

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

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/JPN/CO/2)

JAPAN

(...)

C. Principal subjects of concern and recommendations

(...)

Daiyo Kangoku (substitute detention system)

10. While noting the formal separation of the police functions of investigation and detention under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the Committee expresses its serious concern at the lack of safeguards in the Daiyo Kangoku system, which mitigates the State party's compliance with the obligations under the Convention. In particular, the Committee deeply regrets that under this system, suspects can be detained in police cells for a period up to 23 days, with limited access to a lawyer especially during the first 72 hours of arrest and without the possibility of bail. The lack of effective judicial control over pretrial detention in police cells and the lack of an independent and effective inspection and complaints mechanism are also a matter of serious concern. Furthermore, the Committee regrets the position of the State party that the abolition or reform of the pretrial detention system is unnecessary (A/HRC/22/14/Add.1, para. 147.116) (arts. 2 and 16).

The Committee reiterates its previous recommendations (para. 15) that the State party:

- (a) Take legislative and other measures to ensure, in practice, separation between the functions of investigation and detention;**
- (b) Limit the maximum time detainees can be held in police custody;**
- (c) Guarantee all fundamental legal safeguards for all suspects in pretrial detention, including the right of confidential access to a lawyer throughout the interrogation process, and to legal aid from the moment of arrest, and to all police records related to their case, as well as the right to receive independent medical assistance, and to contact relatives;**

- (d) Consider abolishing the Daiyo Kangoku system in order to bring the State party's legislation and practices fully into line with international standards.**

Interrogation and confessions

11. The Committee takes note of article 38(2) of the Constitution and article 319(1) of the Code of Criminal Procedure stipulating inadmissibility in court of confessions obtained under torture and ill-treatment as well as the State party's statement that convictions are not based solely on confessions and that interrogation guidelines ensure that suspects cannot be compelled to confess to a crime. However, the Committee remains seriously concerned that:

- (a) The State party's justice system relies heavily on confessions in practice, which are often obtained while in the Daiyo Kangoku without a lawyer present. The Committee has received reports about ill-treatment while interrogated, such as beating, intimidation, sleep deprivation, and long periods of interrogations without breaks;
- (b) It is not mandatory to have defence counsel present during all interrogations;
- (c) The lack of means for verifying the proper conduct of interrogations of detainees, while in police custody, in particular the absence of strict time limits for the duration of consecutive interrogations;
- (d) None of the 141 complaints concerning interrogations filed to the public prosecutors by suspects and their defence counsels resulted in a lawsuit. (arts. 2 and 15).

The Committee reiterates its previous recommendations (para. 16) that the State party take all necessary steps to in practice ensure inadmissibility in court of confessions obtained under torture and ill-treatment in all cases in line with article 38(2) of the Constitution, article 319(1) of the Code of Criminal Procedure as well as article 15 of the Convention by, inter alia:

- (a) Establishing rules concerning the length of interrogations, with appropriate sanctions for non-compliance;**
- (b) Improving criminal investigation methods to end practices whereby confession is relied on as the primary and central element of proof in criminal prosecution;**
- (c) Implementing safeguards such as electronic recordings of the entire interrogation process and ensuring that recordings are made available for use in trials;**
- (d) Informing the Committee of the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence based on article 319(1) of the Code of Criminal Procedure.**

(...)

Death penalty

15. The Committee is deeply concerned about the conditions of detention of prisoners on death row in the State party, in particular with respect to:

(a) The unnecessary secrecy and uncertainty surrounding the execution of prisoners sentenced to death. As referred to by the Special Rapporteur on extrajudicial, summary or arbitrary executions, refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation (E/CN.4/2006/53/Add.3, para. 32);

(b) The use of solitary confinement for persons sentenced to death, often for extended periods of time, even exceeding 30 years in some cases, and limited contact with the outside;

(c) Interference with the right to assistance by legal counsel, including the limited confidential access to lawyer;

(d) The lack of a mandatory appeal system for capital cases given that an increasing number of defendants convicted and sentenced to death without exercising their right of appeal;

(e) The non-use of the power of pardon since 2007 and the absence of transparency concerning procedures for seeking benefit for pardon, commutation or reprieve;

(f) Reports about executions carried out even if the person was determined by a court to be mentally ill, as in the case of Seiha Fujima, in contradiction of article 479(1) of the Code of Criminal Procedures which prohibits the execution of a detainee in a state of insanity (arts. 2, 11 and 16).

In light of the previous recommendations made by the Committee (para. 17), the Human Rights Committee (CCPR/C/GC/32, para. 38) as well as the communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.1, paras.515 ff), the Committee urges the State party to ensure that death row inmates are afforded all the legal safeguards and protections provided by the Convention, inter alia, by:

(a) Giving death row inmates and their family reasonable advance notice of the scheduled date and time of the execution;

(b) Revising the rule of solitary confinement for death row inmates;

(c) Guaranteeing effective assistance by legal counsel for death row inmates at all stages of the proceedings, and the strict confidentiality of all meetings with their lawyers;

- (d) Making available the power of pardon, commutation and reprieve in practice for death row inmates;**
- (e) Introducing a mandatory system of review in capital cases, with suspensive effect following a death penalty conviction in first instance;**
- (f) Ensuring an independent review of all cases when there is credible evidence that death row inmate is mentally ill. Furthermore, the State party should ensure that a detainee with mental illness is not executed in accordance with article 479(1) of the Code of Criminal Procedures;**
- (g) Providing data on death row inmates, disaggregated by sex, age, ethnicity and offence;**
- (h) Considering the possibility of abolishing the death penalty.**

(...)

Victims of military sexual slavery

19. Notwithstanding the information provided by the State party concerning some steps taken to acknowledge the abuses against victims of Japan's military sexual slavery practices during the Second World War, the so-called "comfort women", the Committee remains deeply concerned at the State party's failure to meet its obligations under the Convention while addressing this matter, in particular in relation to:

- (a) Failure to provide adequate redress and rehabilitation to the victims. The Committee regrets that the compensation, financed by private donations rather than public funds, was insufficient and inadequate;
- (b) Failure to prosecute perpetrators of such acts of torture and bring them to justice. The Committee recalls that on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them;
- (c) Concealment or failure to disclose related facts and materials;
- (d) Continuing official denial of the facts and retraumatization of the victims by high-level national and local officials and politicians, including several diet members;
- (e) Failure to carry out effective educational measures to prevent gender-based breaches of the Convention, as illustrated, inter alia, by a decrease in references to this issue in school history textbooks;
- (f) The State party's rejection of several recommendations relevant to this issue, made in the context of the universal periodic review (A/HRC/22/14/Add.1, paras.147.145 ff.), which are akin to recommendations made by the Committee (para. 24) and many other United Nations human rights mechanisms, inter alia, the Human Rights Committee (CCPR/C/JPN/CO/5, para. 22), the Committee on the Elimination

of Discrimination against Women (CEDAW/C/JPN/CO/6, para. 38), the Committee on Economic, Social and Cultural Rights (E/C.12/JPN/CO/3, para. 26) and several special procedures mandate holders of the Human Rights Council (arts. 1, 2, 4, 10, 14 and 16).

Recalling its general comment No. 3 (2012), the Committee urges the State party to take immediate and effective legislative and administrative measures to find a victim- centred resolution for the issues of “comfort women”, in particular, by:

- (a) Publicly acknowledging legal responsibility for the crimes of sexual slavery, and prosecuting and punishing perpetrators with appropriate penalties;**
- (b) Refuting attempts to deny the facts by government authorities and public figures and to re-traumatize the victims through such repeated denials;**
- (c) Disclosing related materials, and investigating the facts thoroughly;**
- (d) Recognizing the victim’s right to redress, and accordingly providing them full and effective redress and reparation, including compensation, satisfaction and the means for as full rehabilitation as possible;**
- (e) Educating the general public about the issue and include the events in all history textbooks, as a means of preventing further violations of the State party’s obligations under the Convention.**

(...)

29. The Committee requests the State party to provide, by 31 May 2014, follow-up information in response to the Committee’s recommendations related to (a) ensuring or strengthening legal safeguards for persons detained, (b) conducting, prompt, impartial and effective investigations, and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 10, 11 and 15 of the present concluding observations. In addition, the Committee requests follow-up information on remedies and redress to the victims, as contained in paragraph 19 of the present concluding observations.

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