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Japan Federation of Bar Associations

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**Written Information Submitted for the Summary of
the Human Rights Situation in Japan to be
Prepared by the United Nations Office of High
Commissioner for Human Rights**

Japan Federation of Bar Associations

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I. BACKGROUND

1. The government has failed to take any action to involve civil society in follow up to the UPR, which was recommended at the first UPR [26¹] (hereinafter referred to as “Recommendation”). Furthermore, consultation with civil society during the preparatory process for the second UPR was merely a formality.

A. Scope of international obligation

2. Japan ratified CPED after the first UPR but has not yet signed Second OP to ICCPR, ICRMW or ratified CPRD. Acceptance of individual communication procedures was recommended (Recommendation [1]) and subsequently also requested by Human Rights Committee (2008), CEDAW (2009) and CERD (2010). Nothing has yet been achieved, although some progress has been made such as the establishment of the Office for the Implementation of Human Rights Treaties within the Ministry of Foreign Affairs to conduct preparation.

B. Constitutional and legislative framework

3. Concluded treaties are incorporated and given effect as domestic law according to the spirit of Article 98(2) of the Constitution. However, cases in which treaties were directly or indirectly applied in domestic courts are extremely rare, and treaties have almost no function as judicial norms. Despite recommendations made at the first UPR [6], legislation defining and prohibiting discrimination has yet to be enacted.

C. Institutional and human rights infrastructure

4. Despite Recommendations [2, 3] to urgently establish NHRI in accordance with the Paris Principles, and subsequently by Human Rights Committee, CEDAW, CERD and CRC, this has not yet been achieved. The government is reported to have willingness and plans to submit a bill soon to Diet to establish NHRI, but there have been moves by opposing members of Diet, even within the ruling party, to organize a campaign against its establishment. Prospect for the enactment of the bill is uncertain. Moreover, the bill does not sufficiently observe the Paris Principles.

D. Policy measures

5. Education and training on international human rights law for judiciaries and law enforcement agencies remain insufficient and have not been improved.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS

A. Cooperation with human rights mechanisms

6. After the first UPR, Japan received reviews of periodic reports concerning ICCPR, CEDAW, ICERD and CRC. While some new issues were included in the recommendations made by each treaty bodies, there remain numerous issues for which no specific measures have yet been taken, despite recommendations made at the first UPR as well.

B. Implementation of international human rights

1. Equality and non-discrimination

a. Discriminatory law against women

7. Despite Recommendation [7], a bill to amend or repeal the provisions of Civil Code which discriminate against women (provisions on the minimum age for women, waiting period for remarriage applicable only to women and choice of surnames for married couples) has not yet been submitted.

8. In the Concluding Observations of CEDAW on the Japan's sixth periodic report², repeal of the provision that penalizes women who have had abortions was recommended. Concerns have been also raised about the fact that Anti-Prostitution Act makes prostitutes to be subject to prosecution, while customers are not penalized. These discriminatory provisions against women should be immediately revised or abolished although government has made virtually no consideration.

b. Gender equality in policy-making processes

9. The participation of women in important policy-making processes is extremely rare, and there have not been any legal, provisional special measures introduced to eliminate this disparity³.

c. Discrimination against children born out of wedlock

10. Despite Recommendation [6] and that by CRC (2010), discrimination against children born out of wedlock in the law still exists. The notion of "illegitimate child" as seen in Civil Code and Family Registration Act, as well as discriminatory provisions and treatment, must be corrected immediately^{4,5}.

d. Discrimination against Koreans, Buraku and Ainu

11. Despite Recommendation [6], no progress has been made in legislation for prohibition of racial discrimination. Discriminatory statements against Koreans residing in Japan, including Korean schools students, still have been made, and there continue to be institutional problems against Koreans residing in Japan, such as those with disability and the elderly without pension benefits. Although sense of discrimination toward Buraku is thought to be gradually getting weaker, with regard to marriage in particular, discrimination has been recognized in people's attitudes and behaviors⁶, and there is a need for continual proactive measures towards its elimination. With regard to Ainu, the government set up the Council for Ainu Policy Promotion in December 2009 and has been carrying out various activities such as promoting Ainu culture and conducting surveys on their living conditions. However, more comprehensive measures should be implemented.

e. Discrimination against persons with disability⁷

12. The government signed CRPD in 2007, and active discussions involving those concerned are currently carried on drafting a new comprehensive domestic law. The government needs to ratify CRPD without delay by enacting a domestic law that protects the fundamental human rights of the persons with disability and meets the standards of CRPD under the principle of "full participation and equality" of persons with disability.

2. Rights to life, liberty and security of the person

a. Death penalty and treatment of prisoners on death row⁸

13. Review of death penalty in aiming at its suspension and abolition was recommended (Recommendation [12]), the government clearly opposed to follow the recommendation. However, Human Rights Committee⁹ and CAT¹⁰ have repeated recommendations to review death penalty, with a view to its abolition and immediate suspension. The government should immediately halt the execution and initiate discussions across society on the matter. Particularly death penalty to juveniles should be immediately out of execution when they are under 20 years of age at the time of commission¹¹.

14. As Human Rights Committee has pointed, in a case of death sentence, an appeal is not mandatory, neither retrial nor amnesty when applied has no effect of a stay of execution. Given in a case when a defense attorney visits a prisoner on death row a detention officer may be present in the meeting room, right to counsel and to defense are not protected, either.

As regards the treatment of inmates on death row, solitary confinement is used for very long periods – over 30 years in some cases; executions are carried out without prior notification of the date, and even aged and mentally disabled prisoners have been executed.

b. *Daiyō Kangoku* and penal detention

15. In Japan, a suspect can be held in police custody for as long as 23 days for each case until he/she is prosecuted, and a period in detention can be longer by arresting the same person many times for other cases. There is no bail system available until after the prosecutor files an indictment, and the accused facing restricted access to his/her defense attorney; there is a risk of prolonged and abusive interrogation by investigators, which aims to obtain confession. Abolition of *daiyō kangoku* (substitute prison) system has been demanded for over 30 years by the JFBA and its review of the system has been repeatedly recommended by the Human Rights Committee, CAT and also at the first UPR [13]. The government, however, has made no change in the policy to keep the system, by stating merely continuous efforts to be made in a hope to have more appropriate treatments under *daiyō kangoku* system. By miscarriages of justice over the past several years, including the Shibushi case¹², the Himi case¹³, the Ashikaga case¹⁴ and the Fukawa case¹⁵, it becomes evident again that unlawful and unjust interrogations behind closed doors, only to bring out miscarriages of justice in many cases. *Daiyō kangoku* system must be abolished.

c. Violence against women and human trafficking

16. While at the first UPR continuous measures to reduce violence against women were recommended [14], many women are still victims of violence at the hands of their spouse and/or others¹⁶. The cases of domestic violence consultation, arrests for violence and protection orders are all on the rise.¹⁷ In addition to reform of Act on the Prevention of Spousal Violence and the Protection of Victims, various forms of assistance are needed such as protection for victims and employment promotion to assist their self-independence, housing procurement, and schooling for their children. In contrast with a fall in the number of human trafficking cases,¹⁸ clarification is needed to give real pictures as to their exploitative nature particularly in cases involving foreign workers.

d. Violence against children

17. Despite Recommendations [17], disciplinary cases of school teachers reveal that they carried out corporal punishments in schools¹⁹. Moreover, a case was reported that at a

juvenile institution staff abused inmates in 2009²⁰. While the government has been promoting a policy of tough punishment against bullying and violence at school, sufficient understands are still lacking as to background behind these incidents why some children have behavioral problems, and as to complexity of bullying among children.

18. In 2009, it was revealed that one out of seven children aged 17 or younger lived in poverty, and it was the case with more than half the number of children of single parents. CRC recommended measures to ensure appropriate resource allocation [67], and for the effective collection of child-support payments [69] to eradicate poverty among children²¹. The government should immediately survey conditions of poverty-stricken children, to draw up measures to combat poverty, and to prevent poverty and avoid adversity for all children, including the securement of child support²².

e. Great East Japan Earthquake and Fukushima nuclear crisis

19. Great East Japan Earthquake on March 11, 2011 brought about catastrophic damage to Pacific coast region of Tohoku and other regions due to huge tsunami, fires and destructions of residential properties, and even today many residents can find hardly any other way to live in temporary housing units²³. Nuclear Power Plant Accident of Tokyo Electric Power Company Fukushima No.1, released into air enormous radioactive materials, to bring as a result residential restrictions²⁴. Even outside of these areas, people are forced to live under radioactive levels higher than the limit set by the International Commission on Radiological Protection. Under these circumstances, residents' rights should be protected from hazardous health damage²⁵, and right to sustainable living conditions and good health is to be realized²⁶. Information on evacuation plans or instructions, vital to people's lives, was far from satisfaction. Even today, any clear information about nuclear power plants or their accidents has not been provided. Impact on the health of children and expecting mothers among others are concerned.²⁷

3. Administration of justice and the rule of law

a. Electric recording of interrogations²⁸

20. In Japan, suspects can be investigated for unlimited period of time without the presence of a defense attorney. Moreover, video recordings of interrogation process by prosecutors were taken only after a confession was documented in the statement, and actual cases of interrogations by police officers being video-recorded had been extremely limited.

Under such circumstances, Human Rights Committee²⁹ and CAT³⁰ strongly urged the use of audio and video recordings during the entire interrogation process, and the video recording of interrogations was also recommended [13]. Following the case in September 2010 in which a director at the Ministry of Health, Labour and Welfare was wrongfully charged³¹, the Public Prosecutors Office, on a trial basis, has started video recording of the entire process of interrogations on special investigation cases, and cases involving suspects with mental disabilities. However, the range of applicable cases needs to be broadened, and the video recording of interrogations should be legislated in accordance with these recommendations. Until such legislation comes about, the entire interrogation process, including investigation by police offices, must be videotaped to the maximum extent possible.

b. “Japanese military comfort women”

21. Recommendations [5 and 18] were made on the issue of “Japanese military comfort women”. In September 2011, given the ruling of the Korean Constitutional Court³², the Korean government demanded positive measures for damage relief for the victims, and during the summit meeting on December 18 of the same year, the Korean President strongly urged settlement of the comfort women issue. However, the Japanese government has taken a position that the issue has already been legally resolved. The government should take this opportunity immediately to hold discussions with the relevant governments, and as soon as possible, through legislation, make an official apology; provide measures to restore the dignity of the victims and compensate them financially; fulfill its legal responsibility by establishing an investigative body to uncover the truth; and restore the trust of the various UN human rights bodies. In association with the Korean Bar Association, JFBA has made a proposal regarding the final settlement of the “Japanese military comfort women” issue³³.

**4. Freedom of religion or belief, expression and
right to participate in public and political life**

22. In Japanese public schools, teachers who do not stand during the raising of the national flag and singing of the national anthem have received adverse dispositions, including suspension from work, and the freedom of thought and conscience at educational institutions has been threatened³⁴. Moreover, there is also growing concern about wide-ranging controls imposed by the government over the freedom of expression, such as arresting and prosecuting those who post flyers containing political views. It has also been

pointed out that personal information on many Muslims has been exhaustively gathered as a counterterrorism measure³⁵.

5. Rights to work, social security and adequate standard of living

a. Prolonged working hours and non-permanent employment

23. The number of non-permanent workers facing such problems as unstable employment, poor working conditions, and the lack of opportunities for improving vocational abilities and career development has continued to increase, and in 2010 the figure was 34.9% of all workers. Women make up 69.3% of non-permanent employment. Workers earning 2 million yen or less (less than half the average salary in Japan) per year accounted for 22.9% of all workers, and 42.7% of all working women in 2010³⁶. There is an increasing tendency for workers to be hired on non-permanent basis and face growing financial hardships, especially for women. In addition, there are still areas in which the local minimum wage is below the welfare standard, and thus the minimum wage system is not sufficiently performing its function as a safety net for workers³⁷.

24. Permanent workers are being placed under pressure to achieve results through prolonged working hours, excessively heavy schedules and performance-based wage systems. In 2010, workers who worked 60 hours or more per week made up 9.5% of the total workforce³⁸. As a result, there has been an increasing incidence of work-related cases of brain, heart and mental illness among workers³⁹. These working conditions of regular workers not only make it difficult for them to maintain work life balance, but also act as an obstacle to giving regular positions to women in particular, who are traditionally expected to bear family responsibility.

b. Standard of living and the Homeless

25. The number of public assistance recipients is on the rise due to the worsening employment situation and an increasingly aging society, having passed the 2 million in 2011⁴⁰. However, there still remain many households that have not applied for or do not receive public assistance while living below the minimum standards, and the low recipient rate is becoming a significant problem. Improper practice in welfare administration of dissuading people from applying for public assistance has also been pointed out. A government survey confirms that the number of homeless people has exceeded 13,000 nationwide⁴¹, and supportive measures including public assistance for the homeless have

been insufficient⁴².

6. Migrants, refugees and asylum-seekers^{43,44,45,46}

a. Technical intern trainees

26. Despite the continuing trend towards a multiethnic/multicultural society in Japan today, there has not been any progress in the development of domestic laws aiming at guaranteeing the rights of immigrants, and discrimination exists in the areas of labor, education, social security and public participation. With regard to improvements in the industrial training programs for foreigners, which were recommended by Human Rights Committee,⁴⁷ there has been some degree of progress. However, abolition of the training program is needed as numerous structural problems still remain, including rampant violations of labor-related laws and regulations.

b. Refugees and asylum-seekers

27. With regard to Japanese refugee status recognition system, although a recommendation was made at the first UPR to establish an independent appeal mechanism [22], the government has not taken any action in response. Concerning the recommendation to harmonize the refugee status recognition procedure with relevant international human rights treaties [20]⁴⁸, while provisions have been explicitly made to prohibit the deportation of foreigners to countries where there is a risk of torture, the criteria for granting special permission to stay in accordance with the spirit of international human rights treaties have not been laid down. There have also been no improvements whatsoever in terms of the recommendation related to the access of asylum seekers to the legal aid system [20].

¹ Figures in parentheses refer to the recommendations section of the first session of the UPR.

² Committee on the Elimination of Discrimination against Women (CEDAW), *Concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/JPN/CO/6)*, August, 2009

<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.JPN.CO.6.pdf>

³ The percentage of female Diet members as of April 2011 was 10.9% in the House of Representatives, and 18.2% in the House of Councillors. The percentage of female government officials in administrative positions was only 2.2% in 2008.

⁴ JFBA, *"JFBA report regarding the third Japanese Government Report on Optional Protocols for the Sale of Children and for Children in Military Conflicts based on the Convention on the Rights of the Child(CRC)"*, July 17th, 2009

http://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/child_report_3_en.pdf (English)

⁵ JFBA, *"Statement on calling for prompt revisions to discriminatory regulations in family law"*, October 6th, 2011

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- <http://www.nichibenren.or.jp/activity/document/statement/year/2011/111006.html> (Japanese)
- ⁶ According to the “2006 Survey Report on Buraku discrimination” (March 2008, Miki City), among married couples living in Dōwa districts, those with one spouse from a Dōwa district and the other from elsewhere comprise 29.9% of marriages overall. The proportion of couples whose marriage was not opposed by either family or both families was 59.8% where the husband was from a Dōwa district, 68.8% where it was the wife, and 94.3% where both partners were from Dōwa districts. Compared to the 90.5% rate for marriages in which neither spouse is from a Dōwa district, proportions are clearly lower and imply that many people still object to marriages when the spouse is from a Dōwa district. In response to the question of whether they felt there was Buraku discrimination regarding marriage, 53.7% of those living in Dōwa districts answered in the affirmative, compared with 23.5% of those living elsewhere.
- <http://www2.city.miki.lg.jp/miki.nsf/0/80a3ce81a1fde7e34925737e002d2b1a?OpenDocument> (Japanese)
- ⁷ JFBA “Resolution repealing the Services and Supports for Persons with Disabilities Act and calling for enactment of a comprehensive welfare Act that respects the views of persons with disabilities to the utmost and guarantees their rights”, Resolution at the 54th JFBA Convention on protection of Human Rights, October 7th, 2011
- http://www.nichibenren.or.jp/activity/document/civil_liberties/year/2011/2011_3.html (Japanese)
- ⁸ JFBA, “Declaration Calling for Establishment of Measures for Rehabilitation of Convicted Persons and Cross-Society Discussion on Abolition of the Death Penalty”, Declaration at the 54th JFBA Convention on protection of Human Rights, October 7th, 2011
- http://www.nichibenren.or.jp/en/document/statements/year/2011/20111007_sengen.html (English)
- ⁹ Human Rights Committee (CCPR), *Concluding Observations of the Human Rights Committee: Japan (CCPR/C/JPN/CO/5)*, October 2008
- <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/401/08/PDF/G0940108.pdf>
- ¹⁰ Committee against Torture (CAT), *Conclusions and recommendations of the Committee against Torture (CAT/C/JPN/CO/1)*, May 2007
- <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/433/72/PDF/G0743372.pdf>
- ¹¹ On November 25th, 2010, Sendai District court sentenced a young man, 18 years of age at the time of the commission, to death for assaulting his ex-girlfriend and killing her elder sister and friend when they tried to protect her.
- ¹² Against charges of a violation of the Public Offices Election Act for receiving money in exchange for a vote in a local election for prefectural assembly in Kagoshima, 12 persons in total involved were all found not guilty on February 23, 2007 by Kagoshima District Court. In the complete framed-up case, indictments were based on a fabricated story as a result of a coercive interrogation technique known as “tatakiwari” (smash and break), which is an investigation technique developed by Kagoshima Prefectural Police using psychological pressures on the suspects to extract from them a confession.
- ¹³ In a sexual assault case, Toyama Prefectural police arrested a wrong person, who has been proven innocent after having served his prison sentence. While kept denial of the charge in a voluntary hearing, he gave up finally to heavy-handed interrogations for a false confession. Only after his release from the prison, his innocence came to light when the real culprit was found.
- ¹⁴ In a murder case of a very young girl in Ashikaga City, Tochigi Prefecture, a man was forced to give false admission of the charge against him on a basis of pre-matured evaluation of DNA testing undertaken not so well controlled conditions at that time. The sentence was life imprisonment, which had never be overturned until additional DNA testing during an application for a retrial. In March 26, 2010 he was finally found not guilty. In a murder case of a very young girl in Ashikaga City, Tochigi Prefecture, a man was forced to give false admission of the charge against him on a basis of pre-matured evaluation of DNA testing undertaken not so well controlled conditions at that time. during an application for a retrial accused by the police of being the perpetrator on the basis of DNA testing from that time, and in which he gave a false confession after being subjected to heavy-handed interrogation. He was sentenced to life imprisonment, but his innocence was proven on the basis of additional DNA testing during an application for a retrial. In March 26, 2010 a verdict of not guilty was handed down in the retrial.
- ¹⁵ A case in which two men who had been arrested for a murder and robbery incident that occurred in Fukawa, Tone-machi, Ibaraki Prefecture, were forced to give a false confession through heavy-handed

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- interrogation by the police. Although life imprisonment sentences were handed down, following an application for a retrial a large amount of evidence pointing to their innocence that had remained hidden finally came to light. On May 24, 2011, at the retrial, the men were handed a verdict of not guilty.
- ¹⁶ Gender Equality Bureau of the Cabinet Office, Information regarding support for victims of spousal violence, “*Survey on violence between the sexes*”, March, 2009
<http://www.gender.go.jp/e-vaw/chousa/10.html> (Japanese)
- ¹⁷ Gender Equality Bureau of the Cabinet Office, Information regarding support for victims of spousal violence “*Domestic Violence Statistics Data*” Updated on July 11th, 2011
http://www.gender.go.jp/e-vaw/data/dv_dataH2307.pdf (Japanese)
- ¹⁸ Gender Equality Bureau of the Cabinet Office, “*White Paper on Gender Equality 2010*”, p.92, 137
<http://www.gender.go.jp/whitepaper/h22/zentai/pdf/H22-1-3.pdf> (Japanese)
- ¹⁹ JFBA, *op. cit.*, July 17, 2009
- ²⁰ Ibid.
- ²¹ Committee on the Rights of the Child (CRC), *Concluding Observations: Japan (CRC/C/JPN/CO/3)*, June 2010
<http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.JPN.CO.3.pdf>
- ²² JFBA, “*Resolution Requesting the Breaking of the Chain of Poverty and Realization of the Rights of All Children to Live, Grow, and Develop*”, Resolution at the 53rd JFBA Convention on protection of Human Rights, October 8th, 2010
<http://www.nichibenren.or.jp/en/document/statements/year/2010/20101008.html> (English)
- ²³ JFBA, “*Resolution on Relief for Victims of the Great East Japan Earthquake, the Nuclear Plant Incident and the Restoration and Recovery of Affected Areas*”, Resolution at the 62nd JFBA General Meeting, May 27th, 2011
<http://www.nichibenren.or.jp/en/document/statements/year/2011/20110527.html> (English)
- ²⁴ JFBA, “*Written statement calling for the abandonment of nuclear power and the nuclear fuel cycle*”, July 15th, 2011
<http://www.nichibenren.or.jp/activity/document/opinion/year/2011/110715.html> (Japanese)
- ²⁵ ICRP Pub.111 Summary (d), IAEA Basic Safety Principles 7, Covenant on Civil and Political Rights, Articles 6, 17
- ²⁶ ICRP Pub.111 Summary (d), Covenant on Economic, Social and Cultural Rights, Articles 11 through 15
- ²⁷ JFBA, “*Report compiled by the Japan Federation of Bar Associations*” for a presentation in the CSW 56th session Side-Event “*Situation of Rural Women affected by the Great East Japan Earthquake and Nuclear Power Plant Accident*” and “*Opinion concerning Gender-Equal Participation in Planning toward Post Great East Japan Earthquake Recovery and How to Protect the Rights of Female Earthquake Victims*”
- ²⁸ JFBA, “*Resolution on Achieving Drastic Reform of Criminal Justice by Realizing Transparent Interrogations*”, Resolution at the 62nd JFBA General Meeting, May 27th, 2011
http://www.nichibenren.or.jp/en/document/statements/year/2011/20110527_3.html (English)
- ²⁹ CCPR, *op. cit.*, October 2008
- ³⁰ CAT, *op. cit.*, May 2007
- ³¹ A case in which a former bureau director of the Ministry of Health, Labour and Welfare was arrested and detained for over five months on suspicion of forging seal-bearing official documents and using them, and in which an acquittal was handed down on September 10, 2010 by the Ōsaka District Court. The sentence showed that prosecutors had used unfair and unlawful investigation methods on the relevant persons in order to obtain a written statement in line with a prefabricated story by prosecutors.
- ³² Regarding the rights of former wartime “Japanese Army comfort women” to claim damage compensation from the Japanese government, the South Korean Constitutional Court handed down a first decision on August 30, 2011 that “it is unconstitutional and a violation of the fundamental rights of the victims” that the South Korean government had not resolved the issue through diplomatic negotiations with Japan.
- ³³ JFBA - Korean Bar Association (KBA), “*Proposal on the final settlement of the issue of Japanese army “comfort women*”, September 2010
http://www.nichibenren.or.jp/library/ja/opinion/report/data/101211_2.pdf (Opinion in Japanese)

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- 36 National Tax Agency, *Private Salary Survey Report 2010*, September, 2011
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- 37 Ministry of Health, Labour and Welfare, “*On the findings on the revision of the minimum wage by regions for fiscal year 2011*”, September, 2011
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- 38 Ministry of Internal Affairs and Communications, “*Annual Report on the Labour Force Survey 2010*”
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- 44 JFBA, “*Opinion Paper on New Refugee Status Recognition System*”, October 17th, 2006
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- 47 CCPR, *op. cit.*, October 2008
- 48 CAT, *op. cit.*, May 2007