Ministry of Foreign Affairs
Tokyo, Japan

30 November, 2018

Ms. Suela Janina
Distinguished Chair of the Committee
on Enforced Disappearances

Dear Ms. Janina,

On 19 November 2018, the Committee published concluding observations after a dialogue held on 5 and 6 November 2018 on the report submitted by the Government of Japan (GOJ). The GOJ would like to express its grave concerns and strongly protest the findings of the concluding observations, as they do not sufficiently reflect explanations made by the Japanese delegation during the consideration of Japan's report.

While the concluding observations refer to descriptions of our legislation, such as the Penal Code and the Code of Criminal Procedure, as well as the comfort women issue, they include grave factual errors in no small measures and ignore our explanations at the dialogue and comments which the GOJ sent to the Committee before its release. Please see the attached fact-sheet for more details.

First and foremost, it is inappropriate to take up the comfort women issue in the consideration of the Government report regarding the state of implementation of the Convention since the Convention does not apply retroactively to any issues that occurred prior to its entry into force. Article 35 (1) of the Convention states that "The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention." While the GOJ understands that the Committee emphasizes continuous nature of the crime of enforced disappearance and the rights of victims to justice, the way that the Committee takes up the issue which happened more than 70 years ago without indicating any evidence is questionable in itself. As for the rights of victims, the GOJ has explained during the consideration that victims are eligible for reparations if there are reasonable grounds.

Despite this fact, the GOJ thoroughly and sincerely explained the result of a fact-finding study on comfort women conducted by the GOJ during the 1990s, and the reason behind why the widespread belief that comfort women were "forcefully taken away" is a fabricated story, as requested by members of the Committee. Nevertheless, paragraphs 25 and 26 of the concluding observations still refer to the comfort women issue in a one-sided manner based on fundamental misunderstanding and prejudice without showing any substantial grounds. This should be regarded as a matter of grave concern.

The GOJ would like to point out three main points on the comfort women issue with regard to the concluding observations. Firstly, it is a grave error for the Committee to make observations and recommendations on the assumption that the comfort women are subject to enforced disappearance as stipulated under the Article 2 of the Convention. The Committee should provide proper evidence in making such observations and recommendations. In other words, it is extremely inappropriate to include such reference without showing any substantial grounds. The GOJ requests the Committee to provide us the answers to the above question based on explicit legal grounds.

Secondly, it is also extremely inappropriate for the Committee to express its regret regarding the agreement between the GOJ and Government of the Republic of Korea (ROK) that the issue "is resolved finally and irreversibly". This disregards sincere efforts made by the both governments. Moreover, the observations do not take into account the background leading up to the agreement, specifically that both governments reached the agreement as a result of considerable diplomatic efforts, and that the agreement was widely welcomed by the international community, including the then Secretary General of the United Nations. Last but not least, the recommendations for the GOJ lack balance compared with those in the concluding observations on reports submitted on other countries.

Accordingly, the GOJ has no choice but to state that the way the Committee published the one-sided recommendations without addressing the GOJ's concerns lacks the impartiality required for the UN, and is extremely unfair to the State Party which has implemented the Treaty and has conducted its own examination in a sincere manner. Committees belonging to the UN Human Rights Treaty Bodies, including the Committee on Enforced Disappearances, should formulate and publish concluding observations that fully take into account reports submitted by the State Parties as well as their explanations during dialogues. The GOJ, in this regard, cannot help but conclude that the consideration of Japan's report as well as the concluding observations have taken place based only on information from limited and specific certain sources. The GOJ believes that additional efforts on the side of the Committee are crucial to ensure that the consideration is conducted in a fair manner.

Sincerely,

Yoshifumi Okamura
Representative
of the Government of Japan
Ambassador Extraordinary
and Plenipotentiary for Human Rights
Ministry of Foreign Affairs of Japan