

Comments by the Government of Japan (GOJ) concerning the conclusions and recommendations of the Committee against Torture (CAT/C/JPN/CO/1)

1. In its conclusions and recommendations regarding the Initial report of Japan, the Committee Against Torture (hereinafter: the “Committee”) requested that Japan provide, within one year, information on its response to specific recommendations identified by the Committee. These specific recommendations and responses to them by the Government of Japan are provided below. The Government of Japan wishes to reserve its right to explain in the future process its position on other recommendations by the Committee. The Government of Japan would also like to express its desire to continue constructive dialogues with the Committee.

#### **Paragraph 14**

**“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 the individuals to be deported would be in danger of being subjected to torture, and should establish an independent body to review asylum applications. The State party should ensure due process in asylum applications and deportation proceedings and 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 for persons awaiting deportation, in particular for vulnerable groups, and make public information concerning the requirement for detention after the issuance of a written deportation order.”**

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.

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.

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.

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.

#### **Paragraph 15**

**“The State party should take immediate and effective measures to bring pre-trial detention into 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 detention;**
- (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 detained persons from the moment of arrest, that defence counsel are present during interrogations and that they have access to all relevant materials in 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 member of the Board 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.”**

#### 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.

#### 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).

### (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.

## 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.

#### 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.

#### 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.

#### 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.

#### **Paragraph 16**

**“The State party should ensure that the interrogation of detainees in police custody or substitute prisons is systematically monitored by mechanisms such as electronic and video recording of all interrogations; that detainees are guaranteed access to and the presence of defence 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 the Committee with information on the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence.”**

#### 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.

#### 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).

#### 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.

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.

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.

#### **Paragraph 24**

**“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 rehabilitation 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 rehabilitation measures to the victims, including steps to prevent impunity.**

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.

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.