Report of the Japan Federation of Bar Associations in response to Comments by the Government of Japan concerning the conclusions and recommendations of the Committee against Torture (CAT/C/JPN/CO/1) (Alternative Report)

September 18, 2008
Japan Federation of Bar Associations

Introduction

The Committee Against Torture ("The Committee") raised many issues in its conclusions and recommendations for Japan, issued in May 2007, in particular, urging Japan to submit a follow-up report on paragraphs 14, 15, 16 and 24.

In May 2008, the Japanese government responded by submitting "Comments by the Government of Japan concerning the conclusions and recommendations of the Committee against Torture (CAT/C/JPN/CO/1)."
The Japan Federation of Bar Associations ("JFBA") was present at the session where the aforementioned conclusions and recommendations were issued, and in April 2008, invited Committee member Fernando Mariño Menendez to Japan. The JFBA has also strongly called upon the Japanese government to make conscientious efforts to create a follow-up report.

Unfortunately, many of the Japanese government's comments in response to the Committee's conclusions and recommendations repeat the same explanations previously given. The JFBA wishes to clarify its position on the government's explanations pertaining to the previously mentioned paragraphs, hoping that this will be of use to the Committee in follow-up to the government's comments. The JFBA hopes for meaningful dialog between the Committee and the Japanese government, and that the Japanese legal system would helps in the prevention of torture and inhuman treatment.

1. Paragraph 14 of the Committee's Concluding Observations: Asylum procedures

(1) In response to Paragraph 2 of the Japanese government's comments

Comments by Japanese Government

2. Japan's Immigration Control and Refugee Recognition Act (hereinafter the "Immigration Control Act") does not specify or define the term "torture". However Article 53, paragraph 3 of the Immigration Control Act incorporates the provisions of Article 33 of the Convention relating to the Status of Refugees, the so-called principle of non-refoulement into the domestic law. The said paragraph in this way clearly specifies that the GOJ in principle does not return any foreign nationals to any territories where their lives would be threatened. Furthermore, when any foreign nationals face the risk of being tortured in their home countries, such persons fall in the categories provided in Article 53, paragraphs 2 and 3 of the Immigration Control Act. These provisions prevent relevant foreign nationals from

being returned to their home countries, thereby ensuring that Japan does not force any foreign nationals to return to their home countries.

Article 3 of the Convention Against Torture ("The Convention") states "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." The application of this article is different to that of the prohibition of expulsion or return ("refoulement") under Article 33 (1) of the Convention relating to the Status of Refugees ("Refugee Convention"). The Convention Against Torture also does not include exceptions, such as in Article 33 (2) of the Refugee Convention. The Immigration Control and Refugee Recognition Act ("Immigration Control Act"), which regulates the deportation of foreigners, incorporates the provisions of Article 33 (1) and (2) of the Refugee Convention, but not Article 3 of the Convention against Torture. Because treaties to which Japan is party have domestic legal force and prevail over Japanese laws, any deportation of a foreigner that violates Article 3 of the Convention should not be allowed. It is not explicitly clear, however, whether the application of Article 3 or other articles are examined as part of the deportation and applications for asylum procedures under the Immigration Control Act.

The United Nations Human Rights Council in its Universal Periodic Review ("UPR") of Japan in May 2008 recommended that Japan harmonize its procedures for reviewing asylum decisions with the Convention against Torture and other relevant human rights treaties (A/HRC/8/44, No. 60(20). The Japanese government accepted to follow-up on this recommendation (A/HRC/8/44/Add.2), but as of this writing, has not released a concrete timetable for revising the Immigration Control Act to remedy the abovementioned point.

(2) In response to Paragraph 3 of the Japanese government's comments

Comments by Japanese Government

3. Foreigners wishing to be approved as refugees may apply for the status of refugee with the Minister of Justice pursuant to Article 61-2 of the Immigration Control Act. Specifically, such persons may apply for refugee status recognition by undergoing the procedures set forth in Article 55 of the Implementation Rules for the Immigration Control Act. The provision under Article 61, paragraph 1 specifies that those unable to prepare the application form due to such reasons as being illiterate or having physical disorders are allowed to make the application orally. Paragraph 3 of the same Article also specifies that those under 16 years old and those unable to appear at the relevant office due to reasons such as diseases are allowed to have an agent make the application on their behalf. These indicate that applicants are given broad opportunities for the said application. Article 61-2-14, paragraph 1 of the Immigration Control Act stipulates that when the Minister of Justice makes dispositions related to the recognition of refugee status, the Minister of Justice may order refugee inquirers to inspect relevant facts. Accordingly, Article 61, paragraphs 2 and

3 of the Act grant refugee inquirers a broad range of inspection rights for determining applicants' eligibilities for refugee status, such as the right to interview related parties and refer cases to public offices. The Ministry of Justice determines applicants' eligibilities for refugee status based on the results of inspections by refugee inquirers. Those applicants whose applications for such recognition have been denied may file an objection to the decision of the Minister of Justice pursuant to the provisions of Article 61-2-9. Article 61-2-9, paragraph 3 requires the Minister of Justice to consult with the refugee examination counselors for every case of such objection, when the Minister makes a decision on the objection. Refugee examination counselors are appointed from among experts with neutral stances, specializing in a broad range of fields such as law, academia, and non-government organizations (NGOs). Three of such counselors, each specializing in a different field, form a unit to inspect cases. Refugee examination counselors may ask the Minister of Justice to provide applicants who are filing for an objection with opportunities to present their opinions orally, and the counselors may also observe the oral statements by the applicants and question them, pursuant to Article 61-2-9. Such counselors in these ways are entitled to directly interview the applicants filing objections, in order to formulate the counselors' determinations. Since the system of refugee examination counselors was enforced in May 2005, there has been no case thus far in which the Minister of Justice has made a decision that has deviated from the majority opinions presented by refugee examination counselors. In these ways the refuge procedures under the Immigration Control Act ensure adequate procedures considerate of the refuge applicants' rights and interest, all the way from the point of making an application through to the point of filing an objection. Furthermore, the system of refugee examination counselors is in place as a neutral, third-party institution to inspect refuge applications on a secondary basis being operated in ways to respect the counselors' opinions.

In the past, in the case of a refugee applicants filing an objection to the decision of the Ministry of Justice, the ministry refused to disclose to the applicant the record of his or her interview with refugee review officers. Since November 2007, however, applicants can access to this information to under the Personal Information Protection ACT.

Other than this, there has been no improvement concerning procedural guarantees.

Thus, procedural problems remain, including the denial of the right to be assisted by a representative for the primary examination of applications for refugee status and the ineligibility of foreigners without regular residential status to state-funded legal aid throughout the process. Those seeking refugee status are not an exception.

Recently, to reduce the rising number of refugee recognition applicants, the Ministry of Justice has required applicants to prepare application forms in the Japanese language and refused to accept applications submitted only in the applicant's mother tongue.

Refugee examination counselors ("counselors") are still not independent of government agencies. They are appointed by the Minister of Justice, the criteria for which are not publicly available. They also do not have an independent office for carrying out examination procedures and looking into case facts and rules and regulations.

At Japan's UPR, it was recommended that it "establish an independent body to review asylum applications" (A/HRC/8/44, para60 22), to which the Japanese government's only reply has been that "refugee examination counselors are appointed from among experts specialized in a broad range of fields and operate as a neutral, third-party institution to inspect refugee applications on a secondary basis" (A/HRC/8/44/Add.1, para16).

No case has been reported that Counselors have expressed any opinion on the procedural fairness of the primary examination.

In Ⅰ migration control ACT Their investigative functions of counselors are limited to determining whether refugee status is recognized or not and they are not charged under the ACT with investigating whether or not Article 3 of the Convention is being complied with.

(3) In response to Paragraphs 4 and 5 of the Japanese government's comments

Comments by Japanese Government

4. In the deportation procedures, a so-called three procedural stage is adopted, consisting of the examination by immigration inspectors, the hearing by special inquiry officers and determinations by the Minister of Justice. This system affords sufficient proceedings in the screening process and ensures due process.
5. The detention facilities of the Immigration Bureau are designed to temporarily detain such foreigners who fall under the categories requiring deportation in order to facilitate the administrative purposes of displacing such persons from the country. If any detainees placed in such facilities object to the measures taken by immigration control officers concerning the treatment they receive, they may lodge a complaint to the head of the facility they are being kept in or other relevant persons. If such detainees furthermore object to the judgment given by the head of the facility or other relevant person, such detainees are ensured of a system to lodge a complaint with the Minister of Justice. As these measures allow for appropriate treatment received by detainees, the GOJ finds it unnecessary to establish an independent inspecting organization to serve lodgings of objections. However, from the perspective of securing the transparency of treatment in detention facilities, the Immigration Bureau of the Ministry of Justice is in the process of collecting information on the operation statuses of the penal facility visiting committees and on overseas case examples, and conducting surveys and research in order to consider the pros and cons and whether to establish a third- party treatment monitoring system. As for landing prevention facilities, they are not designed for detention, but for short stays by foreigners who have not been

admitted for landing until the time they depart from Japan. As such, landing prevention facilities require no independent agency as suggested in the consideration by the Committee.

No new measures have been taken to improve immigration detention centers and landing prevention facilities to prevent ill treatment and abuse of foreign nationals awaiting deportation and ensure that they receive medical care as appropriate.

At the West Japan Immigration Detention Center in Ibaraki City, Osaka Prefecture in April 8, 2002 a Chinese detainee protested the fact that he wasn't allowed to make a phone call for his provisional release and was assaulted by several of the staff, resulting in broken bones in three places. The Osaka High Court delivered a judgement in May 29, 2008 that damages were to be paid to the victim. After being assaulted, the detainee had complained of severe pain to the doctor stationed in the detention center. The doctor did not take an x-ray or diagnose the broken bones.

A 16-year old male applying for refugee status was detained from August 2006 to April 2007, during which time he was placed in a shared cell for adult detainees. Although he reported his fears in being placed in this situation to the Ministry of Justice, the court and counselors, nothing was done to remedy it.

(4) In response to Paragraph 6 of the Japanese government's comments

Comments by Japanese Government

6. Under the Immigration Control Act, those foreigners that receive the order of deportation remain in custody when they undergo the deportation procedures. However, when such persons are unable to be deported over a long period of time or they need to be given special considerations due to their ages, health conditions and other humanitarian reasons regardless of the length of detention, flexible operation of provisional release is applied to such persons, allowing temporary relief from physical custody, as part of efforts to avoid prolonged detentions.

If a decision to deport is made, according to Japanese government guidelines, the general rule is that foreign nationals who are waiting to be deported are to be detained, and there is no investigation into the necessity of it, due to flight risk, for example. The concerned authorities have discretionary powers regarding whether or not to grant provisional release. There is no exception even if a case has been filed contesting the deportation decision.

The period of detention for foreign nationals awaiting deportation is not limited by law, nor have any rules regarding the restriction of such period been made public. In practice, there appears to be a trend toward shorter detention periods, but about eight months of continuous detention is usual.

The criteria for determining whether or not to grant provisional release have not been made public, and the only explanation given to the denied applicant is that there is "no reason to grant permission."

It is common while in detention for people to become ill or for their health condition to worsen. Precedents show that detainees are not released unless their health condition is so bad that they cannot endure being detained.

2. Paragraph 15 of the Committee's Concluding Observations: Substitute Prison (Daiyo Kangoku) and Police Detention

(1) In response to Paragraphs 7 and 8 of the Japanese government's comments (The Substitute Prison (Daiyo Kangoku) System)

Comments by Japanese Government

7. Concerning (a) Japan's police carries out measures considerate of human rights, part of whose initiatives is to ensure separation between functions of investigation and detention. Therefore, detainees are treated by those detention officers that belong to a section not in charge of investigation. The Act on Penal and Detention Facilities and the Treatment of Inmates and Detainees (hereinafter the "Penal and Detention Facilities Act"), enforced in June 2007, clearly stipulates the principle of separating functions of investigation and detention. The Act also establishes a system by which a Detention Facilities Visiting Committee, consisting of external third parties, visits detention facilities, interviews detainees and thereby presents its opinions to the detention services managers. The Act furthermore establishes the complaint mechanisms, and with regard to the treatment of those detained in detention facilities, the Act prescribes the similar level of treatment, which includes serving of meals, handover of money and goods by their visitors, provision of medical care and other treatment covering visitation, and sending/receipt of letters, to one of unsentenced inmates awaiting trial in penal institutions. These provisions ensure adequate detention administration in Japan with due consideration of human rights. Based on that, Japan's substitute detention system, in which suspects are detained in police detention facilities instead of penal institutions controlled by the Ministry of Justice, does not raise possibilities of abusing detainees' human rights. Such a system also conforms to the principles of the Convention. Concerning complete separation between functions of investigation and detention, the Penal and Detention Facilities Act prohibits detention officers from engaging in criminal investigations of those detainees that are detained in the detention facilities supervised by such detention officers. This requirement also prohibits investigation officers from being involved in the treatment of those detainees whom they are investigating. The transfer of detainees is also categorized in the detention administration and when a detainee is transferred to a public prosecutor office or a hospital, etc., the transfer is carried out in principle by officers belonging to the section in charge of detention

administration. When it is unable to be handled solely by the police officers in charge of detention services, transfer will be undertaken in principle by those police officers that belong to sections not involved in the investigation, such as community police section, and it is prohibited at any time to be assigned to escort officers from among personnel who are engaged in the particular investigation associated with the detainee.

8. Concerning (b) Not only to facilitate investigation to fully reveal the truths but to ensure the observation of human rights, Japan's Code of Criminal Procedure demands, with regard to the detention of suspects prior to indictment, that: strict judicial examinations be carried out at every stage of arrest, detention, and extended detention, and the duration of detention to be the maximum of 23 days. The GOJ believes these legal requirements are adequate and rational.

As is clear even from the comments of the Japanese government, the complete separation of the functions of detention and investigation is not clearly set out, even in the Law Concerning Penal and Detention Facilities and the Treatment of Inmates. In actual fact, this law only prohibits an investigator engaged in investigations regarding a specific detainee from carrying out that detainee's custodial care. Consequently, there is no prohibition on a police officer in charge of investigations being involved in the escort of detainees or other detention-related duties. The Committee's recommendation is that the body carrying out detention-related duties should be completely separate from the body in charge of investigating the cases, but no improvements have been made towards achieving this.

In March 2008, the Kokura Branch of the Fukuoka District Court acquitted a female defendant of the charges of arson and murder, which had formed part of the indictment against her (the "Hikinoguchi Case"). The main matter at issue in this case was the admissibility of trial testimony by the defendant's substitute prison cellmate, that she had heard the (female) defendant "confess" to murdering her brother and then committing arson. The cellmate was detained in the same substitute prison as the defendant (a cell at the Fukuoka Prefectural Police's Suijo Police Station). After her first indictment, the defendant was transferred to a detention centre, which is under control of Ministry of Justice. The defendant was later re-arrested for the crime of forcible obstruction of business, and detained in a substitute prison (a cell at the Fukuoka Prefectural Police's Yahata-nishi Police Station) where her former cellmate, who was also re-arrested, was also detained. The cellmate was subsequently continuously held in the substitute prison rather than being transferred to the detention centre, even after being formally charged. The female detention space at this substitute prison has a holding capacity of two persons, and for a period of over two months until the defendant was transferred to the detention centre, the defendant and her cellmate were the only two held in this substitute prison. During this time, the cellmate was hardly interrogated at all regarding the alleged facts of her own case, and was subjected to police questioning almost solely regarding what the defendant said in the substitute prison. It was during this time that the cellmate's written statement was drawn up. The judgment criticized this technique by the police, "who could be said to have

intentionally used the substitute prison to situate the defendant and her cellmate in the same cell with the aim of obtaining information via the cellmate for their investigations. The court has no choice but to impute that police custody in a substitute prison was used to further investigations." As a result "the defendant can be said to have been put in a position equivalent to undergoing interrogation by criminal investigative authorities, via the medium of her cellmate. The court is forced to conclude that physical detention in a cell, which should by all rights be differentiated from the issue of interrogation, was misused for the purposes of criminal investigation."

This case is a classic example of the investigative division and the detention division working as one to obtain a confession from a defendant through use of substitute prisons. There is no way of avoiding these sorts of negative effects as long as suspects are detained in substitute prisons managed by police.

Further, as the example of the Hikinoguchi Case demonstrates, because there is no upper limit on the length of time a suspect can be detained in a substitute prison, the aforementioned cellmate continued to be held in the same room as the defendant even after being charged, and was used hand and foot by the investigator. In addition, through repeated re-arrest and detention, a suspect can be held in a substitute prison for an extended period of time that far exceeds 23 days. If, for example, the upper limit of time for police detention was set at two to three days, quite clearly, it would not have been possible to employ the investigative technique used in this case.

(2) In response to Paragraph 9 (1)-(3) of the Japanese government's comments: The Detainee's Right to Counsel

Comments by Japanese Government

9. Concerning (c)

(1) Legal advisers for detainees The Code of Criminal Procedure ensures every criminal suspect of the right to appoint a lawyer for defense. While in the past, official defense counsels were available only in and after the stage of indictment, the 2004 amendment to the Code of Criminal Procedure established a system that allows suspects in the custody to be assisted by an official defense counsel in cases when they are unable to appoint a lawyer on their own due to poverty or other reasons. This amendment has been in force since October 2006. This system is currently applicable to "cases that are punishable by death, or imprisonment for life or a minimum term of not less than one year." However by May 2009, the system will be expanded to the extent of "those cases which are punishable by death, or imprisonment for life or a maximum term of more than three years." (Statistics of 2006 shows that this accounts for more than 80% of those cases in which, the suspects were detained.) (note 1) In addition, in order to serve for still fairer interrogation practices of both police and public prosecutors, in 2008, the National Police Agency and the Supreme Public Prosecutors Office instructed respective offices to give further consideration to

enable the arrested or detained suspect to have consultation with the counsel or the prospective counsel.

(2) Presence of defense counsel during interrogations In Japanese criminal justice system, interrogation of suspects is an indispensable step that plays an extremely important role in revealing the truths of cases. However, the presence of the defense counsel during interrogations may cause following issues, and thus prudent considerations are required: ○ it may inhibit the essential functions of interrogations in that investigating officers build relations of trust with the suspect through directly facing, hearing and persuading the suspect, and then clarify the true facts of the case by obtaining the statements of truths from the suspects; ○ it may inhibit investigating officers from asking sufficient questions to suspects, as the investigating officers would not reveal their various investigating methods and information sources etc. from being known to the defense counsel; and ○ it may prevent swift and sufficient investigation in the limited time frame of the detention.

(3) Disclosure of evidence The amended Code of Criminal Procedure of 2004 prescribes the provisions regarding inspection of evidence by defendants or defense counsels. The amended Code has introduced a system to allow the disclosure of evidence materials that are necessary and sufficient to organize points of arguments and preparation of the defense. (Specifically, prosecutors are required to disclose those evidence materials, with which they intend to provide the Court, to defendants or defense counsels in pre-trial or interim conference procedures (Article 316-14 of the amended Code). In these preparatory procedures, in response to the requests by defendants or defense counsels, prosecutors are also required to disclose certain categories of evidence materials that are: of certain types and of importance to examine the evidential value of those evidence materials with which the prosecutors demand to provide the Court; and associated with claims revealed by the defense side, when prosecutors deem such disclosures appropriate, taking the necessity and negative effects of such disclosures into consideration (Articles 316-15 and 316-20 of the amended Code).

(1) Defense counsel for the detainee

Having the right of to appoint counsel and actually receiving their assistance are separate matters. In Japan, the period between arrest and indictment may be as long as 23 days, during which time a suspect can be held under police control (in a substitute prison). In addition, suspects are often arrested and detained on minor misdemeanors, and their custody (in a substitute prison) is used to interrogate them regarding other more serious crimes. As a result, it is extremely important that all suspects are guaranteed the right of access to state-appointed counsel from the very “moment of arrest,” regardless of the nature of their alleged crime.

However not all cases are covered under the new system of state-appointed defense counsel which began in 2006.,Eeven with its expansion scheduled from May 2009, this system will applie to crimes “punishable by death, or imprisonment for life, or a maximum term of more than three years..” In addition, the state-appointed counsel can only be accessed after arrest,

court custody and a court decision to detain the person has been made. In most cases, the arrest is carried out by police, and three days pass between the initial arrest and the formal decision to detain. Where a suspect is arrested by a public prosecutor, it is usually two days between the arrest and the formal decision to detain. This reality is far from international standards, which demand that suspects have access to counsel from "the moment of arrest."

(2) Presence of defense counsel during interrogations
The Japanese government has declined to respond in regard to the issue of defense counsel presence at interrogations.

Article 180 (2) of the Crime Investigation Regulations, which provides guidelines for police criminal investigations, states that "an attorney or a person deemed appropriate" may in some cases be present during suspect interrogations. In practical, however, this is not the case at all. What is more, there is absolutely no evidence of investigatory bodies reviewing whether or not to allow the presence of counsel during interrogations. The Japanese government states that "prudent consideration is needed" regarding the matter, but this is what it says when it must answer to bodies such as the Diet to express that it has no intention of taking any measures at all.

(3) Interrogation of suspects
The way that interrogations are conducted must be reconsidered. The Japanese government states, "In the Japanese criminal justice system, interrogation of suspects is an indispensable step that plays an extremely important role in revealing the truths of cases," emphasizing that Japan place more importance on suspect interrogation than other legal jurisdictions.

Indeed, Japan's investigatory bodies do currently place great importance in the interrogation of suspects in criminal investigations. It is normal for interrogations to take place almost daily and for long periods of time over the maximum period of 23 days that the suspect is detained before indictment. It is exactly because of this situation that prompt reforms are needed.

In fact, in Japan, the adverse effects of investigatory methods attach place importance to suspect interrogation have become evident through cases such as the Shibushi Case (detailed below), wherein 12 suspects who were indicted for violating the Public Offices Election Law based on false confessions were acquitted in 2007, and a case of a man who was found innocent after serving over two years of his sentence, having been convicted of rape because his confession was considered to be compelling evidence.

From the perspective of comparative law and history, Japan is not only country using investigative practices that attach importance to confessions, and therefore, interrogations. In all legal jurisdictions we know of, a suspect's confession has been considered to be evidence of paramount importance and suspect interrogation a vital investigation method. Torturous methods of interrogation have thus been used to obtain them. To prevent human rights

violations of this kind, principles have been established in modern criminal procedural laws to limit the evidential admissibility and value of confessions, and in recent times, various countermeasures have been introduced, such as the presence of defense counsel at interrogations and video-taping of the process.

Japan's problematic investigatory practices must be overcome, and not preserved.

(4) Confessions obtained without the presence of defense counsel
There is no guarantee that confessions obtained without the presence of defense counsel will reveal the truth.

All the negative aspects that the Japanese government specifically raises pertaining to allowing defense counsel to be present at interrogations are not enough to completely deny this right.

Firstly, the Japanese government reasons that if it allows the presence of defense counsel at interrogations, "it may inhibit the essential functions of interrogations in that investigating officers build relations of trust with the suspect through directly facing, hearing and persuading the suspect, and then clarify the true facts of the case by obtaining the statements of truths from the suspects."

In fact, the nature of an interrogation is that it is a place where the investigating officer, backed by the state, presses the defendant, who defends him or herself, and state power threatens major negative consequences for the suspect, including loss of his or her life, freedom or assets. Even if an investigating officer and a suspect do build a relationship of trust, this is just an exception, and the fostering of such relationship is not the real nature of interrogation. If true relationships of trust could be built in interrogations in the first place, there should be no reason to deny the presence of defense counsel.

Further, there is absolutely no guarantee of the truth of the suspect's testimony in the closed interrogation room, from which defense counsel is excluded.

Thus, the Japanese government's views above are completely irrational.

The Japanese government also argues that allowing defense counsel at interrogations "may inhibit investigating officers from asking sufficient questions to suspects, as the investigating officers would not reveal their various investigating methods and information sources etc. from being known to the defense counsel."

Concealing investigation methods and sources of information from the suspect or counsel, however, takes away the suspect's opportunity to defend him or herself, and raises suspicion concerning the legality and fairness of investigation activities.

Even if there was a need to protect information about an investigation, this can be dealt with by establishing appropriate regulations, and is not reason to completely refuse the presence of defense counsel at interrogations.

Further, the Japanese government says that allowing defense counsel at interrogations "may prevent swift and sufficient investigation in the limited time frame of the detention."

However, as explained above, reform is needed in Japan's investigative methods, which use the detention period of a maximum of 23 days to carry out interrogations almost daily and over long periods of time. The Japanese government's views above, which are based on maintaining the long interrogation methods currently used, are not legitimate.

(5) Disclosure of evidence

There is no system that guarantees the defendant access to all police records related to his or her case. While it is true that, as the Japanese government's comments point out, the amended Code of Criminal Procedure includes new provisions concerning this issue, they are still very inadequate.

That is to say, the right of the defendant or their counsel to petition for disclosure of evidence is recognized only in cases which are subject to new pre-trial arrangement proceedings. Even where a case is subject to these proceedings, the right to petition for disclosure is limited to the evidence that satisfies the disclosure requirements set out in the Code of Criminal Procedure. There are currently cases in which the views of the defendant's team and those of the public prosecutor differ regarding whether criminal investigation related documents fall under the category of "evidence" recognized by the Code of Criminal Procedure as being subject to petition for disclosure, and if they do fall under this category, whether or not this evidence satisfies the Code's disclosure requirements. Further, the system does not provide for the disclosure of evidence immediately after indictment.

This current system for disclosure of evidence is a long way from the Committee's recommendation to ensure that the detainee and defense counsel have access to all relevant materials in police records.

(3) In response to Paragraph 9 (4) of the Japanese government's comments: Medical Care (para. 15 (c)

Comments by Japanese Government

(4) Medical services for detainees Under the Penal and Detention Facilities Act, doctors assigned by the detention services managers provide detainees with health checks approximately twice a month. Also pursuant to the Act, when detainees are injured or sick, they must immediately undergo adequate medical treatment with the expenses borne by public funding, such as receiving medical attention by doctors. These provisions of the Act are duly implemented, with the total number of cases detainees receive medical services by doctors being about 250,000 in 2006.

In 2006, the total number of detainees stood at 5,441,386 (according to the 2007 Police White Paper). Based on this number, the number of medical visits of about 250,000 (it is unclear whether this includes health check-ups) is not high at all (one in 21 detainees received treatment). It is not known whether these services were promptly provided.

Cases of detainees dying in police cells are still common, with notable instances in 2007 involving detainees apprehended for driving under the influence of alcohol (see chart below). These cases raise doubts as to whether the detainees were provided with appropriate and prompt medical treatment, as well as whether they could even endure such detention.

February 9, 2007 Nishi Police Station, Fukuoka Prefectural Police	The suspect (52) was apprehended by the Fukuoka police under suspicion for driving under the influence. While at the Nishi police station detention facilities, on the evening of the 8th, his condition took a turn for the worse. He died in the early hours of the 9th at the hospital to which he had been moved. It was explained by the police that at around 11:55pm on the 8th, a police officer surveilling the facility via monitor noticed the resting suspect vomit. He was not breathing, so the officer tried to resuscitate him. After about 10 minutes, emergency workers transferred him to the hospital. The suspect had been off work since February 2005 due to alcohol dependency, and had been hospitalized from January 18 to February 1 that year for chronic pancreatitis. After apprehending him on the afternoon of the 8th, the police had made the suspect undergo a checkup at the same hospital he had been admitted to before, where it was determined that he was suffering from dehydration and impaired consciousness, but that if he replenished his liquids, it would not be a problem to detain him. At 6:30pm, he returned to the station, drank an isotonic drink, did not take any food, then lay down.	Asahi Shimbun and Nippon Television

February 12, 2007 Choshi Police Station, Chiba Prefectural Police	At about 6:30pm on the 12th, a police officer at the Choshi Police Station detention facility in Choshi City in Chiba prefecture discovered the suspect (64) passed out and not breathing. He had been apprehended on the 8th on suspicion of professional negligence resulting in injury and traffic law violations (driving under the influence of alcohol). An emergency worker rushed to the scene about 30 minutes later, but the suspect was already dead. After being apprehended, the suspect had continuously shouted and was unable to sleep, and hardly ate anything, so he had been sent to the hospital for a checkup on the 11th.	The Yomiuri Shimbun
November 6, 2007 Otaru Police Station, Hokkaido Prefectural Police	At about 10:15pm on the 5th, a car crossed a lane divider and collided directly with a minivan traveling in the opposite direction. Just after 1am on the 6th, the Otaru police apprehended the suspect (57) on the spot under suspicion for unsafe driving resulting in death and traffic law violations (driving under the influence of alcohol). The suspect was detained at a police station facility. At around 3am, a patrolling police officer noticed that he wasn't breathing and sent him to the hospital, where it was confirmed that he was dead. The police officer said that the suspect had complained of back pain at both the scene of the accident and at the police station. He was taken to a local hospital where he was x-rayed, but both times resulted in a diagnosis that nothing was abnormal. The police said that the suspect told them that he "suffered from a chronic slipped disk," but they apprehended him because he did not appear to have any external injuries. They said that "they are investigating the cause of death but there is no issue regarding the way this was handled."	The Yomiuri Shimbun
August 10, 2008 Ota Station, Gunma Prefectural Police	At around 9:40 of the morning of the 10th, a woman (51) held at the Ota police station detention facility in Gunma prefecture collapsed and was found dead by a police officer. The police claimed that she had died of an illness but an autopsy is underway and the cause of death is being investigated. According to the police, on the evening of the 2nd, the woman went to a private residence near her home holding a knife and was arrested at the scene for weapons violations. From the 2nd, she did not eat at all, nor drink very much water. She was seen by the doctor three times, who said that there was no issue with keeping her in detention, and she was put on a drip. The police claim that there was no problem in the way that the woman was treated.	Mainichi Daily News and The Yomiuri Shimbun

(4) In response to Paragraph 10 of the Japanese government's comments: Detention Facilities Visiting Committees

Comments by Japanese Government

10. Concerning (d) The Penal and Detention Facilities Act requires the Detention Facilities Visiting Committees (hereinafter referred to as "the Committee(s)") to consist of such members that are appointed by the Prefectural Public Safety Commissions among those deemed to possess deep insight and exceptional personality and be enthusiastic about efforts to improve the administration of detention facilities (as mentioned later, the Prefectural Public Safety Commissions are tasked to manage the prefectural police as a third person body independent of the prefectural police). The Public Safety Commission in each prefecture appoints the Committee members appropriately in accordance with this provision and thereby based on its own decisions and the purport of the system. Specifically as of June 2007, the total number of the Committees is 51 in Japan, and 49 appoint a total of 52 lawyers, while all Committees include both legal professionals and doctors. All Committees have already begun visiting facilities that have been autonomously determined by each Committee, reflecting their independent activities.

Unlike the Boards of Visitors for Inspection of Penal Institutions, whereby Bar Association recommended attorneys are always appointed, a system has not been established to ensure that Bar Association recommended attorneys are appointed to Detention Facilities Visiting Committees.

During the system's first year in 2007, in 33 out of 51 boards attorneys recommended by Bar Associations were appointed. Of the remaining boards, there were some cases where the Bar Association's recommendations were rejected and the local Public Safety Commission appointed an attorney independently, or in the case of two boards, no attorney-at-law was appointed at all. In many cases where a Bar Association recommended attorney was not appointed, the alternative appointee was a former judge or public prosecutor who had later gone on to be admitted as an attorney at law. It is a serious problem that a system has still not been established for Bar Association recommended attorneys even after the Committee's recommendations.

(5) In response to Paragraph 11 of the Japanese government's comments: Complaints System

Comments by Japanese Governmen

11. Concerning (e) The Prefectural Public Safety Commissions function as council organizations to represent the sound sense of residents tasked to supervise prefectural police from the third-person standpoint, in order to ensure the democratic administration of the police. Each Commission's member is chosen from those eligible to run for the seats of the relevant prefecture's assembly and has no record of serving as professional civil servants for police or prosecution authorities in the past five years before serving as the Commission member.

Commission members are then finally appointed by governor of the prefecture upon the approval of the prefectural assembly. Consisting of such members, the Prefectural Public Safety Commissions can adequately pursue their tasks such as the examination of complaints filed by those detained in police detention facilities.

Some of the actual jurisdictional powers of Prefectural Public Safety Commissions are as follows:
- Approving the appointment and dismissal of senior members of the local police (those above police superintendent level)
- Making the particulars of the Metropolitan Police Department's organizational structure
- Make assistance requests to the National Police Agency and other prefectural police forces
- Traffic control and issuing drivers licenses
- Licensing for food and entertainment, antique and secondhand and pawnshop businesses.
(Taken from the Metropolitan Police Department website)

All of the above have nothing to do with the management and operation of police detention facilities.

Further, the actual work of the Prefectural Public Safety Commission is carried out from within the offices of the prefectural police. It was hoped that the Public Safety Commission system would democratically supervise the police and prevent and regulate illegal acts, but in reality, it is a toothless system that does not provide the right to direct supervisory powers over the police or substantive authority regarding personnel matters.

In other words, there is a problem with the independence of the structure. Further, the Prefectural Public Safety Commission does not know the realities of detention centers and is not the appropriate body to deal with complaints as an independent third party.

There is a need for a new independent institution comprised of external experts including attorneys, doctors and legal academics to be established, similar to the Review and Investigation Panel on Complaints by Inmates in Penal Institutions (Complaints Consideration Panel).

(6) In response to Paragraph 12 of the Japanese government's comments: Alternatives to Detention

Comments by Japanese Governmen

12. Concerning (f) In principle, Japanese criminal investigation is, done by the voluntary basis. Suspects are arrested and placed under the custody in extremely limited scopes and with judicial reviews in prior to the detention. Considering that these sufficient judicial reviews within the short detention period before the indictment, and that relevant provisions ensure the release of the detainees when necessary, the GOJ finds it unnecessary to employ a pre-indictment bail system or any other alternatives to existing measures.

The government asserts that the physical detention of suspects is extremely limited.

There are, however, many cases where harsh interrogations are carried out almost daily and over long periods of time, much like detention, under the name "voluntary criminal investigations." The Shibushi Case* is a typical example, when in interrogations that took place as voluntary criminal investigations, the suspects were unable to drink water or tea for long periods of time.

If a detention application is made by a public prosecutor after a suspect is arrested, it is hardly ever rejected by the judge. According to Supreme Court records, the percentage of rejected detention applications was 0.7% in 2006, and 0.99% in 2007. Further, the number of detainees bailed before the end of trial in the court of first instance was 13.5%. The percentage of defendants who were under detention orders in the court of first instance was 64.6%, of which only 15.0% were granted bail. In 2007 also, the number of defendants under detention order was 64.8%, of which 15.8% were bailed. Accordingly, the current status quo is that the majority of defendants remain in custody at the time of trial.

The Japanese government claims that there are measures that allow the release of detainees prior to indictment if necessary. Under the Code of Criminal Procedure, courts must revoke detention warrants where the basis or need for detention no longer exists. But according to the 2006 Annual Report of Judicial Statistics, only four suspects had their detention revoked prior to being charged in 2006. Courts can also suspend the enforcement of detention where deemed appropriate, by entrusting a suspect to the custody of their relatives or placing restrictions on their place of residence and so on. But the number of suspects who had their detention suspended in 2006 was 83. By contrast, in the same year over 147,000 warrants for detention were issued. These numbers demonstrate the fact that the system for revoking or suspending detention enforcement is almost non-functional prior to indictment.

Despite the fact that it can be up to 23 days between arrest and the laying of charges, there is no pre-indictment bail system and the systems for revoking and suspending detention do not function effectively. As a result, once arrested and detained, there is a high likelihood a suspect in Japan will lose their job and the basis of their livelihood. There is an urgent need, at a minimum, for a pre-indictment bail system.

*The Shibushi Case:
In April 2003, during the Kagoshima prefectural assembly elections, around ten people were accused of electoral fraud. Those arrested and detained were held at the police detention center (substitute prison). Most of them underwent investigation over long periods of time, from 9am to 9pm almost daily.

During interrogations, suspects were yelled at loudly and told not to lie, and that they would receive the death penalty. Some investigating officers kicked and hit the table, and coerced a suspect to put his both hands on the table and not to lower them. Apart from such a harsh treatment, the suspects were deceived and promised favors.

In court, all 12 defendants were acquitted. In the judgment (Kagoshima District Court, February 23, 2007), it was recognized that because of the investigator's high-handed and aggressive, extremely harsh interrogations while in detention, it was possible that the confessions were false. The prosecutor abandoned their appeal and the defendants'acquittal was finalized.

(7) In response to Paragraph 13 of the Japanese government's comments: The Use of Gags

Comments by Japanese Government

13. Concerning (g) The Penal and Detention Facilities Act allows the use of gags only in those detention facilities that lack a protection cell. The National Police Agency has been instructing prefectural police to actively make protection cells, while prefectural police have been striving to do so despite fiscal stringency. As of October 2007, 244 detention facilities (20% of the total detention facilities) accommodate protection cells and no gags are equipped in these detention facilities. However, if the use of gags were banned in those facilities without a protection cell, loud voices of a detainee could impair the sleep of other detainees, among other possibilities of negative consequences. This suggests such a ban would be inadequate. The use of a gag is allowed only in cases whereby: a detainee disturbs calm life within detention facilities by such acts as yelling continuously, defying the instructions of a detention officer, and disturbing the sleep of other detainees; and at the same time, no other measure but the use of a gag is available to hold back such acts. The duration of such use is restricted to three hours, while every time a gag is used, the detention services manager in charge must immediately consult the doctor about the health condition of the detainee to whom the gag is applied. Use of gags for the purpose of obtaining confessions is prohibited. In these ways strict conditions are imposed on the use of gags under the Penal and Detention Facilities Act.

In April 2004, at the Wakayama East Police Station, a tragic incident occurred whereby a detainee died from the use of a gag. After this, the use of gags was temporarily banned, but a new gag, said to be an improved version, was developed, and they were brought back into use from May 24, 2006. The new gag's track record is unclear, but it was used 20 times between January and May 2008. Under the law, it is necessary to consult a doctor regarding use of a gag,

but because doctors are not available in detention centers, it is assumed that they are consulted through other means, such as by telephone. This means that the specialist is unable to directly assess the detainee's condition to determine whether there are any symptoms that might make it dangerous to use a gag.

Though not regarding gags, in August 2007, a detainee died after being placed in a special holding cell with a straitjacket on (see below). It is necessary to consult a doctor not just concerning the use of gags, but also straitjackets. This tragic case is evidence that the legal requirement to consult a doctor is not fully adequate to ensure the safety of detainees.

August 3, 2007 Sennan Police Station, Osaka Prefectural Police	On the 3rd, Sennan Police Station in Osaka prefecture announced that it had arrested and detained the suspect, a 35-year old male construction worker from Sakai City, Minami ward, for a traffic violation (hit-and-run). In the early hours of the same day, he lost consciousness while in detention and was taken to the hospital for treatment, but then died. While detained, he had raised his voice loudly at around 11pm on the 2nd, so he was moved to a special holding cell. He then repeatedly banged his head against the door, so at about 12:30 in the morning of the 3rd, he was put in a straitjacket like a sleeping bag. About two and a half hours later, however, a police officer noticed that he looked unwell and took him to the hospital, but he died shortly after. The police said that after being arrested, he had been diagnosed with high blood pressure, for which he was receiving medication.	Asahi Shimbun, Jiji Press and The Yomiuri Shimbun

3. **Paragraph 16 of the Committee's Concluding Observations: Police Investigation and Interrogation**

(1) In response to Paragraph 14 of the Japanese government's comments

Comments by Japanese Governmen

14. Recording of the interrogation of detainees by video and other media Under the current Japanese criminal justice practices, statements by suspects through adequate investigations play a highly important role in revealing the truths of criminal cases. Given this point, compulsory audio/visual recording of the whole investigation process could hamper the building of ties of trust between suspects and investigators. It could also discourage suspects from making statements and thus prevent the revelation of truths. Further, suspects may withhold from providing the information regarding organized crimes, and such recording may cause difficulty in protecting the reputation or privacy of related parties in the statements. Therefore, the GOJ believes prudent consideration is necessary for the adoption of such recording methods.

The unreasonableness of the Japanese government's comments concerning the importance of suspect interrogations and the building of relationships of trust between investigating officers and suspects in investigation practices have already been pointed out above in the JFBA's response to Paragraph 9 (2) of the Japanese government's comments.

While the Japanese government says, "In the Japanese criminal justice system, interrogation of suspects is an indispensable step that plays an extremely important role in revealing the truths of cases," because defense counsel is not present at interrogations and the full investigation process is not videotaped, there is absolutely no guarantee that interrogations are being properly carried out.

The Japanese government also states that compulsory audio/visual recording of the whole investigation process "could also discourage suspects from making statements and thus prevent the revelation of truths."

However, according to JFBA surveys, in legal jurisdictions where the audio/visual recording of the whole investigation process is a general rule, there have been no reports of cases where the recording created difficulties in the ascertainment of truth because of suspects being discouraged from making statements, or of confession rates being lower.

Even in Japan, the Supreme Public Prosecutors' Office tested the recording of some interrogations between August 2006 and December 2007 and found that a difference in the suspect's attitude when making the statement with and without recording could be observed in only 17% of the cases. An actual difference in the content of the statement with and without recording was found in only 7%. If the whole investigation process is recorded, the percentages above will probably become less as investigating officers and suspects become used to it.

Thus, the Japanese government's view that the recording of interrogations could discourage suspects from making statements is not based on any reasonable grounds.

Further, the Japanese government states that if audio/visual recording of the whole investigation process is made compulsory, "suspects may withhold from providing information regarding organized crimes, and such recording may cause difficulty in protecting the reputation or privacy of related parties in the statements."

Regarding organized crimes, however, if the suspect refuses to be recorded, it is possible to make an exception and temporarily stop recording the interrogation. Regarding protecting the reputation or privacy of others, again, it is possible to take special measures to deal with this situation.

Thus, the negative aspects stated by the Japanese government above are not reason to completely deny the audio/visual recording of the whole investigation process.

(2) In response to Paragraph 15 of the Japanese government's comments

Comments by Japanese Government

15. Access to and Presence of defense counsel during interrogations This issue is referred to in (2) of section 9 in this report, responding to the Committee's recommendation in paragraph 15 (c).

Our response here is as stated above concerning paragraph 9 (2) of the Japanese government's comments.

(3) In response to Paragraph 16 of the Japanese government's comments

Comments by Japanese Government

16. Rules concerning length of interrogations In order to serve for still fairer interrogation practices of both police and the public prosecutors, in 2008, the National Police Agency and the Supreme Public Prosecutors Office instructed afresh respective offices to avoid interrogating the suspect to the midnight or for long duration unless there is inevitable circumstance, and to respond properly when the suspect, the counsel or other relevant person raised complaint or other opinion on interrogation as to record the opinion and to conduct necessary review. In particular, the police has its own regulations which describes that it shall avoid conducting interrogation of a suspect in midnight or for long time except when there are inevitable reasons, and has rules that the advanced approval by the person in charge of the investigation department such as the Chief of Police Station is necessary for cases below; (a) When interrogation is to be carried out between the hours of 10pm and 5am the next day. (b) When interrogation is to be carried out over eight hours (excluding rest break) in a single day. On the other hand, setting unified limits for the length of interrogations and imposing sanctions for incompliance with the limits are questionable in terms of feasibility and adequacy, given the flexible nature of investigations and diversity of the characteristics of criminal cases. At the same time, sufficient consideration is already in place to prevent interrogations from imposing excessive burdens on suspects. Thus, the GOJ finds it unnecessary to impose such limits by law.

In the public prosecution interrogation policy released by the Supreme Public Prosecutors Office in 2008, the following guidelines appear under the heading "Interrogation Considerations": a) In interrogating the arrested and detained suspect, make every effort to allow the suspect to sleep, eat, exercise and bathe according to the times set by the facility, giving consideration to the necessity of investigation, b) Unless there are compelling reasons, make every effort to avoid interrogations late at night or for long periods of time, and c) Make every effort to have a break at least every four hours of interrogations.

Regarding the first point, it is normal to ask that the schedule for sleeping, eating etc. of the facility be observed. On the contrary, if we focus instead on the fact that this provision allows an exception by giving consideration to the necessity of investigation, and only seeks to "make efforts" and is not making anything compulsory, it can be said that this provision legitimizes taking away the suspect's time to sleep and eat.

On the second point, aside from the meaning of "late at night" and "long periods of time" not being clear, the provision permits late night and long interrogations if there are "compelling reasons."

The third point is the same: It is normal for food or sleep after four hours of interrogation, regardless of the time it begins, so this provision cannot be said to regulate the length of interrogations. Again, it only seeks to "make efforts," so, on the contrary, permits over four hours of interrogation.

Further, inquiries into complaints filed by a suspect or counsel regarding interrogations are conducted by high-ranking officers of the Public Prosecutor's Office, which directs the investigations, and cannot be expected to be effective.

The interrogation policy of the Supreme Public Prosecutors Office does not, therefore, satisfy the recommendations made under paragraph 15 at all.

In the guidelines for interrogations in police investigations and rules for supervising suspect interrogations released by Japan's National Police Agency in 2008, an internal regulation proscribed, "Unless there are compelling reasons, make every effort to avoid interrogations late at night or for long periods of time." Another regulation said that approval must be obtained in advance from the chief of police or of the police station in the case of "suspect interrogations between 10pm and 5 am the next day" and "over eight hours in a single day."

However, it is the chief of police and of the police station who bears responsibility for the investigation, so it cannot be said that by obtaining the permission of someone in this position, there will be strict rules regarding the length of the interrogation. Particularly, in Japan, in serious crimes such as murder and cases where the defendant disputes all or part of the accusations, there is a tendency for courts to easily permit long interrogations in the middle of the night, and it is much more likely that those responsible for the investigation will prioritize the need to investigate over self-regulation of the length of interrogation.

Further, inquiries into complaints filed by a suspect or counsel regarding interrogations are carried out by police officers of the station that conducts the investigations, and such internal inquiries cannot be expected to be effective.

Thus, the above policies of the National Police Agency also do not satisfy the recommendations made under paragraph 15 at all.

The Japanese government claims that "setting unified limits for the length of interrogations and imposing sanctions for incompliance with the limits are questionable in terms of feasibility and adequacy, given the flexible nature of investigations and diversity of the characteristics of criminal cases." However, it is clear that investigatory bodies are granted excess interrogation powers, in a system that allows closed interrogations that last over eight hours a day, without the presence of defense counsel or video recording, over a maximum detention period of 23 days. The length of these interrogations must be restricted to prevent physical and mental torture in the interrogation room.

The Japanese government also states that "sufficient consideration is already in place to prevent interrogations from imposing excessive burdens on suspects. Thus, the GOJ finds it unnecessary to impose such limits by law." However, the fact that one must submit to closed interrogations with the possibility of being denied food and sleep over a maximum period of 23 days itself is equivalent to physical and mental torture. This requires immediate reform.

(4) In response to Paragraph 17 of the Japanese government's comments

Comments by Japanese Government

17. Concerning the necessity to amend its Code of Criminal Procedure to ensure full conformity with Article 15 of the Convention Article 319, paragraph 1 of the Code of Criminal Procedure provides that: confessions shall not be the evidence of the case, if they are made upon coercion, torture or intimidation, after an unreasonably long detention, or in any other ways suspected of being made involuntarily. This provision conforms to Article 15 of the Convention.

Article 319, paragraph 1 of the Code of Criminal Procedure does not conform to Article 15 of the Convention in substance.

In Japan, audio/visual recording of the whole investigation process is not carried out. Thus, if the defendant disputes the admissibility of his confession on the grounds of an illegal interrogation, he or she has no compelling means to prove it. Court proceedings thus consist of a he-said-she-said battle, pitting the defendant's statement against the investigating officer's testimony. In such situations, Japan's judges show a remarkable tendency to believe the latter, so there is a strong danger of confessions obtained through torture in interrogations being used as evidence.

Thus, defendants do not have the means to prove anything about the interrogation, and in light of Japan's criminal procedures whereby judicial review of the fairness of interrogations is

becoming a mere facade, Article 319, paragraph 1 of the Code of Criminal Procedure is a grossly inadequate provision.

For the Code of Criminal Procedure to be in complete conformity with Article 15 of the Convention, the Code must be revised, and in addition to making it compulsory for investigating bodies to carry out audio/visual recording of the whole investigation process, a provision must be introduced so that, as a general rule, all confessions obtained in interrogations without such recording are inadmissible.

(5) In response to Paragraph 18 of the Japanese government's comments

Comments by Japanese Governmen

18. There is no statistics available on the number of cases where the confessions were not admitted as evidence on the ground that they were made upon coercion, torture or intimidation, or after prolonged arrest or detention. However, in all those intentionally committed criminal cases resulting to the victim's death and punishable with capital punishment, imprisonment for life or for the minimum term of no less than 1 year, there were 3 cases in 2005, 5 cases in 2006 and 10 cases in 2007 where the court dismissed the request to examine the confession as evidence as the possible involuntariness.

The fact that there are only three to ten cases per year of courts dismissing requests to examine evidence of confession records in serious cases shows the reality that judicial review of the content of interrogations is greatly lacking substance in Japan, where it is normal to have closed interrogations over long periods of time.

As stated above, there is a tendency for judges in Japan to easily believe the testimony of investigating officers that deny that illegal interrogations have taken place.

Even if they strongly believe that an illegal interrogation did take place, judges are cautious about denying the inadmissibility of a confession obtained during the investigatory process. There is a remarkable tendency for them to admit the confessions as evidence, but deny their evidential value because they lack credibility. For example, in the Shibushi Case mentioned above, the judge held that the defendants, who had confessed, had been subject to interrogations over extremely long periods of time over several days and relentlessly pressed for a confession by the investigating officers. The defendants thus made their statements out of desperation, agreeing to the facts as provided by the investigator. The judge also held that there were indications that interrogations were hard and high-handed, as alleged by the defendants, and that to make the statements consistent with that of other suspects in the case, it was evident that the interrogations were coercive and leading.

While holding that the defendant's confession was not credible, the voluntariness of the confession was not denied. This propensity among judges continues to give investigating bodies the wrong message that interrogations that raise problems during trials are not illegal.

4. Paragraph 24 of the Committee's Concluding Observations: Violence Against Women

(1) In response to Paragraphs 19-22 of the Japanese government's comments

Comments by Japanese Government

19. The GOJ, though it has been observing international discussion since the review session last year, has not found any new development to change its position that the Convention (adopted in 1984) does not apply retroactively to issues that arose before 1999 when the Convention came into force for Japan and during the Second World War (including the issue of so-called "comfort women"). Based on these premises, the GOJ provides with facts as set forth below, concerning the issues referred to in this paragraph.
20. The GOJ repeatedly expressed its position on this issue at its UPR session in May this year as well as at the examination of its initial report for CAT in May last year, and thus there has been no official denial.
21. Besides its legal position, as explained at the examination last May, the GOJ, together with the people of Japan, seriously discussed what could be done about this issue, which led to the foundation, in July 1995, of the Asian Women's Fund (AWF). The Fund was designed to facilitate feasible remedies for so-called former "comfort women" who had reached advanced ages. The GOJ exerted its maximum efforts for the projects of the AWF, by such means as contributing about 4.8 billion yen from the national budgets, through to the time the Fund was dissolved in March 2007. Furthermore, the AWF actively compiled documents and materials relating to the issue, including the results of surveys by GOJ. The AWF publicized its activities as well as the factual findings of the so-called "comfort women" issue via its website (http://www/awf.or.jp/e-guidemap.htm). The Japan Center for Asian Historical Records has also publicized related historical documents of the Japanese Government via its website (http://www.jacar.go.jp/english/index.html). Thus, it is not appropriate, as the Committee points out, to state that there exists concealment or failure to disclose facts.
22. The GOJ will continue its efforts to promote understanding of the sympathy of the Japanese people represented by the activities of the AWF.

Paragraphs 19 to 22 of the Japanese government's comments limit the matter for consideration to Japan's military sexual slavery and do not directly address the Committee's original recommendation.

The government comments merely repeat previous statements concerning Japan's military sexual slavery, ignoring that the Committee's concluding observations were made based on those same statements. Further, paragraph 23 on education only states the accomplishments of

the Asian Women's Fund ("AWF") and that general human rights education is being provided to public officials.

As stated in paragraph 21, the activities of the AWF were already explained during the 2007 examination. The Committee would have deemed this inadequate and made its concluding observation accordingly.

Even if we only consider the issue of Japan's military sexual slavery, other than contributing about 4.8 billion yen to AWF projects, the Japanese government has still not addressed the matters required.

The Committee emphasizes Japan's military sexual slavery because it understands that this issue is strongly linked to the discriminatory factors that lie at the root of continuing problems.

Based on the comments, it can only be thought that the Japanese government has not understood at all the Committee's request for it to provide, within a one-year grace period, more information on the specific point of government response to Committee recommendations concerning measures to address fundamental problems stemming from the issue of Japan's military sexual slavery.

(2) In response to Paragraph 23 of the Japanese government's comments

Comments by Japanese Government

23. Concerning article 10 of the Convention on human rights education, as mentioned in its initial Report, the GOJ provides the public officials with education on the importance of human rights through various training programs. Furthermore, the AWF also engaged in contemporary women's issues by: organizing of international fora on these issues; providing public relations support to NGOs; initiating research and fact-finding projects; initiating counselling projects for women; and conducting research on counseling and mental care techniques.

The Committee recommends that "the State party take measures to provide education to address the discriminatory roots of sexual and gender-based violations," to which the Japanese government has responded, "the GOJ provides public officials with education on the importance of human rights through various training programs."

The Committee, however, is requesting not just general human rights education for public officials, but education with a specific aim, as stated above. It cannot be said that education is being provided to public officials that is based on a clear awareness that sexual and gender-based discrimination exists among them and that must be addressed.

Among public officials are those involved in the judiciary and education, as well general administration, but it cannot be said that the abovementioned type of education is being provided in all spheres. Because education is inadequate, it is not unusual at all for victims to experience secondary victimization upon approaching a public official for help.

We have no alternative but to regard government effort towards the eradication of sexual violence to be extremely poor. It is true that the issue of eradication of violence against women is raised in gender equality policy, and, naturally, this includes sexual violence, but concrete policy to address the latter is vague. The 2007 Cabinet Office survey on gender-based violence asked women for the first time whether they had ever been forced to have sex against their will by a person of the opposite sex. Four percent answered "Once" and 3.2% answered "More than twice," showing that 7.2% of respondents had experienced forced intercourse. These numbers are not exactly low, yet no research has been done on causes. In particular, there is absolutely no effort being made to confirm what social structures give rise to sexual violence. Sexual violence is generally dealt with only from the perspective of crime.

If we compare the victims of sexual violence today with these of about ten years ago, we can observe a change in the way they are treated in society, and a lot of this can be credited to the vigorous efforts of movements supporting them. With the influence of the movement for the rights of crime victims, understanding of victims of sexual violence has improved, but even so, outstanding gender-based issues among crime victims in general remain marginalized.

Both a cause and effect of gender-based discrimination in Japan is gender inequality in labor, specifically reflected in a big wage gap. In 2007, if the average official wage per hour of a regular male worker was set at 100, regular women company workers received only 68.1, and those who worked short hours, of which many are women, only 47.7 (2008 Gender Equality White Paper, page 77).

With such a big gap in wages and many women working in the market for short-time employment, such as in part-time jobs, women can only earn under half that of men. This forces them to depend economically on men, making their status inferior, and is a factor preventing men from treating women as equals. This is one factor leading to violence against women being tolerated, but the government has not made any policies that relate these two issues to each other. Education (not limited to schools) plays a big role in achieving gender equality, but there is nothing in government policy clearly acknowledging this.

Professional legal education is a more direct way to address this issue.

However, in recent legal education, passing the bar examination is considered the final goal, so that it is difficult to say there is interest in matters unrelated or only remotely related to this, such as sexual and gender-based violations and their discriminatory roots.

First of all, it is common for students seeking a profession in law to lack full opportunities to learn about issues concerning sexual violence, even in learning Criminal Law. Such students then go on to become practicing legal professionals who deal with sexual violence cases. Under this type of system, the situation in the legal world - which already has problems keeping up with changes in society - is such that gender-based violations are dealt with by people with no interest in the discriminatory roots of the issue. The judiciary is being criticized by victims, because in reality, it is unable to provide the redress they seek.

Despite this, still not much attention is being paid, academically or practically, to what is giving rise to impunity for sexual violence today.

Current awareness of issues such as whether the requirement of a formal complaint from the victim for prosecution for crimes of sexual violence should be maintained, whether the requisites for the crime of rape are serving as an obstacle to the victim's access to judicial remedy, and whether limiting those who can claim to be victims to women is gender discrimination and in violation of Article 14 of the Constitution, are not dealt with or are dealt with lightly in practical legal education. These are the education issues that the Committee's concluding observations refer to.

In recent efforts to change the situation, women, who are more likely to become victims, have been central in creating a movement for a law prohibiting sexual violence. Women are taking a stand against cases of impunity and inadequate penalties for sexual violence in Japan. The government, however, does not share this awareness of the mounting problems concerning the current penal codefor criminal sexual violence and its actual application.

Hardly any efforts are being made in social and school education to prevent domestic violence. The government has not dealt with this issue from the perspective of preventing impunity. Further, regarding the rehabilitation of victims, domestic violence victims are only provided with counseling at some agencies, such as the Spousal Violence Counseling and Support Center, under the Law for the Prevention of Spousal Violence and the Protection of Victims. Treatment for physical and mental injury is basically a personal expense, even if health insurance applies.

According to the government, a law exists providing for the payment of benefits to crime victims. What this law provides is only one part of what victims require and does not include rehabilitation. Further, paragraph 23 of the Japanese government's comments states that the AWF is also engaged in initiating counseling projects for women and conducting research on mental care. These benefits, however, have not reached many of the victims.