United Nations CED/C/JPN/1

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
25 August 2016

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

Consideration of reports submitted by States parties under article 29 (1) of the Convention

Reports of States parties due in 2012

Japan*

[Date received: 22 July 2016]

* The present document is being issued without formal editing.

GE.16-14764(E)
1614764

Contents

** Annexes can be consulted in the files of the Secretariat.

I. Introduction

1. On July 23, 2009, Japan deposited the instrument of ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter referred to as the "Convention on Enforced Disappearance" or the "Convention") with the Secretary-General of the United Nations and became a State Party to the Convention. The Convention was promulgated on December 22, 2010 and entered into force for Japan on December 23, 2010 in accordance with Article 39, paragraph 1 of the Convention. This first report of the Government of Japan covers the period from December 23, 2010 to December 2015.

2. The Convention is of significance in affirming within the international community that enforced disappearance should be punished as a criminal offence, as well as in deterring the repetition of similar crimes in the future. In addition, the Convention is also important in raising international awareness on the issue of enforced disappearances, including the abductions issue. Therefore, Japan promptly concluded the Convention, and, in cooperation with other States Parties, has been promoting the signature and conclusion of the Convention by other states.

3. Among cases of enforced disappearance, the abductions of Japanese citizens by North Korea are a matter of grave concern pertaining to the sovereignty of Japan and the lives and safety of Japanese citizens. At the same time, as a violation of fundamental human rights, the abductions of Japanese citizens by North Korea are a universal issue for the international community. The Government of Japan has identified that 17 Japanese citizens were abducted by North Korea between the 1970s and the 1980s. However, only five abductees have returned to Japan and the rest have not yet returned home. The Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea states that human rights violations continue against abductees and their families. Moreover, there are suspected cases of abductions of non-Japanese nationals within Japanese territory ("Korean domiciles," an alternative nationality for ethnic Koreans in Japan who do not hold South Korean citizenship) and other cases in which the possibility of abductions by North Korea cannot be ruled out. The Government of Japan will exert the utmost effort to assure the safety of all abductees and their immediate return to Japan, regardless of whether they are officially identified as abductees by the Government of Japan. In addition, the Government of Japan will unremittingly pursue the disclosure of the truth regarding all abduction cases and continue to seek extradition of the perpetrators of the abductions to Japan.

Efforts by the Headquarters for the Abduction Issue

4. Under the policy stated in paragraph 3, the Headquarters for the Abduction Issue, which consists of all of the Ministers of State, with the Prime Minister serving as chief and the Chief Cabinet Secretary, the Minister in Charge of the Abduction Issue, and the Minister for Foreign Affairs serving as assistant chiefs, was established in January 2013 in order to discuss various measures to address the abduction issue and to promote strategic and comprehensive efforts. At its first meeting, "Policies and Concrete Measures for Resolving the Abduction Issue" was determined, which is to continuously pursue: (1) the assurance of the safety and immediate return of all abductees; (2) the investigation of the truth of the abductions; and (3) the extradition of the perpetrators of the abductions. In addition, the Government of Japan provides the abductees and their families with comprehensive support, including payment for expenses of return to Japan and financial assistance to live safely in Japan, medical examinations, consultation for daily life, stable residence, and the securement of employment and educational opportunities.

Efforts in the International Community

5. At the United Nations (UN), each year Japan and the European Union (EU) co-submit resolutions on the "Situation of human rights in the Democratic People's Republic of Korea," at the sessions of the Third Committee of the UN General Assembly in autumn and the UN Human Rights Council in March. The resolutions call upon an improvement of the overall human rights situation in North Korea including the abduction issue (the resolutions have been adopted by the UN General Assembly eleven times for eleven consecutive years and by the UN Human Rights Council eight times for eight consecutive years). The resolutions adopted by the General Assembly focus on the human rights situation in North Korea. The resolutions adopted by the UN Human Rights Council mention the human rights situation in North Korea and extend the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (currently Mr. Marzuki Darusman, former Attorney General of Indonesia).

6. At the session of the UN Human Rights Council in March 2013, considering that there had been no improvement in the human rights situation in North Korea, Japan and the EU co-submitted a resolution including the establishment of the Commission of Inquiry (COI) to be adopted by consensus. After its vigorous activities for one year, including a visit to Japan, the COI released its final report in February 2014. The report comprehensively amplifies in several areas of the systematic, widespread, and grave violations of human rights in North Korea including the abduction issue, urges North Korea to take concrete measures against these violations that may amount to "crimes against humanity," and also calls for the international community to make further efforts.

7. At the session of the UN Human Rights Council in March 2014, Japan and the EU co-submitted the strongest ever resolution based on the COI report, and the resolution was adopted by an overwhelming majority. This resolution recommended that: (1) the UN General Assembly submit the COI report to the UN Security Council for its consideration and appropriate action in order that those responsible for the human rights violations are held to account, including through consideration of referral of the situation to the appropriate international criminal justice mechanism, along with consideration of the scope for effective targeted sanctions against those who appear to be most responsible for the human rights violations; and (2) the Office of the High Commissioner for Human Rights (OHCHR) follow up on the recommendations made in the report, including the establishment of a field based structure. Furthermore, the resolution that was co-submitted by Japan and the EU was adopted at the UN General Assembly in December 2014, and the resolution encourages the UN Security Council to take appropriate action to ensure accountability, including through consideration of referral of the situation in the Democratic People's Republic of Korea to the International Criminal Court (ICC), along with consideration of the scope for effective targeted sanctions against those who appear to be most responsible for the human rights violations. After the adoption of this resolution, on December 22 (local time), "the situation of the Democratic People's Republic of Korea" including human rights situations was discussed at the UN Security Council for the first time.

8. At the sessions of the UN Human Rights Council in March 2015 and the UN General Assembly in December 2015, resolutions equally as strong in their contents as the resolutions of 2014 were adopted. In the same year, based on the resolution of the UN Human Rights Council, the OHCHR Office in Seoul was established in June, and a panel discussion on the situation of human rights in North Korea, especially focusing on the issue of international abductions and enforced disappearances, was convened in September. Mr. Koichiro Iizuka, Vice Secretary-General of the Association of Families of Victims Kidnapped by North Korea, participated in this panel discussion and represented the family members of Japanese abductees. Furthermore, on December 10, 2015, "the situation of the

Democratic People's Republic of Korea" including human rights situations was discussed at the UN Security Council for the second consecutive year. At the discussion, Japan made a statement that it strongly urges North Korea to respond in good faith to the concerns raised by the UN Security Council and improves its human rights situation. Moreover, considering that the abduction issue must be resolved without delay, Japan also stated that it strongly demands that North Korea return all abductees as soon as possible through an expeditious investigation.

Cooperation with the Working Group on Enforced or Involuntary Disappearances

9. Japan recognizes that the Working Group on Enforced or Involuntary Disappearances is an important body that serves the function of considering individual cases regarding the abduction issue, making inquiries into the facts to the authorities of North Korea and seeking solutions, and that it plays an indispensable role in the efforts of the international community toward a resolution of the abduction issue. From this viewpoint, Japan has provided information to the Working Group and asked it to continue urging North Korea to take concrete and sincere steps to confirm the location of the disappeared persons regarding whom a request for the confirmation of their whereabouts has been filed.

10. We conclude this introduction by citing a statement by a family member of an abductee at an international symposium, calling for a resolution of the abduction issue.

> "My sister was like the sun or a sunflower in my family. She was always jovial and cheerful. Since she disappeared, the atmosphere in my house has changed and has been filled with an extreme gloom beyond description. Somewhere down the line, smiles have disappeared from our dining table, and we have ceased to talk about my sister." "I hope each county will take action to settle the abduction issue and change the current situation of human rights violations. To allow everyone to lead decent lives and end each day with a happy smile and conversation amongst family, I would like every one of you to imagine that these issues had happened to yourself and to take concrete actions. Time really is running out, as both the abductees and their family members waiting for them are getting older. Please share your strong will and an overflowing power of hope for those who were abducted. Please help us so that they can set foot in Japan with no further delay and so that the day will come when my sister and parents can embrace each other." (Mr. Takuya Yokota, brother of Ms. Megumi Yokota, an abductee identified by the Government of Japan)

II. Background information

A. General legal framework under which enforced disappearances are prohibited

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

or confining a person, the act of concealing such act, and the act of concealing the fate or whereabouts of the disappeared person shall be punished.

12. Among other related international agreements, Japan has concluded the International Covenant on Civil and Political Rights in 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1999, and the Rome Statute of the International Criminal Court (ICC) in 2007.

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

B. Information in relation to each substantive Article of the Convention

Article 1

14. As stated above, Article 31 of the Constitution provides that no person shall be deprived of life or liberty except according to procedure established by law. Furthermore, Article 33 of the Constitution provides that no person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, and Article 34 of the Constitution provides that no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, thus guaranteeing that persons deprived of liberty shall not be placed outside the protection of the law.

15. In addition, under the Penal Code and the Code of Criminal Procedure of Japan, there is no system of exception from legal liability by reason of "a state of war, a threat of war, internal political instability or any other public emergency."

Article 2

16. As stated above, Article 31 of the Constitution provides that no person shall be deprived of life or liberty except according to procedure established by law. Furthermore, Article 33 of the Constitution provides that no person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, and Article 34 of the Constitution provides that no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, thus guaranteeing that persons deprived of liberty shall not be placed outside the protection of the law. The Penal Code of Japan provides that the act of unlawfully capturing or confining another, the act of concealing such act, and the act of concealing the fate or whereabouts of the disappeared person shall be punished (see the section on Article 3 and Annex 1).

Article 3

17. In Japan, acts of enforced disappearance are stipulated as crimes, regardless of whether they were carried out with or without the authorization, support, or acquiescence of the State (see Annex 1 for detailed provisions). Among acts of enforced disappearance, the act of depriving a person of liberty shall be punished under Article 220 (unlawful capture and confinement) and Articles 224 to 228 (kidnapping, buying or selling of human beings) of the Penal Code, and the act of concealing an act of depriving a person of liberty shall be

punished under Article 103 (harboring of criminals) and Article 104 (suppression of evidence), etc., of the Penal Code.

18. The investigation of enforced disappearances shall be conducted by a judicial police official, public prosecutor, or public prosecutor's assistant officer (Articles 189 and 191 of the Code of Criminal Procedure). It is provided that a judicial police official shall, when he/she deems that an offense has been committed, investigate the offender and evidence thereof (Article 189, paragraph 2 of the said Code) and that a public prosecutor may, if he/she deems it necessary, investigate an offense him/herself (Article 191, paragraph 1 of the said Code). Then, based on the collected evidence, a public prosecutor shall judge whether to institute prosecution (Article 247 of the said Code).

19. Pursuant to the provisions of Article 29 of the Act on Mental Health and Welfare for the Mentally Disabled, the decision of "compulsory hospitalization" may be made by the prefectural governor when the governor recognizes that the person in question is likely to hurt himself/herself or others after having such person examined by designated doctors based on reporting or notification by a police official, etc. Pursuant to the provisions of Article 38-6 of the said Act, the Minister of Health, Labour and Welfare or the prefectural governor may, if he/she deems it necessary, collect reports or conduct on-the-spot inspections regarding the condition and treatment of persons hospitalized at a mental hospital. For a person who fails to follow such order, penal provisions shall apply (Article 55 of the Act on Mental Health and Welfare for the Mentally Disabled).

Article 4

20. As stated in the sections on Article 2 and Article 3, in Japan, acts of enforced disappearance are stipulated as crimes regardless of whether they were carried out with or without the authorization, support, or acquiescence of the State, and the Penal Code of Japan provides that acts of enforced disappearance shall be punished (see Annex 1).

Article 5

21. When cooperation for mutual legal assistance or surrender is requested by the ICC with regard to enforced disappearance that constitutes "a crime against humanity" under the Rome Statute of the ICC, Japan will provide cooperation pursuant to the Act on Cooperation with the International Criminal Court.

22. In Japan, a person who commits an enforced disappearance shall be punished in accordance with the Penal Code for the crime of unlawful capture or confinement (Article 220), unlawful capture or confinement causing death or injury (Article 221), abuse of authority by public officers (Article 193), abuse of authority by special public officers (Article 194), abuse of authority causing death or injury by special public officers (Article 196), and uttering of counterfeit official documents (Article 158), etc. A person who commits an enforced disappearance in an organized manner shall be punished for the crime of organized unlawful capture and confinement (Article 3, paragraph 1, item 8 of the Act on Punishment of Organized Crimes and Control of Crime Proceeds and Article 220 of the Penal Code), etc. The widespread or systematic practice of enforced disappearance can serve as the grounds for the aggregation of penalties (Article 47 of the Penal Code) and will be taken into account unfavorably in the assessment of the penalty, as the crime is vicious in nature.

Article 6

23. In addition to the provisions for crimes under the Penal Code relating to enforced disappearance, the Penal Code of Japan contains provisions for complicity (Articles 60 to 62) pursuant to which a person who orders, induces, or solicits the commission of an

enforced disappearance or a person who is an accomplice to or participates in an enforced disappearance shall be punished. Attempts of enforced disappearance can be punished as for the crime of attempted kidnapping or the crime of the buying or selling of human beings (Article 228), as for the crime of assault (Article 208), or as for the crime of intimidation (Article 222). A person who harbors a criminal or suppresses evidence in an attempt to interfere with the arrest or prosecution of the criminal can be punished without regard to whether or not the arrest or prosecution of the criminal is actually interfered with. The criminal responsibility of a superior falling under Article 6, paragraph 1, subparagraph (b)-(i) to (iii) of the Convention is secured by the provisions for the crimes of unlawful capture and confinement (Article 220 of the Penal Code) and the provisions for complicity (Articles 60 to 62 of the said Code).

Article 7

24. In Japan, a person who commits an enforced disappearance shall be punished in accordance with the Penal Code for the crime of unlawful capture and confinement (Article 220), unlawful capture or confinement causing death or injury (Article 221), abuse of authority by public officers (Article 193), abuse of authority by special public officers (Article 194), abuse of authority causing death or injury by special public officers (Article 196), and uttering of counterfeit official documents (Article 158), etc. A person who commits an enforced disappearance in an organized manner shall be punished for the crime of organized unlawful capture and confinement (Article 3, paragraph 1, item 8 of the Act on Punishment of Organized Crimes and Control of Crime Proceeds and Article 220 of the Penal Code), etc. The circumstances described in Article 7, paragraph 2, subparagraph (a) of the Convention can be taken into account as favorable circumstances for the accused, and those described in Article 7, paragraph 2, subparagraph (b) of the Convention can be taken into account as unfavorable circumstances for the accused in the assessment of the penalty.

Article 8

25. A period of statute of limitations is prescribed in proportion to the seriousness of the statutory penalty (Article 250 of the Code of Criminal Procedure). The period of statute of limitations for principal crimes under the Penal Code related to enforced disappearance are as follows:

- Unlawful capture and confinement (Article 220): 5 years
- Kidnapping of minors (Article 224): 5 years
- Kidnapping for profit (Article 225): 7 years
- Kidnapping for transportation out of a country (Article 226): 10 years
- Buying or selling of human beings (Article 226-2): 10 years for the offense committed for the purpose of transportation from one country to another country (paragraph 5)
- Harboring of criminals (Article 103): 3 years
- Suppression of evidence (Article 104): 3 years (Reference: Article 250 of the Code of Criminal Procedure)

26. Regarding prescription, Article 32 of the Penal Code provides as follows:

(Period of Prescription)

Article 32. Prescription takes effect when a punishment has not been executed within any of the following periods after a sentence has become final and binding:

(i) Thirty years for life imprisonment with or without work;

(ii) Twenty years for imprisonment with or without work for a definite term of 10 years or more;

(iii) Ten years for imprisonment with or without work for a definite term of 3 years or more but less than 10 years;

(iv) Five years for imprisonment with or without work for a definite term of less than 3 years;

(v) Three years for a fine; and

(vi) One year for misdemeanor imprisonment without work, a petty fine and confiscation.

27. Article 253 of the Code of Criminal Procedure, which provides for the commencement of the statute of limitations, states that "the statute of limitations shall commence to run at the time when the criminal act has ceased." Thus, it is ensured that the statute of limitations shall not commence upon the commencement of the act of enforced disappearance. Article 255 of the said Code provides that "where the offender is outside Japan…, the statute of limitations shall be suspended during the period when the offender is outside Japan…."

28. One of the rights that victims of enforced disappearance may exercise under the Civil Code is the right to demand compensation for damages in tort from the offender. Article 724 of the Civil Code provides for the restriction of the period of this right, saying that "the right to demand compensation for damages in tort shall be extinguished by the operation of prescription if it is not exercised by the victim or his/her legal representative within three years from the time when he/she comes to know of the damages and the identity of the perpetrator. The same shall apply when twenty years have elapsed from the time of the tortious act."

Article 9

29. The competence to exercise jurisdiction required by Article 9, paragraph 1 of the Convention is established as follows:

Subparagraph (a)

Article 1 of the Penal Code (jurisdiction over crimes committed within the territory of Japan or on board a Japanese vessel or aircraft outside the territory of Japan)

Subparagraph (b)

Article 3 of the Penal Code (jurisdiction over crimes of unlawful capture and confinement, kidnapping, and the buying or selling of human beingscommitted by Japanese nationals outside Japan)

Subparagraph (c)

Article 3-2 of the Penal Code (jurisdiction over crimes committed against a Japanese national outside Japan [disappeared person])

In addition, Article 4-2 of the Penal Code provides that the Penal Code shall apply to anyone who commits outside the territory of Japan those crimes prescribed under the Penal Code which are governed by a treaty even if committed outside the territory of Japan.

30. As Japan does not require conclusion of a treaty as a prerequisite for the extradition of a fugitive, if the statutory requirements are satisfied, it is possible to extradite a fugitive

even to a state with which an extradition treaty has not been concluded. Although it is not possible to extradite a Japanese national without concluding an extradition treaty, there are punitive provisions applied to Japanese nationals who have committed crimes that constitute enforced disappearance outside Japan, and therefore it is possible to punish such criminals.

Article 10

31. In Japan, when a request for extradition or provisional detention of a fugitive is made by a foreign country, the fugitive shall be detained or provisionally detained if legal requirements are satisfied (Article 5, paragraph 1; Article 24, paragraph 1 of the Act of Extradition). The same shall apply to the request for surrender by the ICC (Articles 21 and 34 of the Act on Cooperation with the International Criminal Court). With respect to consular support, Japan is bound to consular notification requirements under the Vienna Convention on Consular Relations.

32. Custody and other legal measures to ensure the presence of a suspect in Japan include:

- A request for the appearance of a suspect by a judicial police official, public prosecutor, or public prosecutor's assistant officer (Article 198, paragraph 1 of the Code of Criminal Procedure).
- The arrest of a suspect by a judicial police official, public prosecutor, or public prosecutor's assistant officer (Articles 199, 210, and 213 of the said Code).

33. In Japan, investigations of crimes related to enforced disappearance shall be conducted by judicial police officials, etc., in accordance with the Code of Criminal Procedure.

Article 11

34. As stated in the section on Article 9, Japan does not require conclusion of a treaty as a prerequisite for the extradition of a fugitive. Thus, it is possible to extradite a fugitive even to a state with which an extradition treaty has not been concluded as long as the statutory requirements are satisfied. In determining whether or not to extradite a fugitive, the Tokyo High Court determines whether the statutory requirements are satisfied, and the Minister of Justice determines the appropriateness of the extradition. Although it is not possible to extradite a Japanese national without concluding an extradition treaty, there are punitive provisions applied to Japanese nationals who have committed crimes that constitute enforced disappearance outside Japan, and therefore it is possible to punish such criminals. In this case, the usual criminal proceedings shall apply, and there is no difference from the cases prescribed in Article 9, paragraph 1 of the Convention in the standards of evidence.

35. With regard to the competent authorities, investigations of crimes including enforced disappearance shall be conducted by a judicial police official, public prosecutor, or public prosecutor's assistant officer (Articles 189 and 191 of Code of Criminal Procedure), and prosecution shall be instituted by a public prosecutor (Article 247 of the said Code).

36. With regard to the guarantee of fair treatment, in addition to the provisions of Article 31 of the Constitution, Article 32 of the Constitution guarantees the right of access to the courts, and Article 37 of the Constitution guarantees the accused the right to a fair trial, the right of compulsory process for obtaining witnesses, and the right to have the assistance of competent counsel. Based on these provisions, the Code of Criminal Procedure sets out detailed provisions concerning the right to appoint counsel (Articles 30 to 41) and the right to examine witnesses (Articles 143 to 164).

37. To convict an accused person, the fact that the accused has committed a crime must be proven beyond reasonable doubt, and this principle applies to all those accused regardless of whether they are Japanese nationals or not.

Article 12

38. The mechanism available for an individual who alleges that a person has been subjected to enforced disappearance includes complaint or accusation with the investigation authorities (Articles 230 to 244 of the Code of Criminal Procedure) and reporting on a crime to the investigation authorities, based on which the investigation authorities initiate investigation (Articles 189 and 191 of the said Code). The police shall accept a report about a missing person filed by a person with parental authority, by the guardian or spouse of the missing person, or by a person who has close relations with the missing person in social realms, such as a custodian, welfare office staff, housemate, or employer (Article 6 of the Rules on Activities to Locate Missing Persons). A judicial police official shall investigate the offender and evidence thereof, when he/she deems that an offense has been committed. No complaint, accusation, or reporting is required to start investigations (Article 189, paragraph 2 of the Code of Criminal Procedure).

39. The investigation authorities conduct investigations through interrogation, search, inspection, and expert opinions, etc., and then reveal the facts. Based on the result of the investigation, the public prosecutor decides whether or not to prosecute the case. In cases of certain crimes such as assault and cruelty by special public officers, the person who filed the complaint or accusation may, when he/she is not satisfied with the public prosecutor's decision not to prosecute, request that the case be referred to court for trial.

40. In cases where, based on the investigation of a case, the public prosecutor decides not to prosecute the case, any person who is not satisfied with such decision may file a complaint with the Committee for the Inquest of Prosecution in accordance with the Act on Committee for the Inquest of Prosecution. The Committee, which consists of members randomly selected from the general public, examines whether the public prosecutor's decision not to prosecute is appropriate, from an independent stance. In certain cases, the Committee may decide that the case should be prosecuted, and in these cases, the case in question shall be prosecuted by an attorney designated by the court. The person who filed the complaint or accusation for the case, the victim, or the bereaved family of the victim, may file a complaint with the Committee.

41. Relating to the protection of the complainant, etc.,

- A person who intimidates a complainant or accuser can be punished for a crime of intimidation (Article 222 of the Penal Code) or compulsion (Article 223 of the said Code).
- 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, can be punished for the crime of the intimidation of witnesses (Article 105-2 of the said Code).
- A person who commits an act of assault or intimidation against a public officer who is an investigator in the performance of public duty can be punished for the crime of obstructing performance of public duty (Article 95, paragraph 1 of the said Code).
- 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 to resign can be punished for the crime of compelling performance of public duty (Article 95, paragraph 2 of the said Code). In addition, a person who commits any

criminal act such as injurious assault against the complainant, witnesses, or any other persons engaged in the investigation can be punished under relevant laws and regulations, such as the Penal Code.

42. The investigation authorities can conduct a search, upon warrant issued by a judge, in places where there are reasonable grounds to believe that the disappeared person may be present, in principle (Article 35 of the Constitution and Article 218 of the Code of Criminal Procedure). In addition, when the investigation authorities arrest a suspect upon an arrest warrant or arrest a flagrant offender, the investigation authorities may, if necessary, conduct a search on the spot of the arrest, such as at the residence of another person (Article 220 of the Code of Criminal Procedure). Furthermore, when a police official notices that a crime is about to occur and in the event that the lives, bodies or property of persons are endangered, if the police official considers it necessary in order to prevent such danger, restrain the spread of damage or give relief to sufferers, the police official may, to the extent judged reasonably necessary, enter any person's land, building, vessel or vehicle (Article 6 of the Police Duties Execution Act).

43. In cases where the refusal of investigation by the authorities constitutes unlawful exercise of public authorities as a result of which a victim of enforced disappearance suffers damage, such victim may seek redress from the State or Public entity (Article 1, paragraph 1 of the State Redress Act).

44. The human rights organs of the Ministry of Justice set up human rights counselling offices at Legal Affairs Bureaus and District Legal Affairs Bureaus nationwide to provide consultation concerning all kinds of human rights issues, including human rights violation by an administrative organ. In cases of a suspected human rights violation, appropriate measures are taken depending on the case to provide remedy to the victims and prevent its recurrence.

Article 13

45. Under the Act of Extradition, crimes committed in Japan satisfy dual criminality (Article 2, item 4 of the Act of Extradition). As stated above, an act of enforced disappearance constitutes a crime in Japan, and therefore enforced disappearance is an extraditable offence. There is no provision in domestic legislation that regards enforced disappearance as a political offence, as an offence connected with a political offence, or as an offence inspired by political motives. Under extradition treaties and the Act of Extradition, the Tokyo High Court shall examine whether the case is extraditable (Article 9, paragraph 1; Article 10, paragraph 1 of the Act of Extradition). In cases where the Tokyo High Court renders a decision that the case is extraditable, the Minister of Justice shall further examine whether it is appropriate to extradite the fugitive and, when it is found appropriate to extradite the fugitive, shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to extradite the fugitive.

Article 14

46. In Japan, an act of enforced disappearance constitutes a crime satisfying the conditions of dual criminality for the purpose of providing mutual legal assistance in criminal matters. Therefore, it is possible to provide such assistance (Article 2, item 2 of the Act on International Assistance in Investigation and Other Related Matters). Japan has concluded mutual legal assistance treaties and agreements with the United States, the Republic of Korea, China, Hong Kong, the EU, and Russia, which enable prompt and smooth mutual legal assistance in criminal matters.

Article 15

47. Japan may cooperate with other States Parties in assisting victims of enforced disappearance through the provision of mutual legal assistance in investigation as mentioned in the section on Article 14.

Article 16

48. The Tokyo High Court shall examine whether the fugitive is extraditable under domestic laws (Article 9, paragraph 1; Article 10, paragraph 1 of the Act of Extradition), and then the Minister of Justice shall determine the appropriateness of the extradition (Article 14, paragraph 1 of the said Act).

49. It is possible to file an action for the revocation of the extradition order by the Minister of Justice (Articles 3 and 8 of the Administrative Case Litigation Act). Although the filing of action for the revocation itself does not have the effect of staying the execution of the order (Article 25, paragraph 1 of the said Act), if there is an urgent necessity in order to avoid any serious damage that would be caused by the continuation of any subsequent procedure, the court before which the action for the revocation of the original administrative disposition is pending may, upon petition, by an order, stay the execution of the order (Article 25, paragraph 2 of the said Act).

50. Article 53, paragraph 3 of the Immigration Control and Refugee Recognition Act (hereinafter referred to as the "Immigration Control Act") provides that a deportation destination of a foreign national subject to deportation shall not include any country considered to be "another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance" as referred to in Article 16, paragraph 1 of the Convention on Enforced Disappearance. In addition, Article 53, paragraph 3, item 1 of the Immigration Control Act provides that the deportation destinations shall not include any country to which territories prescribed in Article 33, paragraph 1 of the Convention relating to the Status of Refugees belong, while Article 53, paragraph 3, item 2 of the Immigration Control Act also provides that the countries prescribed in Article 3, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shall not be included in the deportation destination.

51. Moreover, Article 53, paragraph 1 of the Immigration Control Act provides that any foreign national subject to deportation shall be deported to a country of which he/she is a national or citizen, and Article 53, paragraph 2 of the said Act provides that if the foreign national cannot be deported to such country as set forth in paragraph 1, such person shall be deported, pursuant to his/her wishes, to a country: (i) in which he/she had been residing immediately prior to his/her entry into Japan; (ii) in which he/she once resided before his/her entry into Japan; (iii) that contains the port or airport where he/she boarded the vessel or aircraft departing for Japan; (iv) where his/her place of birth is located; (v) that contained his/her birthplace at the time of his/her birth; or (vi) any country other than those prescribed in the above. In this way, other forms of danger that may cause significant damage to the life or dignity of individuals are taken into consideration in the decision of the deportation destination of a person subject to deportation.

52. In addition to the above-mentioned Immigration Control Act, other relevant laws, regulations, and treaties are observed in deporting a foreign national subject to deportation. In the deportation procedures in Japan under the Immigration Control Act, a so-called three-step examination process is adopted, in which the investigation by an immigration control officer into violations is followed by: (i) the examination of the violation by an immigration inspector, (ii) the hearing by a special inquiry officer (senior immigration inspector); and ends with (iii) the determination (final decision) by the Minister of Justice

for the objection. During the three-step examination process, consideration is given so that a foreign national can object to the suspected fact or express a desire to stay in Japan after admitting the suspected fact.

53. As designation of a deportation destination is an important factor of deportation procedures, an immigration control officer, immigration inspector, and special inquiry officer shall hear the opinion of a suspect as to which country he/she wishes to be deported to during the deportation procedures. When the Minister of Justice (including the Director-General of the Regional Immigration Bureau commissioned by the Minister of Justice) has made a decision of deportation, the supervising immigration inspector who issues a written deportation order shall decide the deportation destination pursuant to the provisions of Article 53 of the Immigration Control Act, taking into account the opinion of the suspect heard during the deportation procedures. As the premise, as mentioned above, the deportation procedures in Japan under the Immigration Control Act adopt a three-step examination process with a view to giving due consideration to the foreign national in question so that he/she can express his/her opinion and to making a careful decision after taking such opinion into account.

54. After the issuance of a written deportation order, for instance, it is possible to file an action with a court for the revocation thereof. Furthermore, if a petition is filed with the court for the stay of execution of the written deportation order and if the decision of stay of execution is confirmed, deportation is suspended.

55. Pursuant to the provisions of Article 46 of the Administrative Case Litigation Act, the information about the filing of an action shall be given (provided) in writing when any recognition, judgment, decision, and issuance of a written deportation order are notified during the above-mentioned procedure under the three-step examination process, thus consideration is given to ensure the right to trial.

56. Immigration officials are provided with lectures on human rights and international laws as part of their training programs, which are implemented depending on the length of service or which focus on human rights, for the purpose of deepening understanding and awareness regarding human rights issues.

Article 17

Criminal Procedure

57. Article 31 of the Constitution provides that no person shall be deprived of life or liberty except according to procedure established by law. Furthermore, Article 33 of the Constitution provides that no person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offense with which the person is charged, and Article 34 of the Constitution provides that no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel. In this way, the Constitution guarantees various rights of persons deprived of liberty and also guarantees that they shall not be placed outside the protection of the law.

58. An arrest or detention that deprives a person of liberty shall be conducted upon warrant issued by a judge except for the arrest of a flagrant offender (Articles 199, 207, and 210 of the Code of Criminal Procedure). A suspect shall be arrested only when there exists sufficient probable cause to suspect that an offense has been committed by the suspect and when there is necessity for arrest (Article 199 of the said Code). The detention of a suspect shall be conducted only when there is probable cause to suspect that he/she has committed a crime and when the suspect has no fixed residence, may conceal or destroy evidence, or may flee (Article 60 of the said Code).

59. In Japan, when a judicial police officer or public prosecutor has arrested a suspect upon an arrest warrant or has received a suspect who was arrested upon an arrest warrant, he/she shall immediately inform the suspect of the essential facts of the suspected crime and the fact that the suspect may appoint defense counsel, and then give the suspect an opportunity for explanation (Articles 203 and 204 of the Code of Criminal Procedure). In addition, when the accused has been detained, his/her counsel shall be notified (Article 79 of the said Code), the accused or the suspect have the right to have an interview with counsel (Article 39 of the said Code), and the accused or the suspect may have an interview with persons other than counsel (relatives, etc.), respectively (Article 80 of the said Code). A person under detention or his/her counsel, relatives or other interested person may request the court to disclose the grounds for detention (Article 82 of the said Code), and the presiding judge must disclose the grounds for detention in an open court (Articles 83 and 84 of the said Code). A person under detention may file a request against the decision of detention (Article 429, paragraph 1, item 2 of the said Code).

60. A decision of punishment by detention (imprisonment with or without work) shall be made in an open court, and a judgment of conviction shall be rendered when the case has been proven to be a crime (beyond a reasonable doubt) (Article 333, paragraph 1 of the Code of Criminal Procedure). The accused or his/her counsel may appeal against the judgment of conviction (Article 351 and the following Articles of the said Code).

61. With regard to communication with consular authorities, when a foreign national is detained by arrest or in any other manner, notification to the consul of his/her country shall be made promptly under the Vienna Convention on Consular Relations and the consular agreement, and the consul may have an interview or exchange letters with the foreign national under detention. In cases where notification is required under a consular agreement, it shall be ensured that the consular authorities are informed of the fact of detention and the reason for the detention. In other cases, the foreign national under detention shall be asked whether he/she requests notification to the consular authorities, and, if requested, a police official or public prosecutor shall notify the consular authorities having jurisdiction over the place where he/she was detained and shall record such a notification in an appropriate manner. The consul may, pursuant to the laws and regulations of Japan, visit and communicate with the foreign national under detention.

Deportation procedures of foreign nationals by the Immigration Bureau

62. In accordance with the provisions of the Immigration Control Act, a suspect may be detained pursuant to a written detention order issued by a supervising immigration inspector (Article 39, paragraph 2 of the Immigration Control Act). A written detention order shall be issued when there are reasonable causes to believe that the suspect falls under any of the grounds for deportation provided on Article 24 of the Immigration Control Act. The period of detention of a suspect for whom a written detention order is issued is no longer than 30 days, in principle; provided, however, that when there is an unavoidable reason, such period may be extended for a period of no longer than 30 days.

63. As a result of prescribed procedure, when it is found that a foreign national falls under any of the grounds for deportation, a supervising immigration inspector shall, in order to have such foreign national deported immediately, issue a written deportation order (Article 47, paragraph 5; Article 48, paragraph 9; and Article 49, paragraph 6 of the Immigration Control Act). If the foreign national for whom a written deportation order has been issued cannot be deported immediately, the foreign national shall be detained at an immigration detention center, detention facility, or any other place designated by the Minister of Justice or by the supervising immigration inspector commissioned by the Minister of Justice until such time as deportation becomes possible; provided, however, that if an application by the foreign national subject to deportation is approved, the supervising

immigration inspector may accord provisional release to such foreign national (Article 54, paragraph 2 of the said Act).

64. Persons who are detained in detention facilities (detaining foreign nationals only) managed and administered by the Immigration Bureau for a violation of the Immigration Control Act may contact their counsel, doctor, or family (by telephone, visits, or by receiving or sending letters). Notification to consular authorities is also conducted properly in accordance with the Vienna Convention on Consular Relations, etc.

65. In September 2010, the Immigration Bureau of the Ministry of Justice and the Japan Federation of Bar Associations reached an agreement to set up a joint meeting to discuss various issues concerning immigration control administration. It was also agreed that bar associations would give legal advice to the detainees in the immigration detention centers for free. Based on this agreement, bar associations provide free legal consultation services. Thus, efforts are made to further facilitate access by detainees to counsel or legal support.

66. Following the partial revision of the Immigration Control Act in 2009, the Immigration Bureau established the "Immigration Detention Facilities Visiting Committee" formed by outside experts in July 2010. The committee, composed of third-party experts such as academic experts, legal experts, medical experts, and NGO staff, conducts visits to the immigration detention centers or departure waiting facilities and interviews detainees. The committee also gives opinions to directors of the immigration detention center based on the opinions and suggestions of detainees collected from the suggestion boxes placed at the immigration detention centers or at the departure waiting facilities. Through these activities, the committee ensures the transparency of the treatment of persons subject to immigration control and promotes the improvement of the administration of the immigration detention facilities.

67. In the deportation procedures under the Immigration Control Act, it is supposed that a suspect for whom no grounds for deportation are found as a result of examination through the above-mentioned three-step examination process shall be immediately released (Article 47, paragraph 1; Article 48, paragraph 6; and Article 49, paragraph 5 of the Immigration Control Act). In cases where immediate deportation is difficult, the supervising immigration inspector may release the foreign national subject to deportation (Article 52, paragraph 6 of the said Act). Any foreign national subject to deportation other than those described above may file an action with the court for the revocation of issuance of the written detention order or the written deportation order that warrants the detention. Pursuant to the provisions of Article 46 of the Administrative Case Litigation Act, the information about the filing of an action shall be given (provided) in writing when three dispositions (recognition, judgment, and decision) and the issuance of a written deportation order are notified during the above-mentioned procedure under the three-step examination process, thus consideration is given to ensure the right to trial.

Procedures of commitment to a juvenile training school as protective measures and guidance measures for women

68. The Juvenile Training Schools Act provides that a juvenile training school shall confine juveniles sent from the family court as protective measures stipulated in Article 24, paragraph 1, item 3 of the Juvenile Act and juveniles sentenced to imprisonment with or without work stipulated in Article 56, paragraph 3 of the said Act. The Juvenile Classification Homes Act provides that the juvenile classification home shall confine juveniles who shall be committed to a juvenile classification home as protective detention stipulated in Article 17, paragraph 1, item 2 of the Juvenile Act and juveniles who otherwise shall or may be committed to the juvenile classification home under the provisions of the other laws and regulations. The Women's Guidance Home Act provides

that a women's guidance home shall confine women who are subject to guidance measures stipulated in Article 17 of the Anti-Prostitution Act.

69. Inmates at a penal institution, juvenile training school, juvenile classification home, or women's guidance home, pursuant to the provisions of the Code of Criminal Procedure and other relevant laws and regulations, are allowed visits and correspondence with their family or counsel. If they are foreign nationals, they are guaranteed the right to communicate with the consular authorities of their countries under the provisions of the Vienna Convention on Consular Relations or relevant agreements.

Administrative function for visiting custodial facilities

70. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that the penal institutions shall commit those (i) who are detained for the execution of punishment of imprisonment with work or without work, or misdemeanor imprisonment without work; (ii) who are arrested and detained pursuant to the provisions of the Code of Criminal Procedure; (iii) who are under detention pursuant to the provisions of the Code of Criminal Procedure; (iv) who are detained after being sentenced to the death penalty; and (v) others than those listed in (i) to (iv) above who shall or may be committed to a penal institution pursuant to the provisions of laws and regulations.

71. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that "in the interests of the appropriate enforcement of this Act, the Minister of Justice shall designate inspectors from among his/her staff and order the inspectors to conduct on-the-spot inspections at each penal institution at least once per annum or more frequently," while the Women's Guidance Home Act provides that "the Minister of Justice shall designate his/her staff to conduct on-the-spot inspections at the women's guidance home at least once per annum or more frequently." Under these acts, inspections of each penal institution and the women's guidance home are conducted. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees also provides that "judges and public prosecutors may observe the penal institutions." Furthermore, the Juvenile Training Schools Act provides that "the Minister of Justice shall be responsible for properly maintaining the juvenile training schools and conducting full inspections." Under or in accordance with this provision, inspections are conducted at each juvenile training school and each juvenile classification home. In addition, similarly to the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the above-mentioned revised Juvenile Training Schools Act and the Juvenile Classification Homes Act also include provisions on matters concerning on-the-spot inspections and matters concerning observation by judges and public prosecutors.

72. In addition, a Board of Visitors for Inspection of Penal Institutions is established at each penal institution. Board members are appointed by the Minister of Justice from among persons of integrity and insight with a passionate interest in the improvement of the administration of penal institutions. In fact, appointed members include attorneys, doctors, and local government officials, as well as local residents. The role of the board is to monitor the circumstances of the administration of the penal institution through visits to the penal institution and interviews with inmates, and to make recommendations to the warden of the penal institution. The Minister of Justice shall compile both the opinions submitted by the board to the warden of the penal institution and the measures taken by the warden responding to the opinions once per annum, and release a summary to the public. The above-mentioned revised Juvenile Training Schools Act and the Juvenile Classification Homes Act also contain provisions concerning the establishment of the Juvenile Training School Visiting Committee and the Juvenile Classification Home Visiting Committee respectively.

73. With regard to the detention facilities, on-the-spot inspections are conducted at least once per annum or more frequently by inspectors designated by the Chief of Prefectural Police Headquarters. It is also provided that judges and public prosecutors may observe detention facilities (Articles 11, 18, and 24 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees). In addition, the National Police Agency conducts patrols of the detention facilities, and supervises and gives guidance to the prefectural police.

74. A third-party Detention Facilities Visiting Committee is established at each Police Prefectural Headquarters for the purpose of enhancing the transparency of the administration of detention facilities and ensuring the adequate treatment of detainees (Article 20 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees). The committee members are appointed by the Prefectural Public Safety Commission from among persons of integrity and insight and who are also enthusiastic about the improvement of the administration of the detention facility. Specifically, the appointed members include attorneys, doctors, local government officials, and university staff. The role of the committee is to understand the circumstances of the administration of the detention facility, through their activities such as a visit to the detention facility and interviews with detainees, and to provide the statement of its opinions to the detention service manager. The Chief of Prefectural Police Headquarters shall compile both the opinions expressed by the committee to the detention service manager and the measures taken by the detention services manager responding to the opinions, and shall publicize the outline thereof.

Registration of persons under detention

75. When committing an inmate, the warden of the penal institution, juvenile training school, or juvenile classification home checks the warrant, judgment document, warrant of execution, or other document that forms grounds for the custody, and keeps record of the date, time, and place where the person was deprived of liberty, the authorities that ordered the deprivation of liberty, and the grounds for the deprivation of liberty for each inmate in the record of inmate status or the juvenile record.

76. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that medical examinations for inmates shall be conducted promptly after the commitment, and that in cases where an inmate is injured or suffering from disease, or is suspected to sustain an injury or to have a disease, medical treatments (including a procedure to supply nutrition) shall be provided by a doctor who is also the staff of the penal institution and other necessary medical measures shall be taken. The record of the medical examinations and medical treatment performed is entered into the medical examination record or the medical treatment record, and these are maintained properly. Similarly to the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the above-mentioned revised Juvenile Training Schools Act and the Juvenile Classification Homes Act also contain provisions concerning medical examinations and medical treatments. Furthermore, in cases where an inmate has died at a penal institution, etc., the circumstances and cause of death, etc., are recorded in the death record.

77. When an inmate is released from a penal institution, etc., the date and time of the release or transfer to another custodial facility are recorded for each inmate in the inmate release registry or the juvenile record.

78. The detention facilities maintain up-to-date official records of the detainees, such as the “detainee registry” and the “detainee medical record.” The information contained in the “detainee registry” include the date and time of arrest, name and organization of the person who arrested the detainees, health condition of the detainee at the time of detention, and the record of release or transfer. The “detainee medical record” contains information such as

the medical treatment received by the detainee and the result of medical examination. In cases where a detainee has died, the circumstances, cause of death, and the destination of the remains are recorded in the "detainee registry."

Access to a doctor, family, and counsel from detention facilities

79. Pursuant to the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, when a detainee complains of a health problem or is suspected to be injured or suffering from disease, a detention services manager shall record such circumstance in the detainee registry and take necessary medical measures, including medical examination by a doctor commissioned by the detention services manager.

80. The Rules on the Detention of Detainees (National Public Safety Commission Rule No.11 of 2007) provides that a detention services manager shall, upon request from a detainee, notify the family of the detainee or their representative of the fact that the detainee is detained, in principle (Article 8 of the said Rules). When a detainee makes a request for the appointment of a defense counsel, a detention officer shall immediately notify a supervising detention chief thereof and take necessary steps (Article 15 of the said Rules).

Contact with outside persons

81. Under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, detainees are guaranteed rights to have contact with the outside world through visits by their relatives or defense counsel and through correspondence. A defense counsel may visit the detainee without restriction except for cases where there is an unavoidable reason to impose a restriction, for the management and administration of the facility. As for visits by any person other than the defense counsel to the detainee, a staff member of the detention facility shall attend, and communication during the visit in a foreign language shall be made through an interpreter.

Internment under the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations

82. In case of armed conflicts, persons subject to internment such as prisoners of war are to be treated in line with international humanitarian law including the Third Geneva Convention. In Japan, as Article 98 of the Constitution stipulates faithful observation of international law, the effective implementation of international humanitarian law is ensured by relevant domestic laws such as the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations.

83. To be specific, the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations provides in detail due processes concerning the recognition of internment status, treatment in prisoner of war camps etc. Furthermore, meetings with representatives of protecting powers and Red Cross International Organizations, and notifications of information about prisoners of war, including their whereabouts to their home countries and related organizations, are to be appropriately implemented in accordance with the Geneva Conventions and related domestic laws such as the said Act. The following paragraphs are regulations of principal relevant domestic laws.

84. Article 10 of the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations provides that a recognition officer of internment status shall recognize whether a captive person is subject to internment. In accordance with Article 6 of the ordinance for enforcement of the said Act, the Commanding General of each Army Headquarters at the Ground Self-Defense Force, the Commandant of each district at the Maritime Self-Defense Force, and the Commander of each Air Defense Force and the

Commander of the Composite Air Division at the Air Self-Defense Force shall serve as a recognition officer of interment status accordingly.

85. Article 80, paragraph 1 of the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations provides that visits to detainees shall be permitted when requested by any of: (i) representatives of protecting powers; (ii) representatives of designated Red Cross International Organizations; or (iii) defense counsels in the criminal case of the detainees. In such cases, no staff members of the prisoner of war camp are to attend the visit.

86. Article 81, paragraph 1 of the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations provides that in cases where a person other than those listed in all items of paragraph 1 of Article 80 of the said Act requests to visit a detainee, if it is deemed that there is a special circumstance where a visit is necessary, and if it is deemed that there is no risk of causing hindrance to the management and administration of the prisoner of war camp by permitting such visits, the requested visit shall be permitted in the manner set forth by the Minister of Defense. In this case, a staff member of the prisoner of war camp shall attend such visits to the extent the attendance is not inconsistent with the purpose of the visitor's business

87. Article 25 of the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations provides that the prisoner of war camp commander shall respect missions that are fulfilled pursuant to the provisions of the Third Geneva Convention and the First Additional Protocol of 1977 by the representatives of protecting powers and designated Red Cross International Organizations (i.e., Red Cross International Organizations provided by the Cabinet Order; the same shall apply hereinafter) and designated assisting organizations (i.e., organizations which assist the detainees and are designated by the Minister of Defense; the same shall apply hereinafter), and shall especially take precautions so that no hindrance may be caused in the fulfillment of the said missions.

88. With regard to the appeal for review on the recognition of internment status by interned persons, Article 106, paragraph 1 of the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations provides that a person for whom a written internment order has been issued may appeal, in writing or orally, to the Review Board for a review on the recognition of internment status.

89. Article 167 of the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations provides that a recognition officer of internment status shall periodically report to the Minister of Defense on captive persons in his/her custody and on the situation and state of the detainees at the prisoner of war camp.

Compulsory hospitalization under the Act on Mental Health and Welfare for the Mentally Disabled and hospitalization under the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity

90. Pursuant to the provisions of Article 29 of the Act on Mental Health and Welfare for the Mentally Disabled, the decision of "compulsory hospitalization" may be made by the prefectural governor when the governor recognizes that the person in question is likely to hurt himself/herself or others after having such person examined by designated doctors based on reporting or notification by a police official, etc.

91. The decision of compulsory hospitalizations provided in Article 29 of the Act on Mental Health and Welfare for the Mentally Disabled is subject to the administrative appeal provided in the Administrative Appeal Act. In addition, it is possible to file an action against the prefectural government, etc., for the revocation of such decision in accordance with the Administrative Case Litigation Act.

92. In accordance with the restrictions on behavior specified by the Minister of Health, Labour and Welfare under the provisions of Article 36, paragraph 2 of the Act on Mental Health and Welfare for the Mentally Disabled and in accordance with the standards set by the Minister of Health, Labour and Welfare under the provisions of Article 37, paragraph 1 of the said Act, a person hospitalized under the said Act shall have the liberty to communicate with and be visited by others, in principle. However, certain restrictions may apply in a reasonable manner to a reasonable extent in cases where there are reasonable grounds to do so, such as that the medical condition is likely to deteriorate or for other medical or protective reasons; provided, however, that even in such cases, no restriction shall apply to the communication with or visits by the staff of prefectural governments, Legal Affairs Bureaus, District Legal Affairs Bureaus, or any other administrative organs relevant to human rights protection, or by the lawyer representing such person. Foreign nationals shall also have the liberty of communication and visits except for cases where there is a medical reason for such to be restricted. With respect to hospitalization under the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity as well, in accordance with the restrictions on behavior specified by the Minister of Health, Labour and Welfare under the provisions of Article 92, paragraph 2 of the said Act and with the treatment standards set by the Minister of Health, Labour and Welfare under the provisions of Article 93, paragraph 1 of the said Act, no restriction shall apply to the telephone communication with or visits by the staff of the court or the Regional Bureau of Health and Welfare, by the staff of prefectural governments, Legal Affairs Bureaus, or District Legal Affairs Bureaus, or any other administrative organs relevant to human rights protection, or by the lawyer acting as a representative or attendant of the hospitalized person.

93. Concerning the medical treatment record that contains the information referred to in Article 17, paragraph 3, subparagraph (f) of the Convention, a doctor designated for mental health welfare shall, pursuant to the provisions of Article 19-4-2 of the Act on Mental Health and Welfare for the Mentally Disabled and Article 88 of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity, when he/she has performed his/her duty prescribed in these Acts, enter the record thereof into the medical treatment record without delay.

94. Pursuant to the provisions of Article 38-6 of the Act on Mental Health and Welfare for the Mentally Disabled, the Minister of Health, Labour and Welfare or the prefectural governor may collect reports or conduct on-the-spot inspections regarding the condition and treatment of persons hospitalized at a mental hospital. In addition, a Mental Health Care Examination Committee that examines the notification of hospitalization, periodic condition reports, and any requests for discharge or improvement of treatment, etc., is established. Furthermore, pursuant to the provisions of Article 97 of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity, the Minister of Health, Labour and Welfare may, if he/she deems it necessary, collect reports or conduct on-the-spot inspections regarding the condition and treatment of persons hospitalized at a designated medical institution for hospitalization.

95. Articles 55 and 56 of the Act on Mental Health and Welfare for the Mentally Disabled provide punishment for any individual who refuses a request for a report or an on-the-spot inspection regarding the condition and treatment of persons hospitalized at a mental hospital or who provides a false report, as well as for a judicial person that operates such hospital.

Article 18

96. When an accused has been detained, his/her counsel shall be notified immediately and the notification includes the name of the court that detained the accused and the place

of detention (Article 79 of the Code of Criminal Procedure). When no counsel has been appointed for the accused, notification shall be given to the person who has been specified by the accused from among his/her legal representative, curator, spouse, lineal relatives and siblings (Article 79 of the Code of Criminal Procedure). Not only the accused in detention but also other persons such as the counsel or lineal relatives of the accused may request the court to disclose the grounds for detention, in which case the court shall give the grounds for detention in an open court (Articles 82 to 84 of the said Code). A decision of punishment by detention (imprisonment with or without work) shall be made in an open court. The act of intimidating the person who requested access to information may constitute a crime of intimidation (Article 222 of the Penal Code).

97. In principle, the Immigration Bureau does not willingly provide information concerning a foreign national lawfully deprived of liberty and detained by the Immigration Bureau even to persons with legitimate interest, to protect personal information of the detainee. However, a detainee is permitted to send and receive letters and use a telephone except for cases where it is deemed that there is a risk of hindering security measures, and it is possible for the detainee himself/herself to contact any person to whom the detainee wishes to notify the information referred to in Article 18, paragraph 1 (except for subparagraphs (e) and (g)) of the Convention. The detainee may also be visited by the consul of the country of which he/she is a national or citizen or by a lawyer acting as a representative or defense counsel of the detainee (including those lawyers who are going to act as such by request) and, in cases where it is deemed that there is no risk of causing hindrance to security or sanitation purposes, by any other person (without any specific restriction). At the time of such visits, the detainee may also notify them of the information referred to in Article 18, paragraph 1 (except for subparagraphs (e) and (g)) of the Convention.

98. If a detainee is a minor or an adult ward, the statutory representative of such minor or adult ward may, pursuant to the provisions of Article 12 of the Act on the Protection of Personal Information Held by Administrative Organs, request the disclosure of such retained personal information of the detainee as referred to in Article 18, paragraph 1 of the Convention. The right to request the disclosure of the retained personal information under Article 12, paragraph 1 of the Act on the Protection of Personal Information Held by Administrative Organs is granted to “any person,” and Article 12, paragraph 2 of the said Act provides that a statutory representative of a minor or an adult ward may make the request for disclosure on behalf of the principal.

99. A penal institution, juvenile training school, juvenile classification home, and women’s guidance home retains, uses, and provides personal information in accordance with the Act on the Protection of Personal Information Held by Administrative Organs. The detention facilities retain, use, or provide, etc., personal information in accordance with the personal information protection ordinance established by each prefecture. When a request for the report on the person deprived of liberty is made to a penal institution, etc., under relevant laws or regulations, such penal institution, etc., respond to such request within the extent permitted by such laws or regulations. When an inmate is committed to a juvenile training school or a juvenile classification home, the custodian of the inmate or other person deemed appropriate shall be promptly notified thereof. When a foreign national is committed to a penal institution, etc., notification to the consul of his/her country is promptly made under the Vienna Convention on Consular Relations.

100. Notifications of information about prisoners of war including their whereabouts to their home countries and related organizations, in case of armed conflicts are to be appropriately implemented according to the Geneva Conventions and related domestic laws, including the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations.

101. Article 42 of the Rules of Treatment in Prisoner of War Camps provides that the commander of the prisoner of war camp shall permit the issuance of a notice to detainees in the form stipulated in the said Rules upon any of the following events:

(i) The detention of the detainee has commenced;

(ii) The detention facility or other places that should be the destination of the letters addressed to the detainee have changed; or

(iii) The detainee is injured or suffering from disease, or is suspected to sustain an injury or to have a disease, and is to receive medical treatment by a doctor or dentist other than those who are staff members of the prisoner of war camp.

Article 19

102. Penal institutions, detention facilities, juvenile training schools, juvenile classification homes, and women's guidance homes in Japan retain, use, and provide personal information in accordance with the Act on the Protection of Personal Information Held by Administrative Organs, etc.

103. Necessary procedures concerning DNA profile records are established in the Regulation concerning Collection and Use of DNA Profile Records and are properly implemented in accordance with the Act on the Protection of Personal Information Held by Administrative Organs.

104. In accordance with Articles 5 and 6 of the Regulation concerning Collection and Use of DNA Profile Records, comparison of the DNA profile records concerning the suspect with the DNA profile records concerning the materials left at the scene and the sorting and storage thereof are conducted.

105. Article 6 of the Regulation concerning Collection and Use of DNA Profile Records provides that necessary and appropriate measures shall be taken for the prevention of the leakage, loss, or damage of information when storing the DNA profile records concerning the suspect and the DNA profile records concerning the materials left at the scene.

106. In accordance with Article 6 of the Regulation concerning Collection and Use of DNA Profile Records, a database has been prepared containing DNA profile records concerning suspects and the DNA profile records concerning the materials left at the scene.

107. Pursuant to the provisions of Article 53 of the Act on Mental Health and Welfare for the Mentally Disabled and Article 117 of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity, punitive provisions apply to any person who leaks the secrets of other persons that he/she learned from medical treatment records in connection with the execution of his/her duties under these Acts without legitimate reason.

Article 20

108. As stated in the section on Article 19, penal institutions, detention facilities, juvenile training schools, juvenile classification homes, and women's guidance homes in Japan retain, use, and provide personal information in accordance with the Act on the Protection of Personal Information Held by Administrative Organs, etc.

109. Under the Act on the Protection of Personal Information Held by Administrative Organs, restrictions on the use and provision of information are imposed. In cases where, for example, the individual concerned is seeking refugee status, he/she may not desire to provide his/her information. In addition, from the perspective of the protection of the individual concerned and considering that the provision of information involves risk of unreasonably violating his/her rights or the rights of a third party, the necessity to restrict

the right to use and provide information may arise exceptionally due to the nature of the Act.

110. With respect to the decision of disclosure or nondisclosure for a request for disclosure of the retained personal information under the Act on the Protection of Personal Information Held by Administrative Organs, an action for the revocation of such decision may be filed pursuant to the provisions of the Administrative Case Litigation Act (Act No. 139 of 1962) within six months from the day on which the requester comes to know that such decision has been made. If an administrative organ fails to make any disposition that it should make within a reasonable period of time in response to a request for disclosure, the requester may file an action for the declaration of the illegality of inaction.

111. Any person who is not satisfied with the decision of disclosure or nondisclosure on a request for disclosure of the retained personal information under the Act on the Protection of Personal Information Held by Administrative Organs, in addition to what is provided in the preceding paragraph, may appeal to the administrative organ that made such decision or its superior authorities pursuant to the provisions of the Administrative Appeal Act (Act No. 160 of 1962) within 60 days reckoning from the day following the day on which the appellant comes to know that such decision has been made. If an administrative organ fails to make any disposition that it should make within a reasonable period of time in response to a request for a disclosure, the requester may appeal the inaction.

112. In accordance with the restrictions on behavior specified by the Minister of Health, Labour and Welfare under the provisions of Article 36, paragraph 2 of the Act on Mental Health and Welfare for the Mentally Disabled and in accordance with the standards set by the Minister of Health, Labour and Welfare under the provisions of Article 37, paragraph 1 of the said Act, the person hospitalized under the said Act shall have the liberty to communicate with and be visited by others, in principle. However, certain restrictions may apply in a reasonable manner to a reasonable extent in cases where there are reasonable grounds to do so, such as that the medical condition is likely to deteriorate or for other medical or protective reasons; provided, however, that even in such cases, no restriction shall apply to the communication with or visits by the staff of prefectural governments, Legal Affairs Bureaus, District Legal Affairs Bureaus, or any other administrative organs relevant to human rights protection, or by the lawyer representing such person. Foreign nationals shall also have the liberty of communication and visits except for cases where there is a medical reason for such to be restricted.

113. With respect to hospitalization under the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity as well, in accordance with the restrictions on behavior specified by the Minister of Health, Labour and Welfare under the provisions of Article 92, paragraph 2 of the said Act and with the treatment standards set by the Minister of Health, Labour and Welfare under the provisions of Article 93, paragraph 1 of the said Act, no restriction shall apply to the telephone communication with or visits by the staff of the court or the Regional Bureau of Health and Welfare, by the staff of prefectural governments, Legal Affairs Bureaus, District Legal Affairs Bureaus, or any other administrative organs relevant to human rights protection, or by the lawyer acting as a representative or attendant of the hospitalized person.

Article 21

114. For detention through the deportation procedures in Japan, as provided in Chapter V of the Immigration Control Act, the above-mentioned three-step examination process is adopted and the due process is protected as follows: if an immigration control officer has detained a suspect pursuant to a written detention order, he/she shall deliver the suspect to an immigration inspector together with the records and evidence within 48 hours from the time at which the suspect is taken into custody; and the immigration inspector who has

taken delivery of the suspect shall immediately examine whether there are any grounds to deport the suspect and, if he/she finds as a result of the examination that there are no grounds to deport the suspect, he/she shall immediately release the suspect.

115. In cases where it is found that, as a result of the examination by an immigration inspector, a suspect falls under any of the grounds for deportation, the suspect may request the special inquiry officer for a hearing. If the special inquiry officer finds that, as a result of the hearing, that the findings made by the immigration inspector are not supported by factual evidence, he/she shall immediately release the suspect. Moreover, under the Immigration Control Act, the suspect who is not satisfied with the findings made by the special inquiry officer may file an objection with the Minister of Justice (including the Director-General of a Regional Immigration Bureau commissioned by the Minister of Justice; the same shall apply hereinafter in this section) and, if the Minister of Justice determines that the objection is with reason, the suspect shall be released.

116. In Japan, a foreign national subject to the deportation procedures is taken into custody during the procedure, in principle. However, when the necessity arises to release a person detained pursuant to a written detention order or a written deportation order from custody, taking into consideration the circumstances such as the need for humanitarian consideration, such person may be accorded provisional release upon ex officio or request. In this way, the procedure is applied flexibly, taking into account the perspective of human rights protection.

117. In cases where a foreign national subject to deportation is detained because it is difficult to deport him/her from Japan immediately, if there are any objective circumstances that make it difficult to deport him/her for a long period of time, he/she may be released with such conditions as may be deemed necessary, such as restrictions on the place of residence and area of movement and the obligation of appearing at a summons.

118. As stated in paragraphs 114 and 115, an immigration inspector, a special inquiry officer, and the Minister of Justice (including the Director-General of a Regional Immigration Bureau commissioned by the Minister of Justice) are responsible for the release.

119. If a detainee considers that the issuance of the written detention order or the written deportation order in the deportation procedures is illegal, he/she may, pursuant to the procedure prescribed in the Act on Protection of Personal Liberty or the Administrative Case Litigation Act, file an action over the illegality of such issuance of the written order, to seek the decision of the court. In addition, under the legal system in Japan, it is also possible to claim compensation for illegal detention under the State Redress Act.

120. The warden of a penal institution, juvenile training school, juvenile classification home, or women's guidance home shall, when releasing an inmate, take necessary measures to prevent the release or continuation of custody by error, including: checking the contents of 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 comparing a photograph with the actual person.

121. In addition, the warden of a penal institution, juvenile training school, or women's guidance home shall, when releasing an inmate upon the termination of the execution of the sentence, notify the public prosecutor of the public prosecutor's office corresponding to the court that has rendered the final judgment and the mayor of the municipality who administers clerical work related to the family register of the inmate.

122. Detainees shall be released immediately when: the term of detention has expired; the warrant of detention has become ineffective; or the direction or notification of release has been received from the public prosecutor. When the procedure of release has been taken,

the public prosecutor or the public prosecutor's assistant officer in charge of warrant administration is notified of such fact and the date of the release.

123. Article 137 of the Act on the Treatment of Prisoners of War and Other Detainees in Armed Attack Situations provides that upon armed attack situations, the Minister of Defense shall prepare the criteria for the repatriation of prisoners of war, medical personnel, and chaplains in armed attack situations without delay.

124. When a person who has been compulsorily hospitalized requests a discharge or improvement of treatment pursuant to the provisions of Articles 38-4 and 38-5 of the Act on Mental Health and Welfare for the Mentally Disabled, the Mental Health Care Examination Committee shall examine the necessity of hospitalization, and, based on the result, the prefectural governor shall issue a discharge order or take other measures.

125. Pursuant to the provisions of Article 29-4 of the Act on Mental Health and Welfare for the Mentally Disabled, when the symptoms for which a patient was involuntarily/compulsorily hospitalized have disappeared, compulsory hospitalization shall be terminated immediately.

126. Pursuant to the provisions of Article 64 of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity, a hospitalized person or his/her guardian or attendant may appeal against the decision of hospitalization within two weeks from such decision only for a reason of the violation of laws and regulations affecting the decision, material mistakes of fact, or substantially unwarranted disposition. The hospitalized person or his/her guardian or attendant may also file an action for permission for discharge or the termination of medical care in the district court.

Article 22

127. A pubic officer who makes a false record on the deprivation of liberty of a person can be punished for the crime of the making of false official documents (Article 156 of the Penal Code), and a pubic officer who abuses his/her authority and hinders another from exercising such person's right by refusing to provide information on the deprivation of liberty can be punished for the crime of abuse of authority by public officers (Article 193 of the said Code).

128. For the detention of foreign nationals in the deportation procedures, due process is ensured by dividing authorities between different officials, such as an immigration control officer, who requests and executes written detention orders, and a supervising immigration inspector, who issues written detention orders, so that they can check each other's work. In addition, records are periodically checked by an internal audit of affairs and an audit of documents. Sanctions applicable to public officers who are involved in such acts as described above include punishment for the crime of making false official documents (Article 156 of the Penal Code) and for the crime of abuse of authority by public officers (Articles 193 to 196 of the said Code). Disciplinary action under Article 82 of the National Public Service Act may also be imposed.

129. If a staff member of a penal institution, detention facility, juvenile training school, juvenile classification home, or women's guidance home fails to record necessary information or records incorrect information concerning an inmate, or refuses to provide information or provides incorrect information in spite of the fact that the legal requirements are satisfied, he/she may be subject to disciplinary action under the National Public Service Act for the breach of his/her obligations in the course of his/her duties as a public officer and also may be subject to a criminal penalty for the crime of making false official documents or the crime of abuse of authority by public officers.

130. Pursuant to the provisions of Article 19-4-2 of the Act on Mental Health and Welfare for the Mentally Disabled, a doctor designated for mental health welfare shall, when he/she has performed his/her duty prescribed in the said Act, enter the record thereof into the medical treatment record without delay. Pursuant to the provisions of Article 38-6 of the said Act, the Minister of Health, Labour and Welfare or the prefectural governor may, if he/she deems it necessary, collect reports or conduct on-the-spot inspections regarding the condition and treatment of persons hospitalized at a mental hospital. Any person who provides a false report on such occasions shall be subject to a penalty in accordance with Article 55 of the said Act.

131. Pursuant to the provisions of Article 88 of the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity, a doctor designated for mental health welfare shall, when he/she has performed his/her duty as prescribed in the said Act, enter the record thereof into the medical treatment record without delay. Pursuant to the provisions of Article 97 of the said Act, the Minister of Health, Labour and Welfare may, if he/she deems it necessary, collect reports or conduct on-the-spot inspections regarding the condition and treatment of persons hospitalized at a designated medical institution for hospitalization. Any person who provides a false report on such occasions shall be subject to a penalty in accordance with Article 119 of the said Act.

Article 23

132. Efforts are made to educate public prosecutors by conducting lectures on relevant human rights treaties, including the Convention on Enforced Disappearance, during training programs that are provided in accordance with their number of years' experience in accordance with their number of years' experience.

133. In order to enhance awareness about human rights and provide immigration administration services considerate of the human rights of foreign nationals, the Immigration Bureau conducts trainings on international law and relevant human rights treaties several times a year on the occasion of various staff training programs for immigration inspectors and immigration control officers. In addition to the above-mentioned trainings, the Immigration Bureau also provides specialized trainings to staff exclusively engaged in the investigation of violations of the Immigration Control Act, to those engaged in the management and administration of detention facilities, and to those engaged in the treatment of detainees. The Ministry of Justice and the Research and Training Institute of the Ministry of Justice are mainly responsible for the training of staff at the Immigration Bureau.

134. In Japan, in conjunction with the conclusion of the Convention on Enforced Disappearance, the Immigration Control Act was partially amended to stipulate that a deportation destination of a foreign national subject to deportation shall not include any country considered to be "another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance" as referred to in Article 16, paragraph 1 of the Convention (Article 53, paragraph 3, item 3 of the Immigration Control Act), which came into effect on December 23, 2010. Regarding the determination of the deportation destination, conjunction with the entry into force of the Convention on Enforced Disappearance, on December 22, 2010, regional immigration offices were directed to be more careful in dealing with each case without omission, and continuous efforts have been made to ensure appropriate handling.

135. In addition, the officials of the Immigration Bureau are made aware of their duties through the trainings provided at each level as described above. It should be noted that national public officers are under obligation to observe laws and regulations under the

National Public Service Act, and therefore failure to obey an illegal order is not subject to disciplinary action or criminal punishment.

136. For the staff of a penal institution, juvenile training school, juvenile classification home, and women's guidance home, lectures on the human rights of inmates are provided in various programs at the Training Institute for Correctional Personnel from the perspective of respect for the human rights of inmates in line with relevant human rights treaties and with the Standard Minimum Rules for the Treatment of Prisoners established by the United Nations and other international guidelines.

137. As the police perform duties closely related to human rights, as part of the compulsory training course conducted at the police academy for newly recruited or promoted police officials, education on the Constitution, Penal Code, Code of Criminal Procedure (domestic laws that ensure the implementation of the Convention), and international trends in human rights, etc., is provided for the purpose of ensuring proper execution of duties with due consideration given to human rights. In the specialized training for the officials engaged in criminal investigation or detention activity as well, education is provided to equip participants with specialized knowledge and skills necessary for the proper execution of duties with due consideration given to human rights.

138. In order to ensure the capabilities of relevant officials, the police provide the above-mentioned training at the time of recruitment and promotion and on the occasions of various specialized training programs. The National Police Agency and each prefectural police force are responsible for the training of police officials.

139. Pursuant to the provisions of Article 19 of the Act on Mental Health and Welfare for the Mentally Disabled, doctors designated for mental health welfare who make a decision on compulsory hospitalization are required to attend the training every five years after becoming qualified.

Article 24

140. The "victim and others" include not only the victim but also his/her spouse, lineal relatives, or brothers or sisters in cases where the victim has died or suffers from a serious physical or mental disorder according to the Code of Criminal Procedure (Article 290-2 of the said Code) (the same as defined in Article 2 of the Act on Measures Incidental to Criminal Procedures for Purpose of Protection of Rights and Interests of Crime Victims). The victim and others are notified of information regarding the disposition of the case or the result of criminal trial, if they wish.

141. The victim and others may inspect or copy the case records after the first trial (Article 3 of the Act on Measures Incidental to Criminal Procedures for Purpose of Protection of Rights and Interests of Crime Victims). The victim and others may inspect the final criminal case records or the records for non-prosecution in certain cases (Article 4, etc., of the Act on Final Criminal Case Records).

142. A person who suffered property damage caused by an act of enforced disappearance may demand compensation for "damages in torts" (Article 709 of the Civil Code) from the offender. Article 711 of the said Code provides that "a person who has taken the life of another must compensate for damages to the father, mother, spouse and children of the victim, even in cases where the property rights of the same have not been infringed." Based on this Article, in the event of the death of a victim as a result of an act of enforced disappearance, the father, mother, etc., of the victim may demand that the offender provide compensation for moral damages.

143. Article 709 of the Civil Code provides that "a person who has intentionally or negligently infringed any right of others, or legally protected the interests of others, shall be liable to compensate any damages resulting in consequence," while Article 710 of the said Code provides that "persons liable for damages under the provisions of the preceding Article must also compensate for damages other than those to property, regardless of whether the body, liberty or reputation of others have been infringed, or property rights of others have been infringed." Based on these provisions, a victim of enforced disappearance may demand compensation for damages from the offender. In addition, the victim, who has the right to demand compensation for damages in tort, may also realize such right through civil procedure. A child can also be the party (plaintiff) (Article 28 of the Code of Civil Procedure). Matters concerning civil procedure are stipulated in the Civil Procedure Code.

144. Article 30, paragraph 1 of the Civil Code provides that "if it is not clear whether the absentee is dead or alive for 7 years, the family court may make the adjudication of disappearance at the request of any interested person," while Article 30, paragraph 2 of the said Code provides that "the procedure of the preceding paragraph shall likewise apply with respect to any person who was engaged in any war zone, was aboard any vessel which later sank, or was otherwise exposed to any danger which could be the cause of death, if it is not clear whether such person is dead or alive for one year after the end of the war, after the sinking of the vessel, or after the termination of such other danger, as the case may be."

145. Regarding the effect of adjudication of disappearance under Article 30 of the Civil Code, Article 31 provides that "any person who has become the subject of the adjudication of disappearance pursuant to the provisions of paragraph 1 of the preceding Article is deemed to have died upon elapse of the period set forth in such paragraph, and a person who is the subject of the adjudication of disappearance pursuant to the provision of paragraph 2 of the same Article is deemed to have died upon the termination of such danger."

146. In cases where a disappeared person has a son or daughter who is a minor, if there ceases to exist any person with parental authority over the child as a result of the adjudication of disappearance to the disappeared person, guardianship shall commence and a guardian of the minor shall be appointed, and thereby the rights of the child are protected (Article 838, item 1; and Article 839 and following Articles of the Civil Code).

147. When handling the body of an unidentified person including the remains of a disappeared person, the police determine the identity by conducting a comparison of fingerprints or DNA profile analysis and deliver the remains to the bereaved family. Out of courtesy to the deceased, blood and other stains are removed from the remains, and wounds are tended to before the delivery to the bereaved family.

148. In accordance with Articles 24-2 and 24-3 of the Rules on Activities to Locate Missing Persons, DNA profile records of persons who went missing under peculiar circumstances persons who went missing under peculiar circumstances or their parents and children are sorted and stored, and are compared with DNA profile records of unidentified persons who died an unnatural death. Furthermore, in accordance with Articles 5 and 6 of the Regulation concerning Collection and Use of DNA Profile Records, DNA profile records of unidentified persons who died an unnatural death are sorted and stored, and are compared with DNA profile records of suspects or DNA profile records of persons who went missing under peculiar circumstances or their parents and children.

149. If an act of enforced disappearance constitutes the unlawful exercise of the public authorities in the course of duties of a public officer and as a result if the victim of enforced disappearance suffers damage, such victim may seek redress from the state or public entity (Article 1, paragraph 1 of the State Redress Act).

Article 25

150. An act of wrongful removal of children who are subjected to enforced disappearance or an act of wrongful removal of children whose father or mother is subjected to enforced disappearance or of children born during the captivity of a mother subjected to enforced disappearance can be punished for the crime of kidnapping or the buying or selling of human beings under the Penal Code, depending on how such act is conducted and the purpose thereof.

151. An act of falsification of documents attesting to the identity of the children as referred to above can be punished for the crime of the counterfeiting of official documents (Article 155 of the Penal Code) or false entries in the original of notarized deeds (Article 157 of the said Code), and an act of concealment or destruction of documents attesting to the true identity of the children can be punished for the crime of damaging of documents for government use (Article 258 of the said Code).

152. The search for and identification of children who have disappeared in the criminal procedure are conducted by the relevant investigative authority in accordance with the Code of Criminal Procedure. Furthermore, in accordance with Articles 24-2 and 24-3 of the Rules on Activities to Locate Missing Persons, DNA profile records of persons who went missing under peculiar circumstances or their parents and children are sorted and stored, and are compared with DNA profile records of unidentified persons who died an unnatural death.

153. When a case of enforced disappearance where a child is the victim is prosecuted, the child may state an opinion on the sentiments or other opinions relating to the case at the trial (Article 292-2 of the Code of Criminal Procedure).

154. In cases where a child who is subjected to enforced disappearance is separated from his/her guardian and adopted by other persons for the purpose of concealing the child's true identity, it is considered that there is no agreement between the parties, in which case adoption should be void (Article 802 of the Civil Code). In addition, if any of the requirements for adoption under the Civil Code, such as the consent of parents in the case of the adoption of a person who has not attained 15 years of age (Article 797 of the Civil Code) or the permission of the family court in the case of the adoption of a minor (Article 798 of the Civil Code), are not met, a request for the rescission of the adoption can be filed with the family court (Article 803 and following Articles of the Civil Code).

155. A person who has mental capacity, including a child, may present his/her opinions in the proceedings of personal status litigation, such as actions seeking the invalidation or revocation of adoption, actions seeking the dissolution of an adoptive relationship, and actions seeking a declaratory judgment on the existence of an adoptive parent-child relationship and in conciliation thereof as a party or an intervener (regarding the capacity to be a party: Article 13, paragraph 1; Article 2, item 3 of the Code of Procedure Concerning Cases Relating to Personal Status; Article 252, paragraph 1, item 5 of the Domestic Relations Case Procedure Act; and regarding interventions in proceedings: Article 42 of the Code of Civil Procedure; Articles 41 and 42 of the Domestic Relations Case Procedure Act).

156. Article 65 of the Domestic Relations Case Procedure Act provides that "in proceedings for adjudication of domestic relations …. the outcome of which would affect a minor, the family court shall endeavor to understand the intentions of the child by hearing statements from said child, having a family court probation officer conduct an examination or using any other appropriate methods, and to take the child's intentions into consideration in adjudicating the case, according to the child's age or degree of development" (this Article applies mutatis mutandis to the proceedings for conciliation of domestic relations under Article 258 of the said Act). In actual application, efforts are made to understand the

intentions of the child as much as possible, while taking into consideration the psychological burden on the child.

157. As mentioned above, a child will have full capacity to perform procedural acts as long as he/she has mental capacity. However, in reality there may be many cases in which it may be difficult for a child to perform procedural acts. Therefore, in order to protect the interest of the child, the presiding judge may appoint an attorney as such child's counsel upon petition or ex officio (Article 13, paragraphs 2 to 4 of the Code of Procedure Concerning Cases Relating to Personal Status; and Article 23 of the Domestic Relations Case Procedure Act).

158. Adoption shall be governed by the national law of an adoptive parent at the time of the adoption. In this case, for the protection of the interest of the person to be adopted, if obtaining the acceptance or consent from the person to be adopted or a third party, or obtaining permission or any other decision from a public authority is required for adoption under the national law of the person to be adopted, such requirement shall also be satisfied (Article 31, paragraph 1 of the Act on General Rules for Application of Laws).

159. In cases where a foreign law shall govern, in order to prevent a situation that would bring unacceptable consequences to the legal order of Japan, if the application of those provisions of the foreign law is against public policy, those provisions shall not apply (Article 42 of the Act on General Rules for Application of Laws).

160. In actions relating to personal status, a minor is considered to be competent to stand trial if he/she is mentally fit. Provided that the minor has the capacity to act, he/she may present his/her views as a party or a supplementary intervener, directly or through a legal representative. In family trials and family conciliation, a minor may, provided that he/she is mentally fit, similarly present his/her views as a party or a supplementary intervener, directly or through a legal representative. As for family trials, the child's statement must be heard if he/she is 15 full years of age or over, in trials on the custody of children upon divorce of parents or recognition, etc., and trials on cases involving the designation or change of the person in parental authority. In other cases, or if the child is less than 15 full years of age, the family court may hear the child's view ex officio, and there is nothing to impede the child from presenting his/her view voluntarily if he/she wishes to do so. (Paragraph 65 of the initial report of Japan under the Convention on the Rights of the Child)

161. Anyone who is a party to a judicial proceeding, or is concerned by it, is generally guaranteed the opportunity to express his/her views. Nevertheless, proceedings in cases relating to personal status and determination, and conciliations of domestic relations concerning emergence, alteration or dissolution of status relationship, require procedural actions through legal representatives for minors who are younger than 20 years of age and incapable of understanding the interests, advantages and disadvantages of legal acts. This is also the case for proceedings in civil suits (excluding cases relating to personal status), administrative litigations, and conciliations of civil matters (Paragraphs 156 and 157 of the second periodic report of Japan under the Convention on the Rights of the Child).

162. A minor, regardless of his/her age, may be a party to civil or administrative litigation. In addition, even with regard to litigation where the minor is not personally a party, in cases where such minor has an interest that may be affected by the results of the suit, the minor may intervene in order to assist either party (Article 42 of the Code of Civil Procedure). However, procedural acts such as the filing of a suit are, in principle, to be performed by a statutory representative such as a person with parental authority, except personal status actions, for which a person may perform a procedural act even if such person is a minor (see Article 13, paragraph 1 of the Code of Procedure Concerning Cases

Relating to Personal Status). (Paragraph 199 of the third periodic report of Japan under the Convention on the Rights of the Child).

163. With regard to procedures for family affairs, a hearing is required under the law for children who are 15 years of age or older when examining a family affairs case that directly involves the welfare of the child (for instance, cases related to the designation or disposal of the person with child custody, or cases related to the designation or change in the person with parental authority; with handover of the child and negotiations over meeting with the child included in the former) (Article 152, paragraph 2; and Article 169, paragraph 1, item1 of the Domestic Relations Case Procedure Act). In addition, the law for children who are under 15 years of age requires that the family court shall endeavor to understand the intentions of the child by using appropriate methods, and to take the child's intentions into consideration in adjudicating the case, according to the child's age or degree of development (Article 65 of the said Act). Moreover, in personal status actions, when the trial involves designation of the person to have parental authority over a child who is 15 years or older in a divorce proceeding, a hearing for the child's opinions is mandatory (Article 32, paragraph 4 of the Code of Procedure Concerning Cases Relating to Personal Status). (Paragraph 201 of the third periodic report of Japan under the Convention on the Rights of the Child).

164. The police accept reports about a missing person filed by persons with parental authority, guardians, or any other persons who have close relations with the missing person in social realms, and share the information about the missing person among police nationwide. Efforts are made to find missing persons through police activities, such as patrols, home visits, correctional guidance to juveniles, crackdowns on traffic violations, and investigations. When a person suspected to be missing, a lost person, or an unidentified body is found the police check the report about missing persons to see if there is any match.

Article 31

165. The Government of Japan recognizes the individual communications procedures set forth in Article 31 of the Convention to be noteworthy in the sense that it effectively guarantees the implementation of the Convention. With regard to the acceptance of the procedure, the Government of Japan is aware that there are various issues to consider including whether it could pose any problems in relation to Japan's judicial system or legislative policy, and what possible organizational frameworks would be required to implement the procedures in the case that Japan is to accept it. The Government of Japan will further consider whether or not to accept such procedures in good faith, while taking into consideration opinions from various sectors. In April 2010, the Division for Implementation of Human Rights Treaties was established in the Ministry of Foreign Affairs.

Article 32

166. Regarding Article 32 of the Convention, the Government of Japan declares that it recognizes the competence of the Committee to receive and consider communications claiming that a State Party is not fulfilling its obligations under this Convention.