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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Information received from Japan on follow-up to the concluding observations on its report submitted under article 29 (1) of the Convention*

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I. Introduction

1. Japan provides the following information in response to the request of the Committee on Enforced Disappearances that Japan provide, within one year, relevant information on its implementation of the Committee's recommendations as contained in Paragraphs 12 (prohibition of enforced disappearance), 14 (the offence of enforced disappearance) and 32 (fundamental legal safeguards) of the Committee's concluding observations (CED/C/JPN/CO/1) adopted at its 271st meeting held on 14 November 2018, following the Committee's consideration of the report submitted by Japan at its 257th and 258th meetings held on 5 and 6 November 2018.

II. Follow-up information relating to paragraph 12 of the concluding observations (CED/C/JPN/CO/1)

2. Article 31 of the Constitution of Japan provides that no person shall be deprived of life or liberty except according to procedure established by law. Furthermore, Article 33 of the Constitution provides that no person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, and Article 34 of the Constitution provides that no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel. In this way, the Constitution guarantees that persons deprived of liberty shall not be placed outside the protection of the law. The Penal Code of Japan provides that the act of unlawfully capturing or confining a person, the act of concealing such act, and the act of concealing the fate or whereabouts of the disappeared person shall be punished.

3. In addition, there is no system in Japan in which a person may be immunised from criminal responsibility or may be kept immune from the law of criminal procedure on the grounds of "a state of war or a threat of war, internal political instability or any other public emergency".

4. Therefore, we do not believe that Japan needs to take the legislative measures recommended by the Committee.

III. Follow-up information relating to paragraph 14 of the concluding observations

5. In Japan, among acts of enforced disappearance, the act of depriving a person of liberty shall be punished under Article 220 (unlawful capture and confinement) and Articles 224 to 228 (kidnapping, buying or selling of human beings) of the Penal Code, etc., and the act of concealing an act of depriving a person of liberty shall be punished under Article 103 (harbouring of criminals) and Article 104 (suppression of evidence) of the Penal Code, etc., in each case regardless of whether these acts were carried out with or without the authorization, support, or acquiescence of the State. These legal provisions secure the punishment of enforced disappearance consisting of all three elements defined in Article 2 of the Convention. Therefore, we are not considering defining enforced disappearance as a new "autonomous offence".

6. The substantive criminal law of Japan, including the Penal Code, has no category of crimes called "crimes against humanity" and does not specifically provide for such crimes. However, a person who commits an enforced disappearance in an organized manner shall be punished under Article 3, Paragraph 1, Item 8 of the Act on Punishment of Organized Crimes and Control of Crime Proceeds, Article 220 of the Penal Code (crime of organized unlawful capture and confinement), etc. In addition, the widespread or systematic practice of enforced disappearance can serve as the grounds for the aggregation of penalties (Article 47 of the Penal Code) and will be taken into account unfavourably in the assessment of the penalty, as the crime is vicious in nature. This allows the appropriate handling of this practice according to its seriousness as a crime, and makes it unnecessary to separately incorporate into domestic law the widespread or systematic practice of enforced disappearance as a specific "crime against humanity".

IV. Follow-up information relating to paragraph 32 (a) of the concluding observations

7. Under Article 39 of the Code of Criminal Procedure ("The accused or the suspect in custody may, without any official being present, have an interview with, or send to or receive documents or articles from a defence counsel or prospective defence counsel upon the request of a person entitled to appoint a defence counsel (with regard to a person who is not a lawyer, this shall apply only after the permission prescribed in Article 31 Paragraph 2 has been obtained)"), the accused or the suspect in custody has the right to have an interview with a defence counsel. Article 80 of the Code of Criminal Procedure provides that the accused under detention may have an interview with persons other than a defence counsel (relatives, etc.). With regard to communication with consular authorities, when a foreign national is arrested or committed to prison or to custody pending trial or is detained in any other manner, notification to the consular post of his/her country is made without delay in accordance with the Vienna Convention on Consular Relations and others, and consular officers may visit, converse, correspond, or otherwise communicate with the foreign national.

8. Inmates at penal institutions, juvenile training schools, juvenile classification homes, or women's guidance homes, pursuant to the provisions of the Code of Criminal Procedure and other relevant laws and regulations, are allowed to meet with and to correspond with their family or a defence counsel. If they are foreign nationals, they can communicate with the consular post of their countries in accordance with the Vienna Convention on Consular Relations and others.

9. Persons who are detained in detention facilities (detaining foreign nationals only), managed and administered by the Immigration Services Agency, for a violation of the Immigration Control and Refugee Recognition Act may contact or be contacted by their lawyer, doctor, or family, etc. (by telephone, visits, or receiving or sending letters). Notification to the consular post is also conducted properly in accordance with the Vienna Convention on Consular Relations and others.

10. Persons who are detained in detention facilities, pursuant to the provisions of the Code of Criminal Procedure and other relevant laws and regulations, are allowed to meet with and to correspond with their family or a defence counsel. If they are foreign nationals, notification to the consular post of their countries is made without delay in accordance with the Vienna Convention on Consular Relations and others, and consular officers of their countries may visit, converse, correspond, or otherwise communicate with them.

11. In accordance with the restrictions on behaviour specified by the Minister of Health, Labour and Welfare under Article 36 (2) of the Act on Mental Health and Welfare for the Mentally Disabled and with the standards set by the Minister of Health, Labour and Welfare under Article 37 (1) of the said Act, or in accordance with the restrictions on behaviour specified by the Minister of Health, Labour and Welfare under Article 92 (2) of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity and with the treatment standards set by the Minister of Health, Labour and Welfare under Article 93 (1) of the said Act, persons (including foreign nationals) hospitalized at a mental hospital shall have the liberty to communicate with and be visited by others, in principle. However, certain restrictions may be imposed in a reasonable manner to a reasonable extent in cases where there are reasonable grounds to do so, such as that the medical condition is likely to deteriorate or where there are other medical or protective reasons. Even in such cases, nevertheless, no restriction shall apply to the communication with or visits by the staff of prefectural governments, Legal Affairs Bureaus, District Legal Affairs Bureaus, or any other administrative entities relevant to human rights protection, or by the lawyer representing such persons.

12. Pursuant to Article 38-4 of the Act on Mental Health and Welfare for the Mentally Disabled, a person hospitalized at a mental hospital or his/her family, etc. may request the prefectural governor to improve treatment of the hospitalized person. Upon receipt of such a request for improvement of treatment, the prefectural governor shall request a Psychiatric Review Board (i.e., a third-party organization established in the prefectural government and consisting of, among others: Designated Physicians of Mental Health who are designated by the Minister of Health, Labour and Welfare as having knowledge and skills necessary to

perform the duties of a Designated Physician of Mental Health from among physicians who have certain work experience in psychiatry and who have successfully completed training on laws, regulations, etc. on the human rights of mentally disabled persons; and experts in law, etc.) to review the treatment.

13. When reviewing the treatment, the Psychiatric Review Board must hear the opinions of the requester and of the administrator of the mental hospital at which the hospitalized person relevant to the review has been committed, and may, if deemed necessary by the Board, take such actions as: having the hospitalized person relevant to the review examined by the Board members; requesting a report from the administrator, etc. of the mental hospital relevant to the review; and ordering the administrator, etc. to submit medical records, etc. (Article 38-5 (3) and (4) of the Act on Mental Health and Welfare for the Mentally Disabled).

14. The Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity provides for a system similar to that provided for by the Act on Mental Health and Welfare for the Mentally Disabled. Under Article 95 of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity, a person hospitalized at a designated medical institution for hospitalization or his/her guardian may request the Minister of Health, Labour and Welfare to improve treatment of the hospitalized person. Upon receipt of such a request for improvement of treatment, the Minister of Health, Labour and Welfare shall request the Social Security Council (i.e., an advisory body to the Ministry of Health, Labour and Welfare) to review the treatment. The actual review will be performed by the Committee of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity, which is established under the said Council and consists of Designated Physicians of Mental Health, experts in law, etc.

15. When reviewing the treatment, the Social Security Council must hear the opinions of the requester and of the administrator of the designated medical institution for hospitalization at which the hospitalized person relevant to the review has been committed, and may, if deemed necessary by the Council, take such actions as: having the hospitalized person relevant to the review examined by the Council's Designated Physician of Mental Health; requesting a report from the administrator, etc. of the designated medical institution for hospitalization relevant to the review; and ordering the administrator, etc. to submit medical records, etc. (Article 96 (3) and (4) of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity).

16. For the reasons described above, the recommended measures have already been sufficiently guaranteed.

V. Follow-up information relating to paragraph 32 (b) of the concluding observations

17. The purpose of a Penal Institution Visiting Committee is to hear a wide range of opinions of external parties and to ultimately contribute to the proper administration of the penal institution also based on the attitudes of the general public.

18. The qualifications for Committee members have been specified: the Committee members are appointed by the Minister of Justice from among persons "who are deemed to be of good character and who have a high level of insight, along with an interest in improving the administration of penal institutions" (Article 8, Paragraph 2 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees).

19. Mechanisms that enable the Committee to collect information necessary to express its opinions to the warden of the penal institution also ensure the Committee's practical activities. Specifically, the warden of the penal institution shall provide the Committee, on a regular or as-needed basis, with information on the status of administration of the penal institution (Article 9, Paragraph 1 of the said Act). The Committee may conduct penal institution visits for Committee members (the first sentence of Paragraph 2 of the same Article). During such visits, the Committee may have the warden of the penal institution cooperate in conducting an interview between inmates and Committee members (the second sentence of Paragraph 2 of the same Article). The wardens of the penal institutions

must cooperate as required in the visits and interviews with inmates (Paragraph 3 of the same Article).

20. In this way, the independence of the Committee from the detention facility is guaranteed by the procedure of appointing Committee members and by the granting of necessary authority to the Committee. The Committee has not received training on the Convention but has been provided with a handbook containing a summary of the Committee's duties and information on the cooperation from penal institutions, in order to facilitate the Committee's activities.

21. The foregoing also applies to the Juvenile Training School Visiting Committee, the Juvenile Classification Home Visiting Committee, and the Immigration Detention Facilities Visiting Committee.

22. The Detention Facilities Visiting Committee, consisting of external third-parties, has been established for the purpose of enhancing the transparency of the administration of detention facilities and ensuring the adequate treatment of detainees. In order to improve the administration of detention facilities, the Committee shall visit detention facilities and shall express its opinions on the administration of detention facilities to the detention service manager. The Committee members are appointed by the Public Safety Commission, a body supervising the police, from among persons who are deemed to be of good character and who have a high level of insight, along with an interest in improving the administration of detention facilities.

23. The detention service manager shall provide the Detention Facilities Visiting Committee, on a regular or as-needed basis, with information on the management and administration of the detention facilities. The Committee may request the detention service manager to provide cooperation in visiting the detention facilities and conducting interviews with detainees, in which case the detention service manager shall provide necessary cooperation.

24. As described above, Japan intends to continue its serious efforts towards the prevention and ensuring the punishment of enforced disappearances in accordance with the objectives of the Convention and in coordination with the international community.