



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

**Second periodic report of States parties due in 2011,
submitted in response to the list of issues (CAT/C/JPN/Q/2)
transmitted to the State party pursuant to the optional
reporting procedure (A/62/44, paras. 23 and 24)**

Japan^{*}, ^{}, ^{***}**

[18 July 2011]

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- * The initial report submitted by the Government of Japan is contained in document CAT/C/JPN/1; it was considered by the Committee at its 767th and 769th meetings, held on 9 and 10 May 2007 (CAT/C/SR.767 and 769). For its consideration, see CAT/C/JPN/CO/1.
 - ** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.
 - *** Annexes can be consulted in the files of the Secretariat.

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I. Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

Reply to the issues raised in paragraph 1 of the list of issues (CAT/C/JPN/Q/2)

1. Under the Penal Code of Japan, the acts of torture mentioned in the Convention (including attempts and complicity) fall under crimes of assault and cruelty by special public officers, crimes of assault and cruelty causing death or injury by special public officers, etc., and also fall under, depending on the content of the acts, various crimes under the Penal Code and other laws., or complicity in those crimes, including crimes of abuse of authority by public officers, crimes of assault, crimes of injury, crimes of abandonment, crimes of unlawful capture and confinement, and crimes of intimidation, as well as crimes of homicide, crimes of forcible indecency, crimes of rape, and crimes of compulsion, and attempts at those crimes. As they are thus covered under various provisions of crime, further measures have not been taken to provide new definitions of torture into Japan's domestic law.

2. Regarding mental torture, acts causing emotional distress to a detainee committed by a guard, etc. are considered as crimes of assault and cruelty by special public officers. In this manner, acts of mental torture are also punishable, depending on the different actors, forms, results, etc., as crimes of abuse of authority by public officers, crimes of abuse of authority by special public officers, crimes of unlawful capture and confinement, crimes of intimidation, crimes of compulsion, crimes of forcible indecency, crimes of rape and so forth. (For their penalties, see "Reference 1" below).

3. In addition, if a person commits an act that falls under complicity or participation in these crimes, he/she is punishable pursuant to the provisions of complicity under the current Penal Code, irrespective of whether he/she is a public officer or not (the provisions on complicity in the Penal Code is as in "Reference 2" below). Therefore, the Penal Code of Japan covers all individuals acting in an official capacity. Such individuals include public officials (regardless of their types or categories) as well as individuals acting under instigation, consent or acquiescence of public officials and other individuals acting in an official capacity.

Reference 1

- *Penal Code*

(Abuse of authority by public officers)

Article 193. When a public officer abuses his or her authority and causes another to perform an act which the person has no obligation to perform, or hinders another from exercising such person's right, imprisonment with work or imprisonment without work for not more than 2 years shall be imposed.

(Abuse of authority by special public officers)

Article 194. When a person performing or assisting in judicial, prosecutorial or police duties, abuses his or her authority and unlawfully captures or confines another, imprisonment with or without work for not less than 6 months but not more than 10 years shall be imposed.

(Assault and cruelty by special public officers)

Article 195. When a person performing or assisting in judicial, prosecutorial or police duties commits, in the performance of his or her duties, an act of assault or physical or mental cruelty upon the accused, suspect or any other person, imprisonment with or without work for not more than 7 years shall be imposed.

(Abuse of authority causing death or injury by special public officers)

Article 196. A person who commits a crime prescribed under the preceding two Articles and thereby causes the death or injury of another shall be dealt with by the punishment prescribed for the crimes of injury or the preceding two Articles whichever is greater.

(Unlawful capture and confinement)

Article 220. A person who unlawfully captures or confines another shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.

(Intimidation)

Article 222. A person who intimidates another through a threat to another's life, body, freedom, reputation or property shall be punished by imprisonment with work for not more than 2 years or a fine of not more than 300,000 yen.

2. The same shall apply to a person who intimidates another through a threat to the life, body, freedom, reputation or property of the relatives of another.

(Compulsion)

Article 223. A person who, by intimidating another through a threat to another's life, body, freedom, reputation or property or by use of assault, causes the other to perform an act which the other person has no obligation to perform, or hinders the other from exercising his or her rights, shall be punished by imprisonment with work for not more than 3 years.

2. The same shall apply to a person who, by intimidating another through a threat to the life, body, freedom, reputation or property of the relatives of, another causes the other to perform an act which the other person has no obligation to perform, or hinders the other from exercising his or her rights.

3. An attempt of the crimes prescribed under the preceding two paragraphs shall be punished.

(Forcible indecency)

Article 176. A person who, through assault or intimidation, forcibly commits an indecent act upon a male or female of not less than thirteen years of age shall be punished by imprisonment with work for not less than 6 months but not more than 10 years. The same shall apply to a person who commits an indecent act upon a male or female under thirteen years of age.

(Rape)

Article 177. A person who, through assault or intimidation, forcibly commits sexual intercourse with a female of not less than thirteen years of age commits the crime of rape and shall be punished by imprisonment with work for a definite term of not less than 3 years. The same shall apply to a person who commits sexual intercourse with a female under thirteen years of age.

Reference 2

- *Penal Code*

(Co-principals)

Article 60. *Two or more persons who commit a crime in joint action are all principals.*

(Inducement)

Article 61. *A person who induces another to commit a crime shall be dealt with in sentencing as a principal.*

(Accessoryship)

Article 62. *A person who aids a principal is an accessory.*

2. *A person who induces an accessory shall be dealt with in sentencing as an accessory.*

(Reduced punishment for accessories)

Article 63. *The punishment of an accessory shall be reduced from the punishment for the principal.*

(Complicity and status)

Article 65. *When a person collaborates in a criminal act in which the status of the criminal establishes the criminal's punishability, the person is an accomplice even without such status.*

(2) *When the gravity of a punishment varies depending upon whether or not a criminal has a certain status, a normal punishment shall be imposed on a person without such status.*

Article 2**Reply to the issues raised in paragraph 2 (a) of the list of issues**

4. The Japanese police continue to thoroughly separate the functions of investigation and detention, as they have done in the past and which was put into statutory form in the Act on Penal Detention Facilities and Treatment of Inmates and Detainees which came into force in 2007. In addition, the Japanese police act giving due consideration to human rights through operation of (i) a system whereby the officials of the National Police Agency or Prefectural Police Headquarters regularly conduct inspections of detention facilities, (ii) a system whereby the Detention Facilities Visiting Committee inspects detention facilities and issues a statement of its opinion with regard to detention services, and (iii) a system to deal with appeals filed by detainees, etc.

5. In addition, the following are implemented as specific measures for separating the functions of investigation and detention: (i) prohibiting investigators from entering detention facilities, (ii) requiring the approval of the detention supervisor when having a detainee leave or enter a detention facility for investigation and having the detention supervisor record each exit or entry with the time of the detainee's going out of and entering the detention facility, (iii) when an interrogation continues even after bedtime or mealtimes, having the detention supervisor request that the investigation supervisor consider discontinuing the interrogation, (iv) making it a principle for detainees to have their meals within detention facilities and prohibiting investigators from allowing detainees to have meals in interrogation rooms, etc., and (v) transferring detainees on the detention

supervisor's responsibility, and designating persons in the detention division (when it is impossible to make up the needed escort system only from persons in the detention division, persons who belong to a division not responsible for investigations in principle) as escort officers and not allowing the designation of persons engaged in an investigation pertaining to the detainee as escort officers. Thereby, it is thoroughly guaranteed that only detention officers who belong to a division not responsible for investigations oversee the treatment of detainees.

Reply to the issues raised in paragraph 2 (b) of the list of issues

6. With regard to the custody of suspects prior to indictment, the Code of Criminal Procedure of Japan requires strict judicial reviews at each stage of the arrest, detention, and extension of the detention period, as well as placing limits on the total period of detention for up to 23 days so that while guaranteeing the human rights of suspects, investigations to reveal sufficiently the true facts of cases can be performed. The content of the provisions of the said Act is appropriate and rational.

Reply to the issues raised in paragraph 2 (c) of the list of issues

7. The Code of Criminal Procedure of Japan guarantees the right for all suspects to obtain defense counsel. In addition, in October 2006, a system was introduced whereby a court-appointed counsel is assigned in cases where a suspect's punishment is the death penalty, life imprisonment with or without labor, or imprisonment with or without labor for a term of more than one year, if the detained suspect is unable to obtain defense counsel him/herself due to indigence or for other reasons. Moreover, in May 2009, cases covered by the system were expanded, and now include cases where a suspect is liable for punishment by imprisonment with or without labor for more than three years. Thereby, it has become necessary to appoint a court-appointed counsel from the suspect stage for all cases for which the appointment of a defense counsel is required, under certain requirements.

Reply to the issues raised in paragraph 2 (d) of the list of issues

(a) Access to a defense counsel

8. Article 39(1) of the Code of Criminal Procedure of Japan guarantees suspects in custody the right to an interview with, or to send to or receive documents or articles from, their defense counsel, and detainees in detention facilities are in principle guaranteed access to their defense counsel. Paragraph (3) of said Article stipulates that a public prosecutor, etc. may, only "when it is necessary for investigation," designate the date and time, etc. of the interview, from the perspective of coordination with the necessity of investigation, including interrogation. However, it is understood that such designation is limited to cases in which the interruption of an interrogation, etc. would cause notable obstacles to the investigation, and that, in the event of designation, a public prosecutor has to designate the date and time for realizing the interview as promptly as possible through consultation with the defense counsel, etc.

9. In addition, the proviso to the said paragraph provides that "such designation shall not unduly restrict the rights of the suspect to prepare for defense." Moreover, where a suspect is dissatisfied with the exercise of the right to designate an interview by a public prosecutor, he/she may request the judge for the rescission of or a change to the disposition (Article 430(1) of the said Act). Thereby, a judicial review procedure is available.

(b) Presence of a defense counsel during interrogation

10. In criminal judicial proceedings in Japan, the interrogation of suspects is an essential means of clarifying the true facts of a case, and it plays an extremely important role therein.

Regarding the presence of defense counsel during an interrogation, careful consideration would appear to be necessary as there are, for example, the following problems:

(a) The essential function of an interrogation — interrogators face suspects and clarify the true facts of cases by obtaining statements of truth from the suspects while establishing a relationship of trust through hearing and persuasion— could be inhibited;

(b) Interrogators would be unable to question suspects sufficiently so as to prevent the details of the various investigation methods and information sources, etc. from being known to defense counsels;

(c) If the presence of a defense counsel were to be required for an interrogation, it would be difficult to perform the interrogation promptly and sufficiently within the limited period of custody.

Reply to the issues raised in paragraph 2 (e) of the list of issues

11. Under the Code of Criminal Procedure of Japan, a public prosecutor shall give the accused and his/her defense counsel an opportunity, in advance, to inspect the documentary or material evidence for which he/she requests examination (Article 299(1)). In addition, through the 2004 revision of the Code of Criminal Procedure, provisions on the disclosure of evidence were developed from the perspective of enriching and speeding up criminal proceedings. Thereby, a system for disclosing the necessary and sufficient evidence for organizing the points at issue and preparing for the defense of the accused was introduced. Due to these provisions, the public prosecutor has to disclose to the accused and his/her defense counsel (i) evidence of a certain category which is important for judging the credibility of particular evidence for examination requested by the public prosecutor and (ii) evidence which is connected to the allegation revealed by the accused or his/her defense counsel, in pretrial arrangement proceedings, etc. when disclosure is deemed appropriate considering the necessity for and harmful effects of disclosure. If there is a dispute over the necessity for disclosure, the court shall make a ruling.

Reply to the issues raised in paragraph 2 (f) of the list of issues

12. With regard to medical measures for detainees, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that the necessary medical measures shall be taken, including health examinations for detainees to be implemented by the doctors who are commissioned by detention services managers at a frequency of approximately twice a month and giving detainees prompt medical treatment by the doctors at public expense where the detainees are injured or suffering from disease. Operations are carried out in line with these provisions.

13. Specifically, the total number of detainees who received a periodic health examination from the doctors nationwide was 265,398 in 2007, 249,951 in 2008, and 253,669 in 2009.

14. In addition, the number of times detainees received medical treatment from the doctors nationwide was 243,309 in 2007, 243,302 in 2008, and 244,359 in 2009.

Reply to the issues raised in paragraph 2 (g) of the list of issues

15. In Japan, the principle is voluntary investigation. The arrest and detention of a suspect is conducted within a very limited scope and after going through an advance review by a judge. In addition, a sufficient level of judicial review is also conducted during a short pre-indictment detention period, and there is also a release measure in cases where it is necessary. Therefore, we believe that there is no need to adopt measures beyond the current ones, including a pre-indictment bail system.

Reply to the issues raised in paragraph 3 of the list of issues

16. Under the Code of Criminal Procedure, pre-indictment detention is allowed only where there is probable cause to suspect that a suspect has committed a crime and the suspect is deemed likely to conceal or destroy evidence or to flee, etc. The advisability of a public prosecutor's request for detention and request for an extension of detention, etc. is determined by a judge taking all due consideration of the fundamental human rights of the suspect.

17. Even for cases over which there has been no dispute, the public prosecutor is to institute prosecution only where there is a high probability of achieving a conviction based on precise evidence, after collecting sufficient objective evidence as well as supportive evidence, without solely relying on confessions. Similarly, the public prosecutor also tries to prove crimes that a crime has been committed based on sufficient objective evidence during a trial. Therefore, convictions are not rendered "based primarily on confessions".

Reply to the issues raised in paragraph 4 of the list of issues

18. A Detention Facilities Visiting Committee is an organ composed of external third parties. It is established in each Prefectural Police Headquarters in order to increase the transparency of the operational status of detention facilities and ensure the appropriate treatment of detainees.

19. The members of a Detention Facilities Visiting Committee are appointed by each Prefectural Public Safety Commission from persons of proven integrity and insight who manifest their enthusiasm for the improvement of the administration of detention facilities. Specifically, a Committee is composed of a maximum of ten members consisting of professionals, such as attorneys, doctors, local government officials, university officials, local residents, etc. Out of 51 Detention Facilities Visiting Committees nationwide, all Committees have had an attorney as a member while 50 Committees have a doctor as a member as of June 2010.

20. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that each Committee member shall actually visit the detention facilities to understand the actual situation of the detention facilities through interviews with detainees and that the Committee shall then provide a statement of its opinions to the detention services managers. Furthermore, the said Act provides that the Chief of each Prefectural Police Headquarters shall make public an outline of the opinions expressed by the Committee and the measures taken by the detention services managers in response to those opinions. Each Committee actually carries out the inspection of detention facilities and interviews with detainees, etc. in a planned manner by voluntarily deciding which detention facilities to inspect, and also provides statements of its opinions to the detention services managers at the end of each fiscal year.

21. The Committees have submitted wide-ranging opinions to the detention services managers so far, including opinions on the installations at facilities, the treatment of detainees, and the working environment of detention officers. A more appropriate treatment of detainees has been achieved through measures that have been taken by the detention services managers in response to these opinions.

22. These opinions and the measures that have been taken by the detention services managers are open to public view on the website of each Prefectural Police Headquarters.

Reply to the issues raised in paragraph 5 of the list of issues

23. We think that it is not appropriate to adopt an immediate moratorium on executions for the following reasons: 1) that the majority of citizens in Japan consider that the death

penalty is unavoidable for extremely malicious/brutal crimes; and 2) that if executions are once suspended but are resumed thereafter, this will upset any expectations which those sentenced to death may have had about executions not taking place, and it could lead to rather inhumane consequences.

Reply to the issues raised in paragraph 5 (a) of the list of issues

(a) Pardon

24. A person sentenced to death may file an application for a pardon (special pardon, commutation of sentence, remission of execution of sentence), at any time, with the warden of the penal institution to which they are committed. The warden of a penal institution who has received such an application has to file a petition with the National Offenders Rehabilitation Commission, established in the Ministry of Justice, without fail. In response to this, the National Offenders Rehabilitation Commission must carry out an examination without fail.

25. There has been no case in which a person sentenced to death was granted a pardon since Japan's first report (2007).

(b) Suspension of execution

26. Grounds for suspension of an execution are insanity and pregnancy.

27. We are not aware of any cases in which an execution was suspended for a person sentenced to death.

Reply to the issues raised in paragraph 5 (b) of the list of issues

28. The accused is guaranteed the right to appeal in all criminal cases in Japan, although appeal against a death penalty sentence is not mandatory or automatic. In addition, a defense counsel and others are also entitled to the right to appeal a case unless it contravenes the explicit intention of the accused.

Reply to the issues raised in paragraph 5 (c) of the list of issues

29. A request for retrial, an order for commencement of retrial, or an application for a pardon does not necessarily lead to suspension.

30. However, where a request for a retrial is filed, the public prosecutor may decide to suspend the execution at his/her own discretion. In addition, the court may also decide to suspend the execution at its own discretion when an order for the commencement of a retrial has been rendered.

31. There has been no specific discussion on the system whereby a request for a retrial or an application for a pardon has had the effect of suspending an execution.

32. The execution of the death penalty is to be based on an order from the Minister of Justice. We understand that the remark made by the Minister of Justice was in essence to indicate that it is not desirable that the execution of the death penalty, which should, by its nature, be carried out strictly in accordance with a judicial determination, that is, a final and binding judgment, attract attention, and therefore be significantly publicized. Therefore, we consider that the remark should not be taken to mean that the current law should be revised.

33. The execution of the death penalty is to be based on an order from the Minister of Justice, and such an order is to be made within six months from the day on which the judgment became final and binding. However, the period from the filing of a request for retrial or an application for pardon, etc. until the termination of the relevant procedures and

the period until a judgment on a person who has been a codefendant becomes final and binding are not included in that period.

34. The Minister of Justice orders the execution of the death penalty only when it is found, after careful examination, that there are neither the grounds, etc. for suspending of the use of the death penalty, a retrial, nor an extraordinary appeal to the court of the last resort, nor any circumstance that makes a pardon reasonable, through a sufficiently careful examination of individual records.

Reference

- *Code of Criminal Procedure*

Article 475 (1) Death penalty shall be executed by the order of the Minister of Justice.

(2) The order set forth in the preceding paragraph shall be made within six months of the day on which the judgment becomes final and binding; provided, however, that the period from the filing of a demand for recovery of the right of appeal, a request for retrial, an extraordinary appeal to the court of the last resort, or an application or recommendation for pardon, etc. until the termination of the relevant procedures and the period until a judgment on a person who has been a codefendant becomes final and binding shall not be included in that period.

Reply to the issues raised in paragraph 5 (d) of the list of issues

35. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that a staff member of the penal institution shall, in principle, attend a visit to an inmate sentenced to death. However, measures such as the attendance of a staff member are not taken for visits by a counsel to an inmate sentenced to death for whom the court's order of commencement of a retrial has become final and binding, since the provisions of the law on unsentenced persons (the accused, in criminal cases) apply *mutatis mutandis* thereto.

36. In addition, for visits by a lawyer to an inmate sentenced to death for whom an order of commencement of a retrial has yet to become final and binding, measures such as the attendance of a staff member may be omitted at the discretion of the warden of each penal institution when certain requirements stipulated by law are satisfied. Therefore, we understand that the warden of each penal institution makes determinations in an appropriate manner on specific individual cases.

Reference

- *Act on Penal Detention Facilities and Treatment of Inmates and Detainees*

Article 121. The warden of the penal institution shall have a designated staff member attend at a visit to an inmate sentenced to death, or make a sound or video recording of it; provided, however, that this shall not apply in cases where there is a circumstance to be concluded that not having the attendance or the sound or video recording is appropriate in order to protect such legitimate interest of the inmate sentenced to death as arrangements for a lawsuit, and if such conclusion is deemed appropriate.

Article 123. The provisions of Articles 113, 118, 120, and 121 shall apply mutatis mutandis to the visits received by an inmate sentenced to death having the status as an unsentenced person. In this case, the phrase "under the following items" in paragraph (1) of Article 113 shall be read as "under the following items (limited to (b) under item (i) in the case of a visit by a defense counsel., etc.)"; the phrase "hinder adequate pursuance of correctional treatment for the sentenced person" in (d) under item (ii) of said paragraph shall be read as "cause destruction of evidence"; the phrase "the next

Section” in paragraph (1) of Article 120 shall be read as “the next Section and where receiving visit is not permitted by the provisions of the Code of Criminal Procedure”; the phrase “receive the visit” in paragraph (2) of said Article shall be read as “receive the visit except the cases where it is not permitted by the provisions of the Code of Criminal Procedure”; and the term “visit” in Article 121 shall be read as “visit (except those by a defense counsel, etc.).”

Reply to the issues raised in paragraph 6 of the list of issues

37. The Human Rights Protection Bill which aimed to establish an independent human rights institution was submitted to the Diet in March 2002, but was abandoned due to the dissolution of the House of Representatives in October 2003.

38. With regard to a new human rights remedy system, there are discussions concerning various issues such as the scope of human rights infringements eligible for remedy, measures to guarantee the independence of the new human rights institution, and details concerning the investigation authority. Therefore, at present, a new bill on the human rights remedy system has not yet been re-submitted to the Diet.

39. Japan is making the necessary preparations for establishing a national human rights institution that is independent of the government in order to realize more effective remedies for victims of human rights infringements.

Article 3

Reply to the issues raised in paragraph 7 of the list of issues

40. In Japan, the following system has been adopted in the past: where a person to be deported is likely to be subjected to torture in the country of which he/she is a national or citizen, he/she is not deported to the said country. In light of the Committee’s concluding observations, in 2009, the Immigration Control and Refugee Recognition Act (hereinafter referred to as the “Immigration Control Act”) was partially revised to put in the statutory form (Article 53(3)(ii) of the said Act) that countries to which a person to be deported shall not include any “State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture” as provided for in Article 3(1) of the Convention. The revised Immigration Control Act came into effect on July 15, 2009.

Reference

- *Immigration Control Act*

Article 53. Any person subject to deportation shall be deported to a country of which he/she is a national or citizen.

(2) If the person cannot be deported to such country as set forth in the preceding paragraph, such person shall be deported to any of the following countries pursuant to his/her wishes:

- (i) A country in which he/she had been residing immediately prior to his/her entry into Japan;*
- (ii) A country in which he/she once resided before his/her entry into Japan;*
- (iii) A country containing the port or airport where he/she boarded the vessel or aircraft departing for Japan;*
- (iv) A country where his/her place of birth is located;*

- (v) A country which contained his/her birthplace at the time of his/her birth;
- (vi) Any country other than those prescribed in the preceding items.
- (3) The countries set forth in the preceding two paragraphs shall not include any of the following countries.
- (i) The territories of countries prescribed in the Refugee Convention, Article 33, paragraph (1) (except for cases in which the Minister of Justice finds it significantly detrimental to the interests and public security of Japan);
- (ii) Countries prescribed in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3, paragraph (1).
- (3) (omitted)

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 3

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Reply to the issues raised in paragraph 8 of the list of issues

(a) Extradition

41. The number of cases in which Japan has carried out the extradition of fugitives at the request of foreign countries since the submission of the previous report is: two to the United States, one to the People’s Republic of China, and one to the Republic of Korea.

(b) Return or expulsion

42. We provide data for the period from 2007 to 2009 in Attachments 1-1 and 1-2.

43. Attachment 1-1 shows statistics on the method of deporting persons deported through deportation procedures.

44. With regard to the method of deporting, “deportation at the expense of the deported person” accounts for the largest portion, approximately 96% of the entirety. Therefore, the voluntary departure of persons to be deported is recognized. Foreign nationals who have no other choice but to be deported at government expense, including those without money, account for the majority of persons deported at government expense.

45. Attachment 1-2 shows statistics on the number of deported persons by grounds for deportation.

46. Looking at deported persons by grounds for deportation, over stay (Article 24(iv)(b) of the Immigration Control Act; stated as “Art. 24(iv)(b)” in the table; the same shall apply hereinafter) accounts for the majority, followed by illegal entry (Article 24(i) of the Immigration Control Act).

Reply to the issues raised in paragraph 9 (a) of the list of issues**(a) Procedures for applying for refugee recognition and objection procedures**

47. With regard to the acceptance of applications for recognition of refugee status and objections, translations of the relevant documents have been prepared into 15 or more languages. Applications for recognition of refugee status and objections even written in a foreign language are accepted without requiring the attachment of the Japanese translations thereof. In addition, efforts are being made to accept applications in an appropriate manner by giving consideration according to the situation of applicants, including allowing those who are under 16 years of age or those who are unable to appear due to a disease or on other grounds to apply for refugee recognition through a representative.

48. In all cases the inquiry into the facts by refugee inquirers and the oral presentment of opinions/questioning in objection procedures are carried out through an interpreter in order to understand assertions precisely. Moreover, in objection procedures, a refugee examination counselors system is adopted, as stated in 9(b), in order to ensure further appropriate procedures.

49. When issuing written notices denying the recognition of refugee status and certified copies of written decisions pertaining to objections, the content of the statements therein are explained through interpreters in each case. In addition, applicants are informed of the procedures to be followed in the case of dissatisfaction with any disposition, as stated in 9(c). Consideration is thus given to the right of access to the courts, etc.

(b) Deportation proceedings

50. Whether a country of destination conflicts with any of the provisions prohibiting deportation (clearly stipulated in Article 53(3) of the Immigration Control Act) set in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention Relating to the Status of Refugees is determined finally by the supervising immigration inspector after collecting relevant materials, for example, by obtaining the necessary statements at each stage of the deportation procedures, specifically, statements on the investigation into violations by an immigration control officer, examination by an immigration inspector, hearing by a special inquiry officer, and any investigation pertaining to an objection. In addition, in enforcing a written deportation order, the content thereof is accurately conveyed to the foreign national subject. In 2009, instructions were thoroughly reasserted to regional immigration offices so as to prevent omissions in the procedures for deciding on a destination, thereby continuously endeavoring to ensure appropriate handling.

51. Moreover, in September 2010, the Immigration Bureau of the Ministry of Justice and the Japan Federation of Bar Associations decided to take the opportunity of discussing problems concerning detention under the immigration control administration, and they agreed on the point that bar associations should provide free legal consultation to persons detained in immigration detention centers, etc. Based on this agreement, bar associations started providing free legal consultations, thereby making efforts to further facilitate detainees' access to attorneys and legal aid.

Reply to the issues raised in paragraph 9 (b) of the list of issues

52. The administrative appeal system is designed to promote a remedy for rights and interests through simple/prompt procedures, and it has qualities, such as simple procedures and low costs, which differ from legal proceedings. On the other hand, the organ engaged in any proceedings/determination is not a third-party organ which is completely independent of the parties to the dispute, but is, ordinarily, a disposition agency directly

involved in the case or the nearest higher administrative agency. An appeal against a denial of recognition of refugee status is also according to this principle.

53. On the premise of such an administrative appeal system, under the system of objection against a denial of recognition of refugee status, the Minister of Justice is to make a decision without fail on an appeal after hearing the opinions of refugee examination counselors who are third parties, in order to further secure the fairness/impartiality of the proceedings/determinations. In the case of dismissing an objection, etc., a summary of the opinions of refugee examination counselors is to be clearly stated in the statement of reasons.

54. Refugee examination counselors are appointed by the Minister of Justice from among persons of reputable character who are capable of making a fair judgment on objections against a denial of recognition of refugee status and who are intellectuals in an impartial position in wide-ranging fields, including the legal profession, those who have an academic background, and NGOs.

55. The purpose of the refugee examination counselors system is to further increase the accuracy, etc. of the finding of facts and to enrich the appeal procedures by having experts in various fields who have academic backgrounds in law or current international affairs, etc. from various angles. There seem to be quite a few minority opinions worth listening to, and it is more appropriate in some cases that each expert individually states his/her opinions in his/her own field. If the power to issue binding decisions is granted to refugee examination counselors, they will have to, by necessity, come to a single conclusion by majority vote whenever they cannot reach an agreement even after thorough discussion. Thus, it can be a mechanism that eliminates the opinions of minority experts or ignores the value of such opinions. Therefore, the Minister of Justice is to make a final judgment in reference to the opinions of refugee examination counselors.

56. Incidentally, the refugee examination counselors system has been in force since May 2005; however, there has been no case in which the Minister of Justice has made a judgment that is different from the opinions of the refugee examination counselors (the majority opinion in the cases on which refugee examination counselors were divided).

Reply to the issues raised in paragraph 9 (c) of the list of issues

57. When notifying an applicant of a denial of recognition of refugee status, the applicant is informed that he/she may file an objection against the denial of recognition of refugee status with the Minister of Justice if he/she is dissatisfied with the denial. In addition, an arrangement is made to secure an opportunity for judicial review by issuing a document that provides information about matters concerning the filing of an action for the revocation of an administrative disposition ((1) the person who is to stand as a defendant in an action for the revocation of the decision and (2) the statute of limitations for filing an action for the revocation of the decision) pursuant to the provisions of Article 46 of the Administrative Case Litigation Act.

58. In addition, when notifying a petitioner for an objection who has filed the aforementioned objection to a decision to the effect that the objection against a denial of recognition of refugee status is to be denied or dismissed, an arrangement is made to secure an opportunity for judicial review by issuing a document that provides information about matters concerning the filing of an action for revocation ((1) the person who is to stand as a defendant in an action for the revocation of the decision and (2) the statute of limitations for filing an action for the revocation of the decision) pursuant to the provisions of Article 46 of the Administrative Case Litigation Act.

59. Article 52(3) of the Immigration Control Act provides that an immigration control officer shall "have" a person of whom his/her stay in Japan has been denied and for whom a

written deportation order has been issued “deported promptly.” For the deportation of a person whose recognition of refugee status has been denied and for whom a written deportation order has been issued, such a person is informed of his/her right to file an objection, and implementation of the deportation is determined after thought has been given to the process of procedures for a considerable period of time, giving consideration to the right of access to the courts, for example, by confirming whether the person to be deported intends to file an action against the disposition.

Reference

- *Administrative case litigation*

(Informing of matters concerning filing of actions for the revocation of administrative dispositions, etc.)

Article 46. When an administrative agency makes an original administrative disposition or administrative disposition on appeal against which an action for the revocation of an administrative disposition may be filed, it shall inform the person to whom the original administrative disposition or administrative disposition on appeal is addressed, in writing, of the following matters; provided, however, that this shall not apply where the administrative agency makes said original administrative disposition orally:

(i) The person who is to stand as a defendant in any action for the revocation of the administrative disposition against the original administrative disposition or administrative disposition on appeal;

(ii) The statute of limitations for filing an action for the revocation of an administrative disposition on the original administrative disposition or administrative disposition on appeal; and

(iii) If there is a provision in any Act that no action for the revocation of the original administrative disposition may be filed until an administrative disposition on appeal is made in response to a request for an administrative review of the original administrative disposition, such provision.

(2) Where an administrative agency makes an original administrative disposition which is subject to a provision in any Act that an action for the revocation of an administrative disposition may be filed only against an administrative disposition on appeal made in response to a request for an administrative review of said original administrative disposition, the administrative agency shall inform the person to whom the original administrative disposition is addressed, in writing, of such provision in the Act; provided, however, that this shall not apply where the administrative agency makes the original administrative disposition orally.

(3) Where an administrative agency makes an original administrative disposition or administrative disposition on appeal against which an action relating to an original administrative disposition or administrative disposition on appeal that confirms or creates a legal relationship between parties, wherein either party to the legal relationships shall stand as a defendant pursuant to the provisions of laws and regulations, may be filed, the administrative agency shall inform the person to whom the original administrative disposition or administrative disposition on appeal is addressed, in writing, of the following matters; provided, however, that this shall not apply where the administrative agency makes the original administrative disposition orally:

(i) The person who is to stand as a defendant in the action; and

(ii) The statute of limitations for filing the action.

- *Immigration Control Act*

(Enforcement of written deportation orders)

Article 52

(3) In enforcing a deportation order, an immigration control officer (including a police official or coast guard officer enforcing a written deportation order pursuant to the provisions of the preceding paragraph; hereinafter the same shall apply in this Article) shall show the deportation order or a copy of it to the foreign national subject to deportation and have him/her deported promptly to the destination provided in the following Article. However, the immigration control officer shall deliver him/her to a carrier if the foreign national is to be sent back via the carrier pursuant to the provisions of Article 59.

Reply to the issues raised in paragraph 9 (d) of the list of issues

60. The Immigration Control Act provides that when a written deportation order is issued, an immigration control officer shall have the foreign national subject to the written deportation order deported promptly, and that when the foreign national cannot be deported immediately, the immigration control officer may detain the foreign national until such time as deportation becomes possible. Thus, detention is carried out as a principle. The purpose of this detention is to secure custody prior to deportation and prohibit any activity during his/her stay.

61. However, the Immigration Control Act provides for a system of provisional release. Where a detainee, etc. applies for provisional release, the director of the immigration detention center or supervising immigration inspector shall decide whether to accord provisional release taking into consideration such matters as the circumstances of the detainee, evidence produced in support of the application for provisional release, and the character, assets, etc. of the detainee.

62. Provisional release should be decided on comprehensively taking into consideration the circumstances of individual detainees, and it is difficult to set uniform standards. However, for the reference of applicants for provisional release, matters taken into consideration in determining whether to accord provisional release are open to the public on the Immigration Bureau's website.

63. Incidentally, matters taken into consideration in determining whether to accord provisional release that are open on the Immigration Bureau's website are as follows:

- (a) Suspected offense and grounds for deportation of the detainee;
- (b) Reasons for applying for provisional release and evidence thereof;
- (c) Character, age, assets, behavior and conduct, and condition of the health of the detainee;
- (d) Family status of the detainee;
- (e) Detention period of the detainee;
- (f) Age, occupation, income, assets, behavior and conduct, relationship with the detainee, and willingness to take care of the detainee of a person who is to be an endorser;
- (g) Likelihood of detainee fleeing or violating conditions attached to provisional release;
- (h) Effects on the interests or public safety of Japan;
- (i) Existence of harm such as trafficking in persons;

- (j) Other special circumstances.

Articles 5 and 7

Reply to the issues raised in paragraph 10 of the list of issues

64. The Penal Code of Japan provides that it shall, according to the categories of crime, apply to crimes committed outside Japan. And it applies to all persons who committed crimes under the Penal Code which fall under acts of torture as defined in the Convention.

65. That is, Article 3 of the Penal Code provides that it applies to crimes of injury, crimes of forcible indecency, crimes of rape, crimes of unlawful capture and confinement, etc. committed by Japanese nationals outside Japan. Article 3-2 provides that the Penal Code shall apply to non-Japanese nationals who commit crimes of injury, crimes of forcible indecency, crimes of rape, crimes of unlawful capture and confinement, etc. against Japanese nationals outside Japan. In addition, Article 4 provides that the Penal Code shall apply to crimes of abuse of authority by public officers, crimes of assault and cruelty by special public officers, crimes of abuse of authority, etc. causing death or injury by special public officers, etc. committed by public officials of Japan outside Japan. Moreover, Article 4-2 of the Penal Code provides that even in cases where the aforementioned provisions of Penal Code are not immediately applicable, the Penal Code shall apply to anyone who commits those crimes prescribed in the Penal Code that are obliged under a treaty (which includes the Convention) to be punished when committed outside Japan.

66. On the other hand, there has been no case in which Japan rejected a request for extradition by a third State for an individual suspected of having committed an offense of torture and thus engaging its own prosecution as a result.

Reference

- *Penal Code*

(Crimes committed outside Japan)

Article 3. This Code shall apply to any Japanese national who commits one of the following crimes outside the territory of Japan:

(i) The crimes prescribed under Article 108 (Arson of Inhabited Buildings) and paragraph (1) of Article 109 (Arson of Uninhabited Buildings), and other crimes which shall be dealt with in the same manner as the preceding crimes provided therein, as well as an attempt of the above-mentioned crimes;

(ii) The crime prescribed under Article 119 (Damage to Inhabited Buildings by Flood);

(iii) The crimes prescribed under Articles 159 through 161 (Counterfeiting of Private Documents; Falsifying of Medical Certificates; Utterance of Counterfeit Private Documents) and the crime regarding electromagnetic records in Article 161-2 except that which shall fall within item (v) of the preceding Article;

(iv) The crimes prescribed under Article 167 (Counterfeiting or Unauthorized Use of Private Seals) and an attempt of the crimes prescribed under paragraph (2) of that Article;

(v) The crimes prescribed under Articles 176 through 179 (Forcible Indecency; Rape; Quasi Forcible Indecency and Quasi Rape; Gang Rape;

Attempts), 181 (Forcible Indecency Causing Death or Injury) and 184 (Bigamy);

(vi) The crime prescribed under Article 199 (Homicide) and attempt thereof;

(vii) The crimes prescribed under Articles 204 (Injury) and 205 (Injury Causing Death);

(viii) The crimes prescribed under Articles 214 through 216 (Abortion through Professional Conduct; Causing Death or Injury thereof; Abortion without Consent; Abortion without Consent Causing Death or Injury);

(ix) The crime prescribed under Article 218 (Abandonment by a Person Responsible for Protection) and the crime of 219 (Abandonment Causing Death or Injury);

(x) The crimes prescribed under Articles 220 (Capture; Confinement) and 221 (Unlawful Capture or Confinement Causing Death or Injury);

(xi) The crimes prescribed under Articles 224 through 228 (Kidnapping of Minors; Kidnapping for Profit; Kidnapping for Ransom; Kidnapping for Transportation out of a Country; Buying or Selling of Human Beings; Transportation of Kidnapped Persons out of a Country; Delivery of Kidnapped Persons; Attempts);

(xii) The crime prescribed under Article 230 (Defamation);

(xiii) The crimes prescribed under Articles 235 through 236 (Larceny; Taking Unlawful Possession of Real Estate; Robbery), 238 through 241 (Constructive Robbery; Robbery through Causing Unconsciousness; Robbery Causing Death or Injury; Rape on the Scene of Robbery; Causing Death Thereby), and 243 (Attempts);

(xiv) The crimes prescribed under Articles 246 through 250 (Fraud; Computer Fraud; Breach of Trust; Quasi Fraud; Extortion; Attempts);

(xv) The crime prescribed under Article 253 (Embezzlement in the Pursuit of Social Activities);

(xvi) The crimes prescribed under paragraph (2) of Article 256 (Acceptance of Stolen Property).

(Crimes committed by non-Japanese nationals outside Japan)

Article 3-2. This Code shall apply to any non-Japanese national who commits one of the following crimes against a Japanese national outside the territory of Japan.

(i) The crimes prescribed under Articles 176 through 179 (Forcible Indecency; Rape; Quasi Forcible Indecency and Quasi Rape; Gang Rape; Attempts), 181 (Forcible Indecency Causing Death or Injury);

(ii) The crime prescribed under Articles 199 (Homicide) and attempt thereof;

(iii) The crimes prescribed under Articles 204 (Injury) and 205 (Injury Causing Death);

(iv) The crimes prescribed under Articles 220 (Capture; Confinement) and 221 (Unlawful Capture or Confinement Causing Death or Injury);

(v) *The crimes prescribed under Articles 224 through 228 (Kidnapping of Minors; Kidnapping for Profit; Kidnapping for Ransom; Kidnapping for Transportation out of a Country; Buying or Selling of Human Beings; Transportation of Kidnapped Persons out of a Country; Delivery of Kidnapped Persons; Attempts);*

(vi) *The crimes prescribed under Articles 236 (Robbery), 238 through 241 (Constructive Robbery; Robbery through Causing Unconsciousness; Death or Injury on the Occasion of Robbery; Rape on the Scene of Robbery; Causing Death Thereby), and 243 (Attempts).*

(Crimes committed by public officials outside Japan)

Article 4. This Code shall apply to any public official of Japan who commits one of the following crimes outside the territory of Japan:

(i) *The crime prescribed under Article 101 (Assistance in Escape by a Guard) as well as an attempt thereof;*

(ii) *The crime prescribed under Article 156 (Making of False Official Documents);*

(iii) *The crimes prescribed under Article 193 (Abuse of Authority by Public Officials), paragraph (2) of Article 195 (Assault and Cruelty by Special Public Officials) and Articles 197 through 197-4 (Acceptance of Bribes; Acceptance on a Request; Acceptance in Advance; Passing of Bribes to a Third Party; Aggravated Acceptance; Acceptance after Resignation of Office; Acceptance for Exertion of Influence), and the crime of causing death or injury through commission of the crime prescribed under paragraph (2) of Article 195.*

(Crimes committed outside Japan governed by a treaty)

Article 4-2. In addition to the provisions of Article 2 through the preceding Article, this Code shall also apply to anyone who commits outside the territory of Japan those crimes prescribed under Part II which are governed by a treaty even if committed outside the territory of Japan.

Article 10

Reply to the issues raised in paragraph 11 of the list of issues

67. The police proactively provide education on human rights at the police schools for each rank and workplace.

68. Specifically, the police have newly recruited prefectural police officials acquire the necessary knowledge and skills for carrying out appropriate police activities with due consideration to fundamental human rights, at classes about the law, including the Constitution and the Code of Criminal Procedure, as well as police ethics, etc. through training at prefectural police schools for prefectural police which they are to receive without fail after their recruitment. In addition, the police also provide official education on international trends of human rights, including with regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), etc.

69. Moreover, education on various human rights issues, including the international trends in human rights, is also provided at each rank of official at the time of their promotion, through training at the National Police Academy or regional police school.

70. Furthermore, police officials who are exclusively engaged in such operations as criminal investigation, detention services, and victim assistance are educated to acquire the necessary knowledge, skills, etc. for appropriately performing their duties with due consideration to the human rights of suspects, detainees, victims, etc. according to the content of the specialized field in which they are engaged, respectively, through specialized education provided at a police school for each rank and in workshops held at Prefectural Police Headquarters, etc.

71. The police provide a steady stream of education on human rights in conformity with the Conventions as mentioned above. In addition, with regard to making public materials related to the education curriculum, the police formulate “Implementation Guidelines on Education for Newly Recruited Prefectural Police Officers,” “Implementation Guidelines on Education for Newly Appointed Assistant Police Inspectors at Regional Police Schools and the Hokkaido Police School,” “Implementation Guidelines on Education for Newly Appointed Police Sergeant at Regional Police Schools and the Hokkaido Police School,” etc. as part of an educational curriculum that includes education on human rights, and make these guidelines public on the National Police Agency’s website (<http://www.npa.go.jp/pdc/notification/index.html>; available only in Japanese).

72. Moreover, the “Manual for Police Activities with Due Consideration to Human Rights” was newly prepared as an office material in March 2008, and has been distributed to the police nationwide.

73. In order to ensure the exercise of prosecutorial authority with full respect to the fundamental human rights, various types of training are provided to public prosecutors and other officials, according to their years of experience and so forth. An outline thereof is open to public view on the Ministry of Justice’s website (http://www.moj.go.jp/keiji/kanbou_kenji_04_index.html#b; available only in Japanese).

74. Lectures on human rights provided during such training sessions cover the content of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and so forth. And such lectures also cover the matters pointed out or recommended by the Committees of each Conventions, as well as ‘matters to be considered in practice with respect to children and women’.

75. See the answer to the next question, 12(a), with regard to other law enforcement officers.

Reply to the issues raised in paragraph 12 (a) of the list of issues

(a) Judges

76. We understand that the Legal Training and Research Institute, which is in charge of training judges, provides various lectures on subjects such as the application of various international laws, including the International Covenants on Human Rights, inviting professors at graduate schools who specialize in international human rights issues, officials of human rights organs (including international organs), etc., in the various types of training provided every year for judges who have assumed new duties or positions, including judges who have just been appointed.

(b) Public prosecutors

77. Lectures are provided in relation to the duties of public prosecutors, including those on “international conventions related to human rights” and “due consideration to children and women and prosecutorial practice” by inviting visiting lecturers or experts versed in various conventions/laws and regulations, etc. as lecturers, through various types of training provided according to their years of experience, etc., such as “training for newly appointed public prosecutors” targeting newly appointed public prosecutors and “general training for public prosecutors” targeting public prosecutors who have held their appointments for about three years.

(c) Immigration officials

78. Training is provided for officials serving at immigration offices nationwide who are in leadership positions in order to infuse them with expert knowledge, for example, by inviting lecturers regarding the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the provisions concerning women’s rights, etc. from outside.

79. In addition, officials who have participated in the said training inform their subordinate officials, etc. about the content of the training at the offices in which they serve.

(d) Correctional institution officials

80. Regarding education and training for correctional institution officials, as stated in paragraph 63 of the First Report of the Japanese Government, systematic and intensive collective training is provided based on the annual plan at the Training Institute for Correctional Personnel and its branches. In addition, various types of practical training are provided in each correctional institution according to the actual circumstances, etc. of each institution.

81. Many subjects related to human rights/ethics/duties are incorporated in such training in order to ensure that correctional institution officials respect human rights and prevent unjust treatment; and lectures and practical training are provided with regard to related domestic laws, international conventions, guidelines, etc. Teaching methods, training materials, lecturers, etc. are devised, for example, by introducing advanced private programs, in which behavioral science techniques are adopted, in human rights training, by distributing materials for human rights training prepared by the Training Institute for Correctional Personnel to correctional institutions, and by inviting external lecturers well-versed in human rights issues.

82. Since 2010, training to prevent improper treatment and increase the awareness of human rights of juveniles has been provided to middle-level supervisors who serve at juvenile training schools. This training includes lectures on the “treatment and human rights at juvenile training schools,” including the Convention on the Rights of the Child.

(e) Police officials

83. With regard to training for police officials, the police have them enter police schools and provide education at the time of recruitment targeting newly recruited prefectural police officials, education at the time of promotion for police officials promoted at each rank, specialized education targeting police officials who are exclusively engaged in such operations as criminal investigation, detention services, and victim assistance, and other education in a systematic and intensive manner.

84. In such education, the police have their officials acquire the necessary knowledge and skills for carrying out appropriate police activities with due consideration to fundamental human rights through classes about the law, including the Constitution and the Code of Criminal Procedure, as well as about police ethics, etc. In addition, the police also provide a steady stream of education on various human rights issues, including international trends of human rights, such as with respect to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), as well as education designed to have police officials acquire the necessary knowledge, skills, etc. for executing their duties in an appropriate manner with due consideration to the human rights of suspects, detainees, victims, etc. according to the content of their specialized fields, such as criminal investigation, detention services, and victim assistance.

Reply to the issues raised in paragraph 12 (b) of the list of issues

85. Although the Istanbul Protocol is not dealt with in particular, doctors who are still in the early days of their appointment to correctional institutions are to participate in training provided at the Training Institute for Correctional Personnel. In addition, newly appointed medical doctors are provided with training at correctional institutions to which they have been appointed. This training includes training on appropriate treatment giving due consideration to the human rights of inmates.

86. The training provided at the Training Institute for Correctional Personnel and correctional institutions is as mentioned in 12(a) above.

87. In addition, with regard to the treatment of detainees, internal regulations stipulate that appropriate treatment shall be provided according to the situation of each detainee while respecting the human rights of detainees and that attention shall be paid so as not to unfairly infringe the rights of detainees. Police officers to be appointed to a detention officer are given guidance on the appropriate treatment of detainees in line with said provisions through specialized training concerning detention services, at prefectural police schools, while senior police officers, etc. who supervise at Prefectural Police Headquarters the detention services of each police station are given such guidance at the National Police Academy and regional police schools.

Reply to the issues raised in paragraph 12 (c) of the list of issues

(a) Judges

88. We understand that the Legal Training and Research Institute, which is in charge of training judges, revises the training curriculum every year, based on the results of questionnaire surveys targeting the participants, etc. In addition, the institute invites experts who are well-versed and have reasonable profiles in the relevant fields on a case-by-case basis, taking into account their activities in academic societies, the content of their writings, etc.

(b) Public prosecutors

89. Training is provided as mentioned in 12(a) above. The content of such training is revised and improved based on feedback from questionnaire surveys submitted by those who participated in the training program.

(c) **Immigration officials**

90. Efforts are made to ensure that the latest and effective content is provided in the training by making requests to international organs, NGOs, etc. In addition, questionnaire surveys are conducted after the completion of the training so that the results can be used as a reference in formulating training programs for the next fiscal year.

(d) **Correctional institution officials**

91. With regard to the effect of the training, participants' level of understanding is measured through examinations, questionnaire surveys, reports, etc. according to the content, purpose, etc. of the training. The training is reviewed based on the results thereof as needed.

(e) **Police officials**

92. As mentioned in 11 and 12(a), the police also provide education on various human rights issues. With regard to the evaluation method for such education, the effect of the education is measured by such methods as examinations and questionnaire surveys, and the results are reflected in the content of future classes.

93. In carrying out an examination, for example, questions to precisely assess practical knowledge and the ability to make judgments and to put such knowledge into practice, which should be acquired through education, are set with regard to education on various human rights issues. The degree of understanding by police officials who have received the education is measured with certainty, with due consideration given to objective evaluation.

Article 11

Reply to the issues raised in paragraph 13 of the list of issues

94. The police set internal rules to establish the system for the supervision of interrogations by a department other than an investigation department in April 2008 in order to make interrogation techniques in investigations more appropriate. The rules came into effect in April 2009. In addition, the police aim at stricter management of the hours of interrogation, for example, by clearly stipulating in the internal rules that they shall avoid conducting interrogation late at night or over long periods of time unless there is an unavoidable reason. The police also added points to be kept in mind during an interrogation to the internal rules, such as the point that consideration shall be given to the hours, place, etc. of the interrogation of mentally or physically disabled persons and the point that an interrogation shall be conducted according to the characteristics of the persons subject to interrogation that are derived from their circumstances, personality, etc., for example, where the nature of the person subject to interrogation is shown as being easy to adjust his/her own opinions and behavior to please or flatter an interrogator, etc. Furthermore, in order that those outside can be made aware of the status of an interrogation, the interrogation environment has been developed by, for example, installing two-way mirrors, etc. in all interrogation rooms.

95. These measures to ensure the propriety of interrogation are promoted in an appropriate manner on a timely basis without setting the time of review, etc.

96. The public prosecutors office also took public measures for securing appropriate interrogation procedures at the public prosecutors office in April 2008 in order to secure further appropriate interrogation procedures, thereby stipulating the following: where a suspect has made a request for an interview with his/her defense counsel, etc. during interrogation, the public prosecutor shall immediately communicate with the defense

counsel, etc. to that effect; where a defense counsel, etc. has made a request for an interview with a suspect under interrogation, the public prosecutor shall give him/her the opportunity for an interview as soon as possible; interrogation shall not be conducted at midnight or over long periods of time; efforts shall be made to give a break during the interrogation at least every four hours; where, with regard to the interrogation of a suspect, the defense counsel, etc. of the suspect has made an overture or the suspect has made a statement of dissatisfaction, etc., the public prosecutor in charge of the final decision shall make him/herself aware of the content thereof and promptly conduct the required investigations and take any necessary measures. The public prosecutors office implements these measures.

97. These measures are also promoted in an appropriate manner on a timely basis without setting the time of review, etc.

Reply to the issues raised in paragraph 14 (a) of the list of issues

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

99. According to a survey conducted by the Supreme Public Prosecutors Office, between the period of April 2008 to March 2010, the number of cases for which part of interrogation was audio/video recorded at the public prosecutors office was 3,791. DVDs recording the status of interrogations were disclosed to defense counsels in accordance with the law, as written statement of the accused. The number of cases in which such DVDs were actually admitted into evidence in open court is 51 out of the aforementioned cases. Moreover, also according to a survey conducted by the Supreme Public Prosecutors Office, the number of cases in which measures for immediate communication with a defense counsel were taken, where a suspect made such a request for interview, was 1,090 for the period of four months from June to September 2010.

100. With regard to making the interrogation of suspects visible by the method of audio/video recording, there are ongoing surveys and discussions toward realization from wide-ranging perspectives.

Reply to the issues raised in paragraph 14 (b) of the list of issues

101. Article 38(2) of the Constitution provides that “[c]onfession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.” In response to this, Article 319(1) 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.” In this manner, legislation in Japan conforms to Article 15 of the Convention.

102. Internal police rules clearly stipulate that they shall avoid conducting interrogation late at night or over long periods of time unless there is an unavoidable reason, that when the interrogation of a suspect is conducted during the hours from 10:00 p.m. to 5:00 a.m. of the next day or when the interrogation of a suspect is conducted over eight hours in a single day, advance approval shall be obtained from a person responsible for the investigation, such as the Chief of the Police Station, and that when such interrogation has been conducted without the said advance approval, the interrogation shall be suspended or other measures shall be taken.

103. From 2008, the public prosecutors office sets the following as rules and implements them in order to secure further appropriate interrogation procedures: interrogation shall not be conducted at midnight or over long periods of time; efforts shall be made to give a break during an interrogation at least every four hours; where, with regard to the interrogation of a suspect, the defense counsel has filed complaint or the suspect has made a statement of dissatisfaction, the public prosecutor in a supervisory position shall be informed of the content thereof and promptly conduct required investigations as well as take necessary measures.

104. Although the documents involved in the incident of leakage of information at the Ehime Prefectural Police included a document titled “guidelines for interrogating suspects,” the document was not prepared either by the National Police Agency or by the Ehime Prefectural Police but was prepared by an individual.

105. The police have stipulated internal rules in the past that compulsion, torture, intimidation, or any other method that raises the suspicion of the lack of voluntariness of a deposition shall not be used in interrogations, thereby the police aim at ensuring appropriate interrogation.

Articles 12 and 13

Reply to the issues raised in paragraph 15 of the list of issues

106. A legal revision was conducted to abolish the statute of limitations for crimes that caused death which are punishable by the death penalty and to extend the period of the statute of limitations for crimes which are punishable by imprisonment with/without work. The revision was put into force in April 2010. Hereby, for example, the statute of limitations was abolished for crimes of homicide, and the period of the statute of limitations was extended from 10 years to 20 years for crimes of assault and cruelty causing death by special public officers and crimes of abuse of authority causing death by special public officers.

Reply to the issues raised in paragraph 16 (a) of the list of issues

107. No independent authority has been established to review complaints as of the present date.

108. The Immigration Bureau revised part of the Immigration Control Act in 2009, and in July 2010 newly established the “Immigration Detention Facilities Visiting Committee,” (hereinafter referred to as “the Committee” in this paragraph and paragraph 4) which is composed of outside intellectuals. This committee system is different from the appeal system under which the advisability of the treatment of individual detainees is examined. However, the Committee is composed of intellectuals, such as those who have an academic background, or who are from the legal profession, medical personnel, or NGO-related

persons, all of whom are third parties. The Committee inspects immigration detention centers, etc. or departure waiting facilities and conducts interviews with detainees, etc. in order to secure the transparency of security and treatment and to improve the administration of the facilities, including immigration detention centers, and also carries out activities to make statements of opinions to the directors of immigration detention centers, etc. on the basis of opinions/proposals from detainees, etc. which have been dropped into proposal boxes installed in immigration detention centers, etc. and departure waiting facilities. In order to secure the independence of the Committee, immigration officials do not attend interviews conducted by members of the Committee with detainees, etc. unless requested to do so by the Committee. Regarding opinions/proposals from detainees, etc. dropped into proposal boxes, the Committee members open the proposal boxes and collect documents directly. Detainees, etc. are able to bring opinions and proposals directly to the Committee without going through immigration officials.

109. In addition, in September 2010, the Immigration Bureau agreed with the Japan Federation of Bar Associations to have the opportunity to discuss measures, etc. for realizing a more desirable situation regarding various problems concerning detention in immigration control administration. As a part of this, the Immigration Bureau and the Japan Federation of Bar Associations agreed on the provision of free legal consultations, etc. by attorneys to detainees. Free legal consultations have already been provided. No immigration officials attend such free legal consultations, and when a detainee is dissatisfied with his/her treatment, he/she may file a complaint with the Japan Federation of Bar Associations, which is an independent authority.

110. The improvement of treatment at immigration detention centers, etc. is being promoted through such activities by the Committee and through efforts made in cooperation with the Japan Federation of Bar Associations. If it is determined in light of the status of such operations that it is necessary to establish an independent agency to review complaints, the establishment thereof will be considered.

Reply to the issues raised in paragraph 16 (b) of the list of issues

111. In response to the partial revision of the Immigration Control Act in 2009, “Immigration Detention Facilities Visiting Committee” (hereinafter referred to as “the Committee” in paragraphs 2 and 3) which is composed of outside intellectuals, was newly established in Tokyo and Osaka in July 2010, as a third-party organ which monitors the administration of immigration detention centers, detention houses, or departure waiting facilities (see Note) (hereinafter referred to as “immigration detention centers, etc.”).

112. Regarding the members of the Committee, 10 members were appointed from among persons of proven integrity and insight with enthusiasm for the improvement of immigration detention centers, etc. from a wide range of fields, including those who have an academic background, or who are from the legal profession, medical personnel, international agency-affiliated persons, NGO-affiliated persons, and local residents, in reference to the operation status, etc. of the Penal Institution Visiting Committee, etc.

113. As mentioned in 16(a), the Committee conducts the inspection of immigration detention centers, etc. and interviews with detainees, etc. and also states opinions to the directors of immigration detention centers, etc. based on opinions/proposals from detainees, etc. which have been dropped into proposal boxes installed in immigration detention centers, etc. in order to secure the transparency of security and treatment and improve the administration of facilities, including immigration detention centers. The directors of immigration detention centers, etc. will promote further improvements based on these opinions, etc.

114. When a member of the Committee interviews a detainee, etc., no immigration officials attend the interview unless requested to do so by the Committee. With regard to opinions/proposals from detainees, etc. dropped into proposal boxes, the Committee members open the proposal boxes and collect documents directly, thereby making it possible for detainees, etc. to bring opinions and proposals directly to the Committee without going through immigration officials.

Note: Landing prevention facilities have been referred as “departure waiting facilities” since July 2010 due to the revision of the Immigration Control Act in 2009.

Reply to the issues raised in paragraph 17 (a) of the list of issues

115. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees sets three appeal systems relating to detention facilities, specifically, Claim for Review of an act of disposition, etc. Report of Cases for illegal use of physical force against body, and the Filing of Complaints with regard to treatment in general.

116. Out of these systems, regarding the claim for review and the report of a case, if a detainee is dissatisfied with the determination on a complaint he/she has filed with the Chief of Prefectural Police Headquarters, he/she may file a reclaim for review with or report the case to the Prefectural Public Safety Commission. In this case, the Public Safety Commission may order the detention services manager to make a report and submit materials, and may have designated officials question the detainee who has filed the complaint and other related persons if it is necessary to conduct an inquiry of the content.

117. In addition, Prefectural Public Safety Commissions are established as collegial organs which represent the good sense of residents in order to guarantee the democratic administration of the prefectural police, and they administer the prefectural police from a third party standpoint. The members are appointed by the prefectural governor, with the consent of the prefectural assembly, from among persons who are eligible to run for election by the members of the prefectural assembly and who have not had a career as a professional public officer engaged in police or prosecutorial duties within five years prior to appointment. Therefore, a review of appeals by Prefectural Public Safety Commissions is implemented in an objective and fair manner from a third party standpoint.

118. Moreover, the said Act establishes three systems, specifically, Claim for Review, Report of Cases, and Filing of Complaints, as appeal systems relating to penal institutions as well. Out of these, regarding the claim for review and the report of cases where a person is dissatisfied with the determination, etc. by the Superintendent of the Regional Correction Headquarters, he/she may file a reclaim for review with and report the case to the Minister of Justice respectively.

119. With regard to the filing of a reclaim for review with and reporting of a case to the Minister of Justice, where the Minister of Justice intends to reject the reclaim filed by the claimant on the grounds that the reclaim is groundless, or where the Minister of Justice intends to notify that the reported case has not been recognized, the Minister shall consult with the Study Group on Review of Appeals Filed by Inmates of Penal Facilities which is composed of outside intellectuals (members), including jurists, attorneys, and medical doctors. Thereby, the fairness and impartiality of dispositions is secured.

120. The meeting of the said Study Group has been basically held twice a month since its first meeting on January 12, 2006, and 99 meetings in total have been held as of the end of October 2010.

121. At the said Study Group, all the materials requested by the members are provided to them, thereby securing the members' sufficient access to all related information so that they can perform their role effectively.

122. Incidentally, although the Penal Institution Visiting Committee was not established for the direct purpose of securing the rights and interests of a specific inmate in an individual case, it contributes to improving the overall administration of penal institutions as its duties include inspecting institutions, interviewing inmates, and accepting proposals from inmates, as well as providing its opinions on the administration of penal institutions to the wardens of penal institutions after gaining a precise understanding of the circumstances of the administration of the penal institutions.

Reply to the issues raised in paragraph 17 (b) of the list of issues

123. With regard to measures taken to ensure that the rights of inmates to make a complaint can be fully exercised, as stated in paragraph 114 of the previous report, when any inmate of a correctional institution claims that he/she has been tortured, he/she may file a petition with an investigation authority by using the criminal complaint procedure, etc. and ask for prompt and fair examination, as well as file a civil or administrative lawsuit.

124. Regarding 1 above, an inmate is not prohibited from asking for a representative at penal institutions, and the warden of a penal institution is not to have a staff member attend a visit or make a sound or video recording of a visit unless there is a special circumstance where contact between an attorney acting as the representative of a sentenced person and the sentenced person, with regard to measures taken by the warden of the penal institution toward the sentenced person or any other treatment which the sentenced person has received, is deemed likely to cause disruption of discipline and order in the penal institution (for unsentenced persons, unless there is a special circumstance where such contact is deemed likely to cause either disruption of discipline and order in the penal institution or destruction of evidence). In addition, the examination of letters sent or received does not go beyond checking that letters are sent to or received from an attorney.

125. Incidentally, there are no restrictions on the use of an attorney, etc. in filing a complaint, etc., or a civil or administrative lawsuit.

126. In addition, the measures include neither the guarantee that inmates are entitled to a protection mechanism against the intimidation of witnesses nor a review of all rulings limiting the right to claim compensation.

127. The systems of the claim for review, the reclaim for review, the report of cases to the Superintendent of the Regional Correction Headquarters, the report of cases to the Minister of Justice, and the filing of complaints are available as appeal systems provided in the Act on Penal Detention Facilities and Treatment of Inmates and Detainees which are available for all inmates in penal institutions. All inmates are notified of these appeal systems at the time of their imprisonment, and are kept fully informed thereof by such methods as statements in brochures available at their rooms, etc.

128. In addition, a brochure that explains how to prepare the necessary documents is lent to those who wish to file an appeal in writing. Thereby, consideration is given to facilitate the preparation of necessary documents.

129. Incidentally, for these appeal systems, the secrecy of filing is guaranteed by law (excluding the filing of complaints with the warden of a penal institution). It is also prohibited for inmates to be treated adversely for the reason of having filed an appeal.

Reference

- *Act on Penal Detention Facilities and Treatment of Inmates and Detainees*

Article 112. In cases where it is deemed necessary for the maintenance of discipline and order in the penal institution or adequate pursuance of correctional treatment of a sentenced person, or for any other reasons, the warden of the penal

institution may have a designated staff member attend a visit for the sentenced person or make a sound or video recording of it; provided, however, that this shall not apply where the sentenced person receives a visit from any of such persons as are listed in the following items, if there is a special circumstance where it is deemed likely to cause disruption of discipline and order in the penal institution:

- (i) *National or local government official who conducts an inquiry into the measures taken by the warden of the penal institution toward the sentenced person, or any other treatment the sentenced person received;*

Article 116. The warden of the penal institution shall have a designated staff member attend at any of the visits to unsentenced persons, other than those visits by a defense counsel, etc., or have the staff member make a sound or video recording of it; provided, however, that in cases where it is deemed that there is risk of causing neither disruption of discipline and order in the penal institution nor destruction of evidence, the warden of the penal institution may opt not to command the attendance or sound and video recording (referred to as “attendance, etc.” in the following paragraph).

Reply to the issues raised in paragraph 17 (c) of the list of issues

130. When a public officer who exercises the public authority of the State or of a public entity has, in the course of his/her duties, committed an act of torture or ill-treatment, the victim may seek damages against the State or the public entity based on the State Redress Act.

131. In addition, when a public officer (including law enforcement officials) abuses his/her authority and causes another to perform an act which the person has no obligation to perform, or hinders another from exercising such person’s right, he/she is punishable on the charge of a crime of abuse of authority by public officers (Article 193 of the Penal Code; imprisonment with or without work for not more than two years).

132. Furthermore, when a person performing or assisting in judicial, prosecutorial or police duties, abuses his/her authority and unlawfully arrests or detains another, he/she is punishable on the charge of a crime of abuse of authority by special public officers (Article 194 of the Penal Code; imprisonment with or without work for not less than six months but not more than 10 years). Moreover, when a person performing or assisting in judicial, prosecutorial or police duties commits, in the performance of his/her duties, an act of assault or physical or mental cruelty upon the accused, suspect or any other person or when a person who is guarding or escorting another person detained or confined in accordance with laws and regulations commits an act of assault or physical or mental cruelty upon the person, he/she is punishable on charges of a crime of assault and cruelty by special public officers (Article 195 of the Penal Act; imprisonment with or without work for not more than seven years). When a person commits either of the aforementioned two crimes (crimes as set forth in Articles 194 and 195 of the Penal Code) and thereby causes the death or injury of another, he/she is dealt with on the charge of a crime of abuse of authority, etc. causing death or injury by special public officers either by the punishment prescribed for the crime of injury or the punishment under said Articles, whichever is greater (for injury, compared with the punishment for injury [Article 204 of the Penal Code; imprisonment with work for not more than 15 years or a fine of not more than 500,000 yen], and for injury causing death, compared with the punishment for injury causing death [Article 205 of the Penal Code; imprisonment with work for a definite term of not less than three years]).

133. The number of persons prosecuted for these crimes is as indicated in Table 1 (neither statistics on sentencing nor statistics by ethnicity, age, and gender have been compiled).

134. In addition, we understand that the total number of persons convicted for these crimes is as indicated in Table 2.

135. Statistics have not been compiled on claims for state compensation or on disciplinary sanctions while limiting the subject to those based on acts of torture.

Table 1
Number of persons prosecuted

<i>Crime</i>	2007	2008	2009
Abuse of authority by special public officers	-	-	-
Abuse of authority causing death or injury by special public officers	-	-	-
Assault and cruelty by special public officers	3	1	16
Assault and cruelty causing death or injury by special public officers	-	-	-

Table 2
Number of persons convicted in ordinary first instance for criminal cases (including those found partially not guilty) (district court)

<i>Crime</i>	2007	2008	2009
Abuse of authority by special public officers	-	-	-
Abuse of authority causing death or injury by special public officers	-	-	-
Assault and cruelty by special public officers	-	2	5
Assault and cruelty causing death or injury by special public officers	4	-	-

- Notes:* 1. Figures indicate the actual numbers of persons.
2. Crimes are those for which the persons were sentenced.

136. When a person who has made a complaint or an accusation against a public officer regarding any crime, including abuse of authority, is dissatisfied with a disposition whereby a prosecution has not been instituted, he/she may request the district court having jurisdiction over the case to commit the case to the court for trial. Where the request is well-grounded, the district court makes a decision to the effect that the case is to be committed to the court for trial. Based on this decision, it is deemed that prosecution regarding the case has been instituted. Then, an attorney who exercises the same function as a public prosecutor (appointed attorney) is appointed by the court, and the appointed attorney is to engage in maintaining the prosecution of the case pertaining to the decision.

137. We understand that the number of persons for whom such a decision has been made and the number of cases on which a decision has been made are as follows.

Number of persons for whom a decision has been made on cases for which a request for committing the case to the court for trial has been made (district court)

	2007	2008	2009
No. of persons for whom a decision has been made	206	201	425

Note: Figures indicate the total numbers of such persons.

Cases for which a decision to the effect that the case is to be committed to the court for trial has been made

<i>Name of case</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Assault and cruelty by special public officers	-	1	1
Assault and cruelty causing death or injury by special public officers	-	-	1

Note: Figures indicate the actual numbers of persons.

138. The status of the use of the appeal systems by inmates detained in penal institutions is as indicated below.

139. Incidentally, the number of each type of appeal is not limited to those against torture, etc.

<i>Appeal</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Claim for review	3 075	3 813	3 717
Reclaim for review	763	917	1 177
Report of cases to the Superintendent of the Regional Correction Headquarters	880	957	1 279
Report of cases to the Minister of Justice	222	238	403
Filing of complaints with the Minister of Justice	4 036	4 052	4 173

140. The status of the use of the system of petition for redress, etc. by inmates detained in penal institutions is as indicated below.

141. However, petitions include not only cases related to torture, etc. but other complaints regarding treatment including requests, opinions and comments.

	<i>2007</i>	<i>2008</i>	<i>2009</i>
Complaints	700	788	762
Accusations	89	67	68
Lawsuits	281	358	243

Article 14

Reply to the issues raised in paragraph 18 (a) of the list of issues

142. When a public officer who exercises the public authority of the State or of a public entity has, in the course of his/her duties, committed an act of torture or ill-treatment, the victim may seek damages against the State or the public entity pursuant to the provisions of Article 1 of the State Redress Act.

143. When a person who has committed an act of torture or ill-treatment is a private individual, the victim may seek damages against the private individual pursuant to the provisions of Article 709 of the Civil Code.

144. In addition, where there is correlation between a consequence caused by a private individual's act and a public officer's act of violating an obligation in the course of his/her duties, including cases where a public officer could not prevent any act of torture or ill-treatment due to the violation of an obligation in the course of his/her duties, the victim

may seek damages against the State or the relevant public entity pursuant to the provisions of Article 1 of the State Redress Act.

145. Incidentally, even if the aforementioned state compensation, etc. is not established, a benefit system for crime victims may apply.

146. The systems of the claim for review, the reclaim for review, the report of cases to the Superintendent of the Regional Correction Headquarters, the report of cases to the Minister of Justice, and the filing of complaints are established as appeal systems under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees. Under any system, if any point in a measure, etc. taken by a facility is found to be unjust, it is possible to make corrections and take measures to prevent recrudescence.

147. Specifically, regarding the claim for review and the reclaim for review, where there are grounds for a claim or reclaim for review, the Minister of Justice or the Superintendent of the Regional Correction Headquarters, who serves as the reviewing agency, is to rescind the whole or a part of the disposition or to order the abolition of the whole or a part of the actual act, and is also to make a declaration to that effect in a determination. Moreover, the reviewing agency may change the relevant disposition by a determination or order the disposition agency to change the relevant act, and may also make a declaration to that effect.

148. Regarding the report of cases, where the Minister of Justice or the Superintendent of the Regional Correction Headquarters has found that a case exists, he/she shall take measures to prevent the recrudescence of similar acts if deemed necessary.

149. Regarding the filing of complaints, the Minister of Justice shall handle complaints in good faith and notify the complainant of the results of such handling. "Handling in good faith" mentioned here includes taking measures to prevent the recrudescence of similar acts, etc. if it is deemed to be necessary.

150. In addition, it is also possible to file a lawsuit to seek legal remedy.

151. Detention facilities of the Immigration Bureau differ from penal facilities in that they are not designed for the correction/rehabilitation of detainees but are solely designed to secure the custody of persons who fall under any grounds for deportation until they are deported. As a result, persons detained in such facilities are given maximum liberty consistent with the security requirements of the detention facilities.

152. Therefore, persons detained in well-equipped immigration detention centers, etc. are able to make phone calls to the outside freely during certain hours without the presence of any official. Thus, persons who are dissatisfied with their treatment have a route toward bringing lawsuits by making phone calls to attorneys themselves.

153. Moreover, the realization of appropriate treatment has been promoted through the appeal systems stipulated in the Regulations for Treatment of Detainees. In light of a request for securing the transparency of the administration of these systems, the "Immigration Detention Facilities Visiting Committee," (hereinafter referred to as "the Committee" in this paragraph) composed of outside intellectuals, was newly established in July 2010. The Committee inspects immigration detention centers, etc. and conducts interviews with detainees and also provides the statement of its opinions to the directors of immigration detention centers, etc. on the basis of opinions/proposals which have been dropped by detainees into proposal boxes installed in detention facilities such as immigration detention centers. The directors of immigration detention centers, etc. are to promote the securing of further transparency of security and treatment and the improvement of the administration of the immigration detention centers, etc. in light of such opinions, etc.

154. Moreover, in September 2010, the Immigration Bureau of the Ministry of Justice and the Japan Federation of Bar Associations decided to take the opportunity to discuss problems concerning detention in immigration control administration, and also agreed on the point that bar associations should provide free legal consultation to persons detained in immigration detention centers, etc. It is possible for such persons to file lawsuits to seek legal remedy with free legal consultation provided by bar associations through the dispatch of attorneys based on this agreement.

Reference

- *Immigration Control Act*

Article 61-7-2. An Immigration Detention Facilities Visiting Committee (hereinafter referred to as "Committee") shall be established at immigration offices provided for by Ordinance of the Ministry of Justice.

(2) In order to contribute to the proper administration of the immigration detention facilities, the Committee shall inspect immigration detention facilities in the area of its responsibility as provided by Ordinance of the Ministry of Justice and state its opinion to the director of the immigration detention facilities.

Article 61-7-4. The director of immigration detention facilities shall furnish the Committee with information on the immigration detention facilities with respect to its state of administration pursuant to the provisions of an Ordinance of the Ministry of Justice.

(2) The Committee may conduct a visit to the immigration detention facilities by the Committee members in order to grasp the circumstances of their administration of the immigration detention facilities. In this case, when the Committee deems necessary, it may elicit cooperation from director of the immigration detention facilities for conducting interviews of detainees by Committee members.

(3) Directors of immigration detention facilities shall provide the necessary cooperation for such visits and interviews with detainees as set forth in the preceding paragraph.

(4) Notwithstanding the provisions of Article 61-7, paragraph (5), documents submitted by detainees to the Committee shall not be inspected, and submission of documents to the Committee by detainees shall not be prohibited or restricted.

Reply to the issues raised in paragraph 18 (b) of the list of issues

(a) Penal institutions

155. The number of lawsuits filed by inmates, etc. of penal institutions during the period from 2007 to 2009 is as indicated in Q17(c). Out of those lawsuits, the number of civil lawsuits to seek payment of compensation for damage, etc. and the number of judgments ordering the State to compensate for damage are indicated below.

	2007	2008	2009
No. of civil lawsuits	246	320	219
No. of judgments ordering to compensate for damage	16	11	14

(b) Detention facilities of the Immigration Bureau

156. The meaning of "acts of ill-treatment" (18(a)), which is the premise of this question, is not necessarily clear. However, the number of cases in which a lawsuit for damages was

filed on the grounds of ill-treatment in a detention facility of the Immigration Bureau during the period from 2007, in which the previous concluding observations were published, and 2009 was two. The number of such cases pending before 2007 was four.

157. For all of the aforementioned six cases, there are final and binding judgments at the present time. Out of those, the State won five cases. The State lost the remaining case, and the judgment ordered the State to pay compensation of 580,250 yen and an amount of money calculated by a 5% annual rate for the period from April 16, 2002 to the day on which the payment was fully made. The total amount paid by the State to the other party was 759,239 yen, including delay damages of 178,989 yen.

Reply to the issues raised in paragraph 19 of the list of issues

158. Japan has humbly accepted the fact that it caused substantial damage and pain to people in many countries, particularly in Asian countries, by colonial rule and invasion, and has expressed its feelings of deep remorse and feelings of sincere apology in the past. In addition, since the war, Japan has consistently refrained from becoming a military power and has firmly maintained the position of solving any problems in a peaceful manner.

159. The Government of Japan is aware that the comfort women issue is an issue that has been a grave affront to many women's honor and dignity, and has expressed feelings of sincere apology and remorse to former comfort women through the issuance of a letter from the Prime Minister and in a speech by the Chief Cabinet Secretary (1993).

160. As the issues of compensation, property and the right to claim have already been legally solved in relation to the parties to a convention, the Murayama Cabinet determined that it was appropriate to take action through the "Asian Women's Fund", which was established through the cooperation of Japanese citizens and the government, in order to aim at a realistic remedy for former comfort women who had already grown old. Subsequently, the government has been providing maximum cooperation for the Fund's projects, including medical/welfare services for former comfort women and the payment of "atonement money."

161. The said Fund was dissolved as of the end of March 2007 as a result of coordination with related countries. However, the government intends to continue to make the maximum efforts to gain the understanding of Japanese citizens on this issue, which was shown through the projects of the said Fund. Thus the government continues to follow up on the projects of the said Fund. Specifically, in South Korea, Taiwan, the Philippines and Indonesia, which were covered by the said Fund, the government has entrusted the provision of visiting care (South Korea, Taiwan, and the Philippines) and group counseling (South Korea) for former comfort women to persons related to the former Asian Women's Fund and has conducted meetings with government officials and academia (Indonesia and the Philippines). In addition, the government has provided support for the holding of the "ASEAN+3 Human Security Symposium on Women and Poverty Eradication" in order to deal with contemporary issues relating to women.

Article 15

Reply to the issues raised in paragraph 20 (a) of the list of issues

162. Article 38(2) of the Constitution provides that "[c]onfession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence". In response to this provision, Article 319(1) 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".

163. The practice of the prosecutorial authority is appropriately in accordance with Article 319(1) of the Code of Criminal Procedure.

Reply to the issues raised in paragraph 20 (b) of the list of issues

164. According to a survey conducted by the Supreme Public Prosecutors Office for the period from June to September 2010, the number of complaints concerning interrogations filed by a suspect or his/her defense counsel was 141. In relation to all of these complaints, a public prosecutor in a supervisory position, conducted the necessary inquiry and took necessary measures, such as urging interrogators to give appropriate consideration for the suspect. None of these complaints resulted in a lawsuit.

Article 16

Reply to the issues raised in paragraph 21 (a) of the list of issues

165. In response to the partial revision of the Immigration Control Act in 2009, the “Immigration Detention Facilities Visiting Committee” (hereinafter referred to as “the Committee” in paragraphs 2 and 3) which is composed of outside intellectuals was newly established in Tokyo and Osaka in July 2010, as a third-party organ which monitors the administration of immigration detention centers, detention houses, or departure waiting facilities (see Note) (hereinafter referred to as “immigration detention centers, etc.”).

166. Regarding the members of the Committee, 10 members were appointed for each of the Committees from among persons of proven integrity and insight with enthusiasm for the improvement of immigration detention centers, etc. in a wide range of fields, including those who have an academic background, or who are from the legal profession, medical personnel, persons from international organs or NGOs, and local residents, in reference to the operational status, etc. of the Penal Institution Visiting Committee, etc.

167. The Committee conducts the inspection of immigration detention centers, etc. and interviews with detainees, etc. and also states opinions to the directors of immigration detention centers, etc. based on opinions/proposals from detainees, etc. which have been dropped into proposal boxes installed in immigration detention centers, etc. in order to guarantee the transparency of security and treatment and improve the administration of facilities, including immigration detention centers. The directors of immigration detention centers, etc. will promote further improvements based on these opinions, etc.

168. When a member of the committee interviews a detainee, etc., no immigration officials attend the interview unless requested to do so by the Committee. With regard to opinions/proposals from detainees, etc. dropped into proposal boxes, the Committee members open the proposal boxes and collect documents directly, thereby making it possible for detainees, etc. to bring opinions and proposals directly to the said Committee without going through immigration officials.

169. In addition, under the Immigration Control Act, deportation procedures are, in principle, to be carried out after first taking the persons to be deported into custody. Although no exception is made for minors, when carrying out deportation procedures for minors, measures are taken to prevent their detention when possible, including seeking appropriate persons to assume responsibility for such minors and asking relatives of such minors or child guidance centers for temporary protection. Even where detaining such a minor is unavoidable, measures such as provisional release on the day on which the minor is detained are taken from a humanitarian perspective. In addition, even if it is impossible to take such measures, deportation procedures and refugee recognition procedures for minors are processed in priority over other persons, thereby aiming to keep the detention of minors to the minimum necessary.

170. Furthermore, even where a minor is detained for a continuous period, he/she is in principle detained separately from other adult detainees, taking into account the best interests of the child as provided for in Article 3 of the Convention on the Rights of the Child. Where it is difficult to take such a measure due to the particular circumstances of the facility, etc., appropriate measures are to be taken in addition to giving consideration to the allocation of rooms so as to keep smoking and other negative effects on minors from other adult detainees to the minimum.

171. Incidentally, even when having a minor use a departure waiting facility, he/she is in principle to be kept separate from adults, and appropriate measures are to be taken.

Note: Landing prevention facilities have been called “departure waiting facilities” since July 2010 due to the revision of the Immigration Control Act in 2009.

Reply to the issues raised in paragraph 21 (b) of the list of issues

172. The Immigration Control Act makes it a principle to carry out deportation procedures after taking the person subject into custody. However, the Act provides for the system of provisional release in preparation for cases in which it becomes necessary to provisionally release the person in custody. Where a detainee applies for provisional release, the director of the immigration detention center or the supervising immigration inspector decides whether to accord the provisional release, comprehensively taking into consideration such matters as the circumstances of the detainee, evidence produced in support of the application for the provisional release, and various conditions of the detainee, including his/her character, assets, condition of health, detention period, etc.

173. In addition, the number of persons detained for a long period is decreasing. This is because efforts have been made since July 2010 to avoid the prolonged detention of detainees who have yet to be deported after the passage of a considerable period of time after the issuance of a deportation order by flexibly utilizing the system of provisional release according to the circumstances of individual detainees in light of the results of the verification/consideration of the necessity and reasonableness of their provisional release by the director of the immigration detention center or the supervising immigration inspector with respect to each period, irrespective of whether an application for provisional release has been filed, taking into account the fact that the period of detention has tended to be prolonged in recent years due to the filing of applications for refugee recognition during detention and the repeated filing of applications for refugee recognition as it is prohibited under the Immigration Control Act to deport a person who is in the course of applying for refugee recognition.

174. Incidentally, data on the period of detention of detainees who are in the course of applying for refugee recognition is as indicated in Attachment 2. In addition, statistics on the number of detainees who are in the course of applying for refugee recognition and have been allowed to go out of the detention facility are as indicated in Attachment 3. We do not make public the details of the number of persons who are in the course of applying for refugee recognition disaggregated by nationality because of the nature of the procedure. However, as of 24:00 on 31 December 2008 and 31 December 2009, the countries of origin of detainees who were in the course of applying for refugee recognition were Afghanistan, Bangladesh, Bolivia, Brazil, Cameroon, China, Colombia, the Democratic Republic of the Congo, Cote d'Ivoire, Egypt, Ethiopia, Ghana, Guinea, India, Iran, Iraq, Laos, Liberia, Mali, Myanmar, Nigeria, Nepal, Pakistan, Peru, the Philippines, Sri Lanka, Thailand, Turkey, Togo, Uganda, Uzbekistan, and Viet Nam.

Reply to the issues raised in paragraph 22 of the list of issues

175. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees allows the use of gags only at detention facilities without a protection room. There are no gags at detention facilities with a protection room.

176. The prefectural police are carrying out the installation of protection rooms at detention facilities under the direction of the National Police Agency in a planned manner despite severe financial conditions. As of April 1, 2010, there are 370 protection rooms at 341 facilities out of 1,239 facilities nationwide, and approximately 30% of all detention facilities have protection rooms (the number of facilities with a protection room increased by 106 and the number of protection rooms increased by 123, compared with 2007).

177. If the use of gags were to be prohibited at detention facilities without a protection room, it would result in such cases as one noisy detainee continuously disturbing the sleep of the other detainees among other possible negative consequences. Therefore, it is not appropriate to prohibit the use of gags.

178. The use of gags is only allowed when a detainee continues to shout against a detention officer's order to cease doing so, thereby disturbing the peaceful community life of a detention facility by disturbing the sleep of other detainees and at the same time, there is no measure available other than the use of a gag. The period of the use of a gag is limited to three hours. In cases in which a gag has been used on a detainee, the detention services manager is to promptly obtain the opinion of a doctor about the health condition of the detainee. In this manner, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides for the severity of the conditions under which a gag can be used. The use of a gag for the purpose of extracting a confession is prohibited.

Reply to the issues raised in paragraph 23 (a) of the list of issues

179. In order to deal with overcrowding at penal institutions, budgetary measures to expand capacity by about 1,400 persons were taken at 34 institutions in total after the initial budget for fiscal 2007 until the initial budget for fiscal 2010.

180. With regard to penal institutions using the Private Finance Initiative (PFI) method, three institutions commenced operation in fiscal 2007 and one started in fiscal 2008, thereby aiming to expand capacity by 6,000 persons in total.

181. As mentioned in the paragraph above, new penal institutions have been established. In addition, the conditions of detention in penal institutions have been adjusted by instructing transfers of sentenced persons as appropriate so as to maintain a balance in terms of the rate of detention among penal institutions, in consideration of the conditions of detention in penal institutions.

Reply to the issues raised in paragraph 23 (b) of the list of issues

182. Background to the revision of the Prison Act (background to the enforcement of and partial revision of the "Act on Penal Institutions and Treatment of Sentenced Persons").

183. The revision of the Prison Act, which was the most important issue in realizing the reform of prison administration as mentioned in paragraph 85 of the First Report of the Government of Japan, was conducted in two stages.

184. First, on May 24, 2006, the Act on Penal Institutions and Treatment of Sentenced Persons was put into force. The purpose of the Act is to provide for the fundamentals of penal institutions and matters concerning management and administration of penal institutions and to conduct adequate treatment of sentenced persons, etc. detained in penal institutions according to their circumstances while respecting their human rights.

185. Moreover, the “Act for Partial Revision of the Act on Penal Institutions and Treatment of Sentenced Persons,” which centers on the matters concerning the treatment of unsentenced persons, inmates sentenced to death, etc., was put into force on June 1, 2007. By the enforcement of this Act for Partial Revision, the title of the “Act on Penal Institutions and Treatment of Sentenced Persons” was revised to the “Act on Penal Detention Facilities and Treatment of Inmates and Detainees” (hereinafter referred to as the “Penal Detention Facilities Act”). Thereby, the fully-fledged revision of the Prison Act was completed for the first time in about 100 years.

Main content of the Penal Detention Facilities Act

186. The main content of the Penal Detention Facilities Act concerning penal institutions is as follows:

(a) *Clarification of the rights and obligations of inmates/Authority of staff members.* The Act clearly articulated the guarantee of rights for religious acts and for access to books and newspapers, etc. and any requirements for restricting them, as the rights and obligations of inmates. The Act clearly articulated measures for the maintenance of discipline and order as coming under the authority of staff members. In addition, advance notification/furnishing of an opportunity for explanation was established as a condition for disciplinary punishments and procedures for meting out a punishment;

(b) *Enrichment of treatment toward the re-entry of sentenced persons into society.* The Act clearly articulates the principle of “individualized treatment,” which is that the treatment of sentenced persons is conducted by the most appropriate method according to the personality and circumstances of each individual sentenced person. In particular, the Act clearly articulates that work, guidance for reform, and guidance in school courses, which are conducted as “correctional treatment,” are to be conducted in a planned manner based on adequate treatment guidelines according to the characteristics of the individual sentenced persons. In addition, the Act introduced some new treatment measures, such as privilege measures, outside work with commute travels, and day leave/furlough;

(c) *Guarantee of the standard of living of inmates.* The Act clearly articulates the scope of and requirements for lending of clothing, serving of meals and using of self-supplied articles to the extent that it suffices for the maintenance of inmates’ health and is recognized as appropriate. In addition, the Act provides that penal institutions shall take adequate hygienic and medical measures in light of the public standards in order to maintain the health of inmates and the hygiene inside the penal institutions;

(d) *Guarantee/expansion of contact with the outside world.* The Act clearly articulates the requirements for restricting visits and correspondence of inmates as well as guaranteeing those within a certain scope. In addition, the Act sets out a provision that allows sentenced persons who fulfill certain requirements communication by telephone;

(e) *Development of appeal systems.* The Act establishes the following systems (i)–(iii), and puts the guarantee of secrecy of filing and the prohibition of adverse treatment in statutory form:

(i) An inmate may file a claim for review with the Superintendent of the Regional Correction Headquarters with regard to certain measures taken by the warden of the penal institution. In addition, any person who is dissatisfied with the determination on a claim for review may file a reclaim for review with the Minister of Justice;

(ii) An inmate who has suffered the illegal use of physical force against his/her body, etc. from a staff member may report the case to the Superintendent of the Regional Correction Headquarters. In addition, when an inmate is dissatisfied with

the result of the confirmation as to whether or not the case he/she has reported actually happened, etc. he/she may report the case to the Minister of Justice;

(iii) An inmate may file a complaint with the Minister of Justice, the inspector, or the warden of the penal institution with regard to the treatment he/she has received.

(f) *Ensuring the transparency of prison administration.* The Penal Institution Visiting Committee was established as a system under which citizens inspect penal institutions and provide the statement of their opinions to the wardens of the penal institutions with regard to the administration of the penal institutions.

187. The Act provides that penal institutions shall reflect the opinions stated by the Penal Institution Visiting Committee on the administration of the penal institutions as far as possible, as well as provide the necessary cooperation for the Committee to accomplish its duties, taking into consideration that the purpose of the Committee is to contribute to improving the overall administration of penal institutions by providing the statement of its opinions as a representative of citizens after gaining a precise understanding of the actual conditions of penal institutions.

188. In addition, the Act provides that the Minister of Justice shall compile a report on both the opinions expressed by the Committee to the wardens of the penal institutions and the measures taken by the wardens of the penal institutions responding to the opinions once per annum, and shall publicize the outline thereof.

Reply to the issues raised in paragraph 23 (c) of the list of issues

189. With regard to Type II handcuffs, Article 30 of the “Official Directives concerning Execution of Duties by Prison Officers” provides for the requirements for their use. With regard to restraint suits, Article 78 of the “Act on Penal Detention Facilities and Treatment of Inmates and Detainees” provides for the requirements for their use. The use of handcuffs and restraint suits for punishment is prevented by keeping staff members fully informed of these provisions through discipline and training.

190. In addition, when using a restraint suit or Type II handcuffs on an inmate, the situation is to be recorded by a portable video camera, thereby strictly monitoring their use.

191. The number of cases in which Type II handcuffs or a restraint suit was used at penal institutions is as follows.

	2006	2007	2008	2009
Type II handcuffs	176	308	250	297
Restraint suit	10	12	1	9

Reference

- *Act on Penal Detention Facilities and Treatment of Inmates and Detainees*

Article 78. Prison officers may, pursuant to a Ministry of Justice Ordinance, use arresting ropes or handcuffs in cases where either they escort inmates, or where an inmate is likely to commit any of such acts as are set out under the following items:

- (i) *Escaping;*
- (ii) *Committing self-injurious behavior or inflicting injury on others;*
- (iii) *Damaging facilities, the instruments, or any other property of the penal institution.*

(2) *Prison officers may use a restraint suit by order of the warden of the penal institution in cases where an inmate is likely to commit a self-injurious behavior, if no other means are available. However, the restraint suit may not be used in combination with any arresting rope or handcuff.*

(3) *In the case prescribed in the preceding paragraph, if there is no time to wait for the order from the warden of the penal institution, then prison officers may use a restraint suit without the order. In the case of the foregoing, the prison officers shall promptly report this effect to the warden of the penal institution.*

(4) *The period of use of a restraint suit shall be three hours. However, the warden of the penal institution may, if he/she finds that there is a special necessity to continue the use, renew the period every three hours but not exceeding twelve hours in aggregate.*

(5) *In cases where the necessity of use of a restraint suit has ceased to exist, the warden of the penal institution shall immediately order to suspend it even during the period set forth in the preceding paragraph.*

(6) *The warden of the penal institution shall, in cases where he/she used a restraint suit on an inmate or renewed the period of its use, promptly obtain the opinion of a medical doctor on the staff of the penal institution about the health condition of the inmate.*

- *Official directives concerning execution of duties by prison officers*

Article 30

In the cases that fall under any of the following items, a prison officer may use Type II handcuffs on an inmate, etc.:

(i) *Where the inmate, etc. is detained in a protection room, when he/she is likely to commit any of the acts listed in Article 78(1)(ii) of the Act after his/her detention in the protection room and it is deemed impossible to restrain him/her from committing any of the relevant acts only by detaining him/her in the protection room;*

(ii) *Where the inmate, etc. is detained in a protection room, when he/she damages or attempts to damage the protection room;*

(iii) *Where a protection room is not available or has not been installed, when the inmate, etc. is likely to commit any of the acts set forth in the items of Article 78(1) of the Act.*

Reply to the issues raised in paragraph 24 of the list of issues

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

Reply to the issues raised in paragraph 25 (a) of the list of issues

193. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides for isolation as a measure for the maintenance of discipline and order in penal institutions or the protection of the relevant sentenced person.

194. The requirement for isolation is that the case falls under circumstances (i) where there is a risk of disrupting discipline and order in the penal institution by making contact with other inmates or (ii) where there is a risk of being exposed to harm by other inmates and no other solutions are available to avoid it.

195. The period of isolation is to be no longer than three months in principle. However, if there is a special necessity to continue the isolation, the period may be renewed by one month upon the expiration thereof, and every month thereafter. Compared to the fact that the Prison Act provides that the period of solitary confinement shall be no longer than six months in principle and that the period may be renewed by three months upon the expiration thereof, the use of isolation has been tightened by increasing the frequency of determining the necessity for isolation.

196. Incidentally, it goes without saying that, if the necessity for isolation ceases to exist, isolation shall be immediately suspended even during the period of isolation.

197. Moreover, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that the warden of a penal institution shall, in cases where he/she has put a sentenced person into isolation, obtain the opinion of a medical doctor on the staff of the penal institution about the condition of the health of the sentenced person periodically at least once each three months.

198. Isolation is subject to a claim for review. In addition, various measures are taken, including on-the-spot inspection by the Ministry of Justice and the Regional Correction Headquarters and inspection, etc. by the Penal Institution Visiting Committee, to ensure the appropriate use of isolation.

199. Incidentally, regarding putting a ceiling on the period of isolation by law, we consider it inappropriate as continued isolation is unavoidable as long as the necessity for isolation continues to exist. However, needless to say, we are sufficiently aware that long-term isolation has the possibility of exerting a negative influence on the physical and mental conditions of sentenced persons and that it is important to facilitate the socialization of sentenced persons through living and interacting in a group with other people in order to promote their rehabilitation. Therefore, we will continue to make efforts for the appropriate use of isolation.

Reply to the issues raised in paragraph 25 (b) of the list of issues

200. The procedures of extension, etc. in the case of isolating a sentenced person are as mentioned in 25(a).

201. There is no individual data that is limited to solitary confinement.

Reply to the issues raised in paragraph 26 (a) of the list of issues

202. Regarding the notification on the execution of the death penalty, inmates sentenced to death are to be notified of their execution on the day it is to be performed. This is because, if inmates sentenced to death are notified of their execution before the day of the execution, their peace of mind may be negatively affected and the notification could rather inflict excessive pain on them, etc.

203. In addition, if families, etc. of inmates sentenced to death are notified in advance of the execution, it would cause unnecessary psychological suffering to those who have

received the notification. If the family, etc. of an inmate sentenced to death who has received such a notification visits the inmate and the inmate comes to know the schedule of his/her execution, similar harmful effects may occur. Therefore, we consider that current method of addressing the situation is unavoidable.

204. After the execution of an inmate, the person who has been designated by the inmate sentenced to death in advance (it is possible to designate a family member or an attorney, etc.) is to be promptly notified pursuant to laws and regulations.

Reply to the issues raised in paragraph 26 (b) of the list of issues

205. Regarding visits, etc., the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that an inmate sentenced to death shall be permitted to receive visits, etc. from (i) relatives of the inmate sentenced to death, (ii) persons with the necessity to have a visit, etc. in order to carry out a business pertaining to important concern, and (iii) persons whose visit is deemed instrumental to help the inmate sentenced to death maintain his/her peace of mind. The Act also provides that the warden of a penal institution may permit an inmate sentenced to death to receive a visit, etc. from a person other than those mentioned above at his/her own discretion if it is deemed that there is a circumstance where the visit, etc. is necessary for the maintenance of a good relationship with the person or for any other reasons, and if it is deemed that there is no risk of causing disruption of discipline and order in the penal institution. Thereby, the warden of each penal institution determines whether to permit a visit, etc. by a person other than a relative in an appropriate manner in line with the purposes of law on a case-by-case basis.

Reference

- *Act on Penal Detention Facilities and Treatment of Inmates and Detainees*

Article 120. In cases where any of the persons listed in the following items requests to visit an inmate sentenced to death (except those having the status as an unsentenced person; hereinafter the same shall apply in this Division), the warden of the penal institution shall permit the inmate sentenced to death to receive the visit except the cases where it is prohibited pursuant to the provision of paragraph (3) under Article 148 or the provisions of the next Section:

(i) A person who is a relative of the inmate sentenced to death;

(ii) A person with the necessity to have a visit in order to carry out a business pertaining to personally, legally, or occupationally important concern of the inmate sentenced to death, such as reconciliation of marital relations, pursuance of a lawsuit, or maintenance of a business;

(iii) A person whose visit is deemed instrumental to help the inmate sentenced to death maintain peace of mind.

(2) In cases where a person other than those listed in the items of the preceding paragraph requests to visit an inmate sentenced to death, if it is deemed that there is a circumstance where the visit is necessary for the maintenance of good relationship with the person or for any other reasons, and if it is deemed that there is no risk of causing disruption of discipline and order in the penal institution, then the warden of the penal institution may permit the inmate sentenced to death to receive the visit.

Reply to the issues raised in paragraph 26 (c) of the list of issues

206. At penal institutions, it is necessary to secure the custody of inmates sentenced to death and to pay attention so as to ensure that the inmates sentenced to death can maintain their peace of mind. Article 36 of the Act on Penal Detention Facilities and Treatment of

Inmates and Detainees provides that the treatment of an inmate sentenced to death shall be conducted in a single room throughout day and night, and also provides that no inmate sentenced to death shall, in principle, be permitted to make mutual contact even outside of the inmate's room.

207. However, Article 36 of the said Act provides that an inmate sentenced to death may be permitted to make contact with another inmate sentenced to death if it is deemed instrumental to help the inmate sentenced to death maintain his/her peace of mind. Thus we do not consider such handling an abuse of human rights.

Reference

- *Act on Penal Detention Facilities and Treatment of Inmates and Detainees*

Article 36. Treatment of an inmate sentenced to death shall be conducted in an inmate's room throughout day and night, except where it is deemed appropriate to conduct it in the outside of the inmate's room.

(2) *The room of an inmate sentenced to death shall be a single room.*

(3) *No inmates sentenced to death shall be permitted to make mutual contacts even in the outside of the inmate's room, except where deemed advantageous in light of the principle of treatment prescribed in paragraph (1) of Article 32.*

Reply to the issues raised in paragraph 26 (d) of the list of issues

208. The execution of a judicial decision that has become final and binding must be strictly enforced in law-abiding countries. In particular, a death sentence is rendered to persons who have committed extremely brutal and serious crimes after thorough and careful deliberation by the court. Therefore, death sentences should be strictly pursued in accordance with the provisions of law while respecting the court's determinations.

209. Under Japanese law, being of advanced age neither falls under grounds for suspension of the execution of death penalty nor falls under reasons for which a pardon is automatically deemed reasonable.

210. It is stipulated in the law that if a person condemned to death is in a state of insanity, the execution is to be stayed by the order of the Minister of Justice (see Note).

211. The mental condition of each death row inmate is carefully examined based on determinations including from an expert's perspective. If a death row inmate is determined not to be in a state of insanity, the judicial decision that has become final and binding shall be strictly respected and the provision of law shall be pursued.

Note: Code of Criminal Procedure.

Article 479. If a person condemned to death is in a state of insanity, the execution shall be stayed by order of the Minister of Justice.

(2) to (4) *Omitted.*

212. Article 62(1) of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that, in cases where an inmate is injured or suffering from disease, the warden of the penal institution shall promptly give him/her medical treatment by a doctor on the staff of the penal institution and take other necessary medical measures.

213. We are careful in trying to understand the mental and physical conditions of inmates sentenced to death by having staff members conduct thorough inspections on a daily basis and by providing medical examinations by a doctor as needed, as well as by conducting periodic health examinations.

Reference

- *Act on Penal Detention Facilities and Treatment of Inmates and Detainees*

Article 62. In cases where an inmate falls under any of the cases set out under the following items, the warden of the penal institution shall promptly give him/her medical treatment (including a procedure to supply nutrition; the same shall apply hereinafter) by a doctor (i.e. a medical doctor or a dentist; the same shall apply hereinafter) on the staff of the penal institution and other necessary medical measures. However, in cases falling under item (i), if there is no risk of either endangering the inmate's life or infecting his/her disease to others, then the foregoing is limited to the cases where the treatment is not given against the inmate's will:

- (i) Cases where the inmate is injured or suffering from disease, or is suspected to sustain an injury or to have a disease;*
- (ii) Cases where the inmate refuses to ingest food and drink, and may endanger his/her own life.*

Reply to the issues raised in paragraph 27 of the list of issues

214. Regarding the restriction of activities at mental hospitals, only the isolation and physical restraint of patients are permitted after hearing the opinions of the Social Security Council, pursuant to Article 36 of the Act on Mental Health and Welfare for the Mentally Disabled. The said Act provides that, in actually restricting activities, designated psychiatrists shall judge the necessity thereof.

215. Furthermore, it is stipulated, pursuant to Article 37 of the said Act, for example, that physical restraint is to be imposed as an unavoidable measure until any alternative method is found in cases where attempted suicide or acts of self injury are highly likely and where hyperactivity or disquiet is noticeable, and in other cases where the patient's life is likely to be threatened due to his/her mental disorder if left as he/she is.

216. In addition, efforts are made to notify the patient in question of the reasons for physical restraint. Moreover, specific and effective procedures are set, including stating the fact that physical restraint was imposed, the reasons therefore, and the date and time of the commencement and cancellation of physical restraint in the patient's medical record, conducting, in principle, constant clinical observation during the period of physical restraint, thereby securing appropriate medical care and protection, and having a doctor conduct frequent medical examinations to prevent any physical restraint from being imposed unthinkingly.

217. In addition, when a person hospitalized at a mental hospital or a person responsible for his/her custody makes a request for that person's discharge or for taking necessary measures to improve his/her treatment pursuant to Article 38-5 of the said Act, the prefectural governor is to request the Psychiatric Review Board, consisting of designated psychiatrists and those who have an academic background in the field of law, etc., for a review, and when such a request is accepted as the result of the review, the prefectural governor is to discharge the person or take any necessary measures to improve his/her treatment. With regard to compulsory hospitalization, it is possible to file a request for review pursuant to the Administrative Appeal Act with the Minister of Health, Labour and Welfare. In addition, it is also possible to file a lawsuit pursuant to the Administrative Case Litigation Act.

218. In this manner, current law guarantees procedures that give sufficient consideration to human rights.

Reply to the issues raised in paragraph 28 (a) of the list of issues

219. Article 16 of the Convention covers “acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity,” but does not cover domestic violence, etc., in other words, violence by a private individual.

220. However, Japan is also making proactive efforts concerning all forms of violence against women, including domestic violence and gender-based violence.

221. Regarding spousal violence, measures have been taken to prevent spousal violence and to protect victims/provide victims with support for self-reliance based on the “Act on the Prevention of Spousal Violence and the Protection of Victims” (hereinafter referred to as the “Spousal Violence Prevention Act”).

222. The Spousal Violence Prevention Act provides for Spousal Violence Counseling and Support Centers which undertake activities such as consultation and counseling for victims, temporary protection, and offering of various kinds of information. The Act also sets out a system whereby the court orders, upon a petition from a victim, that the spouse of the victim should not get close to the victim, etc. if certain requirements are fulfilled.

223. As one of the preventive measures, in the first instance, efforts concerning violence against women, including raising awareness, are further strengthened through the “Campaign for Eliminating of Violence against Women” (November 12 to 25 every year), in coordination/cooperation with the State, local governments, women’s groups, and other related groups, in order to eradicate violence against women, such as violence by a spouse, etc., sexual crimes, prostitution, trafficking in persons, sexual harassment, and stalking activities.

224. From the perspective of preventing persons from becoming the perpetrators or victims of violence against women, preventive educational materials, etc. targeting young people have been prepared and distributed to related organs and educational institutions, etc. nationwide.

225. Moreover, instructor training has been provided so as to ensure that instructors can provide effective guidance to young people by the use of said educational materials.

226. Next, as one of the measures taken to promptly, effectively, and fairly conduct investigations of all petitions regarding torture or ill-treatment, the Supreme Public Prosecutors Office ruled in 2008 that where the defense counsel has filed a complaint or the suspect has made a statement of dissatisfaction. With regard to the interrogation (not limited to torture or ill-treatment), the public prosecutor in the supervisory position shall be informed of the content thereof and promptly conduct any required investigations and take necessary measures. The public prosecutors offices nationwide are putting this into practice.

227. In relation to measures taken to eliminate all forms of violence against women, including domestic and sexual violence, the system of victim participation in trial procedures was put into force in 2008 following the previous review. The said system is one that, based on a decision of the court, enables the victims of certain crimes, including domestic violence cases and sexual crimes, to attend court on the trial dates and to directly ask questions of the accused. The number of cases in which the victims participated in 2009 was 403, involving 571 persons. 24 of such persons were allowed to be accompanied by another person to alleviate their psychological burden, and 50 persons were provided with measures such as shielding.

228. The public prosecutors office has been giving consideration to the victims of sexual crimes, for example, at the investigation, a female investigator attends questioning and a female interrogator conducts the questioning as needed. In addition, in order to alleviate the burden and anxiety of victims, “victim supporters” engaged in supportive activities for crime victims are allocated to each public prosecutors office, and they introduce related organs and groups that provide mental, everyday and economic support in accordance with the situation of the victim.

229. Furthermore, regarding cases of violence against women, etc. reported to the police through consultations, etc., if the case violates penal laws and regulations, an arrest or any other appropriate measures are carried out. In addition, even if the case does not violate any penal laws and regulations, appropriate measures are taken to prevent damage, including providing crime prevention guidance and giving out warnings to the other party as needed. Moreover, such cases which can be handled appropriately by an organization other than the police are smoothly taken over by the appropriate organization. In this manner, the police handle cases proactively from the standpoint of victims.

230. With regard to support for crime victims, etc. provided by the police, in cases in which a person’s house has become the scene of a criminal act and it is difficult for the person to reside in the house or to secure a place to reside in by him/herself, the police provide accommodation for temporary shelter at public expense, thereby reducing economic and psychological burdens. In addition, the police have established a consultation/counseling system to alleviate psychological damage to crime victims, etc. through the allocation of officials who have expertise and skills in counseling and coordination with psychiatrists and private counselors. At present, the prefectural police in all prefectures entrust outside psychiatrists and clinical psychotherapists with counseling for crime victims, etc. and advisory operations for improving the counseling skills of officials.

231. Women’s Consulting Offices, established in each prefecture, provide consultation for women victimized by spousal violence and women victimized by trafficking in persons, and also provide women who require protection with such support as temporary protection. In addition, Women’s Consulting Offices are promoting the allocation of staff members in charge of psychotherapy for mental health care at Women’s Consulting Offices, training for specialized interpreters to provide support to foreign victims, legal coordination by attorneys, etc., and support for legal affairs when women are seeking assistance.

232. In addition, support for securing a stable residence for victims of spousal violence has been provided, for example, by adopting such methods as prioritizing the move of victims into public housing and by allowing such victims to move into public housing on their own.

Reply to the issues raised in paragraph 28 (b) of the list of issues

233. When a public officer who exercises the public authority of the State or of a public entity has, in the course of his/her duties, committed an act that falls under torture or ill-treatment, the victim may seek damages against the State or the public entity based on Article 1 of the State Redress Act.

234. When a person who has committed an act of torture or ill-treatment is a private individual, the victim may seek damages against the individual pursuant to the provisions of Article 709 of the Civil Code. In addition, where there is correlation between a consequence caused by a private individual’s act and a public officer’s act of violating an obligation in the course of his/her duties, including cases where a public officer could not prevent any act of torture or ill-treatment due to the violation of an obligation in the course

of his/her duties, the victim may seek damages against the State or the relevant public entity pursuant to the provisions of Article 1 of the State Redress Act.

235. However, since we have not compiled statistics which differentiate between whether the redress was state redress and whether or not the victims were those of torture, etc., we are unable to provide information on statistics specifically targeting victims of torture, etc. in response to your question.

236. Claims arising out of acts of members or employees of the United States (U.S) armed forces done in the performance of official duty and causing damage to third parties in Japan shall be dealt with, in accordance with paragraph 5 of Article 18 of the Japan-U.S Status of Forces Agreement (SOFA), by the Japanese government through such procedures as lawsuits against the Japanese government, and the cost incurred in satisfying claims in individual cases shall be distributed between the Japanese and the U.S. governments.

237. On the other hand, claims against members or employees of the U.S armed forces (except employees who are nationals of or ordinarily resident in Japan) arising out of acts in Japan not done in the performance of official duty could be dealt with either through lawsuits or through the means whereby U.S government makes an ex gratia payment as designated by paragraph 6 of Article 18 of the SOFA. The Japanese and the U.S government also provide an advance payment system, a no-interest loan system, and consolation payments as improved application of paragraph 6 of Article 18 of the SOFA in order to further enhance the relief of victims.

238. However, since we have not compiled statistics on claims dealt with under Article 18 of the SOFA from the viewpoint of whether or not the victims were those of torture, we are unable to provide information on statistics specifically targeting victims of torture in response to your question.

Reply to the issues raised in paragraph 28 (c) of the list of issues

(a) Police officials

239. The police provide training classes at police schools to newly recruited prefectural police officials and police officials who are promoted to a new rank, to have them understand the main points of investigations and consideration for victims in cases of violence against women, such as sexual crimes, domestic violence, and stalking activities.

240. In addition, police officials who engage in the investigation of cases of violence against women, such as sexual crimes, domestic violence, and stalking activities, are educated to acquire the necessary knowledge and skills for appropriately performing their duties with due consideration to the human rights of suspects, detainees, victims, etc. according to the content of the specialized field in which they are engaged, respectively, through specialized education provided at a police school for each rank and workshops held at Prefectural Police Headquarters, etc. Moreover, the "Manual for Police Activities with Due Consideration to Human Rights" was newly prepared as office materials in March 2008, and has been distributed to the police nationwide.

(b) Judges

241. We understand that the Legal Training and Research Institute, which is in charge of training judges, provides various lectures on subjects such as the application of various international laws, including the International Covenants on Human Rights, inviting professors at graduate schools who specialize in international human rights issues, officials of human rights organs (including international organs), etc., in the various types of training provided every year for judges who have assumed new duties or positions, including judges who have just been appointed.

242. We are also aware that each high court invites experts on support for victims of crime or specialists on crime victim issues as lecturers once every year to hold a study meeting where lectures are given to and opinions are exchanged among judges, etc. who are in charge of criminal or juvenile cases, in order to deepen their understanding on the standpoint and situation of victims of crime.

(c) Public prosecutors

243. Lectures are provided in light of the characteristics of the duties of public prosecutors, including those on the “psychology of victims” and “due consideration to children and women and prosecutorial practice” by inviting visiting lecturers or experts versed in various conventions/laws and regulations, etc. as lecturers, through various types of training provided according to their years of experience, etc., such as “training for newly appointed public prosecutors” targeting newly appointed public prosecutors and “general training for public prosecutors” targeting public prosecutors who have held their appointments for about three years.

(d) Immigration officials

244. Training on domestic violence, trafficking in persons, etc. is provided for officials serving at immigration offices nationwide who are leadership positions, for example, by inviting officials from outside relevant organs or experts as lecturers and conducting “human rights training for relevant immigration officials” and “training for officials engaged in administrative affairs concerning measures against human traffic and domestic violence cases”.

245. In addition, officials who have participated in the said training keep their subordinate officials, etc. informed of the content of the training at the offices in which they serve.

(e) Correctional institution officials

246. Regarding the education and training for correctional institution officials, systematic and intensive collective training is provided based on the annual plan at the Training Institute for Correctional Personnel and its branches. In addition, various types of practical training are provided in each correctional institution according to the actual circumstances, etc. of each institution.

247. See the answer to 12(a) above for details.

Reply to the issues raised in paragraph 28 (d) of the list of issues

(a) Regarding complaints relating to violence against women

248. Through the expansion of awareness-raising activities for eradicating violence against women and an increase in the number of Spousal Violence Counseling and Support Centers (201 centers as of April 1, 2011 (as of January 1 in Miyagi and Fukushima prefectures), efforts are being made to reveal the level of damage of spousal violence.

249. The following statistical data shows the number of complaints made in relation to spousal violence.

Number of complaints made to Spousal Violence Counseling and Support Centers

	<i>Fiscal</i> 2002	<i>Fiscal</i> 2003	<i>Fiscal</i> 2004	<i>Fiscal</i> 2005	<i>Fiscal</i> 2006	<i>Fiscal</i> 2007	<i>Fiscal</i> 2008	<i>Fiscal</i> 2009
No. of complaints	35 943	43 225	49 329	52 145	58 528	62 078	68 196	72 792

250. The following shows the number of human rights counseling cases handled by the Human Rights Organs of the Ministry of Justice in relation to violence against and abuse of women.

Number of human rights counseling cases handled by the Human Rights Organs of the Ministry of Justice in relation to violence against and abuse of women

	2007	2008	2009
No. of human rights counseling cases	7 457	7 872	6 944

251. Moreover, the Human Rights Organs of the Ministry of Justice in human rights counseling with regard to human rights issues including violence against women, provide appropriate advice and introductions to relevant organizations. Also, when human rights infringement is suspected, they promptly investigate it as a human rights infringement case, ascertain the presence or absence of human rights infringement, and based on the results, take appropriate measures according to the case.

252. The following shows the recent number of human rights infringement cases relating to violence against and abuse of women.

	2007	2008	2009
No. of cases of human rights infringement cases	3 137	3 152	3 082

(b) Regarding criminal procedures

253. As described in the answer to 28(a), the police are taking active steps concerning cases of spousal violence, and are taking various measures to prevent victims of spousal violence from incurring further damage. The status of police responses has shown an increase every year as shown in the following table.

Changes in the status of police responses under the Spousal Violence Prevention Act (2005–2009)

<i>Category</i>	<i>Year</i>				
	2005	2006	2007	2008	2009
Assistance by the Chief of the Prefectural Police Headquarters, etc.	3 519	4 260	5 208	7 225	8 730
Arrests for violation of protection orders	73	53	85	76	92
Arrests under other laws and regulations	1 367	1 525	1 581	1 650	1 658
Warnings to offenders	3 099	3 353	4 085	5 341	5 753
Lending of security equipment	10 105	11 943	14 315	17 967	20 255

254. The following table shows the total number of persons prosecuted in relation to crimes of sexual violence.

Number of persons prosecuted

	2007	2008	2009
Forcible indecency*	1 412	1 304	1 335
Forcible indecency causing death or injury*	157	139	117
Rape	571	524	434
Rape causing death or injury	239	198	139
Gang rape	52	49	68
Gang rape causing death or injury	23	18	21
Rape at the scene of a robbery	136	117	129

* Partially including cases of male victims.

We understand that the total number of persons convicted of crimes of sexual violence is as follows.

Number of persons convicted (including those found partially not guilty) in ordinary criminal cases in the first instance (district court)

	2007	2008	2009
(Quasi) forcible indecency	1 016	898	892
(Quasi) forcible indecency causing death or injury	133	123	73
(Quasi) rape	345	306	266
(Quasi) rape causing death or injury	186	158	105
(Quasi) gang rape	43	55	53
(Quasi) gang rape causing death or injury	16	22	20
Rape at the scene of a robbery	65	61	571

- Notes: 1. Crimes are those for which the persons were sentenced.
2. Figures indicate the actual numbers of persons.

Reference• *Penal Code*

Article 176. Forcible Indecency

Article 177. Rape

Article 178 (2). Gang Rape

Article 181. Forcible Indecency Causing Death or Injury

Article 241. Rape at the Scene of a Robbery

(c) Regarding protection

255. The number of women victimized by spousal violence who were temporarily protected at Women's Consulting Offices is as follows:

- (a) Fiscal 2009: 4,681;
- (b) Fiscal 2008: 4,666;
- (c) Fiscal 2007: 4,549.

Reply to the issues raised in paragraph 29 of the list of issues

256. Sexual abuse other than actual sexual intercourse and the rape of men are punishable under Article 176 (Forcible Indecency) of the Penal Code, and incest is punishable under the same Article or Article 177 (Rape) of the Code.

257. The assault or intimidation that is required for the constitution of rape only needs to be at such a level that makes it extremely difficult for the victim to put up a resistance, and the victim is not required to have actually resisted the violence.

258. In Japan, from the viewpoint of protecting victims, forcible indecency, rape, quasi forcible indecency, quasi rape, and attempts of these crimes are designated as crimes that can be prosecuted only upon complaint. The restriction of the period of complaint was abolished by the 2000 revision of the Code of Criminal Procedure. Meanwhile, gang rape and forcible indecency, etc. causing death or injury can be prosecuted without a complaint, as a result of prioritizing the need to punish the criminal from the viewpoint of protecting the public interest.

Reference

- *Penal Code*

(Forcible indecency)

Article 176. A person who, through assault or intimidation, forcibly commits an indecent act upon a male or female of not less than thirteen years of age shall be punished by imprisonment with work for not less than 6 months but not more than 10 years. The same shall apply to a person who commits an indecent act upon a male or female under thirteen years of age.

(Rape)

Article 177. A person who, through assault or intimidation, forcibly commits sexual intercourse with a female of not less than thirteen years of age commits the crime of rape and shall be punished by imprisonment with work for a definite term of not less than 3 years. The same shall apply to a person who commits sexual intercourse with a female under thirteen years of age.

(Quasi forcible indecency; Quasi rape)

Article 178. A person who commits an indecent act upon a male or female by taking advantage of loss of consciousness or inability to resist, or by causing a loss of consciousness or inability to resist, shall be punished in the same manner as prescribed for in Article 176.

(2) A person who commits sexual intercourse with a female by taking advantage of a loss of consciousness or inability to resist, or by causing a loss of consciousness or inability to resist, shall be punished in the same matter as prescribed in the preceding Article.

(Gang rape)

Article 178-2. When two or more persons jointly commit the crimes prescribed under Article 177 or paragraph (2) of Article 178, they shall be punished by imprisonment with work for a definite term of not less than 4 years.

(Attempts)

Article 179. An attempt of the crimes prescribed for in Articles 176 through the preceding Article shall be punished.

(Complaints)

Article 180. The crimes prescribed for in Articles 176 through Article 178 and attempts of the above-mentioned crimes shall be prosecuted only upon complaint.

(2) The provision of the preceding paragraph shall not apply when the crimes prescribed under Article 176, paragraph (1) of Article 178 or attempts of the above-mentioned crimes are committed jointly by two or more persons who are at the scene of crime.

(Forcible indecency causing death or injury)

Article 181. A person who commits a crime prescribed under Article 176, paragraph (1) of Article 178 or an attempt of the above-mentioned crimes and thereby causes the death or injury of another shall be punished by imprisonment with work for life or for a definite term of not less than 3 years.

(2) A person who commits a crime prescribed under Article 177, paragraph (2) of Article 178 or an attempt of the above-mentioned crimes and thereby causes the death or injury of another shall be punished by imprisonment with work for life or for a definite term of not less than 5 years.

(3) A person who commits a crime prescribed for in Article 178-2 or an attempt of the above-mentioned crimes and thereby causes the death or injury of another shall be punished by imprisonment with work for life or for a definite term of not less than 6 years.

Reply to the issues raised in paragraph 30 (a) of the list of issues

(a) Measures taken to combat trafficking in persons

259. The Government of Japan achieved significant results by taking measures to combat trafficking in persons based on Japan's Action Plan to Combat Trafficking in Persons formulated in 2004. Specifically, the Government steadily implemented measures such as strengthening countermeasures at the border (including the introduction of e-passports), reviewing the criteria for landing permission for the status of residence of "entertainer" and stepping up visa examination, criminalizing the conduct of Buying or Selling of Human Beings, implementing thorough crackdowns, and revision of the Immigration Control Act to allow the flexible operation of special permission to stay in Japan to protect victims of trafficking in persons. Moreover, considering the recent situation of trafficking in persons such as cases of trafficking in persons becoming more sophisticated and invisible, the government revised the Action Plan in December 2009 and drew up Japan's 2009 Action Plan to Combat Trafficking in Persons. Based on the 2009 Action Plan, the government aims to further enhance its efforts to prevent and eliminate trafficking in persons and to protect the victims. Relevant institutions will comprehensively implement the respective measures in cooperation with each other. Specifically, the new items that were incorporated into the 2009 Action Plan are as follows:

(a) Promoting compliance with laws and regulations, including actions against labor exploitation;

(b) Taking stringent actions against the sexual exploitation of children, and enhancing action to eliminate child pornography;

(c) Enhancing efforts to provide guidance to victims in a foreign language or through female counselors, and examining the possibility of managing (supporting) a multi-language hotline for victims;

- (d) Examining mid- and long-term protection policies for victims, and examining protection policies for male victims;
- (e) Examining the total procedure, from identifying and protecting victims to providing them with repatriation assistance;
- (f) Examining the necessity of establishing a bureau that handles policy concerning trafficking in persons in an integrated manner;
- (g) Publicizing protection policies to potential victims.

(b) Entertainer visas and Training and Technical Internship Programs

260. The number of entertainer visas issued has decreased considerably as a result of the government's efforts to review the criteria for landing permission for the status of residence of "entertainer" and stepping up visa examinations based on Japan's Action Plan of Measures to Combat Trafficking in Persons formulated in 2004.

261. With regard to the Training and Technical Internship Programs, the government has not had reports of any notably malicious cases that can be identified to be trafficking in persons or forced labor in light of international standards. However, the government has stepped up examinations pertaining to the issuance of visas of such status. In addition, the revised Immigration Control Act that came into effect in July 2010 stipulates measures for providing technical interns with protection under labor-related laws and regulations and for stabilizing their legal status, in an effort to implement the system more appropriately.

(c) Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)

262. With regard to the Trafficking Protocol, the Diet approved the conclusion of the Protocol in June 2005, and relevant domestic laws have already been established. However, since Japan has yet to conclude the U.N. Convention against Transnational Organized Crime to which the Protocol is linked, Japan has not concluded the Protocol yet. At present, the relevant ministries and agencies are carrying out the necessary study, toward the conclusion of the Convention and the Protocol.

263. Whereas the Committee's previous concluding observations have stated that victims of trafficking are "being treated as illegal immigrants and deported without redress or remedy," this is not true. For foreign victims who had been in violation of the Immigration Control Act, such as illegal stay, the government has been making efforts to stabilize their legal status by giving them special permission to stay in Japan for residence. Among the foreign victims to whom the Immigration Bureau have extended protection or provided repatriation assistance to date, all 115 victims who were in violation of the Immigration Control Act have been given special permission to stay in Japan for residence.

Reply to the issues raised in paragraph 30 (b) of the list of issues

264. Since the formulation of Japan's Action Plan of Measures to Combat Trafficking in Persons in December 2004, the government has promoted the following measures in an effort to prevent and eliminate trafficking in persons and to protect the victims:

- (a) Measures at the border, such as the introduction of e-passports, review of the criteria for landing permission for the status of residence of "entertainer," and stepped up visa examinations;
- (b) Thorough crackdown on cases of illegal employment as well as on malicious employers and brokers, etc.;

(c) Revision of the Immigration Control Act to enable the grant of special permission to stay in Japan for residence to victims of trafficking in persons, etc.

265. In addition, the relevant provisions of the Penal Code and the Immigration Control Act have been revised as follows based on the Action Plan.

(a) With the revision of the Penal Code, penal provisions were introduced against the buying or selling of human beings, against kidnapping with the intent to threaten life or body including the purpose of harvesting organs, and against the transport, delivery or hiding of a kidnapped person or a person who has been bought or sold. In addition, statutory penalties against unlawful capture and confinement and against kidnapping of minors have been made stricter (2005);

(b) With the revision of the Immigration Control Act, provisions were put in place for strengthening the protection of victims (introduction of provisions for enabling a grant of special permission to stay in Japan for residence to victims, etc.) and for punishing perpetrators (2005).

266. As a result of these efforts, the number of victims of trafficking in persons has declined sharply from 117 in 2005 to 17 in 2009, and appropriate protection is now being extended to the victims.

267. In December 2009, based on the recent situation of trafficking in persons, the government drew up Japan's 2009 Action Plan to Combat Trafficking in Persons in order to continue to promote the measures implemented by the government as a whole.

Reference

- *Penal Code*

Article 220. A person who unlawfully captures or confines another shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.

Article 224. A person who kidnaps a minor by force or enticement shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.

Article 225. A person who kidnaps another by force or enticement for the purpose of profit, indecency, marriage or threat to the life or body shall be punished by imprisonment with work for not less than 1 year but not more than 10 years.

Article 226. A person who kidnaps another by force or enticement for the purpose of transporting another from one country to another country shall be punished by imprisonment with work for a definite term of not less than 2 years.

Article 226-2. A person who buys another shall be punished by imprisonment with work for not less than 3 months but not more than 5 years.

(2) *A person who buys a minor shall be punished by imprisonment with work for not less than 3 months but not more than 7 years.*

(3) *A person who buys another for the purpose of profit, indecency, marriage or threat to the life or body, shall be punished by imprisonment with work for not less than 1 year but not more than 10 years.*

(4) *The preceding paragraph shall apply to a person who sells another.*

(5) *A person who sells or buys another for the purpose of transporting him/her from one country to another country shall be punished by imprisonment with work for not less than 2 years.*

Article 226-3. A person who transports another kidnapped by force or enticement or another who has been bought or sold, from one country to another country, shall be punished by imprisonment with work for not less than 2 years.

Article 227. A person who, for the purpose of aiding another who has committed any of the crimes prescribed under Articles 224, 225 or the preceding three Articles, delivers, receives, transports or hides a person who has been kidnapped by force or enticement or has been bought or sold, shall be punished by imprisonment with work for not less than 3 months but not more than 5 years.

(2) A person who, for the purpose of aiding another who has committed the crime prescribed under paragraph (1) of Article 225-2, delivers, receives, transports or hides a person who has been kidnapped shall be punished by imprisonment with work for not less than 1 year but not more than 10 years.

(3) A person who, for the purpose of profit, indecency or threat to the life or body, receives a person who has been kidnapped or sold, shall be punished by imprisonment with work for not less than 6 months but not more than 7 years.

(4) A person who, for purpose prescribed under paragraph (1) of Article 225-2, receives a person who has been kidnapped shall be punished by imprisonment with work for a definite term of not less than 2 years. The same shall apply to a person, who has received a kidnapped person and causes or demands such person's relative or any other person who would be concerned about the safety of the kidnapped person to deliver any property, taking advantage of such concern.

Article 228. An attempt of the crimes prescribed under Articles 224, 225, paragraph (1) of Article 225-2, Articles 226 through 226-3 and paragraphs (1) through (3) and the first sentence of paragraph (4) of the preceding Article shall be punished.

Article 229. The crimes prescribed under Articles 224 and 225, the crimes prescribed under paragraph (1) of Article 227 which are committed for the purpose of aiding the person who has committed the crimes above, the crimes prescribed under paragraph (3) of Article 227 and the attempts of these crimes shall be prosecuted only upon complaint unless committed for the purpose of profit or threat to the life or body; provided, however, that when the person who has been kidnapped or sold has married the offender, the complaint shall have no effect until a judgment invalidating or rescinding the marriage has been rendered.

- *Immigration Control Act*

Article 2. The terms in the following items as used in the Immigration Control and Refugee Recognition Act and the orders pursuant to the Act shall have such meanings as are defined in each item respectively.

(i)–(vi) (omitted)

(vii) The term “trafficking in persons” means any of the following acts:

(a) The kidnapping, buying or selling of persons for the purpose of profit, indecency or threats to a person's life or body, or delivering, receiving, transporting or hiding such persons who have been kidnapped, bought or sold;

(b) In addition to the acts listed in sub-item (a) above, placing persons under 18 years of age under one's control for the purpose of profit, indecency or threats to a person's life or body;

(c) *In addition to the acts listed in sub-item (a), delivering persons under 18 years of age, knowing that they will be or are likely to be placed under the control of a person who has the purpose of profit, indecency or threat to their lives or bodies.*

(viii)–(xvi) *(omitted)*

Article 5. *Any foreign national who falls under any of the following items shall be denied permission to land in Japan.*

(i)–(vii) *(omitted)*

(vii)-2. *A person who has committed trafficking in persons or incited or aided another to commit it.*

(viii)–(xiv) *(omitted)*

(2) *(omitted)*

Article 12. *In making a decision as set forth in paragraph (3) of the preceding Article, the Minister of Justice may, even if he/she finds that the objection filed is without reason, grant special permission for landing to the foreign national concerned if he/she falls under any of the following items.*

(i) *(omitted)*

(ii) *He/she has entered Japan under the control of another due to trafficking in persons.*

(iii) *(omitted)*

(2) *(omitted)*

Article 24. *Any foreign national who falls under any of the following items may be deported from Japan in accordance with the procedures provided for in the following Chapter.*

(i)–(iii) *(omitted)*

(iv) *A foreign national residing in Japan (except for those to whom permission for provisional landing, permission for landing at a port of call, permission for landing in transit, landing permission for crew members, or landing permission due to distress has been granted) who falls under any of the following sub-items (a) to (o).*

(a) *A person who is clearly found to be engaged solely in activities related to the management of business involving income or activities for which he/she receives remuneration in violation of the provisions of Article 19, paragraph (1) (except for those under the control of another due to trafficking in persons).*

(b) *(omitted);*

(c) *A person who has committed trafficking in persons or has incited or aided another to commit trafficking in persons;*

(d)–(i) *(omitted);*

(j) *A person who engages or has engaged in prostitution, or intermediation or solicitation of prostitutes for others, or provision of a place for prostitution, or any other business directly connected to prostitution (except for those under the control of another due to trafficking in persons);*

(k)–(o) (omitted);

(iv)-2–(x) (omitted)

Article 50. Even if the Minister of Justice finds that a filed objection is without reason in making the determination set forth in paragraph (3) of the preceding Article, he/she may grant the suspect special permission to stay in Japan if the suspect falls under any of the following items:

(i)–(ii) (omitted)

(iii) *He/She resides in Japan under the control of another due to trafficking in persons.*

(iv) (omitted)

(2)–(3) (omitted)

Reply to the issues raised in paragraph 30 (c) of the list of issues

268. The government has taken budgetary measures for various support systems provided at Women's Consulting Offices, such as the protection of women victimized by trafficking in persons, allocation of staff members in charge of psychotherapy who provide counseling, etc., hiring appropriate foreign language interpreters, support for medical examinations and medical expenses, and as required legal coordination by attorneys. Since fiscal year 2010, the government has also taken budgetary measures for supporting the medical expenses of and hiring interpreters and caseworkers for victims of trafficking in persons at Women's Protection Facilities, targeting victims who are judged to require longer-term protection.

269. Based on the recognition that trafficking in persons is a grave crime and a violation of human rights, the government revised the existing Action Plan in December 2009, and drew up Japan's 2009 Action Plan to Combat Trafficking in Persons (http://www.cas.go.jp/jp/seisaku/jinsin/kettei/2009gaiyou_en.pdf). Based on the 2009 Action Plan, relevant institutions have been implementing comprehensive measures to prevent and eliminate trafficking in persons and to protect the victims, in cooperation with each other. For foreign victims of trafficking in persons, repatriation assistance and social rehabilitation assistance are provided. Since 2005, the government has provided repatriation assistance and social rehabilitation assistance after repatriation to 196 foreign victims of trafficking in persons by the end of December 2010 (reference: Japan's 2009 Action Plan to Combat Trafficking in Persons).

270. In addition, since fiscal 2006, the government has implemented projects against trafficking in persons in Southeast Asia through the United Nations Office on Drugs and Crime (UNODC), to protect children from sexual exploitation, raise public awareness of the issue, and to provide mental care for victimized children, for the purpose of continuously providing protection and social rehabilitation assistance to victims of trafficking in persons.

Reply to the issues raised in paragraph 30 (d) of the list of issues

(a) Number of persons trafficked to and in transit through the State party

271. The 2005 revision of the Immigration Control Act clarified that victims of trafficking in persons are subject to protection. As a result, the number of persons to whom the Immigration Bureau has extended protection or provided repatriation assistance from 2005 to the end of 2009 was 250, among whom all 115 persons who were in violation of the Immigration Control Act were given special permission to stay in Japan for residence for the stabilization of their legal status.

272. The information on the number of persons trafficked in transit through Japan is unavailable. But there was a case in which a non-Japanese female minor, who was trying to board a connecting flight to a third country in a transit area of a Japanese airport, was protected.

Number of victims of trafficking in persons to whom the Immigration Bureau has extended protection or provided repatriation assistance (2005–2009)

	2005	2006	2007	2008	2009
Persons with status of residence	68	20	27	11	9
Persons violating the Immigration Control Act	47	27	13	17	11
Total No. of victims	115	47	40	28	20

* Special permission to stay in Japan for residence has been granted to all victims who were in violation of the Immigration Control Act.

(b) Number of cases investigated

273. The government formulated Japan's Action Plan of Measures to Combat Trafficking in Persons in 2004, and has taken various measures to prevent and eliminate trafficking in persons. Moreover, based on the recent situation of trafficking in persons in Japan, the government drew up Japan's 2009 Action Plan to Combat Trafficking in Persons in December 2009, in order to continue promoting the measures implemented by the government as a whole.

274. As regards items which relate to the police, the 2009 Action Plan provides for the elimination of trafficking in persons through measures which include the following:

- (a) Stringent action against the sexual exploitation of children;
- (b) Thorough crackdown on malicious employers, brokers, etc.

275. Based on the Action Plan, the police are engaging in measures against trafficking in persons in close cooperation with the relevant ministries and agencies.

276. Furthermore, the National Police Agency is making efforts, in cooperation with the relevant ministries and agencies, to inform victims of trafficking in persons of Japan's measures including the protection of victims by distributing leaflets on trafficking in persons written in foreign languages such as Thai, Tagalog, and Spanish to relevant organizations, etc., and by other means.

Number of arrests, etc. for trafficking in persons (2005–2009)

Category	Year				
	2005	2006	2007	2008	2009
No. of arrests	81	72	40	36	28
No. of persons arrested	83	78	41	33	24
Total No. of victims	117	58	43	36	17

(c) Number of persons prosecuted

277. The following table shows the total number of persons prosecuted in relation to Article 226-2 of the Penal Code.

Number of persons prosecuted

	2007	2008	2009
Buying a person for profit	5	2	3
Selling of human beings	6	3	1

We understand that the total number of persons convicted in relation to Article 226-2 of the Penal Code is as follows.

Number of persons convicted (including those found partially not guilty) in ordinary criminal cases in the first instance (district court)

	2007	2008	2009
Buying a person for profit, etc.	6	2	1
Selling of human beings	6	3	-

- Notes:*
1. Crimes are those for which the persons were sentenced.
 2. Figures indicate the actual numbers of persons.
 3. “Buying a person for profit, etc.” denotes persons convicted in relation to Article 226-2(3) of the Penal Code, and “selling of Human Beings” denotes persons convicted in relation to paragraph (4) of said Article.

Reference

- *Penal Code*

Article 226-2

- (1) *Buying a person*
- (2) *Buying a minor*
- (3) *Buying a person for profit*
- (4) *Selling of Human Beings*
- (5) *Selling a person for transportation to a foreign country*

[Statistics on protection of victims]

278. The number of victims of trafficking in persons who were protected at Women’s Consulting Offices is as follows.

- (a) Fiscal 2009: 14;
- (b) Fiscal 2008: 39;
- (c) Fiscal 2007: 36.

Reply to the issues raised in paragraph 31 of the list of issues

279. The scope of Article 16 of the Convention is “acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity,” and it does not include violence by private individuals, such as domestic violence.

280. Meanwhile, with regard to “corporal punishment in the home,” Japan has provisions prohibiting child abuse in Article 3 of the Act on Child Abuse Prevention that “no person

shall abuse a child.” In addition, Article 14(1) of the Act provides that “a person who has parental authority over a child shall, upon disciplining the child, give consideration to appropriate exercise of the parental authority,” obligating a child’s guardian (meaning a person who has parental authority, a guardian of a minor, or any other person who has actual custody of the child) to give consideration to the appropriate exercise of parental authority, etc. so that such exercise does not lead to child abuse.

Other issues

Reply to the issues raised in paragraph 32 of the list of issues

281. We recognize the system of communications from or on behalf of individuals provided under Article 22 of the Convention to be a noteworthy system for effectively guaranteeing the implementation of the Convention.

282. With regard to the acceptance of the system, the government is making an internal study of various issues including whether it poses any problem in relation to Japan’s judicial system or legislative policy, and the possible organizational framework for implementing the system if we were to accept the system. In April 2010, the government set up the Division for Implementation of Human Rights Treaties within the Ministry of Foreign Affairs. The government will continue to seriously consider whether or not to accept the system, while taking into account opinions gathered from various quarters.

283. As for the Optional Protocol to the Convention, the government is currently studying the relation between the provisions of the Optional Protocol and those of domestic laws, and other matters that need to be studied.

Reply to the issues raised in paragraph 33 of the list of issues

284. In December 2004, the government’s Headquarters for the Promotion of Measures Against Transnational Organized Crime and Other Relative Issues and International Terrorism formulated an “Action Plan for Prevention of Terrorism.” Based on this Action Plan, Japan enacted the Act for Partial Revision of the Immigration Control and Refugee Recognition Act (Act No. 43 of 2006) in May 2006, which included (i) introduction of provisions obligating foreign nationals to provide personal identification information such as fingerprints, and (ii) introduction of provisions concerning grounds for deportation, such as for non-Japanese terrorists.

285. Furthermore, in December 2008, the Ministerial Meeting Concerning Measures Against Crime formulated the Action Plan for Realization of a Society Resistant to Crime, which incorporated measures to respond to threats of terrorism, etc., while taking into account the results achieved by the Headquarters for the Promotion of Measures Against Transnational Organized Crime and Other Relative Issues and International Terrorism. Related ministries and agencies are promoting measures based on these Action Plans.

286. With regard to the relevant training given to law enforcement officers, we understand that the Legal Training and Research Institute, which is in charge of training judges, does not provide training specifically targeting anti-terrorist measures at present. However, as mentioned in the answers to Paragraphs 12 and 28, it provides training on the international protection of human rights in the various types of training provided every year for judges who have assumed new duties or positions. Also, the institute has carried out judicial research on the confiscation of crime proceeds from organized crimes, etc. and has distributed the report on the research results to courts. For public prosecutors, correctional institution officials, immigration officials, etc., no training is provided on anti-terrorist measures, but in order to ensure appropriate performance of their duties, various types of training are provided according to their years of experience, etc., in which lectures are

given on human rights issues including the International Covenants on Human Rights and other related conventions, in an effort to increase their understanding of a broad range of human rights issues.

II. General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

Reply to the issues raised in paragraph 34 of the list of issues

287. The Human Rights Protection Bill which aimed to establish an independent human rights institution was submitted to the Diet in March 2002, but was abandoned due to the dissolution of the House of Representatives in October 2003.

288. With regard to a new human rights remedy system, there are discussions concerning various issues such as the scope of human rights infringements eligible for remedy, measures to guarantee the independence of a human rights institution and details of the investigation authority. Therefore, at present, a new bill on the human rights remedy system has not yet been re-submitted to the Diet.

289. Japan considers the establishment of a national human rights institution independent of the government as an important issue, and intends to continue making necessary preparations for the establishment of the institution.

290. The Human Rights Organs of the Ministry of Justice are engaged in human rights remedy activities (including handling complaints filed by the victims of human rights infringements) and human rights promotion activities at the Legal Affairs Bureaus and the District Legal Affairs Bureaus and their branches (a total of approximately 320 locations across the nation). These activities are appropriately conducted by government officials of the Legal Affairs Bureaus and the District Legal Affairs Bureaus as well as Human Rights Volunteers (approximately 14,000 volunteers nationwide), on fair and impartial grounds under the Human Rights Bureau of the Ministry of Justice. However, there are still some issues to be addressed, such as the insufficiency of legal measures to ensure the reliability of the independence of their duties.

291. Based on the current situation described above, we intend to provide effective relief to the victims of human rights infringements and continue the preparation for the establishment of a new human rights institution.

Reply to the issues raised in paragraph 35 of the list of issues

292. The Human Rights Organs of the Ministry of Justice have been continuously offering human rights counseling service through interviews and telephone calls at the Legal Affairs Bureaus and the District Legal Affairs Bureaus and their branches (a total of approximately 320 locations across the nation). The Organs strengthened their counseling system by distributing "Children's Rights SOS Letter-cards," which are writing paper and envelope sets that can be used for human rights counseling, to all elementary and secondary school students nationwide since 2006, and, in 2007, changing the "Children's Rights Hotline," which is a dedicated telephone consultation service, to a toll-free service, and setting up an online system for receiving requests for human rights counseling available around the clock via PC and mobile phone.

Reply to the issues raised in paragraph 36 of the list of issues

293. The Committee against Torture, in paragraph 28 of its conclusions and recommendations (CAT/C/JPN/CO/1) (August 7, 2007) based on a consideration of the report submitted by Japan under Article 19 of the Convention, encourages the State party to consider becoming a party to the Rome Statute of the International Criminal Court (hereinafter referred to as the “ICC Statute”). Japan deposited its instrument of accession to the ICC Statute to the UN Secretary-General on July 17, 2007, and officially became a State Party to the ICC Statute on October 1, 2007. Prior to its accession to the ICC Statute, Japan enacted the Act on Cooperation with the International Criminal Court for the domestic implementation of the obligations for cooperation under the ICC Statute, and for the punishment of offences against the administration of justice set forth in article 70 of the ICC Statute.

294. In addition, an Expert Meeting on Juvenile Correction was established, consisting of eleven members, as a place for hearing the opinions of experts from various quarters, in order to further promote the appropriateness of juvenile correction operations and to enhance the functions of facilities for juvenile correction, including correctional education at juvenile training schools and predisposition investigations at juvenile classification homes, thereby contributing to the sound development and smooth social rehabilitation of juvenile inmates. From January to December of 2010, the expert meeting held discussions and submitted recommendations for further improving the system of juvenile correction.
