

## **JAPAN**

### **Follow-up - State Reporting**

#### **i) Action by Treaty Bodies**

**CAT, A/62/44 (2007)**

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#### **IV. FOLLOW UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS**

46. In Chapter IV of its annual report for 2005 2006 (A/61/44), the Committee described the framework that it had developed to provide for follow up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2006. This chapter updates the Committee's experience to 18 May 2007, the end of its thirty eighth session.

47. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2007 on the results of the procedure.

48. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

49. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

50. Since the procedure was established at the thirtieth session in May 2003, through the end of the thirty eighth session in May 2007 the Committee has reviewed 53 States for which it has identified follow up recommendations. Of the 39 States parties that were due to have submitted their follow up reports to the Committee by 18 May 2007, 25 had completed this requirement

(Albania, Argentina, Austria, Azerbaijan, Bahrain, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Germany, Greece, Latvia, Lithuania, Monaco, Morocco, New Zealand, Qatar, Sri Lanka, Switzerland, United Kingdom and Yemen). As of 18 May, 14 States had not yet supplied follow up information that had fallen due (Bulgaria, Bosnia and Herzegovina, Cambodia, Cameroon, Democratic Republic of the Congo, Georgia, Guatemala, Republic of Korea, Moldova, Nepal, Peru, Togo, Uganda and United States of America). In March 2007, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow up information was due in November 2006, but had not yet been submitted, and who had not previously been sent a reminder.

51. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report (A/61/44). However, only 4 (Austria, Ecuador, Qatar and Sri Lanka) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. While comparatively few States had replied precisely on time, 19 of the 25 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

52. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

53. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she writes to solicit the outstanding information.

54. At its thirty eighth session in May, the Committee decided to make public the Rapporteur's letters to the States parties. These would be assigned a United Nations document symbol number and placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies (these symbol numbers are under consideration) to the follow up and also place them on its website.

55. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters

seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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57. The chart below details, as of 18 May 2007, the end of the Committee's thirty eighth session, the state of the replies with respect to follow up.

#### **Follow up procedure to conclusions and recommendations from May 2003 to May 2007**

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#### **Thirty eighth session (May 2007)**

<b>State party</b>	<b>Information due in</b>	<b>Information received</b>	<b>Action taken</b>
...			
Japan	May 2008	-	
...			

...

#### **CHAPTER IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS**

46. In this chapter, the Committee updates its findings and activities that follow-up on the conclusions and recommendations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on Follow-Up to Country conclusions. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated to through May 2008, following the Committee's fortieth session.

47. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2008.

48. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2008 on the results of the procedure.

49. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

50. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

51. Since the procedure was established at the thirtieth session in May 2003, through the end of the fortieth session in May 2008, the Committee has reviewed 67 States for which it has identified follow-up recommendations. Of the 53 States parties that were due to have submitted

their follow-up reports to the Committee by 16 May 2008, 33 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Bosnia and Herzegovina, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Republic of Korea, Latvia, Lithuania, Monaco, Morocco, Nepal, New Zealand, Qatar, Russian Federation, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen). As of 16 May, 20 States had not yet supplied follow-up information that had fallen due (Bulgaria, Burundi, Cambodia, Cameroon, Democratic Republic of the Congo, Denmark, Guyana, Italy, Japan, Luxembourg, Mexico, Moldova, the Netherlands, Peru, Poland, South Africa, Tajikistan, Togo, Uganda and Ukraine). In March 2008, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2007, but had not yet been submitted, and who had not previously been sent a reminder.

52. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report.<sup>3</sup> However, only 2 (Hungary and the Russian Federation) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 25 of the 33 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

53. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

54. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

55. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

56. Since the recommendations to each State party are crafted to reflect the specific situation

in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

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58. The chart below details, as of 16 May 2008, the end of the Committee's fortieth session, the state of the replies with respect to follow-up.

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3/ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44 (A/62/44).*

**Follow-up procedure to conclusions and recommendations  
from May 2003 to May 2008**

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**Thirty-eighth session (May 2007)**

State party	Information due in	Information received	Action taken
...			
Japan	May 2008	Not received	
...			

...

**CAT, A/64/44 (2009)**

#### **IV. FOLLOW UP ON CONCLUDING OBSERVATIONS ON STATES PARTIES REPORTS**

53. In this chapter, the Committee updates its findings and activities that follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on follow-up to concluding observations. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated through 15 May 2009, following the Committee's forty-second session.

54. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2009.

55. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2009 on the results of the procedure.

56. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and ill-treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

57. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

58. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-second session in May 2009, the Committee has reviewed 81 States for which it has identified follow up recommendations. Of the 67 States parties that were due to have submitted their follow up reports to the Committee by 15 May 2009, 44 had completed this requirement. As of 15 May 2009, 23 States had not yet supplied follow up information that had fallen due. The

Rapporteur sends reminders requesting the outstanding information to each of the States whose follow up information was due, but had not yet been submitted, and who had not previously been sent a reminder. The status of the follow-up to concluding observations may be found in the web pages of the Committee (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

59. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report. However, only 4 (Algeria, Estonia, Portugal and Uzbekistan) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. One State party (Montenegro) had already submitted information which was due only in November 2009. While comparatively few States had replied precisely on time, 34 of the 44 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

60. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

61. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she requests the outstanding information.

62. At its thirty eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

63. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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65. The chart below details, as of 15 May 2009, the end of the Committee's forty-second session, the state of the replies with respect to follow up.

### **Follow-up procedure to conclusions and recommendations from May 2003 to May 2009**

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#### **Thirty-eighth session (May 2007)**

<b>State party</b>	<b>Information due in</b>	<b>Information received</b>	<b>Action taken</b>
...			
Japan	May 2008	29 May 2008 CAT/C/JPN/CO/1/Add.1	Response under review
...			

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**Chapter IV. Follow-up to concluding observations on States parties' reports**

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this

requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (<http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses

from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

Ensure prompt, impartial and effective investigation(s)	76 per cent
Prosecute and sanction persons responsible for abuses	61 per cent
Guarantee legal safeguards	57 per cent
Enable right to complain and have cases examined	43 per cent
Conduct training, awareness-raising	43 per cent
Ensure interrogation techniques in line with the Convention	39 per cent
Provide redress and rehabilitation	38 per cent
End gender-based violence, ensure protection of women	34 per cent
Ensure monitoring of detention facilities/visit by independent body	32 per cent
Carry out data collection on torture and ill-treatment	30 per cent
Improve condition of detention, including overcrowding	28 per cent

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for

improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee's forty-fourth session, the replies with respect to follow-up. This chart also includes States parties' comments to concluding observations, if any.

#### **Follow-up procedure to concluding observations from May 2003 to May 2010**

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#### **Thirty-eighth session (May 2007)**

<b>State party</b>	<b>Information due in</b>	<b>Information received</b>	<b>Action taken</b>
...			
Japan	May 2008	29 May 2008 CAT/C/JPN/CO/1/Add.1	Request for further clarification
...			

...

**Follow-up - State Reporting**  
**ii) Action by State Party**

**CAT/C/JPN/CO/1/Add.1 (2008)**

Comments from the Government of JAPAN\* to the conclusions and recommendations of the Committee against Torture (CAT/C/JPN/CO/1)

[29 May 2008]

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 dialogue 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 national face the risk of being torture 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 abroad opportunities for the said application.

4. Articles 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.

5. 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.

6. 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.

7. 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.

8. Refugee examination counselors may ask the Minister of Justice to provide applicants who are filing of 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.

9. 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 decided from the majority opinions presented by refugee examination counselors.

10. In these ways the refugee procedures under the Immigration Control Act ensure adequate procedures considerate of the refugee 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 refugee application on a secondary basis being operated in ways to respect the counselor's opinions.

11. 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.

12. 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.

13. 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.

14. As for landing prevention facilities, they are not designated 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 by the Committee.

15. 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 consideration 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.**

**Concerning (a)**

16. Japan's police carries out measures considerate of human rights, part of whose initiatives is to ensure separation between functions of investigations 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"), enforces 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 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.

17. Concerning complete separation between functions of investigation and detention, the Penal and Detention Facilities Act prohibits 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.

### **Concerning (b)**

18. 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.

### **Concerning (c)**

#### **Legal advisers for detainees**

19. The Code of Criminal Procedure ensures every criminal suspect of the right to appoint a lawyer for defense.

20. 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 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)

21. 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.

#### **Presence of defense counsel during interrogations**

22. In Japanese criminal justice system, interrogation of suspects is an indispensable step that plays and extremely important role in revealing the truths of cases.

23. However, the presence of the defense counsel during interrogations may cause following issues, and thus prudent considerations are required:

a) 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;

b) 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

c) It may prevent swift and sufficient investigation in the limited time frame of the detention.

### **Disclosure of evidence**

24. 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 reveals 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).

### **Medical services for detainees**

25. 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.

### **Concerning (d)**

26. 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 effort 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.

### **Concerning (e)**

27. The Prefectural Safety Commissions function as council organizations to represent the sound sense of residents tasked to supervised 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.

### **Concerning (f)**

28. 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 the 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.

### **Concerning (g)**

29. The Penal and Detention Facilities Act allows these 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 act 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 defense counsel during interrogation; and that recordings are made available for use in criminal trials. In addition, the State party should promptly adopt strict rules concerning the length of interrogations, with appropriate sanctions for non-compliance. The State party should amend its Code of Criminal Procedure to ensure full conformity with article 15 of the Convention.**

**The State party should provide 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.**

## **Recording of the interrogation of detainees by video and other media**

30. 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.

## **Access to and Presence of defense counsel during interrogations**

31. This issue is referred to in (2) of section 9 in this report, responding to the Committee's recommendation in paragraph 15(c).

## **Rules concerning length of interrogations**

32. 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.

33. 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.

34. On the other hand, setting unified limits for the length of interrogations and imposing sanctions for non-compliance 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 find it unnecessary to impose such limits by law.

#### **Concerning the necessity to amend its Code of Criminal Procedure to ensure full conformity with Article 15 of the Convention**

35. 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.

36. 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.**

37. 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 when the Convention came into force for Japan and during the Second World War (including issue of so-called "comfort women"). Based on these premises, the GOJ provides with facts as set for the below, concerning the issues referred to in this paragraph.

38. 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.

39. Besides its legal position, the 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.

40. The GOJ will continue its efforts to promote understanding of the sympathy of the Japanese people represented by the activities of the AWF.

41. 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 for a on these issues; providing public relations support to NGOs; initiating research and fact-finding projects; initiating counseling projects for women; and conducting research on counseling and mental care techniques.

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services