# Appendix 1:
# Citation from Paragraphs of the Japanese Government's Report

*The paragraph numbers shown in the UN edited version might differ from the original version of the Japanese government's report. However, we refer to the number of the original version of the government's report in our Alternative Report. Then, some parts of the government's report are cited in this paper for references to read our Alternative Report.

Note 1, 5 and 7:

[para139] In Japan, approximately 1,300 police detention cells are established in police stations. Detainees in police detention cells include suspects arrested pursuant to the Code of Criminal Procedure, and pretrial detainees held in custody on a warrant of detention issued by a judge based on the Code of Criminal Procedure. The number of suspects detained in police detention cells was approximately 190,000 during the year of 2003.

[para.140] An arrested suspect is, unless released, brought before a judge upon the request of custody made by a public prosecutor and the judge determines whether or not the suspect is to be taken into custody. The place of detention for suspects is stipulated as a prison in the Code of Criminal Procedure (paragraph 1 of Article 64 of the Code of Criminal Procedure), and the Prison Law stipulates that a police detention cell may be used as a substitute for a prison (paragraph 3 of Article 1 of the Prison Law). This system to use a police detention cell as a substitute for a prison is the so-called "substitute prison system". With regard to the place of detention, there is no provision in the Code of Criminal Procedure stipulating selection of a detention house or police detention cell, and a judge, upon a request from a public prosecutor, makes a decision case by case, taking various conditions into consideration (paragraph 1 of Article 64 of the Code of Criminal Procedure).

[para.141] Even after a prosecution has been instituted, the court may detain the defendant when there is reasonable ground to suspect that the defendant may destroy or alter evidence, or escape (Article 60 of the Code of Criminal Procedure). The place of detention for this case is specified as a prison similarly to the case of suspects, and a police detention cell may be used as a substitute.

[para.142] This system falls under the lawful sanctions referred to in paragraph 1 of Article 1 of the Convention and the detention itself in a so-called substitute prison does not fall under the torture referred to in the Convention. In the so-called substitute prison system, officials in charge of detention who belong to a department not in charge of investigation supervise detainees, taking their human rights into consideration in accordance with relevant laws and regulations, and do not conduct treatment or punishment as may be deemed inhumanly cruel with unnecessary mental or physical pain. Therefore, it is understood that the so-called substitute prison system does not cause any problems of cruel, inhuman or degrading treatment or punishment under the Convention as long as it is operated appropriately.

[para.143] With regard to living conditions in police detention cells, see Paragraphs 118 to 133 of the fourth report of Japan pursuant to subparagraph 1(b) of Article 40 of the International Covenant on Civil and Political Rights. With regard to the separation of investigation and detention, see Paragraphs 134 to 143 of the said report.

Note 9:

[para.85] The Ministry of Justice has been endeavoring to improve prison administration and has taken necessary measures. However, in response to the fact that prison officials of Nagoya Prison were prosecuted for causing death or injury by violence and cruelty by a special public official as described below (see Paragraph 106), intensive discussions on the role of prison administration were held in the Diet, and based on the results of these discussions, the Ministry of Justice is taking further steps to improve prison administration.

……In addition, to examine reform of prison administration from a broad viewpoint, the Correctional Administration Reform Council consisting of private experts was established. The Council examines the actual conditions by interviewing NGOs and by conducting questionnaires given to prisoners and prison officials, and holds discussions from various viewpoints such as: (1) proper treatment in the prison regulations and

disciplinary punishment system; (2) securing transparency through the system of information disclosure and filing of complaints; and (3) the medical and organizational systems of prisons including improvements in medical standards and the working environment of the officials. In December 2003, the Council released its recommendation report titled "Recommendations by the Correctional Administration Reform Council – Prisons that Gain the Understanding and Support of the Citizens". In the report, various recommendations on the basic direction for reform of correctional administration were made in order to: (1) achieve real rehabilitation and integration of inmates by respecting their individuality; (2) ease the excessive burden on prison officials; and (3) realize correctional administration open to the public.

The recommendations include: (1) review of the proper form of regulations for prisons; (2) improvement in the system for human rights relief; (3) improvement in correctional medical care; (4) an increase in communications with people outside the prisons; (5) clarification of the administrative authority of the officials; (6) establishment of a Penal Institutions Inspection Committee (tentative name), and (7) improvement in information disclosure and cooperation with local communities. ……

Note 12 and 13:

[para.17] Article 36 of the Constitution absolutely prohibits torture by public officials by stipulating that "the infliction of torture by any public official and cruel punishments are absolutely forbidden". It is ensured by criminal laws such as the Penal Code that all acts of torture, attempts to commit torture and acts which constitute complicity or participation in torture as defined in paragraph 1 of Article 1 of the Convention are punishable.

Note 13 and 14:

[para.31] Any person who commits an act of torture, including an attempt to commit torture, an act which constitutes complicity or participation in torture, is punishable under the Penal Code and other criminal laws for various offences and their complicity (see below) including violence and cruelty by a special public official or causing death or injury thereby as described below and depending on the kinds of acts, abuse of authority by a public official, violence, injury, abandonment, arrest, detention, intimidation, and murder, forcible obscenity, rape, coercion and attempts thereof. These offences punish a wider range of acts of torture in that they do not require as their constituent element the "purposes" or "reason" referred to in paragraph 1 of article 1 of the Convention. In this regard, it can be said that a wider range of acts of torture is punishable.

[para.32] As stated above, all acts of torture, attempts to commit torture and acts which constitute "complicity" or "participation" in torture under the Convention, including those by order of a competent person, constitute an offence under criminal law. Furthermore, it is guaranteed that appropriate prosecution shall be instituted, taking into consideration the gravity of the offence and circumstances, and that appropriate penalties shall be imposed in courts, taking into account the gravity of the offence.

Note 15:

[para.33] "When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State" (sub-paragraph 1(a) of Article 5 of the Convention), Japan establishes its jurisdiction in accordance with Article 1 of the Penal Code (Crimes within Japan).

[para.34] "When the alleged offender is a national of that State" (sub-paragraph 1(b) of Article 5 of the Convention), Japan establishes its jurisdiction in accordance with Article 3 (Crimes committed by Japanese outside Japan), Article 4 (Crimes by a public official outside Japan) and Article 4bis (Crimes committed outside Japan made punishable by a treaty) of the Penal Code as well as paragraph 3 of Article 1bis of the Law concerning Punishment of Physical Violence and Others and Article 5 of the Law for Punishing Compulsion and Other Related Acts Committed by Those Having Taken Hostages.

[para.35] Since the amendment of the Penal Code in July 2003, "when the victim is a national of that State if that State considers it appropriate" (sub-paragraph 1(c) of Article 5 of the Convention), Japan establishes its jurisdiction over certain offences in accordance with Article 3bis (Crimes by non-Japanese outside Japan) of the Penal Code, paragraph 3 of Article 1bis of the Law concerning Punishment of Physical Violence and Others and Article 5 of the Law for Punishing Compulsion and Other Related Acts Committed by Those Having Taken Hostages.

[para.36] In “cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article” (Paragraph 2 of Article 5 of the Convention), Japan establishes its jurisdiction in accordance with Articles 1, 3, 3 bis, 4, and 4 bis of the Penal Code, paragraph 3 of Article 1bis of the Law Concerning Punishment of Physical Violence and Others and Article 5 of the Law for Punishing Compulsion and Other Related Acts Committed by Those Having Taken Hostages.

[para.37] The Japanese government has taken the following legislative and other measures to fulfill its obligations prescribed in this Article of the Convention. Custody and other legal measures

[para.38] Japan, when a suspect of the offence referred to in Article 4 of the Convention is present in its territory and when it is satisfied, after examination of the information available to it that the circumstances so warrant, shall promptly take the following measures to ensure his presence.
(i) In cases where the country concerned requests extradition or provisional detention of the suspect, the authorities may place him under detention or provisional detention pursuant to the Law of Extradition;
(ii) On the assumption that Japan has jurisdiction over the case in accordance with its domestic laws, the authorities may investigate the whereabouts of the suspect and request him to voluntarily cooperate with investigation, as well as arrest or detain him pursuant to the Code of Criminal Procedure.

[para.39] In Japan, the offences referred to in Article 4 of the Convention are investigated by judicial police officials or public prosecutors in accordance with the Code of Criminal Procedure. Therefore, the obligation of making a preliminary inquiry prescribed in paragraph 2 of the Article is fulfilled by such investigation.

[para.40] It will be decided in accordance with Articles 80 and 81 of the Code of Criminal Procedure whether a representative of the State of which the detained defendant or suspect is a national is allowed to interview him. It will be decided in accordance with Article 45 of the Prison Law whether a representative of the State of which the person detained pursuant to the Law of Extradition is a national is allowed to interview him. Upon concluding the Convention, the relevant authorities such as the National Police Agency and the Ministry of Justice sent the wardens and other officials of detention facilities written instructions to observe the Convention.

[para.41] The Ministry of Foreign Affairs will make notifications or reports to the country concerned under paragraph 4 of this Article through diplomatic channels after receiving relevant information from the relevant authorities such as the Ministry of Justice and the National Police Agency. During the period from July 29, 1999, when the Convention entered into force for Japan, to March 31, 2004, there were no cases where Japan gave such notification.

[para.42] The “competent authorities” referred to in paragraph 1 of Article 7 of the Convention are public prosecutors for Japan. If a suspect is present in Japan and if Japan does not extradite the suspect concerned, the public prosecutors shall take the case and determine whether or not to institute criminal prosecution.

[para.43] In Japan, public prosecutors determine whether or not to institute criminal prosecution for the offences referred to in Article 4 of the Convention, treating them in the same manner as any other offence of a serious nature.

[para.44] With regard to the standards of evidence required for prosecution and conviction concerning the offences referred to in Article 4 of the Convention, no distinction is made between the cases referred to in paragraph 1 of Article 5, and those in paragraph 2 of Article 5.

[para.45] In Japan, any person against whom a proceeding is instituted in connection with any of the offences referred to in Article 4 of the Convention is, regardless of his nationality, guaranteed the “fair treatment” referred to in paragraph 3 of Article 7 of the Convention at all stages of the proceedings pursuant to relevant domestic laws such as the Code of Criminal Procedure and by their proper application.

[para.46] With regard to extradition in Japanese domestic law, there is the Law of Extradition. Although Japan does not require a treaty as a prerequisite for extradition, as is stipulated in paragraph 2 of Article 3 of the Law of Extradition, when a request for extradition is made without a treaty, one of the requirements the requesting country has to meet is the assurance that the country will honor a request of the same kind made by Japan.

[para.47] Paragraphs 3 and 4 of Article 2 of the Law of Extradition stipulate requirements for the statutory penalties concerning extraditable offences. However, the proviso of the article stipulates “this shall not apply when a treaty of extradition provides otherwise”, and therefore, upon conclusion of the Convention, the offences referred to in Article 4 of the Convention have all become extraditable offences in Japan even if they do not meet the requirements for the statutory penalties as referred to in paragraphs 3 and 4 of Article 2 of the Law of Extradition.

[para.48] As a result of conclusion of the Convention, when a State Party of the Convention requests Japan to extradite any fugitive of the offences referred to in Article 4 of the Convention, Japan will deal with the case in accordance with the Law of Extradition and other related laws.

[para.49] During the period from July 29, 1999 when the Convention entered into force in Japan, to March 31, 2004, there were no fugitives of the offences referred to in Article 4 of the Convention extradited from Japan or to Japan pursuant to Article 8 of the Convention.

[para.50] Japan has the Law for International Assistance in Investigation and Other Related Matters regarding mutual legal assistance in criminal investigation procedures and the Law for Judicial Assistance to Foreign Courts regarding mutual judicial assistance to be provided when requested by a foreign court.

[para.51] Under the Law for International Assistance in Investigation and Other Related Matters, if there is a request by a foreign country for the provision of evidence necessary for investigation of a criminal case in the requesting country, if the request meets the requirements set out in the Law such as the non-political nature of the offence, double criminality, and the assurance of reciprocity (Article 2) and if it is considered appropriate to accept the request (Article 5), then the Law allows the competent authorities to collect and provide the foreign country with evidence by interviewing the persons concerned, requesting expert examinations, conducting on-the-spot investigations, requesting submission of documents and other items from the owners, making inquiries of public and private organizations, search, seizure, and inspection (Article 8), and examining witnesses (Article 9).

[para.52] Furthermore, according to Article 17 of the Law for International Assistance in Investigation and Other Related Matters, if a request for cooperation to investigate a criminal case in a foreign country is received from the International Criminal Police Organization (ICPO), and if the request meets the requirements set out in the Law for International Assistance in Investigation such as the non-political nature of the offence and double criminality, then the Law allows the police to ask questions to the persons concerned, conduct on-the-spot investigations, request submission of documents and other items from the owners, make inquiries to public and private organizations, and provide the collected materials and information to ICPO.

[para.53] Based on the Law for Judicial Assistance to Foreign Courts, a Japanese court may examine the evidence when requested by a foreign court.

[para.54] During the period from July 29, 1999 when the Convention entered into force in Japan, to March 31, 2004, there were no requests for assistance in investigation or requests for judicial assistance either received or made based on Article 9 of the Convention with regard to the offences referred to in Article 4 of the Convention. (The full texts of the Law for International Assistance in Investigation and the Law for Judicial Assistance to Foreign Courts are attached.)

Note 16:

[para.19] The legislative, administrative, judicial or other measures taken in Japan to prevent acts of torture in any territory under its jurisdiction are described in the following sections corresponding to the respective

articles.

Note 17:

[para.56] The public officials including local government officials have been provided with education on the importance of human rights, including the prohibition of torture, through various training programs. The Japanese government attaches importance to human rights education and has formulated Japan's National Plan of Action for "the United Nations Decade for Human Rights Education" in July 1997. It was decided, in line with this plan, to improve the human rights education of public officials as they are engaging in the occupations closely connected with human rights. For central government officials, human rights education is given through various training courses in each ministry and agency including the courses by the National Personnel Authority provided for separate levels of officials. For local government officials, the human rights education is given at local municipal entities as well as through various training courses carried out by the Ministry of Internal Affairs and Communications at the Local Autonomy College and the Fire and Disaster Management College.

Note 18:

[para.20] As described above, Article 36 of the Constitution absolutely prohibits the infliction of torture by any public official and cruel punishment, and there is no domestic law that allows anyone to invoke, as a justification of torture, exceptional circumstances such as a state of war, a threat of war, internal political instability or any other public emergency.

Note 19:

[para.21] No domestic law stipulates that an order from a superior officer or a public authority may be invoked as a justification of torture.

Note 20:

[para.155] Inmates in correctional institutions, when isolation is necessary for detention in accordance with laws and regulations, are to be put in solitary confinement, for a period within six months, in principle, and this period can be extended every three months where extraordinarily necessary. The final decision as to whether solitary confinement is necessary and whether to extend the period is made by the warden of the correctional institution, in practice, after careful examination of the necessity by the classification examination committee established in the institution and after taking the inmate's mental and physical conditions into due consideration.

Long-term solitary confinement has, of course, the possibility of exerting a negative influence on the physical and mental health of the inmates. In order to promote inmates' rehabilitation, it is important to facilitate their socialization through living and interacting in a group with other people. Prison facilities therefore would like inmates to go out and work in factories as much as possible. From this viewpoint, at every possible opportunity, prison facilities try to transfer inmates from solitary confinement to group cells by such methods as prison officials in charge giving guidance to the inmates in solitary confinement and senior officials having interviews with them. However, there are still a small number of cases where long-term solitary confinement is inevitable.

Note 21:

[para.150] When there is the risk of escape, violence or suicide, or when an inmate does not follow the directions of officials to stop shouting or making unnecessary noise, or when there is the risk that an inmate may repeat abnormal behavior such as contaminating the cell, then he may be housed in a protective cell (solitary cell with an appropriate structure or equipment which has been designed to calm and protect inmates), as far as it is deemed inappropriate to house him in an ordinary cell. In addition, when there is the risk of escape, violence or suicide, instruments of restraint (handcuffs) may be used. A protective cell is designed for such specific purpose, and its structure is built to stand noise and destruction, by eliminating fixtures, equipment and protrusions as may be used for suicide and using soft materials for the walls and floor. Accommodation in a protective cell is a type of solitary confinement in cases where isolation is necessary based on laws and regulations.

[para.151] Both protective cells and restraining devices are used based on relevant laws and regulations, only when there is the risk of escape, violence or suicide and when they are necessary for the prevention of such acts. Therefore, as long as such use is appropriate, it does not fall under the torture referred to in paragraph 1 of

Article 1 of the Convention, since there are no purposes or reasons which are required to constitute torture. In addition, such measures do not give unnecessary pain to the inmate and, as described below, due consideration is given so as not to harm the inmate's dignity and integrity, which is why use of these measures does not fall under the cruel, inhuman or degrading treatment referred to in the Convention.

In particular, the use of restraining devices or protective cells is to be based on relevant laws and regulations, and based on official instructions, should not exceed the limit, depending on the situation, reasonably necessary to achieve its purpose. For the inmate on whom a restraining device is used or the inmate in a protective cell, encouragement is given so that such restrictions can be lifted as soon as possible, and a doctor, when necessary, shall monitor his mental and physical conditions.

[para.152] Leather handcuffs, a kind of restraining device used until recently (handcuffs made of a leather band with cylindrical leather bangles to fix both wrists), were abolished on October 1, 2003, because of the above-mentioned case where prison officials of Nagoya Prison were prosecuted for causing death or injury by violence and cruelty by a special public official as the leather handcuffs tightly squeezed the abdomen of the inmate. As an alternative, a new type of handcuffs has been adopted, which restrains only the wrists without squeezing the abdomen. The new type of handcuffs is considered safer than conventional leather handcuffs because they do not restrain parts other than the wrists.

Furthermore, to secure appropriate and safe operation, the following guidelines have been clearly set out and officials are made fully aware of the guidelines through drills and training. The new type of handcuffs can be used on an inmate housed in a protective cell only when housing him in it is not enough to prevent violence or suicide; and the new type of handcuffs may not be used in a way that harms the inmate's body.

Note 22:

[para.157] In penal institutions, it is necessary to keep discipline and order appropriately so that many inmates may be managed as a group, they can be prevented from escaping and kept in custody, and so that the purpose of detention depending on the legal status of the respective detainee may be achieved. To this end, the acts prohibited in the facilities are stipulated in the "Rules for Inmates", which are made known and easily comprehensible, in advance, to the detainees. By punishing persons who violate the rules, the recurrence of prohibited acts is prevented, and discipline and order in the facilities are maintained.

Among the punishments, there are reprimands, prohibition of reading documents and looking at pictures for up to three months, docking of part or all of the remuneration for prison work, and minor solitary confinement for up to two months.

Minor solitary confinement is when a detainee is kept in a single cell with the same structure as an ordinary cell, communication with other inmates is cut off, and the detainee is made to sit in the cell and is given the chance for self-reflection in order to encourage penitence. This is the severest form of punishment actually practiced. When minor solitary confinement is conducted, a medical examination by a doctor is required beforehand, and minor solitary confinement may not commence unless it is deemed that there will be no harm to the inmate's health. During the confinement, medical examinations by a doctor are also conducted, and the confinement is suspended if there are any special factors which may cause harm to the health of the inmate, which is why consideration is given so as not to harm the health of the inmate.

The procedures of punishment conform to the official directions of the Minister of Justice. First, the person who is suspected of having violated the rules is informed of the suspicion of such violation and interviewed on the facts and background. Then other information is collected such as reports from officials who witnessed the violation, and interviews of other inmates who saw or heard about the violation. Afterwards, a punishment examination committee consisting of senior officials of the penal institution is convened, where the suspicion of violation is notified to the suspect who is present at the meeting. After giving the suspect an opportunity to defend himself, a senior official who plays the role of supporting the suspect gives his opinion on behalf of the suspect. The committee forms an opinion taking into account all the factors such as whether the act falls under a violation of the rules, the cause, contents, and circumstances, the suspect's behavior and the progress of treatment, and the security conditions of the prison facility concerned. The warden of the penal institution, based on the opinion reported by the committee and considering all of the various factors, decides whether to give a punishment and what punishment is to be given. In this way, the decision for the punishment meets the requirement for securing fairness.

Note 25:

[para.3] Japan concluded in 1979 the International Covenant on Civil and Political Rights, which has a close relationship with the Convention, and prohibits torture in its Article 7. All acts which fall under the torture of the Convention are offences under Japanese domestic laws as described below in the section of Article 4.

[para.68] Major rules or instructions for the prohibition of torture in the immigration centers include Articles 3 and 4 of the Duties and Instructions for Immigration Control Officers and the Regulations for Treatment of Detainees.

Note 27:

[para.153] The use of restraining devices is permitted but kept to a minimum, in accordance with the Regulations for Treatment of Detainees formulated based on the Immigration Control and Refugee Recognition Act, only when there is the risk of escape, violence or suicide by the detainees and it is considered that there is no other way to prevent such acts. In addition, when based on the Regulations isolation is deemed necessary to protect the life and body of the detainees and to maintain order within the facility, those detainees may be housed in protective cells.

Therefore, both restraining devices and protective cells, as long as they are used appropriately, do not fall under the torture referred to in article 1, paragraph 1 of the Convention because there are no purposes or reasons, which are required to constitute torture. In addition, these restraining devices and protective cells do not give unnecessary pain as long as they are used appropriately in accordance with the Regulations, and in March 2003 the Immigration Bureau revised the guidelines for using restraining devices and for isolation in order to enhance appropriate usage; thus giving due consideration to avoid harming the dignity and integrity of detainees. Therefore they do not fall under the cruel, inhuman or degrading treatment or punishment provided for in the Convention.

Isolation is conducted according to the decision of the director based on Article 18 of the Regulations and the period of isolation is decided by the director depending on the case. As soon as it becomes unnecessary to isolate the detainee, he is released from isolation. A protective cell is designed with a structure which eliminates protrusions as much as possible and uses soft material for the walls and floor to protect the detainee's life and body.

[para.154] The use of restraining devices and protective cells is allowed when the director orders as such in accordance with laws and regulations. When there is no time to get an order from the director for use of a restraining device or a protective cell, this shall be reported to the director immediately after the use, thus ensuring careful and appropriate decisions on the use of restraining devices and protective cells. Leather handcuffs, a kind of restraining device formerly used in immigration centers, whose use has been suspended since March 10, 2003, were abolished totally on January 28, 2003 due to the introduction of a new type of handcuffs as a substitute, which does not restrain parts of the body other than the wrists.

Note 28:

[para.156] The purpose of detention in an immigration center is to facilitate deportation procedures in accordance with the Immigration Control and Refugee Recognition Act and to prohibit residence and activity in Japan. The Immigration Control and Refugee Recognition Act stipulates that detainees are to be given as much freedom as possible unless this causes a problem for the security of the facility. In principle, detainees are housed in a group room for two or more people. However, there are some detainees who wish to be housed in single rooms due to various reasons such as differences in nationality and culture and an inability to adjust to living in a group, and these detainees are, in principle, housed in single rooms in accordance with their wishes. Even in such cases, there are no restrictions on communication among the detainees, and when a detainee requests to be housed in a group room this is also granted.

Note 29:

[para.24] The Immigration Control and Refugee Recognition Act further stipulates that, if a foreign national who is a suspect has any objections to the findings of an immigration inspector that the suspect comes under any one of the grounds for deportation, he may request a special inquiry officer for an oral hearing (paragraph 1 of Article 48); and, if the suspect does not accept the findings of the special inquiry officer that there is no error in

the findings of the immigration inspector (namely the suspect comes under any one of the grounds for deportation), he may file an objection with the Minister of Justice by submitting to a supervising immigration inspector a written statement containing the grounds for his complaint (paragraph 1 of Article 49). Accordingly this allows the filing of an objection in the procedures for deportation.

When an immigration inspector has found that a foreign national who is a suspect does not come under any one of the grounds for deportation or when a special inquiry officer finds that such findings are not supported by factual evidence, that foreign national shall be released.

When the Minister of Justice has decided that the objection filed by the foreign national is well-grounded, that foreign national shall be released.

When the Minister has decided the objection has no grounds, a written deportation order shall generally be issued; however, he may grant the foreign national special permission to stay in Japan if he finds special grounds for such grant ( paragraph 1 of Article 50).

In addition, the foreign national may file a lawsuit to seek revocation of the written deportation order pursuant to the Code of Administrative Case Procedure.

Note 30:

[para.146] The offences to which the death penalty applies as a statutory penalty are limited to 18 serious offences such as murder, robbery causing death, and rape on the scene of robbery causing death. For the 17 offences, other than inducement of foreign aggression, imprisonment with or without appointed work is provided for as an optional punishment. For all the 18 offences, mitigating circumstances such as diminished capacity and extenuations are also provided for. Application of the death penalty for individual cases is made carefully and strictly based on the standard established by a Supreme Court judgment, which states, “Under the present legal system which retains the death penalty, the death penalty may apply when criminal responsibility is extremely significant and capital punishment is considered unavoidable in terms of the balance between a crime and its punishment and of the general prevention of crimes, when considering various circumstances such as the nature and motive of the crime, the method of the crime, in particular the pertinacity and brutality of the method of murder, the seriousness of the result, in particular the number of murdered victims, the suffering of the bereaved family, social effects, the offender’s age, his criminal records, and the circumstances after the crime.” Therefore, in Japan today, the death penalty applies only to those who have committed atrocious crimes of extremely significant responsibility.

Note 31:

[para.147] The defendant against a judgment of guilty including the death penalty has the right to appeal and may file an appeal to the high courts or the Supreme Court depending on the instance. Even after the above mentioned appeal against the judgment of guilty has been exhausted, the person sentenced as guilty may request reopening of the proceedings.

Note 32:

[para.105] Under Japanese domestic laws, as mentioned above in the section of Article 4, any violence by a public official is punishable under offences such as violence and cruelty by a special public official (Article 195 of the Penal Code) or causing death or injury thereby (Article 196 of the Penal Code). The numbers of the cases convicted for the above-mentioned offences from 1999 to 2003 are shown in the table below, and the cases include obscene conduct and violence toward suspects by police officials as well as violence toward prisoners by prison officials.

During the period that this report covers, there were no cases where the court decided to send a case to trial upon a request against a disposition of non-institution of violence and cruelty by a special public official, as described in Paragraph 104.

Note 33:

[para.17]

[para.31]

[para.32]

See supra [part of note 12, 13 and 14].

Note 34:

[paras.33-54]

See supra [part of note 15].

Note 35:

[para.70] In the Mental Health Law, it is prescribed that the findings of designated psychiatrists are the conditions to isolate or restrain a patient and to hospitalize a patient for mental disorder without the person's consent (see Paragraph 92). Accordingly, the designated psychiatrists are obliged to receive training courses on human rights before and once in every five years after being designated.

Note 36:

[para.76] Interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under Japan’s jurisdiction are systematically reviewed by the relevant organizations, and revisions are made to relevant regulations as necessary.

Note 37:

[para.79] A rule on the supervision and direction at police detention cell is Article 4 of the Rules for Detaining Suspects. Directors or chief officials of police detention cells management section of prefectural police headquarters make regular inspections of police detention cells at police stations under their jurisdiction from coast to coast and provides individual guidance to officials in charge of police detention cells. In addition, the chief official of prison management and his staff members at the National Police Agency make regular inspections of police detention cells from coast to coast to ensure proper management and operation of police detention cells.

Note 39:

[para.92] Article 29 of the Mental Health Law stipulates that, in order for a person to be forcibly hospitalized, the results of examination by at least two designated psychiatrists shall concur that the person is likely to hurt himself or others because of mental disorder unless admitted to a hospital for medical care and protection. Article 36 of the Law stipulates that the judgment on the necessity of restraint or continuation of hospitalization shall be made by designated psychiatrists. Article 19-4-2 stipulates the obligations to record the results of examination used for these judgments in medical examination record.

Article 36 of the Law stipulates that the Minister of Health, Labour and Welfare shall hear the opinion of Social Security Council when he establishes the judging standards for restraints.

In addition, prefectural governments conduct on-site instructions once a year per facility in principle, and administrators of mental hospitals are to inform a patient of the matters related to a request for release when hospitalizing them (Article 29 of the Law) and regularly report to the prefectural governor the conditions of the patient (Article 38bis of the Law). The prefectural governor is to release the patient immediately when the person is deemed not likely to hurt himself or others if the hospitalization is discontinued (Article 29-4 of the Law).

Note 40:

[para.94] Law on the Medical Care and Observation for Mentally Incompetent Person Who Committed Serious Harm on Others (hereinafter "Law for Medical Observation on Mentally Incompetent Person") was enacted and promulgated in 2003. The purposes of the Law are to improve the state of disease, to prevent recurrence of similar incidents caused by the disease and to promote the patient's reintegration into society, by stipulating procedures to decide appropriate treatment for the person who did serious harm on others when mentally incompetent, and by providing continuous and appropriate medical care together with observation and instruction to assure the medical care. The Law is to be put in force on the day a Cabinet order stipulates, which is within two years after the date of promulgation.

The Law for Medical Observation on Mentally Incompetent Person stipulates that a panel consisting of a judge and a mental health judge (psychiatrist) shall agree to decide on the treatment of the person the Law is applied to, on whether to hospitalize him or to make him go to hospital (Article 6, paragraph 1 of Article 11, Article 14, Article 42, etc.)

With regard to the treatment of the person hospitalized in a designated medical institution for hospitalization according to the Law (hereinafter referred to as "hospitalized person"), the Law stipulates as follows so that his human rights is well taken into consideration:

(i) The administrator of a designated medical institution for hospitalization shall not restrict the activities that the Minister of Health, Labour and Welfare prescribes by hearing the opinions of Social Security Council such as sending and receiving a correspondence and meeting an attorney or official of administrative organ (paragraph 2 of Article 92);

(ii) The restriction on activities such as the patient's isolation that the Minister of Health, Labour and Welfare prescribes by hearing the opinions of Social Security Council shall not be conducted unless a designated psychiatrist who works at a designated medical institution for hospitalization deems it necessary (paragraph 3 of Article 92);

(iii) The Minister of Health, Labour and Welfare may set out other necessary standards for treatment of the hospitalized person, and when such standards are set out, the administrator of a designated medical institution for
hospitalization shall comply with the standards (paragraphs 1 and 2 of Article 93).

Furthermore, the Law for Medical Observation on Mentally Incompetent Person stipulates the following to assure appropriate treatment:

(i) The hospitalized person or those responsible for his custody may request the Minister of Health, Labour and Welfare to give an order to the administrator of a designated medical institution for hospitalization to take necessary measures to improve his treatment. When receiving such request, the Minister shall ask the Social Security Council to review the request, and based on the result of the review, the Minister shall, when he deems necessary, give an order to the administrator of a designated medical institution for hospitalization to take necessary measures to improve the treatment (Article 95, paragraphs 1 and 5 of Article 96);

(ii) The Minister of Health, Labour and Welfare may, when he deems necessary, request the administrator of a designated medical institution for hospitalization to report on the treatment of the hospitalized person , and when he deems that the treatment does not satisfy the standards he set out, may make an order to take necessary measures to improve the treatment.

Note 41:

[para.98] In Japan, the competent authorities who conduct an investigation when there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed are those who have investigative authority based on the Code of Criminal Procedure including public prosecutors, public prosecutors' assistant officers and judicial police officials (in addition to police officials, wardens of prisons and of branch prisons, other designated prison officials, Coast Guard officers, police affairs officers and assistant police affairs officers of the SDF). The human rights organs of the Ministry of Justice carry out non-compulsory investigation with the cooperation of the people concerned. Furthermore, with regard to administrative organs authorized to detain a certain person in accordance with laws and regulations, the officials with the power of authorization investigate a case upon a petition or ex officio and impose a disciplinary sanction when a violation is found as described in Paragraph 112 below.

Note 42:

[para.8] Responsibilities and duties of the police are to protect the life, body and property of an individual, and take charge of the prevention, suppression and investigation of a crime, as well as the apprehension of a suspect, traffic control and other affairs concerning the maintenance of public safety and order. A police official as a judicial police official, when deeming a crime has been committed, is to investigate the criminal and evidence thereof pursuant to paragraph 2 of Article 189 of the Code of Criminal Procedure (refer to paragraph 39), which also applies to the offences referred to in Article 4 of the Convention. The police are also in charge of matters concerning international assistance in investigation.

Note 43:

[para.82] Under these supervisory systems, senior officials of the Ministry of Justice and the regional correction headquarters inspect the facilities under their respective jurisdictions on a regular basis, give appropriate guidance for the overall operation of the facilities, recommend necessary correctional measures, report the results of their inspections to the Minister of Justice or the Director-General of the Correction Bureau of the

Ministry of Justice, and monitor subsequent improvements. In particular, focused investigations are conducted for matters that may seriously affect the mind and body of inmates, such as the use of disciplinary punishments, restraining devices and solitary confinement, nutrition, medical and hygiene conditions, as well as matters that are related to instructions and training for prison officials. The results of such focused investigations are examined from a comprehensive and systematic viewpoint at the Correction Bureau of the Ministry of Justice and regional correction headquarters, and necessary directions are given to the correctional institutions under their respective jurisdictions.

With regards to the supervisory systems, recommendations were made at the Correctional Administration Reform Council (consisting of private experts) held under the direction of the Minister of Justice in 2003 attaching importance to enhancing the supervisory function of the Correction Bureau and regional correction headquarters in order to ensure the transparency of prison administration. In particular, expansion of on-site inspections and publication of the results are sought in order to enhance the function of internal inspections.

Note 46:

[para.68] Major rules or instructions for the prohibition of torture in the immigration centers include Articles 3 and 4 of the Duties and Instructions for Immigration Control Officers and the Regulations for Treatment of Detainees.

[para.86] Based on paragraph 6 of Article 61-7 of the Immigration Control and Refugee Recognition Act, the Regulations for Treatment of Detainees were formulated as the basic law for the treatment of detainees for the purpose of stipulating necessary matters to provide appropriate treatment while respecting the human rights of the detainees. Article 2-2 of the Regulations stipulates that appropriate treatment shall be expected of the directors of the immigration centers by taking measures such as hearing the opinions of the detainees concerning their treatment and patrolling the immigration centers. Paragraph 1 of Article 41-2 of the Regulations stipulates that the detainee can file a complaint with the director when he has a complaint about the treatment administered to him by immigration control officers. Paragraph 1 of Article 41-3 of the Regulations stipulates that when the detainee is not satisfied with the judgment of the director on the filed complaint, he may file a complaint with the Minister of Justice. Furthermore, paragraph 1 of Article 4 of the Duties and Instructions for Immigration Control Officers stipulates that the immigration control officer shall always be calm, polite, and orderly, shall keep a calm attitude, make correct decisions and be patient when executing duties, shall refrain from rude or humiliating language or such attitude toward any person, and shall strive for appropriate treatment of detainees.

[para.88] When there is suspicion that an official of the immigration center has conducted an illegal or wrongful act against a detainee which may fall under torture, a fact-finding investigation will be carried out. When it is found that such act took place, severe sanctions will be imposed on the official concerned such as referring the matter to the authorities depending on the contents of the act. The causes and problems of the individual incident will be analyzed, and the results will be immediately notified to the detention facilities and immigration centers all over the country, in order to prevent the recurrence of similar incidents.

[para.117] In addition, any detainee of an immigration center who claims that he has been tortured may file a petition with an investigative organ by using the above-mentioned criminal complaint procedure, ask for prompt and fair examination, and file a civil or administrative lawsuit. In addition, when a detainee has complaints about the treatment in the center, the director of the center who is not an immigration control officer (Note: Only the immigration control officer is authorized to detain persons who are subject to the execution of written detention orders or deportation orders - Article 61-3-2 of the Immigration Control and Refugee Recognition Act) is to hear the opinions of the detainee concerning the treatment, and to examine the actual facts of the treatment and ensure appropriate treatment by taking measures such as inspection of the site of treatment in the immigration center (Article 2-2 of the Regulations for Treatment of Detainees). The method of filing a complaint is either in writing addressed to the director, which may be filed anonymously, or orally in the meeting with the director. The filing of opinions or complaints shall not be grounds for unfair treatment, and notice to this effect is made widely known to the detainees by posting as such in the immigration centers. The director of the immigration center, on receiving a complaint shall, when deemed necessary, ask the detainee and the officials concerned to explain the contents of the complaint, and shall take necessary measures. In addition, when a detainee has a complaint about the treatment by an immigration control officer, such complaint may be filed with the director of the center

(paragraph 1 of Article 41-2 of the Regulations for Treatment of Detainees), and when the detainee is not satisfied with the judgment of the director on the filing of the complaint, he may file a complaint with the Minister of Justice (paragraph 1 of Article 41-3 of the Regulations).

[para.119] The number of complaints filed in 2003 was 28, the reasons of which were not only torture, but included complaints unrelated to measures taken by immigration control officers and those not covered by the system of filing complaints.

Note 47:

[para.122] As described in Paragraph 93, based the Mental Health Law, those hospitalized at a mental hospital or those responsible for their custody may request the prefectural governor to discharge them or to take necessary measures to improve their treatment, and if, the Psychiatric Review Board consisting of designated psychiatrists and academic experts deems that hospitalization is not necessary or that the treatment is not appropriate, the prefectural governor is to discharge them or order to take necessary measures to improve their treatment. With regard to compulsory hospitalization, a petition for review based on the Administrative Appeal Law and a lawsuit based on the Code of Administrative Case Procedure may be filed against the Minister of Health, Labour and Welfare.

Note 48:

[para.128] When a victim is a foreign national, the provisions concerning the right to claim damages under the State Redress Law apply only if there is the guarantee of reciprocity (Article 6 of the State Redress Law). The provisions concerning the right to claim damages under the Civil Code apply equally to foreign and Japanese nationals.

Note 49:

[para.133] It is ensured that any statement which is found to have been made as a result of torture shall not be used as evidence in any proceedings, under paragraph 2 of Article 38 of the Constitution which stipulates, “Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence”, as well as the Code of Criminal Procedure as described below.

[para.134] In criminal proceedings, confessions made under compulsion, torture or threat, or after prolonged arrest or detention, or which are suspected of not having been made voluntarily shall not be admitted in evidence (paragraph 1 of Article 319 of the Code of Criminal Procedure). Public prosecutors are to prove that the confession was made voluntarily, and courts shall not admit the confession as evidence unless such proof is made. In addition, the defendant will not be convicted if the confession is the only proof against him (paragraph 2 of Article 319 of the Code of Criminal Procedure). Such confession includes any admission of the defendant which acknowledges himself to be guilty of the offence charged (paragraph 3 of Article 319 of the Code of Criminal Procedure). Even when a document or statement is admissible as evidence in accordance with other provisions of the Code of Criminal Procedure, the court shall not admit it as evidence, unless the court believes after investigation that the document or statement has been made voluntarily (Article 325 of the Code of Criminal Procedure). Any document or statement which public prosecutors and defendants have consented to for use as evidence may be admitted only if the court finds it proper after considering the circumstances under which the document or statement was made (paragraph 1 of Article 326 of the Code of Criminal Procedure).

In addition, it is understood and is the practice that public prosecutors have the responsibility of checking that judicial police officials do not conduct inappropriate investigations and of preventing such investigations from occurring.

[End of Appendix 1]