



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

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Summary record of the first part (public)* of the 1152nd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 21 May 2013, at 10 a.m.

Chairperson: Ms. Gaer (Vice-Chairperson)

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1152/Add.1.

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

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Second periodic report of Japan (CAT/C/JPN/2; CAT/C/JPN/Q/2; HRI/CORE/JPN/2012)

1. *At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.*
2. **Mr. Ueda** (Japan) said that the State party had made considerable progress in the implementation of the Convention since the consideration of its initial report (CAT/C/JPN/1) in May 2007, as indicated in the report currently under consideration. The second periodic report had been prepared in cooperation with the relevant government agencies and ministries and with civil society, including NGOs, and the Government recognized that the latter played an important role in promoting respect for human rights.
3. Measures taken in April 2008 by the public prosecutor's office to ensure appropriate interrogation procedures provided that, if a suspect or their defence counsel complained to a prosecutor about an interrogation, the latter must refer it to the prosecutor in charge of the case, who would conduct an investigation without delay and take the necessary measures to explain the outcome to the complainant as far as possible. In addition, in July 2011 an inspection guidance division had been established in the public prosecutor's office; it was responsible for investigating, inter alia, any breach or inappropriate act committed by prosecutors and for providing appropriate guidance. In January 2008, the National Police had developed a policy on ensuring the propriety of examinations conducted in police investigations, which focused on strengthening the supervision of interrogations, including their duration, and training investigators in good practices. Recognizing the merits of recording interrogations, particularly for the purpose of verifying that the confessions were made voluntarily, the Government had expanded that practice on an experimental basis. The Ministry of Justice was currently exploring a reform of the criminal justice system to institutionalize the audiovisual recording of interrogations. A report on the subject would shortly be submitted to the Government.
4. The separation of the functions of investigation and detention appeared in statutory form in the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, which had entered into force in 2007, and was scrupulously respected by the National Police. In application of the Act and in order to ensure that law enforcement officials respected human rights in the exercise of their duties, detention facilities were regularly inspected by officials of the National Police Agency or prefectural police headquarters and by the Detention Facilities Visiting Committee. A detainee complaints system had also been established. Japan safeguarded the fundamental rights not only of its nationals, but of foreigners as well. In July 2009, the Immigration Control and Refugee Recognition Act had been amended to specify that no person could be deported to a country where violations of the Convention against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance were likely to be committed. Measures had also been taken to improve the management of immigration detention facilities and to strengthen their monitoring, and an agreement with the Japan Federation of Bar Associations now guaranteed access to free legal counselling for foreigners in those facilities.
5. Japan had become a party to the Rome Statute of the International Criminal Court on 1 October 2007, thereby demonstrating its resolve to end impunity for the most serious crimes, including torture. All public officials were trained in the principles set out in international human rights instruments, and the Government intended to strengthen that training in the future. Prosecutors, law enforcement officials, prison staff and immigration

officials in particular received in-depth training tailored to their respective duties and experience. The Japanese Government was determined to eradicate torture and other cruel, inhuman or degrading treatment or punishment, to improve the country's human rights situation and to promote human rights throughout the world, particularly in Asia and the Pacific, and it was committed to working to that end in close cooperation with the Committee, United Nations institutions, States parties and civil society.

6. **Mr. Mariño Menéndez** (Country Rapporteur), noting that the State party's criminal law still did not classify torture as a criminal offence, said that the absence in national law of a definition of torture that included all the elements contained in article 1 of the Convention could impede the implementation of the Convention, particularly article 3, as well as other international standards that referred to the concept of torture. He wished to know whether the State party intended to remedy that shortcoming, and more about which categories of officers were covered by the provisions of the Penal Code punishing assault and cruelty by special public officers, which he found unduly restrictive.

7. After 48 hours of detention, suspects could be placed in either a police detention centre (Daiyo Kangoku) or in a detention centre under the authority of the public prosecutor's office. The delegation might wish to explain the criteria on which that distinction was based. The fact that police investigations still focused mainly on obtaining confessions increased the risk of use of extreme methods for that purpose. It would therefore be interesting to know what rules were in force regarding solitary confinement and the length of the interrogation and whether any measures were planned to ensure that the detainee's lawyer was present during questioning, which was currently not the case. The delegation might also wish to clarify whether a judge had ever declared confessions inadmissible as evidence on the ground that they had been obtained under duress.

8. Regarding the implementation of article 3 of the Convention, he wondered whether remedies, including judicial remedies, were available to rejected asylum seekers and foreigners in an irregular situation subject to a deportation order, and if there were any guidelines for the relevant immigration officials on enforcement of the principle of non-refoulement. Noting with regret that the State party had no plans to abolish the death penalty for the time being, he urged the Government to take measures to humanize the system, including by prohibiting the solitary confinement of death-row inmates, ensuring their right to appeal and ensuring that a death sentence had to be unanimous. With regard to violence against women, he asked whether abortion was still classified as a criminal offence in all circumstances, whether rape and other forms of sexual violence could be prosecuted ex officio or only as the result of a complaint, and whether there was a specific procedure in place to deal with complaints of domestic violence that provided for emergency measures to keep victims away from their aggressors. Lastly, he urged the State party to establish a national human rights institution as the previous Government had planned to do.

9. **Mr. Tugushi** (Country Rapporteur) said that, in default of a criminal provision expressly prohibiting torture, it would be useful if the delegation provided a comprehensive list of charges that could be brought against perpetrators of acts of torture or ill-treatment, and indicated, if applicable, the period of limitations for each of those charges. The delegation might also say how many visits the Immigration Detention Facilities Committee had made since its establishment and to whom it submitted its reports, explaining what follow-up was given to those reports. How many foreigners in detention had received free legal counselling under the agreement with the Japan Federation of Bar Associations?

10. Referring to paragraphs 124 and 129 of the State party's report, he asked how many times article 112 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees had been invoked and on what grounds, and how many complaints from detainees denouncing acts of torture or ill-treatment had been registered. He also wished to

know how the confidentiality of complaints by prisoners was ensured and what measures were taken to protect complainants and witnesses from reprisals. In its report, the State party provided statistics on the number of persons prosecuted and convicted of abuse of authority by public officers (article 193 of the Penal Code), abuse of authority by special public officers (art. 194) and assault and cruelty by special public officers (art. 195). It would be interesting to know whether those statistics covered cases in which the offences committed were akin to torture or ill-treatment, or whether there were separate statistics on such cases.

11. Referring to paragraph 145 of the report, he requested clarification about the benefits system available to victims of offences and the circumstances in which victims of torture or ill-treatment could claim such benefits. He would also like information on the measures of redress available to victims of torture or ill-treatment, and specific examples of cases in which such measures had been granted. With regard to some 200,000 women who had been exploited as sex slaves during the Second World War, he wished to know what measures the State party was taking to accurately identify the victims and to inform the general public.

12. Regarding article 16 of the Convention and, in particular, the situation in detention centres for migrants in an irregular situation, the delegation might wish to provide statistics on the number of minors placed in those centres while awaiting deportation and to indicate what criteria a minor must meet to be granted provisional release. Statistics on decisions to provisionally release migrants in an irregular situation, disaggregated by year, age, sex and country of origin, would be welcome. The delegation might also wish to indicate the length of time a detainee could be forced to wear Type II handcuffs or a restraint suit. Were doctors who examined detainees who had been forced to wear Type II handcuffs or a restraint suit required to record that information in the detainees' files? And did the State party intend to establish more detailed registers on the use of restraints in places of detention?

13. He would like the delegation to indicate when the three new prison establishments under construction would be operational and to provide statistics on the admission capacity and occupation rate of all detention centres during the period 2007–2012. The delegation might also describe the measures the State party had taken to ensure that prisons, especially women's prisons, were not overcrowded and were all heated in winter. With regard to prisoners' access to medical care, he requested clarification about the number of new doctors hired to work in prisons, efforts to improve prison medical services, the number of detainees transferred to a medical facility outside the prison, and the reasons for those transfers.

14. He wished to know if there was any legislation limiting the length of time that restraints could be used to control mentally disturbed patients. With reference to the Committee's previous concluding observations (CAT/C/JAP/CO/1, para. 26), the delegation might describe initiatives to ensure that detention orders for patients placed in public or private mental-health institutions were subject to effective and thorough judicial control. The delegation could also indicate the criteria patients must meet to obtain permission to leave a psychiatric hospital. According to information before the Committee, Japan had one of the highest rates of involuntary admission to psychiatric institutions in the world, and the length of stay was usually rather long. It would be interesting to know why outpatient care was not more developed and whether the State party intended to take steps to remedy the gaps in that area. The delegation might wish to provide details on the possibilities for lodging an appeal before the courts when the mental-health institution itself took the decision to hospitalize a patient against his or her will.

15. He wished to know more about the concerns expressed by the Detention Facilities Visiting Committees regarding the treatment of detainees and about the measures the State

party had taken to ensure that an independent external mechanism monitored institutions where minors in conflict with the law were housed. He also wished to know the basis for decisions to place persons in solitary confinement. The delegation might wish to indicate whether there were any alternatives to such confinement and describe the initiatives the State party had taken, since the submission of its initial report, to avoid excessive detention in solitary confinement. It might also indicate whether detainees placed in solitary confinement and suffering from psychiatric disorders were given appropriate care and whether persons kept in solitary confinement for prolonged periods were subject to mental-health evaluations. Further details on the number and outcome of the appeals lodged thus far by detainees placed in solitary confinement would be welcome.

16. Could the delegation provide further information on training on violence against women offered to police officers, judges, prosecutors, immigration officials and prison staff? It would be interesting to learn whether there were plans to amend the current regulations so that victims of sexual offences would no longer be required to lodge a complaint before the alleged perpetrator could be prosecuted. It would also be useful to have statistics on the artist visas issued to foreigners each year, as well as updated information on the progress of the State party's efforts to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Statistics on complaints of trafficking, and an explanation of the low number of suspected traffickers prosecuted would be appreciated. In addition, he requested clarification on the penalties for violence against children, as well as statistics on the convictions and sentences handed down in child abuse cases. Lastly, he wished to know the status of the State party's discussions on whether it would recognize the competence of the Committee to receive and consider individual complaints and ratify the Optional Protocol to the Convention.

17. **Mr. Domah** asked on what grounds the police could arrest individuals, and whether the latter were informed of the reason for their arrest and of their right to contact a lawyer, be examined by a doctor and inform their family of their situation. He also wished to know how soon the suspect must be brought before a judge and at what point they could be assigned counsel. He wondered whether the system to monitor the legality of pretrial detention was not illusory, since it could be challenged only by the accused. Given the very low percentage of complaints of torture brought before the courts, it would be interesting to know whether judges were trained to identify signs of torture.

18. **Ms. Belmir** noted that the Supreme Court decided on criminal matters only when it considered that the case raised issues of constitutionality or was likely to bring about a reversal of case law, which meant that individuals could not appeal to the Supreme Court for exercise of their rights if they were dissatisfied with the lower court's decisions. The delegation could perhaps comment on the matter.

19. **Mr. Bruni** asked whether the Detention Facilities Visiting Committees could make unannounced visits and whether the State party intended to implement the Human Rights Committee's recommendation to inform persons on death row and their families of the date and time of their execution. In his report on solitary confinement (A/66/268), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had expressed particular concern about the practice of prolonged solitary confinement, which, after more than 15 days, could have irreversible harmful psychological effects. Might the State party consider prohibiting prolonged periods of solitary confinement? Lastly, it would be interesting to know whether alternative sentences could be introduced in the State party to reduce prison overcrowding.

20. **Mr. Gaye**, referring to paragraph 164 of the report, asked whether authors of complaints about interrogations had been able to appeal the decision not to prosecute the persons named in their complaints. According to some reports, the measures taken by the

judiciary in trafficking cases were not sufficiently dissuasive, which seemed to confirm the striking disparity between the number of persons arrested for trafficking stated in paragraph 276 of the report and the number of persons prosecuted according to paragraph 277. The delegation could perhaps comment on those allegations and indicate the current status of efforts to establish a national human rights institution in accordance with the Paris Principles.

21. According to information in the Committee's possession, one third of all death row inmates executed since 2010 had not exhausted all available remedies against their sentence. The delegation might wish to explain the remedies available to persons on death row and specify whether they had suspensive effect. It might also indicate whether Japan had a procedure in place for determining stateless status.

22. He would like to know whether the State party had fulfilled its promise made following consideration of its initial report, to build new protection cells in detention facilities so that it could abolish the use of gags and what objective obstacles prevented the State party from assigning counsel to detainees, regardless of the charges against them. Lastly, it would seem that the prosecutor had the right to exclude evidence in a case and could thus prevent the defence lawyers from consulting certain case file materials. The delegation could perhaps indicate whether any measures had been taken to abolish that prerogative and provide prosecutors and lawyers with a level playing field in proceedings.

23. **Ms. Sveaass**, noting that, according to some sources, the number of unreported cases of violence against women was extremely high, asked the delegation to provide information on the follow-up to complaints of violence against women and on the possibilities of providing victims with emergency shelter. She wished to know if the State party might consider measures to reduce the proportion of involuntary admissions to psychiatric institutions and the length of stay in such institutions, and ensure the possibility of appealing an involuntary admission. Additional information would be welcome on the considerable increase in the number of placements in solitary confinement and in the use of restraints, as reported by some sources. Lastly, the delegation might indicate whether the dark chapter of Japanese history when "comfort women" were sexually exploited during the Second World War could be included in school textbooks, and whether the Japanese Government could issue a public apology for the regrettable remarks recently published on the subject in the national media.

24. **The Chairperson** said that certain elements that did not constitute a violation of the Convention per se could be problematic when viewed in combination. Thus, the prolonged duration of interrogations coupled with the absence of a lawyer could lead to a situation in which the Convention was not respected. She wished to know what the State party was doing to prevent such a situation and requested statistics on the number of convictions based mainly on a confession from the accused. Noting that, according to the report, the number of complaints had almost doubled between 2002 and 2009 (para. 249), while the number of persons arrested by the police had increased only slightly (para. 253), she wished the delegation to comment on those statistics and explain why the lending of security equipment had increased so dramatically between 2005 and 2009. She requested clarification of the meaning of the word "quasi" added on to the charges listed in the second table in paragraph 254 of the report.

25. In its previous concluding observations, the Committee had recommended that the State party should take educational measures to change the discriminatory behaviour that was at the root of sexual and gender-based violations. However, according to the NGO Women's Active Museum on War and Peace, the number of secondary school textbooks that addressed the issue of "comfort women" had steadily decreased over the past 15 years. The delegation might indicate what educational measures were being taken to prevent the conditions that could lead to violations such as those committed during the Second World

War. In its concluding observations, the Committee had also expressed concern about the failure to prosecute the perpetrators and had recommended that the State party should take rehabilitation measures for victims. Apart from apologizing, however, the Japanese Government did not seem to have taken any other measures to provide redress to the victims, who were still waiting to have their rights recognized. The statements of the mayor of Osaka to the effect that the system under which women had been exploited and reduced to sexual slavery had been necessary and there was no proof that the women had been forced into that situation constituted the same type of denials that the Committee had heard on several occasions in various circumstances and firmly rejected. As demonstrated by historians, the women had been victims of commercial trafficking for the purpose of forced sexual labour and in some cases had been abducted and forcibly taken by their captors or reduced to debt servitude. It was obvious that the Government did not value the opinions of the members of local administrations and knowledgeable observers who did not share its view on the issue. The delegation's comments on all those points would be welcome.

26. **Mr. Ueda** (Japan) said that his delegation would study the many remarks, comments and questions addressed to it. While several of them seemed to reflect a certain lack of information or were based on misunderstandings, many were well founded and legitimate, and the delegation would endeavour to provide answers that were as complete and accurate as possible at a subsequent meeting.

The discussion covered in the summary record ended at 12.05 p.m.