Japan’s Comments on the Draft revised General Comment No. 10 (2007)

on children’s rights in juvenile justice

In response to the Note Verbale of the Office of the High Commissioner for Human Rights Reference: CRC/GC/AF dated 12 November 2018, the Government of Japan would like to submit the following comments on the Draft revised General Comment No. 10 (2007) on children’s rights in juvenile justice, after careful consideration of the draft from a legal perspective.

I. Overview

The Government of Japan understands that the General Comments of the Committee on the Rights of the Child represent the Committee’s view on interpretation of the Convention, and that they do not change or revise the provisions of the Convention and that they are not legally binding to the State Parties. The Government of Japan also believes that careful consideration is required when the General Comments refer to fields and matters stipulated by other treaties. It is important for the Committee to produce additional value when making its General Comments, within the scope of the Convention, taking into consideration the above-mentioned aspects.

II. Other Specific Comments

1. The Upper Age Limit of Juvenile Justice / The Application of Juvenile Justice Systems

First of all, with regard to paragraph 37 of the Draft revised General Comment No. 10 (2007), which reads “[t]he upper age limit of the juvenile justice system/criminal majority is universally fixed at 18 years of age” and “every person under the age of 18 years at the time of the alleged commission of an offense has the right to be treated in accordance with the rules of juvenile justice,” the Government of Japan would like to remind the Committee that the Convention of the Rights of the Child does not stipulate such a provision and that paragraph 3 of Article 40 of the Convention stipulates that “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law.” The said Article only provides for the obligation of the States Parties to strive for this end, and the Government of Japan thus believes that it is not appropriate for the revised General Comment to include content that would override the provisions of the Convention.

While juvenile justice systems vary in nature depending on the situations of each State Party, the system used in Japan works as outlined below.

Regarding paragraphs 37, 39 and 40, the Government of Japan believes that due to children’s high plasticity the juvenile justice system should be used to the greatest extent possible when an offender is a child. However, it is not appropriate to forbid criminal punishments toward children in those cases for which it is more appropriate to apply a criminal procedure in light of the nature of the case and circumstances.

Based on such understanding, in Japan, in all cases a public prosecutor shall refer a suspected juvenile offender to a family court (Juvenile Act Article 42(1)). The family court carries out the juvenile justice proceedings, and refers the case to a public prosecutor only when it deems it appropriate to take criminal proceedings. In such a case, the public prosecutor shall indict the referred juvenile offender as part of the criminal proceedings (Juvenile Act Article 20(1), 45(i)).

2. The Application of Juvenile Justice / Offenses Committed before and after 18 Years and Offences Committed with Adults

With regard to paragraphs 41 and 47, Japan believes it is juveniles’ high plasticity that justifies the different treatment of juvenile offenders from adults, with consideration for minimizing their risk of reoffending. From this point of view, it is reasonable to apply juvenile justice proceedings for those who are children at the time of the proceedings. On the other hand, we must say that in criminal proceedings it is also reasonable to consider the extent of juvenile offenders’ blameworthiness in accordance with their immaturity at the time of the offence and mitigate the sentences prescribed.

In Japan, whether the case of a juvenile offender is dealt with under the juvenile justice system or criminal justice system is subject to the offender’s age at the time of the disposition, rather than at the time of the commission of the offence. When a juvenile under the juvenile protective measure becomes an adult, the protective measure will be, in principle, discontinued. However, for offenders who need further treatment through protective measures, such treatment may be extended, even after they become adults.

3. Legal or Other Appropriate Assistance

With regard to paragraph 62, the Government of Japan understands the necessity and usefulness of court-funded legal representation for children in juvenile cases. Having said that, provision of court-funded legal representation for all juvenile cases needs careful consideration given the importance of gaining the broad support of the people of Japan at a time when budgetary resources are limited.

4. Procedural Rights

With regard to paragraph 101, whether deprivation of liberty should be used in the case of children depends on the content of the disposition and the treatment as well as the character of the juvenile offender. From this point of view, it is not appropriate to set an inflexible age limit for the use of deprivation of liberty.