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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Sixth periodic report of States parties**

**Japan\***

[26 April 2012]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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## I. Introduction

1. This document is the sixth periodic report submitted by Japan under article 40 of the International Covenant on Civil and Political Rights (hereafter “the Covenant”). The presentation of the report takes into account the harmonized guidelines on reporting (HRI/GEN/2/Rev.6).

2. Except where otherwise indicated, this report describes the measures and related matters newly introduced since the submission of the fifth periodic report, based on the facts confirmed for the period following the submission of the fifth periodic report, i.e. from January 2007 to September 2011.

## II. General Comments

### A. Institutional aspects of human rights protection in Japan

#### 1. Efforts by the Human Rights Organs of the Ministry of Justice (MOJ)

3. The Human Rights Organs of the Ministry of Justice (the Human Rights Bureau of MOJ, the Legal Affairs Bureaus and District Legal Affairs Bureaus, and Human Rights Volunteers) carry out human rights protection activities (including response to complaints by victims of human rights infringement) and human rights promotion activities at the Legal Affairs Bureau and the District Legal Affairs Bureaus and their branches (a total of approximately 320 locations across the nation). For these activities, government officials of the Human Rights Bureau of MOJ, the Legal Affairs Bureaus and District Legal Affairs Bureaus and Human Rights Volunteers, who are private citizens appointed by the Minister of Justice (about 14,000 volunteers across the country) work appropriately on fair and impartial grounds. The number of human rights infringement cases handled by the Organs was 21,328 in 2006, 21,506 in 2007, 21,412 in 2008, 21,218 in 2009, and 21,696 in 2010. The Organs are addressing various types of Human Rights infringements by acting to provide remedy to victims of human rights infringements and preventing such infringements, through human rights counselling and investigation and resolution of human rights infringement cases. The number of cases handled by the Organs in 2010 is as follows:

- Assault and maltreatment (e.g.: violence by a husband against his wife, child abuse): 4,788 cases (22 per cent);
- Security of residence and living (e.g.: disputes among neighbours concerning noise): 3,889 cases (18 per cent);
- Coercion and compulsion (e.g.: compelled divorce, harassment in the workplace): 3,564 cases (16 per cent);
- Bullying in schools: 2,714 cases (13 per cent).

#### 2. Establishment of a new national human rights institution in Japan

4. With regard to the establishment of a new human rights institution, there has been debate concerning various issues such as the scope of human rights infringements that are eligible for remedy by the institution, measures to guarantee the independence of the institution and details of the authority of its investigations. At the moment, therefore, a bill for a new human rights institution has not yet been resubmitted to the Diet. The Government considers the establishment of a national human rights institution independent from the Government to be a critical issue and is continuing efforts to prepare for the establishment of the institution.

## **B. Concept of “public welfare” in the Constitution of Japan**

5. As explained in previous periodic reports, the concept of “public welfare” in the Constitution of Japan is embodied in more concrete terms by court precedents for respective rights based on their inherent nature, and the human rights guaranteed by the Constitution and the restrictions on human rights imposed under the Constitution closely resemble those under the Covenant. Under no circumstance, therefore, could the concept of public welfare allow the state power to arbitrarily restrict human rights, or allow any restrictions imposed on the rights guaranteed by the Covenant to exceed the level of restrictions permissible under the Covenant.

6. Typical judicial precedents concerning “public welfare” being an inherent restriction which coordinates the conflicts among fundamental human rights are mentioned in the previous periodic reports. One of the recent rulings worth summarizing here is a judgment rendered by the Petty Bench of the Supreme Court on July 7, 2011. The defendant (a former high school teacher) was opposed to standing and singing the national anthem at the graduation ceremony of the high school, and he called out loudly to the parents in the school gymnasium used as the place for the ceremony, urging them not to stand and sing the national anthem, and shouted out against the vice-principal and other teachers who tried to stop his behaviour, causing a tumultuous situation in which the opening of the graduation ceremony was eventually delayed. The Supreme Court rendered the following opinion and judged that the defendant had committed a crime of forcible obstruction of business. “While the freedom of expression must be respected as a particularly important right in a democratic society, article 21, paragraph 1 of the Constitution does not guarantee the freedom of expression absolutely without any reservation, but allows such restrictions that are necessary and reasonable for public welfare. When it comes to the means to announce one’s opinions outside, no means would be allowed should they unreasonably harm the rights of others. The act of the defendant in this case was conducted in an undue manner that did not fit the occasion and caused a considerable disturbance to the smooth performance of the graduation ceremony, while it should have been performed in a calm atmosphere. As such an act is impermissible in light of general societal norms, it evidently involves illegality.”

## **C. Relationship between the Covenant and Japanese laws, including the Constitution**

7. The relationship between the Covenant and Japanese laws, including the Constitution, is explained in the previous periodic reports. That is, the treaties concluded by Japan have the same effect as domestic laws in light of the purport of article 98, paragraph 2 of the Constitution. Meanwhile, whether or not any provision of a convention can be directly applicable will be determined on a case-by-case basis, considering the objective, content, language, and other matters of the provision. Most cases of violation of the Covenant, however, are addressed as violations of domestic laws, since domestic laws are in most cases enacted in order to carry out the obligations of the Covenant.

8. In some suits filed by the plaintiffs with reference to the provisions of the Covenant, the courts rendered opinions as to whether the domestic laws, rules, or administrative dispositions in question were in violation of said provisions of the Covenant, as explained in the previous periodic reports.

## **D. Human rights education, encouragement, and publicity**

### **1. Act for Promotion of Human Rights Education and Encouragement**

9. Pursuant to this Act, the Government compiles the annual report (“Measures for Human Rights Education and Encouragement”) which summarizes the measures for human rights education and encouragement implemented by the Cabinet Offices, ministries and agencies in the preceding year and submits it to the Diet. The report submitted to the Diet is published as a white paper to be made known widely to citizens.

10. The Basic Plan for Human Rights Education and Encouragement formulated based on this Act was partially revised in April 2011, to newly incorporate the matters concerning “the Abduction Issue by North Korean Authorities” as part of human rights issues.

### **2. Efforts under the World Programme for Human Rights Education**

11. Japan has consistently cosponsored a series of resolutions concerning the World Programme for Human Rights Education as recommended in a resolution of the UN Human Rights Council in 2004. At present, relevant ministries and agencies are advancing efforts in accordance with the plan of action for the second phase (2010-2014) of the World Programme.

### **3. Human rights education for judges, public prosecutors, and administrators**

#### **General public officials**

12. In accordance with the second phase of the World Programme for Human Rights Education, MOJ holds human rights training seminars for national public officers of central ministries and agencies twice a year, with the aim of enhancing their understanding and appreciation of human rights issues. In addition, MOJ holds human rights leadership training seminars for officials engaged in duties for human rights awareness-raising activities in prefectures and municipalities three times a year, with the aim of providing knowledge necessary for them to act as leaders.

13. With regard to administrators, the National Personnel Authority (NPA) has established a curriculum concerning human rights in all forms of training implemented for national public officers, and has been providing guidance to the Cabinet Office and each Ministry concerning the enhancement of human rights education in training therein.

14. As for local public officers, human rights education is enhanced in all forms of training implemented by the Ministry of Internal Affairs and Communications (MIC) at the Local Autonomy College and the Fire and Disaster Management College, and MIC provides human rights education to local governments also.

#### **Police personnel**

15. The police carry out duties such as criminal investigations, which are deeply related with human rights. In this context, the Rules Concerning Work Ethics and Service of Police Personnel (National Public Safety Commission Rule No. 1 of 2000) stipulate the “fundamentals of work ethics” primarily focusing on respect for human rights and place the highest priority on education concerning work ethics in police education. In this way, human rights education for police personnel is actively implemented.

16. At police schools, education concerning respect for human rights is provided to newly recruited police personnel and promoted police personnel through courses on work ethics and law, including the Constitution and the Code of Criminal Procedure. In addition, in courses on methods and skills for investigation of cases of violence and abuse in which females are more likely to become victims, such as sexual crimes or domestic violence, education is provided to promote the understanding of the care and concern required to be

shown to victims. Police personnel involved in criminal investigations, detentions, assistance to crime victims, etc. are educated so that they can acquire the knowledge and skills necessary to execute their duties appropriately and in a way that respects the human rights of suspects, detainees, and victims. To provide such education, various opportunities such as specialized education courses offered at police schools of every level and training sessions in police headquarters, police stations, and other workplaces are utilized.

### **Judges**

17. With regard to the courts, in accordance with the concluding observations of the Human Rights Committee (hereafter “the Committee”) on the fifth periodic report, the courts are taking measures to disseminate information about international human rights covenants to judges.

18. With regard to the compulsory training undertaken by judges according to their years of work experience, they are given lectures on such themes as international human rights covenants, international human rights, foreign nationals’ human rights, and gender sensitivity in which how to apply and interpret the international human rights covenants are taken up.

19. All those who become judges, public prosecutors, or attorneys at law obtain their legal qualifications after receiving training at the Legal Training and Research Institute, and such training contains curricula on international human rights covenants and the Committee, and includes gender sensitivity training.

### **Public prosecutors**

20. MOJ provides lectures on the Covenant and on the protection and support for crime victims, gender consideration, and other issues in training sessions that public prosecutors are obligated to take at the time of appointment and at subsequent times specified according to years of work experience.

### **Correctional officers**

21. With a view to developing respect for human rights of inmates through various training programs at the Training Institute for Correctional Personnel and its branches, training, such as lectures on the human rights of inmates based on the Constitution and various human rights treaties, training sessions adopting behavioural science approaches, and lectures on gender sensitivity, including sexual harassment issues, are provided to correctional officers. In addition, respective correctional institutions endeavour to promote human rights awareness in their correctional officers through such efforts as in-house practical training concerning the human rights of inmates.

### **Immigration officials**

22. For immigration officials, lectures on human rights treaties are provided in various forms of personnel training to further raise their human rights awareness.

## **4. Publicity for the Covenant**

23. The Government shared the significance of the fifth periodic report and the concluding observations of the Committee among relevant ministries and agencies and the Government distributed their copies, together with preliminary Japanese translations, to the Supreme Court, the Secretariat offices of the House of Representatives and the House of Councillors, and local governments. Copies were also distributed to Diet members, private-sector organizations, and individuals, who requested them. These documents, together with preliminary Japanese translations, are posted on the website of the Ministry of Foreign Affairs (MOFA), and distributed to news media and citizens, as and when requested.

24. In drafting this report, MOFA heard the opinions from the public at large through its website and held sessions with the general public and non-governmental organizations (NGOs) to hear their opinions. Recognizing the importance of activities at the private-sector level to promote respect for human rights, the Government attaches importance to the dialogue with civil society and will continue the dialogue. As with the previous periodic reports, the Government is going to publicize and distribute the sixth periodic report to make it accessible to NGOs and other citizens.

### **III. Information concerning the application of articles 1 to 27 of the Covenant**

#### **Article 1**

25. As stated in the previous reports.

#### **Article 2**

##### **A. Issues relating to foreign nationals living in Japan**

###### **1. Amendment to the Immigration Control Act**

26. On July 15, 2009, the “The Law for Partial Amendment to the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, those who have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan” was promulgated (scheduled to be enforced in July 2012). In line with such revisions, the alien registration system will be abolished and replaced by the new system of residence management. Under this new system, the Minister of Justice will be able to ascertain the status of foreigners resident in Japan for the medium to long term accurately on an ongoing basis. Information about the status of foreigners residing in Japan to be accurately determined under the new system of residence management will be reflected in the basic resident registers to be newly created by each municipality under the “Law for Partial Amendment of the Basic Residents’ Registration Act”. This approach is expected to enable respective municipalities to provide enhanced administrative services to foreigners.

27. Under the new system of residence management, each special permanent resident will be given a special permanent resident certificate to be issued by the Minister of Justice. This is equivalent to an alien registration certificate issued under the prevailing system, which plays an important role of certifying one’s legal status. With a view to simplifying the special permanent resident certificate to the minimum content necessary, the matters stated on the same will be drastically reduced, compared with an alien registration certificate. The procedures relating to the special permanent resident certificate such as a change in its contents or its reissuance will be processed at the relevant municipal office, as is currently done. The new system will not require that special permanent resident certificates be carried at all times.

###### **2. Acceptance of foreign workers**

28. In accordance with the basic policy of the Government, as stated in the “Ninth Employment Measures Basic Plan” adopted by the Cabinet in August 1999 as mentioned in the fifth periodic report, the Government aims to “more actively promote the acceptance of foreign workers in professional or technical fields, from the standpoint of invigorating and internationalizing the country’s economy and society” and considers that “concerning the acceptance of what are called unskilled workers, it can be expected to have a tremendous effect on the Japanese economy, society, and national life, beginning with problems related

to the domestic labour market. In addition, it would have a significant impact on both the foreign workers themselves and their countries. Therefore, the Government must address this issue through thorough deliberation based on consensus among the Japanese people.”

Concerning the acceptance of foreign nationals who wish to work in Japan, under the fourth edition of the Basic Plan for Immigration Control established in March FY 2010, the Government is going to willingly accept foreign nationals who could revitalize Japanese society.

29. To facilitate the movements of business persons, efforts are made to enhance the convenience of staying in Japan. For one thing, the relevant provisions for the status of residence intended for working in Japan is amended by the provisions of relevant laws revised in phases. For another thing, under the new system of residence management to be introduced pursuant to the Immigration Control Act as amended in 2009, the maximum period of stay is set at five years, and no re-entry permit is required subject to the specified conditions in case of a re-entry within one year from the date of departure.

### **3. Employment placement system**

30. As mentioned in the fifth periodic report, the Employment Security Act provides that no one should be discriminated against in employment exchange, vocational guidance, or the like, by reason of nationality, etc. (Art. 3). Foreign nationals qualified to work in Japan should, therefore, be able to receive the same employment placement as Japanese nationals do. In order to further develop the working environment of foreign workers, the Employment Service Centre for Foreigners was established in Aichi in FY 2008, following the establishment of similar facilities in Tokyo and Osaka.

### **4. Promotion of proper employment**

31. In accordance with the Guidelines Concerning Employment Conditions for Foreign Workers to be properly conducted by Employers established in FY 2007 and the like, the Government provides guidance and instructions to employers to enable them to develop their employment management of foreign workers.

### **5. Foreign trainees and technical interns**

32. In connection with the Training and Technical Internship Programs, the Immigration Control and Refugee Recognition Act was amended in July 2009 in order to strengthen the protection of foreign trainees and technical interns (enforced in July 2010). If on-the-job training (OJT) is to be provided to technical interns, employers are obligated to start activities to enable them to acquire skills from the first year of their stay in the capacity of “technical intern” under the employment agreements with them. This arrangement is intended to enable foreign trainees to seek protection under the Labour Standards Act, the Minimum Wages Act, and other labour-related legislation of Japan. In addition, relevant ministerial ordinances were amended so that the period of suspension for the acceptance of technical interns by accepting organizations that committed any serious abuse of human rights through improper conduct, including taking custody of interns’ passports and non-payment, has been extended from three years to five years.

33. Under the scheme for monitoring against violations stepped up through the law amendment explained above, labour standards inspection authorities implement inspections to the work places which are considered to have a problem in compliance with the statutory labour conditions for technical interns. If a serious or malicious violation is found, the authorities take strict measures, including judicial dispositions. In addition, the authorities endeavour to properly operate the mutual notification system established between labour standards inspection authorities and immigration bureaus.

34. Through all these measures, the Government is endeavouring to protect the rights of foreign technical interns and ensure that the internship program is adequately operated.



## **6. Education for children of foreign nationals resident in Japan**

35. Children of foreign nationals without Japanese nationality can receive all compulsory education at Japanese public schools free of charge if they wish to do so. If they do not wish to receive Japanese school education, they can receive education at foreign schools such as Korean schools, American schools, German schools, etc.

36. In order to build a society where every willing high school student can concentrate on learning without worry, regardless of family finances, a system to make public high schools tuition-free and provide students at private high schools with school enrolment subsidies was established in April 2010. This system is intended to equally support all students learning in the latter stage of secondary education in Japan, regardless of nationality. If foreign schools which are classified as miscellaneous schools are designated by the Minister of Education, Culture, Sports, Science and Technology as having a curriculum equivalent to the Japanese high school curriculum, such foreign schools are eligible for the High School Enrollment Support Fund System.

37. In January 2005, the Upper Secondary School Equivalency Examination was launched as an examination to certify academic ability equal to or higher than graduates of a high school, in place of the University Entrance Qualification Examination implemented up to that time. As the qualifications for the examination are now expanded under this new examination system, anyone can undergo the examination, regardless of nationality, if they will be 16 years of age or older by the end of the relevant school year (except for those who have already qualified for university entrance). In August 2005, the qualifications for graduate school admissions were also made more flexible. Those who have been recognized as having academic ability equal to or higher than those who have graduated from the university as a result of an admission qualification screening carried out by each graduate school on an individual basis and are aged 22 years or above will be qualified for admission to graduate school.

38. In September 2003, the qualifications for university admissions were made more flexible for graduates of foreign schools. If a foreign school graduate who is aged 18 years or above is recognized to have an academic ability equal to or higher than those who have graduated from a high school as a result of an admission qualification screening carried out by each university on an individual basis, the foreign school graduate is permitted admission to such university.

## **7. Various activities to protect the human rights of foreign nationals**

39. As explained in previous periodic reports, the Human Rights Organs of MOJ, in a position to disseminate and encourage the idea of respecting human rights, putting the slogan "Respect the Human Rights of Foreign Nationals" in their annual matters of priority, publish or post related contents and articles through television or radio broadcasting, in newspapers or magazines and in other media; hold lecture meetings, round-table talks, symposiums and other events; distribute awareness-raising pamphlets; and carry out other activities all over Japan throughout the year.

40. North Korea formally admitted at the Japan-North Korea Summit in September 2002 that it had abducted Japanese nationals. For this and other reasons, this was followed by harassment, intimidation and assaults directed at Korean students residing in Japan. Therefore, the Organs distributed pamphlets and leaflets, put up posters and carried out other awareness-raising activities in school zones frequently accessed by a large number of Korean students. Through these activities, the Organs called on these students to consult with the Organs in the event that they were the target of harassment, etc.

41. Similar actions were taken by the Organs to address the cases of harassment, etc. against Korean students when North Korea was reported to have launched missiles in July 2006 and April 2009 and when North Korea announced nuclear tests in October 2006 and May 2009.

42. In order to tackle a variety of human rights issues involving foreign nationals, the Organs are acting to relieve victims of human rights infringements and prevent them through human rights counselling and investigation and resolution of human rights infringement cases. The Human Rights Counselling Offices for Foreigners are set up respectively in the Legal Affairs Bureaus in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka and Takamatsu and in the District Legal Affairs Bureaus in Kobe and Matsuyama.

## **B. Measures for persons with disabilities**

### **1. Mechanism for the promotion of measures for persons with disabilities**

43. The Five-Year Plan for Implementation of Priority Measures (FY 2003 - FY 2007) mentioned in the fifth periodic report was steadily implemented under close coordination among the relevant ministries and agencies. Then, during the later five-year period of the Basic Programme for Persons with Disabilities (FY 2008 - FY 2012), the Five-Year Plan for Implementation of Priority Measures (FY 2008 - FY 2012) was formulated to specify the targets and timelines for the measures to be implemented intensively.

44. Since FY 2009, the mechanism for promoting measures for persons with disabilities has been drastically changed. In order to improve the legislation required for Japan to conclude the Convention on the Rights of Persons with Disabilities and intensively reform Japan's systems and policies for persons with disabilities in other respects, the Government has set up the Ministerial Board for Disability Policy Reform, which is comprised of all cabinet ministers. Under this Ministerial Board, the Committee for Disability Policy Reform (the "Committee") mainly comprising persons with disabilities was convened to discuss the matters concerning the promotion of policies for persons with disabilities. Based on the discussions of the Committee, the roadmap for reforms was approved by a Cabinet decision in June 2010. Major milestones listed in this roadmap are to revise the Basic Act for Persons with Disabilities, establish the Act on General Welfare for Persons with Disabilities (tentative name), and establish the Act on Prohibition of Discrimination by Reason of Disability (tentative name). In addition, the Committee prepared a request stating the points to be considered when drafting the revision of the Basic Act for Persons with Disabilities. Based on this request, the Government drafted the bill for revision of the Basic Act for Persons with Disabilities (the "Revision Bill") and submitted it to the Diet on April 22, 2011, incorporating the provisions to set up an organization responsible for monitoring the implementation of measures for persons with disabilities. After being modified by the House of Representatives, the Revision Bill was unanimously approved by both the House of Representatives and the House of Councillors and enacted on July 29, 2011.

### **2. Welfare services for persons with disabilities**

45. Welfare services for persons with disabilities are provided pursuant to the laws including the Services and Supports for Persons with Disabilities Act of 2005, which is intended to support community lives of persons with disabilities under a framework common to physical disabilities, intellectual disabilities, and mental disorders. This Act and the Child Welfare Act were revised in accordance with the "Act on the Arrangement of Related Acts for Supporting Community Life of Persons with Disabilities, etc. until the Revision of Healthcare and Welfare Measures for Persons with Disabilities based on Reviews by the Ministerial Board for Disability Policy Reform, etc." promulgated on December 10, 2010. Under these revisions, the cost burdens for users are redefined according to their individual financial capacities, consultation support and supports for children with disabilities are strengthened, housing subsidies are provided to persons with disabilities using group homes or nursing care homes, and services for assisting transportation of persons with severe visual disabilities have been launched. In this way, the Government is further enriching the measures to support community lives of persons with disabilities.

46. With regard to the measures for persons with mental disorders, the Act on Mental Health and Welfare of Persons with Mental Disorders was revised in accordance with the Services and Supports for Persons with Disabilities Act enforced in 2006. In this context, adequate medical care for persons with mental disorders is ensured in a manner that is more conscious of their human rights; for example, special measures are introduced to provide medical examination by designated mental health physicians on the occasion of hospitalization recognized for medical care and protection, and the system for reporting medical conditions of inpatients subject to consensual hospitalization has also been introduced.

### **3. Social participation by persons with disabilities in employment situations**

47. Measures for social participation by persons with disabilities in employment situations are promoted pursuant to the Act on Employment Promotion etc. of Persons with Disabilities and the Fundamental Policies for Employment Measures for Persons with Disabilities (FY 2009 – FY 2012) formulated under the said Act.

48. With gradual improvement in the employment of persons with disabilities in general, the Act on Employment Promotion etc. of Persons with Disabilities was revised in December 2008 in order to promote the employment of persons with disabilities at small and medium sized enterprises where employment situations for persons with disabilities are still less improved. Major revisions are as follows: (i) to expand the scope of employers subject to the levy system and (ii) to include part-time workers in the scope of employees covered by the employment obligation. These revisions were enforced in phases from April 2009 (enforced in July 2010 for (i) and (ii), with the scope for (i) to be further expanded from April 2015).

## **C. First Optional Protocol to the Covenant**

49. The Government considers the individual communications procedure set forth in the Optional Protocol to the Covenant to be noteworthy in that it effectively guarantees the implementation of the Covenant. With regard to the acceptance of the procedure, 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 a possible organizational framework for implementing the procedure if we were to accept it. In this process, the Division for Implementation of Human Rights Treaties was set up in MOFA in April 2010. The Government will continue to seriously consider whether or not to accept the procedure, while taking into account opinions from various quarters.

## **Article 3**

### **A. Mechanisms for the promotion of the realization of a gender-equal society**

50. Japan has been improving and strengthening the mechanisms for the realization of a gender-equal society. In December 2010, the Government adopted the Third Basic Plan for Gender Equality under the Basic Act for a Gender-equal Society by a Cabinet decision. This Basic Plan was formulated as an effective action plan based on "the Basic Vision for Formulating the Third Basic Plan for Gender Equality (Report )" summarized by the Council for Gender Equality in July 2010. In the Third Basic Plan, specific numerical targets and deadlines for the respective priority objectives were established with the intention of further accelerating the formation of a gender-equal society in Japan. During the course of drafting this Third Basic Plan, the Government heard the opinions and

requests from a wide range of people from all levels of society and endeavoured to reflect them in the plan as much as possible.

51. In this Basic Plan, the following 15 priority fields are listed and our “Basic Approach” is set out for each. Based on this “Basic Approach,” long-term policy directions through to the year 2020 and concrete measures to be implemented by the end of FY 2015 are described for each. Through increased cooperation with local governments and people from all levels of society, the Government of Japan is going to ensure the formation of a gender-equal society by steadily promoting the measures listed in this plan.

52. 15 priority fields:

- (a) Expansion of women’s participation in policy and decision-making processes;
- (b) Reconsideration of social systems and practices and increased awareness from a gender-equal perspective;
- (c) Gender equality for men and children;
- (d) Securing equal opportunities and treatment between men and women in employment;
- (e) Men’s and women’s work-life balance;
- (f) Promotion of gender equality aimed at bringing about vibrant agricultural, forestry and fisheries communities;
- (g) Support of men and women facing living difficulties such as poverty;
- (h) Creation of an environment in which people such as the elderly, the disabled, and non-Japanese people can live safely;
- (i) Elimination of all forms of violence against women;
- (j) Support for women’s lifelong health;
- (k) Enhancement of education and learning to promote gender equality and facilitate diversity of choices;
- (l) Gender equality in science and technology and academic fields;
- (m) Promotion of gender equality in the media;
- (n) Promotion of gender equality in the area of regional development, disaster prevention, environment, and others;
- (o) Respect for international regulations and contribution to the “Equality, Development, and Peace” of the global community.

## **B. Women’s participation in policy and decision-making processes**

53. The Government is advocating the promotion of effective “positive action” in the Third Basic Plan for Gender Equality. The Government introduced positive action with “time-goals,” setting numerical targets and timetables for each priority field.

54. Looking at the participation of women in the field of domestic politics in Japan, the number of female Diet members is 97 among the total of 721 Diet members as of November 2011 (13.5 percent), comprising 52 of the total of 479 in the House of Representatives (10.9 percent) and 45 of the total of 242 in the House of Councillors (18.6 percent). As of November 2011, the types of official positions to which women are assigned in the Diet are found in the House of Representatives: the Chairpersons of Standing Committees and the Chairperson of a Special Committee.

55. In the Third Basic Plan for Gender Equality, the Government made mention of the expansion of women's participation in the field of politics, which had not been put on the agenda previously. For the first time, numerical targets were set for the percentages of women's candidacy to become House of Representatives members and House of Councillors members at 30 percent respectively, to be achieved by 2020. In accordance with this plan, the Minister of State for Gender Equality requested the cooperation of each political party and each of the associations of chairpersons of local assemblies in increasing the ratio of women assigned to posts of higher responsibility in each political party, increasing the percentage of female candidates for Diet elections and local assembly elections, improving mechanisms for promoting work-life balance, along with introducing "positive action" including to facilitate networking of female local assembly members.

56. With regard to the promotion of the participation of women as members of national advisory councils, the following targets were set based on a decision passed by the Headquarters for the Promotion of Gender Equality in April 2006: the participation of either male or female members at a percentage of not less than 40 percent among all members in the entire Government, to be achieved by the year 2020, and an immediate target of a 33.3 percent participation rate, to be achieved before the end of FY 2010. As of the end of September 2010, 33.8 percent participation was achieved. For the present, ministries and agencies are pushing ahead with their efforts to achieve the 2020 target, using female personnel databases, as necessary.

57. With regard to recruitment examinations, and recruitment and promotion for national public service, men and women are treated equally without restriction or discrimination under the principle of equal treatment and the principle of personnel management based on performance, i.e. the Merit System, prescribed in the National Public Service Act.

58. In order to further expand the recruitment and promotion of female national public employees, NPA formulated "Guidelines concerning the Enlargement of the Recruitment and Promotion of Female National Public Employees" in May 2001 and notified the Cabinet Office and each ministry, thereby promoting the enlargement of recruitment and promotion of female employees throughout the government. In response to the revisions of the Basic Plan for Gender Equality that followed, these guidelines were revised in December 2005 and January 2011.

59. With regard to the expansion of women's participation as national public officers, the proportion of women recruited through the National Public Service Level I Recruitment Examination for administrative service for the Government as a whole was set at around 30 percent, to be achieved by approximately FY 2010, by agreement at the conference among human resource heads of ministries and agencies in April 2004. This proportion remained at 21.3 percent in FY 2004, but exceeded 30 percent in FY 2009 for the first time. For female personnel assigned to posts of director or higher in central ministries or agencies, a target of around 5 percent to be achieved before the end of FY 2010 was set in the Program for Accelerating Women's Social Participation decided by the Headquarters for the Promotion of Gender Equality in April 2008. However, this target could not be achieved, even though there was an increase from 1.7 percent in FY 2005 to 2.2 percent in FY 2008. Under the Third Basic Plan for Gender Equality, therefore, numerical targets were set for the respective position levels for the Government as a whole and the numerical targets relating to recruitment and promotion were set by respective ministries and agencies. When it comes to the expansion of women's participation as local public officers, the Minister of State for Gender Equality requested that prefectural governors and mayors of government-designated cities introduce positive actions and other measures.

## **C. Employment measures**

### **1. Employment situation**

60. The proportion of female employees among all people in employment in Japan is on a rising trend, and women's entry into the labour market is progressing. The ratios of women in positions at the levels equivalent to chief, section manager, and director were increased to 11.1 percent, 5.0 percent, and 3.1 percent respectively in 2009.

61. In order to encourage self-initiated efforts of enterprises, in FY 2010, for the first time, the Government introduced a bidding system, for projects such as extramural research on gender equality or work-life balance, that gives additional points to enterprises which are working on gender equality and work-life balance, with a view to positively evaluating and supporting those enterprises, as well as ensuring the quality of the outcome of the research.

### **2. Compliance with the Equal Employment Opportunity Act**

62. The Act on Securing, Etc. Equal opportunity and Treatment between Men and Women in Employment was revised in 2006 (fully enforced from April 2007). Under this revised Act, discrimination against both men and women is prohibited, indirect discrimination is prohibited, measures against sexual harassment are strengthened, and positive actions are promoted.

63. With regard to the wage disparity between men and women, "the Study Group on the Issue of Wage Disparity between Men and Women" started meetings in June 2008 and compiled a wage disparity report. Based on this report, the Government prepared the "Guidelines on the Improvement Measures of Wage and Employment Management for Eliminating Wage Disparity between Men and Women" in August 2010. These guidelines include some practical assistance tools such as survey sheet templates to be used to determine the review points in wage and employment management or to check the real status of wage gap, for the purpose of helping enterprises learn and understand the reality of the gender gap.

64. In FY 2011, "Supporting tools to Increase the Visibility of Gender Gap" and other assistance tools and their manuals were prepared by the industrial sector, based on the actual employment management practices in each part of the industrial sector. By improving the guidelines to make them more easy-to-use in this way, the Government hopes to encourage their widespread use.

#### **Prohibition of indirect discrimination**

65. Based on the deliberations at the council composed of intellectuals, representatives of labour unions and employer's organizations acts deemed to fall under indirect discrimination and violation of the Act on Securing, Etc. of Equal opportunity and Treatment between Men and Women in Employment are specified by the Ordinance of the Ministry of Health, Labour and Welfare.

66. The requirement of being a head of household for an employee to be eligible for family allowance or housing allowance is not considered to constitute indirect discrimination, because no consensus was formed at the council on treating such a requirement automatically as illegal indirect discrimination. In this regard, strong opinions were expressed as follows at the council meeting: (i) either the husband (male) or wife (female) can be a head of household at the sole discretion of each family and no women are precluded from being a head of household; and (ii) the payments of family allowance or housing allowance are made under the mechanism built up through long-term labour-management discussions and serve as support for living expenses equivalent to wages.

67. Likewise, treatment of employees differentiated based on their positions, such as part-time workers and fixed-term employees, is not regulated as indirect discrimination, because no consensus was achieved on the idea that it should be automatically regarded as indirect discrimination. The points to be noted in this connection include the following: (i) one strong opinion raised in the discussions at the council is that it is appropriate to rely on the Part-Time Workers Act to address the issues concerning treatment of part-time workers; and (ii) the issues concerning balanced treatment between regular employees and part-time workers derive, in essence, from the difference of employment patterns, rather than gender discrimination.

68. In addition to what is specified by the ministerial ordinance, some other acts are likely to be determined by the court to constitute illegal indirect discrimination. This point is clearly described in the guidelines established under the Equal Employment Opportunity Act, and related pamphlets and leaflets are now modified to incorporate similar descriptions. By continuing these efforts, the Government hopes to keep everyone informed and to raise their awareness.

#### **Strengthening measures against sexual harassment**

69. Regarding sexual harassment cases, it is really important to take preventive measures. Based on this recognition, the Equal Employment Opportunity Act obligates employers to develop mechanisms necessary to provide adequate consultation to employees in order to prevent sexual harassment, and to take other measures necessary for employment management. In this way, this Act stipulates the responsibilities of employers in connection with employment management.

70. Sexual harassment in the workplace could constitute forcible indecency or other crimes. In the event where sexual harassment constitutes a crime punishable under penal legislation, it will be investigated and punished in the manner appropriate to the individual case.

#### **Promotion of positive action efforts**

71. Under the Equal Employment Opportunity Act as revised in 2008, a new mechanism was established to enable the Government to provide consultation and other assistance to employers who disclose their positive action efforts, with the aim of further promoting positive actions.

72. The Government provides comprehensive information about positive actions on its website where contents were newly added in FY 2010 such as a tool for self-assessment of positive action efforts of respective business users. Additionally, the Government is providing services to small and medium sized enterprises lagging behind large enterprises in positive action efforts to support the implementation of positive actions, including dispatch of consultants and preparation of manuals.

73. In the Third Basic Plan for Gender Equality, the target for the proportion of enterprises engaged in positive actions is set at 40 percent or more, to be achieved by 2014.

### **3. Support for child care and family care**

#### **Revisions to the Child Care and Family Care Leave Act**

74. Support for the balancing of work life and family life is Japan's pressing challenge to address the declining birth rate. In order to push forward such support, the Child Care and Family Care Leave Act was revised in June 2009 (enforced on June 30, 2010). Major points of this revision are as follows:

- Employers are obligated to establish a short working hour system (six hours a day) for employees responsible for the care of a child under three years of age, and a

system to invoke exemption from overtime work when requested by such employees;

- If both father and mother take childcare leave, each of them is entitled to take leave of up to one year before the child attains the age of one year and two months, while this age limit was one year before enforcement of the revised Act (“Extended Childcare Leave for Mom and Dad”);
- A system allowing short-term leave for nursing care was launched, up to five days per year, in the case of only one family member in need of nursing care, and up to 10 days per year, in the case of two or more family members in need of nursing care.

75. According to the 2010 survey (Basic Survey of Gender Equality in Employment Management (FY 2010) by the Ministry of Health, Labour and Welfare), the proportion of female employees who took childcare leave was 83.7 percent of all female employees who gave birth, and the proportion of male employees who took childcare leave was 1.38 percent of all male employees whose spouse gave birth. The female-male ratio among all childcare leave takers was 97.1 percent female employees and 2.9 percent male employees.

#### **Measures to support work life and family life balance**

76. In order to develop an environment to enable employees to balance work and child care or family care, with employment continued, the Government is putting forth efforts to raise awareness of the Child Care and Family Care Leave Act and ensure compliance with this Act, promote employers’ efforts and support them through subsidies based on the Act on Promotion of Measures for Fostering Next Generations, and respond to child day-care needs. In this way, efforts are being made to create an employment environment capable of achieving a work-life balance.

77. More specifically, with the aim of eliminating waiting lists for child day-care centres, the Government has formulated a Vision for Children and Childcare and set numerical targets covering both actual and potential child care needs, with the intention of annually increasing the capacity of day-care centres by about 50,000. Such quantitative expansion is ensured through securing operating costs for day-care centres under the FY 2011 national budget.

78. In order to drive forward the development of child day-care centres, the budgeted amount for the project for setting up the “Child Relief Fund” in each prefecture based on the second supplementary budget for FY 2008 was increased through the first and second supplementary budgets for FY 2009 and the supplementary budget for FY 2010, and the project period was extended from the end of FY 2010 to the end of FY 2011. Using this “Child Relief Fund,” efforts are being made to promote the establishment of branches of licensed child day-care centres in underutilized spaces in communities (schools, public housing, community halls, etc.) and to enhance day-care service in a home-like environment.

79. Some other projects are underway, based on the Proactive Project for Zero Waiting Lists for Child Day-care Centres through Integrated Efforts by National and Local Governments announced on November 29, 2010, such as subsidizing non-licensed day-care centres with assured quality and operating a scheme of childcare provided by multiple childcare workers in a home-like environment (child sitters) in the same place.

#### **4. Other related efforts**

80. For the purpose of curbing long hours of work, securing the health of employees, and achieving a work-life balance, the Act for Partial Revision of the Labour Standards Act entered into force on April 1, 2010.

81. The revised Act strengthens the restrictions on working long hours in such a way as to raise the statutory premium wages for overtime work in excess of 60 hours per month



from 25 percent to 50 percent (not applicable to small and medium sized enterprises for the time being), and the Government is trying to entrench this practice.

82. The supplementary provision of the Act for Partial Amendments to the Part-Time Workers Act of 2007 provided that necessary measures shall be taken considering the status three years after the implementation of the Revised Act. In consideration of this, an Equal Employment Subcommittee under the Labour Policy Council has been held to discuss measures for part-time work since September 2011.

## **D. Protection from violence**

### **1. Act on the Prevention of Spousal Violence and the Protection of Victims**

83. The Act on the Prevention of Spousal Violence and the Protection of Victims (the "Spousal Violence Prevention Act") was amended by the first revision of June 2004. Then, the subsequent revision was established in July 2007 and enforced in January 2008, particularly intended for expanding protection orders and strengthening the provisions concerning municipalities.

84. The purpose of this Act is to prevent spousal violence and protect victims through the establishment of a system for notification, counselling, protection, and support for self-reliance, etc. in spousal violence cases.

85. Major points of the 2007 revision are as follows:

(a) Expansion of the protection order system:

- Protection orders for victims who have been received life-threatening intimidation;
- Establishment of orders prohibiting phone calls or other behaviour, etc.;
- Orders prohibiting a spouse from approaching the relatives of the victim;

(b) Obligation for efforts by municipalities to formulate basic plans;

(c) Revised provisions concerning Spousal Violence Counselling and Support Centres;

(d). Notification of a protection order from the court to the Spousal Violence Counselling and Support Centre.

### **2. Efforts by the Government**

86. Based on the second revision of 2007, the Government reviewed the existing basic policy and then formulated the Basic Policy concerning Measures for the Prevention of Spousal Violence and the Protection of Victims on January 11, 2008.

87. Then, the Specialist Committee on Violence against Women set up in the Council for Gender Equality under the Cabinet Office carried out discussions for efficient implementation of the Spousal Violence Prevention Act. The results of such discussions were incorporated in the Third Basic Plan for Gender Equality formulated by the Government on December 17, 2010. For now, the Government is pursuing broad-ranging efforts concerning violence against women, including violence by husbands or partners, in accordance with the said plan.

#### **Crackdowns**

88. The police, based on the special nature of spousal violence, are promoting appropriate measures tailored to each case, policies for victims related to protection orders

and strict crackdowns for violations of protection orders and other laws. The trends in the situation of response to the Spousal Violence Prevention Act are as follows.

	2006	2007	2008	2009	2010
Support from police chief	4,260	5,208	7,225	8,730	9,748
Violation of protection orders	53	85	76	92	86
Violation of other laws	1,525	1,581	1,650	1,658	2,346

89. Under no circumstances will violence or sexual abuse be exempted from the application of the penal provisions for homicide, injury causing death, bodily injury, assault, unlawful capture and confinement, forcible indecency, rape, or the like, even if it is committed within the family. It will be properly investigated and punished in a manner appropriate to the individual case. Such in-home violence or sexual abuse may also be subject to protection order, and the violation of the protection order will also be properly investigated and punished in a manner appropriate to the individual case.

90. The crime of rape under the Penal Code is applicable when committed by a spouse.

91. In Japan, an act of infringing another's sexual freedom by misusing one's position as a close relative constitutes a crime of rape or forcible indecency or a violation of the Child Welfare Act and is therefore punishable. Sexual violence other than rape or sexual violence against a male is also punishable as a crime of forcible indecency. All these acts are strictly addressed in Japan.

92. For an act to constitute rape or forcible indecency, resistance of the victim is not required. An assault or intimidation to such a degree that it makes resistance by the victim extremely difficult is sufficient. To protect the reputation and the privacy of the victim, the crime of rape and the crime of forcible indecency are prosecutable only upon complaint.

#### **Protection and support for victims**

93. If a victim of spousal violence is accompanied by her child, the framework for supporting fatherless families is utilized to pay child-rearing allowance, provide support in maternal and child living support facilities, help her find a job through various means, and implement other efforts.

94. Women's Consulting Offices set up in respective prefectures provide consultation to female victims of spousal violence or trafficking in persons, provide the temporary protection to women in need of protection or move them into Women's Protection Facilities, and support all such women in other forms. Meanwhile, to aid the prefectural governments which provide the protection and support to victims of spousal violence, etc., the National Government provides budgetary assistance for the assignment of therapists qualified for psychological therapy, training of professional interpreters to assist foreign victims, legal support to obtain legal coordination and assistance by attorneys and other experts, and other measures.

95. For foreigners victimized by spousal violence, immigration bureaus cooperate with relevant organizations to ensure the physical protection of the victims and act promptly and appropriately in other respects; for example, when a victim is unavoidably forced to live separately due to violence by the spouse and is therefore unable to prepare requisite documents, the victim's application for extension of the period of stay will be permitted in principle, or when a victim needs to change the status of residence because of harm from spousal violence, the victim's application for change of status of residence will be permitted in principle, and when an illegal stay or other violation of the Immigration Control Act is caused because of spousal violence, special permission to stay in Japan will be granted to the victim.

### 3. Protection of victims of sexual crimes in criminal proceedings

96. The police are making efforts to respond appropriately to victims of sexual crimes from their standpoint in order to reduce psychological burden of victims. In order to promote fair and intensive investigations into sexual crimes, the police are implementing measures including expert training for sexual crime investigators at the National Police Academy, etc., in addition to the measures mentioned in the previous periodic report.

97. In conducting investigations and trials of child prostitution cases, special consideration is placed on the rights and characteristics of victimized children in accordance with article 12 of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children. Especially during the trial phase, information linked to the identification of the victims can be concealed (Code of Criminal Procedure, art. 290-2, para. 1, item 2) and court testimony of the witness may be provided via video link (Code of Criminal Procedure, art. 157-4, para. 1, item 2).

#### Anti-stalking Act

98. In addition to strict crackdowns based on the Anti-Stalking Act, the police are promoting victim assistance, crime prevention measures, and publicity and awareness-raising activities. The trends in the situation of application of the Anti-Stalking Act are as follows:

	2006	2007	2008	2009	2010
Warnings (cases)	1,375	1,384	1,335	1,376	1,344
Restraining order s	19	17	26	33	41
Support from police chief	1,631	2,141	2,260	2,303	2,470
Violations of the Anti-Stalking Act	183	242	244	263	229
On the charge of Stalking e	178	240	243	261	220
Restraining Orders	5	2	1	2	9

#### Various activities to protect the human rights of women

99. Putting the slogan “Protect the Human Rights of Women” in their annual matters of priority, the Human Rights Organs of MOJ are carrying out various awareness-raising activities all over Japan throughout the year (e.g. lecture meetings or round-table talks; public relations through television or radio broadcasting, in newspapers or magazines and in other media; production and distribution of posters and leaflets; and promotion activities through various events.).

100. The special telephone counselling service for women’s human rights, “Women’s Rights Hotline,” received approximately 23,000 calls in 2010.

### Article 4

101. As stated in the previous reports.

### Article 5

102. As stated in the previous reports.

## Article 6

### A. Death penalty issues

#### 1. Application of the death penalty

103. In Japan, the death penalty is applicable to 19 types of crimes only. For all these crimes, except for the instigation of foreign aggression, imprisonment with or without work for life or for a definite term is also specified, instead of the death penalty. The death penalty is applicable only to the most serious of crimes (homicide or an intentional act that seriously endangers another's life) under the current legislation. In actual cases, the application of the death penalty is carried out in an extremely strict and prudent manner, as described in the judgment rendered by the Second Petty Bench of the Supreme Court (July 8, 1983): "It is allowed to choose the death penalty, when it is found inevitable to impose the ultimate penalty from the standpoint of balanced punishment, as well as from the standpoint of general deterrence because the criminal responsibility is determined as immensely serious, after comprehensively considering the following matters: the nature, motive, and manner of the crime, especially the relentlessness and cruelty of the murder method; the severity of the consequences, especially the number of murder victims; feelings of victimization on the part of the bereaved family; social impacts; the offender's age and criminal history; the circumstances after the crime was committed; and all other circumstances". As a matter of fact, for the period of five years from 2006 to 2010, the number of persons sentenced to death whose death penalty judgment has become final and binding is 80 in total. All of these cases were either cruel murders or murders on the occasion of robbery, and no case that does not involve murder is found here.

#### 2. Government view on the abolishment of the death penalty

104. In our view, whether to continue or abolish the death penalty should be determined by each country at its discretion based on public sentiment, actual conditions of crimes, criminal policies, and other factors. As to whether or not we should continue or abolish the death penalty, it is a critical issue constituting the backbone of Japan's criminal justice system, and therefore needs to be carefully examined in all respects; among others, in terms of social justice, with the fullest attention given to the people's opinion. Presently, the death penalty is believed to be unavoidable by a large number of Japanese people in cases of extremely malicious or atrocious crimes (affirmed by 85.6 percent in the latest opinion survey conducted from November to December 2009, answering "The death penalty should be allowed according to circumstance"), and there is no end to atrocious crimes in Japan. In view of these and other observations, it seems unavoidable inflicting the death penalty on an offender who has committed an atrocious crime and whose criminal responsibility is extremely serious. We therefore consider it inappropriate to immediately abolish the death penalty.

105. For the reasons above, careful examination of whether to accede to the Second Optional Protocol to the Covenant is needed.

106. As a substitute for the death penalty, life imprisonment without parole is often proposed. Yet, some consider that, since perpetual confinement could completely destroy the personality of an inmate, it is a very controversial punishment in terms of criminal policy. Therefore, such punishment also requires close examination from various perspectives.

### **3. Treatment of inmates sentenced to death**

#### **Grounds for detention of inmates sentenced to death and their general treatment**

107. Inmates whose death sentence has become final and binding are detained in detention houses until the time of execution. They are treated in a manner nearly equivalent to that for unsentenced persons. For example, they have no obligation to work, and they are allowed to buy food and drink at their own expense. In order to help inmates sentenced to death stabilize and control their emotions, they are allowed to seek counselling or teachings from religious leaders or voluntary prison visitors.

#### **Outside contacts for inmates sentenced to death**

108. As inmates sentenced to death are placed in an extreme situation where they must wait for execution of the death penalty, they are afflicted by extraordinary mental instability and emotional distress. It is therefore necessary to pay due consideration to their mental stability, not just to ensure their detention in a strict manner.

109. Based on this standpoint, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees allows inmates sentenced to the death penalty to contact the following individuals in principle: (i) relatives, (ii) persons with the necessity to have a visit in order to carry out a business pertaining to an important concern of the inmate sentenced to death, and (iii) persons whose visit is deemed instrumental to help the inmate sentenced to death maintain peace of mind, and contacts with other individuals are permitted at the discretion of the warden of the penal institution when the visit or other contact is reasonably deemed to be necessary for the maintenance of a good relationship with this individual or for any other reasons and when it is deemed that there is no risk of causing disruption of discipline and order in the penal institution.

#### **Notification of execution of the death penalty to inmates sentenced to death and their family members**

110. The notification of execution of the death penalty is given to the inmate in question on the day of the execution before the death penalty is executed. This is partly because it is considered that, if the notification were given before the date of execution, it would seriously affect the mind of the inmate sentenced to death and make it difficult to maintain peace of mind.

111. There is no provision by law with regard to the matters concerning communication to the family of an inmate sentenced to death except for the provisions that if an inmate dies, the bereaved family, etc. will be promptly notified of the cause, the date, and other details of the death. A customary practice is that the date of execution of the death penalty is not communicated to the family or any outsiders in advance. One reason for this is that such advance notification is considered to cause unwanted emotional distress to the family members receiving the notification. Another reason is that, if the family member receiving such advance notification visited the inmate in question and the scheduled execution was made known to this inmate in advance, his or her mind would be seriously affected in the same way as is the case with firsthand notification and he or she would find it difficult to maintain peace of mind.

#### **Pardon**

112. An inmate sentenced to death may file an application for a pardon with the warden of the penal institution at any time. Upon receipt of such an application, the warden must submit a petition, accompanied by his or her opinion, to the National Offenders Rehabilitation Commission, and this petition will be examined by the Commission. There are no recent cases in which a pardon has been granted to an inmate sentenced to death. Yet, whenever a pardon is applied for by an inmate sentenced to death, a petition submitted

accordingly is examined by the Commission. The procedures for requesting examination for a pardon are provided for in the Pardon Act and the Ordinance for Enforcement of the Pardon Act.

### **Elderly persons and persons with mental disorders**

113. While no Japanese law stipulates any special treatment concerning execution of the death penalty by reason of the fact that an prisoner sentenced to death is an elderly person, article 479, paragraph 1 of the Code of Criminal Procedure stipulates that, when the person who has been sentenced to death is in a state of insanity, the execution shall be suspended by order of the Minister of Justice. The mental condition of a prisoner sentenced to death is carefully considered at all times and, where needed, mental care is provided by a physician from an expert standpoint. If it is determined, based on these factors, that the prisoner is in a state of insanity, the execution of the death penalty is suspended.

## **Article 7**

114. In June 1999, Japan concluded the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In accordance with article 19, paragraph 1 of the Convention, Japan submitted the initial report in December 2005 and the second periodic report in July 2011.

115. In this connection, the “Law for Partial Amendment to the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, those who have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan” promulgated on July 15, 2009 clearly stipulates that “another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” specified in article 3, paragraph 1 of the Convention should not be included in the countries to which the person subject to deportation may be deported.

## **Article 8**

### **A. Measures against trafficking in persons**

116. In accordance with the Action Plan of Measures to Combat Trafficking in Persons formulated in 2004, the Government of Japan has been steadily implementing measures against trafficking in persons including, among others, the following steps and achieving substantial results: promoting monitoring and countermeasures at the border such as the introduction of IC passports, reviewing the criteria for landing permission for those with the status of residence of “entertainer” and stepping up visa examination, criminalizing the conduct of Buying or Selling of Human Beings, strengthening crackdowns, and amending the Immigration Control and Refugee Recognition Act to allow granting special permission to stay in Japan to protect victims of trafficking in persons. In light of recent trends in trafficking in persons, which have become more sophisticated and invisible, the Government formulated a revised action plan in December 2009 as “Japan’s 2009 Action Plan to Combat Trafficking in Persons”. Based on the 2009 Action Plan, the Government is committed to preventing and eradicating the crime of trafficking in persons and to stepping up the protection of victims through mutual coordination among relevant organizations and the implementation of respective policies in an integrated manner.

117. The 2009 Action Plan mentions the effort to make victim protection measures known to potential victims, using publicity materials. This plan also requires mutual coordination among related organizations in order to ensure proper response at various counselling offices of the police, the Immigration Bureaus, the Legal Affairs Bureaus, Women's Consulting Offices, the Child Guidance Centres, the Labour Standards Inspection Offices,

MOFA, municipal offices, and general consultation offices for non-Japanese residents. In addition, the police, the Immigration Bureaus, the Labour Standards Inspection Offices, and related organizations, when handling offenders or violation cases under their respective authority, are making efforts to find offenders of trafficking in persons as quickly as possible.

118. The information about human trafficking cases comes from various sources or at various opportunities, including procedures in immigration bureaus, on-site inspections and crackdowns by the police on adult entertainment businesses, activities to protect victims of human trafficking by Women's Consulting Offices, or sources such as foreign embassies in Tokyo, NGO staff, attorneys at law, and other persons. Based on such information, relevant administrative organs endeavour to understand and analyze the working situations of foreign females and foreign workers, damages caused by trafficking in persons, the current situations of domestic and foreign brokers and their networks, and other matters. In addition, efforts in cooperation with airline companies are made through monitoring and detection of suspicious behaviour or activities such as delivery of forged or altered passports from brokers, in order to block human trafficking planned through entries into third countries via Japan.

119. Efforts by immigration bureaus to create databases of human trafficking cases are also helpful in preventing human trafficking.

120. In connection with cases of trafficking in persons, the Penal Code was revised in 2005 to criminalize all types of crimes that are required to be criminalized under the UN Trafficking Protocol, and the statutory maximum penalties for the crime of unlawful capture and confinement and other related crimes have been raised. Currently, cases of trafficking in persons are prosecuted by applying the Penal Code and other related punitive laws.

121. In 2005, other related laws were amended. Under the amended Immigration Control Act, the protection of victims is enhanced (by the newly incorporated provision to grant special permission to stay in Japan to victims, etc.) and the provisions concerning punishment of perpetrators were reorganized.

122. The punishment is determined by comprehensively considering the manner, consequences, and motive of the crime, the level of involvement in the crime, the subject's criminal history, and other circumstances. In 2010, 14 persons were arrested by the police and subsequently prosecuted for trafficking in persons, and each of them were punished appropriately on a case-to-case basis in the following manner: seven persons were sentenced to imprisonment with work, with no suspension of sentence (five of them were subject to the cumulative imposition of imprisonment and a fine), six persons were sentenced to imprisonment with work, with suspended sentence (four of them were subject to the cumulative imposition of imprisonment and a fine), and one person was fined.

123. Efforts to promote the protection of victims are made in coordination among relevant organizations. While it is the duty of Women's Consulting Offices to protect and support victimized females, the duty of temporary protection may be entrusted to private shelters, etc., if more appropriate protection is expected. In addition, the Government provides support enhanced through using the language of one's home country, provides necessary medical care or counselling, and makes known legal assistance available to victims. As part of the protection measures for victims whose stay in Japan continues over a medium or long term, efforts are made to reduce their mental burden.

124. For the purpose of prioritizing the protection of victims, the Government tries to stabilize their legal status. More specifically, with due consideration of the positions and wishes of victims, the Government will permit extension of the period of stay or change of the status of residence if the victim is a legitimate resident, and grant special permission to stay in Japan if the victim is an illegal resident such as an overstayer in violation of the Immigration Control Act.

125. Looking at the victims of trafficking in persons protected from the amendment of the Immigration Control Act in 2005 to today, special permission to stay in Japan was granted to all of the victims whose residency was illegal.

## **B. “Comfort women”**

126. Since the Covenant has no retroactive effect and does not apply to issues arising in Japan before Japan’s accession of the Covenant (1979), it is not appropriate to mention the issue of the “comfort women” before and during the Second World War in the report on the measures implemented under the Covenant. However, taking into consideration the deliberations in the Human Rights Committee 94th session in October 2008 and the concluding observations of the Committee on Japan’s periodic reports, Japan’s efforts on this issue are explained below.

127. Japan humbly accepts the fact that its past colonial rule and aggression caused tremendous damage and suffering to the people of many countries, particularly to those of Asian nations, and Japan has therefore expressed its deep remorse and heartfelt apology. Since the end of the Second World War, Japan has maintained its policy not to be a military power and resolve each and every issue it faces in a peaceful manner.

128. Recognizing that the comfort women issue is one that severely injured the honour and dignity of a large number of women, the Government of Japan has expressed its sincere apologies and remorse to the former so-called comfort women on many occasions.

129. Japan concluded the San Francisco Peace Treaty, bilateral peace treaties, agreements and instruments with countries concerned, and in accordance with them carried out payment of reparations and other damages in good faith. In this way, issues of claims concerning the War have been legally settled with the countries of the parties to these treaties, agreements and instruments. Recognizing, however, that the issue of comfort women was a grave affront to the honour and dignity of women, the Government of Japan determined that it was appropriate for Japan to express sincere apologies and remorse to former comfort women. The Asian Woman’s Fund (AWF), established in 1995, with financial support by the Government amounting to approximately 4800 million yen, provided assistance to former comfort women, including medical care and welfare services. The AWF also provided direct payment totalling approximately 600 million yen funded by contribution from Japanese people.

130. This Fund was closed and dissolved as of the end of March 2007 after the final project under this Fund in Indonesia had been completed. In order to gain a better understanding of Japanese citizens’ sincere feelings about the comfort women issue, as shown through various projects implemented under the Fund, the Government of Japan intends to continue its efforts and to carry out follow-up activities for those projects.

## **Article 9**

### **A. Detention of suspects**

#### **1. Detention period**

131. As stated in the previous reports.

#### **2. Interrogation**

##### **Interrogation policy**

132. In order to ensure fairer interrogations, the Public Prosecutors Office released a policy for promotion of fair interrogations in April 2008. According to this policy, if a



complaint or statement pertaining to interrogations is raised by a suspect, a defence counsel, or other person, the prosecutor must put such the details into writing and must report this to his or her superior. The superior will carry out the necessary inquiry and take necessary measures. This superior will also provide explanation to the person making the complaint to the extent possible. This policy has been already put into practice since its release.

133. NPA put together the Guidelines for Ensuring the Propriety of Interrogation Procedures in Police Investigations in January 2008 to promote further propriety of interrogations. Based on these Guidelines, the police are advancing various measures including strengthening supervision of interrogations, strictly managing the time and length of interrogations, and raising the awareness of the police personnel involved in criminal investigations.

134. In July 2011, an Inspection and Supervision Division was newly established in the Supreme Public Prosecutors Office to take charge in the detection and the investigation of illegal or improper interrogations or other illegal or improper conduct by public prosecutors and to provide necessary guidance.

#### **Time and length of interrogations**

135. Given the unpredictability and diversity of criminal investigations, it is difficult to uniformly prohibit by legislation interrogations which exceed a certain time frame or interrogations during specific time periods.

136. However, in recent years, Japan's police and public prosecutors have paid much more attention to the length and times of interrogations than before, so as not to inflict an excessive burden on suspects.

137. The policy for promotion of fair interrogations released by the Public Prosecutors Office encourages prosecutors to act in the following manner, when interrogating a suspect in detention: (i) to endeavour to enable the suspect to keep to the bedtime, mealtimes, bathing time, etc. prescribed by the penal institution, etc.; (ii) to avoid conducting interrogations during late night hours or for long hours, except under unavoidable circumstances; and (iii) to endeavour to take a break at least every four hours during the course of interrogation. These points have been put into practice by the prosecutors since the release of the policy.

138. According to the internal rules prescribed by police, they must avoid conducting interrogations during late night hours or for long hours, except under unavoidable circumstances. In addition, new internal rules have been established in accordance with the Guidelines for Ensuring the Propriety of Interrogation Procedures in Police Investigations compiled in January 2008. The new rules require that the prior approval of the Chief of the Prefectural Police Headquarters, etc. be obtained in the event of interrogating someone for more than eight hours in a day. These rules stipulate that in the absence of such prior approval, the interrogation may be discontinued or another measure may be taken.

139. Furthermore, the police and public prosecutors offices must record in writing the time and the length of each interrogation and must have the suspect confirm, sign and seal the document to ensure the appropriateness and objectivity of the time and length of the interrogation.

#### **Presence of defence counsel at interrogations**

140. Under the criminal justice system of Japan, interrogating a suspect is the most important investigation method to discover the whole truth of the case and plays an extremely important function in the investigation, since unlike in other countries, most of the powerful methods for evidence collection, including plea bargains and electronic surveillance, are not allowed in Japan.

141. However, if the presence of a defence counsel at the place of interrogation were mandatory, it could be likely to have serious adverse effect on investigations for the

following reasons: (i) the primary function of an interrogation is to find out the truth of the case in the course of an interrogator's face-to-face communication to gain the trust of the suspect and persuade the suspect, and such function would be likely to be considerably disturbed; (ii) as evidence or information brought to the place of an interrogation would be observed or heard by the defence counsel firsthand, this could sometimes make it difficult to use the interrogation methods generally adopted in Japan such as showing part of the evidence to the suspect who had made a statement inconsistent with other objective evidence and questioning the suspect about its inconsistency, and thus conducting sufficient interrogation through close examination of the statements given by the suspect could be difficult; and (iii) since pre-prosecution detention is limited to a maximum period of 23 days, it would be impossible to promptly conduct necessary interrogations if no interrogation could be started without the presence of a defence counsel.

142. Meanwhile, the scope of cases for which a suspect may hire legal counsel at government expense has now expanded to cover cases that include those where the punishment is the death penalty, imprisonment with work or without work for life or imprisonment with work or without work for a term exceeding three years. In Japan, as reported for Article 10 below, communications between a suspect and a defence counsel are guaranteed in a more enhanced manner than before. The issue of whether or not to allow the presence of defence counsels at interrogations needs to be carefully considered in the context of the function and role of interrogations as a part of the entire criminal procedures and therefore requires deliberate examinations from various perspectives.

#### **Recording by electromagnetic means**

143. The system for audio and video recording of prosecutors' interrogations of suspects was launched on an experimental basis in July 2006. From April 2009, for all confessed cases subject to lay judge ruling, in principle, audio and video recordings of the scenes of interrogating suspects were created. During the period from April 2009 to the end of March 2011, interrogations were recorded for 3,296 cases in total.

144. Likewise, in September 2008, some prefectural police started audio and video recording of interrogations of suspects, on an experimental basis, for cases subject to lay judge ruling and involving confessions. This experimental approach was launched in all prefectures in April 2009. By the end of March 2011, 791 recordings of interrogations were made in total.

145. Such audio and video recording by the prosecutors and the police in this way can objectively reveal the situations of the interrogation rooms, how interrogators' questions were asked, facial expressions of suspects, their tones of voice, their behaviour, and the like. In the course of the recording, the suspects are afforded opportunities to freely make statements about the circumstances of their confessions or the situation of the interrogations. The recording is not interrupted or discontinued even if the suspect is making a statement detrimental to the prosecution. All audio and video recordings are disclosed as they are to the defence counsels, without any modification or compilation.

146. MOJ and others are currently looking into the issue of transparency of suspect interrogations and the procedures of the criminal justice system. Specific topics under discussion are summarized below.

147. A study group was set up in MOJ to discuss the transparency of suspect interrogations in October 2009. The outcomes of their survey and study were summarized in a report in August 2011, proposing a certain direction for transparent interrogations. The proposal suggested that audio and video recordings of prosecutors' interrogations be expanded on an experimental basis, in order to contribute to future efforts in designing the system of transparent interrogations.

148. Based on this, in August 2011, the scope of cases for which interrogation must be recorded was expanded to all cases subject to lay judge rulings including cases of denial. In

addition, experimental recording of public prosecutors' interrogations was newly started for suspects in detention under investigation by the special investigation department who deals in cases not necessarily subject to lay judge rulings (from March 2011) and for cases involving suspects whose communication skills are poor due to intellectual disabilities (from July 2011). The additional expansion above also covers cases in which the suspect is denying the charges, and includes the recording of the total process of interrogations, from start to finish.

149. On the part of the police, in order to ensure the transparency of suspect interrogations in a manner not to diminish public safety, a study group organized by the Chairman of the National Public Safety Commission and comprising members selected from among outside experts was set up in February 2010, with the mission of studying the sophistication of investigation methods. In April 2011, this study group issued an interim report to summarize the discussions in the group and to clarify the issues to be subsequently discussed.

150. In June 2011, the Minister of Justice asked the MOJ's advisory boards for deliberation on how to develop legislation to establish a new criminal justice system adapted to meet the demands of time including the introduction of a system of audio and video recording of interrogations of suspects.

### **Roles of the police**

151. The Code of Criminal Procedure of Japan provides for all criminal procedures from the investigation stage through the prosecution and trial stage to the stage of execution of sentence. The purpose of this Code is "to reveal the true facts of cases and to apply and realize criminal laws and regulations quickly and appropriately" as specified in article 1. Accordingly, the investigations carried out by police officials are primarily intended to reveal the facts of cases accurately and to solve the cases.

152. The internal rules of the police explicitly require that facts be revealed accurately by evidence in the course of carrying out investigations and that their investigations be pursued with an eye to their prosecution and trial proceedings. Therefore, the police strive for collection of relevant evidence.

## **B. Detention in immigration facilities**

### **1. Detention period**

153. In Japan, the procedures for deportation are carried out, in principle, after detaining the person to be deported. However, when it is necessary to release a detainee from detention, due to the need for humanitarian consideration or other circumstances, even in the case where this detention is based on a written detention order or a written deportation order, provisional release of the detainee may be permitted *ex officio* or upon request. In this way, the procedures for deportation are implemented with flexibility, with due consideration of the guarantee of human rights. In 2010, a total of 5,629 applications for permission for provisional release were submitted and provisional release was permitted for 4,174 applications.

### **2. Treatment of detainees (including female detainees)**

154. Detainees held in the detention facilities of immigration bureaus are allowed to send and receive correspondence; receive visits by relatives, acquaintances, defence counsel, and others; purchase goods; and hold worship and other religious activities; and efforts are made to afford them opportunities for exercise. Meals provided to detainees are prepared, taking into consideration their habits, customs, and religious beliefs, as well as nutritional balance based on calorie calculation by dietitians. All possible measures for healthcare are implemented, including medical care by in-house physicians or by outside medical care

providers on an outpatient basis and, in some detention facilities, even medical care by psychiatrists and counselling by clinical psychologists; and hygiene management is adequately considered for bathrooms, living quarters, bedclothes, and so on.

155. Under the Regulations for the Treatment of Inmates and Detainees, the system using opinion boxes is supposed to be operated as a mechanism for the director of the immigration detention facility to hear detainees' firsthand opinions and improve treatment there. In 2010, a total of 913 opinions were received. In addition, an appeal system has been adopted to enable detainees to raise a complaint with the director of the immigration detention facility, if they are dissatisfied with their treatment, and finally to file an objection with the Minister of Justice. In 2010, the total number of appeals submitted was 58, and 17 objections were filed. All these efforts show that more attention is being paid to the human rights of detainees to ensure the proper treatment of detainees.

156. Under the Immigration Control Act amended in 2009, the Immigration Detention Facilities Visiting Committee was set up in July 2010, comprising members appointed by the Minister of Justice from among academic experts, legal experts, and others who are of a fair and neutral position. The committee members visit detention facilities, interview detainees, and look into the opinions freely submitted by detainees through the opinion boxes placed in the detention facilities; and based on the results of the aforesaid activities, the Committee expresses its comments to the director of the immigration detention facility in relation to the administration of immigration detention facilities. As a result, efforts are being made to ensure the transparency of security and treatment, and facility administration is improved through the partial installation of transparent window glasses and the provision of psychiatric care on a regular basis.

157. The following measures also have been implemented to pay conscientious attention to the human rights of detainees. If the director of the immigration detention facility deems that attendance of an immigration control officer is not needed, detainees are allowed to meet visitors without such attendance; and in some well-equipped detention facilities, detainees are allowed to freely make phone calls during specified hours without being attended by an immigration official.

158. In September 2010, immigration bureaus and the Japan Federation of Bar Associations agreed to establish a forum to discuss measures to realize more preferable conditions in relation to various issues concerning detention in immigration control administration. Following this, discussion meetings have been held between them on a regular basis, and free legal counselling is provided by attorneys to detainees from time to time.

159. With regard to female detainees, female-specific approaches are being promoted. According to the special provisions concerning female detainees in the Regulations for the Treatment of Detainees, all tasks for the treatment of female detainees are supposed to be performed by female immigration control officers. In order to ensure adherence to this policy, the number of female immigration control officers has been increased and they are adequately staffed. In particular, body searches, clothing checks, and attended bathing are carried out by female immigration control officers or other female personnel without exception.

### **C. Hospitalization under the Mental Health and Welfare Act**

160. The Act on Mental Health and Welfare of Persons with Mental Disorders was revised in accordance with the Services and Supports for Persons with Disabilities Act enforced in 2006. Under this revised Act, various measures as indicated below have been implemented to ensure adequate medical care for persons with mental disorders in a manner that is more conscious of their human rights: (i) the introduction of special measures to provide medical examination by designated mental health physicians on the occasion of

hospitalization recognized for medical care and protection, (ii) the introduction of a system for reporting medical conditions of inpatients subject to consensual hospitalization, and (iii) the introduction of a system of disclosing the names of mental hospitals which have failed to comply with an improvement order.

161. The cases examined by the Mental Health Review Tribunal in 2009 are as follows:

- Periodic report:
  - Persons under involuntary hospitalization for whom hospitalization is no longer needed: 0
  - Persons under hospitalization for medical care and protection for whom it is inappropriate to continue hospitalization: 4
- Request for release:
  - Persons whose hospitalization is inappropriate: 62
- Request for improved treatment:
  - Persons whose treatment is inappropriate: 12

162. The period specified for examination by the Mental Health Review Tribunal is one month or shorter, in principle, and adherence to this rule is instructed again.

163. The Act on Medical Care and Observation for Persons in a State of Insanity, etc. entered into force on July 15, 2005.

#### **D. Efforts to eliminate discrimination against persons affected by leprosy (Hansen's disease)**

164. In accordance with the Act on Payment of Compensation, etc., to Inmates of Leprosy Sanatoria and the Act on Promotion of Resolution of Leprosy Issues (enforced in April 1, 2009), the Government is committed to paying adequate compensation, implementing awareness-raising activities and other measures to restore the honour of present and former inmates of leprosy sanatoria, taking measures to enhance their welfare, and continuing its utmost efforts for the early and complete solution of leprosy issues.

165. In addition, the Government is leading an international initiative to address the issues of leprosy discrimination, based on Japan's experience, and the draft resolution "Elimination of discrimination against persons affected by leprosy and their family members" proposed by Japan for three consecutive years from 2008 was unanimously adopted by the UN Human Rights Council. In 2010, the UN General Assembly unanimously adopted a resolution to require the governments of the member states to pay due regard to the Principles and Guidelines for the Elimination of Discrimination against Persons Affected by Leprosy and Their Family Members, which had been proposed by the Government of Japan with the aim of solving problems of bias and discrimination based on misconceptions and misunderstanding of leprosy.

166. Recognizing the importance of disseminating and promoting these Principles and Guidelines, the Government decided to extend the term of the delegation for the Goodwill Ambassador for the Human Rights of People Affected by Leprosy by an additional two years in April 2011, and the Government is continuing to address leprosy issues in cooperation with this Goodwill Ambassador.

## Article 10

### A. Right to interview and communication with legal counsel in criminal custodial facilities

#### 1. Date, place and time of the interview under article 39, paragraph 3 of the Code of Criminal Procedure

167. Starting September 2008, the following procedures are being taken regarding the interviews between a suspect arrested and detained and his or her legal counsel, etc. In the course of giving the suspect an opportunity for explanation immediately after the arrest by the police or prosecutors or immediately after the case referral from the police to the prosecutors, prosecutors and the police must notify the suspect of the right to appoint legal counsel. If the suspect requests an interview with the legal counsel, etc. in the middle of the interrogation, such a request must immediately be communicated to the counsel. If no legal counsel is appointed and the suspect desires to have someone be appointed as legal counsel at his or her own expense, the suspect is entitled to request the appointment of legal counsel by specifying a specific attorney, incorporated law firm or bar association. In addition, if the legal counsel, etc. requests an interview with a suspect who is under interrogation or who has been sent to the public prosecutor's office, the prosecutors or the police must give due consideration so that such an interview can take place at the first available opportunity.

#### 2. Restrictions based on the need of facility administration

168. The right to interview and communication as above is subject to certain restrictions as needed for the purpose of administration of the facilities, as previously reported. For example, the penal institution can refuse a late-night interview unless it is urgently necessary. Considering that human resources and physical conditions are limited in penal institutions, restrictions of this kind are unavoidable and unobjectionable.

169. According to article 118 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the date and time of visits to an unsentenced person by the defence counsel, etc. must be during working hours of the penal institution for the day except Sunday and other days specified by a Cabinet Order, and such visits may be restricted if it is necessary to do so for the management and administration of the penal institution. Nevertheless, if it is urgently necessary, visits by defence counsels on Sundays or other holidays may be permitted under certain conditions, in view of the fact that visits and interviews by defence counsels play an important function in the court proceedings.

170. In detention facilities, as explained in the previous periodic reports, visits by counsel on non-working days and during hours outside the regular working hours of the facility are accepted to the extent possible, since the needs for such visits should be considered in light of the importance of detainees' right to interview and communication with their counsels, etc.

#### 3. Penal Institution Visiting Committee

171. A Penal Institution Visiting Committee (the "Visiting Committee") is set up in each penal institution, and its duty is to inspect the penal institution, interview inmates, receive or otherwise handle correspondence from inmates, understand the state of the management and administration of the penal institution, and deliver opinions to the warden of the penal institution with regard to its management and administration.

172. The warden of a penal institution is required under law to submit information about the management and administration of the penal institution to the Visiting Committee on a regular basis or when necessary. Additionally, the warden of the penal institution is supposed to provide the cooperation necessary for inspections and interviews with inmates

conducted by the Visiting Committee. As explained above, the Government considers that the opportunities for the Visiting Committee to access information necessary for understanding the management and administration of the penal institution are sufficiently guaranteed by law.

173. Members of the Visiting Committee for each penal institution are appointed by the Minister of Justice, not by the warden or other manager of the penal institution. Visiting Committee members are appointed based on recommendations of bar associations, medical associations, local governments, and others.

#### **4. Study Group on Review of Appeals Filed by Inmates of Penal Institutions**

174. The Study Group on Review of Appeals Filed by Inmates of Penal Institutions (the “Study Group”) has its own secretariat set up in the Secretarial Division of the MOJ Minister’s Secretariat, in order to ensure independence from the MOJ’s Correction Bureau having jurisdiction over penal institutions.

175. The Study Group is comprised of around five members who are attorneys at law, physicians, law scholars, or other outside experts. When Study Group members are appointed by the Minister of Justice, they are selected from well-qualified candidates recommended by concerned organizations outside the Government, in order to make an adequate line-up.

176. If the result of the review of an appeal differs from the opinion of the Minister of Justice, the Study Group will make a proposal to the Minister and request that the manner of handling the appeal be reviewed. On the other hand, the Minister of Justice handles appeals with respect for proposals of the Study Group, and in conformity with those proposals to the extent possible.

177. Information about the Study Group is disclosed on the MOJ website.

#### **5. Right to access legal aid**

178. Refer to paragraph 6 of the Government comments on the concluding observations of the Committee (CCPR/C/JPN/CO/5).

### **B. Treatment in correctional institutions**

#### **1. Treatment of sentenced persons**

179. The number of inmates detained in the penal institutions of Japan was 45,525 at the end of 1993 and increased consistently over the subsequent years. In 2007, this number declined for the first time in 14 years, and marked 72,975 in 2010, with a year-on-year decrease of 2,275. However, the continuous high occupancy rate and overcrowding of penal institutions remains unsolved. Looking at the figures for convicted inmates (e.g. sentenced persons) at the end of 2010, 64,883 persons were detained, with the occupancy rate as high as 90 percent; and 13 of the 77 penal institutions housed more inmates than their capacity, with the occupancy rate exceeding 120 percent of capacity for two institutions.

180. In addition to this continuing high occupancy rate and overcrowding, a significant proportion of the sentenced persons is still made up of persons associated with organized crime groups, persons convicted of stimulant drug offenses, re-imprisoned persons, and others of whom treatment may be a formidable task, and the inmate population is aging. These situations now require increased attention in treatment, security, and safety of inmates.

181. The number of officers of penal institutions (quota) was 17,912 at the end of FY 2006 and increased by 1,197 to 19,109 at the end of FY 2010. As a consequence, the number of inmates per officer (the year-end number of inmates divided by the year-end

number of officers) was slightly improved over these five years, with a decrease from approx. 4.5 to approx. 3.9. Even so, the high occupancy rate and overcrowding issue still remains unsolved, and the Government is continuing approaches to reduce burdens on the staff of penal institutions.

182. Following their study meetings as explained in the previous periodic reports, the Correction Bureau of MOJ and the Japan Federation of Bar Associations, one of Japan's NGOs, exchanged opinions about the revision of the Prison Act, as detailed later in this report, and bilateral discussions are held on specified issues several times every year.

## **2. Assessment for treatment and group formation**

183. In order to achieve the rehabilitation and social reintegration of sentenced persons, it is necessary to provide treatment tailored to respective sentenced persons based on their personal characteristics and various environmental and social factors. Scientific investigation intended for identifying problems faced by respective sentenced persons is called assessment for treatment. Based on the assessment results, treatment guidelines are formulated as a plan for treatment. Then, the sentenced persons are classified into groups to effectively implement the guidelines, and are provided with effective treatment suited for each group

184. To be more specific, when a sentenced person is committed to a penal institution based on a sentence newly finalized, assessment for treatment is conducted. Based on the findings of this assessment, the type and contents of correctional treatment to be administered to this sentenced person as well as his/her category and criminal tendencies are determined, and then the institution to accept the sentenced person is specified.

## **3. Prison work**

185. Prison work is one of the important components of the correctional program for achieving the rehabilitation and social reintegration of sentenced persons. This accustoms the sentenced persons to a well-regulated working life, in order to enable them to maintain their mental and physical health, to give them motivation to work, to develop a disciplined lifestyle, and to become more conscious of their role and responsibility through group work. In addition, prison work provides sentenced persons with vocational knowledge and skills with the aim of promoting their social reintegration.

186. In particular, the vocational training offered as one of the forms of prison work is implemented in order to enable sentenced persons to acquire occupational licenses or qualifications, or knowledge and skills necessary to work at a job.

187. Vocational training is offered in areas such as welding, telecommunication engineering, automobile mechanic service, information processing, construction machinery operation, and nursing care. In FY 2010, a total of 11,885 sentenced persons completed vocational training, and 5,919 of them acquired licenses or qualifications as electricians, automobile mechanics, information technology engineers, home care workers, and so on.

188. The standard working conditions for prison work must, in principle, be adequate in light of generally accepted ones. Hours for prison work, together with hours for correctional guidance, must be specified within the range of eight hours per day, and Saturdays, Sundays, and holidays prescribed in the Act on National Holidays are specified as nonworking days. Inside the premises of each penal institution, measures are taken to prevent accidents in the course of prison work of any type, in line with the Industrial Safety and Health Act, which is designed to govern private sector companies. Sentenced persons are prohibited from chatting during work hours. This rule is adopted as a minimum requirement necessary to ensure safety on the job. Therefore, oral conversations necessary for the work are allowed, and talking is not prohibited during breaks.



189. Although persons sentenced to imprisonment without work have no obligation to perform any specific work, approximately 90 percent of them worked of their own will as of the end of FY 2010, in the same way as done by persons sentenced to imprisonment with work. This high participation rate shows that prison work is not performed under harsh conditions.

#### **4. Guidance for reform**

190. Sentenced persons are obligated to receive guidance for reform as part of their correctional treatment. Guidance for reform is classified into general guidance for reform targeting all sentenced persons and special guidance for reform targeting sentenced persons who are faced with special situations and are therefore found to have difficulty in rehabilitation and smooth social reintegration.

191. General guidance for reform is provided in the form of lectures, interviews, and so on, and is intended to lead sentenced persons to: (i) understanding the circumstances and feelings of crime victims and their families, and developing feelings of remorse, (ii) learning a self-regulated lifestyle and healthy ways of thinking and promoting mental and physical health, and (iii) preparing for life planning and social reintegration and acquiring skills necessary for social adjustment.

192. Special guidance for reform consists of guidance for overcoming drug addiction, guidance for withdrawal from organized crime groups, re-offending prevention guidance for sex offenders, education from the victims' viewpoint, traffic safety guidance, and job assistance guidance.

##### **Overcoming drug addiction**

193. Persons with addictions to narcotics, stimulants, or other drugs are given such guidance that helps them understand their own characteristics leading to drug abuse and learn concrete ways to live their lives without drugs, through efforts of the penal institutions with cooperation from private self-help groups acting to assist recovery from drug addiction.

##### **Withdrawal from organized crime groups**

194. Persons belonging to or associated with organized crime groups are given such guidance that helps them realize the antisocial nature of organized crime groups and develop the will to withdraw from such groups.

##### **Re-offending prevention for sex offenders**

195. Persons with a distorted perception or a lack of self-control leading to sexual crimes are given such guidance that helps them look into and identify wide-ranging factors leading to the sexual crimes and consider and learn concrete ways to prevent reactivation of the identified factors.

##### **Education from victims' viewpoints**

196. If persons having committed crimes causing serious harm to other's lives or mental or physical condition are unaware of or indifferent to the significance of apology and compensation for victims, they are given such guidance that helps them recognize the gravity of their crimes and feelings of the victims and consider ways of facing victims, etc. with sincerity.

##### **Traffic safety**

197. If persons having committed crimes through driving cars, etc. lack or are indifferent about a law-abiding spirit or knowledge concerning traffic safety, they are given such

guidance that helps them become conscious of drivers' responsibilities and obligations and recognize the gravity of their crimes. In certain penal institutions, guidance for recovery from alcoholism is provided as part of the traffic safety guidance program.

#### **Job assistance**

198. Some persons have not learned attitudes and behavioural patterns necessary to adjust themselves to human relationships in workplaces and are therefore unable to keep working at the same job; they are given such guidance that helps them acquire basic skills and manners necessary to work at a job and prepare for concrete efforts to find a job after their release.

#### **5. Guidance in school courses**

199. In the absence of scholastic abilities serving as a basis of social life, some sentenced persons are found to have difficulty in rehabilitation and social reintegration. Such sentenced persons are given guidance in school courses at the elementary and junior high school levels. If improving scholastic abilities is found particularly conducive to facilitating smooth social reintegration of some sentenced persons, penal institutions may provide guidance in school courses at the high school or university level. In addition, the High School Equivalency Examination is administered in penal institutions under cooperation between the MOJ and the Ministry of Education, Culture, Sports, Science and Technology (MEXT), and the guidance to prepare for this examination is provided proactively and systematically in specified penal institutions.

#### **6. Other educational activities**

200. Respective penal institutions arrange guidance from outside collaborators and provide guidance at the commencement of execution of sentence as well as pre-release guidance, and educate sentenced juveniles in keeping with characteristics particular to juveniles.

201. As guidance at the commencement of execution of a sentence and pre-release guidance, introductory guidance is provided to a sentenced person for a certain period following the commencement thereof, in order to teach the significance of serving time, the outline of correctional treatment, instructions on the life and activities in the penal institution, and so on. In addition, for a certain period preceding the release, the sentenced person to be released receives pre-release guidance to acquire knowledge concerning matters needed for returning home and life after the release, including the knowledge required in social life immediately after the release, knowledge and information concerning jobs after re-entry into society, and knowledge concerning the probation system and other information on rehabilitation.

#### **7. Treatment of sentenced juveniles**

202. For respective sentenced juveniles, a treatment guideline is prepared for each sentenced juvenile, and in accordance with the guideline, each juvenile is treated and educated, taking into consideration that they are still in the stage of mental and physical development, their impressionability, and other characteristics particular to sentenced juveniles. Approaches used for this purpose include individualized interview and guidance using the one-to-one instructor system, intensive guidance in school course, encouragement of vocational training courses, and proactive communications with the family members of the sentenced persons to maintain and improve their family relationships. In addition, sentenced juveniles committed to juvenile training schools who are 14 years of age or older and under 16 years of age are to receive correctional education.

## **8. Contact with outside persons**

203. In general, it is appropriate to permit sentenced persons to contact relatives and other outside persons from a humanitarian perspective. It must be also noted that they sometimes need face-to-face communications with outsiders to take care of important concerns, and that outside contacts could be an important means to maintaining healthy, favourable relationships with their friends and acquaintances with a view to facilitating the reform of sentenced persons and their smooth re-entry to society. Therefore, visits by the relatives of sentenced persons and other persons who need to meet sentenced persons to take care of important concerns are allowed in principle, and even visits by other people may be permitted under certain conditions.

## **C. Daily lives of sentenced inmates**

204. Clothing and bedding, meals, hygiene and medical care (bathing, physical exercise, health examinations, and medical care), and order and discipline for inmates are as previously reported.

### **1. Disciplinary punishment**

205. The objectives of and the procedures for disciplinary punishment are as previously reported. The categories of disciplinary punishment are as follows: admonition, suspension from prison work for a period not exceeding 10 days, complete or partial suspension from the use or consumption of self-supplied articles for a period not exceeding 15 days, complete or partial suspension of access to books, etc. for a period not exceeding 30 days, reduction of up to one-third of calculated amount of incentive remunerations, and disciplinary confinement for a period not exceeding 30 days. When an inmate is under disciplinary confinement, he or she must stay in his or her own room, in principle, throughout the day under conditions strictly isolated from other inmates and anyone else, without being allowed to contact others, urging the inmate to reflect on his or her violation of the rules. When executing a disciplinary confinement, the fullest attention is paid so as not to hinder the maintenance of the good health of the inmate.

### **2. Confinement in a protection room**

206. If an inmate is likely to commit self-injurious behaviour, shouts in a loud voice or makes noise against a prison officer's order to cease doing so, is likely to inflict injury on others, or is likely to damage or defile facilities, equipment, or any other property of the penal institution, and besides it is especially necessary in order to maintain discipline and order in the penal institution, the inmate may be confined in a protection room pursuant to applicable laws. In order to achieve its objective, a protection room is designed with sound insulation and structural solidity, without being equipped with fixtures, tools, goods with projecting parts, and other items that could easily be used to commit suicide, with walls and floors made of soft materials, et al. While an inmate is confined in a protection room, the inmate is encouraged to endeavour to seek early removal from the protection room. When an inmate is confined in a protection room, or when the confinement period is extended, the warden of the penal institution must seek an opinion from the in-house physician about the health condition of the inmate.

### **3. Complaints mechanisms**

207. The complaints mechanisms available to inmates in relation to measures implemented by penal institutions cover civil or administrative suits, criminal complaints or accusations, filing of human right infringement, and others under general law. While the former Prison Act stipulated the petition system and the warden interview system, the complaints mechanisms are now refined under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees currently in effect allow inmates to file complaints in

the following manner. When an inmate is dissatisfied with a measure decided by the warden of the penal institution (prohibition on the delivery of correspondence, disciplinary punishment, etc.), the inmate may file a claim for review or a reclaim for review to seek its rescission, etc. and when dissatisfied with an act actually performed by a staff member of the penal institution (illegal physical assault against the inmate's body, etc.), the inmate may report the case for which the inmate intends to request confirmation; and in either case, the initial filing or reporting must be made to the Superintendent of the Regional Correction Headquarters (RCH), and if dissatisfied with the Superintendent's decision, a complaint may be submitted to the Minister of Justice. When an inmate is dissatisfied with any kind of treatment received by the inmate, the inmate may file an appeal with the Minister of Justice, the Inspector, or the warden of the penal institution.

#### Number of complaints filed by inmates

Year	Total	Claim for review	Reclaim for review	Report of cases		Filing				
				Superintendent of RCH	Minister of Justice	complaints to the Minister	Petition to the Minister	Civil suits	Criminal suits <sup>1</sup>	Others <sup>2</sup>
2006	13,021	1,774	338	590	156	2,320	4,219	286	705	2,633
2007	13,237	3,075	763	880	222	4,036	277	281	789	2,914
2008	13,756	3,813	917	957	238	4,052	...	358	855	2,566
2009	14,238	3,717	1,177	1,279	403	4,173	...	243	830	2,416
2010	13,530	3,486	1,093	1,142	332	4,219	...	271	746	2,241

<sup>1</sup> Each figure shows the number of letters entitled "criminal complaints or accusations" sent by inmates to investigative authorities.

<sup>2</sup> This category includes filings of human rights infringement cases, requests for trial, etc. and does not include complaints filed with the Inspectors and the wardens of penal institutions.

208. The cases involving referrals to criminal procedure or disciplinary action by reason of violence of penal institution staff against inmates are indicated in the table below.

	2006	2007	2008	2009	2010
Criminal procedure	0	0	0	0	2
Disciplinary (Dismissal) action	0	0	1	0	2
(Suspension from duty)	0	0	1	1	4
(Reduction in pay)	0	3	2	6	1
(Admonishment)	0	0	1	0	5

#### 4. Improvement of correctional administration

209. The revision of the Prison Act was the most important challenge in the course of correctional administration reform, as explained in the previous periodic reports, and such revision was implemented in two phases.

210. In its first phase the Act on Penal Institutions and Treatment of Sentenced Persons entered into force in May 2006. This Act is intended to stipulate the basic matters for penal institutions and their management and administration, and provide for adequate treatment of sentenced persons and other inmates detained in penal institutions with respect for their human rights and in accordance with their respective circumstances.

211. In its second phase, the Act for Partial Revision of the Act on Penal Institutions and Treatment of Sentenced Persons entered into force in June 2007. This revision focuses on matters concerning treatment of unsentenced persons, inmates sentenced to death, and other individuals. Upon enforcement of this Revision Act, the Act on Penal Institutions and Treatment of Sentenced Persons was renamed the “Act on Penal Detention Facilities and Treatment of Inmates and Detainees” (the “Penal Detention Facilities Act”), perfected as the complete revision of the Prison Act.

212. The Penal Detention Facilities Act is characterized by the following provisions concerning penal institutions:

(a) The transparency of correctional administration is secured, among others, by establishment of the Penal Institution Visiting Committee comprising third parties;

(b) The rights and obligations of inmates (e.g., religious activities, access to books, etc.) and the authority of the officers (e.g., use of handcuffs, confinement in a protection room, use of weapons, disciplinary punishment) are clearly specified;

(c) Given that prison work, guidance for reform, and guidance in school courses are specified as correctional treatment, treatment for social reintegration of sentenced persons is enhanced. To this end, systematic treatment based on treatment guidelines, alleviation of restrictions, and privilege measures are utilized;

(d) The living standards for inmates are guaranteed by clearly stipulating the loan and supply of clothing and food and the range and requirements for using self-supplied articles. In addition, adequate hygiene and medical care for inmates are guaranteed;

(e) Contact with outside persons is guaranteed through the allowance of visits and correspondence within certain limits and clear stipulation of the requirements for imposing restrictions. In addition, sentenced persons meeting the necessary criteria may be permitted to communicate by phone;

(f) Complaints mechanisms consisting of a claim for review, report of cases, and filing of complaints are established.

213. Based on the results of reviewing the operation of the Penal Detention Facilities Act and considering the issues to be improved in such operations, the Regulations on Penal Institutions and Treatment of Inmates (a Ministerial Ordinance) were partly revised in June 2011, with the aim of achieving the objectives of this Act even more adequately.

## **5. Commitment of inmates sentenced to death to single rooms**

214. Refer to paragraphs 13 to 15 of the Comments by the Government of Japan on the Concluding Observations of the Human Rights Committee (CCPR/C/JPN/CO/5).

## **D. Substitute detention system**

### **1. Substitute detention system**

215. In Japan, detention facilities are set up within the Prefectural Police Headquarters and the police stations. While the Code of Criminal Procedure (art. 64, para. 1) requires that suspects be detained in penal institutions, the Penal Detention Facilities Act (art. 15, para. 1) stipulates that suspects may be detained alternatively in detention facilities, instead of penal institutions. This system, which allows suspects to be detained in detention facilities, is called the “substitute detention system.”

216. For the details about this system, refer to paragraph 5 of Comments by the Government of Japan on the Concluding Observations of the Human Rights Committee (CCPR/C/JPN/CO/5).

## **2. Detention Facilities Visiting Committee**

217. 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.

218. 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 including legal professionals such as attorneys, doctors, local government officials, university officials and local residents.

219. The Penal Detention Facilities Act provides that each Committee member shall actually visit the detention facilities to understand the actual situation of the detention facilities, including interviews with detainees, and that the Committee shall then provide its opinions to the detention services managers. Furthermore, the 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 independently 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.

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

221. 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.

## **3. Appeal system**

222. The Penal Detention Facilities Act sets up 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 the body, and the Filing of Complaints with regard to treatment in general.

223. 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.

## **4. Review by Prefectural Public Safety Commission**

224. 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.

## 5. Appeals by detainees

225. The numbers of appeals by detainees from 2007 to 2010 under the Penal Detention Facilities Act are as follows:

### Number of Claims/Reclaims for review filed (Unit: Number of cases)

	2007	2008	2009	2010	Total
Claim for Review	52	21	27	57	157
Reclaim for Review	0	6	8	2	16
Total number	52	27	35	59	173

\* Each figure shows the number of cases for the period of June of the relevant calendar year to May of the following calendar year.

### Number of Reports of cases filed (Unit: Number of cases)

	2007	2008	2009	2010	Total
Filed with the Chief of Prefectural Police Headquarters	18	23	13	69	123
Filed with the Prefectural Public Safety Commission	1	2	0	3	6
Total number	19	25	13	72	129

\* Each figure shows the number of cases for the period of June of the relevant calendar year to May of the following calendar year.

### Number of Complaints filed (Unit: Number of cases)

	2007	2008	2009	2010	Total
Filed with the Chief of Prefectural Police Headquarters	241	180	230	279	930
Filed with inspector	73	49	83	53	258
Filed with detention services manager	272	242	223	405	1,142
Total number	586	471	536	737	2,330

\* Each figure shows the number of cases for the period of June of the relevant calendar year to May of the following calendar year.

226. In addition to the appeal system explained above, a detainee or anyone else dissatisfied with the execution of duties by a police official may file a complaint with the Prefectural Public Safety Commission in accordance with the Police Law. The number of complaints filed by detainees and other persons with regard to detention service was 14 in 2006, 5 in 2007, 10 in 2008, 18 in 2009, and 17 in 2010, and all these complaints were adequately addressed.

## 6. Disciplinary action imposed on detention officers; compensation provided to victims

227. Looking into the cases involving a final and binding judgment of conviction for the crimes of assault and cruelty by special public officers and the crimes of assault and cruelty causing death or injury by special public officers for the period from the beginning of 2006

to July 2011, there were two cases of crimes of assault and cruelty by special public officers (one in 2008 and the other in 2011, each case involving an indecent act against a female detainee) and disciplinary dismissal was imposed on both of the detention officers concerned.

228. The total amount of compensation provided to the victims for the period from 2006 to 2010 was approximately 72.55 million yen. This was the compensation paid to the bereaved family in 2009 based on a final and binding judgement in a case where a claim for damages was filed because the detainee had died in 2004 while a gag had been used.

## **Article 11**

229. As stated in the previous reports.

## **Article 12**

### **A. Re-entry permit system under the Immigration Control and Refugee Recognition Act**

230. In order to make more stable the legal status of special permanent residents in Japan, in light of their historical backgrounds, the Special Act on Immigration Control stipulates some special provisions for special permanent residents. In addition, pursuant to article 10, paragraph 2 of the Special Act on Immigration Control (or pursuant to article 23, paragraph 2 of the same Act after the amended Immigration Control Act enters into force), the Minister of Justice is required to respect the purport of the Special Act on Immigration Control to the effect that due regard must be paid to stabilizing the lives of special permanent residents in Japan.

231. Under the Immigration Control Act amended in 2009, a new system of residence management is scheduled to be launched in July 2012. As a measure to enhance convenience of foreign nationals residing in Japan, a special re-entry permit system will start. If a foreign national having a valid passport and a valid residence card (or special permanent resident certificate, in the case of a special permanent resident) re-enters Japan within one year (or two years, in the case of a special permanent resident), a re-entry permit will not be required in principle.

232. Under the new system of residence management to be launched, if a foreign national leaves Japan with a re-entry permit, as in the past, the maximum validity of the re-entry permit is five years, extended from three years under the prevailing rule (extended from four years to six years, in case of a special permanent resident).

### **B. Refugee policies in Japan**

233. The amended Immigration Control and Refugee Recognition Act entered into force on May 16, 2005, aiming to add permission for a provisional stay system, to stabilize the legal status of those who are recognized as refugees, and to review the system of filing an objection.

234. Even in the case where a foreign person does not fall under the category of refugee as defined in the UN Refugee Convention, etc. and is not recognized as a refugee, if it is difficult for the person to return from Japan because of the circumstances in his or her homeland or for other reasons, or if it is appropriate to permit a stay in Japan because of special circumstances, the Government finds that such circumstances require humanitarian consideration and therefore grants special permission to stay in Japan. The number of



foreign nationals who were granted special permission to stay in Japan through this approach was 53 in 2006, 88 in 2007, 360 in 2008, 501 in 2009, and 363 in 2010. In 2010, the Government of Japan sheltered 402 foreign nationals in essence, inclusive of 39 persons recognized as refugees. As for the treatment of applicants for refugee status, please refer to the paragraphs for article 13.

#### **1. Refugees under the UN Refugee Convention**

235. Japan recognized 577 foreigners as refugees for the period from 1982, when the refugee recognition system was established, to the end of 2010. During the same period, the Government received applications for refugee status from 9,887 persons, and among them, 887 applications were withdrawn and 7,438 were denied.

#### **2. Resettlement to a third country**

236. The Government of Japan reached a Cabinet understanding “Concerning the Implementation of Pilot Cases relating to the Acceptance of Refugees by Resettlement to a Third Country” on December 16, 2008. Based on this Cabinet understanding, the Government decided to admit approximately 30 people once a year for three consecutive years from 2010. For this purpose, the Government of Japan will carry out the selection process for Myanmar refugees who are temporarily protected in Thailand and who are determined by the United Nations High Commissioner for Refugees (UNHCR) as being in need of international protection and recommended by UNHCR as refugee candidates to Japan. In 2010, 27 Myanmar refugees were permitted to enter Japan for settlement.

### **Article 13**

237. A system of filing an objection is established for foreign nationals who are determined as falling under any of the grounds for deportation. If such a foreign national satisfies the specified requirements, including the fees for an agent acting in hearing under this system being unaffordable, they can utilize the legal assistance system for foreign nationals operated by the Japan Legal Support Centre (JLSC) entrusted by Japan Federation of Bar Associations and gain financial aid for attorney costs.

238. When carrying out deportation procedures for those who cannot understand Japanese well, languages they can understand or interpreters are used in the course of examination and other procedures, in accordance with instructions concerning the procedures prescribed by the Immigration Control Act and other applicable rules.

239. Immigration bureaus make efforts to foster officers proficient in foreign languages through language training and so on, and when selecting interpreters, immigration bureaus pay due consideration to ensure their competency and aptitude.

240. In this regard, immigration bureaus maintain a list of interpreters in dozens of foreign languages, including Korean, Chinese, Spanish, Portuguese, and Tagalog, in order to ensure their prompt response.

241. To prepare a record of the statement or other document for examination, etc. conducted in a foreign language, a written statement is drafted and then its contents are read aloud in the same foreign language as spoken by the foreign person, in order to seek this person’s own confirmation on whether there are any mistakes in its contents. In this way, the human rights of those who undergo deportation procedures are fully considered when carrying out such procedures.

**A. Filing an objection for disposition of disapproval for extension of period of stay or to change of status of residence**

242. As a means to file an objection for disposition of disapproval, an action to seek revocation of such disposition may be filed with the court. From 2006 to 2010, 79 actions were filed to seek revocation of a disposition of disapproval. Among them, the Government was a winning party in 32 cases and defeated in two cases; 44 actions were withdrawn, and one action is pending (as of the end of August 2011).

**B. Treatment of applicants for refugee status**

243. As it tended to take a longer time than before to examine applications for refugee status given the drastic increase in the number of such applications in recent years, the standard processing period for applications for refugee status was set at six months and this standard was publicly announced in July 2010, with a view to shortening the processing period. Then, efforts were made to ensure that adherence to this time limit, in principle, for all applications would be achieved by the end of March 2011. As a result, looking at the pending applications at the end of March 2011, the percentage of applications pending for six months or more from the filing make up approximately 4.7 percent, a drastic decrease from approximately 61 percent at the end of June 2010. In this regard, the average processing (examination) period is disclosed every quarter. In order to ensure opportunities for all applicants seeking protection to access attorneys, legal assistance, interpreters, and social support or employment offered by appropriate countries at all times during the application processing period, a refugee support liaison desk is set up in each of the regional immigration bureaus and major airports. In addition, signs showing the contact information of refugee supporting organizations are provided in major airports. In this way, efforts are being made to facilitate social support and assistance for refugees coming to Japan. In the case of applicants for refugee status who are legitimate residents, the status of residence with qualification for employment is granted after the lapse of a specified period from the filing of the application.

244. Under the refugee examination counsellors system launched in May 2005, the Minister of Justice is required to seek opinions of refugee examination counsellors before making any decision with regard to any case of objection against a disposition of denial of refugee status.

245. Refugee examination counsellors are selected from persons with extensive experience or academic standing who are acting in a neutral position in broad-ranging areas, based on the recommendation of the Japan Federation of Bar Associations, UNHCR, NGOs well experienced in refugee support, and others. As a neutral and fair third party organization, those counsellors are responsible for examination of refugee cases. Up to the end of July 2011, there is no case in which the Minister of Justice's decision went against the majority opinion submitted by the refugee examination counsellors. The number of refugee examination counsellors is being increased in phases (from 28 to 56), in order to expedite objection filing procedures.

246. As explained above, refugee-related administration by the Government of Japan is implemented with respect for opinions raised by a third party organization established under the refugee examination counsellor system to examine and double-check the applications of those seeking protection from a neutral and fair position. Regardless of whether or not an objection has been filed under the refugee examination counsellor system, an applicant dissatisfied with a disposition may use administrative litigation to seek judicial remedy. To bring administrative litigations, foreign nationals who satisfy the specified requirements, including the fees for agents acting for such lawsuits being unaffordable, can utilize the legal assistance system for refugee recognition operated by the Japan Legal Support Centre (JLSC) entrusted by Japan Federation of Bar Associations and

gain financial aid for attorney costs. In FY 2010, JLSC received 570 requests for legal assistance (including legal representation) for refugee recognition.

247. The Immigration Control Act requires that deportation be suspended while application for refugee status is pending. If the detention continues over the long term in such a situation, provisional release may be permitted flexibly when it is found necessary to do so from a humanitarian perspective as a result of considering the health condition of the applicant, detention period, and other circumstances on a case-by-case basis. In Japan, it is possible to seek a court ruling on the legality of detention in the procedures for deportation, issuance of a written deportation order, or other disposition in accordance with the procedures prescribed by the Habeas Corpus Act or the Administrative Case Litigation Act, when a detainee deems such disposition to be illegal. In the case where the detainees intending to use of litigation are deported, due regard is paid to guarantee their right of access to the courts.

## **Article 14**

### **A. Legal framework**

#### **1. Revision of the Juvenile Act**

248. The procedures for juvenile cases are as explained in article 14, paragraph 4 of the second periodic report. Japan's Juvenile Act firmly adheres to the basic policy of promoting the sound development of juveniles.

249. In May 2007, the Juvenile Act was partly revised as follows:

(a) In order to ensure more adequate fact-finding in hearings of the family courts and more adequate selection of treatments and thereby contribute to the enhancement of measures to be implemented for the sound development of juveniles, the authority of the police to investigate cases of juveniles under 14 years of age who violate the laws clearly specified (Juvenile Act, art. 6-2).

(b) A juvenile even under 14 years of age may be committed to a juvenile training school only when it is found particularly necessary. This is because if the juvenile has a serious problem it may sometimes be necessary and appropriate to provide early correctional education for that juvenile to rehabilitate him or her (Juvenile Act, art. 24, para. 1 and Juvenile Training School Act, art. 2, paras. 2 and 5).

(c) If a juvenile under probation violates any applicable rule of material importance and it is found impossible to achieve rehabilitation by continuing probation, with a request from the director of a probation office, the family court will impose protective measures, either referral to a children's self-reliance support facility or the like or referral to a juvenile training school (Juvenile Act, art. 26-4).

(d) If a juvenile who committed a certain serious crime is referred to a Juvenile classification home and is under observation and protection has no attendant who is an attorney at law, the family court may, by its own authority, appoint an attendant who is an attorney at law (Juvenile Act, art. 22-3, para. 2).

250. Under the Juvenile Act revised in June 2008, the family court may permit the victims, etc. of a certain serious crime to observe the proceedings, unless the court finds it inappropriate for the sound development of the Juvenile concerned (Juvenile Act, article 22-4). This has been introduced to respect the feelings of the victims who desire to observe the proceedings. It also contributes to making the juvenile recognize the gravity of the delinquency and reflect deeply on it through a proceeding observed by the victim.

## **2. Abolition of the Civil Legal Aid Act and approval of the Comprehensive Legal Support Act**

251. Civil legal aid services were launched by the Japan Legal Aid Association (JLAA) in 1952, and the contents of these services and the responsibilities of the Government, bar associations, and others in relation to these services were clearly specified in the Civil Legal Aid Act approved in April 2000. Subsequently, in the course of a series of judicial system reforms, and under the principle that the system allowing access to the information and services helpful for solutions of legal troubles everywhere in Japan should be developed, the Comprehensive Legal Support Act was approved in 2004. Under this Act, the Japan Legal Support Centre (JLSC) was established in 2006, wholly funded by the Government. As this Act was approved, the Civil Legal Aid Act was abolished and civil legal aid services were transferred to JLSC from JLAA.

252. The number of cases involving Civil Legal Aid (excluding legal consultations) is increasing every year, reaching a total of 117,583 cases in FY 2010.

## **3. Other matters concerning the legal framework**

253. Refer to Paragraphs 2 to 4 of the Government comments on the concluding observations of the Committee (CCPR/C/JPN/CO/5), with regard to the following issues: adoption of the mandatory re-examination system for all death penalty cases, whether the execution of sentence is suspended by an appeal for retrial or pardon for a death penalty case, and interviews between an inmate sentenced to death waiting for a ruling for commencement of retrial and an attorney at law.

## **B. Disclosure of evidence to defence counsels**

254. If a public prosecutor requests examination of a witness, expert witness, interpreter, or translator, the public prosecutor must give the accused or their counsel an opportunity to know the name and address of that person to be examined. If a public prosecutor requests examination of documentary or material evidence, the public prosecutor must give the accused or their counsel an opportunity to inspect the evidence. The public prosecutor will consider whether to disclose evidence, when to disclose, what to disclose, and if such evidence is found reasonably necessary for the defence of the accused, it will be properly disclosed. If there is a difference in opinion between the public prosecutor and the defence counsel, it will be subject to a court decision as explained below.

255. For pre-trial conference procedures, refer to the previous periodic reports. Weighing both the necessity and the adverse effects of disclosure, the Code of Criminal Procedure was revised to obligate the disclosure of evidence in order to clarify the issues in dispute and to have the accused prepare for his or her defence. The Government will continue to examine the disclosure system based on the implementation of the new method.

256. Since the investigation records for a criminal case include all sorts of documents gathered through broad-ranging investigation, some of them may be irrelevant to the issues in dispute for the case, and others may refer to matters that would cause detriment to the privacy or reputation of a relevant person if disclosed, making it difficult to gain cooperation in future investigations. For these reasons, a system requiring full and complete disclosure of the whole evidence retained by prosecutors was not adopted in the revision of the Code of Criminal Procedure in May 2004. If we were to impose on public prosecutors the general obligation to disclose all evidence, including evidence not intended for use in trials, or to recognize the defence's right to general disclosure of evidence, we would have to pay due consideration to the problems mentioned above and therefore we must carefully examine the issue.

## **Article 15**

257. As stated in the previous reports.

## **Article 16**

258. As stated in the previous reports.

## **Article 17**

259. As the institutional foundation to enable everyone to enjoy the benefits of an advanced information-telecommunication society with a sense of security, the Act on the Protection of Personal Information, setting out the basic philosophies for the protection of personal information applicable to both the public and private sectors; and four other related laws were established in May 2003 and entered into full force in April 2005.

## **Article 18**

260. As stated in the previous reports.

## **Article 19**

### **A. Restrictions under the Public Offices Election Law**

261. The Public Offices Election Law prohibits election campaigns from using door-to-door canvassing and political literature and illustrations before the start of the period permitted for the campaign.

262. In election campaigns, door-to-door canvassing is apt to lead to bribery, influence peddling, or other types of corruption and thereby may be harmful to the peaceful lives of the electorate, and propaganda using political literature and illustrations before the specified period is likely to bring about unfair or unnecessary competition, possibly leading to corrupt acts and inequality due to difference in individual financial abilities, since such propaganda activities entail considerable efforts and costs. Because of these negative effects, door-to-door canvassing and campaigns using political literature and illustrations before the specified period are restricted by law.

263. As these restrictions are solely intended to ensure the fairness of elections, the Supreme Court's ruling states that these restrictions are not in violation of the provision of article 21 of the Constitution of Japan which guarantees the freedom of expression.

264. In this way, the Public Offices Election Law limits the period for election campaigns and restricts means used for election campaigns in order to ensure fairness of elections and ensure that campaigns are carried out on equal footing to the extent reasonably possible. While subject to the restrictions on election campaigns, everyone is basically free to engage in any political activities.

265. For political rights in Japan, please refer to the paragraphs for article 25 below.

### **B. Restrictions on political activities by national public employees**

266. While the freedom of expression guaranteed under the Constitution of Japan is allowed also for national public employees, the National Public Service Act and the NPA

Rule 14-7 currently in effect impose restrictions on political acts likely to be detrimental to the political neutrality of national public employees. Therefore, it is considered to conflict with such restrictions to make house-to-house visits with the intention of supporting or disapproving any specific candidate or political party, or to distribute documents or drawings with political purpose. As these restrictions are the minimum necessary restrictions to maintain the political neutrality of national public employees who are engaged in public administration as the public servants of all citizens, as is imposed by the National Public Service Act and the NPA rule based on the delegation under said Act, these restrictions are considered not to cause violation of the Covenant.

267. According to the Supreme Court's judgment in 1974, prohibiting acts of posting or distributing documents with political purpose is constitutionally permissible insofar as such prohibition is a reasonable, necessary, and unavoidable restriction.

## **C. Protection of the rights of crime victims**

### **1. Protection of crime victims**

268. In December 2004, the Basic Act on Crime Victims was enacted prescribing the basic principles of crime victim policy and other various basic policies. Based on this Act, the Basic Plan for Crime Victims specifying concrete measures to be promoted by the Government was approved by the Cabinet in December 2005. Then, in line with this Plan, the Act for Partial Revision of the Code of Criminal Procedures, etc. to Protect Rights and Profits of Crime Victims was established in June 2007. Under this Act, the following were established:

(a) A victim participation system allowing victims of certain crimes to participate in criminal trials by a court ruling where victims can attend the court on trial dates, question witnesses relating to sentencing, question the defendants to express the victims' own opinions, and express victims' own opinions with regard to the facts of the case or the application of laws (art. 316-33 and subsequent articles)

(b) A system to conceal personal information such as names of the victim during the criminal procedure in order to protect the privacy of the victim. (Code of Criminal Procedure, art. 290-2)

(c) A compensation order system where the criminal court subsequently conducts proceedings after rendering a judgment of conviction for certain serious crimes if a request for an order of compensation is filed by the victims with the same criminal court. The criminal court will render a decision on this request based on the examination of the case file of the criminal trial (Act on Measures Relating to Criminal Procedures to Protect Rights and Profits of Crime Victims, art. 17)

269. With regard to the victim participation system explained in (i) above, the Act for Partial Revision of the Act on Measures Relating to Criminal Procedures to Protect Rights and Profits of Crime Victims and the Comprehensive Legal Support Act was enacted in April 2008, establishing the system of state-appointed attorney service for participating victims .

270. With regard to juvenile cases, the Act for Partial Revision of the Juvenile Act was established in June 2008 and the following systems were launched: (i) the system allowing the victims or others concerned with one of the serious crimes specified in the Act to observe the proceedings; and (ii) the system in which the family court explains the current situation of the proceedings to the victims.

### **2. Victim Notification System**

271. Since December 2007, the victim notification system has been enhanced through promotion of coordination among public prosecutors offices, penal institutions, and

probation offices, etc. Public prosecutors offices notify the victims on the matters concerning treatment of the perpetrator in penal institutions, and probation offices and other offices notify them on the matters of the examination proceedings for parole and supervision during probation as well as other matters.

### **3. Disclosure of the records of non-prosecution cases to victims**

272. Evidence in those case files on non-prosecution cases are not publicly disclosed in principle. However, public prosecutors, in practice, have been disclosing a part of the file if it is deemed necessary for victims to exercise their rights to claim compensation or other rights in civil suits and if the evidence sought is objective and irreplaceable. (objective evidence, in this context refers to such evidence as the result of physical examination, etc.) Since November 2008, the disclosure of such objective evidence to victims of offences that would be applicable to the victim participation system has been even more flexibly implemented such that it is disclosed, regardless of the irreplaceability of the evidence, and, even if the purpose of the victim to request the evidence is just to have better understanding of the case, as long as the disclosure does not jeopardize investigation/trial or privacy of other relevant party.

### **4. Procedure for payment based on the recovery of the property of crime victims**

273. The benefit payment system for restitution of crime damages started in December 2006 to deprive criminals of crime proceeds and for the protection of victims of such crimes. If an asset-related crime like fraud is committed in an organized manner or any property belonging to a victim is concealed or acquired, it has become possible to confiscate such property or collect the equivalent value from the accused, and the money obtained through sale of such property or money equivalent to the value of the property collected from the accused is maintained as compensation funds and then paid out to the victim for the purpose of restitution for the damage.

### **5. Benefit system for crime victims**

274. The overview of this system is as stated in the previous reports.

275. The benefit system for crime victims started in January 1981 in accordance with the Crime Victims Benefit Payment Act and has been gradually enhanced according to the rising momentum in the efforts to support crime victims in society. In particular, survivor benefits for bereaved families whose livelihoods are affected and disability benefits for persons with severe residual disabilities (Grades 1 to 3) were raised in July 2008, in the wake of the Basic Plan for Crime Victims approved by a Cabinet decision in December 2005.

276. In December 2008, the Act on Payment of Relief Benefit for Victims, etc. of Crimes Committed by Aum Shinrikyo entered into force, providing for the payment of benefits to victims, etc. of terrorism and other criminal acts committed by Aum Shinrikyo.

### **6. Measures to prevent harm from repeated crimes**

277. In order to prevent a crime victim from being harmed again by the same perpetrator, the police have been implementing crime prevention guidance, precaution against subsequent crimes, and other prevention measures. In June 2007, the Re-victimization Prevention Guideline formulated in August 2001 was revised. Under this revised Guideline, if crime victims, etc. are highly likely to be harmed by a subsequent crime by the same perpetrator and it is necessary to implement systematic and continuous measures for prevention of subsequent crimes, such crime victims, etc. are designated as persons in need of prevention measures, and necessary measures are continuously carried out through strengthening coordination with relevant judicial organizations.

278. In addition, all forms of measures to provide enhanced support to crime victims are being promoted in various respects, including the design and development of the System to Support Victims by Designated Personnel, the System for Contacting Victims, and other counselling and consultation systems.

## **Article 20**

279. In connection with article 20, paragraph 2 of the Covenant, legislation and other efforts to address the dissemination of discriminatory expression on the Internet are as explained in the previous periodic reports. With regard to Internet-related issues, the association of telecommunications carriers has prepared the following literature: “Guideline for codes of practices for Internet Service Providers,” in relation to response to illegal or harmful information, including discriminatory expression, on the Internet, “Model Agreement for Internet Connection Services” (both formulated by Telecom Services Association), and “Guidelines for Internet Access Services” (formulated by Telecommunications Carriers Association). The Government assists in their efforts to raise awareness and understanding of such literature.

## **Article 21**

280. As stated in the previous reports.

## **Article 22**

### **A. Labour unions**

281. As of June 30, 2011, the number of labour union members was 9,961,000 persons. The labour union membership ratio is estimated at 18.5 percent as of June 30, 2010.

### **B. Declaration of interpretation**

282. Japan declared in 1978 that the term “police” referred to in article 22, paragraph 2 of the Covenant should be interpreted as including the fire service in Japan. As a solution capable of reaching national consensus on the issues concerning the right to organize of fire defence personnel, the Government introduced a system using the Fire Defence Personnel Committee in 1995. In order to improve the operation of this system, the Ministry of Internal Affairs and Communications (MIC), the Fire and Disaster Management Agency, and the All-Japan Prefectural and Municipal Workers Union (JICHIRO) discussed and agreed to modify this system to establish a Liaison Facilitator system in 2005.

283. Subsequently, the “Committee on the right to organize of Fire Defence Personnel” was set up under MIC in January 2010. Based on opinions from both labour leadership and management representatives and interviews with relevant organizations, the Committee prepared a report in December 2010.

## **Article 23**

284. In January 2010, the bill for the Act for Partial Revision of the Civil Code and the Family Registration Act (tentative name) was drafted with the intention of submission from the Cabinet to the Diet at its 174th session (regular session). This bill included provisions for shortening the period of prohibition from remarrying for women and harmonizing the



minimum age of marriage for men and women. However, this bill was not submitted to the Diet because it was so controversial in the ruling party that it was not decided on in the Cabinet.

285. As stated in the Third Basic Plan for Gender Equality, the Government is going to continue discussions on the revision of the Civil Code, in light of the diversification in forms of couples and families and the concluding observations of the UN Committee on the Elimination of Discrimination against Women.

## **Article 24**

### **A. Optional Protocols to the Convention on the Rights of the Child**

286. With regard to Japan's status in relation to the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, the Government of Japan submitted its third periodic report for the Convention and the initial reports for the two Optional Protocols in April 2008 and underwent examination on these reports by the Committee on the Rights of the Child in May 2010. In accordance with the concluding observations, the Government is endeavouring to ensure that this Convention and the Optional Protocols are properly implemented in Japan.

287. In March 2010, MOFA co-hosted the Symposium on the Convention on the Rights of the Child, "Challenges for the Rights of Children," with UNICEF Tokyo Office and Japan Committee for UNICEF. In this Symposium, practical recommendations were raised by experts and frontline workers in various fields such as the legal profession, paediatrics, private enterprise, NGOs, and so on with regard to the problems to be addressed by Japan and the roles to be played by Japan in terms of international cooperation, for the purpose of promoting the "respect and protection of the Rights of the Child" stipulated in the Convention and its two Optional Protocols.

### **B. Protection of children**

#### **1. Countermeasures against child prostitution and child pornography**

288. As part of the efforts to strengthen measures to deal with increasingly internationalized child prostitution and child pornography cases, the Government is promoting enforcement of regulations toward such cases through application of the penal provisions for overseas crime established in the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children. In addition, the G8 Rome/Lyon Group promoted a project, "Support for Victims of Child Sexual Exploitation" and the efforts of the G8 member states to support child victims of sexual exploitation were summarized in "Support for Victims of Child Sexual Exploitation—Best Practice Compilation Document" in 2011, as proposed by Japan to other G8 members. Furthermore, since 2002, the Government has been holding the Conference on Child Prostitution/Commercial Sexual Exploitation in Southeast Asia on an annual basis in order to increase its cooperation with the investigation agencies of various countries.

289. In Japan, the relevant ministries and agencies are promoting measures to eliminate child pornography in cooperation with people, business entities, and related bodies in accordance with the Comprehensive Measures to Eliminate Child Pornography formulated in 2010. The measures promoted in this way include the people movement to eliminate child pornography, measures to prevent damage, measures to prevent distribution of and access to images of child pornography on the Internet, early detection and support

activities, of child victims strengthening crackdowns, and surveys on countermeasures against child pornography in foreign countries, etc.

290. The prevention and eradication of the sexual exploitation of children, represented by child prostitution and child pornography cases, has become an important issue internationally. The police are actively promoting enforcement of regulations against the sexual exploitation of children based on the the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (as shown in the following table), and are also promoting various measures, including early detection of child victims and promoting of support activities, strict apprehension of heinous child pornography offenders, strengthening of charges on heinous related operators, and prevention against distribution of child pornography, based on “the Strategic Programme to Combat Child Pornography” formulated by the National Police Agency (NPA) in 2009 and “the Comprehensive Measures to Eliminate Child Pornography” formulated by the Ministerial Meeting Concerning Measures Against Crime in 2010. Since the “Law Concerning the Regulation of Acts Inducing Children Using the Internet Dating Services and Other Matters” entered into force in 2003, the police are promoting crackdowns on the use of so-called Internet Dating Services to invite children to have a sexual relationship or to offer payment for companionship. In 2008, the Law was revised to introduce a notification system of Internet Dating Services providers and encourage private-sector efforts to prevent children from using Internet Dating Services. In view that the number of children using community sites and suffering from sex crimes has been increasing in recent years, the Government is striving for public relations and awareness-raising activities to make known the potential risks of such websites and promoting dissemination of filtering services. With respect to child victims, the police are endeavouring to lighten the psychological burden on child victims, by, for example, putting female police officers in charge of questioning child victims about the situation, and police personnel such as juvenile guidance officials, etc. are playing a central role in ongoing support for child victims, including counselling.

291. Crackdowns under the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children

		2006	2007	2008	2009	2010
Total	Number of cases cleared	2,229	1,914	1,732	2,030	2,296
	Persons arrested	1,490	1,361	1,272	1,515	1,627
Child prostitution cases	Number of cases cleared	1,613	1,347	1,056	1,095	954
	Persons arrested	1,140	984	860	865	701
Child pornography cases	Number of cases cleared	616	567	676	935	1,342
	Persons arrested	350	377	412	650	926

292. As part of the measures to prevent distribution of and access to images of child pornography on the Internet, Internet service providers and others started blocking on the voluntary basis in April 2011. The National Police Agency (NPA) and the Ministry of Internal Affairs and Communications (MIC) are participating in Safer Internet of JAPAN, the Commission for Prevention of Online Child Pornography, Internet Content Safety Association, the body to prepare and manage address lists of websites containing child

pornography, and other private-sector councils. NPA and MIC are also supporting self-initiated efforts in the private sector through providing necessary information or advice.

293. The police request website administrators and others to delete images of child pornography from time to time, and NPA provides information to the body to prepare and manage address lists of websites containing child pornography.

294. MIC is now implementing the “Proving test relating to blocking child porn websites” to develop and demonstrate blocking methods with high detection ability according to the size of the respective Internet service providers and to prepare an environment to assist the introduction of such methods.

## 2. Child abuse

### Revisions of the Child Abuse Prevention Act and the Child Welfare Act

295. Since the enforcement of the Child Abuse Prevention Act in November 2000, full-scale efforts have begun to prevent child abuse, and, in parallel, reviews of the systems have been continuing to further enhance such efforts.

296. In October 2004, the implementation of the following measures started: (i) reviewing the definition of child abuse; (ii) expanding the scope to be covered by the duty of notification of child abuse; and (iii) realigning the provisions to restrict visits and correspondence.

297. In April 2008, the implementation of the following measures started: (i) strengthening on-site inspections, etc. to verify the safety of children; (ii) tightening the regulations on visits and correspondence from caretakers; and (iii) clarifying measures to be taken when caretakers fail to comply with the guidance.

298. The following two measures have been implemented since April 2009: (i) putting into statutory form that child care support services, including Home visiting service to all families with newborn babies and Home visiting support for child raising; and (ii) enhancing the function of each Regional Council of Countermeasures for Children Requiring Aid.

299. From April 2012, the Civil Code is to be revised to newly establish a system for suspension of parental authority, and allow appointment of a juridical person as a guardian of a minor and appointment of multiple guardians of a minor, and the Child Welfare Act will be revised to include the following measures: (i) granting a Child Guidance Centre’s director the right to request a trial and decision with regard to suspension of parental authority or loss of the right of administration of property; (ii) requiring the person who has parental authority or anyone else not to unreasonably disturb necessary measures concerning the custody of a child, when such measures are taken by a facility manager for the welfare of the child; and (iii) allowing the Child Guidance Centre’s director to act as a person of parental authority when there is no such person for a child entrusted to a foster parent or under temporary custody.

### Enforcement

300. According to the Child Abuse Prevention Act enforced in 2008, a prefectural governor may issue an order against the caretaker of a child to refrain from approaching the child for a specific period not exceeding six months, if it deems it particularly necessary to do so for the purpose of preventing child abuse when this child has been abused by the caretaker and therefore a protective measure has been taken such as admitting the child into a facility, etc., and if this caretaker is restricted to visit the child by law. If the caretaker fails to comply with this order, he or she shall be punished by imprisonment with work for not more than one year or a fine of not more than one million yen. When the child abuse constitutes an offence under criminal law, each case will be properly investigated and punished.

301. The maximum fine for a crime of brokering child prostitution was increased in 2004, from “imprisonment with work for not more than five years and/or a fine of not more than three million yen” to “imprisonment with work for not more than five years and/or a fine of not more than five million yen”; and the statutory penalty for a crime of causing a child to commit an obscene act was increased in 2003, from “imprisonment with work for not more than 10 years and/or a fine of not more than 500 thousand yen” to “imprisonment with work for not more than 10 years and/or a fine of not more than three million yen.”

302. The Penal Code stipulates the minimum age of children who may agree or consent to sexual contact as 13 years of age. This minimum age is specified merely for the purpose of drawing a line to differentiate those who would generally be considered to be mentally immature and incapable of making sound judgement to consent on sexual contact. This base age does not in any way legally allow sexual exploitation or abuse against children of 13 years of age or older.

#### **Current situation of child abuse**

303. The number of child abuse cases handled by Child Guidance Centres nationwide was 11,631 in FY 1999, and increased 4.8 fold to 56,384 in FY 2010 (excluding data from Fukushima because of the Great East Japan Earthquake). These figures show that child abuse still remains a serious concern that the entire society must address.

304. As child abuse has a devastating impact on children’s mental and physical development and personality formation, the Government is committed to establishing and enhancing a seamless, comprehensive support system from “occurrence prevention” through “early detection and quick response” to “protection and self-reliance support” for abused children, aiming at the prevention of child abuse.

#### **4. Efforts by the Ministry of Health, Labour and Welfare (MHLW)**

##### **Occurrence prevention**

305. Home visiting service to all families with newborn babies (Hello Babies Service), Home visiting support for child raising, child care support through regional hubs, and other efforts are promoted by the MHLW.

##### **Early detection, quick response**

306. Aiming at reintegrating the family and revitalizing and enhancing the function of care in the family, efforts to support parents are being promoted in such a way as to strengthen the function of Regional Councils of Countermeasures for Children Requiring Aid formed in each municipality and to ensure the adequate number of Child Welfare Officers necessary to reinforce the system of the Child Guidance Centres.

##### **Protection and self-reliance support**

307. In order to develop and enhance the system for acceptance of children by foster homes, etc. and enrich the system for guiding children, caretakers, and others, relevant facilities are obligated to assign officers responsible for supporting abused children on a one-to-one basis, family support consultants, and therapists qualified for psychological therapy in the case of a facility providing psychological therapy to not less than 10 children; and small-group care and entrustment to foster parents are promoted to realize care in a home-like environment as much as possible. At the same time, the MHLW is endeavouring to expand and enhance self-reliance support measures for older teens and prevent institutional abuse in order to promote the protection of the rights of institutionalized children.

### **Future efforts**

308. The direction of specific measures against child abuse to be taken from this time is as follows. MHLW intends to continuously enhance its measures from the following standpoints:

- (a) Seamless support from occurrence prevention to self-reliance of abused children;
- (b) Change to outreach approach, not just waiting for families in need of support;
- (c) Support for families, including both children and parents, aiming at reintegrating the family and revitalizing and enhancing the function of care in the family;
- (d) Strengthen municipal efforts by such means as the Regional Councils of Countermeasures for Children Requiring Aid;
- (e) Various activities to protect the human rights of children.

309. Recognizing that child abuse is a grave human rights violation, the Human Rights Organs of MOJ have been actively working to eradicate child abuse. More specifically, the Organs established a telephone counselling hotline, "Children's Rights Hotline," and distributed "Children's Rights SOS Letter Cards" (cards with pre-stamped envelopes to be sent for human rights counseling) to elementary and junior high schools students throughout Japan, as well as made other efforts to find cases of child abuse or other human rights infringement at an early stage. When a case is found, the Organs seek solutions in cooperation with Child Guidance Centres and other relevant organizations, and as necessary, the Organs investigate such cases as human rights infringement cases and take appropriate measures to raise the awareness of relevant persons.

310. The number of human rights infringement cases concerning child abuse handled by the Organs was 534 in 2006, 600 in 2007, 627 in 2008, 725 in 2009, and 771 in 2010.

### **Prohibition of corporal punishment**

311. Corporal punishment is strictly prohibited under article 11 of the School Education Law. MEXT gives instructions to education-related institutions to realize the principle of this Law.

312. If the Human Rights Organs of MOJ recognize any information concerning corporal punishment through human rights counselling via Children's Rights Hotline or other means, newspaper or other media, the Organs interview the persons involved and make other investigation with a view to relieving victims of human rights infringements as well as preventing such infringements. Based on their investigation, the Organs take appropriate measures such as raising the awareness of the teacher who carried out the corporal punishment and the principal of the teacher's school regarding respect for human rights or requesting such individuals to take steps to prevent the reoccurrence of corporal punishment. Furthermore, the Organs carry out awareness-raising activities in cooperation with schools and local communities. The number of human rights infringement cases concerning corporal punishment handled by the Organs was 211 in 2006, 263 in 2007, 198 in 2008, 268 in 2009, and 337 in 2010.

## **Article 25**

313. As stated in the previous reports.

314. The objectives of the prohibition of election campaigns using door-to-door canvassing and the prohibition of political literature and illustrations before the period specified for election campaigns under the Public Offices Election Law are as explained in the comments for article 19. As the provisions for such prohibition are solely intended to

ensure the fairness of elections, the Supreme Court's ruling shows that they are not in violation of the provision of article 15 of the Constitution of Japan, which guarantees the freedom of expression.

## **Article 26**

### **A. Treatment of children born out of wedlock**

#### **1. Share in inheritance of a child born out of wedlock**

315. In January 2010, the bill for the Act for Partial Revision of the Civil Code and the Family Registration Act (tentative name) was drafted with the intention of submission from the Cabinet to the Diet at its 174th session (regular session). This bill included the provisions for inheritance in equal shares for both children born in wedlock and children born out of wedlock. However, this bill was not submitted to the Diet because it was so controversial in the ruling party that it was not decided on in the Cabinet. .

316. As stated in the Third Basic Plan for Gender Equality, the Government is going to continue discussions on the revision of the Civil Code, in light of the diversification in forms of couples and families and the concluding observations of the UN Committee on the Elimination of Discrimination against Women.

#### **2. Article 3 of the Nationality Act**

317. A judgment rendered by the Grand Bench of the Supreme Court on June 4, 2008 determined that the provision of article 3, paragraph 1 of the Nationality Act is in violation of the Constitution of Japan on the grounds that the marriage of the father and mother is specified as one of the requirements for acquisition of Japanese nationality, in addition to acknowledgment by the father. Based on this judgment, the Act for Partial Revision of the Nationality Act (the "revised Nationality Act") was enforced on January 1, 2009, incorporating provisions to enable a child of unmarried parents to acquire Japanese nationality through notification.

318. Under this revised Nationality Act, a child born out of wedlock who was unable to acquire Japanese nationality by birth can acquire Japanese nationality through notification to the Minister of Justice.

### **B. Nationality requirements under the National Pension Act**

319. Under the prevailing pension system in Japan, those who satisfy the specified requirements (national pension: 20 years of age or over but under 60 years of age, regardless of nationality; employee's pension: under 70 years of age and employed at an eligible workplace on a regular basis, regardless of nationality) are recognized as insured persons, regardless of whether they are Japanese nationals or foreign nationals.

320. Both Japanese and foreign nationals have been eligible under the employees' pension insurance system since the early days of this system (1946). On the other hand, foreign nationals were ineligible under the national pension system from its inception in 1961 until the time of Japan's ratification of the UN Refugee Convention. In 1982, national pension eligibility was expanded toward the future in phases to cover foreign nationals in accordance with this Convention. In this background, some foreign nationals over a certain age resident in Japan who are either elderly or disabled do not have the right to receive pensions. Yet, with subsequent pension system reforms, a certain flexible approach when applying the recipient qualification period (25 years) has been taken.

321. With regard to the stance of the Government of Japan that the nationality requirement had been introduced when the national pension system had been established and that no transitional measures had been taken when the nationality requirement had been eliminated, the allegations on the part of the Government were accepted by the Supreme Court's rulings in February 2009 issued after the concluding observations of the Committee and such rulings in favour of the Government became final and binding. Meanwhile, the Government has the opinion that how to respond to foreign nationals who are unable to receive pensions must be considered in light of the principle of social insurance, "no benefits without premium payment," and the fact that there are Japanese people without pensions.

322. Four lawsuits were filed in relation to foreign nationals resident in Japan who are either persons with disabilities or elderly persons without pension. One of the suits is still pending, and the other three were ruled on by the Supreme Court in favour of the Government.

323. For foreigners with disabilities resident in Japan without pension:

- First instance in the Kyoto District Court: judgement in favour of the Government endorsed by the Supreme Court judgment (December 25, 2007)

324. For elderly foreigners resident in Japan without pension:

- First instance in the Osaka District Court: judgement in favour of the Government endorsed by the Supreme Court decision (December 25, 2007)
- First instance in the Kyoto District Court: judgment in favour of the Government endorsed by the Supreme Court decision (February 3, 2009)
- First instance in the Fukuoka District Court: pending before the Supreme Court (filed on September 18, 2007, ruled on by the Fukuoka District Court in favour of the Government on September 8, 2010, upheld by the Fukuoka High Court on October 17, 2011).

325. Brief summary of the lawsuits - According to the plaintiffs' allegations, the fact of setting the nationality requirement on the occasion of establishing the national pension system and the failure to take sufficient transitional measures in the course of pension system reforms, including the elimination of the nationality requirement and the introduction of basic pensions, are in violation of the Constitution of Japan and the International Covenants on Human Rights, or the legislation involving these actions and inactions is illegal under the State Redress Act. On this basis, the lawsuits were filed to seek pain and suffering damages, etc.

### **C. Revision of the Publicly-Operated Housing Act**

326. According to the eligibility requirements for publicly-operated housing under article 23, item 1 of the Publicly-Operated Housing Act currently in effect, an applicant for publicly-operated housing is required to have relatives living with him or her. This provision will be eliminated soon in accordance with the revision of the "Act on the Arrangement of Related Acts to Promotion of Reforms to Enhance Regional Autonomy and Independency" (to be enforced on April 1, 2012).

327. Accordingly, under the Publicly-Operated Housing Act to be revised, the eligibility requirement relating to relatives living together will be eliminated and, for example, it will be possible for same-sex persons who are not related to live together.

## Article 27

### A. Current status of recent policies relating to the Ainu people

328. Since 2008, the Government of Japan has been implementing various efforts with the participation of the Ainu people, in addition to the measures to promote the Ainu culture previously started, aiming at forming and encouraging more comprehensive and effective Ainu-related policies.

329. In June 2008, the Diet adopted a resolution to call for the recognition of the Ainu as an indigenous people. In response to this, the Government of Japan released a Chief Cabinet Secretary's discourse showing recognition that the Ainu are an indigenous people who have lived around the northern part of the Japanese Archipelago, especially in Hokkaido, with a unique language as well as religious and cultural distinctiveness.

330. In July 2009, proposed ways of future Ainu policies were presented by the Advisory Council for Future Ainu Policy comprised of members including a representative from among the Ainu people. Based on this proposal, the Council for Ainu Policy Promotion was set up (chaired by the Chief Cabinet Secretary), including Ainu people as its members, and council meetings were started from January 2010, in order to comprehensively and effectively promote Ainu policies.

331. To embody the aforementioned proposals of the Advisory Council, the Council for Ainu Policy Promotion is continuing discussions through working groups, particularly on the three major topics: development of "the symbolic space for ethnic harmony," nationwide policy implementation, and promotion of public understanding.

332. The history, culture, etc. of the Ainu are covered, for example, in the Social Studies section of the Courses of Study for lower secondary schools. To be more specific, the fact that Ainu people were engaged in trade with northern countries and territories is explained as part of the topics on foreign relations during the national isolation policy of the Edo Period.

333. There are no special legislative measures for recognition of the right to land for the Ainu people alone. In Japan, however, no one is precluded from exercising the right to enjoy their own culture, relying on their own faith and putting it into practice, and using their own language; and every person is afforded the ownership of land and other property rights guaranteed by Japanese law. These rights are equally guaranteed for all Ainu people as Japanese nationals.

### B. Measures to promote the Ainu culture

334. To realize a society where Ainu people's pride as an ethnic group is respected and to contribute to the development of multiculturalism in Japan, the Act on the Promotion of Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition, etc. was enforced in July 1997. Following this, the Government of Japan has been subsidizing the Foundation for Research and Promotion of Ainu Culture (FRPAC), a leading player in carrying out Ainu policies, in order to enhance the implementation of such policies.

### C. Measures to improve living conditions of the Ainu people in Hokkaido

335. According to the 2006 survey on the living conditions of the Ainu people conducted by the Hokkaido prefectural government, gaps between the Ainu and other people living in Hokkaido still remain unremedied. Therefore, the Hokkaido prefectural government started the "Program for Enhancement of Living Conditions of Ainu People (Phase 2)" in FY



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2009; and the Government of Japan has been continuously cooperating with the measures implemented by the Hokkaido prefectural government through adequate budgeting to facilitate such implementation.

336. For example, the Government subsidizes part of the expenses spent by Hokkaido to grant scholarships, make loans, or offer subsidies for school-commuting supplies, etc. to children of Ainu people having difficulty in continuing attendance of high school, etc. due to economic reasons.

#### **D. Other issues**

337. Regarding “indigenous people,” there is no written definition of this term in the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by consensus with the participation of Japan, and there is no established definition to be found in Japanese domestic laws, either. Regardless, people who live in Okinawa and natives of Okinawa are Japanese nationals and all of them are equally afforded the rights guaranteed to Japanese nationals.

338. The history, culture, etc. of Ryukyu and Okinawa are covered, for example, in the Social Studies section in the Courses of Study for lower secondary schools. To be more specific, the roles played by Ryukyu in the context of the relationships between Japan and China are explained as part of the topics on foreign relations during the national isolation policy of the Edo Period.

339. With regard to the promotion of culture in Okinawa, the Act on Special Measures for Okinawa Promotion and Development was enacted in 2002 and the Plan for Okinawa Promotion and Development was formulated based on this Act. In accordance with this Act and Plan, the Government of Japan, the Okinawa prefectural government, and others are implementing efforts to promote art and culture in the Okinawa region and to protect and utilize the cultural heritage of Okinawa.