JAPAN

Follow-up - State Reporting
(i) Action by Treaty Bodies, Including Reports on Missions

CCPR, CCPR/C/SR.2738/Add.1 (2010)

Human Rights Committee
Ninety-ninth session

Summary record of the second part (public) of the 2738th meeting
Held at Palais Wilson, Geneva,
on Wednesday 28 July 2010, at 11:25 am

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Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Report of the Special Rapporteur for Follow-up on Concluding Observations (CCPR/C/99/2/CRP.1)
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2. **Mr. Amor**, Special Rapporteur for Follow-up on Concluding Observations, said that, while he commended the excellent work of the secretariat, it was regrettable that the relevant staff did not have more time to devote to follow-up on concluding observations. At the Committee's request, he had undertaken to supply details of the contents of the letters sent to States parties concerning follow-up in which the Committee asked for further information, urged the State to implement a recommendation or, alternatively, noted that a reply was satisfactory.

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48. A follow-up report had been received from Japan on 21 December 2009 containing some of the information requested by the Committee on paragraphs 17, 18, 19 and 21 of its fifth periodic report. The information requested related, inter alia, to: the need for strict confidentiality of all meetings between convicted prisoners and their lawyers concerning retrial; abolition of the substitute detention system; the right of confidential access to a lawyer; time limits for the interrogation of suspects; and a relaxation of the rule of solitary confinement for death row inmates. A letter had been sent to the State party pointing out that some of the Committee's recommendations had not been acted on. It was now recommended that a further letter be sent seeking additional information, including on the segregation of prisoners in "accommodation blocks".

49. **The Chairperson** proposed that the Committee should adopt the Special Rapporteur's recommendations.

50. *It was so decided.*
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Chapter VII: Follow-up to Concluding Observations

203. In chapter VII of its annual report for 2003,[16] the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,[17] an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2010.

204. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-seventh, ninety-eighth and ninety-ninth sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

205. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.[18] Over the reporting period, since 1 August 2009, 17 States parties (Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, Denmark, France, Georgia, Japan, Monaco, Spain, the former Yugoslav Republic of Macedonia, Sudan, Sweden, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland and Zambia), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, 12 States parties (Australia, Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Nicaragua, Panama, Rwanda, San Marino and Yemen) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.[19]

206. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-fifth session (October 2005).

207. The Committee emphasizes that certain States parties have failed to cooperate with it in

the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Equatorial Guinea, Gambia).

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Ninety-fourth session (October 2008)

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State party: Japan

Report considered: Fifth periodic (due in October 2002), submitted on 20 December 2006.

Information requested:

Para. 17: Introduce a mandatory system of review in capital cases and ensure the suspensive effect of requests for retrial or pardon in such cases; limits may be placed on the number of requests for pardon in order to prevent abuse of the suspension; ensure the strict confidentiality of all meetings between death row inmates and their lawyers concerning retrial (arts. 6 and 14).

Para. 18: Abolish the substitute detention system or ensure that it is fully compliant with all guarantees contained in article 14 of the Covenant; ensure that all suspects are guaranteed the right of confidential access to a lawyer, including during the interrogation process, and to legal aid from the moment of arrest and irrespective of the nature of their alleged crime, and to all police records related to their case, as well as to medical treatment; introduce a pre-indictment bail system (arts. 7, 9, 10 and 14).

Para. 19: Adopt legislation prescribing strict time limits for the interrogation of suspects and sanctions for non-compliance, ensure the systematic use of video-recording devices during the entire duration of interrogations and guarantee the right of all suspects to have counsel present during interrogations; acknowledge that the role of the police during criminal investigations is to collect evidence for the trial rather than establishing the truth, ensure that silence by suspects is not considered inculpatory, and encourage courts to rely on modern scientific evidence rather than on confessions made during police interrogations (arts. 7, 9 and 14).

Para. 21: Relax the rule under which inmates on death row are placed in solitary confinement, ensure that solitary confinement remains an exceptional measure of limited duration, introduce a maximum time limit and require the prior physical and mental examination of an inmate for confinement in protection cells and discontinue the practice of segregating certain inmates in "accommodating blocks" without clearly defined criteria or possibilities of appeal (arts. 7 and 10).

Date information due: 31 October 2009

Date information received:

21 December 2009 Follow-up report received (para. 17: recommendations partly not implemented, replies partly incomplete; para. 18: replies incomplete; para. 19: recommendations partly implemented; para. 21: recommendations partly not implemented, replies partly satisfactory).

Recommended action: While taking note of the cooperativeness of the State party, the Committee should send a letter requesting additional information on certain questions: confidentiality of meetings between death-row inmates and their lawyers (para. 17); the substitute detention system (para. 18); the right of confidential access to a lawyer and the right of access to legal aid/the evidence against them (para. 18); pre-indictment bail system (para. 18); and the role of the police (para. 19). The letter should also highlight the points concerning which the Committee considers that its recommendations have not been implemented: mandatory system of review and the suspensive effect of requests for retrial or pardon (para. 17); legislation prescribing strict time limits for the interrogation of suspects (para. 19); and the rule under which death-row inmates are placed in solitary confinement (para. 21). In addition, with regard to "accommodating blocks", the letter should take note of the undertaking given by the State party, which should be invited to keep the Committee apprised of any efforts to improve the treatment of prisoners.

Next report due: 29 October 2011

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[16] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40 (vol. I)).

[17] Ibid., *Sixty-Fourth Session, Supplement No. 40*, vol. I (A/64/40 (vol. I)).

[18] The table format was altered at the ninetieth session.

[19] As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Austria, Brazil, Central African Republic, Democratic Republic of the Congo, Hong Kong (China), Mali, Namibia, Paraguay, Republic of Korea, Sri Lanka, Suriname and Yemen.

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

CCPR, CCPR/C/JPN/CO/5/Add.1 (2010)

Information received from Japan on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/JPN/CO/5)

[4 January 2010]

I. In the concluding observations of the Human Rights Committee (CCPR/C/JPN/CO/5) on the Fifth Periodic Report submitted by Japan (CCPR/C/JPN/5), the Committee requested the Government of Japan to submit, within a year, information on the follow-up given to the Committee's specific recommendations. The present situation of the concerned recommendations for which information on the follow-up was requested is as follows. The Government of Japan intends to make efforts in addressing such significant issues as the establishment of a "human rights violations relief organ" and the ratification of optional protocols to the relevant UN human rights treaties which provide individual communication procedures.

Paragraph 17

The State party should introduce a mandatory system of review in capital cases and ensure the suspensive effect of requests for retrial or pardon in such cases. Limits may be placed on the number of requests for pardon in order to prevent abuse of the suspension. It should also ensure the strict confidentiality of all meetings between death-row inmates and their lawyers concerning retrial.

II. Introduction of a mandatory system of review

1. In Japanese criminal proceedings, the right to appeal a conviction or a sentence is widely recognized under its three-tiered judicial system. Additionally, in capital cases, defense counsel must be appointed, and the counsel is granted the right to appeal, with the result that many capital cases have been appealed.

III. Suspensive effect of requests for retrial or pardon in capital cases

2. Requests for retrial or pardon in capital cases have no effect on the suspension of execution under Japanese criminal justice system.

3. However, when issuing an order to execute capital punishment, given the magnitude of such punishment, the Government takes into full account circumstances concerning requests for retrial or pardon irrespective of the number of the requests.

IV. Meetings between death-row inmates and their lawyers concerning cases in which the commencement of retrial has not been determined

4. Consultation between inmates sentenced to death and their defence counsel in cases where the commencement of retrial has been determined is covered by the legal provisions concerning unsentenced inmates (the Code of Criminal Procedure, art. 39), which do not require the presence of prison officers.

5. Additionally, inmates sentenced to death whose appeal for retrial has not been granted may meet with their lawyers without the presence of prison officers at the discretion of the warden of the penal institution provided that certain conditions stipulated in the Act on Penal Detention Facilities and Treatment of Inmates and Detainees are satisfied.

6. In the case that the certain conditions mentioned above are not satisfied, the presence of prison officers is required at meetings of inmates sentenced to death, because the nature of their custody makes it highly necessary that these inmates be kept in secure custody and their emotional state carefully grasped. The recognition of the certain conditions has been considered, case by case, not uniformly. With regard to meetings between inmates sentenced to death and their lawyers, the need for legislative measures or improvement of operations will be considered.

Paragraph 18

The State party should abolish the substitute detention system or ensure that it is fully compliant with all guarantees contained in article 14 of the Covenant. It should ensure that all suspects are guaranteed the right of confidential access to a lawyer, including during the interrogation process, and to legal aid from the moment of arrest and irrespective of the nature of their alleged crime, and to all police records related to their case, as well as to medical treatment. It should also introduce a pre-indictment bail system.

V. Substitute detention system and article 14 of the Covenant

7. Under the Japanese criminal justice system, a decision on whether or not to indict a suspect is required through comprehensive and careful investigations within a relatively limited detention period of 20 days maximum. Therefore, it is necessary to detain the suspect 1) in a location easily accessible to the investigating bodies and 2) in a place with appropriate interrogation rooms and related facilities. It is also necessary that the location should be easily accessible for the detainee's defence counsel and family members. However, under the current situation in Japan, the number of penal institutions is limited compared to that of police detention facilities, while it is not easy to increase the number of penal institutions as it requires a huge budget allocation. Thus, the substitute detention system is operated for swift and appropriate investigation and also for the convenience of the detainee's defence counsel and family members.

8. Moreover, the substitute detention system has been well controlled legally as described below.

9. Firstly, Japan's Code of Criminal Procedure fully guarantees the principle of so-called presumed innocence, the right to remain silent, and the right to appoint a lawyer, and naturally, the same applies to suspects held at police detention facilities. Furthermore, the detention of

suspects is decided following adequate judicial review, and the place of detention is determined by a judge.

10. As a practice of the Japanese police, under the substitute detention system, investigators have been prohibited from controlling the treatment of suspects held in police detention facilities, and detention services are assigned to a general/administration affairs department. This thorough separation of the functions of investigation and detention allows police detention facilities to treat detainees with full respect of their human rights. In particular, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, which came into effect in 2007, stipulates: 1) the principle of the "separation of investigation and detention;" 2) a newly established mechanism by which the Detention Facilities Visiting Committee, consisting of external third parties, visits detention facilities, interviews detainees and thereby presents its opinions to the detention services managers; 3) a complaints mechanism with regard to the treatment of those detained in detention facilities; 4) a similar level of treatment, which includes the serving of meals, provision of medical care and other treatment covering visitation, and sending/receiving of letters, as unsentenced inmates awaiting trial in penal institutions; and 5) the provision of human rights education for detention officers.

11. Moreover, since last year, the police have conducted training once again for police officers on the Covenant itself and on the content of the concluding observations of the Human Rights Committee. The police are strictly implementing a thorough separation of the functions of investigation and detention, and are conducting detention services in an appropriate manner, giving due consideration to the human rights of detainees.

VI. Right of confidential access to a lawyer and of access to legal aid

12. Article 39, paragraph 1 of the Code of Criminal Procedure stipulates that suspects in custody have the right to interview with their counsel or prospective counsel without any official being present, whenever they wish, unless investigation requires otherwise. The Japanese police have offered further consideration for interviews between suspects and their defence counsels or prospective counsels since September 2008. For example, if a defence counsel or prospective counsel requests a interview with a suspect under interrogation, an appointment must be arranged as soon as possible.

13. Additionally, in April 2008, the Public Prosecutor's Office publicized measures to ensure appropriate interrogation to a further extent. Such measures include that: 1) the Public Prosecutor's Office immediately informs a defence counsel if a suspect under interrogation requests a consultation with the counsel and 2) the Office grants an opportunity as soon as possible if a defence counsel requests a meeting with a suspect under interrogation. Interrogation is being conducted in line with the above-mentioned measures.

14. Moreover, regarding the right of a suspect to access legal aid, it has been stipulated that judges should appoint an official defence counsel in cases in which the suspect in custody has allegedly committed "cases punishable with the death penalty, life imprisonment with or without work or for not less than one year", if the suspect is unable to appoint a counsel due to indigence or other reasons. Since May 2009, the scope of this stipulation has been widened to include cases in which a suspect has allegedly committed "crimes punishable with the death penalty, life

imprisonment with or without work or for a maximum period of three years or more." This change in scope requires that the court appoint defence counsel in necessary cases even before indictment.

15. As described above, with due regard for the spirit of the Committee's recommendation, the Government of Japan has been making efforts for the right of confidential access to defence counsels and of access to legal aid, including active implementation of the above-mentioned measures. The Government of Japan will continue to examine necessary measures and take appropriate actions concerning this issue.

VII. Disclosure of evidence

16. The amendment of the Code of Criminal Procedure in May 2004 provides that the prosecutors should disclose evidence for clarifying issues in dispute and preparing for the defence of the accused, while balancing the need for disclosure against the possible adverse effects. The Government of Japan will continue to study what disclosure of evidence is appropriate based on the implementation of the above-mentioned procedure.

VIII. Release of suspects before indictment

17. Under the Japanese criminal justice system, the investigation is conducted on non-compulsory basis in principle. The arrest or the detention of suspects is allowed only in extremely limited cases after the review by judge. There exist mechanisms that ensure a judicial review even during a short detention period before indictment and pre-indictment bail of the suspect if necessary. It is a matter for consideration whether it is necessary to introduce a system of releasing suspects before indictment as the Committee recommends.

Paragraph 19

The State party should adopt legislation prescribing strict time limits for the interrogation of suspects and sanctions for non-compliance, ensure the systematic use of video-recording devices during the entire duration of interrogations and guarantee the right of all suspects to have counsel present during interrogations, with a view to preventing false confessions and ensuring the rights of suspects under article 14 of the Covenant. It should also acknowledge that the role of the police during criminal investigations is to collect evidence for the trial rather than establishing the truth, ensure that silence by suspects is not considered inculpatory, and encourage courts to rely on modern scientific evidence rather than on confessions made during police interrogations.

IX. Legislation prescribing strict time limits for the interrogation of suspects and sanctions for non-compliance

18. There is no law that provides an interrogation which exceeds certain duration or time limit is per se illegal, because of the unpredictable and diversified nature of investigation. In recent years, however, Japanese police officers and prosecutors have been paying more attention than ever to the duration and the hours of interrogations in order not to place excessive burdens on suspects. Unless they have compelling reasons, they refrain from interrogating suspects during

the middle of the night or for long hours. The police have prescribed clearly in their own regulation that they shall avoid conducting the interrogation of a suspect in the middle of the night or for a long period of time, except when there are unavoidable reasons. The police have their own rule for conduct that require advanced approval by the Chief of the respective Prefectural Police or other appropriate officers when interrogation is to be carried out over eight hours in a single day, for example, and that if police officers conduct interrogation without such advanced approval, the interrogation is to be stopped or appropriate measures are to be taken. Additionally, Japanese police officers and prosecutors document the interrogation process and conditions and have suspects confirm and sign a record with a fingerprint; and the police have their own regulation regarding this point.

X. Audio or video recording of the entire process of interrogation

19. In order to examine ways to demonstrate to lay judges the voluntariness of confessions by suspects in an effective and efficient manner, the police have been trying the audio or video recording as an appropriate part of an interrogation to the extent that it does not hamper the functioning of the interrogation.

20. The Public Prosecutor's Office has also been trying the audio or video recording of an appropriate part of an interrogation to the extent that it does not hamper the functioning of the interrogation based on the prosecutors' judgment and responsibility as part of its consideration of ways to prove the voluntariness of confessions by suspects effectively and efficiently, in lay-judge cases. The Supreme Public Prosecutor's Office compiled and reviewed the result of the experience in February 2009. Based on the review, since April 2009, the prosecutors have conducted the above-mentioned recording in all lay-judge cases in which the accused pleaded guilty.

21. Such audio or video recording by police officers and prosecutors reveals the condition of the interrogation room and the interrogator's questioning and the suspect's facial expressions, tone of voice, and behaviour. In a recorded interrogation, the suspect is allowed to make any statement regarding the conditions under which he/she was interrogated and made a confession. Moreover, it is stipulated that the recording should not be suspended even when the suspect testifies counter to building the case and that the recording should be disclosed to the defence counsel without any modification or editing.

22. Additionally the Government of Japan studies measures to address this issue including research on the situation of criminal investigations, such as methods of criminal investigation and conditions of audio or video recording of interrogations in foreign countries.

XI. Right of all suspects to have counsel present during interrogations

23. Since May 2009, the availability of government paid defence counsel has been widened to cases where a suspect has allegedly committed cases punishable with the death penalty, life imprisonment or imprisonment for a maximum period of three years or more. This has opened up ways for suspects in custody to have defence counsel appointed immediately and to receive assistance such as advice through consultation. Measures mentioned above and in Sections 9 and

10 make interrogations appropriate.

XII. Role of the police

24. Japan's Code of Criminal Procedure, which covers all criminal procedures ranging from investigation to indictment, trial, and the execution of a sentence, stipulates that "the purpose of this Code, with regard to criminal cases, is to reveal the true facts of cases and to apply and realize criminal laws and regulations quickly and appropriately" (art. 1). Investigation by the police is aimed at solving cases by revealing the truth.

Paragraph 21

The State party should relax the rule under which inmates on death row are placed in solitary confinement, ensure that solitary confinement remains an exceptional measure of limited duration, introduce a maximum time limit and require the prior physical and mental examination of an inmate for confinement in protection cells and discontinue the practice of segregating certain inmates in "accommodating blocks" without clearly defined criteria or possibilities of appeal.

XIII. Recommendation to relax the rule under which inmates on death row are placed in solitary confinement and to ensure that solitary confinement remains an exceptional measure of limited duration

25. In penal institutions, attention should be paid to helping the inmates sentenced to death maintain their peace of mind, while securing their custody. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees provides that the treatment of an inmate sentenced to death shall be conducted in a single room throughout day and night and that no inmates sentenced to death shall have mutual contact even outside the inmate's room in principle.

26. At the same time, the Act allows inmates sentenced to death to make contact when deemed advantageous to maintaining their peace of mind. Moreover, in order to save the inmates from the suffering of isolation and to contribute to their peace of mind, penal institutions have contrived measures such as counselling provided by nongovernmental volunteers, religious services offered by chaplains, consultation by prison officers if necessary, and opportunities to watch television and videos. Further improvement of the treatment of inmates will continue to be sought.

XIV. Recommendation to introduce a maximum time limit and to require the prior physical and mental examination of an inmate for confinement in protection cells

27. Protection rooms are intended to confine inmates, such as those who are likely to commit self-injurious acts and generate a loud voice or noise against a prison officer's order to cease doing so, for a limited period of time to calm and protect the inmates when deemed necessary.

28. The Act on Penal Detention Facilities and Treatment of Inmates and Detainees stipulates that the period of confinement in a protection room shall be seventy-two hours or less, that if there is a special necessity to continue the confinement, the period may be renewed upon

expiration thereof and every forty-eight hours thereafter, that when the necessity of confinement ceases to exist, the confinement shall be suspended immediately, and that when the period of confinement in a protection room is renewed, due consideration shall be paid to the health condition of the inmate by obtaining the opinion of a medical doctor on the staff of the penal institution.

29. Thus, the Act explicitly provides for legal conditions concerning the period of confinement in a protection room and the involvement of medical doctors, and the system is administered appropriately with due consideration to the circumstances of individual inmates and the opinions of medical doctors. These measures are aimed at the protection of inmates, imposing conditions such as a maximum time limit on confinement; and the mandatory involvement of medical doctors prior to confinement would in fact cause problems in some cases, including hindering the taking of timely measures to protect inmates.

30. Without a doubt, the Government of Japan recognizes that careful attention should be paid to the health condition of inmates confined in protection rooms, and it will continue to make efforts to appropriately administer the confinement in protection rooms.

XV. Recommendation to discontinue the practice of segregating certain inmates in "accommodating blocks" without clearly defined criteria or possibilities of appeal

31. The recommendation by the Human Rights Committee seems to refer to the treatment of inmates in single rooms throughout day and night. In penal institutions, there are sentenced persons who do not wish to be housed in groups and demand single rooms throughout day and night, and also those who cannot be treated in groups for reasons such as their physical and mental health conditions. Thus, there are cases in which sentenced persons who are not suitable for group treatment are treated in single rooms throughout day and night.

32. The penal institutions have been making efforts to eliminate the reasons for which the inmates are treated in a single room through day and night by taking measures such as encouraging the inmates to switch to group treatment through consultation by prison officers and having medical examinations conducted by psychiatrists.

33. Additionally, treatment in a single room throughout day and night is covered by a complaints mechanism. Moreover, in order to ensure the appropriate administration of the treatment of inmates, a variety of measures are being taken, including firsthand examination by the Ministry of Justice and by the Regional Correction Headquarters as well as visits by the Penal Institution Visiting Committee. The Government will try to improve the treatment of inmates so that as few as possible are treated in a single room throughout day and night.