the time of review is when 30 years have passed from the execution of sentence and thereafter when every 10 years have passed from the last review of parole⁶¹, the period between reviews is too long for periodic review. Furthermore, inmates have no right to file a petition for review and cannot be involved in the review procedure. As for the number of paroles after July 2014, there have been only 10 persons each year as compared with the number of inmates serving life sentences of about 1,800 persons. On the other hand, as many as 20 to 30 persons die each year, which means

⁶⁰ Judgment of the Sendai High Court, Akita Branch as of March 30, 2018 (Case No.: (wa) No. 126 of 2016)

In a similar case, however, there is a precedent which held censorship by a prison as illegal (Judgment of Akita District Court as of March 1, 2019 (Case No.: (wa) No. 140 of 2017), and judgments differ among lower courts.

⁶¹ Director-General of the Rehabilitation Bureau, MOJ, "Operation of Affairs related to Review of Parole of Inmates Serving Life Sentences (Notification)) (March 6, 2009)

a life sentence is actually imprisonment for life.

2. Recommendations

Japan should:

- (1) Limit around-the-clock solitary confinement to the minimum extent necessary and if it is necessary, the scope of prohibition of contact with other inmates should be limited to the minimum extent and establish a substantial system for filing complaints;
 - (2) Ensure that, in particular, persons who are under around-the-clock solitary confinement receive a periodic physical and mental medical examination by a doctor and, if any problem is discovered, around-the-clock solitary confinement should be suspended immediately;
 - (3) In order for inmates to receive medical care at the same level as the outside, realize as independent medical care from the security system in facilities by entrusting to external medical institutions and transferring the control of prison medical care to Ministry of Health, Labour and Welfare (“MHLW”), etc.;
 - (4) Prohibit censorship at least for letters exchanged with defense counsels and implement any measure so that letters can be sent and received promptly under any circumstance; and
 - (5) Indicate specifically the requirements for social rehabilitation to inmates serving life sentences and provide necessary treatment to achieve them.
- In addition, if parole is not permitted as a result of review, specific reasons therefor should be notified to inmates.

XXVIII. Issue of “Comfort Women” (Paragraph 18)

1. Reply

There has been no particular progress in (a) and (c).

Regarding (b), for victims with nationality of ROK, based on the agreement between Japan and South Korea as of December 28, 2015, the Government of Korea established on July 28, 2016 “Reconciliation and Healing Foundation” to support former “comfort women” and GOJ contributed on August 31, 2016 1 billion yen to the above Foundation and support money was paid to some of the former “comfort women” and their bereaved family members. The above agreement was criticized by some former “comfort women” as “it does not reflect the will of victims,” etc., and

they refused to receive the support money based on the agreement, which shows difference in evaluation of the agreement.

The former President of the former “comfort women” support organization “Korean Council for Justice and Remembrance for the Issues of Military Sexual Slavery by Japan” (former “Korean Council for the Women Drafted for Military Sexual Slavery by Japan ”; hereinafter referred to as “Korean Council”) was accused of embezzlement, breach of faith, etc., and the Seoul Western District Prosecutors’ Office conducted a compulsory investigation of the office of the Korean Council on May 20, 2020⁶².

There has been no progress in responses to the victims of countries other than ROK, including the Republic of the Philippines and the People’s Republic of China, etc.

Regarding (d), inappropriate statements slandering the victims were made even after the previous recommendations. With respect to the comfort woman statue, installed on December 30, 2016, in front of the Consulate-General of Japan in Busan, the issue of “comfort women” was reignited between the two countries and on January 9, 2017, GOJ ordered the Ambassador to ROK and Consul-General in Busan to return to Japan temporarily⁶³.

In June 2017, the Japanese Consul-General in Atlanta was requested by ROK’s MOFA to withdraw his statement as it insulted the victims known as “comfort women”⁶⁴. In November 2017, the incumbent Mayor of Osaka expressed his opinion as “comfort women were (not sexual slaves but) public prostitutes in the battlefield”⁶⁵

⁶² JoongAng Daily, “Korean Prosecutors searched the Office of “Korean Council,” the organization supporting comfort women victims” (May 21, 2020)

<https://japanese.joins.com/JArticle/266157>

Nishinippon Shimbun, “The organization supporting former comfort women is in distress; Former Representative denied suspicion in the press conference; Prosecutors conducted a full-scale investigation” (May 30, 2020)

<https://www.nishinippon.co.jp/item/n/612606/>

Editorial of JoongAng Daily (May 28, 2020)

<https://japanese.joins.com/JArticle/266439>

⁶³ Asahi Shimbun, “Japanese Ambassador to Korea returns temporarily; ‘highly regrettable’ about the statue of the girl in Busan (January 9, 2017)

<https://www.asahi.com/articles/ASK193TJDK19UHBI00C.html>

⁶⁴ Livedoor News “Statement of Japanese Consul-General in Atlanta: ‘comfort women were prostitutes’ strongly criticized by Korea - Korean Media (June 27, 2017)

<https://news.livedoor.com/article/detail/13261053/>

⁶⁵ Asahi Shimbun, “Mayor of Osaka expressed dissolution of sister city relationship: ‘trust relationship destroyed’ (November 24, 2017)

<https://www.asahi.com/articles/ASKCS3DVMKCSPTIL00S.html>

in response to the fact that San Francisco in the United States, a sister city of Osaka, has municipalized “comfort woman” statue of the former Japanese military. As stated above, inappropriate statements by public officials have been continuously made.

Regarding (e), out of history text books at junior high schools, which passed the textbook authorization in Japan, only one textbook included “comfort women” issue and this textbook passed the authorization by responding to the demand by Ministry of Education, Culture, Sports, Science and Technology to add the statement, “the Government of Japan currently expresses its opinion, ‘no material indicating so-called forcible removal by the military or authorities has been discovered.’”⁶⁶

2. Recommendations

Japan should make efforts faithfully for resolution of the issues of “comfort women,” continuously considering the feelings of victims and should ensure that any person in public office or a leading position shall not make inappropriate statements slandering the victims and should not force the publication of the views of the Government in the explanations about “comfort women” issues in history textbooks.

XXIX. Trafficking (Paragraph 19)

1. Reply

Most victims of trafficking recognized by the police were women and in 2018, 60% of the victims were younger than 20 years old.⁶⁷ Although the recognized number of cases of trafficking is small, there are almost no cases of labor exploitation.

The number of foreign nationals accounting for the victims of trafficking, recognized by the police, was 7 persons out of 25 persons in 2018, 14 persons out of 42 persons in 2017 and 21 persons out of 46 persons in 2016⁶⁸. As for resident status

⁶⁶ Akahata Newspaper, “Comfort Women Description Largely Deleted” (April 7, 2015), http://www.jcp.or.jp/akahata/aik15/2015-04-07/2015040701_02_1.html; Hankyoreh, “‘Manabiya’ Textbook Putting back Description on Comfort Women” (April 6, 2015), <http://japan.hani.co.kr/arti/international/20225.html>; Sankei Shimbun, “Nakasone says “Big Problem” on Comeback of ‘Comfort Women’ Description in Junior High School Textbook (March 26, 2020), <https://www.sankei.com/politics/news/200326/plt2003260020-n1.html>

⁶⁷ National Police Agency, “Status of Arrest, etc., of Crime of Trafficking in Persons, etc., in 2018” (February 28, 2019) https://www.npa.go.jp/publications/statistics/safetylife/hoan/h30_jinshin.pdf

⁶⁸ The same as the above.

of foreign-national victims in the past 5 years, temporary visitor accounted for 70% and the spouses of Japanese nationals accounted for a little less than 20%⁶⁹. Forms of victimization of trafficking are sexual exploitation, working as hostesses and labor exploitation⁷⁰. In the past, there was the case calling for support for Japanese-Filipino children (children who were born between Japanese father and Filipino mother and raised in the Philippines), in which the Filipino mother and child were made to enter Japan with the status of temporary visitor as they were told that the Japanese father would recognize the child and the mother was forced to work as a hostess, etc.⁷¹

On the other hand, there are a considerable number of victims of trafficking which were not recognized. In Japan, there are no regulations on prostitution other than those subject to minors, and there is an inundation of pornography related to women other than minors, which means countermeasures for sexual exploitation are insufficient.

Regarding foreign domestic workers, acceptance of whom started in the National Strategic Special Zones in March 2016, the danger of human rights violation is high as the place of work has such special nature as closed space in an individual home, and there was a case of sudden dismissal⁷².

For acceptance of foreign workers based on “Specified Skill” system, which started in April 2019, the system of cooperation with local sending countries was not sufficiently established and there is a danger that foreign nationals would be forced to work in poor environments at low wages similar to the technical intern training system.

2. Recommendations

Japan should enact “Act to Prevent Trafficking and Protect Victims”

In particular, in 2015, 36 persons are foreign nationals out of 49 persons.

⁶⁹ The same as the above.

⁷⁰ Council for the Promotion of Measures to Combat Trafficking in Persons “Measures to Combat Trafficking in Persons (Annual Report)” (May 24, 2019)

<https://www.kantei.go.jp/jp/singi/jinsintorihiki/dai5/honbun.pdf>

The following cases were reported: the case in which Thai women were induced by saying “you can earn money by working in a Japanese massage parlor,” seizing their passports after entering Japan, forcing them into providing sexual services in a private room of a massage parlor and exploiting their wages; and the case in which the victims were forced to reside in an apartment near the business base of prostitution and live under supervision by always monitoring their location information with a smartphone application.

⁷¹ Council for the Promotion of Measures to Combat Trafficking in Persons “Measures to Combat Trafficking in Persons” (May 2016)

<https://www.kantei.go.jp/jp/singi/jinsintorihiki/dai2/honbun.pdf>

⁷² Nippon.com “Keevee’s Story: Unfair Dismissal Highlights Flaws in Japan’s System for Hiring Foreign Domestic Workers” (July 10, 2018)

<https://www.nippon.com/ja/column/g00543/>

(Provisional),” which comprehensively provides for proper recognition of victims of trafficking as well as prevention of trafficking, including support for victims of trafficking and eradication of demand.

XXX. Remedial Measures for Technical Intern Trainees (Paragraph 20)

1. Reply

Regarding (a), the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees (“Technical Intern Training Act”) was enacted in November 2017. However, while the Act provided penalties for prohibiting disadvantageous treatment of technical intern trainees by reason of having filed a report with the competent ministers concerning the fact of violation of the Act (Article 49 (2)), the Act did not prohibit by penalties forced return to their home countries.

In order to eradicate collection of deposits and demand of guarantors by sending organizations and any other matters which can be a hotbed for infringement of the rights of technical intern trainees, it is essential for sending countries to eliminate heinous sending operators by executing bilateral agreements, but execution of bilateral agreements remain the non-binding target of the government. Also, the effect is insufficient in the case where any acts in breach of the above agreement were committed.

Regarding (b), (c) and (d), the Organization for Technical Intern Training (“OTIT”), which conducts proper implementation of technical intern training and protection of technical intern trainees, was established in January 2017, but there has been no particular progress. In order to eliminate trafficking in persons, the system should be more effective by specifying matters including that on-site inspection of implementing organizations and supervising organizations by OTIT shall generally be conducted without prior notice.

Regarding (e), OTIT established the contact for consultations and report from technical intern trainees so that trainees can consult on violations of the technical training laws and on such problems as mental health and industrial accident insurance. It is apparent, however, that there are cases requiring judicial remedy, as remedies for these damages cannot be provided by only the three parties of the Ministry of Justice (“MOJ”), MHLW and the Organization. Various human rights issues, etc., encountered by technical intern trainees are best known to attorneys, NGOs and trade

unions which accept consultations for them. In addition, public agencies and the Organization alone cannot respond to remedies from human rights violations of technical intern trainees. Furthermore, unless there is the system corresponding to consultations in the mother languages of technical intern trainees, effective protection of technical intern trainees cannot be expected.

2. Recommendations

Japan should immediately abolish the technical intern trainee system, which, in fact, must be called modern slavery and is used to accept foreign unskilled workers as cheap labor. In abolition of the system, such measures should be implemented as technical intern trainees currently staying in Japan will not be subject to disadvantageous treatment.

Regarding (a), forced return to home countries should be prohibited by the explicit text of the Technical Intern Training Act and in case of forced return, the authorization of training of implementing organizations should be revoked as penalties. In addition, Japan should not maintain execution of bilateral agreements as the non-binding target, but it should be a condition for accepting technical intern trainees from the sending country and in such bilateral agreements, the provision should be established that if there is any act violating the bilateral agreement, acceptance of all trainees from the sending country shall be suspended.

Regarding (d), Japan should specify matters including that the on-site inspection by OTIT shall generally be conducted without prior notice.

Regarding (e), Japan should specify, as the subject of consultations and remedy, claim for unpaid wages, etc., and compensation for damages by harassment, etc., and specify that OTIT shall include bar associations, Japan Legal Support Center (Houterasu), NGOs and trade unions, etc., as its collaborators. Japan should construct a system in which trainees can consult via interpreters.

XXXI. Prohibition of Unjust Treatment at Deportation (Paragraph 21)

1. Reply

Regarding (a), since the death of a Ghanese in March 2010, deportation by subduing and physical restraint against her/his will was virtually suspended, but such deportation resumed in January 2013. In July 2013, “deportation by a chartered flight” started, in which a number of foreign nationals were deported at one time by chartering an aircraft.

In these deportations, opportunities for consulting with attorneys in advance were not provided for foreign nationals.

Regarding (b), since September 2016, refugee application cases have been classified into four categories and practices with different procedures have been applied for each category, and since January 2018, application of restrictions on work and residence have been expanded to Cases B and C (cases which were determined by authorities as it is unlikely to be recognized as refugees or abuse of the refugee recognition system). However, there are several cases which were recognized as refugees as a result of reapplication and cases which were recognized as refugees by filing an objection or litigation in spite of non-recognition in the initial procedure. While there is not a sufficient environment for applicants to be recognized as refugees to obtain sufficient legal support, it cannot be said that objective rationality is secured in classification of cases, which is problematic in terms of protection of procedures for applicants of refugee recognition. The system was amended so that vulnerable persons could be accompanied by a representative in interviews in the initial application for refugee recognition, but only one case has been implemented as of yet and there has been no further progress in particular.

Regarding (c), there has been no particular progress.

Regarding (d), the Immigration Services Agency (“ISA”), in charge of deportation procedures, conducts recognition of refugees, but as there is no professional career path, professionalism and accuracy of methods and contents of recognition of refugees are lacking, and in addition, there are some cases in which prejudgment and prejudice against the applicants are suspected including the case where application for recognition of refugees by a person with specific nationality are refused at contact. There were 13 cases which did not recognize as refugees against the opinions of the refugee adjudication counsellors from 2013 to 2015 and there were 5 cases in which ISA refused recognition again although the revocation trial decisions made for the non-recognition of refugees became final.

Regarding (e), as the detention period is unlimited under deportation orders, there is no concept of extension of the detention period, and there is no judicial review system to periodically check the legality of continued detention after the start of detention. According to Instruction No. 43 of MOJ as of February 28, 2018, provisional release is rarely permitted and long-term detainees for more than half a year have drastically increased. Hunger strikes protesting long-term detention have

been carried out in detention facilities throughout Japan and one of the detainees has died from hunger. However, ISA has not changed its detention policy but rather the Agency has conducted practice of re-detaining and continuing detention by permitting provisional release for those who suffered from bad physical condition of only 2 weeks. The Minister of Justice expressed its intention to make the requirements for provisional release stricter and facilitation of deportation.

2. Recommendations

Japan should:

- (1) Prohibit deportation infringing on the rights to receive trial (a);
- (2) Abolish unjust restrictions on work and residence for applicants of refugee recognition (b);
- (3) Enact a law providing that if refugee adjudication counsellors and courts recognize an individual as a refugee, ISA shall recognize the individual as a refugee within a certain period of time, unless there are special circumstances. An organization independent from ISA, in charge of deportation procedures, should determine whether the applicant falls under a refugee (d); and
- (4) Establish the upper limit on the detention period and conduct judicial review at the time of renewal of detention. The medical care system should be constructed so that detainees can receive sufficient treatment in a timely manner (e).

XXXII. Surveillance (Paragraph 22)

1. Reply

- (1) There are no any official explanations about the measures implemented by GOJ regarding surveillance of Muslims. Courts recognized the responsibility of the police for leakage of information, but denied illegality of collection and use of information. Not only Muslims but also every person living in Japan might be under surveillance of security police. Regarding the wind power generation facility construction plan, which had been promoted by a subsidiary of a local power company as an operator in Ogaki City, Gifu Prefecture, there was a case in which the Gifu Prefectural Police provided the operator with personal information, which was collected by the police with respect to the movement of residents residing in

the City⁷³. In addition, there is information suggesting the possibility of surveillance of high government officials and politicians by security police. Former Vice Minister of Education, Culture, Sports, Science and Technology, Kihei Maekawa tried to whistle-blow distortion of administration regarding authorization of the establishment of a faculty of veterinary medicine of the KAKE Educational Institution, a private university. Mr. Maekawa was summoned by the Deputy Chief Cabinet Secretary, Kazuhiro Sugita and a threat was made that Mr. Sugita would publish private matters of Mr. Maekawa if Mr. Maekawa were to give such testimony. Immediately before Mr. Maekawa was to have stated his opinions as an unsworn witness in the Diet, an article reporting Mr. Maekawa went to a bar which was said to have problems was published in the Yomiuri Shimbun, with the intention of lowering his social standing⁷⁴.

- (2) Security cameras pose a risk of infringing on people's privacy rights. Facial recognition systems, which began to be introduced for investigation by the police, have a search function that can identify specific individuals easily from an enormous volume of images stored in security cameras⁷⁵. However, Japan does not have a law to regulate establishment and operation of security cameras by the public and private sectors and use of facial recognition systems, and they are used at the discretion of the police⁷⁶.

2. Recommendations⁷⁷

⁷³ This case was revealed by a report in the Asahi Shimbun, which obtained the minutes summarizing the contents of information exchange between the business operator and the police. In the minutes, it was stated that the subject of surveillance participated in the citizen's movement as many as 25 years ago, which suggests that the police have collected an enormous volume of information for a long time and used it arbitrarily.

⁷⁴ Mainichi Shimbun, June 20, 2019, "If it is true 'present-day *tokko* (Special Higher Police)': the whistle-blowing novel, the reality of 'Prime Minister's Official Residence Police'"

<https://mainichi.jp/senkyo/articles/20190620/k00/00m/010/008000c>

⁷⁵ Three situations are presumed for collection of personal information by security cameras and facial recognition systems: warrants, investigation matter referrals and voluntary provision, but the latter two cases are not checked by a third party and in any case, management, use (provision to a third party) and disposal after obtaining the information are not regulated by law, and even if personal information is incorporated into a database, external checks cannot be made.

⁷⁶ JFBA published the following Opinions and made recommendations, but Japan does not have any intention to enact a law.

"Opinion Concerning the Legal Restrictions on Security Cameras" (January 19, 2012)

https://www.nichibenren.or.jp/document/opinion/year/2012/120119_3.html

"Opinion Concerning the Legal Restrictions on Facial Recognition Systems" (September 15, 2016)

<https://www.nichibenren.or.jp/en/document/opinionpapers/20160915.html> (English)

https://www.nichibenren.or.jp/document/opinion/year/2016/160915_2.html (Japanese)

⁷⁷ JFBA adopted at the 60th Convention on the Protection of Human Rights held on October 6, 2017

Japan should:

- (1) Establish a law that indiscriminate surveillance focusing on a certain ethnicities and religions shall not be made; and
- (2) Establish legal restrictions on the installment of facial recognition cameras and management and use of facial recognition data so that they shall not infringe on the rights of privacy.

XXXIII. Restrictions on Fundamental Human Rights on the Grounds of “Public Welfare”
(Paragraph 23)

1. Reply

Japan has made no progress since the Fourth Review of Japan and there has been no change in domestic laws and practices. Constitution stipulates that only “public welfare” can restrict human rights and regards it as a comprehensive reason for restricting human rights, applicable to all human rights, but the specific content of “public welfare” is not fixed, which means that the concept is essentially a principle that excessively restricts human rights and is subject to abuse depending on the judgments of the courts that interpret and apply the concept.

2. Recommendations

Japan should implement legislative measures defining the concept of “public welfare” and specify that any restrictions on freedom of thought, conscience, religion or freedom of expression, etc., by reason of “public welfare” shall not exceed the restrictions permitted under Covenant.

XXXIV. Draft Amendment of Article 21 of Constitution (Paragraph 24)⁷⁸

“Resolution Calling for Enhancing Guarantee of the Right to Privacy and the Right to Know, and the Promotion of Information Disclosure to Realize a Democratic Society that Secures Respect for the Individual” (Op. cit., 15)

In the Resolution, the following recommendations were made: [1] To prohibit information surveillance in which public authorities exhaustively collect and search all personal data of all persons who use the Internet by themselves or through private companies; [2] To enact new legislation to legally regulate acquisition of images from security cameras or GPS information and the use thereof for investigation purposes in order to make such use appropriate; and [3] To set strict restrictions on the surveillance public authority and its exercise that are authorized for information agencies such as the security police and the SDF Intelligence Security Command and institutionalize the supervisory system by an independent third-party body.

⁷⁸ JFBA, “Opinion Opposing Denial of the Basic Principles of Respect for Fundamental Human Rights under the Constitution of Japan and Restrictions on Fundamental Human Rights by the ‘Public Interest and Public Order’ Clause” (February 20, 2014)

https://www.nichibenren.or.jp/document/opinion/year/2014/140220_6.html

1. Reply

In their Draft Amendment of the Constitution, the LDP introduced a new principle of restriction under Article 21 of Constitution, “public interest and public order”. However, there is no clear definition of such “public order” and there is no guarantee that restriction under the new principle will strictly comply with Covenant and together with the introduction of another extremely open-ended principle of restrictions as “public interest”, there is a danger that principle of proportionality will not be guaranteed.

2. Recommendations

Japan should maintain the current provisions and the principle of restriction under Constitution.

XXXV. Broadcasting Act (Paragraph 24)

1. Reply

There has been no particular progress.

In February 2016, Minister of Internal Affairs and Communications, Sanae Takaichi answered in the Diet that if it gave administrative guidance under the Broadcasting Act, Article 4, paragraph 1 due to the lack of political fairness in the content of a broad casting program, and no improvement was made, she might implement measures for suspending radio waves under the Radio Act, Article 76. Ministry of Internal Affairs and Communications, Prime Minister, Shinzo Abe and Chief Cabinet Secretary, Yoshihide Suga also presented the opinion of the government in accepting her answer.

However, the provision of the Broadcasting Act presumes ensuring freedom of the press through the autonomy of broadcasters and it has previously been interpreted as it did not constitute the grounds for regulating broadcasters by public authority. Each broadcaster feels a chilling effect by the opinion of the government, resulting in self-censorship.

2. Recommendations

Japan should reconfirm publicly that the Broadcasting Act, Article 4, paragraph 1 respects autonomous regulation by broadcasters.

XXXVI. Harassment against Journalists, etc. (Paragraph 24)

1. Reply

There has been no particular progress.

In December 2018, Cabinet Secretariat distributed to the Cabinet Kisha Club (Press Club) a document stating there was “a misunderstanding of facts,” regarding the question by a particular reporter⁷⁹ of the Tokyo Shimbun to Chief Cabinet Secretary, Yoshihide Suga in a press conference, and asked the Club members to “share in awareness about this problem.” On February 15, 2019, GOJ, in response to a question by the same reporter, adopted a Cabinet Decision on the written answer to a parliament member’s inquiry stating as follows: “The reporter made not a few questions that cannot always be made concisely.” and “If it is unavoidable in terms of schedule management of the Chief Cabinet Secretary, the presenter will call for a smooth operation of conferences by asking cooperation as before.”

There were two cases in February and July, 2019, in which an order to return a passport and refusal of issue of a passport to journalists on the grounds that they were refused entry or subject to prohibition of entry into foreign countries⁸⁰, and there was a case in February 2015, in which an order to return a passport on the grounds that Syria, the destination of travel is dangerous⁸².

At the International Art Festival (Aichi Triennale) held in August 2019 in Aichi Prefecture, a statue symbolizing comfort women, haiku related to Article 9 of Constitution, the image work in which portraits, including Emperor Showa, are burning, and other works were displayed. However, for reasons including that more than 1,000 protests, including a terrorist warning and threat to the feature exhibition were raised, and that the Mayor of Nagoya, Takashi Kawamura, made a protest to stop the exhibition, it was forced to be suspended. The Agency for Cultural Affairs decided in September 2019 not to grant the entire amount of the subsidies to the

⁷⁹ The reporter is Ms. Isoko Mochiduki, who is well known as her aggressive questions at the Press Club about various political and social issues including the political suspicion around the Kakei Gakuen and the relocation issue of the U.S. basement to the Henoko in Okinawa Prefecture.

⁸⁰ Asahi Shimbun, “Passport Return Issue, Mr. Tsuneoka sued the government claiming ‘freedom of the press is restricted’ (April 24, 2019)

<https://www.asahi.com/articles/ASM4S3DTWM4SUTIL009.html>

⁸¹ Shukan Kinyobi, “Mr. Junpei Yasuda is ‘detained’ in Japan; no ground for ‘prohibition of embarkation’ by the Ministry of Foreign Affairs” (August 9, 2019)

<http://www.kinyobi.co.jp/kinyobinews/2019/08/09/antena-530/>

⁸² Information of the text of the written answer on the website of the House of Representatives, “Written Answer to the Questions about Reporting of an Order for Returning Passport by the Ministry of Foreign Affairs submitted by Ms. Takako Suzuki, a Member of the House of Representatives” (February 20, 2015)

http://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b189062.htm

feature exhibition, which was once decided to be granted (In this regard, in March 2020, based on reapplication for subsidies by Aichi Prefecture, the Agency decided to grant subsidies with some reductions⁸³).

2. Recommendations

Japan should not, directly or indirectly, put any pressure on and interfere with acts of expressions of citizens, including journalists and artists, etc., criticize any violence and unfair attacks on journalists and artists, etc., and secure a safe environment for journalists and artists, etc.

XXXVII. Public Offices Election Act (Paragraph 24)

1. Reply

There has been no particular progress.

Prohibition of door-to-door visits during the election campaign period and restrictions on distribution of literature and images for election campaign under the Public Offices Election Act (“POEA”) are not regulations on election campaigns necessary for fair and transparent election processes, and such regulations are unnecessary and inappropriate.

2. Recommendations

Japan should abolish the prohibition of door-to-door visits during the election campaign period and restrictions on distribution of literature and images for election campaigns under POEA.

XXXVIII. SDS Act (Paragraph 25)

1. Reply

(1) It is apparent that the measures stated in Paragraph 25 of the List of issues prior to submission are necessary, based on the provision of paragraph 31 of the Global Principles on National Security and the Right to Information (so-called, “Tshwane Principles”) specifying that “oversight bodies should be institutionally, operationally, and financially independent from the governmental agencies they are mandated to oversee.”

Lack of such a system has been argued by many organizations, including

⁸³ Sankei Shimbun, “Agency for Cultural Affairs decided to grant subsidies with reduction; Non-grant was reviewed for the controversial feature exhibition at the Aichi Triennale” (March 23, 2020) <https://www.sankei.com/life/news/200323/lif2003230064-n1.html>

JFBA since the enactment of the SDS Act. The Act provides, the act of news coverage by journalists shall be treated as an act in the pursuit of lawful business and shall not be punished “as long as it has the sole aim of furthering the public interest and is not found to have been done in violation of laws or regulations or through the use of extremely inappropriate means.” However, it is difficult to obtain the information designated as secrets and to prove that the means of obtaining the information is not inappropriate. In addition, no protection is provided for ordinary citizens other than journalists.

GOJ has not implemented any measures to limit designation of SDS to necessary and essential information only and not to punish whistleblowers, journalists and persons affiliated with citizens’ organizations.

- (2) Among oversight mechanisms established in relation to the SDS Act, the Inspector General for Public Records Management is established in the Cabinet Office. However, most of the staff members are comprised of transferees from MOFA, Ministry of Defense and National Police Agency which are governmental agencies handling SDS, and therefore, it lacks substantial independence from administrative agencies. In fact, there were hardly any cases in which designation of SDS was lifted by the activities of the said organization.

On the other hand, the Boards of Oversight and Review established in the House of Representatives and the House of Councilors are independent and have been carried out under highly motivated activities to properly designate SDS. The Boards do not have the authority to require the government to disclose the SDS, however, and it has not been able to conduct effective activities as a supervising organization. Furthermore, there is no mechanism in which the information designated as the SDS is examined as to whether designation of SDS was truly necessary.

- (3) In designation of SDS, it is not provided in the SDS Act that illegal acts of the government must not be designated as SDS. In the operation standards for the Act, it is provided that illegal acts of the government must not be designated as SDS. However, it is extremely ambiguous whether the whistleblower of arbitrary designation of SDS by the government will be criminally liable and the danger of being prosecuted has not been eliminated.

2. Recommendations

Japan should:

- (1) Define the categories and sub-categories of information which is classifiable so that designation of SDS under the SDS Act shall strictly be made in compliance with Covenant;
- (2) Ensure that no one shall be punished by dissemination of information contributing to the legitimate public interest without infringement of national security;
- (3) Establish an independent oversight mechanism having authority to inspect secrets and require disclosure; and
- (4) Provide in the Act that illegal acts of the government shall not be designated as SDS.

XXXIX. “Hinomaru/Kimigayo” Issue (Paragraph 26)

1. Reply

Regarding measures for imposition of Hinomaru and Kimigayo on schools, including those in Tokyo, and disciplinary actions against teachers for not obeying such measures, JFBA has expressed its opinion: in light of the historical background that GOJ used Kimigayo to whip up war sentiment under the Constitution of the Empire of Japan, there are not a few people who are hesitant about standing-up, singing and accompaniment for Kimigayo; and such a thought is protected under the freedom of thought and conscience provided in Article 19 of the Constitution, and as standing-up, singing and accompaniment for Kimigayo has the essential purpose of expressing honor to Hinomaru and Kimigayo, it constitutes infringement of freedom of thought and conscience to impose such acts at graduation ceremonies, etc., by official orders⁸⁴. In March 2019, the Governing Body of the ILO made recommendations to “convene dialogue with teacher’s organizations about

⁸⁴ JFBA, “Case Seeking Human Rights Remedy for Imposition of ‘Hinomaru’ and ‘Kimigayo’ at the Tokyo Metropolitan Public Schools (Warning)” (February 20, 2007)

https://www.nichibenren.or.jp/document/complaint/year/2007/2007_1.html

JFBA “Statement by the President on the Judgment Dismissing the Final Appeal of the Lawsuit Demanding National Compensation Filed by the former Tokyo Metropolitan High School Teachers who were Refused Re-employment for Refusing to Stand while Singing Kimigayo” (June 10, 2011)

<https://www.nichibenren.or.jp/document/statement/year/2011/110610.html>

JFBA, “Declaration of Reconfirming the Significance of the Constitution and Firmly Maintaining the Constitutionalism, Entering the 70th Anniversary of Enforcement of the Constitution of Japan” (May 26, 2017)

https://www.nichibenren.or.jp/document/assembly_resolution/year/2017/2017_1.html, etc.

disciplinary mechanisms with the aim of avoiding punishments for passive, non-disruptive acts of non-compliance,” “consider involving peer teachers in disciplinary review bodies,” etc.

However, such situations have not significantly changed and there has been no improvement.

2. Recommendations

Japan should not implement disciplinary actions on the passive acts of non-compliance to avoid imposition of Hinomaru and Kimigayo⁸⁵.

XXXX. Freedom of Assembly and Association (Paragraph 27)

1. Reply

We agree with the concerns about the criminal case and long-term detention of Mr. Hiroji Yamashiro, who addresses base issues in Okinawa. The case in which a reporting journalist was arrested, which is indicated in the questions by the Committee, seems to be a case in which a journalist who was reporting on November 16, 2016 the activities of citizens who protested construction of a base, was arrested 3 months later. There is a report that newspaper reporters who tried to interview and report the anti-base movement could not report because the reporters were surrounded by police officers. In the provisional observations published in April 2016 of Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression of UN Human Rights Council, it was pointed out that unnecessary restrictions were made on the protesting activities against the Diet and that a number of protestors against the construction of bases in Okinawa were arrested. The situation of concern in Okinawa continues to this day and more residents protesting construction of bases in Okinawa have been arrested.

2. Recommendations

Japan should not infringe on the freedom of expression of citizens by exercise of excessive tangible forces by the government and police.

XXXXI. Rights to Vote of Inmates (Paragraph 28)

⁸⁵ JFBA, “Statement of President on the Judgment of the Supreme Court of the Lawsuit Demanding Revocation of Disciplinary Actions, etc., Imposed for Refusing to Stand, etc., while Singing Kimigayo” (January 19, 2012)

<https://www.nichibenren.or.jp/document/statement/year/2012/120119.html>

1. Reply

Since the previous review, several lawsuits⁸⁶ have been brought over restrictions on the voting rights of inmates. Among them, there was a judgment by a high court which held that it cannot be regarded as there was unavoidable reason to restrict the right to vote only on the grounds that the person is an inmate⁸⁷, but no improvement has been made to voting rights to those who have been sentenced to imprisonment or severer punishment, and their rights to vote are still totally restricted⁸⁸.

2. Recommendations

Japan should impose restrictions on the right to vote only in cases where unavoidable reasons for restrictions exist, not restricting the right to vote only by reason of being an inmate.

POEA, Article 11, paragraph 1, item 2 and item 3, that restrict suffrage of inmates, is in violation of Article 15, paragraph 1 and paragraph 3, of Constitution that provide for universal suffrage of adults, and ICCPR Article 25, and the above provisions unjustly infringe on the right of inmates to vote.

Japan should promptly amend the Act by removing from the disqualified persons of “Suffrage” under POEA, Article 11, paragraph 1 those who fall under the same paragraph, item 2 and item 3.

XXXXII. Right to Vote in Local Elections (Paragraph 28)

1. Reply

There has been no particular progress.

(1) Article 18 of the Local Autonomy Act (“LAA”)) restricts suffrage in elections of the municipality only to Japanese nationals. Article 92 of the Constitution, however, requests participation of residents in controlling and forming of the municipality. Article 93, paragraph 2 of the Constitution provides that residents of the municipality shall directly elect public officials of the municipality, and it can be understood that residents are not restricted only to Japanese nationals⁸⁹.

⁸⁶ Judgment of the Tokyo High Court as of December 9, 2013 (Case No.: (*Gyo-ke*) No. 82 of 2013), Judgment of the Hiroshima District Court as of July 20, 2016 (Case No.: (*Gyo-u*) No. 25 of 2015), etc.

⁸⁷ Judgment of the Osaka High Court as of September 27, 2013 (Case No.: (*Gyo-ko*) No. 45 of 2013)

⁸⁸ JFBA, “Opinion on Rights to Vote of Inmates” (March 18, 2020)

https://www.nichibenren.or.jp/library/pdf/document/opinion/2020/opinion_200318_3.pdf

⁸⁹ Judgment of the Supreme Court as of February 28, 1995 (Case No.: (*Gyo-tsu*) No. 163 of 1995)

http://www.courts.go.jp/app/files/hanrei_jp/525/052525_hanrei.pdf

- (2) Persons from former Japanese colonies have lived in Japanese society over a century and their actual conditions are no different from those of Japanese nationals. They have a history of unilateral deprivation of Japanese nationality by GOJ, and it is unreasonable to be excluded from elections in municipalities only on the grounds that they do not have Japanese nationality.
- (3) GOJ should face up to its historical background and actual living conditions, amend POEA and LAA, and at least guarantee to “Special Permanent Residents” who are persons from former Japanese colonies rights to participate in municipality elections, as well as consider participation in municipality elections by other permanent residents and permanent settlers⁹⁰.

2. Recommendations⁹¹

Japan should:

- (1) Face up to its historical background and actual living conditions, amend POEA and LAA, and at least guarantee to persons from former Japanese colonies and their descendants who do not have Japanese nationality rights to vote in municipality elections; and
- (2) Consider guaranteeing rights to vote in municipality elections other foreign permanent residents and permanent settlers.

XXXXIII. Ainu People (Paragraph 29)

1. Reply

The Act on Promotion of Measures for Realization of a Society in which the Pride of the Ainu People is Respected (so-called, “New Ainu Act”) was enacted and enforced as of May 24, 2019.

The Act recognizes the Ainu people as indigenous people and provides for prohibition of discrimination and promotion of measures for improvement of an environment that contributes to such matters as promotion of Ainu culture, dissemination and enlightenment of knowledge about traditions, etc., of the Ainu and promotion of Ainu culture in order for the Ainu people to live with pride as a distinct

⁹⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination on the combined tenth and eleventh periodic reports of Japan (CERD/C/JPN/CO/10-11), paragraph 22

⁹¹ JFBA, “Opinion Paper on granting right to vote in local elections to permanent residents” (November 12, 2001)

ethnic group, but rights of indigenous people in lands and resources are not guaranteed and with reference to “Declaration on the Rights of Indigenous Peoples” adopted at UN General Assembly in 2007, problems still remain⁹².

Social discrimination against persons living as the Ainu people have not been corrected⁹³.

The Ainu people request provision of a law specifying the Ainu as indigenous people, return of lands and resources to the Ainu people and use of national lands, etc., and recovery of the Ainu language as their own language with a sense of urgency⁹⁴ and it is necessary to improve the comprehensive law, promote measures and guarantee a self-determination process by the people concerned.

In addition, GOJ is planning to open a “Symbolic Space for Ethnic Harmony” (Upopoi) in 2020, but the measures implemented are still insufficient for education and stability of life, elimination of social discrimination, protection of rights of the Ainu people in lands and resources and realization of rights in culture and language, and in order to realize these, many representatives of the Ainu people should be invited to a forum for discussions on measures for the Ainu people as members and witnesses⁹⁵.

2. Recommendations

Japan should:

- (1) Promote comprehensively legal improvement of the law prohibiting discrimination against the Ainu people and social, cultural, political and educational measures, while securing participation of the Ainu people in decision-making;

⁹² Hokkaido Shimbun, “Urohoro Association brings a lawsuit for confirmation of the indigenous rights of the Ainu in April over regulations regarding salmon fishing” (January 14, 2020)

<https://www.hokkaido-np.co.jp/article/382633>

⁹³ Department of Living Environment, Hokkaido, “2017 Hokkaido Ainu Living Conditions Survey Report” (2017)

http://www.pref.hokkaido.lg.jp/ks/ass/H29_ainu_living_conditions_survey_.pdf

⁹⁴ Ainu General Policy Office, Cabinet Secretariat, “Summary of the Minutes of the Ainu Policy Promotion Conference (10th)” (May 14, 2018)

<https://www.kantei.go.jp/jp/singi/ainusuishin/dai10/gijigaiyou.pdf>

⁹⁵ JFBA, “Japan Federation of Bar Associations Report on Comments by the Government of Japan regarding the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD/C/JPN/CO/10-11)” (March 18, 2020)

https://www.nichibenren.or.jp/library/pdf/activity/international/library/human_rights/25E.pdf
(English)

https://www.nichibenren.or.jp/library/pdf/activity/international/library/human_rights/25.pdf
(Japanese)

- (2) Further enhance and strengthen the opportunities for learning the history and culture, etc., of the Ainu people in public education, based on the history of discrimination against the Ainu people; and
- (3) Guarantee opportunities for the Ainu people to receive education in their own language and promote specific measures for that purpose.

XXXXIV. Recognition of Korean Residents in Japan and their Descendants as Ethnic Minorities, Non-discrimination in Exercise of Social Security and Political Rights, etc., based on Nationality, Tuition Support System and Pension-free Issues (Paragraph 30)

1. Reply

- (1) GOJ turned away the applications of Korean Schools retroactively by extinguishing the provision of laws that constitute the grounds for application for receiving high school tuition support funds under “Act on Free Tuition Fee at Public High Schools and High School Tuition Support Fund Program” (“Free High School Education Act”; Currently “Act on High School Tuition Support Fund Program”). As a result, all Korean Schools in Japan were excluded from application of the Free High School Education Act.

In connection with exclusion by GOJ of Korean Schools from the Free High School Education Program and issuance of the notice by Ministry of Education, Culture, Sports, Science and Technology⁹⁶, the number of local governments suspending granting of subsidies (subsidies granted to private schools at the discretion of each local public entity) increased⁹⁷.

⁹⁶ The Minister of Education, Culture, Sports, Science and Technology issued the Notice of the Minister of Education, Culture, Sports, Science and Technology as of March 29, 2016, “Matters of Note on Granting of Subsidies to Korean Schools” (hereinafter referred to as “Notice”) and actually requested local public entities to suspend granting of subsidies to Korean Schools. In the Notice, the Minister stated as follows: “Regarding Korean Schools, the Government of Japan recognizes that Chosen Soren, an organization having a close relationship with North Korea, focuses on its own education and influences the content of education, personnel affairs and finances. Accordingly, we request each local public entity to fully consider the public interest, effect of educational promotion, etc., of subsidies to Korean Schools, while sufficiently considering the impact on children attending Korean Schools, upon consideration of such characteristics of operation of Korean Schools, as well as ensure proper and transparent execution in compliance with the purposes and objectives of subsidies and proper provision of information related to the purposes and objectives of subsidies to residents.”

⁹⁷ According to reports, 28 local public entities, where Korean Schools exist in the areas, granted subsidies in 2007, but the number of local public entities stopping granting of subsidies gradually increased and in 2017, 14 local public entities stopped grant.

The Supreme Court rendered a decision on August, 27, 2019, dismissing the final appeal of the Plaintiffs regarding a lawsuit filed by graduates of the Tokyo Korean Junior and Senior High School, arguing that exclusion of North Korean Schools from the Free High School Education Program is illegal⁹⁸.

- (2) As a transitional measure was not implemented in connection with the amendment of the National Pension Act, [1] foreign elderly persons who were over 60 years old as of April 1, 1986 and [2] foreign persons with disabilities who were over 20 years old as of January 1, 1982 have not received their pensions under the National Pension System as of yet.

2. Recommendations

Japan should:

- (1) Not discriminate against Korean Schools from other foreign schools and recognize as the subject of application of the Tuition Support Fund Program, and conduct operation, considering rights to equality and rights to receive education of children with regard to payment of subsidies; and
- (2) Promptly amend the related laws and implement remedial measures so that foreign elderly persons and foreign persons with disabilities who are living in Japan can also receive pensions.

Asahi Shimbun “16 Prefectures have stopped grant to Korean Schools upon moves of North Korea and Notice of MEXT, Asahi Shimbun Survey of this year” (August 6, 2017)

<https://www.asahi.com/articles/DA3S13074430.html>

⁹⁸ Sankei Shimbun, “Litigation against free Korean School education; Determination of loss of graduates became final for the first time before the Supreme Court (August 28, 2019)

<https://www.sankei.com/affairs/news/190828/afr1908280033-n1.html>