

CAT Network Japan

The NGO Report on the Second Periodic Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

April 2013

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About our Coalition and the Purpose of this Alternative Report:

The CAT Network Japan is a coalition of NGOs working domestically to protect and promote human rights of persons deprived of their liberty in prisons, immigration detention centers, and psychiatric hospitals. A brief introduction of each NGO follows. This alternative report on the initial report of the Japanese government under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”) was compiled for the purpose of rendering the additional information and our concerns relating the issues arising under the Convention to the Committee Against Torture (hereinafter referred to as “the Committee”). Because of our limited resources and experiences, this report mainly focuses on issues concerning treatment of inmates in police detention cells, prisons and immigration detention centers, and patients in mental health institutions. We would be glad if this report would be one of the references of the Committee’s members.

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is as Follows:

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The Alternative Report on the Second Periodic Report of the Japanese Government by the CAT Network Japan

April 2013

CAT-Network Japan

Articles 1 and 4

Articles 1 and 4

1. Please provide information on steps taken to incorporate into domestic law the definition of torture as contained in article 1 of the Convention, as recommended by the Committee in its previous concluding observations (CAT/C/JPN/CO/1, para. 10). In particular, please provide information on the definition of “mental torture” in the Penal Code and on the penalties for related acts. Furthermore, please indicate if the Penal Code of the State party covers acts of all types of public officials and individuals acting in an official capacity, including the situation of individuals acting at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity.

Comment:

1. Japanese Government has not taken any step to incorporate into domestic law the definition of torture as contained in article 1 of the Convention since previous CAT concluding observations.
2. Although articles 194 to 196 of the Penal Code may be applicable to aggravated offence categories including torture by Japanese special public officers, the government’s report doesn’t show the specific statistical data concerning how many public officers have been prosecuted and sentenced by charging them with offences which result from acts of torture, and also to what extent in public officers’ cases the gravity of the offences were taken into consideration at prosecution and in court. Thus, it will be difficult to assess whether implementation of the Penal Code fully meets the requirements of the Convention in practice.
3. Regarding mental torture, the government’s report says that “acts causing emotional distress to

a detainee committed by a guard, etc. are considered as crimes of assault and cruelty by special public officers”. But we don’t know such a case. The government should show such concrete cases.

4. Principal provisions on torture and ill-treatment cases such as Articles 194 to 196 of the Penal Code are applicable only to certain special public officers, i.e. “a person performing or assisting in judicial, prosecutorial or police duties” or “a person who is guarding or escorting another person detained or confined in accordance with laws”. It seems to be narrower than “a public official or other person acting in an official capacity” under Article 1 of the Convention. For example, whether or not all types of officials such as the Self- Defense Forces, immigration detention centers and health-care settings can be included in the above terms is unclear. Also, “other person acting in an official capacity.” cannot be at least the principal under Articles 194 to 196.
5. Whether or not “acquiescence of a public official” under Article 1 of the Convention is included in the above crime categories is also undefined.
6. If the suspects of the acts of torture are foreign public officers, they cannot be charged with aggravated offences such as articles 194 to 196 of the Penal Code, but can just be punished by charging them with other ordinal types of offences, such as violence, injury, and others. Thus, it doesn’t seem to meet the obligations of universal jurisdiction under the Convention.
7. Thus, although the government’s report says that “the Penal Code of Japan covers all individuals acting in an official capacity. Such individuals include public officials (regardless of their types or categories) as well as individuals acting under instigation, consent or acquiescence of public officials and other individuals acting in an official capacity.“, it is entirely doubtful.
8. Specific incorporation of the Convention into the Penal Code is the best way to ensure full compliance with the Convention and its spirit. Furthermore, incorporation matters for the

interpretation and application of the law in concrete cases.

Recommendations to Japanese Government:

9. Provide concrete statistics and cases to substantiate that torture and ill-treatment cases are covered in practice under various existing provisions of crime , including principal provisions on torture and ill-treatment cases such as Articles 194 to 196 of the Penal Code.

10. Incorporate the definition of torture in the Convention into the Penal Code in order to allow persons to invoke the Convention directly in the courts, to give prominence to the Convention and to raise awareness of the provisions of the Convention among members of the judiciary and the administration.

Articles 5 and 7

Articles 5 and 7

10. Please indicate if the State party exercises universal jurisdiction for acts of torture. Since the consideration of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed an offence of torture, and thus engaging its own prosecution as a result. If so, please provide information on the status and outcome of such proceedings.

Comment:

11. “The obligation to prosecute provided for in Article 7, paragraph 1, is normally implemented in the context of the Convention Against Torture after the State has performed the other obligations provided for in the preceding articles, which require it to adopt adequate legislation to enable it to criminalize torture, give its courts universal jurisdiction in the matter and make an inquiry into the facts.” (The International Court of Justice (ICJ), BELGIUM v. SENEGAL, 20 JULY 2012, para.91). First of all, Japanese Law must adopt adequate legislation to enable it to criminalize torture. As the government’s report says, Article 4-2 of the Penal Code provides

that the Penal Code shall apply to anyone who commits those crimes prescribed in the Penal Code that are obliged under a treaty to be punished when committed outside Japan. But only Article 4-2 is not sufficient to exercise universal jurisdiction in accordance with the Convention because the Penal Code doesn't provide "Torture crimes" to implement the Convention. Even Principal provisions on torture and ill-treatment cases such as Articles 194 to 196 of the Penal Code are not applicable to foreign public officers.

12. Japanese government seems to consider universal jurisdiction as "obligations *erga omnes partes*" less serious. We can see this tendency from the treatment of the former president of the Republic of Peru, Alberto Fujimori who stayed in Japan from 2000 to 2005. Fujimori was suspected of gross human rights violations using his secret army during his presidency, and in 2003 the Peru government requested the Japanese government to extradite him on grounds of international legal standards including the Convention against Torture. Survivors and the families of victims also urged his extradition.
13. However, the Japanese government rejected these requests because Fujimori was deemed a Japanese national and a domestic law prohibits extradition of its own citizens to foreign countries. Additionally, the government didn't move forward with the investigation process. Indeed alleged violations including torture occurred before 29 July 1999, the date when the Convention entered into force for Japan. But this Fujimori case was an important issue to be contrary to the spirit and purpose of the Convention that the torturers cannot enjoy impunity.

Recommendations to Japanese Government:

14. Adopt adequate legislation to enable Japan to establish and exercise universal jurisdiction as "obligations *erga omnes partes*". For the purposes Japan must incorporate into domestic law "Torture crimes" to be applicable to any foreign public official or other person acting in an official capacity.

Article2

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| Article 2 |
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6. Please indicate steps taken by the State party to establish an independent national human rights institution, in accordance with the Paris Principles.

Comment:

15. The government submitted a bill concerning a creation of a human rights institution in 2012 which only failed and abandoned due to the change of the government after the general election. The body proposed by the bill, however, fundamentally lacked the independence and key functions required by the Paris Principle.

16. The body was supposed to be affiliated to the Ministry of Justice, the executive body governing prisons and immigration centers, and who drafted the bill, and mainly designed to address complaints, but had little function for responsibilities listed under the Article 3 of the Principle. It did not have a sufficient power designed to review and advice about a human rights policy of the government, and the bill did not have any reference to international human rights standards. Even for the complaint handling, the body was designed to delegate its authority to local legal affairs bureaus which are under the ministry.

17. A number of proposals were drafted by the civil society, including the JFBA and human rights organizations. Among them, a group of academics proposed to set up such a body as a special independent agency equivalent to the Board of Audit or the National Personnel Authority, which is established outside the government control. Ministries and legislators are, however, stick to establish a quasi-judicial body within the current government executive framework, contrary to the core direction of the Paris Principle.

Recommendations to Japanese Government:

18. The government should establish a truly independent body which can make sufficient advice to the government policy by monitoring and reviewing the performance of the governmental bodies, including the Ministry of Justice and Police Departments as required by the Paris Principle.

19. The law to establish the body should have a key reference to international human rights standards to make sure that the body can operate according to such norms independently from the government.

Article3

Article 3

7. With reference to the Committee's previous concluding observations and the request for clarification sent by the Rapporteur for Follow-up to Conclusions and Recommendations, please provide updated information on steps taken by the State party to incorporate the principle of non-refoulement which constitutes the fundament of article 3 of the Convention into domestic legislation so as to ensure that asylum-seekers are not returned to countries where there are substantial grounds for believing that the individual to be returned would be in danger of being subjected to torture (CAT/C/JPN/CO/1, para. 14).

Comment:

20. In 2009, Japan has amended Paragraph 3 of the Article 53 of the Immigration Control and Refugee Recognition Act to include the prohibition of the refoulement to certain countries prescribed by the Convention. This was widely announced that Japan has improved its legality of the deportation. The civil society, however, observes that the principle of non-refoulement is not yet met from following reasons.

Lack of protective measures at the airport.

21. Arriving in an airport, a foreigner gets an examination of landing. If the arrival expressed that she/he is under threat of torture or ill-treatment in her/his country or expressed her/his desire to seek asylum, the asylum seeker will get examination of landing for temporary refuge. Both examinations are different from refugee recognition procedure, and if the landing is not permitted after the hearing, she/he will be sent back to the original country within the responsibility of the airline company. If the applicant protested against the decision to be sent

back, she/he will be subjected to deportation order. Therefore, it is not possible for them to apply for refugee status before getting the deportation order.

22. Examination for temporary refuge should be concluded within 7 days, therefore the applicant gets intensive hearings. During the hearing, however, the attendance of a legal counsel is not permitted and applicants cannot get assistance from lawyers or her/his supporters because no access to the outside is allowed. If the examination of the landing for temporary refuge is rejected, this will automatically be taken as a denial of a ground for refugee application, and she/he will be deported by the airline company accordingly. Although the ordinance No.626 issued by Ministry of Justice on 14 Sept. 2006 states that the immigration office "may" accept the application for landing for temporary refuge and the refugee application at the same time, the practice does not follow such procedure.
23. Applicants are not informed that either examinations of landing are not the application for refugee status. Refugee application for a person who was denied for landing is only possible when the person resisted against the deportation (the civil society has learned number of cases the applicants physically confront the immigration officers) and she/he was detained in a facility to get the application form.

Lack of a safeguard not to execute deportation to a country/region where she/he may face a torture or ill-treatment

24. The amended act refers to "a country that has a substantive ground to believe that there is a fear of torture" but this vague concept does not have any definitive guideline. In Japan, the burden of proof on this lies on the applicant, and even the refugee inquirer does not make inquiry nor a risk assessment on the situation of original country, which means there is a large risk to be defined having no fear in the country, even she/he was a torture victim or still having a substantive fear to be subjected to torture. The Article 53 is not effective at all in this respect.

Recommendations to Japanese Government:

25. Provide sufficient information regarding Refugee Recognition procedure and the procedure for landing for temporary refuge while examined for landing.
26. For those expressed their demand for refuge, stipulate specifically in respective ordinances to provide refugee application form at the time when examination of landing for temporary refuge is carried out.
27. Create a guideline to ensure that the country of destination for the deportation is not falling under the category defined by respective conventions, and set up an binding administrative procedure not to deport to such countries.

9. (a) Please provide detailed information on steps taken to ensure due process in asylum applications and deportations proceedings, including access to counsel, legal aid and an interpreter.

Comments:

28. Followings are points raised as concerns over protection for torture victims and asylum seekers.

Lack of protection for torture victims.

29. Immigration Control and Refugee Recognition Act does not have a clause to protect torture victims. Victims may seek asylum, but if they failed to be defined as refugees, even a torture victim may be expelled from the immigration procedure.
30. In a case of a woman who applied for refuge because of her experience of being subjected to torture, the refugee recognition procedure denied her refugee status even after she presented the medical report which has been filed by a doctor just after the torture, and even a special permission for stay, which the Minister of Justice has the discretionary power, was not granted.

She filed a complaint against the decision but she is waiting for her interview for already three years without getting a legal ground for her stay.

31. Legal counsel or any other supporter is not permitted to attend the first instance hearing for the refugee recognition procedure.

Lack of understanding about mental aspects of torture victims.

32. A person who is suffering from a mental disorder caused by torture or ill-treatment, such as PTSD, is not assumed to be handled by the immigration procedure, which is completely lacking the understanding of such nature. If a contradiction was found during the inquiry, such a behavior would be regarded as a testimony against the applicant.

Translation and interpretation

33. Although the application itself may be written in applicant's original language, all other documents are required to be translated into Japanese. Therefore, a person who only has insufficient funds to be used for translation cannot submit efficient proof.
34. The immigration office appoints interpreter for interviews but following points are argued. The quality of interpretation varies person by person, and no systematic quality check is made. There is no recording of each interpretation which makes the check impossible afterwards. Interpreters appear to be not neutral. No guideline for the appointment of a interpreter. Applicants are required to sign on the statement, but in some cases, they are forced to sign on even they thought the interpretation was insufficient.

The notification of the objection is insufficient.

35. The notification is written both in Japanese and in English, but in case of objection, the attached explanatory document of the reason of the objection is only written in Japanese. The content of the document usually informed to the applicant through the interpreter, but there is no way checking whether the applicant fully and correctly understood the meaning. The reason provided by the document is too simple and stereotypical so it may not fit the situation

of the applicant. Most of the reason are expressed as "non-credibility" and it is hard to know whether the specific situation in the original country was properly assessed.

Recommendations to Japanese Government:

36. Proper safeguard and guidelines to protect victims of torture in the procedure should be clearly stated in the law or in the ordinance.
37. Specific reference should be made to cases which the mental disorder is suspected.
38. Proof and evidences written in languages other than Japanese should be accepted and assessed.
39. Systematic standard for interpreters and regular check on their quality should be provided. All interviews should be recorded to ensure later checking.
40. In case of objection, the comprehensive and sufficient explanation should be provided by document with references to adequate sources. This information should be fully and adequately informed to the applicant in her/his own language.

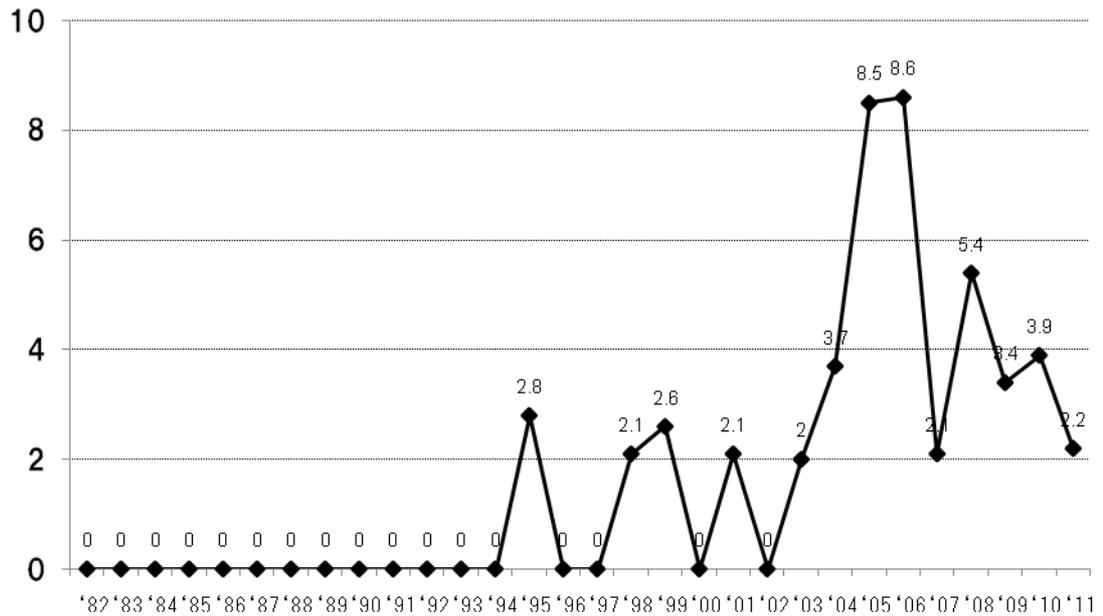
(b) Please describe measures taken to establish an entirely independent appeal mechanism to review decisions by immigration officials. In this respect, please indicate if refugee examination counselors are independently appointed and have the power to issue binding decisions.

Comments:

41. The quality and competence of refugee examination counselors are under questions. The average recognition rate of 1997-2004 when the counselors system was not existing was 1.6% (16 among 1,019), while the rate of 2005-2011 was 4.1% (83 among 2,045). You may see the total number of appeal itself has largely increased these years so the increase of the percentage should not be overestimated. Furthermore, the rate was firstly higher when introduced but later

than 2007 it has dropped to 2-5%, which indicates not so much difference can be expected from the introduction of the system (see the Table below).

Table: Refugee recognition rate after appeal



42. Two visit committees for immigration centers for east and west were established, but the appointment of members is under the discretion of the Ministry of Justice, and so far, not so many changes has been observed yet.

Recommendations to Japanese Government:

43. The clear tribunal system should be introduced as soon as possible for appeal cases and the refugee recognition counselors should be appointed widely and independently from the competent members of the civil society to ensure the due process of the procedure.
44. The visit committee should meet the requirement set by the Optional Protocol.

(c) Please provide information on steps taken to guarantee access to judicial review for all asylum-seekers. In this respect, please indicate steps taken to address the reports of

rejected asylum-seekers being deported immediately before they could submit an appeal against the negative asylum decision.

Comments:

45. In 2009, Japan has amended Paragraph 3 of the Article 53 of the Immigration Control and Refugee Recognition Act to include the prohibition of the refoulement to certain countries prescribed by the Convention. This was widely announced that Japan has improved its legality of the deportation. In 2010, however, the civil society was warned that any deportation itself may amount a torture or ill-treatment in Japan, as officers are regularly using excessive force while executing deportation.
46. The guideline provided by the immigration authority for use of force and restraint instruments in deportation is just only an internal guidance and not defined under the law. Officers often ignore such guidelines and in number of cases, lawyers and members of the civil society observe excessive use of instruments of restraint. These include, chain gangs using handcuffs to legs, using towels which are not defined as a tool for restraint under the guideline, and bondage bands also not defined under the guideline.
47. In a trial concerning a deportation case of a migrant from Ghana, the immigration authority officially stated in oral that because the guideline is an internal regulation, using a different method to restrain a person is permitted by law and it is not illegal even using the method which is prohibited under the guideline. This clearly shows that in Japan there is a serious lack of binding safeguard to prohibit and prevent torture or ill-treatment while executing deportation.

Recommendations to Japanese Government:

48. The Government should provide official and binding standard as a law to prevent torture during the execution of deportation. It must also conduct a human rights training to officers handling the deportation to ensure their compliance to the international standard.

(d) Please indicate if the State party has made public the information concerning the requirement for detention after the issuance of a written deportation order.

Comments:

49. The Immigration Control Act stipulates that a person under the deportation order should be detained till the time of deportation. For instance, a person having no nationality has no original country to be deported, and therefore, such a person should be detained without a definite term. The government reply says "the purpose of this detention is to secure custody prior to deportation and prohibit any activity during his/her stay", but this does not have any legal ground, and there is no check whether there is truly a "need of custody".
50. A research conducted by a medical doctor during 2007-2011 indicates that an average length of detention was 13 months (varies from 2 months to 47 months) and this is not different from the length observed before 2007. As of Feb.2013 the longest is a Somalian who stays there for 48 months.
51. The authority may grant temporary release on request from the detainee, but a standard for this discretion is not disclosed. There are some possible considerable aspects shown on the website of the Immigration Bureau, but in cases of objections, the reason is not specified and even in a case having families, therefore having no reason to escape, the detention continues. For instance, in East Japan Immigration Center, it usually takes 50 to 60 days for examination for the request, and it is extremely rare to get permission of temporary release with the first request.

Recommendations to Japanese Government:

52. Adopt a policy of diversion by applying alternative measures to detention, and review the need of detention regularly and systematically. The detention should be the last resort. In cases of long detention, it should be defined as deportation is not possible, and therefore such detainee should be released accordingly.
53. The decision of temporary release should be concluded within 14 days, and in cases of

objection, the specific reason for the decision should be clearly disclosed.

Article 16

Article 16

21.

- (a) **In light of the Committee's previous concluding observations, please provide information on steps taken to improve the conditions of detention in landing prevention facilities and immigration detention centres, inter alia, by addressing the allegations of violence and the lack of access to proper health care (CAT/C/JPN/CO/1, para. 14). Information should also be provided on steps taken to ensure that minors are kept separate from adult detainees in these facilities.**
- (b) **Please describe steps taken to address the concern about the length of detention for rejected and case-pending asylum-seekers. Statistical information should also be provided on the length of detention for asylum applicants in 2008 and 2009, disaggregated by age, gender, nationality, and location of detention. Furthermore, please provide information on the number of applicants in 2007, 2008 and 2009 who benefited from the special considerations of age, health conditions, and other humanitarian reasons and have been provisionally released despite pending deportation orders.**

Comments:

54. In cases of detaining a whole family or a minor, if the minor is under the age of 18, in practice, and not by law or ordinance, she/he will be sent to foster home through a Child Consultation Office. However, if the age of the child is uncertain the child may be sent to the adult facility and kept in the same room with adults. There was a case of 17 years old boy, who has no accompanying parents, detained in a same room with an adult for about 10 months, and his mental condition got extremely worse.

Recommendations to Japanese Government:

55. Stipulate by law or ordinance not to detain minors.
56. Provide an official procedure to define the age of minors, and in unsure case, the person should be taken as a minor.

27.

In light of the Committee's previous concluding observations, please provide information on steps taken to ensure effective and thorough judicial control over detention procedures in public and private mental health institutions (CAT/C/JPN/CO/1, para. 26).

Comments:

57. There are two main laws in the current Japanese mental health system; The Mental Health and Welfare Law, and The Medical Observation Law on Mentally Incompetent Person.
58. The involuntary hospitalization procedure provided in the Mental Health and Welfare Law was seen as a most problematic aspect of the Japanese system for a long time.
59. The current Mental Health and Welfare Law has two types of involuntary hospitalization.
 - a) Article 29 is ordered by the Prefectural Governor:
Two designated psychiatrists examine the patient and based on their report the Governor's Order comes out.
 - b) Article 33 is implemented in a manner following the procedure below; One designated psychiatrist examines the patient and he requests family (mainly parent) to consent patient's hospitalization.
60. So, there is no chance for detained patient at the time of admission to be heard by outside agencies. Thus, for the detained patient, there is no appeal system against her/his original detention but the detained patient has a right to apply to a Psychiatric Review Board asking reconsideration of their detention and to discharge her/him immediately.

61. In case of a), the detained patient may have a possibility to file a complaint based on Administrative Appeal Law to overturn the decision of hospitalization. The procedure is, however, not realistic as the law itself is not well known and it is quite impossible to go through with this procedure without the assistance of lawyer, whom the patients are hard to access because of the hospitalization. The “*habeas corpus*” may be another possible solution but the procedure is extremely limited to use against the procedural flaw. So far, there was only one case which the procedure applied to a hospitalization case; i.e. Utsunomiya Hospital Case in 1984.
62. In case of b), no remedy process exists for patients who are demanding to be discharged from the hospitalization. So either detained patients use the Psychiatric Review Board system, to seek a discharge, which has not worked so well for a long time. It is hard to get through with this process and in 2009, only 2.2% of detained patients applied for this procedure.
63. The Board is consisted of 5 members and 3 of them are psychiatrists. Only one member is defined as a legal professional and the chairperson is a psychiatrist. Applicants has no assistance from lawyers and legal aid programme is not provided. Furthermore, the Board is also responsible for renewing the detention periodically. Japan still keep 330,000 psychiatric beds, about 37% of them occupied by detained patients, so this renewal work is a heavy workload for the Board, who has a meeting only once a month.

Recommendations to Japanese Government:

64. Set up the Tribunal system based upon the third party examination system, which enables to intervene the procedure from the first point. This may lead the government to accede the Optional Protocol as soon as possible.
65. To ensure the third party agency to function well, the excessive number of psychiatric beds may become a real burden. The government should review the standard for psychiatric medical policy to define the adequate number of psychiatric beds.

Prison Condition in Japanese Prison

Life imprisonment and the system of Parole

66. The Number of Prisoners serving the Life Imprisonment is growing, and periods of such lifers actually serving in prisons are becoming longer.
67. The number of new prisoners sentenced to life conclusively in 2011 was 43, while the number of prisoners released on parole in the same year was only six. The number of life sentences is increasing, and moreover, the average period of imprisonment of lifers is becoming longer. The number of lifers released on parole, however, has been markedly decreasing these years.
68. Since April 2009, prisoners serving more than 30 years in prison are due to be examined for parole automatically.
69. A decade from 2002 to 2011, lifers who are released on parole were 56 in total (excluding prisoners granted more than twice because of revoking former parole). In 2002, the average period in prison was 23 years and 5 months, but in 2011 it became 35 years and 2 months. Those lifers died in prison in this decade were 147, far more than those who were released on parole. (See “Statistical Data” below).
70. As for the treatment, at the end of December 2011, there were eight lifers who have been imprisoned for more than 50 years (See “Statistical Data” below). Long imprisonment will deteriorate prisoners’ health physically and mentally, and therefore it may consist of inhuman under the Convention.
71. What is worse is that the Public Prosecutor’s Office issued an administrative ordinance in 1998 which actually limit the opportunity for parole to prisoners sentenced to life (in cases of very serious offences or widely reported cases). This ordinance has virtually created a new type of

punishment, a life imprisonment without a possibility of parole, without introducing a new law.

72. There is no clear and substantive criteria for parole disclosed to prisoners and the parole granting procedure is carried out only by officers. After long years, prisoners often lack expectation to return to their own community, and non-governmental organizations regularly receive letters from prisons expressing their distress.

73. If there is truly no possibility, no programs, no proper procedure to follow and no fair criterion for lifers to get parole, we must say life sentence is arbitrary and inhuman, and therefore a violation of international human rights standard.

Statistical Data

(1) Number of prisoners sentenced to life imprisonment

| | | | | | | | | | |
|--------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Year | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
| Number | 894 | 909 | 923 | 938 | 968 | 1,002 | 1,047 | 1,097 | 1,152 |
| Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 |
| Number | 1,242 | 1,352 | 1,467 | 1,596 | 1,670 | 1,711 | 1,772 | 1,796 | 1,812 |

Source: Annual Report on Corrections

(2) The situation of life sentenced prisoners (2002~2011)

| Year | The number of life sentenced prisoner in Jail | The number of new prisoners who had been sentenced to life | The Number of prisoners who had been sentenced to life imprisonment and released on parole | The number of life sentenced prisoners died in jail |
|------|---|--|--|---|
| 2002 | 1,152 | 75 | 5 | 18 |
| 2003 | 1,242 | 114 | 13 | 11 |
| 2004 | 1,352 | 119 | 8 | 15 |

| | | | | |
|-------|-------|-----|----|-----|
| 2005 | 1,467 | 134 | 3 | 12 |
| 2006 | 1,596 | 136 | 4 | 15 |
| 2007 | 1,670 | 89 | 0 | 13 |
| 2008 | 1,711 | 53 | 4 | 7 |
| 2009 | 1,772 | 81 | 6 | 14 |
| 2010 | 1,796 | 50 | 7 | 21 |
| 2011 | 1,812 | 43 | 6 | 21 |
| Total | - | 894 | 56 | 147 |

Source: White Paper on Crime in Japan by the Ministry of Justice and The Ministry of Justice Situation of be sentenced to life and life sentenced prisoners are released on parole

(3) life sentence prisoner - period of imprisonment (The end of 2011)

| The period of imprisonment (year) | The number of prisoner | Proportion | The average age (year) |
|--------------------------------------|---------------------------|------------|---------------------------|
| Less than 10 years | 948 | 52.3% | 48.8 |
| From 10 years to 20 years | 402 | 22.2% | 56.1 |
| From 20 years to 30 years | 347 | 19.2% | 62.7 |
| From 30 years to 40 years | 87 | 4.8% | 64.8 |
| From 40 years to 50 years | 20 | 1.1% | 69.6 |
| More than 50 years | 8 | 0.4% | 78.1 |
| Total | 1,812 | 100.0% | 54.2 |

Source: The Ministry of Justice Situation of be sentenced to life and life sentenced prisoners are released on parole

(4) Number of prisoners who had been sentenced to life imprisonment and released on parole by the period of imprisonment

| Year (the period of imprisonment) | Total | Within 12 years | Within 14 years | Within 16 years | Within 18 years | Within 20 years | Beyond 20 years |
|--------------------------------------|-------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| | | | | | | | |

| by the release) | | | | | | | |
|-------------------------------|------|-----|-----|------|------|-----|-----|
| Average number during 1976-80 | 51.0 | 0.8 | 7.6 | 24.2 | 11.0 | 4.2 | 3.2 |
| Average number during 1981-85 | 46.4 | 1.2 | 9.6 | 18.4 | 10.8 | 3.8 | 2.6 |
| 1986 | 28 | – | 3 | 15 | 6 | 2 | 2 |
| 1987 | 25 | 2 | 2 | 12 | 7 | 2 | – |
| 1988 | 11 | – | 1 | 5 | 2 | 1 | 2 |
| 1989 | 13 | – | – | 5 | 1 | 3 | 4 |
| 1990 | 17 | – | – | 5 | 3 | 4 | 5 |
| 1991 | 33 | – | 1 | 12 | 8 | 6 | 6 |
| 1992 | 21 | – | – | 6 | 1 | 6 | 8 |
| 1993 | 16 | 1 | – | 4 | 5 | 4 | 2 |
| 1994 | 15 | – | – | – | 8 | 3 | 4 |
| 1995 | 15 | – | – | 1 | 5 | 4 | 5 |
| 1996 | 9 | – | 1 | – | – | 5 | 3 |
| 1997 | 13 | – | 1 | – | – | 4 | 8 |
| 1998 | 14 | – | – | – | – | 5 | 9 |
| 1999 | 9 | – | – | – | – | 3 | 6 |
| 2000 | 6 | – | – | – | – | – | 6 |
| 2001 | 14 | – | 1 | – | 1 | – | 13 |
| 2002 | 5 | 1 | – | – | 1 | – | 3 |
| 2003 | 13 | – | – | – | – | – | 13 |
| 2004 | 8 | – | – | – | – | – | 8 |
| 2005 | 3 | – | – | – | – | – | 3 |
| 2006 | 4 | – | – | – | – | – | 4 |
| 2007 | 0 | – | – | – | – | – | – |
| 2008 | 4 | – | – | – | – | – | 4 |
| 2009 | 6 | – | – | – | – | – | 6 |

| | | | | | | | |
|------|---|---|---|---|---|---|---|
| 2010 | 7 | - | - | - | - | - | 7 |
| 2011 | 6 | - | - | - | - | - | 6 |

Source: White Paper on Crime in Japan by the Ministry of Justice

Recommendations to the Japanese Government;

74. Specific and objective criterion and procedure should be established to set up an adequate parole program.

75. An opportunity to be assessed for examination for parole should be given regularly and systematically to all prisoners serving more than 10 years in prison.

76. The examination hearing for parole should be observed by prisoner and her/his lawyer, and once the parole was rejected, the prisoner should be eligible to make complaint against the decision.

77. Arrangement and adjustment on environments of parolee's life, such as accommodation after the release, should be enhanced, in order to ensure those most difficult prisoners get proper opportunity for parole.

Solitary confinement

Issue

78. In the past, solitary confinement was used without clear criteria. The new law clarified the criteria for “isolation.” As a result, the number of sentenced inmates who are given the treatment of complete isolation from other inmates for 24 hours a day has decreased dramatically. The number of prisoners who are given the treatment of “isolation” decreased from 148 people in October 2006 to 16 people in April 2012.
79. However, many prisoners who do not meet the criteria for “isolation” are placed in solitary confinement, which is virtually the same as isolation, by being designated as a particular type in the new classification system of inmates called “security categories.” The only differences between this treatment and isolation are merely that there is a possibility for bathing and exercising with other inmates and that the inmates can, in accordance with a directive, come in contact with others twice a month (which used to be once a month before the review of the New Law in 2011). As of 10 April 2012, 2,190 prisoners are designated as type 4 in the security categories, accounting for 4.01% of the total.
80. Even though the number of prisoners designated as type 4 decreased, there still remains tendency to use the type 4 in the security categories to keep prisoners isolated. There are several prisons which actively use the type 4 in the security categories. (About this detail, see Table1.)

Points relating to the Convention

- 81. No legally-established criteria for solitary confinement of type 4 in the security categories.**

The most of solitary confinement has no legally-established criteria. Although the new law has clear criterion for isolation, the criterion cannot be applied on the type 4 in the security categories.

82. Solitary confinement is often used as retaliation.

The civil society has received reports on many cases which the prisoners were detained in solitary confinement when they brought a lawsuit against the prison authorities.

83. No legally-binding complaint procedure.

In 2008, the Human Rights Committee recommended that "The state party should discontinue (omission) the practice of segregating certain inmates in "accommodating blocks" without clearly defined criteria or possibilities of appeal." Japanese government answered that "treatment in a single room throughout day and night is covered by a complaints mechanism."

84. "Application for Examination", one type of grievance mechanism can be applied to "isolation". However, it cannot be applied to the type 4 in security categories. Although "Filing of Complaints", another type of grievance mechanism can be applied to the type 4 in security categories, "Filing of Complaints" is absolutely ineffective in practice.

(Table 1). The list of prisons in which the number of prisoners who are designated as Type 4 in the security categories is more than twice the national average

| Name of Prison | Total number of prisoners | Number of prisoners designated as Type 4 in the security category | Percentage of total number |
|---------------------------|---------------------------|---|----------------------------|
| Kitakyusyu Medical Prison | 263 | 64 | 25.50% |
| Gifu Prison | 846 | 139 | 16.75% |
| Asahikawa Prison | 298 | 44 | 16.18% |
| Tokushima Prison | 741 | 74 | 10.32% |
| Saijo Branch Prison | 39 | 4 | 10.26% |
| Miyagi Prison | 993 | 92 | 10.20% |
| Okazaki Medical Prison | 214 | 21 | 10.10% |
| Hachioji Medical Prison | 229 | 21 | 9.33% |

| | | | |
|------------------------|-------|-----|-------|
| Kakogawa Prison | 983 | 86 | 9.06% |
| Kumamoto Prison | 607 | 52 | 9.03% |
| Fuchu Prison | 2,667 | 218 | 8.61% |
| Himeji Juvenile Prison | 300 | 25 | 8.42% |
| Akita Prison | 497 | 38 | 8.05% |

85. Especially we are concerned that there are about 20 prisoners each year, who have been detained in solitary confinement for more than 10 years as a sum total. Several prisoners have been detained for over 30 years and the longest one has been for 49 years.

(Table 2). The number of prisoners who are detained in solitary confinement for more than 10 years and their period

(The data resulted from 6 times research by one of the Diet members from 2000 to 2012)

| | Research on November 10 th , 2000 | Research on July 10 th , 2001 | Research on October 1 st , 2002 | Research on November 1 st , 2005 | Research on April 10 th , 2008 | Research on April 10 th , 2012 |
|----|--|--|--|---|---|---|
| 1 | 37Y 00M* | 37Y 08M | 38Y 11M | 42Y 00M | 52Y 03M | 49Y 08M |
| 2 | 36Y 07M | 37Y 03M | 38Y 05M | 41Y 06M | 43Y 00M | 47Y 00M |
| 3 | 35Y 06M | 35Y 07M | 36Y 07M | 39Y 08M | 39Y 01M | 30Y 06M |
| 4 | 34Y 11M | 35Y 05M | 29Y 01M | 38Y 07M | 35Y 10M | 30Y 04M |
| 5 | 34Y 09M | 27Y 10M | 24Y 00M | 27Y 01M | 26Y 06M | 27Y 10M |
| 6 | 27Y 10M | 22Y 10M | 23Y 07M | 26Y 08M | 26Y 05M | 27Y 04M |
| 7 | 22Y 06M | 22Y 04M | 22Y 10M | 26Y 00M | 25Y 06M | 23Y 10M |
| 8 | 22Y 02M | 21Y 07M | 22Y 04M | 25Y 05M | 23Y 11M | 22Y 05M |
| 9 | 21Y 05M | 21Y 01M | 22Y 02M | 25Y 00M | 23Y 05M | 21Y 11M |
| 10 | 20Y 11M | 21Y 00M | 21Y 01M | 24Y 10M | 20Y 05M | 20Y 05M |
| 11 | 20Y 05M | 19Y 10M | 21Y 00M | 23Y 11M | 20Y 01M | 20Y 01M |
| 12 | 20Y 04M | 19Y 09M | 21Y 00M | 23Y 11M | 16Y 05M | 19Y 11M |
| 13 | 19Y 04M | 19Y 09M | 20Y 10M | 23Y 06M | 16Y 02M | 16Y 07M |
| 14 | 19Y 03M | 19Y 07M | 20Y 09M | 21Y 07M | 16Y 00M | 15Y 09M |
| 15 | 19Y 01M | 19Y 06M | 18Y 10M | 20Y 03M | 15Y 11M | 15Y 02M |
| 16 | 18Y 11M | 17Y 07M | 18Y 06M | 19 Y 08M | 15Y 09M | 13Y 03M |
| 17 | 18Y 10M | 17Y 03M | 16Y 01M | 18 Y 05M | 13Y 01M | 12Y 07M |
| 18 | 17Y 00M | 15Y 10M | 15Y 09M | 17 Y 01M | 12Y 08M | 11Y 07M |
| 19 | 16Y 07M | 14Y 10M | 13Y 10M | 16 Y 01M | 12Y 06M | 11Y 02M |
| 20 | 15Y 02M | 14Y 07M | 13Y 10M | 15 Y 09M | 11Y 11M | 10Y 05M |
| 21 | 14Y 05M | 12Y 10M | 12Y 12M | 15 Y 03M | 11Y 09M | 10Y 03M |
| 22 | 14Y 02M | 12Y 07M | 12Y 02M | 15 Y 02M | 11Y 03M | |
| 23 | 13Y 11M | 11Y 09M | 12Y 01M | 14 Y 01M | | |

| | | | | | | |
|-------------------------|---------|---------|---------|----------|----|----|
| 24 | 12Y 02M | 11Y 00M | 11Y 06M | 13 Y 07M | | |
| 25 | 11Y 11M | 10Y 10M | 11Y 00M | 13 Y 05M | | |
| 26 | 11Y 01M | 10Y 05M | 10Y 06M | 13 Y 04M | | |
| 27 | 10Y 04M | | 10Y 04M | 13 Y 04M | | |
| 28 | 10Y 02M | | 10Y 04M | 13 Y 01M | | |
| 29 | | | 10Y 03M | 10 Y 06M | | |
| 30 | | | 10Y 00M | 10 Y 00M | | |
| Total number of persons | 28 | 26 | 30 | 30 | 22 | 21 |

“Y” refers to year and “M” refers to month.

Recommendation to Japanese Government:

86. Inhumanely strict discipline and order, including prevalent use of solitary confinement, should be lifted.

Disciplinary measures / Punishments (in prison)

Issue

87. Para.17 of the concluding observations recommended not to use leather handcuff as a mean of punishment, but the most concerning issue now on this is that the procedure for punishments are not fair and meeting the due process. Reports received by the Center for Prisoners' Rights Japan indicates that a lot of inmates are not satisfied with the procedure. Complaint procedure, even it exists, is not functioning as it is very hard to file a complaint when getting a punishment.
88. The Law has a lack of clarity about the conducts constituting a “disciplinary offence” because what kind of conducts should be subject to disciplinary measures and whether a prisoner should be imposed or not are mostly supposed to depend on each warden/prison governor’s discretion. (cf. Rule 29 of the Standard Minimum Rules for the Treatment of Prisoners)
89. Furthermore, concerning the procedure for imposing disciplinary measures, it does not fully guaranteed due process. The prisoners cannot examine the details of their own cases and are not guaranteed the right to call witnesses or appoint a counsel (or other independent representative) for their defense. The Panel to examine the cases and make a judgment also consists of prison officers. An assistant person from the prison officers is supposed to assist or represent the prisoner. According to a result of investigation by one of the Diet members in 2002, there was no record which shows that this “assistant officer” insisted to not impose the punishment for the prisoner. Eventually, prison officers are supposed to play roles of prosecutor, judge, and defense attorney.
90. In addition, this process has a lack of transparency. Under the old Prison Law, most judicial decisions said that the procedure for disciplinary measures is different from that for criminal punishment as the case *infra*, but some decisions also said that it should guarantee

due process as much as possible. Moreover, the Human Rights Committee raised concerns that “lack of fair and open procedures for deciding on disciplinary measures” in the Concluding Observation of 1998 (para.27(c) of the Observation).

91. The most serious disciplinary measure is almost the same as solitary confinement. The prisoner shall be limited in taking a bath and exercise. Additionally, the prisoners might be have more restrictions imposed on them depending on the governor’s discretion such as work and contact with outside. The Human Rights Committee raised concerns that “use of harsh punitive measures, including frequent resort to solitary confinement” in the Concluding Observation of 1998, but after that, disciplinary measure by solitary confinement has been mostly used. This harsh type of measure should be avoided as much as possible.

92. Practically, those who are likely to get punishment repeatedly are said to be long term inmates, foreign inmates, inmates with mental disability. These category of inmates are having difficulties in making communication, therefore it is concerned that whether efforts were invested to obtain their understanding.

Recommendations to Japanese Government:

93. Criterion for application of punishment should be specific and clear.
94. Transparency of the application of the punishment should be ensured.
95. Ensure to raise effectiveness of the complaint. Establish a system of consultation in order to make it possible for those inmates getting punishment to seek assistance from lawyers and supporting organizations.

Health, Sanitation and Medical Treatment in Prison

Issue

96. The areas of health, sanitation and medical treatment are some of the domains whose problems remain unsolved even with the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereinafter called “the New Law”). The root cause of the problem lies in the fact that medical services rely on the security system in place in the penal institutions. Security requirements are prioritized over anything else, making it extremely difficult to provide adequate medical services.
97. The lack of medical staff, of doctors in particular, is serious. As of April 2012, in Japan, the quota of doctors in full time employment in penal institutions is 226, however only 187 doctors are assigned. There are twelve institutions who has no full time doctor, and sixteen institutions that are falling below the quota. (Yomiuri Shimbun 27 Dec. 2012)
98. As a result of the lack of doctors, assistant nurses are charged with the responsibility to judge the necessity and urgency of medical examination by a doctor. Since assistant nurses are themselves prison guards who acquired their qualification at the prison's medical facility, they have a natural tendency to prioritize security requirements.
99. Medical examination by a doctor is frequently deemed unnecessary, causing delay in medical attention, and resulting in symptoms that cannot be treated at the penal institution.
100. There are cases when even though medical facilities and treatment available at the institution are inadequate, the decision to transfer the inmate to an outside hospital is not made, leading to worsening symptoms, or even death. In February 2012, a male prisoner in his seventies detained at Toyama Prison died of disease because of the unreasonable delay in receiving medical treatment.

101. In February 2008, a group of 22 inmates including relatives of a deceased inmate and ex-prisoners in Tokushima Prison filed a criminal complaint against the medical chief doctor, the former prison governor, and a guard in its medical section, saying that they had suffered abuse by a prison doctor while practicing from May 2004 to November 2007.

102. Some inmates said that the doctor injured them by placing his finger into their anus when there was no apparent need for a rectal examination and without their consent. In one case, an inmate who suffered dizziness was pinched on his inner thighs, had his ankle stepped on and was given a rectal check, causing an infection that required surgery at a private hospital. Moreover, another inmate who was wasting away because of high fever requested intravenous feeding but was refused by the prison governor at that time and after that. This inmate later killed by himself.

Points for discussion

103. “The State party should ensure that adequate, Independent and prompt medical assistance be provided to all inmates at all times. The State party should consider placing medical facilities and staff under the jurisdiction of the Ministry of Health.” (concluding observations 2008)

104. In July 2011, Japanese government answered to a question of committee against torture which is concerned with the second Japanese government report.

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

outside medical institution if necessary.”

106. However, fundamental institutional reformation to increase the number of full-time doctors has not achieved. The number of full-time doctors has actually been decreasing.

Recommendations to Japanese Government:

107. Inmates should receive adequate medical treatment and live in a healthy and sanitary environment.

108. The State party should consider placing medical facilities and staff under the jurisdiction of the Ministry of Health.

The Grievance Mechanism

Issues and points relating to the Convention

109. In the first concluding observation, following 3 points were advised about the Grievance Mechanism

110. The State party

should consider establishing an independent mechanism, with authority to promptly, impartially and effectively investigate all reported allegations of and complaints about acts of torture and ill-treatment from both individuals in pre-trial detention at police facilities or penal institutions and inmates in penal institutions.

should take all necessary measures to ensure that the right of inmates to complain can be fully exercised, including the lifting of any statute of limitations for acts of torture and ill-treatment; ensuring that inmates may avail themselves of legal representation to file complaints; establishing protection mechanisms against intimidation of witnesses; and reviewing all rulings limiting the right to claim compensation.

should provide detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions.

111. However the government report 17-18,23(b) is not mentioned on measures taken subsequently to enhance effectiveness of the Grievance Mechanism.

112. Regarding observation 1), if the Minister of Justice determines that such a filing is groundless and therefore should be dismissed, before the final decision is made, the Minister is to ask for advice to the Review and Investigation Panel on Complaints by Inmates in Penal Institutions

(the Study Group on Review of Appeals Filed by Inmates of Penal Facilities), which comprises of 5 outside members.

113. However, this final step is not stipulated in law. Moreover, the Panel does not have its own secretariat and therefore is unable to conduct its own investigation. Since the investigation is primarily based on what is provided in writing, it is extremely difficult for the Panel to reverse a decision made by the regional correction headquarters.
114. Even when the Panel determines that grievances are reasonable, its opinion is anyway not legally binding, which means that the Ministry of Justice may decide to dismiss the grievance as originally proposed.
115. Of the 217 cases examined in 2010, 2 cases were found by the Panel not to be dismissed (in other words, the request made by the inmate is found to be reasonable); 0 case out of 224 in 2011.
116. Regarding observation 2), the Grievance Mechanism still basically should be do inmate itself (they can ask the help to staff but not to ask people and lawyer on the outside) then they got only outcome or even nothing. The Center for Prisoners' Rights Japan got many letters from inmates such as "I did the Grievance Mechanism but nothing. Is there any way to relieve?", "The Grievance Mechanism is not effective against human rights violation".
117. Regarding observation 3), published statistics include no detailed date as the concluding observation requested.
118. In addition, the government report 36 says they consider to establish inspection committees at reformatory too. But the law for setting up have not passed diet yet.
119. Basically there is not big change from NGO report at first summarize. Once again we would point out issue of the Grievance Mechanism as follow.

120. Under the present law we have 3 type grievance mechanism stipulated by prison law. Application for Examination and Stating of Facts which is in the case grievance was accepted then to relief impose an obligation on the institution . These has a limit to what can be grievance. Filing of Complaints dose not have a limit to grievance but we could ask only to improve and not obligation.
121. The former two systems require that the Application (or Stating of Facts) be made within 30 days and for any of the systems, application made by a representative is not permitted.
122. Application for Examination can only be made for a limited range of measures. For instance, what can often be a serious problem, such as rejection of visits and rejection of delivery and purchase of articles, is not subject to such application.
123. The Application for Examination and Stating of Facts are to be made to the superintendent of the regional correction headquarters. When the headquarters determine that there are no illegal or unfair facts after conducting their investigation, then a request can be filed to the Minister of Justice within 30 days.

Recommendations to Japanese Government:

124. Emphasize again the same point made in the last concluding observations.