



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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SUMMARY RECORD OF THE 767th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 9 May 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 10.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Japan (CAT/C/JPN/1)

1. At the invitation of the Chairperson, the members of the delegation of Japan took places at the Committee table.
2. Mr. FUJISAKI (Japan) said that his Government pursued a zero-tolerance policy with regard to torture. An adequate legal framework, cooperation with civil society and international cooperation were vital to the prevention of torture. The Japanese Constitution prohibited all acts of torture, attempts to commit torture and acts which constituted complicity or participation in torture. The Government attached great importance to cooperation with civil society and NGOs, both of which had contributed to the initial report. It was also endeavouring to encourage ratification of the Convention by States which had not yet taken that step.
3. Mr. KIMURA (Japan) summarized the information contained in the initial report (CAT/C/JPN/1). On 24 May 2006, a new law had entered into force regulating the management and operation of places of detention and treatment of convicted prisoners. It would soon be amended to include provisions on the treatment of unconvicted prisoners and prisoners sentenced to the death penalty. It set out the rights of detainees and requirements to be met when imposing disciplinary sanctions. Detainees had the right to receive visits and to engage in correspondence, subject to certain restrictions. Particular importance was attached to ensuring an individual approach to each detainee. The law also contained provisions on the minimum requirements of hygiene, food and clothing for detainees. Complaints concerning excessive use of force or other unlawful treatment of detainees by persons in authority could be lodged with the Superintendent of the regional police headquarters. If a detainee was not satisfied with the decision taken by the Superintendent, he or she could lodge a further complaint with the Ministry of Justice. A special commission had been established, composed of members of civil society who visited places of detention and reported their conclusions on the conditions of detention to the governor of the facility concerned. The latter was required to cooperate with commission members and take their conclusions into account.
4. The new law also provided that detention facilities must be placed under the aegis of prefectural police headquarters. Special human rights training was given to all police officers supervising detention facilities. Criminal investigations could not be carried out by officers responsible for detention, and vice versa. The chief of police appointed an officer to visit and inspect each detention facility at least once a year. The new law laid down clear procedures for inspections by the commission and the treatment of prisoners.
5. He gave a detailed description of the Law for the Partial Amendment of the Immigration Control and Refugee Recognition Act, which had been promulgated in June 2004. The new provisions relating to procedures for the recognition of refugees had entered into force in May 2005. The amendment stabilized the legal situation of applicants for refugee status, and made the procedures for the recognition of refugees more equitable and neutral.

6. Mr. MARIÑO MENÉNDEZ, Country Rapporteur, commended the delegation for its initial report and the efforts of the Government in implementing the Convention against Torture. Japan's practices in the area of human rights protection had the potential to positively influence other countries. At the outset, he urged Japan to look into the possibility of ratifying the Optional Protocol, which established an effective set of measures to prevent torture.

7. He was keen to know whether the Convention was specifically invoked in Japanese courts in decisions relating to torture or other inhuman treatment. He was also interested in knowing the opinion of the delegation on the applicability of the Convention in times of armed conflict, as Japan played its part in peacekeeping missions.

8. In the context of article 36 of the Japanese Constitution and articles 195 and 196 of the Penal Code, which banned torture, he wondered what types of persons could be considered public officials within the meaning of article 1 of the Convention. Could employees of detention facilities or deportation centres or members of "self-defence" forces, for instance, be considered as such?

9. The death penalty should be abolished. However, since it still existed in Japan, the Committee was concerned that the welfare of prisoners awaiting execution should be protected in every respect. The conditions under which they were held should be as humane as possible and their distress should be mitigated. The Committee was therefore interested in receiving details on death row conditions, including the length of time prisoners were aware of their fate.

10. The obligation of States parties under article 2 to adopt effective legislative, administrative, judicial or other measures to prevent torture implied respect for a number of guarantees, including those codified in various General Assembly resolutions and recommendations of the Human Rights Committee concerning the situation of people in detention facilities. The Committee would welcome clarification on Japan's alleged practice of holding detainees for lengthy periods, reportedly up to 23 days, whether a judicial order was required in such cases, and whether the new law limited the period of detention. Further concerns related to prompt access to legal counsel, transparency, psychological pressure on detainees and their vulnerability. He asked whether the new legislation strengthened the safeguards relating to interrogations and enhanced the quest for truthful evidence.

11. On the subject of inhuman treatment and safeguards under article 2, he wondered about the extent to which the recent legislative reform affected the medical treatment provided to prisoners. He had the impression that the current system was inadequate in terms of disease control and the number of doctors caring for prisoners. He wished to know whether the employees of privately-managed psychiatric hospitals were considered public officials, who determined which prisoners should be admitted for psychiatric care, and to learn more about the system through which the treatment of patients was monitored and supervised.

12. He was particularly interested in interrogation techniques, and in that regard asked whether the police were guided by a specific procedure for questioning detainees. Similarly, he wished to know about the procedure for appointing members of the commission of inspectors established under the new law. In general, he asked the delegation to provide more information in order to enable prison procedures to be evaluated impartially.

13. Article 3 banned extradition or the transfer of jurisdiction to a country where there were substantial grounds for believing that the person concerned would be in danger of being subjected to torture or other gross violations. He asked how much time usually elapsed between the issuing of a deportation order and its implementation. He expressed concern that hasty expulsion removed the possibility of appeal or an independent assessment of the merits of the original application for refugee status, and he wondered whether the new law addressed that issue. Likewise, he enquired about cases of foreigners suspected of having committed torture outside Japan. He referred in that connection to the case of former Peruvian President Fujimori, who in fact had dual Peruvian-Japanese citizenship. He asked whether the authorities had taken any steps to extradite him since the initial refusal. He asked whether foreigners detained for criminal acts in Japan were promptly informed of their right to seek advice from the consulate representing their country of origin, as provided for under the Vienna Convention on Consular Relations.

14. In conclusion, he expressed interest in questions concerning gender-related discrimination: the rights of foreign women married to Japanese men; the interpretation by Japan of the criminalization of rape, when committed by women against men; the Japanese mafia and measures to protect women from trafficking, forced prostitution and sexual slavery. Given the fact that there was a law excluding recourse for victims of abuses such as those suffered by “comfort women” in the Second World War, he urged Japan to establish mechanisms for redress in addition to admitting criminal responsibility.

15. Mr. KOVALEV, Alternate Country Rapporteur, welcomed the State party’s efforts, in collaboration with civil-society organizations, to strengthen the legal framework for the prevention of torture. He was concerned, however, that responsibility for training law enforcement officials in issues relating to the Convention was largely entrusted to senior officers from law enforcement agencies and suggested that NGOs and academics should likewise be involved. He asked whether training was also provided on issues such as sexual harassment, whether training included familiarization with international human rights instruments, and whether civilian and military medical personnel who might have contact with detainees received human rights training, in particular concerning the prevention of torture.

16. With regard to article 11 of the Convention, he was concerned about interrogation methods in the State party, including extended interrogations, the existence of a handbook for interrogations (obtained by an NGO) which recommended that interrogation should continue until a confession was obtained, and the fact that interrogations were not recorded. Turning to article 12, he requested information on who was responsible for investigating a police officer accused of torture, stressing that police officers should not be assigned the task of investigating their colleagues.

17. It was important to ensure that complaints filed by prisoners were investigated by an independent mechanism (art. 13) and he requested more information on the role and membership of the independent monitoring group on prison conditions established under the new law on penal institutions and treatment of convicted prisoners. More information would be welcome on the State party’s efforts to facilitate the award of compensation to victims of torture (art. 14) and thereby combat impunity. Currently it appeared that victims had to pay for their own lawyer, and the authorities retained relevant documents to be used in their own defence, documents which were often altered or mislaid.

18. Finally, with regard to article 15, he emphasized the importance of recording interrogations as a means of preventing the use of confessions obtained under duress. In that connection, he expressed concern at reports that in Kyoto prefecture prisoners could be rewarded with special privileges if they confessed to crimes they had not committed. Such practices were a clear violation of the principle of the presumption of innocence.

19. Mr. GROSSMAN asked whether a human rights protection bill would soon be adopted and welcomed the adoption of the 2005 law on penal institutions and the treatment of convicted prisoners as an important sign of the State party's commitment to improving prison conditions and collaborating with civil-society organizations. More information would, however, be welcome on the criteria for selection of the members of the commission set up to inspect penal institutions and on the complaint procedure also established by that law, in particular whether separate secretariat staff and resources would be provided, which would contribute greatly to its effectiveness. With regard to the procedure for dealing with complaints from prisoners, he wondered why prisoners were denied the assistance of lawyers or third parties, and whether any provision had been made for exceptions to the 30-day limit for the filing of a complaint.

20. He asked if there was any time limit on confinement in a "protective cell" and if there were any statistics on the effectiveness of those cells in preventing recidivism. He expressed concern that, although initial detention in police custody was 72 hours, detention could be renewed every 48 hours, apparently without limit. He also expressed concern that, under the new 2005 law, solitary confinement was limited to three months but could be renewed indefinitely. He had information to the effect that one individual had served 50 years in solitary confinement; he wondered what purpose could possibly be served by such a sentence, which would certainly constitute a violation of the Convention.

21. He noted that detainees could be kept in police custody for up to 23 days per charge against them, and requested information on how many detainees faced multiple charges and were detained for more than 23 days. He underscored the importance of establishing an independent body of experts to investigate complaints by detainees. He enquired whether confessions obtained illegally but given voluntarily were considered valid by the courts and whether limits were envisaged for the number of hours a day a detainee could be questioned. More information would also be welcome on the criteria for, and prevalence of, the use of gags for prisoners. Finally, he asked if the State party envisaged any measures beyond human rights awareness training to address problems in prisons, the police force and law enforcement systems, such as guaranteeing detainees the right to legal counsel.

22. Mr. WANG Xuexian suggested that the State party's next report should contain more information on the implementation in practice of laws and measures relating to the Convention. More information would also be welcome on the number of complaints of racially-motivated discrimination against foreigners, in particular by law enforcement officials, and on any action, such as prosecutions, taken as a result. The State party should also acknowledge its moral and legal responsibility for the suffering caused by its forced use of comfort women and labour during the Second World War, which constituted crimes of torture and crimes against humanity. It should heed international calls for justice and redress for the victims of those policies, many of whom were still alive.

23. Ms. BELMIR said she was concerned about the difficulty of ensuring due process for detainees. Much power was vested in the police and prosecutors, and there was little judicial review of detention, which could last 23 days or more, with long interrogations and no access to a lawyer. Although there were regulations governing the interrogation of suspects and the taking of statements, she asked what sanctions could be imposed on an official found guilty of violating those regulations. She was also concerned about the treatment of prisoners, such as the use of solitary confinement, leather handcuffs, protective cells, gags, etc., which were tantamount to torture, and about restrictions on patients in psychiatric hospitals suffering from contagious diseases, who could only be released by authorization of the prefectural governor.

24. Ms. GAER welcomed the presence of a large, high-level delegation for the consideration of the State party's initial report but regretted that the report, due in 2000, had not been submitted until late 2005. Referring to the definition of torture contained in article 1 of the Convention, she asked for information on any prosecutions of public officials for torture inflicted with their consent or acquiescence. With regard to article 3, she requested statistics on the number of applications for refugee status or asylum granted or rejected, and on the number of applicants deported and the countries of destination. She asked whether there was any independent review of applications resulting in deportation to a country where there was a risk of torture, or of the decisions of immigration officials in general. She also enquired whether there were any gender-specific guidelines for the treatment of applicants who arrived in Japan in traumatic circumstances.

25. She asked whether there were any statistics on the number of criminal cases resolved on the basis of a confession alone. She also wished to know whether there was any independent body that reviewed complaints lodged by persons detained in prisons, psychiatric hospitals, immigration centres or other places of confinement, and whether the newly established commission to inspect detention facilities investigated alleged cases of torture or ill-treatment.

26. Noting that, unusually, the new law on penal institutions provided for the use of gags and "arresting ropes" as restraining devices, she requested information on the nature of arresting ropes and the circumstances in which both devices were used. She asked whether there had been any complaints about the use of those restraints and whether their use was monitored.

27. Noting that the regulations for prison officials provided that, when conducting strip searches, they should take care not to embarrass the prisoner, she asked whether, in practice, any measure was taken to ensure that the prisoner was also protected against physical, sexual and psychological abuse while in that vulnerable position, and whether such inspections were conducted by an official of the same sex as the prisoner. She wished to know whether there was a system in place to monitor sexual violence, not only against women, in prisons, and, if so, what the results had been, what complaints had been received, whether the perpetrators had been prosecuted and, if so, what sentences had been handed down and what redress the complainants had received. What measures had been taken to prevent sexual violence in prisons? And what system was in place to allow individuals to complain in confidence and to ensure protection from the officials complained about?

28. She requested an update on the outcome of three cases of violence perpetrated by police officers and prison staff against women in 2004 and 2005 which had been reported to the Committee by NGOs: an assistant inspector arrested for sexually abusing and raping a woman

detainee; a senior prison warder arrested for repeatedly having sexual relations with a detained woman, resulting in pregnancy; and an assistant inspector who had raped a woman who had previously filed a report of domestic violence involving him. She wished to know what punishment had been imposed, if any, and what measures had been put in place to ensure that such incidents did not reoccur.

29. She asked whether there was any truth in the allegation by NGOs that, although the National Police Agency had established in principle that female officers would accompany female suspects, detainees and prisoners, it was only an internal rule without punitive sanctions and was not strictly followed. Noting that the same NGO asserted that the unchecked exercise of authority by police officers often resulted in sexual abuse of women suspects and detainees, she asked what police policy was in that regard.

30. Regarding the allegation that the issuance of “entertainer visas” had de facto become an official channel for trafficking in persons, she asked how many such visas had been issued, and whether there had ever been an investigation into possible links with trafficking. She requested clarification as to whether there was any comprehensive legislation against gender-based violence and whether there was any enactment criminalizing rape within marriage.

31. Associating herself with the comments made by Mr. Wang Xuexian about sexual slavery in the armed forces during the Second World War, she asked whether any legislation accepting legal responsibility and establishing a fund to provide compensation for victims was under consideration, and whether there were any obstacles that would prevent such a step. She asked what measures, if any, had been taken to hold accountable any person involved in the establishment or operation of the “comfort stations”. She asked the delegation to comment on the status of the 1993 official apology by the then Chief Cabinet Secretary Yohei Kono accepting moral responsibility for the sexual slavery system. She asked whether there had been any investigations in the seven compensation lawsuits filed by victims, which had been dismissed on technical grounds.

32. Ms. SVEAASS asked whether there were any plans to establish a national human rights institution in accordance with the Paris Principles. She expressed concern that confessions had been made after long periods of detention, possibly in isolation, and invited the delegation to comment on recent media reports about coercion in the confession process.

33. Citing the case, recently made into a film, of a Japanese man falsely accused of groping a girl on the subway who had been convicted and sentenced to imprisonment, she noted that the way in which that incident had been vigorously investigated appeared inconsistent with the fact that many much more serious cases of gender violence appeared to be addressed inadequately. She asked how incest was regarded, and how many persons had been prosecuted and convicted for incestuous abuse. She wished to know what protection and assistance was afforded to persons reporting cases of domestic violence, particularly immigrant women.

34. She expressed concern about young Japanese women being exposed to sexual exploitation in the vicinity of the United States military bases in Japan, particularly Okinawa. She wished to know how women in those areas could be protected and, if such incidents did occur, how the women could be assisted and the perpetrators held accountable.

35. She requested specific information on the number and type of cases in which compensation had been paid to victims of torture, in particular whether expenses for medical and psychiatric rehabilitation had been covered, as provided for under the law.

36. With regard to police training, she asked whether there was any particular component on women's and children's rights, and how many women prison and police officers there were.

37. The CHAIRPERSON, speaking as a member of the Committee, requested an explanation for the long delay in submitting the report. He agreed with colleagues about the lack of specific examples in the report of how the new and amended laws were implemented in practice. He expressed concern that, according to the core document (HRI/CORE/1/Add.111), the appointment of Supreme Court judges was reviewed by the people at the first general election of members of the House of Representatives following their appointment, and subsequently every 10 years. He wished to know how such a system was reconciled with the principle of independence of the judiciary, whose cornerstone was security of tenure.

38. The Government was tardy in addressing the question of excessively long pretrial detention, which had consistently been brought to the attention of the international community by NGOs over the years. The current situation made a mockery of the presumption of innocence. He was also concerned that some confessions were extracted through unlawful means. He suggested that the common-law approach to accepting confessions, which was that they should have been made freely and voluntarily, should be adopted. The burden of proving that the confession had been made freely should be on the prosecution, not on the accused.

39. He noted that the amendment to the immigration law contained a number of novel provisions, and asked for statistics highlighting the extent to which the situation had improved.

40. Noting that Japan was a party to the International Covenant on Civil and Political Rights, which called on States to limit the crimes for which the death penalty could be imposed, he asked whether the Government had any plans to abolish the death penalty. He stressed that the matter should be kept constantly under review. He also expressed serious concern that, according to the report, execution by hanging was not considered inhuman in Japan.

The meeting rose at 12.55 p.m.