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**Human Rights Committee**

**Seventh periodic report submitted by Japan under  
article 40 of the Covenant pursuant to the optional  
reporting procedure, due in 2018<sup>\*,\*\*</sup>**

[Date received: 30 March 2020]

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\* The present document is being issued without formal editing.

\*\* The annex to the present report may be accessed from the web page of the Committee.

**A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant**

**Reply to paragraph 1 of the list of issues prior to reporting (CCPR/C/JPN/QPR/7)**

1. Japan has carefully examined the recommendations presented in the Human Rights Committee's concluding observations on the sixth periodic report of Japan in August 2014 and has appropriately responded to each of them. As a result, Japan has made important progress in the area of legal and institutional framework for the promotion and protection of human rights, including the rights of persons with disabilities and the child, since the previous concluding observations was adopted. Notably, initiatives stated in paragraphs 12, 16, 46, 48, 49, 64, 84, 85, 129, 144, 157, 165, 185, 186 and 227 correspond to the list of issues prior to submission of the seventh periodic report of Japan.

2. There are several cases where the provisions of the Covenant are referred to by national courts. For example, in a Special Appeals case against the decision to dismiss the appeals to the inheritance division ruling, the Supreme Court found that the provision of the Civil Code, which stipulated that the share in inheritance of children born out of wedlock shall be one half of the share in inheritance of children born in wedlock, was violating Paragraph 1 of Article 14 of the Constitution, which declared equality under the law (Supreme Court decision on September 4, 2013). As a reason for this decision, the Court referred to the fact that the Human Rights Committee had repeatedly recommended deletion of the above provision and revision of the law since 1993. (The measures taken by the Government after this decision are described in paragraph 12.)

3. The information on the training program ascertained by the Government is as follows. Those who become judges, prosecutors or lawyers must study curricula on the international human rights treaties during their training period before obtaining judicial qualifications. Furthermore, even after they have obtained the relevant qualifications, lectures based on the treaties including the Covenant are given to judges by the Legal Training and Research Institute of Japan, to prosecutors by the Ministry of Justice (MoJ), and to lawyers by the Japan Federation of Bar Associations, 52 bar associations nationwide and eight federations of bar associations nationwide at appropriate times, including as part of trainings tailored to their years of experience.

**B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee**

**Constitutional and legal framework within which the Covenant is implemented (art. 2)**

**Reply to paragraph 2 of the list of issues prior to reporting**

4. The First Optional Protocol to the Covenant stipulates the individual communications procedure (hereinafter referred to as "the procedure"). The Government considers the procedure to be noteworthy in that it effectively guarantees the implementation of the Covenant. Regarding the acceptance of the procedure, consideration has been given to questions such as whether it poses any problems in relation to Japan's judicial system and legislative policy, and what possible organizational frameworks would need to be established for implementation of the procedure in the case where Japan accepts it. Such issues are examined based on discussions among the relevant ministries.

5. As part of our study, the Government launched an inter-ministerial-and-agency study group on the procedure, to gather as many examples as possible of the individual communication cases brought to the committees established based on the various human rights treaties, and study the responses to those cases by the committees. Most recently, the study group held a seminar on 23 April, 2019 with attendance of officials from the related

ministries and agencies as well as experts who held discussions on the recent situation regarding the procedure.

6. The Government will continue to engage in serious discussions on this matter, while taking various opinions into account.

#### **Reply to paragraph 3 of the list of issues prior to reporting**

7. Constitutional revisions are firstly proposed by the Diet and then decided in a national referendum. There is no such fact that the Government has proposed any revision to the Constitution. Japan faithfully observes all treaties concluded by Japan, including the Covenant, as an obligation of the Government.

#### **Reply to paragraph 4 of the list of issues prior to reporting**

8. The Government continues to conduct an appropriate review of the framework for a human rights remedy system, while bearing in mind the discussions conducted thus far.

### **Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 20 and 26)**

#### **Reply to paragraph 5 of the list of issues prior to reporting**

9. In Japan, Paragraph 1 of Article 14 of the Constitution provides equality under the law. Based on this, the Government is making efforts to eliminate all forms of discrimination. In highly public areas such as employment, education, medical care and traffic, which are closely related with civil life, discriminatory treatment is prohibited by specific laws and regulations (for specific examples see Annex 1).

10. Furthermore, the Government is in a position to oppose human rights violations on the basis of sexual orientation or gender identity.

11. Due to the revisions of the Act on Public Housing under the Act to Prepare Related Laws for the Promotion of Reform to Enhance Local Autonomy and Independence, the so-called living relatives requirement was abolished. Conditions other than residency requirements, stipulated in laws and regulations such as the upper limit to the residency income standard, are stipulated by the ordinances of each local municipality, and the decision can be made by each local municipality on who is to be accommodated in public housing, including for same-sex couples.

12. In December 2013, the Act for partial revision of the Civil Code was enacted. As a result of the revision, the statutory share in inheritance for children born out of wedlock was made equal to that for children born in wedlock by deleting the provision of the Code stipulating that the statutory share in inheritance for children born out of wedlock shall be one half of the share for children born in wedlock. The Act was enforced in the same month.

#### **Reply to paragraph 6 of the list of issues prior to reporting**

13. In Japan, freedom of expression, including the freedom of demonstration, is fully guaranteed by Article 21 of the Constitution. It constitutes the foundation of a democratic nation and one of the most important fundamental human rights of citizens, and therefore cannot be restricted unjustifiably even by law.

14. Although it is not clear which demonstrations are pointed out by the Committee in question 6, the Government is aware that there were demonstrations in which extremist languages and behaviors of right-wing citizens' groups were observed. They were engaged in extreme nationalist and xenophobic activities.

15. From August 2015 to March 2016, the MoJ implemented a fact-finding survey on so-called hate speech, and published its results. From the results of the survey, it was ascertained, organizations known to organize demonstrations and rallies using hate speech still conduct a considerable number of such activities, but the number of such activities has tended to decrease.

16. Under the idea that “hate speech must not be tolerated”, the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (Hate Speech Elimination Act) was enforced in 2016. The purpose of the law was widely reported in the media, which led to an increasing recognition in society that discriminatory speech and behavior excluding people of specific ethnic groups and nationalities should not be tolerated. The main initiatives of the Government with respect to hate speech are stated in Annex 2 (1) to (5).

17. In accordance with the provisions of the Broadcasting Act, broadcasters are required to broadcast programs appropriately. The Broadcasting Act provides that, for example, when editing domestic broadcast programs, broadcasters must not negatively influence public safety or good morals, and that reporting must not distort the facts. The Government recognizes that broadcasters have played an important social role by editing broadcast programs autonomously and independently in the framework of the Broadcasting Act.

18. Regarding the indigenous people, the Government recognizes Ainu people are the only indigenous people in Japan.

19. With regard to the Dowa issue (discrimination against the Burakumin), the Government believes that residents of Dowa districts are in no way different from other Japanese people in terms of race and ethnicity, and thus belong to the Japanese race and are Japanese people without question. Moreover, based on the Act on the Promotion of the Elimination of Buraku Discrimination enforced in 2016, the Government is enhancing consultation systems and conducting educational and awareness-raising activities in order to promote the elimination of discrimination against the Burakumin.

20. The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (hereinafter referred to as “the Hate Speech Elimination Act”) was a law initiated by the Diet members of Japan. Following discussions in the Diet, it was enacted as the Hate Speech Elimination Act, manifesting basic principles without penal provisions. Since the enforcement of the Hate Speech Elimination Act, the MoJ is implementing awareness-raising activities to demonstrate that so-called hate speech will not be tolerated, developing consultation systems for victims, implementing initiatives to increase the accessibility of human rights counseling services in foreign languages, and implementing other initiatives toward the elimination of hate speech. The Government continues to appropriately promote initiatives toward the elimination of hate speech such as awareness-raising activities and the improvement of consultation systems. (The measures under the current legislation are stated in paragraph 21 to 23.)

*Reply to paragraph 6(a)*

21. In order to eliminate bias and discrimination based on race and nationality, the MoJ is conducting various awareness-raising activities and human rights counseling, investigation and resolution of human rights violation cases to relieve victims of human rights violations and prevent recurrence of such violations.

22. Furthermore, Article 4 of the Hate Speech Elimination Act stipulates the responsibilities of the national government and local governments concerning initiatives for elimination of unfair discriminatory speech and behavior against persons originating from outside Japan.

23. Moreover, under the current legislation, if an act of racial discrimination occurs, the perpetrator may be liable for compensation for damages on the grounds that the act is tortious under the Civil Code. Furthermore, for example, the perpetrator could be held criminally responsible for any acts that are deemed to be crimes of defamation or crimes of insults.

*Reply to paragraph 6(b)*

24. The position of Japan with respect to the freedom of expression is as stated in paragraph 13.

25. Moreover, in recognizing the constitutionality of public safety ordinances made by each local municipality to regulate demonstrations, the Supreme Court has ruled the following: the permission system has no substantial differences from a notification system

since the local municipality is obliged, in principle, to grant a permission and the circumstances under which a permission may be refused are strictly limited. Taking this into account, if there is an application for permission for demonstrations in accordance with public safety ordinances, the permission must be granted except in cases where it is clearly recognized the demonstrations would pose direct risk to the maintenance of public security, and the permission cannot be refused based on the content of the assertions that the applicant intends to express.

26. Based on the purpose of the Hate Speech Elimination Act, when an application has been made for a demonstration in accordance with public safety ordinances, the police are to explain the purpose of the Act to the organizers as necessary, encourage them to keep the participants fully informed about the Act as well, and provide guidance in advance from the perspective of trouble prevention so that there will be no illegal acts.

*Reply to paragraph 6(c)*

27. The results of the fact-finding survey on so-called hate speech implemented by the MoJ from August 2015 to March 2016 are as stated in paragraph 15. Interviews were also implemented with 20 Korean Residents in Japan, who are deemed as major targets of hate speech in the country, and they were asked about their feelings when they saw or heard hate speech as well as the impact such hate speech had, and the report also released the result of that survey.

28. The Government is in the process of taking initial steps for implementing measures based on these surveys and the enforcement of the Hate Speech Elimination Act. The Government intends to consider whether or not it will be necessary to implement similar surveys in the future, taking into account the implementation status of the measures.

*Reply to paragraph 6(d)*

29. Education to raise awareness of respect for human rights is provided through whole school educational activities, depending on students' developmental stage. In social education facilities such as community centers, local centers provide opportunities for learning. For both school and social education, classes and courses, which include human rights education on racial discrimination, are conducted according to the situation of each area.

30. The awareness-raising activities implemented by the MoJ are as stated in Annex 2 (3).

31. Lectures on international human rights treaties, including the Covenant, are given to prosecutors during their training course, depending on the number of years' experience they have. As stated in paragraph 3, judges also receive training on human rights issues. Specifically, with the aim of enhancing their understanding and awareness of these issues, experts such as professors, the Director-General of the Human Rights Bureau of the MoJ, United Nations officials and other professionals, who are familiar with human rights issues, give lectures and distribute materials to judges: on international trends for international human rights treaties and provisions; and on the issues faced by minorities such as women, children and foreign nationals; and on the measures to respond to those issues.

32. Regarding police officials, lectures on respect for human rights, including the prohibition of racial discrimination, are given in police schools to newly-hired police personnel and those due to be promoted.

*Reply to paragraph 6(e)*

33. Violent acts with racially discriminatory ideology as their motivation or background can be punished as a crime of injury or a crime of assault under the Penal Code. While there is no provision in the Penal Code that stipulates racially discriminatory motivation as grounds for increasing the sentence, motivation is one of the elements given due consideration when judging the sentence in individual cases.

34. For the last question, the concept of "hate crimes" has not necessarily been established generally, and the Government does not have any statistics on the number of hate crimes or the subsequent investigations and convictions. While right-wing citizens' groups were

carrying out their activities, cases of assault involving opposition groups to those groups have occurred, and two persons in 2017 and one person in 2018 who were involved in the right wing citizen's groups and the opposition groups were arrested either before, after or during related demonstrations.

#### **Reply to paragraph 7 of the list of issues prior to reporting**

35. The position of Japan with respect to human rights violations on the basis of sexual orientation and gender identity is stated in paragraph 10.

36. Concerning employment, the Ministry of Health, Labour and Welfare (MHLW) makes available online brochures for business owners which say that when recruiting they should not exclude specific people such as sexual minorities including LGBT individuals, as an awareness-raising activity for fair recruitment selection. The MHLW also explains such ideas at workshops on fair recruitment selection for business owners which are held at places such as job-placement offices. Furthermore, the relevant guidelines were revised in August 2016 and enforced in January 2017 to clarify that the "sexual harassment" stated in Article 11 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, includes sexual harassment against people of any sexual orientation or gender identity. In addition, the MHLW also describes in brochures for business owners that it is important to deepen understanding of sexual orientation and gender identity.

37. In the areas of education, for the purpose of preventing students who are sexual minorities from having concerns and insecurities or falling into self-denial, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) endeavors to establish a support system at schools for those students, enhance the understanding of teachers, and improve educational counseling systems (for specific measures see Annex 3). Furthermore, regarding social education, in training courses for social education supervisors who play a central role as social education instructors, a program on human rights issues including sexual orientation and gender identity is implemented, with the aim of steadily promoting human rights education.

38. In the area of medical care and welfare, in February and March 2018, services such as medical care, long-term care, and welfare for persons with disabilities are informed to people through nationwide meetings or other trainings, both of which are for local public entities in order to ensure that people who need these services, including LGBT people, can surely use the necessary services.

39. The MoJ, aiming to eliminate bias and discrimination against LGBT people on the basis of their sexual orientation and gender identity, has prepared awareness-raising booklets and leaflets, human rights awareness-raising videos and video clips, and is distributing them through the Internet. In addition, the MoJ is implementing various awareness-raising activities such as symposiums and training sessions. Furthermore, if a case suspected to be a human rights violation is detected through human rights counseling services, the MoJ promptly investigates the case as a case of human rights violation and takes appropriate measures depending on the case. For example, there are various measures to be taken, such as: "assistance" to provide legal advice; "conciliation" to mediate talks between the parties concerned; "instructions" or "recommendations" that require human rights violators to improve the situation; and "requests" that are made with respect to persons who are capable of responding in an effective manner.

#### *Reply to paragraph 7 (a)*

40. There are no statistics focusing solely on the number of LGBT people who have committed suicide or their rate of death by suicide. However, Japan recognizes that suicide is a social problem and most of the suicide cases, including those of LGBT people, could have been prevented. In this regard, based on the Basic Act on Suicide Prevention and the General Principles of Suicide Prevention Policy, the national government, local governments, related organizations, civil society organizations, companies and citizens are collaborating and working together for realization of "a society in which no one will be driven to commit suicide" and to comprehensively promote measures to address suicide.

*Reply to paragraph 7 (b)*

41. The question of whether or not same-sex marriage or systems equivalent to that should be introduced is an issue related to the nature of families in Japan. Therefore, careful consideration is required in light of national-level debates made thus far.

*Reply to paragraph 7 (c)*

42. The Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder was enforced in July 2004. Based on the Act, persons with gender identity disorder who satisfy certain conditions (a person who has no reproductive glands or whose reproductive glands have permanently lost function, or who has a body which appears to have parts that resemble the genital organs of those of the opposite gender) may request a ruling of a change in the recognition of their gender status. Unless otherwise provided for by law, with regard to the application of the Civil Code and other laws and regulations, a person who has received such a ruling is deemed to have been assigned to the opposite gender. The Government believes that enforcement of the said Act is a measure in line with the object of Articles 2 and 26 of the Covenant.

*Reply to paragraph 7 (d)*

43. In penal institutions, there is no unfair treatment such as the imposition of stricter rules on inmates by reason of being transgender. In penal institutions, considerations are given to enable transgender inmates to lead a comfortable life. For example, they are treated in a way that alleviates difficulties that are caused by their sexual orientation or gender identity in the facility and given consideration to their characteristics as much as possible. Specifically, taking into account individual circumstances such as the physical and psychological situation of the inmates, consideration is given to the extent possible to treating the inmates in accordance with the gender they wish to be treated as. For example, a staff member of the same gender as the psychological gender of the inmate handles surveillance of bathing and body checks, and cuts their hair in the same style as that of inmates of the same gender as the psychological gender of the transgender inmate.

44. In detention facilities, in the case that detainees are transgender, they are treated in a way that takes their characteristics into account as much as possible.

**Equality between men and women (arts. 3 and 25)****Reply to paragraph 8 of the list of issues prior to reporting**

45. Regarding the law that once barred women from remarrying within six months following divorce, a revision of the Civil Code was enforced in June 2016 to reduce the six-month period to 100 days and to specify cases in which women can marry even before the 100-day period is up.

46. In June 2018, a bill was passed at the Diet, which lowers the age of majority under the Civil Code to 18 years old and sets the minimum marriage age to 18 years old for both men and women. The bill is to be enforced in 2022.

47. The Fourth Basic Plan for Gender Equality endorsed in December 2015 and the Intensive Policy to Accelerate the Empowerment of Women 2018 state that the Government continues to consider introduction of an option for spouses not to change their surnames. Moreover, the MoJ is making efforts so that in-depth discussions on this issue will take place among the people of Japan by providing relevant information on its website. While current provision of the Civil Code requires married couples to use the same surname (Article 750 of the Civil Code), the question of which surname is used is left to consultations between the parties, and does not stipulate legally discriminatory treatment based on gender.

48. Regarding the issue of increasing participation of all women, including minority women, in political fields, the Fourth Basic Plan for Gender Equality sets a non-binding goal of raising the proportion of female election candidates for the House of Representatives and the House of Councillors to 30% by 2020. This is a goal that the Government sets out to

achieve when seeking action from political parties and does not aim to restrict autonomous action by political parties. The Minister of State for Gender Equality has asked each political party for cooperation to set a goal for the ratio of female candidates and to introduce positive actions.

49. Moreover, the Act on Promotion of Gender Equality in the Political Field, sponsored by Diet members, was promulgated and enforced in May 2018. The Act provides for fundamental principles of making the numbers of male and female candidates as even as possible, and that political parties are to voluntarily act in accordance with the principles. The Act also provides that the national and local governments, including the Diet, endeavor to formulate necessary policies and measures in accordance with the principles, while securing the freedom of political activity of political parties.

## **State of emergency and counter-terrorism measures (arts. 4, 9, 14, 17, 19, 21 and 22)**

### **Reply to paragraph 9 of the list of issues prior to reporting**

50. For the first question, as stated in paragraph 7.

51. Article 5 of the United Nations Convention against Transnational Organized Crime (the TOC Convention) imposes the obligation on the State Parties to ensure that either “agreeing to commit a serious crime” or “tak[ing] an active part in activities of the organized criminal group,” or both, can be punished as criminal offences distinct from those involving the attempt or completion of the criminal activity. The “serious crime” referred to in the Convention means “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” and in Japan, this is deemed to be offences for which the penalty of imprisonment with work or imprisonment without work of a maximum of at least four years is stipulated. Moreover, the Convention allows for adopting options of adding the requirements of (1) “involving an act undertaken by one of the participants in furtherance of the agreement,” and (2) “involving an organized criminal group” when creating legislation for the crime of agreeing to a serious crime. The crime of the act of preparation for terrorism and other organized crimes, which adopts both of the two options above, was newly established in order to fulfil the obligation under the TOC Convention in regard to the criminalization of the agreement to a serious crime.

52. The three strict requirements of (a) the involvement of “organized criminal groups,” (b) the “planning” of a serious crime, and (c) the “act of preparation for execution” of the planned crime are stipulated as the crime of the act of preparation for terrorism and other organized crimes. The above (a) gives substance to the options in paragraph 51 (2), and an “organized criminal group” is clearly defined as an “association whose common purpose laying the foundation of its unifying relationship is to commit a crime listed in Annex 3.” Moreover, the above (c) gives substance to the options in paragraph 51 (1), and the “act of preparation for execution” is an “act which is distinct from an act of planning, carried out based on the planning, and a manifestation towards the commissioning of the planning” which under the law is clearly stipulated to be “an arrangement of funds or articles, preview of relevant locations, or other acts of preparation to implement the planned crime.”

53. Furthermore, “a criminal intent” is necessary for all three requirements, and if even one of the following three requirements of recognitions on (i) the involvement of “organized criminal groups,” (ii) the fact that specific and feasible planning was carried out regarding the commission of a crime with roles divided among the participants under a chain of command, or (iii) the fact that an act of preparation for execution was committed based on that planning, is not satisfied, the crime of the act of preparation for terrorism and other organized crimes cannot be constituted, and the person cannot be punished on the grounds that he/she was involved without his/her knowledge. Therefore, the scope of the crime of the act of preparation for terrorism and other organized crimes is clear and limited, so the allegation that it does not comply with the principle of legal certainty and predictability is not true.



54. The TOC Convention imposes the obligation to make “a serious crime” the subject of the crime of agreement. Also, in the case that the options in paragraph 51 (2) are adopted, the subject of the agreements for which criminalization is obliged becomes “a serious crime” “in which an organized criminal group is involved.” Thus, in order to perform the criminalization obligation stipulated in the Convention, it is necessary to make all “serious crimes” for which “involvement by an organized criminal group” is realistically anticipated the subject of the crime of the act of preparation for terrorism and other organized crimes. Therefore, based on the standard of whether or not it is realistically anticipated that organized criminal groups would plan to commit the crime, the newly established crime of bribery of a witness and another 277 crimes were selected as crimes subject to the crime of the act of preparation for terrorism and other organized crimes, so the allegation that crimes apparently unrelated to terrorism and other organized crimes are included is not true.

55. In addition, the new establishment of the crime of the act of preparation for terrorism and other organized crimes does not add any changes to the forms of investigation; investigations of the crime of the act of preparation for terrorism and other organized crimes are carried out appropriately in accordance with laws and regulations such as the Code of Criminal Procedure in the same way as for other crimes. In order to carry out an investigation into the crime of the act of preparation for terrorism and other organized crimes, a specific suspicion regarding the requirements (a) to (c) in paragraph 52 is necessary. If there is no specific suspicion, no investigation can be conducted. Furthermore, a provision has been established to the effect that when conducting an investigation into the crime of the act of preparation for terrorism and other organized crimes, sufficient consideration must be given to ensuring the appropriateness of the investigation. Moreover, the investigation by the investigating authorities is examined by the courts before and after the investigation. Therefore, abuse and arbitrary operations by the investigating authorities are not possible.

56. Therefore, the concern that the crime of the act of preparation for terrorism and other organized crimes leads to the unfair restriction or violations of the rights of the citizens is unfounded, and no specific examples of this happening exist to date.

## **Violence against women, including sexual and domestic violence (arts. 2, 3, 6, 7 and 26)**

### **Reply to paragraph 10 of the list of issues prior to reporting**

57. In Japan, relevant ministries and agencies are collaborating to work on various forms of support for the eradication of domestic violence.

58. In July 2013, the third revision of the Spousal Violence Prevention Act was carried out. According to the Act, not only spousal violence but also violence from the persons who are based in the same principal place of residence is subject to the application of law. In addition, the Basic Policy concerning Measures for the Prevention of Spousal Violence and the Protection of Victims, which serves as the guideline for the basic planning of local public entities, was established in December of the same year.

59. Furthermore, in accordance with the provisions of the Fourth Basic Plan for Gender Equality (see Annex 4 (1)), in fiscal year 2017, the Survey on Violence between Men and Women was implemented. In addition, the Government makes efforts to thoroughly keep the public informed about relevant laws and regulations, such as the Spousal Violence Prevention Act, and strictly enforce them. The Government also comprehensively promotes a wide range of initiatives, including support measures corresponding to nationalities of the victims, based on the form of the crime, such as spousal violence, sexual crimes and stalking (see Annex 4 (2)).

60. Various initiatives for combatting violence against women and supporting women victims are undertaken by responsible authorities including police, the MHLW and the MoJ (for specific initiatives, see Annex 4 (3)).

61. Violence against women such as domestic violence is subject to criminal punishments as the crimes of murder, injury, assault, forced sexual intercourse or forced indecency, and appropriate dispositions are carried out based on each case.

62. Furthermore, under the current legislation, it is clearly stated that incidents pertaining to a protection order shall be taken to court promptly. If a victim cannot be protected unless his/her protection order is issued immediately, a protection order will be issued before the date for a hearing.

63. From the perspective of improving transparency in the operation of the revocation system of the status of residence, the Immigration Services Agency (ISA) introduces main cases where the status of residence is not revoked, including cases where there is a “justifiable reason” for not engaging in the activities as a spouse, on its website in eight languages of Japanese, English, Chinese, Korean, Portuguese, Spanish, Tagalog and Thai. The ISA explicitly explains on its website that cases where temporary evacuation or protection from domestic violence is needed correspond to one of the justifiable reasons mentioned above, and operates the system carefully while taking care that foreign victims of domestic violence do not suffer unnecessary detriment. Furthermore, the ISA annually provides mid-level officers who directly handle domestic violence cases with training on the measures for domestic violence cases handled by the ISA (see Annex 4 (4)) and explains to them the details on the operation of this system during the training.

64. To enable actions and punishments that reflect the current state of sexual crimes, the act amending a part of the Penal Code was passed in June 2017, and enforced in July of the same year. In this amendment, the elements of the offence of rape that has applied only to sexual intercourse victimizing females were reviewed. The charge under the amended Penal Code applies regardless of the sex of the offender and the victim, and applies not only to vaginal intercourse but also anal and oral intercourse. The lower limit of punishment was also raised from 3 years to 5 years of imprisonment. The name of the offense was also amended to “forcible sexual intercourse” (Article 177 of the amended Penal Code). In addition, “indecent by person having custody of person under 18” and “sexual intercourse by person having custody of person under 18” were newly established (Article 179, (1) and (2) of the Penal Code). Under the amended Penal Code, sex offenses can be prosecuted without victims’ criminal complaint, leading to a reduced burden of the victims and more effective punishment of sexual offences.

65. The Government has not revised the Penal Code to raise the minimum age of sexual consent from its current level, in consideration of the fact that children under 18 years are protected by the Child Welfare Act and relevant regulations, and that the sexual freedom of young people would be excessively restricted if the minimum age of sexual consent is raised.

66. Furthermore, forced sexual intercourse between spouses is also punishable by the offense of forcible sexual intercourse because there are no provisions excluding such a situation in particular.

### **Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, fair trial and rights of the child (arts. 6, 7, 14 and 24)**

#### **Reply to paragraph 11 of the list of issues prior to reporting**

##### *Reply to paragraph 11(a)*

67. Whether to retain or abolish the death penalty is basically an issue that should be determined by each country at its discretion with careful examination from various viewpoints, such as the realization of justice in society, taking public opinion into full account. The majority of citizens in Japan consider that the death penalty is unavoidable for extremely malicious and atrocious crimes. In light of the current situation in Japan, where there is no sign of decline in atrocious crimes such as mass murder and robbery-murder, it is considered unavoidable to impose the death penalty on the offender who has committed an atrocious crime and bears serious criminal responsibility. Therefore, the Government is of the view that it is not appropriate to abolish the death penalty. As it is a critical issue constituting the backbone of Japan’s criminal justice system, it is desirable to hold discussions among the general public from a wide range of perspectives. The Government

also notes that the crimes for which the death penalty may be imposed in Japan are limited to only extremely serious crimes such as intentional homicide.

68. For the reasons given in paragraph 67, careful examination is also necessary for the accession to the Second Optional Protocol to the Covenant.

*Reply to paragraph 11 (b) (i)*

69. An inmate sentenced to death is notified of the execution in advance on the day of the execution, out of consideration that an advance notice before the day of the execution would disturb the inmate's peace of mind and might cause further suffering. Furthermore, an advance notice to family members, etc. would end up causing unnecessary psychological pain to them, and if a family member who received an advance notice were to make a visit and the inmate were to learn of the schedule of the execution of his/her death sentence, the same harmful effects would be expected. Therefore, the current procedures are unavoidable. After the execution of the sentence, the person designated in advance by the inmate (such as his/her family member or lawyer) is notified promptly based on the relevant laws and regulations.

*Reply to paragraph 11 (b) (ii)*

70. In penal institutions, it is necessary to detain inmates sentenced to death and at the same time, enable them to maintain peace of mind. Article 36 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that an inmate sentenced to death shall be kept in an inmate's room throughout the day, and that, in principle, they shall not be permitted to make contact with other inmates outside of their rooms. In order to ensure that the inmates sentenced to death do not suffer from isolation and to help them stabilize and control their emotions, they are allowed to seek contact with prison staff or voluntary prison visitors, or counseling from prison chaplains. In addition, they are given opportunities to watch videos and television as needed.

*Reply to paragraph 11 (b) (iii)*

71. Based on the principle of warrant and strict evidence rules that are employed in the practice of criminal justice in Japan as well as the three-tiered judicial system, a conviction is confirmed through a carefully-managed process throughout investigation and trials. For final and binding judgments, relief systems are in place, including retrial and extraordinary appeal to the Supreme Court, which function effectively in preventing misjudgment.

*Reply to paragraph 11 (b) (iv)*

72. Paragraph 2 of Article 38 of the Constitution of Japan provides that "[c]onfession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence." Furthermore, Paragraph 1 of Article 319 of the Code of Criminal Procedure provides that "[c]onfession under compulsion, torture, threat, after unduly prolonged detention or when there is doubt about it being voluntary may not be admitted as evidence." Therefore, confessions under compulsion can never be admitted as evidence. This is the same in the investigation of crimes that include the death penalty as an option among the statutory penalties.

*Reply to paragraph 11 (b) (v)*

73. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that when an inmate sentenced to death receives a visit, an official of the penal institution is to be present at the scene, in principle. However, the provisions of laws concerning unsentenced persons (accused persons) are applied to meetings between a lawyer and an inmate sentenced to death for whom the court's ruling shall be rendered to commence a retrial, and therefore, measures such as the attendance of an official are not taken in such cases.

74. With regard to meetings between a lawyer acting as the representative to make an appeal for a retrial and an inmate sentenced to death for whom a retrial has yet to begin, a meeting without the attendance of an official is permitted, based on the judgment by the

warden of the penal institution on a case-by-case basis, unless there are special circumstances including reasonable grounds to suspect that the meeting represents a breach of discipline and order in the penal institution, or there is a high need to monitor the mental state of the inmate.

75. With regard to the letters sent or received by an inmate sentenced to death, an official of the penal institution examines them. As for the letters sent or received between an inmate sentenced to death and a lawyer who is requested to represent such an inmate in a civil lawsuit concerning the treatment that such an inmate received, certain considerations are given, such as that letters are only examined within the limit necessary for ascertaining that they are such letters as specified above unless there are reasonable grounds to suspect that the content represents a breach of discipline and order in the penal institution.

76. With regard to the letters sent or received between a lawyer and an inmate sentenced to death for whom the court's ruling shall be rendered to commence a retrial, the provisions of laws on unsentenced persons apply to them and certain considerations are given. Letters from lawyers, are examined within the limit necessary for ascertaining that they are such letters as specified above.

*Reply to paragraph 11 (c)*

77. In Japan, the death penalty is carried out after careful examination regarding the presence of cause for retrial in addition to the system as stated in paragraph 71. In doing so, the death penalty is executed in an extremely prudent manner under a strict system. Therefore, the Government considers that there is no need to establish a so-called mandatory system of reviews in capital cases in addition to the existing system.

78. In Japan, a request for retrial to a case where an established verdict was handed down can be made for the benefit of the person who received the conviction under certain conditions, such as those when clear evidence showing that a verdict of not guilty, etc. should be handed down has been newly discovered, etc. This process applies to a case in which a death penalty verdict was established. The Government understands that careful examinations on retrials are being thoroughly carried out in the courts, and believes that they are functioning effectively.

79. In our laws, there are no provisions stating that requests for retrial or pardon (hereinafter referred to as "retrial requests") have an effect on the suspension of execution. The Minister of Justice issues an order to execute the death penalty only when it is found that there are no grounds for suspension of the execution after fully scrutinizing relevant records for individual cases and carefully examining the possibility of suspension of the execution and the presence of reasons for retrial. The Government has not adopted an approach whereby execution of a sentence is suspended because a retrial request has been filed.

*Reply to paragraph 11 (d)*

80. Under the current law, if a person sentenced to death is in a state of insanity, the execution is to be suspended. On the other hand, the execution of a judicial decision that has become final and binding must be strictly enforced in law-abiding countries. The Minister of Justice orders the execution of the death penalty in an appropriate and careful manner only after it is found that there are neither the grounds for suspending the death penalty, a retrial, an extraordinary appeal to the court of the last resort, nor any presence of circumstance that makes a pardon reasonable, through a sufficiently careful examination of the relevant records of individual cases.

81. In the penal institutions, the Government pays attention to and carefully considers the health condition of an inmate sentenced to death at all times. The Government tries to understand the mental and physical conditions of inmates sentenced to death through periodic health examinations, and, when necessary, through medical examinations by a doctor at an external medical facility.

*Reply to paragraph 11 (e)*

82. According to the judgment of the Supreme Court, the death penalty as a punishment and the method of hanging currently adopted in Japan do not constitute the cruel punishment that is absolutely forbidden by Article 36 of the Constitution. The Government of Japan considers that there is no need to review the current method of execution of the death penalty because the sentence of hanging currently employed in Japan does not constitute cruel, inhuman or degrading punishment.

**Reply to paragraph 12 of the list of issues prior to reporting**

83. Under the Code of Criminal Procedure, the accused shall not be convicted when the confession is the only piece of incriminating evidence. The public prosecutor never solely relies on confessions even in cases where there are no disputes, rather they are to institute prosecution only when they believe there is a high probability of achieving a conviction based on proper evidence, after collecting sufficient objective evidence as well as supportive evidence. Similarly, the public prosecutor also tries to prove that a crime was committed based on sufficient objective evidence during a trial. The allegation that there are a large number of wrongful convictions is utterly unfounded.

84. In December 2016, the amended Code of Criminal Procedure entered into force. The amended Code stipulates that when there is a request from the accused or his/her defense counsel after the disclosure of the evidence requested by the prosecutor, the prosecutor must promptly issue a list of the evidence kept by the prosecutor to the accused or his/her defense counsel. When the prosecutor keeps new evidence after the evidence list has been issued, the prosecutor must promptly issue the list of said evidence. This system covers all cases subject to pretrial conference procedure for the arrangement of issues and evidence.

85. In May 2016, the amended Code of Criminal Procedure was enacted, under which sound and video recording is mandatory in the entire process of interrogations of the accused detained in the *saiban-in* cases or the prosecutors' independent investigation cases, except for certain exceptional circumstances such as instrument failure or rejection of the accused. This amended law was enforced in June 2019.

86. Based on the above-mentioned amended law, the Public Prosecutor's Office has been proactively recording interrogations, which is believed to contribute to ensuring proper interrogations. In addition to the above-mentioned two types of cases, the authorities have been proactively implementing the recording of interrogations as widely as possible, including all the relevant processes, on the cases in which the accused is detained and (1) has a problem in communication due to intellectual disability or (2) is suspected of decrease and loss of capacity to assume responsibility due to mental disorder, except for certain exceptional circumstances mentioned above. From April 2018 to March 2019, the percentage of cases where sound and video recording was conducted in these four types of cases was approximately 99.9%.

87. Furthermore, the police have also been proactively recording interrogations on the cases in which the accused is detained and has a problem in communication due to intellectual disability or mental disorder, in addition to the *saiban-in* cases, where recording is mandatory under the above-mentioned amendment of law. During the period mentioned in paragraph 86, the percentage of cases where sound and video recording was implemented in these two types of cases was approximately 98.3%.

88. Except for cases subject to *saiban-in* cases, prosecutors' independent investigation cases, and cases that do not entail detentions such as arrests, the recording of interrogations is not mandatory under the legislation. The cases subject to the recording are those for which the recording of the interrogations is thought to be most necessary. However, in cases where the recording of the statement of the suspect is not mandatory, but important, the recording is to be carried out based on the decision of the prosecutor. Furthermore, under the amended law, the Government shall examine the form of this system when three years have passed since the amendment was enforced and take necessary measures based on the result of the examination. During the process, the scope of the cases subjected to mandatory recording will be considered.

89. Cases pertaining to crimes for which the statutory penalties include the death penalty are in principle subject to the recording because such cases are in principle subject to *saiban-in* cases.

90. In order to prove a fact in a trial concerning the voluntariness and credibility of the statement of the accused, the prosecutor requests evidence such as recorded DVDs. Furthermore, if there is a request for the disclosure of evidence such as recorded DVDs from the defense counsel, the prosecutor discloses such evidence to the counsel in accordance with the procedures stipulated in the legislation.

91. The system of court-appointed attorneys for suspects at the stage before juveniles are referred to a family court is the same as in the case of adults and is as explained in paragraphs 129 and 130.

92. After juveniles have been referred to a family court, in certain serious cases where prosecutors may be involved, when the family court made a ruling that a public prosecutor should participate in a hearing, and if the juvenile has no attendant who is an attorney at law, the court shall appoint an attendant who is an attorney at law. In addition, after juveniles have been referred to a family court, the family court may ex officio appoint an attendant who is an attorney at law to the juvenile in certain serious cases where prosecutors may be involved if measures for observation and protection to refer the juvenile to a juvenile classification home have been implemented, and where the juvenile has no attendant who is an attorney at law. The scope of such certain serious cases was limited to cases of crimes, such as murder, injury causing death, arson of inhabited buildings, rape, and robbery, which are punishable by the death penalty, life imprisonment with or without work, or imprisonment with or without work for not less than two years. However, under the amended Juvenile Act enforced in June 2014, the scope was extended to crimes which are punishable by the death penalty, life imprisonment with or without work, or imprisonment with or without work whose maximum term of imprisonment is in excess of three years, and the types of crimes were newly expanded to include those of injury, theft, and fraud as well.

#### **Reply to paragraph 13 of the list of issues prior to reporting**

93. Lifting of the evacuation order is a measure to make return possible for those who prefer to return, and not a measure to force evacuees to return.

94. One of the requirements for lifting the evacuation order is that “the annual cumulative dose estimated by air dose rate is confirmed to be 20 mSv/y or less”, based on the discussions with experts in Japan and overseas. According to scientific findings based on international consensus, the increased risk of cancer due to low-dose radiation exposures at 100 mSv or less per year is so small as to be concealed by carcinogenic effects from other factors. Furthermore, in the Report of the Working Group on Risk Management of Low-dose Radiation Exposure compiled by the Cabinet Secretariat in December 2011, (1) the health risks as a result of the criteria of 20 mSv/y to lift the evacuation order are considered to be sufficiently lower than risks caused by other carcinogenic factors such as smoking, obesity and diet lacking in vegetable intake, and (2) the risks could be avoided sufficiently by continuously taking appropriate measures to control the radiation exposure such as decontamination of land and safe management of foods.

95. In addition, the Government aims to limit the individual additional exposure dose to 1 mSv/y or less as a long-term target. To achieve this long-term target, the Government is making efforts to implement a comprehensive and multi-layered protection strategy including measures for reducing exposure such as decontamination of land and safe management of foods, monitoring and management of individual doses through development of a system to distribute personal dosimeters, and support for developing a system to provide advice from counselors.

96. Regarding housing support for evacuees outside the areas under evacuation orders, the Fukushima Prefectural Government continues to gain a better understanding on the situations of evacuees through offering consultation services, and when necessary, collaborating with the relevant agencies in the areas of welfare, work, and housing of the municipalities where evacuees live, etc.

97. Furthermore, the Basic Policy on Promotion of Measures for Supporting Victims in Their Daily Lives (Cabinet Decision in August 2015) based on the Child Victims Support Act indicates that “according to the external exposure doses estimated based on the results of the airborne monitoring being implemented by the Secretariat of the Nuclear Regulation Authority, the air radiation dose within the region eligible for support has been greatly reduced compared to the time when the nuclear accident occurred,” “there is no situation requiring new evacuations from regions outside the evacuation zone,” and “the decision whether to continue residency without evacuating, reside in another region, or return to the original place of residence should be left to the decision of the victims themselves.”

98. The Fukushima Prefectural Government has been implementing the Fukushima Health Management Survey (FHMS) “Thyroid Examination” since fiscal year 2011, and as of the end of June 2019, it has been reported that 116 cases were diagnosed as “malignant or suspicious for malignancy” in the first examination, 71 cases in the second, 29 cases in the third, 13 cases in the fourth, and 2 cases in the 25-year-old examination.

99. The Interim Report by the Prefectural Oversight Committee Meeting for the Fukushima Health Management Survey established by the Fukushima Prefectural Government reached the following evaluation on the result of the first examination: “Comprehensively considering that: exposure doses due to the accident at the Fukushima Daiichi Nuclear Power Station (FDNPS) were generally lower than those caused by the Chernobyl accident; the period of time from the exposure to the detection of cancers is short (mostly from one to four years); cancers have not been detected in those aged 5 or younger at the time of the accident; and there is no significant regional difference in detection rates, it can be concluded that thyroid cancers found so far through the Thyroid Examination cannot be attributed to radiation discharged due to the accident.” Furthermore, the result of the second examination reached the evaluation that “There is no association between thyroid cancers detected by the Full-scale Screening (second examination) and radiation exposure at this moment.”

100. Furthermore, Annex A “Levels and effects of radiation exposure due to the nuclear accident after the 2011 great east-Japan earthquake and tsunami” in the 2013 report released on April 2, 2014 by the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) reached the evaluation that “the occurrence of a large number of radiation-induced thyroid cancers in Fukushima Prefecture—such as occurred after the Chernobyl accident—can be discounted, because absorbed doses to the thyroid after the FDNPS accident were substantially lower than those after the Chernobyl accident.” Moreover, UNSCEAR’s 2017 White Paper reported that “the substantial numbers that had already been observed in the FHMS had been considered likely to be due to the sensitivity of the screening and not to radiation effects” and reported regarding the effects that could be brought about by new publications that “the Committee has concluded that its findings regarding health effects of radiation exposure from the FDNP accident in the 2013 report remain valid and are largely unaffected by new information that has since been published.”

101. In order to enable mid- to long-term health management of Fukushima Prefecture residents, the Government offered a grant to the Fund for the FHMS established by Fukushima Prefecture in fiscal year 2011. Fukushima Prefecture has utilized this fund to implement the FHMS. Specifically, it has been implementing: the Basic Survey based on a behavioral survey to grasp the external exposure dose for all residents of the prefecture; the Thyroid Examination for all residents of the prefecture who were generally 18 years old or younger at the time of the nuclear accident (approximately 380,000 people); the Pregnancy and Birth Survey of women who were issued the Mother and Child Health Handbook by municipalities in Fukushima Prefecture; and the Comprehensive Health Checkup and the Mental Health and Lifestyle Survey of people who were living in the evacuation areas at the time of the accident.

102. Furthermore, in Japan, access to medical care services is guaranteed for everyone under universal health insurance coverage.

**Reply to paragraph 14 of the list of issues prior to reporting**

103. The former Eugenic Protection Act was amended to the Maternal Health Act, as the result of a proposal by the Diet members in 1996, and the provisions concerning sterilization without consent for reason of mental illness were deleted.

104. In addition, the Act on the Payment of Lump-Sum Compensation to People who Underwent Eugenics Surgeries based on the Former Eugenic Protection Act, introduced by the Diet members, was unanimously enacted and enforced on April 24, 2019. The preamble of the Act expresses regret and feelings of apology, and the Government is to pay lump-sum compensation of 3.2 million yen to each person who underwent eugenics surgery based on the former Eugenic Protection Act.

105. Furthermore, the Government is to implement a survey and other relevant measures on eugenics surgery based on the former Eugenic Protection Act from the perspective of contributing to the realization of an inclusive society to avoid repeating a situation where people are forced to have surgeries or be irradiated in order to prevent their reproduction for reason of their particular disease or disability.

**Liberty and security of person and treatment of persons deprived of their liberty (arts. 7, 9 and 10)****Reply to paragraph 15 of the list of issues prior to reporting***Reply to paragraph 15 (a)*

106. Concerning mental health and welfare services, measures have been developed in line with the basic philosophy of “From Hospital-Centered Care to Community-Centered Care” presented in the Reform Vision for Mental Health and Welfare Services in 2004. Persons with mental disabilities may receive medical care in their community, without being hospitalized, by being treated as outpatients or using day-care services and home-visit nursing services. In order to further support their daily lives in the community, the MHLW has been endeavoring to enhance outreach activities (support for home-visit nursing services) and to develop systems including an emergency medical care system for mental diseases.

107. Moreover, to further promote this basic philosophy, “building a comprehensive community care system including for mental disabilities” was presented as a new policy philosophy in 2016. In light of this, since fiscal year 2017, in order to ensure that persons with mental disabilities can live with peace of mind in a way they like as a member of the community, the Fifth Welfare Plan for Persons with Disabilities sets the outcome goal of establishing consultation platforms for health, medical care and welfare participants, and through such a platform in each Healthcare and Welfare Zone for People with Disabilities, the Government has been promoting initiatives that contribute to building a comprehensive community care system for mental disabilities by building relationships on a face-to-face basis among the stakeholders, including medical institutions such as psychiatric hospitals, community assistance companies, local public entities, and by sharing the issues in the community.

108. When hospitalizing a person with mental disabilities, the manager of mental hospitals must endeavor to hospitalize him/her on a voluntary basis (Article 20 of the Act on Mental Health and Welfare). When a person who is hospitalized on a voluntary basis (voluntary hospitalization) requests a discharge from the hospital, the manager must release the person (Paragraph 2 of Article 21 of said Act).

109. On the other hand, regarding involuntary hospitalization which is not based on the consent of a person with mental disabilities, the procedures at the time of hospitalization and the examinations during hospitalization are stringently determined according to the law. When a person is hospitalized involuntarily, the prefectural governor must have two or more designated physicians of mental health conduct examinations of the person, and may carry out involuntary hospitalization only when, as a result of examinations, designated physicians of mental health agree that a person has mental disorders and that a person may commit self-harm or harm others unless he/she is hospitalized for medical care and protection (Paragraph



2 of Article 29 of said Act). Furthermore, when it is found based on examinations by designated physicians of mental health that a person will not commit self-harm or harm others even if the hospitalization is not continued, the prefectural governor must release the person immediately from the hospital (Article 29-4 of said Act). The period of involuntary hospitalization should be limited to the minimum necessary period.

110. Designated physicians of mental health are required to have the qualities necessary for providing medical treatment with appropriate attention to the human rights of patients. In order to ensure this, the MHLW designates physicians among doctors who have completed legal and other training and have a certain level of practical experience of psychiatry as well as sufficient knowledge and skills necessary to carry out the duties of designated physicians. Such designations are to be renewed every five years.

111. Furthermore, the Government believes that it is desirable for hospitalized persons with mental disabilities to receive measures such as medical care, welfare, nursing care and support for employment necessary for life after discharge so that they can adjust themselves to their community smoothly. In this regard, with the purpose of facilitating implementation of continuous and solid support mainly by the local government, the Government made a guideline on support measures by the local government for persons with mental disabilities after they have been discharged from hospital and issued it to each prefectural governor and others concerned in March 2018.

*Reply to paragraph 15 (b)*

112. The manager of mental hospitals must regularly report to the prefectural governor the condition of a person hospitalized involuntarily (paragraph 1 of Article 38-2 of the Act on Mental Health and Welfare). In addition, a request to the prefectural governor to improve his/her treatment or discharge the hospitalized person may be made by the hospitalized person him/herself or his/her family members (or legal representatives) (Article 38-4 of said Act).

113. These reports and requests shall be reviewed by a Psychiatric Review Board, a third-party organization, which is comprised of designated physicians of mental health and legal and other experts and is established across prefectures (Articles 12, 13 and 14 of said Act), to determine whether or not the hospitalization is necessary and the treatment is appropriate (Paragraphs 1 and 2 of Article 38-5 of said Act). When the Board decides it is necessary, the Board must have a member of the Board conduct examination of a hospitalized person or may seek a report from the manager of the mental hospital or other relevant parties where a person is hospitalized (Paragraph 4 of Article 38-5 of said Act). When the hospitalization is found to be unnecessary based on the results of the review, the prefectural governor must release the person or order the manager of the hospital to take measures including those for the person to leave the hospital (Paragraph 5 of Article 38-5 of said Act).

114. Moreover, the MHLW or the prefectural governor may request the manager to submit a report or a document on the condition of a hospitalized person, and to do the onsite inspections of the hospital (Paragraph 1 of Article 38-6 of said Act). If the treatment for the hospitalized person is against laws and regulations or if the treatment is recognized to be extremely inappropriate, the Minister or the prefectural governor may issue an order to the manager to improve the treatment (Paragraph 1 of Article 38-7 of said Act).

*Reply to paragraph 15 (c)*

115. The Act on the Prevention of Abuse of Persons with Disabilities and Support for Caregivers makes caregivers, employees of care facilities for persons with disabilities, and employers subject to reports and consultations, while it does not make medical institutions including mental hospitals subject to them. On the other hand, it is stipulated that the managers of medical institutions shall conduct training and activities for raising awareness concerning disabilities and persons with disabilities for their staff members and other persons concerned, establish a system for consultation with regard to abuse of persons with disabilities using the medical institutions, and take measures to address cases of abuse and to prevent abuse.

116. In mental disease medical care, if no measures are taken to address patients' suicide attempts or self-harm or other acts, the lives of patients may be put at risk. For this reason, Paragraph 1 of Article 36 of the Act on Mental Health and Welfare stipulates that restrictions can be imposed on patients after an examination by designated physicians of mental health, to the extent necessary for medical care or protection of the patients themselves. Furthermore, based on Paragraph 1 of Article 37 of the Act, a standard was established by the Minister of Health, Labour and Welfare on treatment of hospitalized persons including isolation and physical restriction (hereinafter referred to as "restriction of activities"). According to the standard, for example, the restriction of activities is to be imposed when unavoidable for medical care or protection of the patients themselves, while it must not be used as a punishment or warning to patients. Moreover, when imposing the restriction of activities on patients, matters for compliance are defined so that the restriction of activities is not imposed on patients carelessly. For example, when imposing restriction of activities, the reason must be informed to the patients while the fact and the reason of the restriction of activities, with date and time of commencement must be written in medical records. In addition, as stated in paragraph 112, a request to the prefectural governor to improve the treatment for a patient may be made by the hospitalized person him/herself or his/her family members (or legal representatives).

#### **Reply to paragraph 16 of the list of issues prior to reporting**

117. As stated in paragraphs 122 to 138, in Japan, the suspects' right to meet with and seek advice from the defence counsel without the presence of observers, including the period between arrest and execution of the detention warrant, is widely guaranteed. Audio and video recording of interrogations is enshrined into law. And, regarding interrogation conducted by the police, an interrogation-supervising system is in operation, in which supervisors, who belong to a division different from the investigative divisions, observe the interrogations, in order to prevent inappropriate interrogations.

118. The detainment division, which is organizationally separated from the investigation division, is in charge of the treatment of detainees.

119. Also, the Detention Facilities Visiting Committee is set up at each prefectural police headquarters. After each Committee member conducts on-site inspection of the detention facilities and interviews with the detainees to understand the actual status of the facilities, the Committee deliver its opinions to the detention service manager. The Chief of Prefectural Police Headquarters must publish the opinions of the Committee and the measures taken by the police responding to them. As of January 2019, approximately 250 persons are appointed as members of the Detention Facilities Visiting Committees nationwide. They include attorneys, physicians, local government officers, academic staff and local residents.

120. Furthermore, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides for 3 mechanisms of appeals regarding the detention facilities as follows: (a) claim for review about a certain disposition by a detention services manager, (b) report of a case of illegal use of physical force against a detainee, and (c) filing of complaints with regard to treatment.

121. Additionally, there is a complaint filing system available for any person, including detainees, to lodge complaints regarding the police personnel's execution of duties to the respective prefectural public safety commissions as stipulated in the Police Act.

#### *Reply to paragraph 16 (a)*

122. In Japan, criminal investigations are, in principle, conducted without arrest, and a suspect is taken into custody only when there are reasonable grounds to suspect that the suspect will conceal or destroy evidence, or flee. Besides, strict time limits are applied to duration of the custody. Judicial reviews by judges are carried out at the time of arrest, the beginning of custody and the extension of custody. In addition, remedial release systems of the revocation of detention or the suspension of the execution of detention are fully furnished. Thus, there is little need to introduce a pre-indictment bail system. Furthermore, at the stage of investigation when evidence is actually being gathered, if a suspect who may conceal or destroy evidence or flee is given bail, there is a risk that the investigation would be seriously

impeded due to the suspect concealing or destroying evidence or fleeing. Therefore, careful consideration is needed regarding introduction of the pre-indictment bail system in Japan.

*Reply to paragraph 16 (b)*

123. Regarding the issue of the presence of a defense counsel at interrogations, careful consideration is needed in relation to the function and role of interrogations in criminal procedures overall. The Government therefore believes it is an issue that requires careful consideration from a variety of perspectives.

124. In Japan, interrogation of suspects fulfills an important function as an evidence gathering method for elucidating facts concerning the cases, including the motives and backgrounds of the crimes. Whether or not to allow the presence of a defense counsel at interrogations of suspects should be appropriately judged on a case by case basis, taking into consideration the risk that the function of the interrogation would be impeded, and that the honor and privacy of the people concerned and the confidentiality of the investigation could be undermined. The Government therefore believes that for operational reasons, it is not appropriate to categorically allow a defense counsel to be present.

125. The presence of a defense counsel at interrogations was discussed in the Special Committee on Criminal Justice System for the New Era under the Legislative Council (2011 to 2014). However, it was decided not to introduce the approach, taking into account the expressed concerns, such as the potential of undermining the function of interrogations, which played a critical role as mentioned above, as well as serious constraints on interrogations such that interrogations cannot be conducted without a defense counsel present during the interrogations. Consequently, it was determined to conduct a separate review of the approach, including its necessity and validity.

126. In Japan, suspects have the right to remain silent, to appoint a defense counsel, and to meet with and seek advice from the defense counsel without the presence of observers. Opportunities to meet with the defense counsel must be provided upon request of the suspects as soon as practicably possible and are also granted in practice. Furthermore, it is stipulated that all suspects detained with detention warrants have the right to appoint the respective court-appointed defense counsels.

127. Moreover, a mandatory recording system has been introduced for interrogations of detained suspects in certain cases. In addition, the recording of the interrogations of suspects has been implemented in a significant number of cases where such recording is not mandatory. Such recording makes it possible to conduct consideration after the fact.

128. The systems mentioned above contribute to the implementation of proper interrogations.

*Reply to paragraph 16 (c)*

129. Under the provisions of the amended Code of Criminal Procedure enforced in June 2018, the cases in which a suspect is eligible for a court-appointed defense counsel were expanded to all cases for which a detention warrant is issued. This does not cover the stage after the arrest and before the execution of detention warrant. However, at the same time, under the amended Act, when giving notice to a detained suspect and accused person that they have the right to appoint a defense counsel, including at the time of arrest, judicial police officers, prosecutors and judges are also obliged to inform the detained suspect or accused person that he/she can designate and request the appointment of a specific attorney, legal professional corporation or bar association, and to give the suspect or accused person information on to whom they should address such requests.

130. There are no particular provisions, including those in the Act, on the eligibility criteria for court-appointed defense counsels, except for having a lawyer qualification. However, based on the provisions of the Comprehensive Legal Support Act, it is necessary for attorneys attempting to become court-appointed defense counsels to have entered into contracts with the Japan Legal Support Center.

*Reply to paragraph 16 (d)*

131. Japan's police have paid much attention to the length and times of interrogations so as not to inflict an excessive burden on suspects. Specifically, under the Rules of the National Public Safety Commission, they must avoid conducting interrogations during late night hours or for long hours, unless they are really essential. In addition, the approval of the Chief of Prefectural Police Headquarters or the chief of a police station must be obtained in the event of interrogating someone between 10pm and 5am or for more than eight hours in a day.

132. Regarding the interrogation methods, the Rules of the National Public Safety Commission stipulate in detail that compulsion, torture, intimidation or any other methods that raise doubts about the voluntariness of a statement shall not be used in interrogations. Furthermore, those rules stipulate that the process of interrogation must be recorded in writing, and the records need to be confirmed, signed and sealed by the suspects.

133. Also, the interrogation-supervising system is established to ensure the appropriateness of interrogations. A separate division from the investigative division is in charge of the system. The supervisors observe the interrogations of suspects, and demand implementation of necessary measures including but not limited to interruption of the interrogations in cases where the police personnel's behaviors potentially leading to inappropriate interrogations are recognized.

134. In the Principles of Prosecution, which presents the spirit and basic stance of prosecution, it is stated that "[i]n interviewing witnesses and suspects, we shall strive to obtain true statements, while securing their voluntary nature and the fairness of the questioning." Japan's prosecutors are endeavoring to conduct proper interrogations in accordance with the Principles. They are taking a variety of initiatives to guarantee the propriety of interrogations, for example:

- Recording of interrogations in a wide range of cases
- Avoiding conducting interrogations during late night hours or for long hours and providing breaks appropriately
- Establishment of the Inspection and Supervision Division in the Supreme Public Prosecutor's Office to build an inspection system for investigating and taking appropriate measures against illegal or improper acts, or acts that could be suspected of being illegal or improper, in investigations and criminal procedures, including interrogations, and for providing guidance to prosecutors.

135. As mentioned above, various measures have been introduced to secure proper interrogations and prevent interrogations from being conducted for long hours or using illegal techniques such as intimidation and assault.

*Reply to paragraph 16 (e)*

136. The complaints regarding the police interrogations of suspects are to be reported to the interrogation-supervising division separately established from the investigative division, based on the interrogation-supervising system. The interrogation-supervising division conducts necessary inspection. In addition, under the Police Act, any person who has a complaint about interrogations may also file the complaint to the prefectural public safety commission. If a complaint is filed, the prefectural public safety commission shall in good faith handle it in accordance with the provisions of laws, regulations and ordinances, and shall notify the complainant in writing of the result of the handling.

137. The Public Prosecutor's Office also conducts the following measures to handle complaints about interrogations:

- With regard to the interrogation of a suspect, when the suspect or the defense counsel makes a statement or notification of dissatisfaction, the supervisor of the interrogator shall grasp the content thereof, promptly take any necessary measures with required investigations and keep a record of his/her findings.

- The investigation results must be explained to the suspect or defense counsel to the extent possible while taking into consideration the effects on the conduct of the investigation and criminal procedure.

138. If a suspect deprived of freedom, including under interrogations, has filed a criminal complaint or accusation that he/she had been tortured or abused, and the accused is exempted from prosecution as a result of a subsequent investigation, the accuser, who is dissatisfied with such disposition, may file a claim for review of said disposition with the Committee for Inquest of Prosecution consisting of voters appointed by lot (Article 30 of the Act on Committee for Inquest of Prosecution).

#### **Reply to paragraph 17 of the list of issues prior to reporting**

139. Life in the penal institutions is basically a communal life due to the work in factories. However, there are some inmates who have difficulties adjusting themselves to group treatment due to their physical or mental problems, who dislike communal life and refuse to work in the factories, or who repeatedly cause trouble with the people around them when they join groups. Therefore, in some cases, inmates are put to work in the single rooms in which they live, instead of working in the factories.

140. Even when inmates are assigned round-the-clock to a single room, opportunities for meaningful human contact are maintained, including daily contact with staff members, outside contact through visits and by sending and receiving communications, and contact with other inmates at exercise in small groups twice or more per month. The round-the-clock assignment to a single room is implemented because of the various difficulties and problems caused by the inmates, and consequently lasts for a long time in some cases. Nevertheless, penal institutions are endeavoring to provide solutions to the problems of inmates so that they can move onto communal life, for example, by conducting interviews by staff members, counseling by psychiatric experts, and examinations by psychiatrists.

141. The number of cases of round-the-clock assignment to a single room in 2012 and 2016 (based on the fourth type of restriction category; the same applies below) is stated in Annex 5. The number of such cases that have continued for ten years or more and the number of cases among those in which the inmate was confined to a medical prison have increased. However, the increase is small at 11 cases and five cases, respectively, and the overall number of cases of such treatment has declined by approximately 1,000.

142. The Government, which carries out the detention of the inmates, recognizes that maintenance of the health and treatment of the diseases of the inmates are its important responsibilities. The Act on Penal Detention Facilities and the Treatment of Inmates and Detainees also stipulates that appropriate measures in light of the public standards of hygiene and medical care are to be taken in order to maintain the health of the detainees and hygiene inside the facilities.

143. Doctors and other medical staff are deployed in penal facilities and carry out medical examinations upon an inmate's arrival and regularly thereafter. When an inmate is injured or sick, the medical staff provides medical care in a timely and appropriate manner. In principle, medical examinations of inmates are carried out by a staff doctor of the penal institutions. However, in case a patient needs a specialized treatment that cannot be provided at the penal institutions, the institutions invite a non-resident doctor who carries out the examination, and when necessary, they transfer the patient to a medical prison, or to an external medical institution for examination and/or hospitalization. In doing so, the Government believes that medical care and health management for inmates are being carried out appropriately.

144. The objectives of the Act on Special Provisions for the Subsidiary Work and Working Hours of Correctional Medical Officers, enforced on December 1, 2015, are to grant opportunities to maintain and improve the abilities of correctional medical officers and continuously and stably secure excellent human resources. As of December 1, 2015, 253 correctional medical officers were on staff and as of April 1, 2018, this number had increased by 39 to 292, which is thought to be an effect of the enforcement of said Act.

145. Regarding visits between the inmate and his/her lawyer who has taken a case concerning the treatment of the inmate, a staff member, in principle, is not present during the

visit (Articles 112 and 116 of the Act on Penal Detention Facilities); furthermore, regarding the receipt of letters from the lawyer, they are examined to the extent necessary for confirming that they are said letters (Articles 127 and 135 of said Act).

146. Under the provisions of the Penal Code, in order for a person sentenced to life imprisonment to be granted parole, it is necessary for that person to satisfy the two requirements that ten years have passed since the commencement of their sentence, and that the sentenced person “evinces signs of substantial reformation” (Article 28 of the Penal Code). The specific permission standards for granting parole are stipulated to be “when it is recognized that the person has a feeling of repentance and willingness to make improvements and reform him/herself, there is no risk that he/she will commit a crime again, and putting the person on probation is appropriate for their improvement and reform. However, this shall not apply when it cannot be recognized that the feelings of society endorse this.”

147. While no monthly statistics exist, the numbers of persons serving life sentences who were paroled (excluding persons who were granted parole again after their parole had been revoked) are six in 2014, nine in 2015, and seven in 2016.

## **Elimination of slavery, servitude and trafficking in persons (art. 8)**

### **Reply to paragraph 18 of the list of issues prior to reporting**

#### *Reply to paragraph 18 (a to e)*

148. The Government is of the view that the Covenant is not applied retroactively to any issues that occurred before the entry into force of the Covenant with respect to Japan (1979), therefore, it is not appropriate to bring up the comfort women issue in a report on the implementation status of the Covenant. Nevertheless, the Government expects to receive a fair evaluation of its position and sincere initiatives to date based on an accurate recognition of the facts. The Government would like to state the initiatives of Japan concerning the recommendations in the concluding observations of the committee last time and evaluation of the implementation status of the recommendations.

149. The Government has conducted a full-scale fact-finding study on the comfort women issue since the early 1990s when the issue started to be taken up as a political issue between Japan and the Republic of Korea. The fact-finding study included (1) research and investigation on related documents owned by relevant ministries and agencies of the Government, (2) document searches at the U.S. National Archives and Records Administration, as well as (3) hearings of relevant individuals including former military parties and managers of comfort stations and analysis of testimonies collected by an NGO in the Republic of Korea. The results of this study as well as the materials discovered through the process of the study have already been disclosed. So-called “forcible taking away” by the military or authorities could not be confirmed in the materials discovered by the Government that were obtained through this series of studies.

150. The expression “sexual slavery” contradicts the facts and should not be used. Japan confirmed this point with the Republic of Korea at the time of the 2015 Japan-Republic of Korea agreement.

151. With regard to the war crimes committed by Japanese citizens during the Second World War, we are aware that there were three forms of tribunals established: (1) the International Military Tribunal for the Far East in Tokyo, (2) GHQ Military Tribunals in Tokyo, and (3) tribunals held by the Allied countries. For example, in the Dutch East Indies (currently Indonesia), some former military officials coerced foreign women into prostitution, against their superior’s orders and in violation of military rules that require the woman’s consent. In this case, after the (former Japanese) military found out about the situation, the military shut down the comfort station, and the officials involved in the case were tried in a BC-level court martial after the war. Of the 12 defendants, one was sentenced to death, and 8 were sentenced to imprisonment with work. That said, it is extremely difficult for the Government to investigate the facts of individual cases retrospectively.

152. The Government has sincerely dealt with issues of compensation as well as property and claims pertaining to the Second World War under the San Francisco Peace Treaty, and through bilateral peace treaties, agreements and instruments. The issue of claims, including those from former comfort women, have been legally settled with the parties to these treaties, agreements and instruments (see Annex 6 (1)).

153. Although the above legal settlement had been reached, the Government has taken a variety of measures in order to aim at a realistic remedy for former comfort women who had already reached an advanced age, as a goodwill effort of Japan from a moral perspective.

(1) Recognizing that the comfort women issue was a grave affront to the honor and dignity of a large number of women, the Government of Japan, together with the people of Japan, seriously discussed what could be done to express their sincere apologies and remorse to the former comfort women. As a result, the Government and the people of Japan cooperated to establish the Asian Women's Fund (AWF) on July 19, 1995 in order to conduct an atonement project for the former comfort women (the specific initiatives are as stated in Annex 6 (2)).

(2) When the atonement money was provided from the above-mentioned AWF to the former comfort women, the then-Prime Ministers (namely, Prime Minister HASHIMOTO Ryutaro, Prime Minister OBUCHI Keizo, Prime Minister MORI Yoshiro and Prime Minister KOIZUMI Junichiro), representing the Government, sent a signed letter expressing apologies and remorse directly to each former comfort woman (see Annex 6 (3)).

(3) Japan and the Republic of Korea held serious consultations regarding the comfort women issue, and under the agreement reached at the Japan-Republic of Korea Foreign Ministers' Meeting held in Seoul on December 28, 2015, a "final and irreversible settlement" of the comfort women issue was confirmed. In the Japan-Republic of Korea summit telephone call later the same day, the leaders of both countries confirmed and appreciated that this agreement had been reached. The international community, including then-United Nations Secretary-General BAN Ki-moon, welcomed the fact that Japan and the Republic of Korea had reached an agreement. In this agreement, it was confirmed that the Government of the Republic of Korea would establish a foundation for the purpose of providing support for the former comfort women, that its funds (about 1.0 billion yen) be contributed by the Government of Japan as a one-time contribution through its budget, and that projects for recovering the honor and dignity and healing the psychological wounds of all former comfort women be carried out under the cooperation between the Government of Japan and the Government of the Republic of Korea (see Annex 6 (4)). This foundation provided funds to 35 of the 47 surviving former comfort women and to the families of 62 of the 199 women who had passed away as of the date of the agreement, and this has been commended by many former comfort women.

154. The Government of Japan has no intention of denying the comfort women issue. On August 14, 2015, Prime Minister ABE, in his statement commemorating the 70th Anniversary of the end of the war, resolutely expressed that, "we will engrave in our hearts the past, when the dignity and honor of many women were severely injured during wars in the 20th century" and that "Japan will lead the world in making the 21st century an era in which women's human rights are not infringed upon."

155. For the last question, the National Curriculum Standards are general standards for schools to formulate their own curricula rather than handling any specific content. As textbooks are produced by the private sector, the judgment as to what kind of specific matters to include and how they are described in a textbook based on the National Curriculum Standards is left to the particular textbook publisher as long as the contents do not contain errors.

156. The basic purpose of the textbook authorization is to identify any errors in the textbook descriptions in light of the results of objective academic research and appropriate materials at the time of the authorization, which is conducted based on the National Curriculum Standards and Textbook Authorization Standards. In other words, the textbook authorization is carried out by the Textbook Authorization Research Council based on the

results of professional and academic research and deliberation. The results of the examination are utilized as they are by the Minister of Education, Culture, Sports, Science and Technology to judge whether to authorize a particular textbook or not. This authorization mechanism does not allow intervention by any government policy or political intent or motivation.

### **Reply to paragraph 19 of the list of issues prior to reporting**

#### *Reply to paragraph 19 (a)*

157. In 2004, to promptly and steadily promote close cooperation among the relevant government agencies and cooperation with the international community in preventing and eradicating trafficking in persons and protecting victims, the Government established the Inter-Ministerial Liaison Committee under the Cabinet. In 2014, the Government decided Japan's 2014 Action Plan to Combat Trafficking in Persons, and it was approved that the Council for the Promotion of Measures to Combat Trafficking in Persons, comprising Cabinet Ministers of relevant ministries would be convened. Currently, based on that plan, the related ministries and agencies led by the Council are working together to crack down on trafficking in persons and implement initiatives for the protection and support of victims. The Government as a whole will continue to work toward the aim of the eradication of trafficking in persons.

158. To strengthen the victim certification procedures, including for victims of forced labor, based on the "Methods to Deal with Trafficking in Persons (Measures for Identification of Victims)" agreed in the Inter-Ministerial Liaison Committee Regarding Measures to Combat Trafficking in Persons in June 2010, the ISA is responding actively and appropriately when it receives a request for consultation or protection from victims of trafficking in persons or from any persons involved with the victims. The ISA is endeavoring to detect crimes of trafficking in persons in the process of cracking down on cases of violations of the Immigration Control Act.

#### *Reply to paragraph 19 (b)*

159. Japan has been making efforts to provide various trainings to relevant officials including at the ISA, the MHLW, the Japan Coast Guard (JCG), the police, and the Ministry of Foreign Affairs (MOFA) (for specific examples see Annex 7 (1)).

#### *Reply to paragraph 19 (c)*

160. In order to conclude the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which defines the acts that constitute trafficking in persons in its Article 3, Japan amended the Penal Code to newly establish and develop the necessary penal provisions in 2005. Due to this, all of the acts that constitute trafficking in persons as defined in the Protocol are considered crimes in Japan.

161. Furthermore, in June 2014, the Task Force for the Enforcement of Laws and Regulations Relating to Trafficking in Persons, comprising members from the National Police Agency (NPA), the MoJ, the Supreme Public Prosecutor's Office, the MHLW and the JCG was established. In addition to cooperating and sharing information about offenses related to trafficking in persons, in September of the same year, the Task Force produced the "Handbook on Measures against Trafficking in Persons," which summarizes information such as the laws applicable to trafficking in persons and specific examples of the application of these laws. It is actively utilized by the police, the ISA, the Public Prosecutor's Office, the Labour Standards Inspection Offices, and the JCG in conducting investigations and other activities.

162. With respect to trafficking in persons, the relevant government offices are working together and cooperating to carry out a thorough crackdown, endeavoring to impose strict punishments on perpetrators, and actively dealing with peripheral cases which may potentially involve trafficking in persons. The number of cleared cases of trafficking in persons were 32 in 2014, 44 in 2015, 44 in 2016, 39 in 2017, and 36 in 2018.



163. Regarding punishments, during 2018, the number of arrested suspects for the crime of trafficking in persons was 40, of whom 35 were prosecuted, four were not prosecuted due to problems with evidence, and one was referred to the family court. Of the 35 prosecuted suspects, 29 have been found guilty, and the cases of the remaining six are still pending (as of March 31, 2019). Concerning the 29 suspects found guilty, the sentences of the suspects sentenced to imprisonment with work ranged from a sentence of imprisonment with work of ten months at the shortest to one of seven years at the longest.

*Reply to paragraph 19 (d)*

164. The Government of Japan is appropriately taking measures for the protection of victims in the related ministries and agencies based on the “Methods to Deal with Trafficking in Persons (Measures for Protection of Victims)” agreed in 2011. These measures for providing protection of and support for victims include, inter alia, legal assistance with multiple languages, financial support, assistance for voluntary return, and other forms of assistance (for further information see Annex 7 (2)).

**Reply to paragraph 20 of the list of issues prior to reporting**

*Reply to paragraph 20 (a)*

165. In order to achieve proper technical intern training for foreign nationals and to protect foreign technical intern trainees, the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees (“Technical Intern Training Act”) was enacted and promulgated in November 2016, and enforced in November 2017.

166. When a technical intern trainee decides to return to his/her home country before the completion of the technical intern training plan, the Notification of Difficulty in Conducting the Technical Intern Training is to be submitted by the supervising organization, etc. before the day of return, which makes it possible for the Commissioner of the ISA, the Minister of Health, Labour and Welfare and the Organization for Technical Intern Training to confirm in advance that the technical intern trainee will terminate his/her training and return to his/her home country. In addition, when necessary, the Organization for Technical Intern Training examines the facts by contacting directly the technical intern trainee him/herself to confirm whether his/her return is against his/her will. If there is a suspicion that the return was against his/her will, instructions will be given to the supervising organization, etc. and the necessary investigations will be carried out, taking the nature of the case into consideration.

167. The Organization for Technical Intern Training has established a native language consultation hotline for technical intern trainees, and if a case suspected to involve human rights violations against a technical intern trainee is identified during those consultations, the necessary instruction is given to the supervising organization, etc. with consideration for the privacy of the technical intern trainee.

168. As for the ISA, when an immigration inspector sees a technical intern trainee returning to his/her home country without completing the full term of the technical intern training at the air or sea port of departure, the officer uses documents prepared in his/her native language in order to confirm the trainee is not being forced to return to his/her home country against his/her own will.

*Reply to paragraph 20 (b)*

169. The laws and regulations related to labor, including those of the minimum wage, are applicable to technical intern trainees. In addition, it is also stipulated, as an accreditation criteria for a technical intern training plan, that the amount of remuneration for the technical intern trainees is to be equal to or higher than the amount of remuneration for Japanese who are engaged in the same work. Therefore, the Organization for Technical Intern Training examines whether or not the remuneration amount and other treatment are proper when judging the application for accreditation.

170. The MoJ and the MHLW are now considering establishing a provision under a ministerial ordinance that obliges the implementing organization to make payment of remuneration by bank transfer, etc., while taking as a reference the provisions of the specified

skilled worker system. Furthermore, in order to secure proper implementation of statutory labor conditions of foreign workers, including technical intern trainees, labor standards inspection authorities implement inspections of work places which are considered to have a problem in compliance with the statutory labor conditions for foreign workers, including technical intern trainees. If a serious or malicious violation is found, the authorities take strict measures, including judicial dispositions.

171. Memorandums of Cooperation (MOCs) have been concluded with 14 (as of January 31, 2020) countries that are willing to dispatch technical intern trainees (the Philippines, Viet Nam, Cambodia, India, Lao PDR, Mongolia, Bangladesh, Sri Lanka, Myanmar, Bhutan, Uzbekistan, Pakistan, Thailand and Indonesia) for the purpose of collaborating with the governments of those countries to exclude improper sending organizations in the respective countries and carry out technical intern training properly and smoothly.

*Reply to paragraph 20 (c)*

172. The Technical Intern Training Act strengthens the management system over the supervising organizations and the implementing organizations through various measures including setting a provision for on-site inspections by the Organization for Technical Intern Training established by the Act. In accordance with the Act, the Organization for Technical Intern Training is supposed to check if the technical intern training is being conducted properly by implementing on-site inspections once a year for supervising organizations and once every three years for implementing organizations and by carrying out impromptu on-site inspections for unusual cases. When improper cases, including violations of laws and regulations, are detected, instructions for improvement are to be given to the concerned parties. For particularly malicious cases, the competent minister may take necessary administrative measures such as revocation of the accreditation of the technical intern training plan or of the license of the supervising organization.

173. The Government continues to do its utmost to enhance the structure of the Organization for Technical Intern Training, which conducts the on-site inspections, so that it can implement its operations more appropriately and smoothly.

*Reply to paragraph 20 (d)*

174. As stated in paragraphs 172 and 173.

*Reply to paragraph 20 (e)*

175. The Technical Intern Training Act stipulates that if there is a fact that a supervising organization or an implementing organization violates laws or regulations related to technical intern training, the technical intern trainees themselves can report the fact to the Commissioner of the ISA and the Minister of Health, Labour and Welfare. The Act also prohibits the technical intern trainees from being treated disadvantageously for reason of such reporting. As of October 3, 2018, 15 reports had been received from technical intern trainees.

176. At the time of their entry to Japan, an immigration inspector at the port of entry or departure gives the Technical Intern Trainee Handbook directly to all technical intern trainees and disseminates necessary information to them, such as the consultation window of the ISA, etc., contacts of the Embassy of their country, Japan's labor-related laws and regulations, the information necessary for daily life, reports to a Labour Standards Inspection Office (see Annex 8 (1) and (2)), and the allowance for absence from work.

177. Furthermore, the Organization for Technical Intern Training is implementing native language consultations in eight languages (Burmese, Cambodian, Chinese, English, Filipino, Indonesian, Thai and Vietnamese) so that technical intern trainees can consult about the laws and regulations concerning the technical intern training system itself as well as their wages, and working hours.

## **Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 10 and 13)**

### **Reply to paragraph 21 of the list of issues prior to reporting**

#### *Reply to paragraph 21 (a)*

178. To protect human rights, the deportation procedures are executed extremely carefully and based on a three-trial system, which is conducted after the investigation into violations by the immigration control officer. This system consists of an inspection by immigration inspectors, a hearing by special inquiry officers, and a decision by the Minister of Justice with respect to the objections filed.

179. Applicants for recognition of refugee status staying legally in Japan at the time of application are not detained. An applicant for recognition of refugee status without status of residence is granted permission for provisional stay and not detained unless he/she is recognized as falling under certain grounds such as a case where he/she is likely to flee.

180. On the other hand, in a case where the person applies for recognition of refugee status after deportation has been decided through the proper deportation process, the refugee recognition procedure is to be processed only after the person concerned is detained. However, deportation is suspended during the refugee recognition procedures, and the maximum consideration is given to people for whom particular humanitarian considerations are needed, by flexible implementation of provisional release.

181. Furthermore, applications for recognition of refugee status from minors (persons under 16 years old at the time of the application for recognition of refugee status) unaccompanied by a guardian are processed, giving consideration to that situation at the time of the interview.

182. Regarding the treatment of detainees in immigration detention facilities, the Government is implementing trainings and awareness-raising programs for immigration control officers from the perspective of respect for human rights.

183. Furthermore, given cases of the death of a Vietnamese detainee in 2017 and a Nigerian detainee in 2019, the Government is making its utmost efforts to thoroughly grasp the health condition and the behavior of the detainees in immigration detention facilities.

184. In order to implement safe and secure deportation, the ISA has developed a range of guidelines pertaining to escorts and deportation. Moreover, it is implementing practical trainings for the officers in charge of escorts and deportation, and is positively considering the utilization of chartered flights and the IOM return assistance program.

#### *Reply to paragraph 21 (b)*

185. In recent years, the sharp increase of applications attempting to abuse or misuse the refugee recognition system has been creating an obstacle to the provision of prompt protection for genuine refugees. In order to improve this situation, the MoJ carried out further revisions for operation of the refugee recognition system, and the system with such revisions have been operated for applicants from January 15, 2018 onwards.

186. Specifically, when a legal resident applies for recognition of refugee status (the first examination), those who are truly in need of asylum, such as applicants who are likely to be recognized as refugees, are able to live a stable life much earlier than before through being allowed to work as soon as it becomes clear that they are such applicants. On the other hand, applicants attempting to abuse or misuse the system (people subject to the “fast track” procedure) will not be granted residential status or a work permit. In principle, even people subject to the “fast track” procedure are recognized or not recognized as refugees only after going through the same procedures as other applicants for recognition of refugee status. Furthermore, the provision in Paragraph 3 of Article 53 of the Immigration Control Act, which clearly states the principle of non-refoulement, is applied to the deportation of persons who are not recognized as refugees.

187. As a result of these further revisions, the number of applications in 2018 declined by approximately 47% compared to the previous year. Furthermore, the number of processed applications in 2018 increased by approximately 19% compared to the previous year. Therefore, we believe that the revisions for operation of the refugee recognition system function effectively in reducing the number of applications that attempt to abuse or misuse the system by those whose real intention is to work and have led to prompt protection for refugees who are truly in need of protection.

*Reply to paragraph 21 (c)*

188. Based on the Immigration Control Act, a person who was not recognized as a refugee in the procedures of application for refugee recognition (the first examination) may file a request for an administrative review with the Minister of Justice. In that case, the Minister of Justice makes the determination after hearing the opinions of refugee examination counselors who have an academic background in law or international affairs (for the details see Annex 9).

189. Under the Immigration Control Act, deportation is suspended even for persons to whom a written deportation order has been issued during the process of an application for recognition of refugee status or of a request for review. Therefore, the Government does not implement the deportation of asylum applicants.

190. Regardless of whether or not there is a request for an administrative review, when an applicant has an objection to the disposition, he/she may file an administrative lawsuit to seek judicial remedy. Furthermore, when the suspension of execution of deportation, based on a written deportation order, has been decided by the court, deportation during the application for recognition of refugee status is suspended until the period decided by the suspension of execution is passed.

*Reply to paragraph 21 (d)*

191. Looking at the overall cases in which decisions were made for requests for an administrative review between 2005 when the refugee examination counselors system was introduced and the end of 2017 (including decisions with respect to objections), the Minister of Justice reached the same judgment as the majority opinion of the counselors in more than 90% of those. Appropriate opinions are obtained from the refugee examination counselors based on their respective expertise, and the Government endeavors to achieve appropriate operation of the refugee examination counselors system.

192. In cases where a judgment revoking a disposition denying recognition of refugee status has been handed down in court, the Government has reconsidered whether or not the applicant qualifies as a refugee, taking into account the content of the judgments, and then addressed the situation appropriately.

*Reply to paragraph 21 (e)*

193. The detention of refugee applicants is as stated in paragraph 179 and 180. Furthermore, if a detainee in an immigration detention facility has an objection to that disposition, he/she has the right to file an administrative lawsuit. Notice of such right is given appropriately in writing or verbally based on the relevant laws and regulations.

194. For the latter part of the questions, under the Immigration Control Act, the detention period based on a written detention order shall be up to 30 days. However, if a supervising immigration inspector finds that there are unavoidable reasons, he/she may extend such period by only a further 30 days. Furthermore, detention based on a written deportation order is deemed to continue until his/her deportation. Such deportation procedures are carried out properly in accordance with the relevant legislation. The Government ensures prompt deportation so that the detention period is not prolonged. When there are unavoidable circumstances such as a detainee getting sick, the Government utilizes provisional release flexibly.

195. Recognizing the acceptance of refugees to be an important responsibility towards the international community, the Government examines all the applications for recognition of

refugee status individually to decide whether or not the applicant falls under the category of refugee as stipulated in the Refugee Convention, and properly identify people who should be recognized as refugees. On the other hand, after taking into account various circumstances, flexible treatment is accorded within the framework of immigration and residence management administration by granting permission to stay even to those who do not fall under the definition of refugee as stipulated in the Refugee Convention and are not recognized as refugees. Such persons include, for example, those who will find it difficult to return to their home country due to the circumstances of their home country or those for whom there are special circumstances necessitating that permission to stay in Japan be granted.

196. In the refugee recognition procedures, much evidence is located overseas and difficult to collect. In addition, it is difficult to receive physical evidence from the applicant. Therefore, the credibility of the applicant's statement greatly influences the judgment on the recognition of refugee status. It is thus important to ensure an environment where an applicant can make statements without hiding on the facts known only by the applicant and the private matters of other people. In this respect, the involvement of third parties in the procedures of the application for recognition of refugee status (the first examination) is, in principle, not allowed. However, this is allowed in the case where an applicant who is a minor unaccompanied by guardian, a person with severe physical or mental disabilities, or a person with severe illnesses, requests attendance of a certain person, such as an attorney, at the time of the interview.

197. With regard to the revised operation of the system for refugee recognition, see paragraphs 185 and 186. In addition, in the settlement facilities, the Government offers comprehensive support measures—such as vocational consultations, guidance and job placements by vocational counselors—to both refugees by resettlement to a third country and refugees under the United Nations Refugee Convention and their families.

198. The Government's response after the case of the death of a Vietnamese detainee is as stated in paragraph 183.

## **Right to privacy (art. 17)**

### **Reply to paragraph 22 of the list of issues prior to reporting**

199. In Japan, holding of personal information by administrative agencies is restricted by the Act on the Protection of Personal Information Held by Administrative Organs (for the related clauses see Annex 10). Based on the provisions of the Act and other relevant laws and regulations, the police are executing their duties impartially and neutrally.

200. Furthermore, with regard to privacy of communications, the protection of the right of an individual is secured by Article 21 of the Constitution and related laws. Moreover, Article 19 of the Constitution provides that "[f]reedom of thought and conscience shall not be violated." Guarantee of privacy is provided for in Article 17 of the Covenant and is understood to derive from Article 13 of the Constitution. If a person believes that acts contrary to these provisions were committed against him/her, it is possible for him/her to seek remedy based on existing laws and regulations.

## **Freedom of thought, conscience and religious belief and freedom of expression (arts. 2, 18, 19 and 25)**

### **Reply to paragraph 23 of the list of issues prior to reporting**

201. The concept of "public welfare" and its practical implementation are as stated in paragraph 5 of the sixth periodic report submitted by Japan under the Covenant.

### **Reply to paragraph 24 of the list of issues prior to reporting**

202. For the first question, as stated in paragraph 7.

203. The Broadcasting Act has been established in a framework based on the autonomy and independence of broadcasters, and it ensures broadcasters enjoy one of the most free media circumstances in terms of such factors as prudence in taking actions for the breach of program rules.

204. Freedom of expression is one of the fundamental human rights guaranteed by Article 21 of the Constitution. Article 1 of the Broadcasting Act also stipulates that one of the purposes of the Act is “ensuring freedom of expression in broadcasting by guaranteeing impartiality, truth and autonomy.” Furthermore, Article 3 of the Broadcasting Act stipulates that “Broadcast Programs must not be interfered with or regulated by any person, except in cases pursuant to the authority provided for in laws,” thus guaranteeing the editorial freedom of broadcast programs.

205. To be specific, the Broadcasting Act includes the following provisions in order for broadcasters to achieve the appropriateness of its broadcast programs.

- A broadcaster must stipulate standards for editing the broadcast programs, and must edit the broadcast programs in compliance with those standards (Paragraph 1 of Article 5)
- A broadcaster is to establish a deliberative body for broadcast programs, and then may deliberate on particulars necessary for ensuring that broadcast programs are appropriate (Article 6)

206. Therefore, the Broadcasting Act properly ensures freedom of expression and independence in broadcasting in its framework. The Government thus has no plan to revise the Act.

207. There is no such fact that the Government has illegally and wrongfully put pressure on the media, including broadcasters. Furthermore, the Government is not in a position to provide any comments regarding the response of the parties concerned to erroneous reports.

208. Election campaigns make available information on factors including the personality of the candidates and their policies for the constituents to judge who should be elected. Given this fact, election campaigns should be made as free as possible.

209. On the other hand, if an election campaign is conducted without any restriction, the election might be distorted by, for example, financial, forcible or authoritative power. For this reason, in order to ensure fair elections, certain rules for election campaigns are required to be established and the election campaigns are to be conducted in accordance with these rules. Under the current legislation, the actions mentioned below are restricted for the following reasons: (1) door-to-door visits are likely to become a hotbed of activities such as acquisition and influence peddling, and have the harmful effect of disturbing the peace of constituents; and (2) the use of unlimited documents increases expenses and labor, and leads to unfairness due to differences in economic power. The purpose of these restrictions is to eliminate inequality in election campaigns, and they do not illegitimately violate the right to vote or freedom of expression of the citizens (as stated in Annex 11, restrictions on the grounds described in the above (1) and (2) were both ruled constitutional in previous Supreme Court verdicts).

210. The Government continues to pay close attention to the discussions on this issue in the Diet as the form of election campaigns under the Public Offices Election Act is an important issue pertaining to the foundation of the electoral system of Japan.

#### **Reply to paragraph 25 of the list of issues prior to reporting**

211. In the Specially Designated Secrets Act (“SDS Act”), information designated as SDS is limited to the matters set forth in the appended table of four areas with 23 items, which are divided into 55 sub-items in accordance with the Standards to Ensure Uniform Implementation in Connection with the Designation of Specially Designated Secrets and the Termination of the Designation as Well as the Conduct of the Security Clearance Assessment (the Implementation Standards) for further specification. These measures are taken in order to prevent the Government from arbitrarily designating vague and broad information as SDS.

212. The information designated as SDS is an exceptionally small part of the information which is previously deemed to be secret in the National Public Service Act, and information that has not been secret until now will never be designated as SDS. In the Act, SDS is defined as information that is particularly required to be kept secret, as well as information whose unauthorized disclosure bears the risk of causing severe damage to Japan's national security. Consequently, information which would not jeopardize Japan's national security is not designated as SDS at all.

213. Regarding the penalties for unauthorised disclosure of information designated as SDS, considering the citizen's right to know, Article 22 of the SDS Act stipulates that news-gathering activities by persons engaged in publishing or news reporting are principally regarded as acts performed in the course of lawful business and not punishable. We would like to point out that while more than five years have passed since the Act was enforced in December 2014, no chilling effects on news-gathering activities have been recognized at all. Furthermore, there has not been a single case to date of a person being arrested or prosecuted for a violation of the Act.

214. The Boards of Oversight and Review of SDS are established in both houses of the Diet in order to monitor constantly the implementation of the designation of SDS by the Government. Administrative agencies submit SDS documents in response to the requests of the Boards. In addition, the Inspector General for Public Records Management (Information Security Oversight Division) is established in the Cabinet Office to verify and inspect independently and fairly whether Administrative Organs properly designate and terminate SDS and properly manage and dispose of administrative documents. The Inspector General receives the SDS documents from the administrative agencies for these verifications and inspections. Moreover, in the SDS Act, it is stipulated that the Government holds the Council for Protection of Information, which consists of third-party experts and takes technical and objective opinions and proposals from the members (see Annex 12). Therefore, a multi-layered oversight system is operating.

215. In the case of a complaint by a whistleblower about misconduct concerning the designation of SDS, he/she is protected under the aforementioned Implementation Standards, which were formulated based on the opinions of the members of the Council for Protection of Information in accordance with the Act.

#### **Reply to paragraph 26 of the list of issues prior to reporting**

216. Teaching about the national flag and national anthem to students in schools is implemented based on the account that the National Curriculum Standards provide that "[i]n the enrollment ceremony, graduation ceremony, etc., schools shall, in light of the significance thereof, hoist the national flag and instruct children to sing the national anthem." The intent of this is not to intrude on the inner mind of the students to compel them. It only means that the teaching of the national flag and national anthem is implemented as an educational issue.

217. Generally, as stated in Annex 13, every public official, as a servant of all citizens who serve the public interest, is required to respect laws and regulations as well as the orders of their superiors in the course of duty. Similarly, teachers at Tokyo Metropolitan schools, who are local public officials, also bear the obligation under their work duties to respect laws and regulations as well as the orders of their superiors in the course of carrying out educational activities. In the case that the school principal, who is their superior, orders said teachers to teach about the national flag and national anthem in ceremonies such as the enrollment ceremony in accordance with the National Curriculum Standards, which are the curriculum standards stipulated based on the delegation of the provisions of the School Education Act and the Order for Enforcement of said Act, the teacher bears the obligation under their work duties to observe the order.

218. In this respect, the judgment of the Supreme Court on June 6, 2011 ruled that work duty orders seeking the acts of standing and singing when singing the national anthem as a customary ceremonial presentation at ceremonies such as graduation ceremonies are recognized to be necessary and reasonable to the extent that restrictions brought about by the orders are permissible, based on the comprehensive consideration of the purpose and content of the orders and the form of the restrictions.

219. Consequently, these orders are not contrary to the object of Article 18 of the Covenant.

### **Peaceful assembly (art. 21)**

#### **Reply to paragraph 27 of the list of issues prior to reporting**

220. Japan's basic position concerning freedom of expression is as stated in paragraph 13. This position is also applicable to the protest activities against the Diet and those in Okinawa.

221. The relevant authorities take minimum required security measures in an appropriate manner in order to ensure safety, taking the situation of the protest activities into consideration. There is no such fact that they have exercised excessive physical force against protesters or have arrested multiple people including the press who had reported on the protest activities. If illegal activities such as violent actions are confirmed in the process, the Government appropriately addresses the situations according to relevant laws and regulations by taking necessary measures including arrests, detention and prosecution.

### **Right to participate in public life (arts. 25 and 26)**

#### **Reply to paragraph 28 of the list of issues prior to reporting**

222. Article 25 of the Covenant provides that every citizen shall have the right and the opportunity to take part in the conduct of public affairs "without unreasonable restrictions." Persons are sentenced to imprisonment without work or a greater punishment when they have committed a serious criminal act, which requires them to be detained and isolated from the general public, and have committed a severe infringement of the legal order that is the essential foundation for carrying out an election openly, fairly, and properly. Therefore, the Government believes that it is not appropriate to consider as unreasonable the restriction of the exercise of the right to vote of persons sentenced to such punishments until their sentence has been completed.

223. The judgment of the Supreme Court in February 1995 deemed that:

- Paragraph 1 of Article 15 of the Constitution (the right to choose and dismiss public officials) covers only Japanese nationals due to the nature of the relevant rights, and the guarantee of those rights does not extend to foreign nationals residing in Japan; and
- The "constituents of the local public entity" referred to in Article 95 of the Constitution (direct elections of the organs of local governments) means Japanese nationals who have an address within the area of the local public entity. Thus, it cannot be concluded that the Constitution guarantees the right to vote in local elections to foreign nationals residing in the area.

224. This judgment also presents the idea that granting the right to vote in local elections to certain foreign nationals is not prohibited under the Constitution either. (See Annex 14 (1) and (2).)

225. The problem of granting voting rights in local elections to foreign nationals with permanent residence status is an important issue pertaining to the foundation of Japanese democracy, and the Government continues to pay close attention to the discussions in the Diet.

### **Rights of minorities (arts. 26 and 27)**

#### **Reply to paragraph 29 of the list of issues prior to reporting**

226. The Ainu people and Japanese nationals in or from Okinawa are equally Japanese nationals and are guaranteed to have full and equal rights that are enjoyed by any other Japanese nationals.



227. Regarding the Ainu people, in addition to the previous welfare measures and cultural promotion, the Act on Promotion of Measures for Realization of a Society in which the Pride of the Ainu People is Respected was newly enacted in April 2019 and enforced in May of the same year. The objectives of the Act is to advance a wide range of measures including regional, industrial and tourism promotion. Based on the needs of the Ainu people, the Act incorporates support measures for projects implemented by the municipalities as well as those concerning the harvesting of forest products in national forests and salmon fishing. In addition, the Government is implementing a regeneration project for the traditional living spaces (Iwor) of the Ainu (see Annex 15 (1)).

228. Paragraph 1 of Article 26 of the Constitution and Paragraph 1 of Article 4 of the Basic Act on Education guarantee that all people shall have the right to receive an equal education correspondent to their ability, and may be taught suitably for the actual situation in their regions and schools. For example, an initiative for learning the Ainu language has been started in schools in Hokkaido with many Ainu students. In Okinawa Prefecture, initiatives such as distribution of supplementary reading materials written in the local dialect to students and trainings for teachers are being implemented.

229. See Annex 15 (2) for further details on the promotion of the Ainu culture and Ainu language.

### **Reply to paragraph 30 of the list of issues prior to reporting**

230. In Japan, the right to share one's own culture, believe in and practice one's own religion or use one's own language is not denied at all to anyone, including Korean Residents in Japan and their descendants. Given this context, Japan believes it is not necessary to judge whether or not Korean Residents in Japan and their descendants are recognized as ethnic minorities according to the Covenant.

231. In addition, with regard to the exercise of rights concerning social security, in the area of employment, the Government provides guidance and conducts awareness-raising programs for employers so that a fair recruitment screening system can be established for ensuring equal job opportunities. In addition, labor-related laws and regulations are applied to all the workers employed for a business in Japan, regardless of their nationality.

232. Medical care is provided equally to all the people in Japan, regardless of their nationality. Details of Japan's society security program are as stated in paragraph 236.

233. Regarding school education, in the case that the children of foreign nationals, including Korean Residents in Japan, wish to attend public compulsory education schools, they are accepted free of charge, and can enroll at a school for foreign nationals if they wish to.

234. Details of the exercise of political rights are as stated in paragraph 223 to 225.

235. Under the High School Tuition Support System, students attending schools eligible for the system under the relevant laws and regulations are eligible for it regardless of their nationality as far as they reside in Japan. North Korean schools are currently not eligible for the Support System as they are not confirmed to meet the criteria stipulated by the relevant laws and regulations. The decision was made based on the relevant laws and regulations, and has nothing to do with the nationality of students or political or diplomatic considerations.

236. Any foreigners who stay legally in Japan are eligible for Japan's social security system including the National Pension scheme. Consequently, the principle of the National Pension scheme in Japan is that the pension is paid to all the people, including foreigners, who have contributed insurance premiums. There is no discrimination by nationality.