

ADVANCED UNEDITED VERSION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and recommendations of the Committee against Torture

JAPAN

1. The Committee considered the initial report of Japan (CAT/C/JPN/1) at its 767th and 769th meetings, held on 9 and 10 May 2007 (CAT/C/SR.767 and CAT/C/SR.769), and adopted, at its 778th and 779th meetings on 16 and 18 May 2007 (CAT/C/SR.778 and CAT/C/SR.779), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Japan, as well as the opportunity to initiate a constructive dialogue. In particular, the Committee notes with appreciation the clarifications and explanations provided by the delegation to the numerous oral questions posed by the Committee. The Committee also welcomes the large delegation, representing various departments of the Government, demonstrating the importance given by the State party to meeting its obligations under the Convention. It further welcomes non-governmental organizations present during the discussion of the report.

3. The Committee regrets, however, that the report, due in July 2000, was submitted over five years late. It also notes that the report does not fully conform to the Committee's guidelines for the preparation of initial reports, insofar as it lacks thorough information on how the Convention's provisions have been applied in practice in the State party. The initial report has often limited itself to statutory provisions rather than providing analysis of the implementation of the rights enshrined in the Convention, supported by examples and statistics.

B. Positive aspects

4. The ratification by the State party of the majority of international human rights conventions.
5. The Committee also welcomes the adoption of:
 - a) the Law for Partial Amendment of the Immigration Control and Refugee Recognition (Law No. 73 of 2004)
 - b) the Act on Penal and Detention Facilities and the Treatment of Inmates, which entered into force on 24 May 2005, and was revised on 2 June 2006
6. The Committee notes the establishment of new mechanisms aimed at increasing the transparency of detention facilities and to prevent the recurrence of violence, such as the Board of Visitors for Inspection of Penal Institutions and the Review and Investigation Panel on Complaints by Inmates in Penal Institutions. In addition, the Committee welcomes the announcement of the establishment, as of June 2007, of the Board of Visitors for Inspection of Police Custody.
7. The Committee welcomes the activities of the Corrections Bureau concerning training curricula and practice for penal institution staff, which now include human rights standards as well as behaviour science and psychology.
8. The Committee also welcomes actions taken by the State party to combat trafficking, and in particular the adoption of the National Plan of Action to Combat Trafficking in Persons of December 2004, and the revisions of the relevant laws and regulations in the Penal Code and the Immigration Control and Refugee Recognition Act.
9. The Committee welcomes the consultations with civil society undertaken by the State party in the framework of the preparation of the report.

C. Principal subjects of concern and recommendations

Definition of torture

10. Notwithstanding the State party's assertion that all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable as a crime under Japanese criminal law, the Committee notes with concern that a definition of torture as provided by article 1 of the Convention, is still not included in the Penal Code of the State party. In particular, the Committee is concerned that "mental torture" as per the Convention's definition is not clearly defined under articles 195 and 196 of the Penal Code and penalties for related acts, such as intimidation, are inadequate. In addition, the Committee is concerned that the Japanese legislation does not cover all types of public officials, individuals acting in an official capacity, or individuals acting at the instigation or with the consent or acquiescence of a public official or other person acting in an official capacity, such as members of the Self Defence Forces and immigration officials.

The State party should incorporate into domestic law the definition of torture as contained in article 1 of the Convention, encompassing all its constituent elements characterizing torture as a specific crime with appropriate penalties.

Internal applicability of the Convention

11. The Committee regrets the lack of information on the direct applicability of the Convention, and in particular on any instances of its application by domestic Courts, as well as the applicability of the Convention in times of war.

The State party should provide the Committee with information on the measures taken to ensure the direct applicability by Courts of the Convention, and of examples thereof. The State party should provide information on the applicability of the Convention in times of war.

Statute of limitations

12. The Committee notes with concern that acts amounting to torture and ill treatment are subject to a statute of limitations. The Committee is concerned that the statute of limitations for acts amounting to torture and ill treatment may prevent investigation, prosecution and punishment of these grave crimes. In particular, the Committee regrets the dismissal of cases filed by victims of military sexual slavery during the Second World War, the so-called “comfort women”, for reasons related to statutory limitations.

The State Party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention, so that acts amounting to torture and ill treatment, including attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

Independence of the judiciary

13. The Committee is concerned about the insufficient level of independence of the judiciary, in particular with the tenure of judges which lacks certain necessary safeguards.

The State party should take all necessary measures to reinforce the independence of the judiciary, and in particular ensure the security of tenure of judges.

Non-refoulement

14. The Committee is concerned that certain provisions in domestic law and practices of the State party do not conform with article 3 of the Convention, and in particular:

a) The 2006 Immigration Control and Refugee recognition Act which does not expressly prohibit deportation to countries where there is a risk of torture; in addition, reviewing authorities do not systematically investigate the applicability of article 3;

b) The lack of an independent body to review refugee recognition applications;

c) The conditions of detention in landing prevention facilities and Immigration Detention Centers, with numerous allegations of violence, unlawful use of restraining devices for deportation, abuse, sexual harassment, lack of access to proper healthcare. In particular, the Committee is concerned that, so far, only one case was recognized as ill treatment in Immigration Detention Centers.

d) The lack of an independent monitoring mechanism of Immigration Detention Centers and landing prevention facilities, and in particular the lack of an independent agency to

which detainees can complain about alleged violations by Immigration Bureau staff members. The Committee is also concerned that criteria for the appointment of third-party refugee adjudication counselors are not public;

e) The lack of an independent body to review decisions by immigration officials, in the light of the fact that the Ministry of Justice does not allow refugee recognition applicants to select legal representatives for appeal, and governmental legal assistance is de facto restricted for non residents;

f) Insufficient guarantees of access to judicial review for all asylum seekers, and allegations of deportations executed immediately after the administrative procedure has ended;

g) The undue length of time asylum seekers spend in custody between the rejection of the asylum application and deportation, and in particular reports of cases of indefinite and long-term detention;

h) The strict character and limited effect of the provisional stay system adopted in the revised 2006 Immigration Law.

The State party should ensure that all measures and practices relating to the detention and deportation of immigrants are in full conformity with article 3 of the Convention. In particular, the State party should expressly prohibit deportation to countries where there are substantial grounds for believing that individuals to be deported would be in danger of being subjected to torture, and establish an independent body to review asylum applications. The State party should ensure due process in asylum applications and deportation proceedings. The State party should establish without delay an independent authority to review complaints about treatment in immigration detention facilities. The State party should establish limits to the length of the detention period awaiting deportation, in particular for vulnerable groups, and make public information concerning the requirement for detention after the issuance of a written deportation order.

Daiyo Kangoku (detention in substitute prison system)

15. The Committee is deeply concerned with the prevalent and systematic use of the Daiyo Kangoku, substitute prison system, for the prolonged detention of arrested persons even after they appear before a court, and up to indictment, which, coupled with insufficient procedural guarantees for the detention and interrogation of detainees, increases the possibilities of abuse of their rights, and may lead to a de facto non respect of the principles of presumption of innocence, right to silence and right of defense. In particular the Committee is gravely concerned about:

a) The disproportionate number of individuals detained in police facilities instead of detention centers during the investigation and up to point of indictment, and in particular during the interrogation phase of the investigation;

b) The insufficient separation between the functions of investigation and detention, by which investigators may be engaged in the transfer of detainees, and subsequently be in charge of investigating their cases;

c) The unsuitability of the use of police cells for prolonged detention, and the lack of appropriate and prompt medical care for individuals in police custody;

- d) The length of pre-trial detention in police cells, lasting up to 23 days per charge, before indictment;
- e) The lack of effective judicial control and review by courts over pre-trial detention in police cells, as demonstrated by the disproportionately high issuance rate of warrants of detention by courts;
- f) The lack of a pre-indictment bail system;
- g) The absence of a court-appointed lawyer system before indictment for all suspects, independently of the categories of crimes with which they are charged, currently limited to cases of felony;
- h) The limitations of access to defense counsel for detainees in pre-trial detention, and in particular the arbitrary power of prosecutors to designate a specific date or time for a meeting between the defense counsel and the detainees, leading to the absence of defense counsel during interrogations;
- i) The limited access legal representatives are granted to all relevant material in police records, and in particular the power of prosecutors to decide what evidence to disclose upon indictment;
- j) The lack of an independent and effective inspection and complaints mechanism accessible to detainees held in police cells;
- k) The use of gags at police detention facilities, in contrast with the abolition of their use in penal institutions.

The State party should take immediate and effective measures to bring pre-trial detention in conformity with international minimum standards. In particular, the State party should amend the 2006 Prison Law, in order to limit the use of police cells during pre-trial detention. As a matter of priority, the State party should:

- a) **amend its legislation to ensure complete separation between the functions of investigation and detention (including transfer procedures), excluding police detention officers from investigation and investigators from matters pertaining to the detention of detainees;**
- b) **limit the maximum time detainees can be held in police custody to bring it in line with international minimum standards;**
- c) **ensure that legal aid is made available to all persons detained from the moment of arrest, that defense counsel are present during interrogations and that they have access to all relevant materials in the police records after indictment, in order to enable them to prepare the defence as well as ensuring prompt access to appropriate medical care to persons while in police custody;**
- d) **guarantee the independence of external monitoring of police custody, by measures such as ensuring that Prefectural Police Headquarters systematically include a lawyer recommended by the bar associations as a board member of the Boards of Visitors for Inspection of Police Custody, to be established as of June 2007;**
- e) **establish an effective complaints system, independent from the Public Safety Commissions, for the examination of complaints lodged by persons detained in police cells;**

- f) **consider the adoption of alternative measures to custodial ones at pre-trial stage;**
- g) **abolish the use of gags at police detention facilities.**

Interrogation rules and confessions

16. The Committee is deeply concerned about the large number of convictions in criminal trials based on confessions, in particular in the light of the lack of effective judicial control over the use of pre-trial detention and the extremely disproportionately high number of convictions over acquittals. The Committee is concerned about the lack of means to verify the proper conduct of interrogations of detainees while in police custody, and in particular the absence of strict time limits for the duration of interrogations and the absence of mandatory presence of defense counsel during all interrogations. In addition, the Committee is concerned that, under domestic legislation, voluntary confessions made as a result of interrogations not in conformity with the Convention may be admissible in courts, in violation of article 15 of the Convention.

The State party should ensure that interrogation of detainees in police custody or substitute prisons are systematically monitored, by mechanisms such as electronic and video recording of all interrogations, access and presence of the defense counsel during interrogation and that recordings are made available for use in criminal trials. In addition, the State party should promptly adopt strict rules concerning the length of interrogations, with appropriate sanctions for non-compliance. The State party should amend its Code of Criminal Procedure to ensure full conformity with article 15 of the Convention. The State party should provide to the Committee information on the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence.

Conditions of detention in Penal Institutions

17. The Committee is concerned about general conditions of detention in Penal Institutions, including overcrowding. While welcoming the abolition of the use of leather handcuffs in penal institutions, the Committee notes with concern allegations of instances of improper use of “type 2 leather handcuffs” as punishment. The Committee is concerned about allegations of undue delays in the provision of medical assistance to inmates as well as the lack of independent medical staff within the prison system.

The State party should take effective measures to improve conditions in places of detention, to bring them in line with international minimum standards, and in particular take measures to address current overcrowding. The State party should ensure strict monitoring of restraining devices, and in particular adopt measures to prevent them being used for punishment. In addition, the State party should ensure that adequate, independent and prompt medical assistance be provided to all inmates at all times. The State party should consider placing medical facilities and staff under the jurisdiction of the health ministry.

Use of solitary confinement

18. The Committee is deeply concerned about allegations of continuous prolonged use of solitary confinement, despite the new provisions of the 2005 Act on Penal Institutions and the

Treatment of Sentenced Inmates limiting its use. In particular, the Committee is concerned about:

- a) the de facto absence on a time limit for the use of solitary confinement, as there is no limit on the renewal of the 3 month rule;
- b) the number of detainees who have been in isolation for over 10 years, with one case exceeding 42 years
- c) allegations of the use of solitary confinement as a punishment
- d) the inadequate screening of inmates subject to solitary confinement for mental illness
- e) lack of effective recourse procedures against decisions imposing solitary confinement upon persons serving sentences;
- f) the absence of criteria to determine the need for solitary confinement.

The State party should amend its current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards. In particular, the State party should consider systematically reviewing all cases of prolonged solitary confinement, through a specialized psychological and psychiatric evaluation, with a view to releasing those where the detention can be considered in violation on the Convention.

Death Penalty

19. While noting the recent legislation broadening visiting and correspondence rights for death row inmates, the Committee is deeply concerned about a number of provisions in domestic law concerning individuals sentenced to death which could amount to torture or ill-treatment, and in particular:

- a) The principle of solitary confinement after the final sentence is handed down, given the length of time on death row, in some cases exceeding 30 years;
- b) The unnecessary secrecy and arbitrariness surrounding the time of the execution, allegedly in order to respect the privacy of inmates and their families. In particular, the Committee regrets the psychological strain imposed upon inmates and families by the constant uncertainty of the date of the execution, as prisoners are notified of their execution only hours before it is due to take place;

The State should take all necessary measures to improve conditions of detention of persons on death row in order to bring them in line with international minimum standards.

20. The Committee is seriously concerned with the restrictions imposed on the enjoyment of legal safeguards by death row inmates, in particular with respect to:

- a) The limitations imposed on death row prisoners concerning confidential access to their legal representatives, including the impossibility to meet with them in private, while on appeal; the lack of alternative means of confidential communication and the lack of access to state defense counsel after the final sentence is handed down;

- b) The lack of a mandatory appeal system for capital cases;
- c) the fact that a retrial procedure or a request for pardon are not suspensive of the execution of the sentence;
- d) the absence of a review mechanism to identify inmates on death row who may be suffering from mental illness;
- e) the fact that there has been was no case of commutation of a death sentence in the last 30 years.

The State party should consider taking measures for an immediate moratorium on executions and a commutation of sentences and should adopt procedural reforms which include the possibility of measures of pardon. A right of appeal should be mandatory for all capital sentences. Furthermore, the State party should ensure that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in the implementation of the death sentence. The State party should ensure that all persons on death row are afforded the protections provided by the Convention.

Prompt and impartial investigations, right to complain

20. The Committee is concerned about:

- a) the lack of an effective complaints system for persons in police custody, and regrets the fact the 2006 Penal Law does not introduce an independent body with such a mandate. The Committee notes the lack of information on the Board of Visitors for Inspection of Police Detention Cells, to be established in June 2007.
- b) The lack of authority of the the Board of Visitors for Inspection of Penal Institutions to investigate cases or allegations of acts of torture or ill treatment.
- c) The lack of independence of the Review and Investigation Panel on Complaints by Inmates in Penal Institutions, as its secretariat is staffed by personnel of the Ministry of Justice, and its limited powers to investigate cases directly, as it cannot interview prisoners and officers nor does it has direct access to any related documents.
- d) the statutory limitations on the right of inmates to complain and the impossibility for defense counsel to assist their clients to file a complaint.
- e) reports of adverse consequences on inmates as a result of having filed a complaint and of law suits rejected on the grounds that the term for claiming compensation had expired.
- f) the lack of information on the number of complaints received, as well as the number of investigations initiated and completed and their outcome, including information on the number of perpetrators and the sentences received.

The State party should consider establishing an independent mechanism, with authority to promptly, impartially and effectively investigate all reported allegations and complaints about acts of torture and ill treatment from both individuals in pre-trial detention at police facilities or penal institutions and inmates in penal institutions. The State party should take all necessary measures to ensure the right of inmates to complain can be fully exercised, including lifting of any statute of limitations for acts of torture and ill treatment, ensuring inmates may avail

themselves of legal representation to file complaints, establishing protection mechanisms against intimidation of witnesses and reviewing all rulings limiting the right to claim compensation. The State party should provide detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions.

Human Rights Education and Training

21. The Committee notes the allegations of the existence of a training manual for investigators with interrogation procedures which are contrary to the Convention. In addition, the Committee is concerned that human rights education, and in particular rights of women and children, is only offered systematically to penal institution officials, and has not been fully included in the curricula for police detention officers, investigators, judges, immigration security personnel.

The State party should ensure that all materials related to the education curriculum of law enforcement personnel, and in particular investigators, are made public. In addition, all categories of law enforcement personnel, as well as judges and immigration officials, should be regularly trained on the human rights implication of their work, with a particular focus torture and children and women's rights.

Compensation and Rehabilitation

22. The Committee is concerned about reports of difficulties faced by victims of abuses in obtaining redress and adequate compensation. The Committee is also concerned about restrictions on the right to compensation, such as statutory limitations and reciprocity rules for immigrants; the Committee regrets the lack of information on compensation requested and awarded to victims of torture or ill treatment.

The State party should take all necessary measure to ensure that all victims of acts of torture or ill treatment can exercise fully their right to redress, including compensation and rehabilitation. The State party should take measures to establish rehabilitation services in the country. The State party should provide to the Committee information on any compensation or rehabilitation provided to the victims.

23. The Committee is concerned about the inadequate remedies for the victims of sexual violence, including in particular survivors of Japans's military sexual slavery practices during the Second World War and the failure to carry out effective educational and other measures to prevent sexual-violence and gender-based breaches of the Convention. The survivors of the wartime abuses, acknowledged by the State Party representative to suffer 'incurable wounds', experience continuing abuse and re-traumatization as a result of the State party's official denial of the facts, concealment or failure to disclose other facts, failure to prosecute those criminally responsible for acts of torture, and failure to provide adequate rehabilitation to the victims and survivors.

The Committee considers that both education (article 10 of the Convention) and remedial measures (article 14 of the Convention) are themselves a means of preventing further violations of the State party's obligations in this respect under

the Convention. Continuing official denial, failure to prosecute, and failure to provide adequate rehabilitation all contribute to a failure of the State party to meet its obligations under the Convention to prevent torture and ill-treatment, including through educational and rehabilitative measures. The Committee recommends that the State party take measures to provide education to address the discriminatory roots of sexual and gender-based violations, and provide rehabilitative measures to the victims, including steps to prevent impunity.

Gender-based violence and Trafficking

24. The Committee is concerned about continued allegations of gender-based violence and abuse against women and children in custody, including acts of sexual violence by law enforcement personnel. The Committee is also concerned about the restrictive scope of the State party's legislation covering rape, referring only to sexual intercourse with male and female genital organs, excluding other forms of sexual abuse as well as rape against male victims. In addition, the Committee is concerned that cross-border trafficking in persons continues to be a serious problem in the State party, facilitated by the extensive use of entertainment visas issued by the Government, and that support measures for identified victims remains inadequate, leading to victims of trafficking be treated as illegal immigrants and deported without redress or remedy. The Committee is also concerned about the lack of effective measures to prevent and prosecute perpetrators of violence against women and girls by military personnel, including foreign military personnel, stationed in military bases.

The State party should adopt preventive measures to combat sexual violence and violence against women, including domestic violence and gender-based violence, and promptly and impartially investigate all allegations of torture or ill-treatment with a view to prosecuting those responsible. The Committee calls on the State party to strengthen its measures to combat trafficking in persons, including restricting the use of entertainment visas to ensure they are not used for facilitating trafficking, allocating sufficient resources, and by vigorously pursuing enforcement of criminal laws in this regard. The State party is also encouraged to undertake training programmes for law-enforcement officials and the judiciary to ensure that they are sensitized to the rights and the needs of victims, to establish dedicated police units and to provide better protection and appropriate care for such victims, including, inter alia, access to safe houses, shelters and psychosocial assistance. The State party should ensure all victims can claim redress before courts of law, including victims of foreign military personnel stationed in military bases.

Individuals with Mental Disabilities

25. The Committee is concerned about the role designated private psychiatrists in private hospitals have in issuing detention order for individuals with mental disabilities, and the insufficient judicial control over detention order, management of private mental health institutions and complaints by patients concerning acts of torture or ill treatment.

The State party should take all necessary measures to ensure effective and thorough judicial control over detention procedures in public and private mental health institutions.

26. The Committee encourages the State party to consider making the declaration under article 22, thereby recognizing the competence of the Committee to receive and consider individual communications, as well as ratifying the Optional Protocol to the Convention.

27. The Committee encourages the State party to consider becoming party to the Rome Statute of International Criminal Court.

28. The State party is encouraged to disseminate widely the reports submitted to the Committee and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

29. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, recently recommended by the international human rights treaty-bodies (HRI/MC/2006/3 and Corr.1).

30. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 14, 15, 16 and 24.

31. The State party is invited to submit its second periodic report by 30 June 2011.
