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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Japan under article 29 (1) of the Convention

Addendum

Replies of Japan to the list of issues*

[Date received: 24 September 2018]

* The present document is being issued without formal editing.

List of Abbreviations

EU	European Union
MOFA	Ministry of Foreign Affairs of Japan
ROK	Republic of Korea
NPA	National Police Agency
MHLW	Ministry of Health, Labour and Welfare
ICC	International Criminal Court
SDF	Self-Defense Force
NPA	National Personnel Authority
GoJ	Government of Japan
NGO	Non-governmental organizations
MOD	Ministry of Defense
MOJ	Ministry of Justice

Question 1

1. GoJ understands the importance of various activities by civil society. In formulating the government report under the Convention on Enforced Disappearance, it secured the engagement of civil society in this process from this perspective by holding meetings to exchange opinions with the general public, NGOs, and other stakeholders and soliciting opinions concerning the report on government websites.

2. GoJ intends to continue to give weight to the dialogue with civil society.

Question 2

3. Regarding the issues that require consideration such as whether or not there are problems in relation to the Japanese judicial system and legislative policy and the implementation framework for introducing an individual communications procedure, GoJ has held 19 sessions to date of an inter-ministerial-and-agency study group on the individual communication system in various treaties and conducted surveys on pre-introduction preparations for individual communications procedures in other countries and the actual state of their operation.

4. GoJ will continue to consider this matter seriously going forward, taking into consideration the opinions submitted from all quarters.

Question 3

5. GoJ is considering a human rights remedy system while taking into consideration the state of discussions to date.

Question 4

6. It is difficult to answer in general terms whether or not it is possible for Japanese courts and administrative authorities to directly apply the provisions of the Convention since it is a matter to be determined on an individual and specific basis. GoJ is not aware of any cases where the Convention was directly applied.

Question 5

7. No criminal conduct with the involvement of GoJ that comprises all three constitutive elements of an enforced disappearance as defined in Article 2 of the Convention has been committed under Japanese control. Regarding the abductions issue by North Korea, which is one form of enforced disappearance – albeit criminal conduct by a non-party to the Convention –, the number of victims of abduction by North Korea identified by GoJ is given in Attachment 1.

8. Since the Convention on Enforced Disappearance does not apply retroactively to any issues that occurred prior to its entry into force (2010), GoJ considers that it is not appropriate to take up the comfort women issue in the examination of the Government Report regarding the state of implementation of the Convention.

9. Having said that, no “complaint” pursuant to Article 12 of the Convention, including the comfort women issue, has been raised to date against GoJ.

Question 6

10. As described in paragraphs 14 and 15 of the Government Report. There is no provision in the Constitution of Japan on a state of emergency in which constitutional human rights may be restricted by reason of a public state of emergency beyond the limit allowable for the public welfare. Articles 97 and 98 of the Constitution do guarantee the inviolability of the fundamental human rights.

11. GoJ wishes to refrain from commenting on the ongoing discussions between the political parties in Japan on amending the Constitution.

Question 7

12. As explained in paragraphs 17 and 20 of the Government Report, Japanese law treats acts of enforced disappearance as crimes whether or not they receive the permission, support, or tacit approval of the state. Newly defining enforced disappearance that comprises all three constitutive elements of the crime in line with Article 2 of the Convention as an "autonomous crime" is not being considered. The related provisions of Japanese laws are listed in Attachment 1 of the Government Report.

Question 8

13. "Refusal to acknowledge the deprivation of liberty" or "concealment of the fate or whereabouts of the disappeared person" are punished as harboring of criminals (Article 103, Penal Code), suppression of evidence (Article 104, Penal Code), etc. among others.

14. Acts of enforced disappearance are stipulated and punished as explained in the answer to Q7. Attachment 2 gives the minimum and maximum statutory penalties for each crime.

15. Regarding the reduction or aggravation of penalties, Japanese courts may pronounce the penalty taking into consideration circumstances prescribed by Article 7-2(a) of the Convention.

16. Article 42(1) of the Penal Code stipulates that the "punishment of a person who committed a crime and self-denounced before being identified as a suspect by an investigative authority may be reduced", Article 66 stipulates that the "Punishment may be reduced in light of the extenuating circumstances of a crime" and the main text of Article 43 stipulates that the "punishment of a person who commences a crime without completing it may be reduced."

17. The proviso of Article 43 of the Penal Code stipulates that "voluntary abandonment of commission of the crime, shall lead to the punishment being reduced or the offender being exculpated."

18. Moreover, Article 228-2 of the Penal Code and Article 5 of the Act on Punishment of Organized Crimes and Control of Crime Proceeds stipulates that the punishment shall be reduced when the person kidnapping for ransom (Article 225-2), delivering, receiving, etc. a person kidnapped by force or enticement, for the purpose of aiding another who has committed the crime of kidnapping for ransom (Article 227(2) and (4), Penal Code) or organized kidnapping by force, etc. (Article 3(1) (x), Act on Punishment of Organized Crimes and Control of Crime Proceeds) releases the kidnapped person in a safe location before being prosecuted.

19. Regarding the aggravation of penalties, when the disappeared person is injured or killed, Article 221 (Unlawful Capture or Confinement Causing Death or Injury) of the Penal Code extends the penalties under Article 220 (Unlawful Capture and Confinement) and Article 196 (Abuse of Authority Causing Death or Injury by Special Public Officers) extends the penalties under Article 194 (Abuse of Authority by Special Public Officers).

Question 9

20. As per our answer to Q7, the police do not possess statistics restricted to acts defined by Article 2 of the Convention.

21. Kidnaping by force or enticement and buying or selling of human beings are the main crimes in the Penal Code concerning enforced disappearance. In 2017, the police recognized 239 such cases, of which 155 were notified by victims and related persons.

22. Attachment 3 gives the total number of suspect's cases concluded (number of suspects; including acts defined by Article 2 of the Convention that were carried out by

persons or groups of persons acting without the authorization, support or acquiescence of the State) and the number of persons against whom public prosecutors or judicial police officers filed complaints as the start of investigations (meaning the notification of the criminal fact seeking punishment of the criminal and excluding notification of damage unaccompanied by the expression of the intent to seek punishment).

Question 10

23. Japan's substantive criminal law including the Penal Code doesn't have the category "crime against humanity." "Crime against humanity" is not stipulated as a distinct crime. (See answers to Q7 and 8.)

24. Sentences in criminal trials are generally determined according to the individual cases in consideration of the gravity and circumstances of the crime and other circumstances. Since widespread and systematic practice of enforced disappearance is malicious for the gravity and circumstances of the abovementioned crime and other circumstances, this will be considered disadvantageously in sentencing.

Question 11

25. See Attachment 4 for Articles 60 through 62 of the Penal Code.

26. A "person who commits an enforced disappearance" shall be punishable as the principal, and the "person who orders, solicits or induces the commission of, is an accomplice to or participates in an enforced disappearance" shall be punishable as co-principal (Article 60, Penal Code), inducement (Article 61, same), or accessoryship (Article 62, same).

27. Regarding the responsibility of a superior in Article 6-1(b) of the Convention, the superior shall be punishable by the abovementioned provisions.

28. National public servants in regular service who refuse to obey unlawful orders will not be subject to disciplinary measures since they have an obligation to comply with laws and regulations according to Article 98, paragraph 1 of the National Public Service Act.

29. However if a national public employee in regular service is subjected to a disciplinary action, he/she may enter an appeal against the National Personnel Authority. On receipt of the appeal, the National Personnel Authority shall investigate the case and approve, revise, or rescind the disposition based on the results of its investigation. If the National Personnel Authority revises or rescinds the disposition, the National Personnel Authority shall instruct the person who made the disposition to take the measure to pay the salary lost by such disposition or otherwise take measures necessary to implement the judgment (Articles 90 through 92 of the National Public Service Act).

30. SDF personnel are under the "obligation to comply with laws and regulations" pursuant to the provision of Article 56 of the Self-Defense Forces Act as well as the "obligation to observe the orders of their superiors" pursuant to the provision of Article 57 of said Act.

31. At the same time, an order of a superior is deemed void when it has a grave and clear defect. Thus, the recipient of the order is not obliged to comply with the unlawful order.

32. Thus, when an order is unlawful and does not meet the requirements for an order, the person receiving the order will not be subject to a disciplinary measure for violating the "obligation to observe the orders of their superiors" pursuant to the provision of Article 57 of said Act even if the recipient does not observe the unlawful order.

33. SDF personnel who are dissatisfied with disciplinary measures they receive may appeal to the Minister of Defense pursuant to the provision of Article 49 of said Act.

Question 12

Statute of limitations concerning enforced disappearance

34. Article 250 of the Code of Criminal Procedure prescribes the statute of limitations. Attachment 5 gives the periods of the statute of limitations for the crimes that may be applicable to enforced disappearance (crimes listed in the answer to Q7).

35. Article 254 of the Code of Criminal Procedure (see Attachment 6) has provisions for the starting point and suspension of the statute of limitations in addition to paragraph 27 of the Government Report.

36. Based on the above, we believe that the period for bringing charges (statute of limitations) is "proportionate to the extreme seriousness of the crime".

Statute of limitations applied to criminal, civil or administrative actions brought by victims of enforced disappearance seeking the right to an effective remedy

37. Regarding the statute of limitations for criminal actions, a victim has the right (right to complaint) to notify the facts of the crime to public prosecutors or judicial police personnel and seek punishment of the offender (Article 230, Code of Criminal Procedure). There are no restrictions to exercising such right during the period of the statute of limitations described above for crimes of "enforced disappearance" except where charges may not be brought for kidnapping of a minor (Article 224, Penal Code), which is an offense only prosecutable upon a complaint (Article 229, same), and the delivery, etc. of such person who has been kidnapped by force or enticement for the purpose of aiding another who has committed the crime of kidnapping or minors (Article 227(1), same) after the lapse of six months from the day on which the complainant knew the offenders (Article 235, Code of Criminal Procedure).

38. Regarding the statute of limitations for civil actions, the limitation for victims of enforced disappearance for exercising the right to seek damages for torts is explained in paragraph 28 of the Government Report. Moreover, taking into consideration the necessity of the protection of the right, the Act partially amending the Civil Code was enacted in May 2017 to prolong the period of prescription stipulating that the right to seek damages due to torts caused by infringement of life or body will expire due to the statute of limitations if it is not exercised within five years after becoming aware of the damage or the perpetrator, or twenty years after the right can be exercised (going into force in April 2020).

39. Regarding the statute of limitations for filing an administrative actions, litigation seeking the revocation of an original administrative disposition or any other act constituting the exercise of public authority by an administrative agency (hereinafter referred to as "original administrative disposition") may not in principle be filed when six months lapse after the day on which the person who seeks revocation became aware of the original administrative disposition was made or one year after the day of the original administrative disposition, but this shall not apply when there is just cause (Article 14(1)-(2), Administrative Case Litigation Act). Moreover, there is no statute of limitations on an action seeking the declaration of existence/non-existence or validity/nullity of the original administrative disposition (action for the declaration of nullity, etc.) (See Article 38(1), same).

Question 13

40. As stated in paragraph 29 of the Government Report, concerning Article 9-1(b) of the Convention, the Penal Code is applied to Japanese nationals who commit the crimes outside the territory of Japan in Articles 220, 221, and 224 through 228 of the Code pursuant to Article 3 of the Code (Attachment 7). The Code is applied to public employees of Japan who commit the crimes in Article 193, etc. of the Code outside the territory of Japan pursuant to Article 4 of the Code. Moreover, the Code applies to anyone who commits outside the territory of Japan those crimes under the Code (Article 77 through 264) which are governed by a treaty even if committed outside the territory of Japan. And it is our understanding that Article 9(2) of the Convention prescribes the obligation on State

parties to establish jurisdiction over persons committing enforced disappearance crimes. Therefore the Code is applied to all persons committing the crime of enforced disappearance pursuant to Article 4-2 of the Code.

41. Concerning Article 9-1(c) of the Convention, the Code applies to non-Japanese nationals committing the crimes in Articles 220, 221, 224 through 228, etc. Article 3-2 of the Penal Code against Japanese nationals outside the territory of Japan pursuant to Article 3-2 of the Code.

42. Related domestic legislation concerning Article 9-2 of the Convention are Articles 3, 4, and 4-2 of the Penal Code.

43. The provisions for evidence prescribed by the Code of Criminal Procedure applies to all cases which Japanese courts have jurisdiction over regardless of the nationality of the defendant for Article 9-2 of the Convention as in the case of Article 9-1.

44. Policing troops, who are juridical police officers pursuant to the provisions of the Code of Criminal Procedure based on the provision of Article 96, paragraph 1 of the Self-Defense Forces Act (Attachment 8), are deployed as persons to conduct investigations and arrests for crimes, etc. that SDF personnel commit. Although they do not have the authority to bring charges pursuant to the provision of Article 247 of the Code of Criminal Procedure (Attachment 9), cases will be sent to and prosecuted by public prosecutors through normal criminal procedures after investigations and arrests by the SDF policing troops or police officers. The SDF does not have jurisdiction after a case is sent to public prosecutors by the SDF policing troops.

Question 14(a)

45. A public prosecutor, public prosecutor's assistant officer or judicial police personnel may ask any suspect to appear in their offices and interrogate him/her if it is necessary for the investigation of a crime (main text of Article 198(1), the Code of Criminal Procedure). When there exists sufficient probable cause to suspect that an offense has been committed by a suspect, a public prosecutor, public prosecutor's assistant officer or judicial police official may arrest him/her upon an arrest warrant issued in advance by a judge (main text of Article 199(1), the Code of Criminal Procedure).

46. It is prescribed that when a suspect is a fugitive, a public prosecutor of the Tokyo High Public Prosecutors Office shall detain the fugitive under a detention permit issued in advance by a judge of the Tokyo High Court except when the fugitive has a fixed address and poses no risk fleeing (Article 5(1), the Act of Extradition).

47. When Japan receives a request for provisional detention of a fugitive, the fugitive may be detained provisionally unless (i) there is no notification either that a warrant has been issued for the arrest of the person concerned or that a sentence has been imposed on that person or (ii) there is no assurance that a request for the extradition of the person concerned will be made (when the request for the provisional detention of an offender is not based on an extradition treaty, only if reciprocity is assured). (Articles 23 and 24, the Act of Extradition).

Question 14(b)

48. Article 189(2) of the Code of Criminal Procedure stipulates that a "judicial police personnel shall, when he/she deems that an offense has been committed, investigate the offender and evidence thereof." Article 191 stipulates that a "public prosecutor may, if he/she deems it necessary, investigate an offense him/herself (paragraph 1). A public prosecutor's assistant officer shall investigate an offense under the orders of a public prosecutor (paragraph 2)."

49. The Code of Criminal Procedure allows compulsory investigation consisting of (i) suspect's arrest, (ii) suspect's detention, (iii) seizure, search, inspection, etc., (iv) witness examination request, etc. and voluntary investigation consisting of (v) demand of appearance, (vi) interrogation, (vii) retention, (viii) on-the-spot investigation, (ix) request

for an expert examination, (x) request for an interpretation, translation, (xi) inquiry to public offices or, public or private organizations regarding necessary matters, etc.

50. When Japan extradites a fugitive to a requesting country, the Act of Extradition requires probable cause to suspect that a fugitive committed the act constituting the requested offense for extraditing the fugitive except in the case of the fugitive who was convicted in the requesting country (Article 2(vi) same). Upon receiving an extradition request, the Minister of Justice examines the content of the request and conducts an inquiry as necessary (Article 4(3), same). Subsequently, the Tokyo High Court examines whether there is probable cause to suspect that the fugitive committed a crime unless a guilty verdict is final in the requesting country, and the Court may examine witnesses, etc. if necessary (Article 9(4), same).

Question 14(c)

51. Based on Article 10(2) of the Convention, the related information is transmitted from the relevant authorities to the MOFA, which notifies the related country through diplomatic channels.

Question 15

52. Upon receiving a missing-person notice, the police respond swiftly and appropriately based on the Rules on Activities to Locate Missing Person (Rules of the National Public Safety Commission No.13 of 2009) by such means as conducting the necessary investigation taking into consideration the possibility that the cause for going missing is criminal.

53. Since activities to locate missing persons are aimed at achieving the mission of the police to protect lives and bodies, a chief of police station may take measures under the Rules on Activities to Locate Missing Person irrespective of his/her relationship to the disappeared person when it is deemed particularly necessary based on Article 30 of said Rules.

54. The police provide education/training for officers engaged in investigating cases of kidnapping by force or enticement, capture or confinement, etc. to acquire expert knowledge and techniques to conduct investigations appropriately.

55. Not having a budget and personnel dedicated to enforced disappearance cases, the police respond regardless of department or job category when such cases occur. The authorized number of personnel for prefectural police in FY2018 is 288,800. The total FY2018 budget for expenses necessary to establish the foundations for policing activities including prefectural police expenses subsidies, etc. provided by the NPA is 110,979,992,000 yen.

56. See Attachment 10 for related provisions.

57. For entering the location of a disappeared person as part of criminal investigation, the Code of Criminal Procedure has Articles 218, 102 (search, inspection, etc.), 197(2) (investigation inquiry), and 220 (search, inspection, etc. without a warrant). There are no restrictions on access to the place of detention when it is conducted based on these provisions.

58. Accessing documents and other related information in an investigation is possible, as public offices or public or private organizations may be asked to make a report on necessary matters relating to the investigation under Article 197(2) of the Code of Criminal Procedure, and Article 218 of the same prescribes searches, etc. by warrant. Articles retained or possessed by a public officer or ex-public officer may not be seized without the consent of his/her supervisory public agency, when he/she or the public agency asserts that the articles pertain to official confidential information; provided, however, that the supervisory public agency may not refuse consent except where the seizure may harm important national interests (Article 103 of said Act).

Question 16

59. In investigation procedures, the investigation authorities collect evidence by voluntary investigation in addition to compulsory investigation allowed by the Code of Criminal Procedure, as explained in our answer to Q14. The duration of being under custody is strictly limited, and swift investigation is required. As for dispositions in investigation procedures, compulsory dispositions are subject to prior examination by judicial courts, and illegally collected evidence is excluded from the evidence at the trials. The framework for supervision within the investigation authorities and ex post facto relief systems such as the state redress system under civil law are set up.

60. Concerning the protection of complainants, etc., the crimes of intimidation (Article 222, Penal Code), compulsion (Article 223, same), and others may be applicable to intimidation, etc. of persons making complaints or accusations. A person who, in relation to his/her own criminal case or the criminal case of another person, forcibly demands without justifiable grounds a meeting with any person or intimidates any person deemed to have knowledge necessary for investigation or trial of such case, or a relative of such person, may be punished for the crime of intimidation of witnesses (Article 105-2, same).

61. A person who commits an act of assault or intimidation against a public employee in the performance of public duty is punishable for obstructing performance of public duty (Article 95(1), same). A person who commits an act of assault or intimidation against a public officer in order to cause the official to perform or not to perform the act as an official or in order to cause the official to resign is punishable for compelling performance (Article 95(2), same).

62. In addition, a person who commits injury or other criminal act against a complainant, witness, or other person engaged in an investigation is punishable under the Penal Code and other related laws and regulations.

63. Since activities to locate missing persons are aimed at achieving the mission of the police to protect lives and bodies, a chief of police station may take measures under the Rules on Activities to Locate Missing Persons pursuant to Article 30 of said Rules when it is deemed particularly necessary whether or not there is a report about a missing person.

64. Regarding the police, when there is likely to be doubts about an investigation because there is a special relationship between a police officer about to participate in the investigation and the victim or other person related to the case such as relatives, the officer must recuse him/herself by permission from his/her superior based on Article 14 of the Norms for Criminal Investigation (Rules of the National Public Safety Commission No.2 of 1957).

65. Regarding MOD, when there is likely to be doubts about an investigation because there is a special relationship between a police officer, etc. about to participate in the investigation and the victim or other person related to the case such as relatives, the officer must recuse him/herself by permission from the head of the policing unit based on Article 18 of the Self-Defense Force Service Rules for Criminal Investigation (Official Directive of the Defense Agency No.72 of 1959).

Question 17

66. Regarding cases of enforced disappearance that have been prosecuted, we are unaware of any that falls under enforced disappearance as stipulated in Article 2 of the Convention, as per our answers to Q5 and Q7.

Question 18

67. Japan is a State party to the Rome Statute of the ICC and the United Nations Convention against Transnational Organized Crime. Japan also has concluded treaties or agreements for mutual legal assistance in criminal matters with the United States, the ROK, China, Hong Kong, the EU, and Russia as described in paragraph 46 of the Government Report.

68. Japan has not made a request for mutual legal assistance concerning enforced disappearance to another country to address enforced disappearance since becoming a party to the Convention nor has it received such a request from another country.

69. The Act on International Assistance in Investigation and Other Related Matters and the Act on Assistance Based on Commission by Foreign Courts are the domestic laws concerning mutual legal assistance requests received from other countries. Limitations and conditions are shown in Attachment 11.

Question 19(a)

70. An act constituting the requested offense is an extraditable offence under the Act of Extradition if it constitutes a crime in Japan (dual criminality) (Article 2(iv), the Act). Since acts of enforced disappearance are considered as crimes in Japan, they are included in extraditable offences under the Act. Whether a requirement of dual criminality is satisfied or not is judged on the basis of facts regardless of a component of the constituent elements of the offense. This dual criminality requirement could be eased by treaty.

71. Japan has bilateral extradition treaties only with the United States and ROK. The crime of enforced disappearance prescribed by the Convention may constitute an extraditable crime under these extradition treaties. However, since the two countries are not State parties to the Convention, the obligations pursuant to Article 13-2 of the Convention are not imposed.

72. Regarding the use of the Convention in a case of enforced disappearance, it is possible to extradite a fugitive vis-à-vis a country that does not have an extradition treaty with Japan and requires the existence of a treaty for extradition by using the Convention as grounds for extradition if that country deems the Convention to be such a treaty. Japan has never used the Convention as grounds for extradition.

73. There are no examples of permitting or refusing extradition in a case of enforced disappearance.

Question 19(b)

Expulsion and return

74. A foreign national deemed to have cause for deportation will be subject to a violations investigation by immigration control officers based on the Immigration Control and Refugee Recognition Act (“Immigration Control Act” hereafter). (The foreign national may be detained by a written detention order.)

75. A suspect handed over by immigration control officers shall be issued a written deportation order and deported after an examination by an immigration inspector (or in certain cases a hearing by a special inquiry officer and decision by the Minister of Justice). The Minister of Justice may grant special permission to stay in certain cases. A person being deported may not be deported to any of the countries prescribed by Article 16-1 of the Convention.

76. Although what is meant by the term “diplomatic assurances” is not exactly clear, when it can be objectively discerned that the situation in the country of origin is such that grave harm may be inflicted on life and bodily freedom and there are sufficient grounds to believe that a person is likely to be subjected to enforced disappearance due to the turn of events to date, the deportation destination will be designated after careful determination according to the provisions of the Immigration Control Act, taking into consideration the circumstances, etc. of the country of origin.

Extradition

77. Regarding extradition requests for the persons sought, when the Minister of Justice decided it is deemed inappropriate to extradite a person sought as a result of an examination of appropriateness of extradition or as a result of re-examination of it after Tokyo High

Court admits extradition, the person sought shall not be extradited. Whether or not there is a likelihood of being subjected to enforced disappearance is always taken into consideration in the determination of appropriateness by the Minister of Justice.

78. There are no cases where Japan has accepted "diplomatic assurances". Although there are no domestic legal provisions prohibiting acceptance, when there are sufficient grounds to believe that a person is likely to be subjected to enforced disappearance, extremely cautious considerations will be required in extradition even if there are "diplomatic assurances", and it will be decided not to extradite if the concern is not eliminated.

Question 19(c)

79. There are no particular obstacles to extradition concerning enforced disappearance crimes in Japan. Therefore there are no plans to amend domestic legislation, treaties or agreements.

80. When considering whether a crime committed with a political purpose is a "political offence," which is a reason for refusal under the Act of Extradition, if it is prescribed in a treaty to which Japan is a party that the crime must not be deemed a "political offence," the existence of such provision of the treaty shall be taken into consideration. Therefore, it is appropriate to determine that the enforced disappearance prescribed in the Convention does not fall under the reason for restricting extradition in Article 2(i) of the Act of Extradition. Thus, measures to ensure implementation of Article 13-1 are in place.

Question 19(d)

81. MOJ works to educate public prosecutors through lectures concerning the Convention and other related human-rights treaties in various training courses according to their years of experience.

82. In order to conduct immigration administration that takes the human rights of foreign nationals into consideration, the Immigration Bureau works to enhance human-rights awareness by conducting multiple training sessions annually concerning international law, human rights-related treaties, etc. as part of the various personnel training programs for immigration inspectors and immigration control officers. In addition to this training, the Immigration Bureau provides expertise-specific training for personnel working solely on investigation of Immigration Control Act violations, personnel engaged in the management and operation of detention facilities and the treatment of detainees, etc. (Government Report, paragraph 133).

Question 20(a)

83. Detention facilities, penal institutions, juvenile training schools, juvenile classification homes, women's guidance homes, and immigration detention centers as well as psychiatric hospitals for mental disabilities and detention partitions, etc. managed by recognition officers of internment status and prisoner of war camps for prisoners of war, etc. can be considered places where persons deprived of liberty are detained.

84. See paragraphs 57 through 59 of the Government Report for national legislation on the prohibition of secret detention.

Mental Health

85. Article 29 of the Act on Mental Health and Welfare for the Mentally Disabled stipulates that a prefectural governor may hospitalize a person with a mental disorder or intellectual disability in a mental hospital established by the State, etc. or designated mental hospital that satisfies a certain standard after receiving a report or notification from a police officer, etc., having the person examined by two designated physicians of mental health, and having the results of the examinations by the designated physicians agree that the

mental disorder or intellectual disability is likely to result in self-injury or injury to others unless the person is hospitalized (involuntary hospitalization).

86. Article 33 of said Act stipulates that a mental hospital manager may hospitalize in the hospital a person with a mental disorder or intellectual disability who has been determined as the result of examination by a designated physician of mental health to be in need of hospitalization for medical care and protection and not in a situation where voluntary hospitalization is possible if the family of the person, etc. consents (hospitalization for medical care and protection).

87. Article 43 of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity prescribed in Article 2(1) of said Act in a state of insanity, etc. and receives a decision of hospitalization by a judicial court based on Article 42 of said Act must receive in-patient medical care at a designated in-patient treatment institution specified by the Minister of Health, Labour and Welfare (hospitalization based on the Act on Medical Care and Treatment).

88. In having designated physicians of mental health conduct an examination for compulsory hospitalization pursuant to the provision of Article 27(1) of the Act on Mental Health and Welfare for the Mentally Disabled, Article 28 of said Act stipulates that when there is a person in charge of protecting the person subject to the examination, the prefectural governor must notify the day, time, and place of the examination to that person in advance.

Detention

89. When a person detained in a detention facility so demands, the fact of the detention shall be notified to the detainee's family or others in its place.

Prisoner of War

90. There are no provisions in Japanese laws and regulations concerning the treatment of prisoners of war, etc. on "prohibition... of secret detention." Article 19(3) of the Prisoner of War Treatment Act stipulates that a war camp commander taking delivery of a person in enforcement of a written internment order shall intern the person in the prisoner of war camp.

91. Article 16(3) of the Prisoner of War Treatment Act stipulates that when a recognition officer of internment status recognizes the intern status of a captive person, the captive person shall be notified of the effect. When the captive person requests a status recognition examination, the person shall be provisionally detained in the prisoner of war camp until the judgment is issued.

92. Moreover, there are the provisions explained in paragraphs 82-89 of the Government Report.

93. In Japan, a person that is taken into custody pursuant to the provisions of laws and regulations concerning the treatment of prisoners of war, etc. shall be transferred to a prisoner of war camp for internment after recognition by a recognition officer of internment status.

94. See Attachment 12 for related provisions.

Question 20(b)

95. Attachment 13 gives the main Japanese laws and regulations concerning the guarantee of the right to communicate and be visited.

Conditions and restrictions

96. Criminal procedure:

(i) Regarding the interview or the sending or receiving of documents or articles between the unsentenced detainee and counsel or prospective counsel ("defense

counsel, etc." hereafter), measures necessary to prevent the flight of the accused or the suspect, the concealment or destruction of evidence, or the sending or receiving of articles which may hinder safe custody may be prescribed under the Code of Criminal Procedure (Article 39(2)), the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees ("the Penal Detention Facilities Act" hereinafter), etc.;

(ii) A public prosecutor, etc. may, when it is necessary for investigation, designate the date, place and time of the interview by a defense counsel, etc. only prior to the institution of prosecution (Article 39(3), the Code of Criminal Procedure). The date, time, and place of a visit from the defense counsel, etc. to the accused or suspect may be restricted in light of interference with the management and operation of the penal institution, but the duration and frequency may not be restricted (Article 118, the Penal Detention Facilities Act);

(iii) An accused or suspect under detention may have interviews with persons other than the defense counsel, etc. within the scope of the laws and regulations such as the Code of Criminal Procedure (Articles 80, 81, 207(1)) and the Penal Detention Facilities Act.

97. Inmates in correctional institutions:

It may be necessary to restrict visits from outside persons and sending or receiving of letters for sentenced persons, juvenile training school inmates, and women's guidance home inmates for the maintenance of discipline and order in facilities or the appropriate implementation of interventions for their rehabilitation. There are certain restrictions to this end regarding the counterparties for and content of visits and sending or receiving of letters (Articles 110 through 114 and 126 through 133, Penal Detention Facilities Act; Articles 91 through 96 and 98 through 105, Juvenile Training Schools Act; Article 8, Act on Women's Guidance Homes).

Detainees awaiting a judicial decision may face restrictions for the purpose of maintaining discipline and order in facilities or preventing the suppression of evidence (Articles 115 through 118 and 134 through 136, Penal Detention Facilities Act).

Juvenile classification home inmates may face restrictions for the purpose of maintaining discipline and order in facilities, preventing the suppression of evidence, supporting for sound development, or appropriately conducting classification (Articles 80 through 104, Juvenile Classification Home Act).

98. Deportation procedures (treatment of detainees):

The director of an immigration detention center or regional immigration bureau ("director of the immigration detention facilities, etc." hereafter) shall allow detainees based on the Immigration Control Act visits from consular officers, his/her counsel or lawyer as defense counsel and, when there is no hindrance to safety or hygiene, visits from other persons (Articles 33 and 34, Rules for the Treatment of Detainees).

Claims against restrictions, etc.

99. Criminal procedure:

The courts may be petitioned to rescind or alter interview prohibitions and designations (Articles 429(1) and 430, the Code of Criminal Procedure).

100. Inmates in correctional facilities:

Complaints against restrictions concerning visits and letters for penal institution inmates, juvenile training school inmates, and juvenile classification home inmates ("restrictions on visits, etc." hereafter) may be filed with the Minister of Justice, inspectors conducting on-the-spot inspections, heads of penal detention institutions/juvenile training schools/juvenile classification homes. The Minister of Justice, inspector, or head of the facility receiving the complaint must handle it in

good faith and notify the results to the complainant (Articles 166 through 168, Penal Detention Facilities Act; Articles 120 through 130, Juvenile Training Schools Act; Articles 109 through 119, Juvenile Classification Homes Act). An inmate in a penal institution may also claim the superintendent of the regional correction headquarters for the review of restrictions on letters and may reclaim the Minister of Justice for review in case of dissatisfaction with the determination on a claim (Articles 157 through 162, Penal Detention Facilities Act).

101. Detention procedures based on the Immigration Control Act:

A detainee based on the Immigration Control Act who is dissatisfied with restrictions on visits or other measure by an immigration control officer concerning his/her treatment may file a complaint with the director of the immigration detention center, etc., who must adjudge on the appeal and notify the results to the appellant. A detainee dissatisfied with the judgment may file an objection with the Minister of Justice (Articles 41-2 and 41-3, Rules for the Treatment of Detainees).

102. GoJ does not have the number of complaints in the abovementioned procedures regarding interviews and other exchanges with the outside (although it does have the overall number of appeals).

Guarantee to be informed of detention and the place where the person is being detained

103. The domestic laws and regulations concerning the guarantee to be informed of detention and the place where the person is being detained are given in Attachment 14.

The right to communicate with consular authorities

104. The domestic laws and regulations concerning the right to communicate with the consular authorities are given in Attachment 15.

Detention Facilities

105. The main domestic laws and regulations concerning the guarantee to communicate and receive visits at detention facilities are given in Attachment 16.

106. The Penal Detention Facilities Act stipulates that the detention service manager is to allow visits from defense counsels except for when it hinders the management and administration of the detention facility. In the unlikely case where there is dissatisfaction with the measure, there are appeal systems such as filing complaints with the chief of prefectural police headquarters or with public safety commissions based on the Police Act (Act No.162 of 1954).

107. Although we will refrain from answering to individual cases concerning actual examples, when an appeal is filed, the chief of prefectural police headquarters, etc. shall handle it in good faith, take corrective measures as necessary, and notify the results of the treatment to the appellant.

Prisoner of War

108. Regarding communication by a detainee at a prisoner of war camp with the outside, visits are permitted, as explained in paragraphs 82 through 86 of the Government Report, as well as sending and receiving letters, etc. (Articles 80 through 89 of the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations).

109. The time, place, etc. of visits from outside persons may be designated for the purpose of management and operation of the prisoner of war camp to the extent that it does not obstruct the purpose of carrying out the business of the visitor (Articles 80 through 82, Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations). Letters, etc. may be subject to injunction of their sending and receiving or deletion for the purpose of harmonious implementation of detention operations (Articles 84 and 86, same).

110. A detainee may file a complaint regarding a measure by the war camp commander or other treatment he/she receives (Articles 90 and 91, same). When a complaint is filed,

the necessary investigation will be conducted as swiftly as possible and the results will be notified to the complainant in writing within 60 days (Articles 55 through 64 of the Rules for Treatment in Prisoners of War Camp). See Attachment 17 for the related provisions in the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations.

Mental Health

111. The right of persons, including foreign nationals, who are hospitalized under the Act on Mental Health and Welfare for the Mentally Disabled or the Act on Medical Care and Treatment to visits and communication with outside persons is as described in paragraph 92 of the Government Report.

112. A person hospitalized at a mental hospital or his/her family, etc. may request for discharge or improvement of treatment while hospitalized from the prefectural governor pursuant to the provision of Article 38-4 of the Act on Mental Health and Welfare for the Mentally Disabled. Such demands shall be reviewed by a Psychiatric Review Board, a third-party organization established in prefectures pursuant to the provision of Article 12 of said Act and comprised of designated physicians of mental health, legal experts, etc. The prefectural governor must take measures against the hospital manager such as a discharge order.

Question 20(c)

113. A person who has the legal interests to seek revocation of a disposition or judgment, including a person deprived of liberty, may seek the decision of the courts through litigation on its legality under the procedures prescribed by the Administrative Case Litigation Act. In the Japanese legal system, other possible remedies for illegal detention include habeas corpus under the Habeas Corpus Act, and redress of civil damages under the State Redress Act.

114. A person deprived of liberty by unlawful detention may also demand compensation for damages from the detainer based on the provisions of the Civil Code.

115. The involuntary hospitalization prescribed in the Act on Mental Health and Welfare for the Mentally Disabled is as described in paragraph 91 of the Government Report. A prefectural governor shall notify the patient in advance in writing when conducting involuntary hospitalization. As per our answer to Q20 (b), a person hospitalized in a mental hospital may request for discharge or improvement of his/her treatment from the prefectural governor.

Question 20(d)

116. The information in the registers and records listed in paragraphs 75 through 78 of the Government Report are as given in the table in Attachment 18.

117. The provisions related to the detention facility are as given in Attachment 19.

Question 20(e)

118. The provisions related to inspection are as given in Attachment 20.

Inspection of penal institutions, juvenile training schools, juvenile classification homes and women's guidance homes

119. Penal institutions, juvenile training schools, juvenile classification homes, and women's guidance homes are inspected once or more a year by MOJ officials. Officials who conduct the inspections are designated from officials who have sufficient knowledge concerning the inspection items and also receive sufficient pre-inspection training regarding the focal issues.

Penal Institution Visiting Committees

120. Article 7 of the Penal Detention Facilities Act prescribes the establishment of penal institution visiting committees at penal institutions. The Article states that a penal institution visiting committee visits the penal institution where it is established and gives its opinions regarding its administration to the warden of the penal institution.

121. The warden of a penal institution must provide information to the Committee and cooperate as required in visits and inmate interviews (Article 9, Penal Detention Facilities Act), and is to make efforts to implement measures necessary to reflect the opinions of the Committee on the administration of the penal institution (Article 6-2, Ordinance for Penal Institutions and Treatment of Inmates).

Juvenile Training School Visiting Committees

122. Article 8 of the Juvenile Training Schools Act prescribes the establishment of juvenile training school visiting committees at juvenile training schools. The Article states that a juvenile training school visiting committee visits the juvenile training school where it is established and gives its opinions regarding its administration to the superintendent of the juvenile training school.

123. The director of a juvenile training school must provide information to the Committee and cooperate as required in visits and interviews with inmates (Article 10, Juvenile Training Schools Act), and is to make efforts to implement measures necessary to reflect the opinions of by the Committee on the administration of the penal institution (Article 7, Ordinance for Enforcement of the Juvenile Training Schools Act).

Juvenile Classification Home Visiting Committees

124. Article 7 of the Juvenile Classification Homes Act prescribes the establishment of juvenile classification homes visiting committees at juvenile classification homes. The Article states that a juvenile classification home visiting committee visits the juvenile classification home where it is established and gives its opinions regarding its administration to the director of the juvenile classification home.

125. The director of a juvenile classification home must provide information to the Committee and cooperate as required in visits and interviews with inmates (Article 9, Juvenile Classification Homes Act), and is to make efforts to implement measures necessary to reflect the opinions of by the Committee on the administration of the juvenile classification home (Article 8, Ordinance for Enforcement of the Juvenile Classification Home Act).

126. The abovementioned committees all include third parties (lawyers, doctors, local government officials, etc.). Their role and responsibility are to visit the respective facilities, visit inmates without witnesses, and give their opinions regarding their administration to the administrators from a third-party perspective to improve the operation of the respective facilities.

Immigration Detention Center Visiting Committees

127. Article 61-7-2 of the Immigration Control Act stipulates that Immigration Detention Center Visiting Committees shall be established at immigration offices provided for by Ordinance of the MOJ. The Committees, composed of third-party experts such as academic experts, legal experts, medical experts, and NGO staff. They contribute to the appropriate operation of the immigration detention centers by conducting visits to immigration detention centers, visiting detainees, etc., and giving opinions to the directors of the immigration detention centers, etc.

128. The directors of the immigration detention centers, etc. must provide information and the necessary cooperation for such visits and interviews with detainees to the Committees (Article 61-7-4, Immigration Control Act).

Detention Facilities

129. Detention facilities are inspected through on-the-spot inspections by prefectural police headquarters, inspection rounds by the NPA, inspections and interviews with detainees by Detention Facility Visiting Committees consisting of outside third parties, and observations by judges and public prosecutors.

130. On-the-spot inspections by prefectural police headquarters are conducted at each detention facility by inspectors designated by the chief of prefectural police headquarters, pursuant to the provisions of the relevant prefectural public safety commission.

131. The NPA conducts specialized education and training three times a year for prefectural police officials who conduct on-the-spot inspections.

132. On-the-spot inspections by prefectural police headquarters are conducted once a year or more at all detention facilities (1,140 facilities as of April 1, 2018) in each prefectural police headquarters jurisdiction. A detention services manager charged with matters requiring improvement at an on-the-spot inspection shall promptly rectify them and report to the chief of prefectural police headquarters.

133. The NPA may advise and supervise prefectural police regarding detention service management. Officers designated by the Commissioner General of the NPA, pursuant to provisions of the National Public Safety Commission conduct inspection rounds by the NPA at each detention facility and advises and supervises.

134. The NPA conducts training for inspection rounds officers once a year.

135. The NPA conducts inspection rounds once a year or more at all prefectures by conducting inspection tours of detention facilities in the jurisdiction of the prefectural police. Inspection rounds covered 153 facilities in FY2017. Prefectural police charged with matters requiring improvement in an inspection tour shall promptly rectify them and report the improvement measures for each detention facility to the NPA within two months.

136. Detention Facility Visiting Committees are established at prefectural police headquarters and consist of outside third parties (lawyers, doctors, local government officials, etc.). Their role and responsibility are to inspect the detention facilities, interview detainees without witnesses, and give their opinions regarding their operation to the detention service managers from a third-party perspective to improve and enhance the operation of the detention facilities.

137. Detention services managers shall take measures in response to the opinions received from Detention Facility Visiting Committees. The chief of the prefectural police headquarters shall gather information on both opinions and measures taken by detention service managers in response to those opinions, and publicize the outline thereof.

138. The Detention Facility Visiting Committees have the authority to conduct visit. They decide which detention facilities to visit and when. There are no legal restrictions on the time zone and form of visit. Interviews are conducted under the authority of the Committees. Whether or not to conduct interviews and with whom are all decided by the Committees.

139. Detention service managers are required by the Penal Detention Facilities Act to provide information on the management and operation of detention facilities to the Detention Facility Visiting Committees on a regular basis or as needed. The Detention Facility Visiting Committees may also seek cooperation from detention service managers regarding the implementation of visits to detention facilities and interviews with detainees, and the detention service managers must cooperate accordingly.

140. Detention Facility Visiting Committees had 251 appointees nationwide as of January 1, 2018. They visited 743 facilities in 2017.

141. The related provisions are as given in Attachment 21.

Mental Health

142. Collecting reports, etc. from mental hospitals and designated in-patient treatment institutions is as explained in paragraphs 130 and 131 of the Government Report.

143. Prefectures give on-the-spot guidance to mental hospitals in principle once a year per facility based on a notice. An on-the-spot guidance is accompanied by a designated physician of mental health. Article 19 of the Act on Mental Health and Welfare for the Mentally Disabled requires designated physicians for mental health to receive training prescribed by the Appended Table to said Act once every five years.

144. The Psychiatric Review Board described in the answer to Q20 (b) that reviews the treatment, discharge requests, etc. regarding inpatients must when conducting a review hear the opinions of the requester and the manager of the mental hospital where the inpatient is hospitalized. The Act on Mental Health and Welfare for the Mentally Disabled Mental Health Care also authorizes a Board to demand the examination of the inpatient subject to the Board's examination and reports from the managers, etc. of the mental hospital subject to the Board's review, and to order the submission of treatment records.

145. Psychiatric Review Boards are third-party institutions comprised of designated physicians of mental health, legal experts, etc. Their administrative work is handled by mental health and welfare centers prescribed by Article 6 (1) of the Act on Mental Health and Welfare for the Mentally Disabled.

Question 20(f)

Commitment procedures at correctional facilities

146. Official directives concerning the release of inmates, etc. state that the head of a penal institution, juvenile training school, juvenile classification home, or women's guidance home shall, when releasing an inmate, take necessary measures, including: checking the document that forms the basis for the release, such as the warrant of release, the written decision on discharge on parole from the juvenile training school, or the record of inmate status; and verifying a photograph with the actual person. The supervising authorities for release are the heads of penal institutions, juvenile training schools, juvenile classification homes, and women's guidance homes.

Deportation procedures (treatment of detainees)

147. Article 38 of the Rules for the Treatment of Detainee stipulates that the directors, etc. of the immigration detention centers, etc. must confirm the identity of the detainee at the time of release. The fact, date and time, and cause for release shall be inscribed in the list of detainees prescribed by Article 4 of the Rules. The supervising authorities for release are the directors, etc. of the immigration detention centers.

148. A detainee registry has a column for authorizing detention and release by the detention service manager. This is to make sure that detention service managers make the confirmations on release.

149. The inspection mechanisms described in the answer to Q20 (e) (on-the-spot inspections, inspection rounds, Detention Facility Visiting Committees) enable the confirmation of whether detainees are actually being released through inspections.

Mental Health

150. Psychiatric Review Boards are established in prefectures and cities designated by cabinet order based on Article 12 of the Act on Mental Health and Welfare for the Mentally Disabled. They review whether or not it is necessary for involuntarily hospitalized patients and other patients in mental hospitals to remain hospitalized or whether their treatment is appropriate. Article 38-5(3) of said Act stipulates that a Board must hear the opinions of the requester and the manager of the mental hospital where the inpatient is hospitalized. Paragraph 4 of the Article stipulates that a Board may, when it deems necessary, demand the examination of the inpatient subject to the Board's review and reports from the

managers, etc. of the mental hospital subject to the Board's review and order the submission of treatment records, etc. The prefectural governor must take measures such as a discharge order.

151. Prefectures also give on-the-spot guidance to mental hospitals based on a notice. When a patient hospitalized in a hospitalization measure prescribed by Article 29 of the Act on Mental Health and Welfare for the Mentally Disabled is found through on-the-spot guidance not to require continued hospitalization, the prefectural governor must immediately have that person released.

Question 20(g)

152. Since Article 156 of the Penal Code punishes the act by a public employee in connection with his/her official duty of making a false official document for the purpose of using it, a public officer creating in connection with his/her official duty a document concerning the deprivation of liberty with false content for the purpose of uttering it will be subject to punishment under the Article. Since Article 193 of said Code punishes the act by a public officer abusing his or her authority to hinder another from exercising such person's right, when it is such person's right to be provided with information concerning the deprivation of freedom, a public officer abusing his or her authority to hinder the provision of information concerning the deprivation of liberty will be subject to punishment under the Article.

153. The Official Directive concerning the Start of the Detention of Inmates states that when newly detaining an inmate, the warden of the penal institution shall take necessary measures to prevent erroneous detention such as the confirmation of the content of the warrant, judgment document, or other document as grounds for detention:

- Similar provisions are prescribed concerning the commitment of juvenile training school and juvenile classification home inmates by official directives concerning the commitment of inmates;
- When there is a request for information regarding an inmate, the decision on providing information is made appropriately pursuant to Article 8 (Restriction on Use and Provision) of the Act on the Protection of Personal Information Held by Administrative Organs ("Administrative Organs Held Personal Information Protection Act" hereafter).

154. The provisions explained in paragraphs 130 and 131 of the Government Report restrict the failure to record the deprivation of liberty. The Minister of Health, Labour and Welfare or the prefectural governor may demand reports, conduct onsite inspections, etc. concerning the symptoms and treatment of an inpatient of a mental hospital if he/she deems it necessary pursuant to the provision of Article 38-6 of the Act on Mental Health and Welfare for the Mentally Disabled. A person who gives a false report shall be punished under Article 55 of the Act. This is how refusing to provide information and providing inaccurate information are restricted.

Question 21

Measures to guarantee the opportunity to acquire information

155. The opportunity to acquire various information is guaranteed through the following procedures;

(a) The authorities ordering the deprivation of liberty

(i) Criminal procedure

When detaining a suspect/defendant, the judge/court shall give notice to the defense counsel or, in the case where there is no defense counsel, one person among the legal representative, curator, spouse, lineal relative, and sibling that the suspect or defendant designates (Articles 79 and 207(1), Code of Criminal Procedure).

(ii) Sentencing procedure

The court pronounces the judgment in open court (Article 342, Code of Criminal Procedure).

(iii) Referral to juvenile training school as a protective measure

The family court delivers referral to a juvenile training school as a protective measure to the custodian (Article 24, Juvenile Act; Article 35(1), Juvenile Trial Rules).

(iv) Detention procedure based on the Immigration Control Act

As explained in paragraph 97 of the Government Report. The request for disclosure pursuant to the Administrative Organs Held Personal Information Protection Act is as explained in paragraph 98 of the Government Report.

(b) Date and time of the deprivation of liberty, date and time of detention in the detention facility, location of such detention facility

(i) Criminal procedure

Same as (a) above. The name of the detaining court, place of detention, etc. are notified.

(ii) Commitment procedures for correctional facilities

The Penal Detention Facilities Act, the Juvenile Training Schools Act, and the Juvenile Classification Homes Act guarantee that a person detained in a penal institution, juvenile training school, or juvenile classification home may receive visits from and exchange letters with relatives, defense counsel, etc. All information listed in Article 18(1) of the Convention other than (g) may be obtained from the inmate.

Regarding (a) and (b), penal institutions encourage the inmate on entering the facility to notify relatives. The heads of juvenile training schools and juvenile classification homes notify the fact of detention to custodians, etc. (Article 22, Juvenile Training Schools Act; Article 25, Juvenile Classification Homes Act).

(iii) Detention procedures based on the Immigration Control Act

Same as (a) above.

(c) The authorities responsible for supervising the deprivation of liberty

(i) Criminal procedure

Same as (a) above.

(ii) Commitment procedures for correctional facilities

Same as (b) above.

(iii) Detention procedures based on the Immigration Control Act

Same as (a) above.

(d) Location of person deprived of liberty

(i) Criminal procedure

Same as (a) above. When transferring a suspect/defendant to another detention facility, the public prosecutor notifies the court and the defense counsel or his/her family of such fact and of the name of said detention facility (Article 80, Rules of Criminal Procedure; Article 35, Rules of Administration for Cases).

(ii) Commitment procedures for correctional facilities

Same as (b) above.

(iii) Detention procedures based on the Immigration Control Act

Same as (a) above.

(e) Date, time, and location of release

(i) Criminal procedure

None.

(ii) Detention procedures based on the Immigration Control Act

None.

(f) Matters concerning the state of health of those deprived of the liberty

(i) Commitment procedures for correctional facilities

Same as (b) above.

(ii) When the conditions of an inmate who is injured or ill is grave, the head of the facility shall notify a person that the inmate designates in advance or the relatives, custodian, etc. of the inmate to that effect (Article 19, Official Directive concerning the Health, Hygiene and Medical Care of Inmates; Article 56, Juvenile Training Schools Act; Article 38, Juvenile Classification Homes Act).

(iii) Detention procedures based on the Immigration Control Act

Same as (a) above.

(g) In case of death, circumstances, cause of death, and the destination of the remains

Criminal procedure, commitment procedure for correctional facilities, detention procedures based on the Immigration Control Act.

If an inmate or a detainee dies, the warden of the penal institution, detention service manager, superintendent of the juvenile training school, director of the juvenile classification home, or director of the immigration detention center shall notify the cause, date and time, etc. of death to the family of the deceased, etc. (Articles 176 and 239, of the Penal Detention Facilities Act (Attachment 22), Article 144 Juvenile Training Schools Act; Article 129, Juvenile Classification Homes Act; Article 42, Rules for the Treatment of Detainee).

156. Measures to prevent and impose sanctions on delaying or obstructing a judicial remedy to obtain such information. The following legal provisions are in force among other things, and the opportunity to seek remedies through litigation is guaranteed.

(a) When provided for in individual legislation (excluding criminal procedure)

(i) The head of an Administrative Organ finding a deficiency in the form of the disclosure request may seek its amendment. In this case, the head shall endeavor to provide information that helps the amendment. (Article 13(3), Administrative Organs Held Personal Information Protection Act);

(ii) The disclosure decision, etc. shall come within 30 days after the request (Article 19, same);

(iii) Consult the Information Disclosure and Personal Information Protection Review Board in case of application for examination (Article 42, same).

(b) Appeal under the Administrative Complaint Review Act (excluding criminal procedure)

A person dissatisfied with a disposition by an administrative agency may file a request for review (Article 2, Administrative Complaint Review Act).

(c) Actions for the judicial review of administrative dispositions under the Administrative Case Litigation Act (excluding criminal procedure)

(i) Action for the revocation of the original administrative disposition (Article 3(2), Administrative Case Litigation Act);

(ii) Action for the declaration of nullity, etc. (Article 3(4), same);

(iii) Mandamus action (Article 3(6), same);

(iv) Provisional order of mandamus (Article 37-5, same).

(d) Relief by the State Redress Act

Redress by the State or a public entity (Article 1, State Redress Act).

157. Retained personal information of the detainee:

Immigration detention centers and regional immigration bureaus

An immigration control officer may detain a foreign national at an immigration detention center or regional immigration bureau detention house pursuant to a written detention order (Article 39, Immigration Control Act) issued by a supervising immigration inspector that has reasonable grounds to believe that a foreign national falls under any of the items of Article 24 or a written deportation order (Articles 47(5), 48(9), 49(6), Immigration Control Act) issued by a supervising immigration inspector when the deportation disposition becomes final and binding. A written detention order (Appended Form 50, Ordinance for Enforcement of the Immigration Control Act) or written deportation order (Appended Form 60, same) explicitly gives the name of the supervising immigration inspector as information regarding the authority that orders the deprivation of liberty.

Immigration detention centers and regional immigration bureaus keep a list of detainees (Article 4(i), Rules for the Treatment of Detainee) and records information such as the immigration control officer, detention date, order issue date, date and time of leaving the place of detention, reason of leaving the place of detention (transfer, deportation, special permission to stay in Japan, release), date and time of provisional release. They also keep a detainee's medical record (Article 4(iii), same) and record information such as the treatment date, name of illness, and treatment results.

When a detainee dies, the director of the immigration detention center, etc. must immediately seek an autopsy by a doctor and otherwise take appropriate measures and clarify the cause of death and other necessary matters (Article 42(1), same), and must promptly notify the date and time of death, name of illness, cause of death, etc. to relatives or persons living together with the deceased, etc. (Article 42(2), same).

158. Cases where the exercise of rights is restricted:

(a) Restrictions under the Administrative Organs Held Personal Information Protection Act

The head of an administrative organ must disclose retained personal information when he/she receives a request for disclosure but shall not disclose certain information such as information likely to harm the life, health, livelihood, or property of the disclosure requester (Article 14, Administrative Organs Held Personal Information Protection Act). Retained personal information concerning a person to whom a sentence or protective measure was executed, etc. is outside the scope of disclosure (Article 45, same).

(b) Actions for the judicial review of administrative dispositions pursuant to the Administrative Case Litigation Act may be restricted by the following provisions:

- Standing to sue (Article 9, Administrative Case Litigation Act);
- Restriction on grounds for revocation (Article 10, same);
- Statute of limitations for filing an action (Article 14, same).

Mental Health

159. Article 28 of the Act on Mental Health and Welfare for the Mentally Disabled states that a prefectural governor, when having a designated physician of mental health to conduct an examination on someone who has a person charged with protecting him/her, must notify

date and time and place of the examination in advance to the person so charged pursuant to the provision of Article 27(1) of said Act.

160. As stated in paragraphs 112 and 113 of the Government Report, the liberty of communication and visits of a person committed to a mental hospital with a lawyer, etc. as his/her agent shall not be restricted, and the necessary information may be obtained from the person him/herself.

Question 22

161. The police keep DNA-type records on peculiar missing persons, DNA-type records on persons who died unnatural deaths, etc., and DNA-type records on corpses according to the Rules on Activities to Locate Missing Persons and match them against each other as required. It registers these records in the database.

162. The police strive to locate missing persons by conducting a search upon receiving a report about a missing person by comparing a copy of the receipt for the report about a missing person and unidentified remains sheets. (Articles 17 and 18, Rules on Activities to Locate Missing Persons)

163. When a missing person is located or his/her death is confirmed, the notifier is notified of the date and time of day and time, place, circumstances, etc. of the location or confirmation of death (Article 26(1), Rules on Activities to Locate Missing Persons).

Question 23

164. Correctional officers are given training concerning international norms as well as training to ensure appropriate detention. Training is conducted several times a year for approximately 1,000 officers in FY2017.

165. To add to paragraph 132 of the Government Report regarding public prosecutors, in FY2017, lectures were given to 67 newly hired public prosecutors on one occasion and a total of 69 young public prosecutors and a total of 68 mid-career public prosecutors on two occasions respectively.

166. To add to paragraph 133 of the Government Report regarding staff training program for immigration inspectors and immigration control officers, in FY2017, training lectures were given to a total of 403 newly hired officials on five occasions and a total of 168 mid-career officials on three occasions respectively.

167. Since they fulfill duties deeply connected to human rights such as criminal investigation, the police implement education aimed at the fulfillment of duties in a manner mindful of human rights for all newly hired police officers, police officers receiving promotions, etc. at police academies, etc.

168. In particular, regarding officers engaged in detention service management, the NPA gives lectures and training three times a year to prefectural police officers in charge of management, operations and guidance for detention service management. In 2017, approximately 80 officers participated in the lectures and training by the NPA. Prefectural police headquarters give lectures and training on appointment to all officers in charge of detention. In 2017, approximately 11,000 officers participated in the lectures and training by prefectural police headquarters.

169. The lectures are conducted pursuant to the provision of Articles 1 and 16(2) of the Penal Detention Facilities Act (See Attachment 23) and their contents take the related provisions of the Convention into consideration.

170. Designated physicians of mental health, who conduct examinations for involuntary hospitalization, are required to receive training implemented by registered training institutions every five years under the Act on Mental Health and Welfare for the Mentally Disabled. Since the purpose of the training is to instill the qualities necessary to give medical treatment that is fully mindful of the human rights of the patients in designated

physicians of mental health, who conduct hospitalization and certain restrictions on activities without the consent of the patients themselves, the content of the training is stipulated in the appended table of the Act as the laws and regulations and actual practice concerning the medical treatment of mentally disabled, laws and regulations concerning the human rights of the mentally disabled and, social reintegration of the mentally disabled. There were 14,944 designated physicians of mental health as of FY2017.

Question 24

171. "Victim and others" (Article 292-2, Code of Criminal Procedure; Article 2, Act on Measures Incidental to Criminal Proceedings for Protecting the Rights and Interests of Crime Victims) is interpreted to include the "disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance."

172. It is generally unnecessary for the victim to file a complaint, etc. to be treated as the victim in domestic procedures.

173. (1) (Civil redress) Articles 709 and 710 of the Civil Code, Code of Civil Procedure; and (2) (State redress) Article 1(1) of the State Redress Act are laws and regulations are applicable to redress for victims of enforced disappearance (paragraphs 142 and 149 of the Government Report).

174. In the litigation procedure for civil or state redress, a compliant is submitted to the court with jurisdiction by the plaintiff or his/her counsel, oral arguments are made at an open court, the issues and evidence as necessary are arranged, the evidence is examined (examination of documentary evidence, examination of witnesses, examination of the parties, etc.), and the litigation ends with a judgment, judicial settlement, or otherwise (Code of Civil Procedure). If the party obtaining the final and binding judgment or other title of obligation is unable to receive voluntary redress from the perpetrator as the judgment ordains, the party may resort to such means as filing with the court for mandatory execution based on the title of obligation and, for example, securing redress by seizing and auctioning the real property and movables of the perpetrator or seizing and collecting on the claims of the perpetrator (Civil Execution Act). These procedures can be taken whether or not a criminal sentence is pronounced.

175. For certain serious crimes including unlawful capture and confinement (Article 220); unlawful capture or confinement causing death or injury (Article 221); and kidnapping of minors, kidnapping for profit, kidnapping for ransom, kidnapping for transportation out of a country, buying or selling of human beings, transportation of kidnapped persons out of a country, delivery of kidnapped persons, etc. (Articles 224 through 228, same), the victim may achieve redress through criminal court by petitioning the court where the criminal case is pending for a restitution order (Act on Measures Incidental to Criminal Proceedings for Protecting the Rights and Interests of Crime Victims).

176. The laws are as given in Attachment 24.

177. The police provide information appropriately regarding the systems for criminal procedures and victims of crimes, the state of investigation, etc. to the victims and others in kidnapping, unlawful capture and confinement, and other cases for the purpose of protecting the rights and interests of the victims and others of crime.

178. When a report about a missing person is received, the measures that the police may take when the missing person is found and other contents of the police activities to locate missing persons are explained to the notifier (Article 7(2), Rules on Activities to Locate Missing Persons).

179. The police also collect information, etc. that help locate the missing person by contacting the notifier and other related persons as necessary.

180. Furthermore, when the missing person is located or his/her death is confirmed, the date and time, place, circumstances, etc. of the location or confirmation of death are notified to the notifier (Article 26(1), Rules on Activities to Locate Missing Persons).

Question 25

181. Adjudication of disappearance requires one year (Article 30(2), Civil Code) or seven years (Article 30(1), Civil Code) that it is unclear that the individual is dead or alive. This period cannot be shortened.

182. The person subjected to the adjudication of disappearance is deemed to have died upon the termination of the danger (in the case of Article 30(2), Civil Code) or seven years after it becomes unclear whether the individual is dead or alive (in the case of Article 30(1), Civil Code).

183. The absentee is deemed dead when an adjudication of disappearance is made. For example, succession will commence and, when the absentee is married, the marital relationship will be dissolved.

184. An adjudication of disappearance does not affect the investigation procedure of the absentee.

185. For establishing and participating in associations/organizations concerned with enforced disappearances, Article 21 of the Constitution guarantees the freedom of assembly and association. Associations can take various forms according to purpose, etc., such as general incorporated associations (established under the Act on General Incorporated Associations and General Incorporated Foundations), public interest incorporated associations (authorized by administrative agencies under the Act on Authorization of Public Interest Incorporated Associations and Public Interest Incorporated Foundation), and organizations engaging in specified non-profit activities (established under the Act on Promotion of Specified Non-profit Activities).

186. The legal situation of disappeared persons whose fate has not been clarified and that of their relatives, before and after a declaration of absence are as follows:

(a) When the declaration of absence in Article 30 of the Civil Code ("declaration of absence" hereafter) is not made, the obligation to pay premiums under the pension, health insurance, and long-term care insurance continues since the insured is not deemed to have died;

(b) To receive social security benefits, it is necessary to be able to confirm that the conditions for receiving them such as the survival of the beneficiary and his/her whereabouts are satisfied. Absentees whose survival, etc. are unclear do not in principle receive the benefits since the conditions for receiving them cannot be confirmed;

(c) To pay benefits to surviving families swiftly under the pension and industrial accident insurance systems, death is assumed and compensation for the surviving family is paid when survival is unclear for three months in cases such as being in a sunk ship.

187. To receive surviving family benefits under the pension system after the declaration of absence, it is necessary for the insured, etc. who satisfies certain conditions to die. When an insured, etc. receives a declaration of absence, the insured, etc. is deemed dead pursuant to the provisions of the Civil Code, and the surviving family prescribed by the National Pension Act and the Employees' Pension Insurance Act will be able to receive surviving family benefits if they satisfy the conditions.

188. The victims of abduction by North Korea identified by GoJ receive the payment of abduction victim, etc. benefits and old age benefits, etc. to promote the independence of the returned abduction victims, etc. and help reconstruct the livelihood foundations lost as the result of being abducted and to supplement the income of abduction victims, etc. in old age who became permanent residents in Japan and help secure a good and peaceful life based on the Act concerning Support for Victims, etc. of Abduction by North Korean Authorities. (Act No. 143 of 2002).

189. Under the Act concerning Support for Victims, etc. of Abduction by North Korea Authorities, etc., GoJ provides information to the families of the abductees concerning movements around the abductions issue, the efforts of the Government on the abductions

issue, etc. by holding explanatory meetings, etc. and responds at all times to consultations and requests from the families of the abductees.

Question 26

190. Kidnapping (Articles 224 through 226, Penal Code) and buying or selling of human beings (Article 226-2, same) of the Penal Code apply to acts covered by Article 25(a) of the Convention depending on the form, purpose, etc. of the act. The maximum and minimum sentences are life imprisonment with work (Article 225-2, same) and three months' imprisonment (Articles 224, 226-2(1) and (2)) respectively. See answers to Q8 for statutory penalties and Q17 regarding statistical data.

191. Regarding Article 25(b) of the Convention, counterfeiting of official documents (Article 155, Penal Code), false entries in the original of notarized deeds (Article 157, same), etc. are applicable to counterfeiting documents certifying the origins of a child. Damaging of documents for government use (Article 258, same) may be applied to an act that hides or disposes of a public document certifying true matters regarding origin. See Attachment 25 for statutory penalties.

192. There are no statistical data on forgery of documents proving origins of a child.

193. As for "the procedures in place to review and, if necessary, annul the adoption of children that originated in an act of enforced disappearance," an action seeing invalidation or revocation of the adoption would be filed with a family court (Article 2(iii) and 4, Personal Status Litigation Act).

194. As for "the procedures in place... to guarantee the right of disappeared children to have their true identity re-established," the parent-child relationship between the child and its natural parents is not terminated by adoption in a normal adoption.

195. There is no time limit for initiating an action for invalidation of an adoption.

196. Upon receiving a report about a missing person, the police register the name, address, etc. of the missing person in the missing person file and make missing-person inquiries if deemed necessary to find the missing person to help prevent crimes, accidents, etc. regarding harm to the missing person by swiftly finding and protecting the missing person (Article 13, Rules on Activities to Locate Missing Persons).

197. The police strive to discover missing persons by conducting a search upon receiving a report about a missing person by comparing a copy of the receipt for the report about a missing person and unidentified remains sheets (Article 17 and 18, Rules on Activities to Locate Missing Persons).

198. The police register DNA-type records for suspects and DNA-type records on persons who died unnatural deaths according to Article 6 of the Rules on Handling DNA-Type Records (Rules of the National Public Safety Commission No.15 of 2005), DNA-type records on peculiar missing persons according to Article 24-3 of the Rules on Activities to Locate Missing Persons, and DNA-type records on corpses according to Article 4-2 of the Rules on Handling Corpses (Rules of the National Public Safety Commission No.4 of 2008) in the respective databases.

199. When the missing person is located or his/her death is confirmed, the date and time, place, circumstances, etc. of the location or confirmation of death are notified to the notifier (Article 26(1), Rules on Activities to Locate Missing Persons).