

## **Fact-sheet: Position of the Government of Japan (GOJ) with regard to the concluding observations by the Committee on Enforced Disappearances (CED) on the report submitted by Japan under article 29 (1) of the Convention**

### **1. Jurisdiction over offences of enforced disappearance (art. 9) (concluding observations para 21 and 22)**

The Penal Code of Japan explicitly establishes extraterritorial jurisdiction over all the offence of enforced disappearance.

### **2. Reporting and investigating cases of enforced disappearances (art. 11 and 12) (concluding observations para 23 and 24)**

(1) Article 239 of the Code of Criminal Procedure provides “any person who believes that an offense has been committed may file an accusation”<sup>1</sup>. Therefore, any individual is able to report an alleged enforced disappearance to the competent authorities, irrespective of his/her relationship to the disappeared person.

(2) Article 189 of the Code of Criminal Procedure provides “a judicial police official shall, when he/she deems that an offense has been committed, investigate the offender and evidence thereof”<sup>2</sup>. Accordingly, police officers have no discretion whether to investigate or not but have to initiate investigation.

(3) There is no limit or exception in the course of executing a search warrant. Therefore, all places of detention or any other place where there are grounds to believe that a disappeared person may be present is subject to unconditional search with a warrant.

(4) Japan has no military jurisdiction, and all cases of enforced disappearance are under the ordinary courts’ jurisdiction.

### **3. The situation of the so-called “comfort women” victims of enforced disappearance (art. 1, 8, 12, 24 and 25) (concluding observations para 25 and 26)**

(1) Since the Convention does not apply retroactively to any issues that occurred prior to its entry into force, the GOJ considers that the comfort women issue should not be taken up in the examination of the government report regarding the state of

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<sup>1</sup> See Annex to the report submitted by Japan under article 29 (1) of the Convention.

<sup>2</sup> See Annex to the report submitted by Japan under article 29 (1) of the Convention

implementation of the Convention. Having said that, no “complaint” pursuant to Article 12 of the Convention, including the comfort women issue, has been raised against the GOJ to date.

(2) The GOJ has conducted a full scale fact-finding study on the comfort women issue in the early 1990s. This fact-finding study included 1) research and investigation on related documents owned by relevant ministries and agencies of the GOJ, 2) searching documents at the U.S. National Archives and Records Administration, 3) hearings of relevant individuals including former military parties and managers of comfort stations and 4) analysis of testimonies collected by the Korean Council, a Korean NGO. However, “forceful taking away” of comfort women by the military and government authorities could not be confirmed in any of the documents that the GOJ was able to identify in this.

(3) Every single result of such study is disclosed to the public and accessible on the internet through the websites of related government organizations as well as the Asian Women’s Fund (AWF)<sup>3</sup>. There is no ground for criticism that the GOJ is concealing related facts and materials on the comfort women issue.

(4) We believe that there is some widespread misunderstanding on the comfort women issue. The reason behind such belief that the comfort women were “forcefully taken away” is a fabricated story by the late Seiji Yoshida in his book entitled “My War Crime” published in 1983. In this book, Yoshida illustrates himself hunting many women by order of the Japanese military in Jeju Island of the Republic of Korea (ROK). At the time, the content of his book eventually made a tremendous impact not only on public opinion in Japan and the ROK, but also in the entire international community. The reality is, Yoshida’s story has later been proven by scholars to be entirely a product of imagination. In fact, a major Japanese newspaper which actively reported this book as if it were a true story later admitted to having published erroneous articles, and officially apologized for it to their readers<sup>4</sup>. This background is not widely known. The comfort women issue should be discussed or assessed based on all the objective facts.

(5) The expression “comfort women who may have been subjected to enforced

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<sup>3</sup> Asian Women’s Fund. *Digital Museum: The Comfort Women Issue and the Asian Women’s Fund*. Retrieved on 26 Nov. 2018. <http://awf.or.jp/e6/index.html>

<sup>4</sup> Asahi Shimbun (22 Aug. 2014). *Testimony about 'forcible taking away of women on Jeju Island': Judged to be fabrication because supporting evidence not found*. Retrieved on 26 Nov. 2018. <https://www.asahi.com/articles/SDI201408213563.html>

disappearance” was used in the concluding observations. The GOJ understands that such observation by the Committee is based on the premise of the possibility of “comfort women” being subject to victims of enforced disappearance. Nevertheless, if the Committee gives such observation, it is necessary for the Committee to provide adequate evidence in drawing such conclusions.

(6) Also, with regard to the clause in paragraph 25, which states “It is further concerned at the lack of adequate reparations to the victims in accordance with article 24 (5) of the Convention”, no “complaint” pursuant to article 12 of the Convention has been made in the first place. In addition, the GOJ has sincerely dealt with issues of reparations, property and claims pertaining to the Second World War under the San Francisco Peace Treaty, which the GOJ concluded with 45 countries, including the United States, the United Kingdom and France, and through other bilateral treaties, agreements and instruments. These issues, including those of claims of individuals, have already been legally settled with the parties to these treaties, agreements and instruments. (With regard to the ROK, it was confirmed in the 1965 Agreement on the Settlement of Problems concerning Property and Claims and on Economic Cooperation between Japan and the Republic of Korea that the issues concerning property and claims “have been settled completely and finally.” The GOJ, in accordance with the said Agreement, provided 500 million US dollars to the ROK as economic cooperation.)

(7) Additionally, since the 1990s, the GOJ and Japanese nationals have extended its utmost cooperation to the projects of the AWF, which provided “medical and welfare support projects” and “atonement money” (totaling of 5 million yen per person in the ROK and Taiwan as well as 3.2 million yen per person in the Philippines) to offer material relief to former comfort women. When atonement money as well as the medical and welfare support were provided, the then-prime ministers (namely, PM Ryutaro Hashimoto, PM Keizo Obuchi, PM Yoshiro Mori and PM Junichiro Koizumi), sent a signed letter expressing apologies and remorse directly to each former comfort woman. As a result, 285 former comfort women (211 persons in the Philippines, 61 persons in the ROK, 13 persons in Taiwan) received funds. As a result of such efforts, the 1998 Japan-ROK Joint Declaration—A New Japan-Republic of Korea Partnership towards the Twenty-first Century — called upon both countries “to build a future-oriented relationship based on reconciliation as well as good-neighborly and friendly cooperation.”

(8) Despite such efforts, the comfort women issue became a political matter between

the two countries. The GOJ and the Government of the ROK held intensive consultations on this issue toward an early conclusion to realize the healing of the former comfort women. Both countries held a meeting on December 28, 2015, and finally reached an agreement on this issue. With this agreement, the two governments confirmed that the comfort women issue is “resolved finally and irreversibly” and that the two governments will refrain from accusing or criticizing each other regarding this issue in the international community, including at the United Nations. In addition, in accordance with the agreement, the Government of the ROK established a foundation for the purpose of providing support for former comfort women and the GOJ contributed 1 billion yen to the foundation.

(9) This Japan-ROK agreement was welcomed by the international community, including Mr. Ban Ki-moon, then Secretary-General of the United Nations<sup>5</sup>, and the Government of the United States of America, as well as highly appreciated by the media in the European and American countries, including the New York Times. In addition, the agreement was also received positively by many former comfort women in the ROK. It is thus important that the agreement is steadily implemented for the sake of former comfort women who are now in their advanced years.

(10) As stated in the Statement by the Prime Minister of Japan issued in 2015, that we will engrave in our hearts the past, when the dignity and honour of many women were severely injured during wars in the 20th century. Japan is determined to lead the world in making the 21st century an era in which women’s human rights are not infringed upon.

#### **4. Expulsion, return, surrender and extradition mechanisms (art. 13 and 16) (concluding observations para 29)**

(1) The Convention is, as a matter of course, not applicable to States which are not the party. Therefore, the GOJ shall not be blamed for such obstacles to extradition.

(2) It is very common for countries in the international community to require assurance of the principle of reciprocity in the absence of an extradition treaty. Indeed, not only Japan but also the other countries require this principle as well. Therefore, this requirement is not an obstacle to extradition.

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<sup>5</sup> United Nations Secretary-General (28 Dec. 2015). *Statement attributable to the Spokesman for the Secretary-General on the agreement between Japan and the Republic of Korea on issues related to 'comfort women'*. Retrieved on 29 Nov. 2018. <https://www.un.org/sg/en/content/sg/statement/2015-12-28/statement-attributable-spokesman-secretary-general-agreement-between>

**5. Fundamental legal safeguards (art. 17) (concluding observations para 31 and 32)**

- (1) Under the Code of Criminal Procedure, any suspect in custody can have an access to and correspond with a lawyer with no restriction, prohibition nor examination<sup>6</sup>.
- (2) Under the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees and its related ordinances, when the suspect cannot bear the financial cost of translation or interpretation, the Prefecture supports the cost if it is necessary. Article 39 para (1) of Code of Criminal Procedure provides “the accused or the suspect in custody may, without any official being present, have an interview with, or send to or receive documents or articles from counsel or prospective counsel upon the request of a person entitled to appoint counsel”<sup>7</sup>.

**6. Registers of persons deprived of liberty (art. 17, 18, 20 and 22) (concluding observations para 35 and 36)**

- (1) Custodial records in Japan cover all the information set forth in article 17 of the Convention and such information shall be updated promptly<sup>8</sup>.
- (2) Any responsible officials who fail to record a deprivation of liberty, refuse to provide information or provide inaccurate information in violation of his/her official obligation is subject to disciplinary sanctions and may be subject to criminal punishment when conducting intentionally.

**7. Measures to provide reparation and to protect children against enforced disappearance (art. 24 and 25) (concluding observations para 39)**

- (1) Although the “victim” in the Code of Criminal Procedure appears not to be literally fully mirroring the text of the Convention, prosecutors provides sufficient information and measures for “victims” in practice when requested by the victim himself/herself.
- (2) The GOJ believes that the concluding observations sent from the Committee are not reasonable, as they do not reflect explanations by the GOJ and related legislation submitted before the consideration of Japan’s report.

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<sup>6</sup> See Annex 13 to the replies of Japan to the List of Issues.

<sup>7</sup> See Annex 13 to the replies of Japan to the List of Issues

<sup>8</sup> See Annex 18 to the replies of Japan to the List of Issues