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# **ADVANCE UNEDITED VERSION**

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## **Human Rights Committee**

### **Concluding observations on the sixth periodic report of Japan**

1. The Committee considered the sixth periodic report submitted by Japan (CCPR/C/JPN/6) at its 3080th and 3081st meetings (CCPR/C/SR.3080 and CCPR/C/SR.3081), held on 15 and 16 July 2014. At its 3091st and 3092<sup>nd</sup> meetings (CCPR/C/SR.3091, CCPR/C/SR.3092), held on 23 July 2014, it adopted the following concluding observations.

#### **A. Introduction**

2. The Committee welcomes the submission of the sixth periodic report of Japan and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/JPN/Q/6/Add.1) and supplementary information to the list of issues which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### **B. Positive aspects**

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption of Japan's Action Plan to Combat Trafficking in Persons, in December 2009;

(b) The approval of the Third Basic Plan for Gender Equality, in December 2010;

(c) The amendment of the Publicly-Operated Housing Act in 2012, to the effect that same-sex couples are no longer removed from the publicly-operated housing system;

(d) The amendment of the Nationality Act in 2008 and of the Civil Code in 2013, which removed discriminatory provisions against children born out of wedlock.

4. The Committee welcomes the ratification by the State party of the following international instruments:

(a) Convention for the Protection of All Persons from Enforced Disappearance in 2009;

- (b) The Convention on the Rights of Persons with Disabilities in 2014.

## C. Principal matters of concern and recommendations

### Previous concluding observations

5. The Committee is concerned that many of its recommendations made after the consideration of the State party's fourth and fifth periodic report have not been implemented.

**The State party should give effect to the recommendations adopted by the Committee in the present as well as in its previous concluding observations.**

### Applicability of the Covenant rights by national courts

6. While noting that treaties ratified by the State party have the effect of domestic laws, the Committee is concerned at the restricted number of cases in which the rights protected under the Covenant have been applied by courts (art. 2).

**The Committee reiterates its previous recommendation (CCPR/C/JPN/CO/5, para. 7) and calls on the State party to ensure that the application and interpretation of the Covenant forms part of the professional training of lawyers, judges and prosecutors at all levels, including the lower instances. The State party should also ensure that effective remedies are available for violations of the rights protected under the Covenant. The State party should consider acceding to the Optional Protocol to the Covenant providing for an individual communication procedure.**

### National Human Rights Institution

7. The Committee notes with regret that, since the abandonment in November 2012 of the Human Rights Commission Bill, the State party has not made any progress to establish a consolidated national human rights institution (art. 2).

**The Committee recalls its previous recommendation (CCPR/C/JPN/CO/5, para. 9) and recommends the State party to reconsider establishing an independent national human rights institution with a broad human rights mandate, and provide it with adequate financial and human resources, in line with the Paris principles (General Assembly resolution 48/134, annex).**

### Gender equality

8. The Committee is concerned at the State party's continuing refusal to amend the discriminatory provisions of the Civil Code that prohibit women to remarry in the six months following divorce and establishes a different age of marriage for men and women, on the grounds that it could "affect the basic concept of the institution of marriage and that of the family" (arts. 2, 3, 23 and 26).

**The State party should ensure that stereotypes regarding the roles of women and men in the family and in society are not used to justify violations of women's right to equality before the law. The State party should, therefore, take urgent action to amend the Civil Code accordingly.**

9. While welcoming the adoption of the Third Basic Plan for Gender Equality, the Committee is concerned at the limited impact of this plan in view of the low levels of women carrying out political functions. The Committee regrets the lack of information regarding participation of minority women, including Buraku women, in policy-making positions. It is concerned about reports that women represent 70 percent of the part-time workforce and earn on average 58 percent of the salaries received by men for equivalent

work. The Committee also expresses concern at the lack of punitive measures against sexual harassment or dismissals of women due to pregnancy and childbirth (arts. 2, 3 and 26).

**The State party should effectively monitor and assess the progress of the Basic Plan for Gender Equality and take prompt action to increase the participation of women in the public sector, including through temporary special measures, such as statutory quotas in political parties. It should take concrete measures to assess and support the political participation of minority women, including Buraku women, promote the recruitment of women as full-time workers and redouble its efforts to close the wage gap between men and women. It should also take the necessary legislative measures to criminalise sexual harassment and prohibit and sanction with appropriate penalties unfair treatment due to pregnancy and childbirth.**

#### **Gender-based and domestic violence**

10. The Committee regrets that, despite its previous recommendation, the State party has not made any progress to broaden the scope of the definition of rape in the criminal code, to set the age of sexual consent above 13 years, and to prosecute rape and other sexual offences *ex officio*. It also notes with concern that domestic violence remains prevalent, that the process to issue protection orders is too lengthy and that the number of perpetrators that are punished for this offence is very low. The Committee is further concerned by reports of the insufficient protection provided to same-sex couples and immigrant women (arts. 3, 6, 7 and 26).

**In line with the Committee's previous recommendations (CCPR/C/JPN/CO/5, paras 14 and 15) the State party should take concrete action to prosecute rape and other crimes of sexual violence *ex officio*, raise without further delay the age of consent for sexual activities, and review the elements of the crime of rape, as established in the Third Basic Plan for Gender Equality. The State party should intensify its efforts to ensure that all reports of domestic violence, including of same-sex couples, are thoroughly investigated, that perpetrators are prosecuted, and if convicted, punished with appropriate sanctions; and that victims have access to adequate protection, including by granting emergency protective orders and preventing immigrant women that are victims of sexual violence from losing their visa status.**

#### **Discrimination based on sexual orientation and gender identity**

11. The Committee is concerned about reports of social harassment and stigmatisation of lesbian, gay, bisexual and transgender (LGBT) persons and discriminatory provisions which practically exclude same-sex couples from the municipally-operated housing system (arts. 2 and 26).

**The State party should adopt comprehensive anti-discrimination legislation which prohibits discrimination on all grounds, including on sexual orientation and gender identity, and provides victims of discrimination with effective and appropriate remedies. The State party should intensify its awareness raising activities to combat stereotypes and prejudice against LGBT persons, investigate allegations of harassment against LGBT persons and take appropriate measures to prevent them. It should also remove the remaining restrictions in terms of eligibility criteria applied toward same-sex couples with respect to publicly operated housing services at municipal level.**

### **Hate speech and racial discrimination**

12. The Committee expresses concern at the widespread racist discourse against members of minority groups, such as Koreans, Chinese or Burakumin, inciting hatred and discrimination against them, and the insufficient protection granted against these acts in the criminal and civil code. The Committee also expresses concern at the high number of extremist demonstrations authorised, the harassment and violence perpetrated against minorities, including against foreign students, as well the open display in private establishments of signs such as “Japanese only” (arts. 2, 19, 20 and 27).

**The State should prohibit all propaganda advocating racial superiority or hatred that incites to discrimination, hostility or violence, and should prohibit demonstrations that intended to disseminate such propaganda. The State party should also allocate sufficient resources for awareness-raising campaigns against racism and increase its efforts to ensure that judges, prosecutors and police officials are trained to be able to detect hate and racially motivated crimes. The State party should also take all necessary steps to prevent racist attacks and to ensure that the alleged perpetrators are thoroughly investigated and prosecuted and, if convicted, punished with appropriate sanctions.**

### **Death penalty**

13. The Committee remains concerned that several of the 19 capital offences do not comply with the Covenant’s requirement of limiting capital punishment to the « most serious crimes », that death row inmates are still kept in solitary confinement for periods of up to 40 years before execution, and that neither they nor their families are given prior notice before the day of execution. The Committee notes, furthermore, that the confidentiality of meetings between death row inmates and their lawyers is not guaranteed, that the mental examinations regarding whether persons facing execution are “in a state of insanity” are not independent, and that requests of retrial or pardon do not have the effect of staying the execution and are not effective. Moreover, reports that the death penalty has been imposed on various occasions as a result of forced confessions, including in the case of Iwao Hakamada, are a matter of concern (arts. 2, 6, 7, 9 and 14).

#### **The State party should:**

(a) **Give due consideration to the abolition of death penalty or, in the alternative, reduce the number of eligible crimes for capital punishment to the most serious crimes that result in the loss of life;**

(b) **Ensure that the death row regime does not amount to cruel, inhuman or degrading treatment or punishment, by giving reasonable advance notice of the scheduled date and time of execution to death row inmates and their families, and refraining from imposing solitary confinement on death row prisoners unless it is used in the most exceptional circumstances and for strictly limited periods;**

(c) **Immediately strengthen the legal safeguards against wrongful sentencing to death, *inter alia*, by guaranteeing to the defense full access to all prosecution materials and ensuring that confessions obtained by torture or ill-treatment are not invoked as evidence;**

(d) **In light of the Committee’s previous concluding observations (CCPR/C/JPN/CO/5, para. 17), establish a mandatory and effective system of review in capital cases, with suspensive effect of the request for retrial or pardon, and guaranteeing the strict confidentiality of all meetings between death row inmates and their lawyers concerning requests for retrial;**

(e) **Establish an independent review mechanism of the mental health of the death row inmates;**

(f) **Consider acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.**

#### **Sexual slavery practices against “comfort women”**

14. The Committee is concerned by the State party’s contradictory position that the “comfort women” were not “forcibly deported» by Japanese military during wartime but that the “recruitment, transportation and management» of these women in comfort stations was done in many cases generally against their will through coercion and intimidation by the military or entities acting on behalf of the military. The Committee considers that any such acts carried out against the will of the victims are sufficient to consider them as human rights violations involving the direct legal responsibility of the State party. The Committee is also concerned about re-victimization of the former comfort women by attacks on their reputations, including some by public officials and some that are encouraged by the State party’s equivocal position. The Committee further takes into account, information that all claims for reparation brought by victims before Japanese courts have been dismissed, and all complaints to seek criminal investigation and prosecution against perpetrators have been rejected on the ground of the statute of limitations. The Committee considers that this situation reflects ongoing violations of the victims’ human rights, as well as a lack of effective remedies available to them as victims of past human rights violations (arts. 2, 7 and 8).

**The State party should take immediate and effective legislative and administrative measures to ensure: (i) that all allegations of sexual slavery or other human rights violations perpetrated by Japanese military during wartime against the “comfort women”, are effectively, independently and impartially investigated and that perpetrators are prosecuted and, if found guilty, punished; (ii) access to justice and full reparation to victims and their families; (iii) the disclosure of all evidence available; (iv) education of students and the general public about the issue, including adequate references in textbooks; (v) the expression of a public apology and official recognition of the responsibility of the State party; (vi) condemnation of any attempts to defame victims or to deny the events.**

#### **Trafficking in persons**

15. While appreciating the efforts made by the State party to address trafficking in persons, the Committee remains concerned about the persistence of this phenomenon, as well as about the low number of prison sentences imposed on perpetrators, the absence of cases of forced labour brought to justice, the decline in victim identification, and the insufficient support granted to victims (art. 8).

**In line with the Committee’s previous concluding observations (CCPR/C/JPN/CO/5, para. 23), the State party should:**

(a) **Enhance victim identification procedures, particularly with regard to victims of forced labour, and provide specialised training to all law enforcement officers, including labour inspectors;**

(b) **Vigorously investigate and prosecute perpetrators and, when convicted, impose penalties that are commensurate with the seriousness of the acts committed;**

(c) **Enhance the current victim protection measures, including interpretation services and legal support for claiming compensation.**

#### **Technical Intern Training Programme (TITP)**

16. The Committee notes with concern that, despite the legislative amendment extending the protection of labour legislation to foreign trainees and technical interns, there are still a large number of reports of sexual abuse, labour-related deaths and conditions that could amount to forced labour in the TITP (art. 2 and 8).

**In line with the Committee's previous concluding observations (CCPR/C/JPN/CO/5, para. 24), the State party should strongly consider replacing the current programme with a new scheme that focuses on capacity building rather than recruiting low-paid labour. In the meantime, the State party should increase the number of on-site inspections, establish an independent complaint mechanism and effectively investigate, prosecute and sanction labour trafficking cases and other labour violations.**

#### **Involuntary hospitalization**

17. The Committee is concerned that a large number of persons with mental disabilities are subject to involuntary hospitalization on very broad terms and without access to an effective remedy to challenge violations of their rights, and that hospitalization is reportedly prolonged unnecessarily by the absence of alternative services (art. 7 and 9).

#### **The State party should:**

**(a) Increase community-based or alternative services for persons with mental disabilities;**

**(b) Ensure that forced hospitalization is imposed only as a last resort, for the minimum period required, and only when necessary and proportionate for the purpose of protecting the person in question from harm or preventing injury to others;**

**(c) Ensure an effective and independent monitoring and reporting system for mental institutions, aimed at effectively investigating and sanctioning abuses and providing compensation to victims and their families.**

#### **Daiyo Kangoku (substitute detention system) and forced confessions**

18. The Committee regrets that the State party continues to justify the use of the *Daiyo Kangoku* on the lack of available resources and on the efficiency of this system for criminal investigations. The Committee remains concerned that the absence of an entitlement to bail or a right to State-appointed counsel prior to the indictment reinforces the risk of extracting forced confessions in *Daiyo Kangoku*. Moreover, the Committee expresses concern at the absence of strict regulations regarding the conduct of interrogations and regrets the limited scope of mandatory video recording of interrogations proposed in the 2014 "Report for Reform Plan" (arts. 7, 9, 10 and 14).

**The State party should take all measures to abolish the substitute detention system or ensure that it is fully compliant with all guarantees in articles 9 and 14 of the Covenant, *inter alia*, by guaranteeing:**

**(a) That alternatives to detention, such as bail, are duly considered during pre-indictment detention;**

**(b) That all suspects are guaranteed the right to counsel from the moment of apprehension and that defence counsel is present during interrogations;**

**(c) Legislative measures setting strict time-limits for the duration and methods of interrogation, which should be entirely video-recorded;**

**(d) A complaint review mechanism that is independent of the prefectural public safety commissions and has the authority to promptly, impartially and effectively investigate allegations of torture and ill-treatment during interrogation.**

### **Expulsion and detention of asylum-seekers and undocumented immigrants**

19. The Committee expresses concern about reported cases of ill-treatment during deportations, which resulted in the death of a person in 2010. The Committee is also concerned that, despite the amendment to the Immigration Control and Refugee Recognition Act, the principle of non-refoulement is not implemented effectively in practice. The Committee remains further concerned at the lack of an independent appeal mechanism with suspensive effect against negative decisions on asylum as well as at the prolonged periods of administrative detention without adequate giving of reasons and without independent review of the detention decision (arts. 2, 7, 9 and 13).

#### **The State party should:**

**(a) Take all appropriate measures to guarantee that immigrants are not subject to ill-treatment during their deportation;**

**(b) Ensure that all persons applying for international protection are given access to fair procedures for determination and for protection against refoulement, and have access to an independent appeal mechanism with suspensive effect against negative decisions;**

**(c) Take measures to ensure that detention is resorted to for the shortest appropriate period and only if the existing alternatives to administrative detention have been duly considered and that immigrants are able to bring proceedings before a court that will decide on the lawfulness of their detention.**

### **Surveillance of Muslims**

20. The Committee is concerned about reports on widespread surveillance of Muslims by law enforcement officials (arts. 2, 17 and 26).

#### **The State party should:**

**(a) Train law enforcement personnel on cultural awareness and the inadmissibility of racial profiling, including the widespread surveillance of Muslims by law enforcement officials;**

**(b) Ensure that affected persons have access to effective remedies in cases of abuse.**

### **Abduction and forced de-conversion**

21. The Committee is concerned at reports of abductions and forced confinement of converts to new religious movements by members of their families in an effort to de-convert them (arts. 2, 9, 18, 26).

**The State party should take effective measures to guarantee the right of every person not to be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief.**

### **Restriction of fundamental freedoms on grounds of “public welfare”**

22. The Committee reiterates its concern that the concept of “public welfare” is vague and open-ended and may permit restrictions exceeding those permissible under the Covenant (arts. 2, 18 and 19).

**The Committee recalls its previous concluding observations (CCPR/C/JPN/CO/5, para. 10) and urges the State party to refrain from imposing any restriction on the rights to freedom of thought, conscience and religion or freedom of expression unless they fulfil the strict conditions set out in paragraph 3 of articles 18 and 19.**

### **Act on the Protection of Specially Designated Secrets**

23. The Committee is concerned that the recently adopted Act on the Protection of Specially Designated Secrets contains a vague and broad definition of the matters that can be classified as secret, general preconditions for classification and sets high criminal penalties that could generate a chilling effect on the activities of journalists and human rights defenders (art. 19).

**The State party should take all necessary measures to ensure that the Act on the Protection of Specially Designated Secrets and its application conforms to the strict requirements of article 19 of the Covenant, *inter alia* by guaranteeing that:**

(a) **The categories of information that could be classified are narrowly defined and any restriction on the right to seek, receive and impart information complies with the principles of legality, proportionality and necessity to prevent a specific and identifiable threat to national security;**

(b) **No individual is punished for disseminating information of legitimate public interest that does not harm national security.**

### **Fukushima Nuclear Disaster**

24. The Committee is concerned that the high threshold of exposure level set by the State party in Fukushima, and the decision to cancel some of the evacuation areas, gives no choice to people but to return to highly contaminated areas (arts. 6, 12 and 19).

**The State party should take all the necessary measures to protect the life of the people affected by the nuclear disaster in Fukushima and lift the designation of contaminated locations as evacuation areas only where the radiation level does not place the residents at risk. The State party should monitor the levels of radiation and disclose this information to the people affected in a timely manner.**

### **Corporal punishment**

25. The Committee observes that corporal punishment is only prohibited explicitly in schools, and expresses concern at its prevalence and social acceptance (arts. 7 and 24).

**The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.**

### **Rights of indigenous peoples**

26. While welcoming the recognition of the Ainu as an indigenous group, the Committee reiterates its concern regarding the lack of recognition of the Ryukyu and Okinawa as well as of the rights of these groups to their traditional land and resources or the right of their children to be educated in their language (art.27)

**The State party should take further steps to revise its legislation and fully guarantee the rights of Ainu, Ryukyu and Okinawa communities to their traditional land and natural resources, ensuring respect for the right to engage in free, prior and informed participation in policies that affect them and facilitate, to the extent possible, education for their children in their own language.**

27. The State party should widely disseminate the Covenant, the text of its sixth periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil



society and non-governmental organizations operating in the country, as well as the general public.

28. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 13, 14, 16 and 18 above.

29. The Committee requests the State party to provide in its next periodic report, due for submission on 31 July 2018, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and non-governmental organizations operating in the country.

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