

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE AGAINST TORTURE 38TH SESSION, JAPAN, INITIAL PERIODIC REPORT, 9 - 10 MAY 2007

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Information submitted to the Committee

On 20 December 2005, Japan submitted its initial periodic report to the Committee against Torture (the Committee).¹ The report provided information covering each article of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (the Convention). The information provided was almost entirely composed of descriptions of relevant legislative and constitutional provisions. It included minimal discussion of the human rights situation on the ground and nearly no statistical data. All legislation mentioned in the report was attached in full in a series of annexes.

Several substantial shadow reports were submitted to the Committee by NGOs and published on OHCHR's website.² The Committee announced during the plenary that it had also held a closed briefing with a large number of NGOs, who had provided further written and oral information. This information was not publicly

¹ CAT/C/JAP/1* The asterisk after this report's code indicates that it was reissued on 21 March 2007 for technical reasons.

² Japan Federation of Bar Associations, 'Report on the Japanese Government's Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' 18 January 2007; Japanese Workers' Committee for Human Rights, Japan Association for Social Justice and Human Rights, League Demanding State Compensation for the Victims of the Public Order Maintenance Law, National Liaison Association on Retrials and False-Charge Cases, 'Opinion on the Japanese Government's First Report on the Convention against Torture' 26 March 2007; World Organisation Against Torture and Asia-Japan's Women's Resource Center, 'Violations of Womens' Rights in Japan', April 2007; International Federation for Human Rights, 'The Death Penalty in Japan: A Practice Unworthy of a Democracy', May 2003; The CAT Network Japan, 'The Alternative Report on the Initial Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 30 March 2007.

distributed. The reports that were available to the public dealt with a wide range of issues. One criticised the Japanese Government for the tardy submission of its initial report and commented that it has missed numerous other international reporting deadlines.³ Others discussed the use of police detention cells or ‘substitute prisons’.⁴ A number of practices used in prisons and police detention were described, including: extended periods of solitary confinement;⁵ prolonged detention and unrecorded interrogation of suspects, and the use of ‘confessions’ gained through this treatment;⁶ the use of leather handcuffs;⁷ and detention in ‘protective cells’.⁸ Some reports dealt with the treatment of immigrants in detention institutions.⁹ One report focused solely on the use of the death penalty and treatment of death row prisoners, noting that 43 people were hanged in Japan between 1993 and 2003.¹⁰ Another report discussed the issue of violence against women, including Japan’s position on military sexual slavery during the Second World War.¹¹

Contrary to its usual practice, the Committee did not provide Japan with a list of issues on which to provide further information. This may be due to the fact that this was Japan’s initial report.

Themes and issues

The Japanese delegation was composed of a large number of officials from Japanese ministries and arms of the State, including representatives of the police force and the coast guard. It was headed by the Ambassador of Japan’s Permanent Mission to the UN. The size of the delegation was more than matched by the NGO presence at the plenary, described by the chair of the Committee as ‘vast’.

Ambassador Fujisaki opened Japan’s contributions by describing Japan’s three pillars of fighting torture: a strong legal system prohibiting torture; participation of civil society; and cooperation with the international community. He stated that Japan’s legislation shows a zero tolerance approach towards torture; that last year Japan passed a new law enabling civil society to visit prisons and make recommendations; and that Japan sees the Convention as the ‘corner stone’ of all efforts to eradicate torture. He pronounced the Japanese delegation ready ‘to listen and learn’ from the Committee.

Mr. Kimura (Director for Human Rights in the Japanese Ministry of Foreign Affairs) gave an introductory overview of the State report, reading information relating to each article of the Convention directly from the original text. He then outlined the main developments that have occurred in Japan since the completion of the report. These included a major revision of prison law that came into force in May 2006, establishing new provisions for the appropriate treatment of sentenced inmates. This law provides that ‘optimal treatment’ should be given to inmates, with ‘correctional treatments’ conducted in a systematic manner. Inmates are now allowed to use the telephone in some circumstances, and may submit complaints to the Minister of Justice or warden of the prison. He added that un-sentenced inmates and those sentenced to the death penalty are covered by an act that will soon come into force. He also announced amendments to the *Immigration Control*

³ Japanese Workers’ Committee for Human Rights, Japan Association for Social Justice and Human Rights, League Demanding State Compensation for the Victims of the Public Order Maintenance Law, National Liaison Association on Retrials and False-Charge Cases, 26 March 2007

⁴ Japan Federation of Bar Associations, 18 January 2007 and the CAT Network Japan, 30 March 2007 and Japanese Workers’ Committee for Human Rights, Japan Association for Social Justice and Human Rights, League Demanding State Compensation for the Victims of the Public Order Maintenance Law, National Liaison Association on Retrials and False-Charge Cases, 26 March 2007.

⁵ The CAT Network Japan, 30 March 2007 and Japan Federation of Bar Associations, 18 January 2007.

⁶ Japan Federation of Bar Associations, 18 January 2007 and Japanese Workers’ Committee for Human Rights, Japan Association for Social Justice and Human Rights, League Demanding State Compensation for the Victims of the Public Order Maintenance Law, National Liaison Association on Retrials and False-Charge Cases, 26 March 2007

⁷ The CAT Network Japan, 30 March 2007.

⁸ The CAT Network Japan, 30 March 2007.

⁹ The CAT Network Japan, 30 March 2007 and Japan Federation of Bar Associations, 18 January 2007.

¹⁰ International Federation for Human Rights, May 2003. This was also discussed by Japan Federation of Bar Associations, 18 January 2007.

¹¹ World Organisation Against Torture and Asia-Japan’s Women’s Resource Center, April 2007

Act, which came into effect in May 2005 and should ensure a stable legal status for refugees, and establish a ‘refugee councillor system’ whereby a third party may participate in the application process for refugee status.

The chair of the Committee warned the delegation that since this was their first report, there would be many questions. The general discussion was led by the two Country Rapporteurs assigned to Japan, Committee members Mr. Fernando Mariño Menendez and Mr. Alexander Kovalev.

Throughout the plenary and in the Committee’s concluding observations¹², Committee members welcomed Japan’s first report and praised its statement on international cooperation and civil society groups. However, several expressed their hope that in future Japan’s reports would include more details and statistics to demonstrate the implementation of the laws it discussed and the situation on the ground.¹³ Mr. Mavrommatis, the chair of the Committee, also wanted to know why the report had been so delayed. Japan explained that it had felt it needed extra time in order to record developments that were taking place. These criticisms were reiterated in the concluding observations.

Status of the Convention under domestic Law

Mr. Menendez asked whether the Convention was specifically invoked by courts in Japan. This question was not answered by the delegation. This lack of response was noted with regret in the concluding observations.

Mr. Menendez and Committee member Ms. Felice Gaer both asked Japan to clarify its definition of torture. To this end, Mr. Menendez wished to know whether Japan sees the Convention as applying to people working in immigration detention centres and self-defence forces. Mr. Menendez also asked for Japan’s opinion on the applicability of the Convention in times of armed conflict. Ms. Gaer asked the delegation to provide specific examples of cases where a person was found to be responsible for torture as a result of their ‘acquiescence’ or ‘consent’, according to the definition of responsibility given in Article 1 of the Convention. Japan explained that there is no clear definition of torture in Japanese domestic law. However, self-defence forces who commit torture are punishable under Article 4 of the Japanese Penal Code. The Committee’s concluding observations reiterated concern that no definition of torture is included in Japan’s Penal Code.

Mr. Kovalev expressed his regret that Japan has not made a declaration under Article 22 of the Convention to allow the Committee to receive individual complaints. Japan responded that it has not ratified article 22 as it believes this system could be highly problematic and compromise the position of the judiciary.

Mr. Menendez urged Japan to consider ratifying the Optional Protocol to the Convention. Japan responded that it was studying the Protocol carefully.

Enforcement mechanisms

Mr. Mavrommatis asked whether judges have security of tenure and stressed the importance of this in maintaining an **independent judiciary**. The delegation replied that the status of judges is strongly supported by Japan’s constitution. A judge is only dismissed in cases of public impeachment, due to ‘mental or physical problems’, ‘if they have been lazy’ or if they have ‘misbehaved in their duties’. Japan stressed that the procedures surrounding dismissal of a judge are very strict, and in the Supreme Court, dismissal of a judge also requires support from a majority of the other judges. Mr. Mavrommatis noted that Japan’s State report says that judges may be reassessed every ten years, and that this assessment may lead to dismissal. In the Committee’s concluding observations, it urged Japan to increase safeguards to judges’ security of tenure.

Mr. Kovalev presented a series of questions regarding the processes involved in **investigating public officials accused of torture**. He wished to know how torture is investigated when the suspect is a police officer, stating his belief that the police forces would not be ‘competent’ to conduct this kind of investigation themselves. He also expressed his concern that when an official is accused of torture, documents relevant to

¹² CAT/C/JPN/CO/1. These can be accessed at <http://www.ohchr.org/english/bodies/cat/cats38.htm>.

¹³ Mr. Kovalev, Mr. Wang, Mr. Mavrommatis.

the case are often 'lost' or withheld by the authorities for the purpose of their own self defence. Japan stated that there was a specific room at the national police agency for dealing with illegal acts on the part of the police. The delegation added that in 2002, there were 14 complaints filed to the police safety commission, but no complaints regarding torture in prisons. Ms. Gaer followed up on these questions by referring to the cases of gender-related violence by law enforcement officers mentioned in the report submitted by the World Organisation Against Torture. She asked how these cases had been resolved and whether new mechanisms had been put in place to avoid similar problems occurring again in the future. The delegation did not respond to these questions.

The Committee also had a number of questions and comments on the **complaints review panel** currently used to process complaints from prisoners in Japanese penal institutions.

- Committee member Mr. Silvio Grossman enquired as to how the members of the panel were selected. Japan informed the Committee that experts in legal matters and correctional administration are selected from outside the Ministry of Justice. These experts then compile a series of legal opinions each year and report them to the Ministry of Justice.
- Mr. Grossman was of the view that the panel would function more effectively if they were supported by their own secretariat. The delegation responded that although the secretariat is within the Ministry of Justice, it works as part of the Minister's Secretariat rather than the Correctional Bureau in order to ensure its independence.
- Mr. Grossman also wished to know why a third party could not represent detainees when they made complaints about their treatment. He said that he would like to understand the rationale for excluding lawyers from this process, and suggested that lawyers might help prevent the filing of frivolous cases. On this point, the delegation felt that establishing what happened within a penal institution is usually a 'simple procedure' where the complainant is not required to produce evidence. Therefore they do not need a lawyer.
- Mr. Grossman also noted that there was a 30-day time limit for filing complaints and asked if this limit was flexible in order to allow for exceptional circumstances. Japan responded that this limit was only applicable in 2 of the 3 complaint mechanisms and in the third, there was no limit.
- Ms. Gaer wished to know what mechanisms are in place for detainees to make complaints without the knowledge of the staff in the correctional facility. Japan confirmed that complaints could be kept confidential. The complainant is given a special envelope in which to put his application. In addition, staff members are forbidden from treating a prisoner less well on the basis that he has made a complaint.
- In the Committee's concluding observations, it expressed concern regarding limitations on the prisoner's right to complain, the lack of independence of the complaints review panel, and the inability of prisoners to have a lawyer present their complaint.

The Committee noted with satisfaction the recent establishment of a new **inspectorate of detention facilities or 'Board of Visitors'** through which members of the public will be able to monitor prisons.¹⁴ However, they had a number of questions and concerns regarding this system. Mr. Menendez wished to know: what guarantees protect its independence; how connected it is to the judicial authorities and what authority it will have to investigate acts of torture. The delegation stated that the board will make recommendations directly to the Ministry of Justice, rather than being linked to the judiciary. The fact that the boards will have the power to research but not investigate acts of torture was noted as a subject of concern in the Committee's concluding observations. Mr. Grossman enquired about the criteria for selecting the members of these visitors' boards. Japan explained that the boards will consist of citizens from the region, including lawyers, doctors and local government employees. These people will be recommended by public and private organisations. Those selected will be of 'high moral standing' and 'great enthusiasm'.

Mr. Kovalev noted that Japan has established a **human rights training** system for senior law enforcement officials. He asked whether this training specifically dealt with methods to prevent torture. He also wished to

¹⁴ Mr. Menendez

know whether military personnel received the same training. Ms. Sveass asked whether specific parts of this training dealt with women and children's rights. The delegation did not answer this question.

Mr. Kovalev noted with regret that no **rehabilitation** centre or programmes existed in Japan for victims of torture.

Committee member Ms. Nora Sveass asked whether Japan intends to establish a **National Human Rights Institution** that complies with the Paris Principles.¹⁵ Japan responded that a human rights protection bill has been presented to Parliament that aims to establish an independent human rights committee. The Ministry of Justice is currently still considering this bill.

Treatment of detainees

Length of detention

Several Committee members asked Japan about its practice of holding detainees in police cells for up to 23 days.¹⁶ Mr. Grossman asked what proportion of suspects are held for the full 23 days, whether any are held for longer and whether the 23-day limit is renewed if new charges are brought while the suspect is being detained. Mr. Menendez suggested that long periods of detention before conviction can contravene the principle of the presumption of innocence. He asked whether this detention required a judicial review, and whether the new legislation will limit the use of extended pre-trial detention. Japan insisted that it only keeps suspects in custody when absolutely necessary, such as cases where a suspect is considered to be a flight risk. It said that this is governed by strict judicial control. In 2005, 33.2% of all cases investigated led to arrests and 29.8% led to detention. Among those detained, 43.9% of the suspects were detained for 10 days. The maximum time permitted for interrogation depends on the type and gravity of the crime. In its concluding observations, the Committee was 'gravely concerned' over prolonged detention in police cells and noted a 'lack of effective judicial review' of pre-trial detentions.

Interrogation practices

A number of Committee members expressed concern that interrogations were not recorded, and urged Japan to begin routinely recording interrogations with either audio or video equipment.¹⁷ Mr. Kovalev noted that the Human Rights Committee had recommended that they bring in recording processes for interrogation in 1998. The Japanese delegation stated that taping interrogations would contravene the right to privacy of the detainee. Mr. Kovalev responded that it was the responsibility of the police to ensure that the tapes are not leaked, causing a violation of privacy. However, Japan was of the view that even without a leak, use of the tape in court would mean that personal information about the detainee could be revealed.

Mr. Kovalev reported that he had heard that detainees can be interrogated until morning if they deny accusations of guilt. He wanted to know for how many days this all-night interrogation could continue. The delegation stated that interrogation cannot be limited for serious crimes. However, the police are instructed to consider seriously the sex, age and physical condition of the detainee. If interrogation is conducted late into the night, detainees are permitted to sleep in later in the morning.

Mr. Menendez and Committee member Ms. Essadia Belmir mentioned reports from NGOs alleging that detainees under interrogation frequently do not have access to a lawyer. Mr. Menendez stressed that if detention is undertaken for interrogation purposes, it is particularly important for the detainee to have access to a lawyer. Japan refuted the suggestion that detainees are not allowed access to a lawyer and stated that all detainees may see their lawyer in private. It added that a defence counsel is appointed if 'certain requirements' are satisfied. In its concluding observations, the Committee expressed concern over the absence

¹⁵ Principles relating to the Status of National Institutions, adopted by General Assembly resolution 48/134 of 20 December 1993.

¹⁶ Mr. Menendez, Mr. Grossman, Mr. Mavrommatis.

¹⁷ Mr. Menendez, Mr. Kovalev, Ms. Gaer.

of a court-appointed lawyer except in cases of felony, and over the limitations on detainees' access to their defense counsel.

Mr. Kovalev referred to reports of bribes or incentives given to suspects under interrogation to coerce them into confessing. He mentioned having received information from NGOs, in particular the Japanese Bar Association, regarding a practice in the Hyogo Prefecture whereby suspects are promised sushi if they confess to a crime that they have not committed. The Japanese delegation admitted that this had occurred, but did not comment further.

Committee members discussed NGO reports of a series of cruel practices used routinely during interrogation. Ms. Belmir mentioned the use of extended periods isolation, the tying of suspects' hands, and the forcing of suspects to eat without from a bowl without using their hands, 'like dogs'. Ms. Gaer referred to Japan's State report, which says that the use of leather hand cuffs, 'arresting ropes' and gags was permitted in police detention facilities. She asked for more details on the use of these items, whether complaints had been received regarding their use, and how their use is monitored. Mr. Grossman noted that the use of gags has been banned in penal institutions, but is still admissible in police detention facilities or 'substitute prisons' as they are known. He asked how Japan would justify this partial ban. Japan insisted that all suspects in police detention facilities are treated lawfully, with due regard to human rights. The delegation added that women may not be interrogated by a man without someone else in the room and that men are given guidance not to use obscene language or touch the woman. Regarding gags, the delegation stated that gags are no longer necessary in penal institutions where 'protection rooms' are available, so that the prisoner can be isolated. However, in 'substitute prisons' there are no such facilities and gags must therefore be used instead. The use of gags was a subject of grave concern in the Committee's concluding observations. The delegation explained that 'arresting ropes' were 3 millimetres in diameter and only used when there was a risk of escape, destruction of objects or self harm. It stated that in 2006, this rope was used in 250 cases.

Mr. Kovalev and Ms. Belmir both mentioned that an NGO had reported to the Committee that a 'secret manual' was used by the police force detailing how to conduct interrogations, which included such instructions as, 'Do not leave the interrogation without a confession'. The delegation was asked for comments on this allegation. It responded that this document was in fact a personal memo relating personal experiences. The document has been used in training, but is not an official document. It added that the document was not designed to encourage others to use these methods.

The use of confessions

Following this discussion about Japanese interrogation practices, many Committee members expressed concern regarding the amount of weight given in court to confessions secured, particularly given the use of the above methods.¹⁸ Ms. Gaer asked how many cases in court were resolved solely on the basis of a confession. Ms. Sveass reminded Japan that in times of stress and crisis, people are vulnerable to pressure and will confess to things that they have not done. She asked for the delegation's comments on this. Mr. Mavrommatis described confessions as having the potential to be a 'millstone around the neck of a judicial system'. He stated that confessions must be given freely and voluntarily with no pressure exerted, even in the form of sushi. He added that the burden of proof should be on the prosecution lawyers to show that a confession was given freely and voluntarily. The Japanese delegation stated that according to Article 38(2) of the Japanese constitution, a confession is not valid if it was gained after prolonged arrest or torture. If there is any suggestion that the confession was not given freely, it is not used in evidence. It added that Japanese law states that no one may be convicted solely on the basis of a confession. Further, the delegation stated that Japan's apparently high conviction rate does not result from extensive interrogation and use of confessions, but from thorough screening of cases by public prosecutors before the indictment occurs. In its concluding observations, the Committee expressed deep concern about the large number of convictions in criminal trials based on confessions.

¹⁸ Mr. Kovalev, Ms. Gaer

Conditions in penal institutions

Cruel practices

Mr. Grossman noted with concern that there is no limit on the use of **solitary confinement** in Japanese prisons, since a prisoner can be kept in isolation for 72 hours with no limit on how many times this period may be renewed. He mentioned that he had heard of a prisoner being kept in isolation for 42 years of his 50 year sentence. He wanted to understand the rationale behind this practice and whether it was used as a form of punishment. The delegation stated that isolation is only used for prisoners that: continually refuse work; have psychological or physical conditions that make them ‘cause trouble’ and ‘prevent them from mixing with a group’; make loud noises; or are thought to be at risk of harming other prisoners. It added that sometimes prisoners even request to be isolated. Each time the 72 hour period is renewed, a doctor must confirm that it is safe for the person to continue to be isolated. Nevertheless, continuous prolonged use of solitary confinement was a subject of deep concern to the Committee in its concluding observations.

Ms. Gaer wished to know more details regarding protocol for **strip searches** in prisons. She asked whether this always took place in private; whether officers of the same sex as the prisoner are always used to conduct the search; and what measures are in force to ensure individuals are protected from abuse. Ms. Gaer also noted that in principle, all female prisoners are guarded by female guards, but wished to know how this plays out in practice. Ms. Sveass followed this by asking for figures on the numbers of female and male prison officers currently serving in Japan. Japan responded that strip searching did not usually require underwear to be removed. However, in serious cases where underwear must be removed the prisoner is given a sort of kimono so they do not have to be entirely naked. Female prisoners are examined by female officers. The delegation did not respond to the other questions.

Ms. Gaer asked what mechanisms are in place to prevent acts of **sexual violence** in prisons. The delegation stated that an audit is conducted once a year to establish whether there has been improper treatment. If a specific incident is discovered, it is dealt with at the time following specific complaints, which can be made in private. For example, the delegation stated that in Fukuoka it was discovered that several officers had demanded a female prisoner take off all her clothes. They were discharged in disgrace. However, the prisoner did not press charges. In order to prevent other future sexual violence, officials are provided with special training. If a male official needs to guard a female prisoner, more than one of them will be present. In addition, monitoring cameras are placed in corridors. However, in its concluding observations, the Committee reiterated its concern about continued allegations of gender-based violence against women and children in custody.

Access to medical treatment

Mr. Menendez expressed concern regarding reports that detainees do not have access to appropriate medical treatment. Japan responded that there are four medical prisons in Japan and 6 major facilities have medical equipment onsite. Further, the Government has been working to meet recommendations from the Penal Reform Council to secure external hospitals so that prisoners can be treated there.

The death penalty

Several Committee members urged Japan to totally eradicate the death penalty.¹⁹ Mr. Mavrommatis stated that in particular the use of death by hanging should be eliminated as this a particularly cruel practice. Japan stated that there is no consensus that the death penalty is inhuman, and that Japan does not see hanging as any more inhuman than other forms of execution. Mr. Mavrommatis said that he felt the delegation’s reply on this subject was curt and that it is not enough to say simply, ‘We do not believe hanging is cruel. Period.’ He added that nearly the whole of the rest of the world certainly does believe it is cruel.

¹⁹ Mr. Menendez, Mr. Mavrommatis.

Conditions for death row prisoners

Mr. Menendez inquired about the treatment of prisoners on death row. He wanted to know when people are informed that they will be executed, whether they are given access to lawyers and whether they are kept in solitary confinement. The delegation responded that there is a need for secrecy surrounding when executions take place in order to ensure the privacy of the prisoner. It added that there is often a long wait before the execution takes place, as there may be a need for re-examination. Prisoners are informed when their execution will be on the day that it takes place, so that they are not 'destabilised'. In response to this, the Committee's concluding observations made the point that prolonged uncertainty regarding an execution date can put unnecessary extra psychological strain on prisoners and their families. Japan insisted that all prisoners have access to legal counsel. When Mr. Menendez responded that this answer conflicted with other information provided to the Committee, Japan reiterated that State-funded legal counsel is available up until a Supreme Court decision has been made, and even after this point access to a privately funded attorney is not limited. The Committee's concluding observations expressed serious concern that prisoners could not meet with their counsel in private and that State funded counsel is not provided after the final decision is handed down. Regarding solitary confinement, Japan stated that all prisoners on death row are kept in solitary confinement on principle. In its concluding observations, the Committee argued that this prolonged isolation – sometimes exceeding 30 years – 'could amount to torture or ill-treatment'.

Violence against women

Mr. Menendez asked the delegation about the situation of violence against women in Japan. Japan responded that violence against women is a crime, including domestic violence. It added that the Japanese Government is currently developing specialised approaches to these problems. Mr. Menendez asked what protections were in place to protect women from trafficking and sexual slavery, particularly given the problem of the 'notorious' Japanese mafia. The Japanese delegation responded that victims of trafficking are assisted in returning to their own country, and in 2004 a Trafficking Taskforce was established. Ms. Gaer and Ms. Sveass expressed concern at reports that trafficking into Japan has been facilitated by the granting of visas for 'entertainment workers'. Japan responded that standards for offering this kind of permit have been raised following concerns that they were facilitating trafficking. The Committee reiterated its concern about Japan's problem with trafficking in its concluding observations. Ms. Gaer asked whether intra-marital rape is criminalised. Japan confirmed that it is. Ms. Sveass wanted to know Japan's policy on prosecuting incest. Japan did not respond to this query.

Ms. Sveass stated that she had been approached by a Japanese woman who was gang raped by members of the US military 30 years ago. She wished to know how such cases could be prevented and what could be done to help victims and hold perpetrators accountable. Japan did not respond to this query.

Mr. Menendez also wished to know if it was illegal for a woman to rape a man in Japan. Japan stated that this is the case.

Reparations for 'comfort women'

Several Committee members raised the issue of sexual slavery or 'comfort women' during World War Two.²⁰ They urged the Japanese Government to take full responsibility for the acts that took place and to implement a comprehensive system of reparations for victims. In particular, Mr. Wang called these acts 'serious crimes against humanity'. Ms. Gaer asked what measures have been taken to hold perpetrators to account, and said she had heard that 10 cases aimed at obtaining justice for victims had been dismissed. She urged Japan to provide compensation to every victim regardless of any peace treaties or international negotiations. The delegation responded that it acceded to the Convention in 1999 and the Convention does not apply retroactively. Further, it stated that Japan has issued a statement expressing remorse and paid small sums of

²⁰ Mr. Menendez, Mr. Wang, Ms. Gaer, Ms. Sveass

money to former ‘comfort women’. In addition, Japanese Prime Ministers have sent personal letters of apology to each one. Ms. Gaer replied that the Committee was fully aware of the chronology of the Second World War. However, she was of the view that in the interests of fulfilling the spirit of the Convention, Japan should take more significant steps towards redress and reparation. She added that the crimes could be seen as ‘continuing violations’ because as the State continues to fail to prosecute and disclose all the facts, victims can be ‘re-traumatised’. In the Committee’s concluding observations, it expressed regret at the dismissal of the legal cases brought by ‘so-called “comfort women”’.

Treatment of non-citizens

Asylum

Ms. Gaer wished to see detailed figures on the number of applications for immigration and asylum received by Japan, and the results of these applications. Further to this, Mr. Mavrommatis referred to some information submitted by NGOs regarding cases where applications for refugee status had been rejected without full justification. He argued that this would be prohibited by Article 3 of the Convention. The Japanese delegation responded that its new immigration system gives all applicants for refugee status temporary residence permits. According to the delegation, this has already led to a rise in applications. It explained that in 2002 Japan received 250 applications for asylum, and in 2006, it received 954.

Ms. Gaer wished to know whether treatment of immigration and asylum applications was gender sensitive, taking into account specific trauma experienced by the applicant. Ms. Sveass asked what support female immigrants were given to come forward with complaints regarding a history of sexual violence. Japan responded that all applicants are listened to. If an applicant is not recognised as a refugee, they can be given permission to stay on the grounds of special humanitarian considerations. These could include gender-related issues. The delegation stated that trauma such as rape is a very significant consideration.

The Committee had a number of questions regarding the deportation of non-citizens. Mr. Menendez asked whether an independent body outside the Ministry of Justice decides on the cases of applicants for immigration and asylum. Japan responded that the Ministry of Justice makes these decisions with the help of advisors, which it appoints itself. However, applicants can appeal to a judicial authority. This was a subject of concern in the Committee’s concluding observations, which noted ‘insufficient guarantees of access to judicial review’. Mr. Menendez asked how these advisors could maintain their neutrality since they were appointed by the Ministry of Justice. Mr. Menendez wished to know how long it took after a judgment on their case for a rejected immigrant to be deported, and whether delays in this process ever led to prolonged detention. Japan responded that deportation took place as soon as possible, but that detention was used where deportation could not take place immediately. Ms. Gaer wanted to know to which countries Japan would deport people. The Committee stated its position that there is no excuse for deporting someone to a country where they will be persecuted or tortured, referring to the principle of *non-refoulement* and the *1951 Refugee Convention*.²¹ Ms. Gaer asked whether applications were specifically reviewed to ensure that the deportee would not face a risk of torture. On the subject of *non-refoulement*, Japan stressed that it abides by the *1951 Refugee Convention*. It stated that it has not sent foreigners to any country where there they may be persecuted.

Non-citizens accused of torture

Mr. Menendez wished to know whether Japan applied the Convention’s principle of universal jurisdiction to non-citizens who have committed torture outside of Japan but have entered Japan’s jurisdiction. He also asked if there were any cases of Japan failing to extradite a non-citizen accused of torture who was staying in Japan to a country seeking to bring them to justice. He suggested that the case of Alberto Ken’ya Fujimori, the former President of Peru, might fall into this category and could have been tried in Japan. The delegation responded that the information provided to the Japanese Government by the Peruvian Government had not

²¹ Mr. Menendez

been sufficient to warrant extradition without further investigation, and Mr. Fujimori left Japan before further investigation could be concluded. When pressed further by Mr. Menendez, Japan stated that according to Japanese extradition law, any request must be accompanied by grounds for believing the suspect has committed a crime. According to the delegation, the Peruvian Government did not provide such information and Mr. Fuji Mori left Japan before this was rectified.

Other issues concerning non-citizens

Mr. Menendez wished to know whether non-citizens who gain Japanese nationality through marriage lose their citizenship if the marriage ends in divorce. Japan responded that even a person marrying a Japanese citizen would not automatically be entitled to citizenship, but would have to go through a naturalisation process and face a decision by the Ministry of Justice.

Mr. Menendez asked the delegation whether non-citizens undergoing criminal proceedings in Japan have full access to justice and are clearly notified of their rights. He noted that this is the common practice according to Article 63 of the *Vienna Convention*. Japan did not respond to this question.

Detention in mental health institutions

Mr. Menendez noted that some of Japan's psychiatric hospitals are run by private companies. He asked what protocols and regulations governed these companies. The delegation responded that private hospitals must conform to standards set by the State.

Mr. Menendez also asked about the conditions under which a person may be compulsorily hospitalised. Japan responded that this requires the consent of two psychiatrists. When a request for discharge is made, a psychiatric review board will examine the case and recommend to the governor of the hospital whether the patient should be released. According to the delegation, there were less than 300 requests for discharge in 2004. Ms. Belmir was concerned that the governor of the hospital was given the final say on when patients are released. In response to this concern, Japan stressed the weight of the doctor's opinion in the governor's decision. In its concluding observations, the Committee urged Japan to take measures to ensure effective and thorough judicial control over detention procedures in public and private mental health institutions.

Other Issues

Mr. Wang asked whether any complaints had been brought against law enforcement officials regarding behaviour with racial implications. If, so, Mr. Wang wished to know what legal proceedings had been brought against the perpetrators. Japan responded that it is perfectly possible for complaints to be brought on these grounds. The delegation did not say whether any such complaints have been made.

Conclusions and next steps

The session closed with the delegation and the chair of the Committee expressing their thanks to each other for the dialogue. The chair of the Committee, Mr. Mavrommatis, reiterated the need for Japan to include more practical information in its next report. No further significant concluding statements were offered by either party.

Following the end of the session, the Committee produced its concluding observations. These requested that Japan provide written information within one year on measures it has taken to address the concerns that the Committee had expressed regarding: *non-refoulement*; detention in police custody; interrogation rules and the use of the confessions; and gender-based violence and trafficking. The concluding observations of the Human Rights Committee in 1998 show that several other points raised by the Committee during this session echoed

comments that have previously been made to Japan.²² The Human Rights Committee expressed grave concern regarding pre-trial detention in Japan, in particular regarding the use of police detention. The Human Rights Committee urged Japan to establish ‘an independent mechanism for investigating complaints of violations of human rights’, an idea that was reiterated at this session with Ms. Sveass’ question on Japan’s lack of a national human rights institution. It commented on the ‘lack of a credible system for investigating complaints by prisoners’. It urged Japan to take steps towards abolishing the death penalty. It concluded ‘that the undue restrictions on visits and correspondence and the failure to notify the family and lawyers of the prisoners on death row of their execution are incompatible with the Covenant [on Civil and Political Rights]’. It also expressed deep concern ‘about the fact that a large number of the convictions in criminal trials are based on confessions.’ Amongst other treaty monitoring bodies, in 2003 the Committee on the Elimination of Discrimination Against Women called for Japan to intensify its efforts to address the issue of violence against women and to ‘endeavour to find a lasting solution to the problem of ‘wartime comfort women’’.²³ Similarly, the Committee on Economic Social and Cultural Rights called upon Japan to compensate these victims ‘before it is too late to do so’.²⁴

Japan’s next report to the Committee Against Torture is due on 30 June 2011.

²² CCPR/C/79/Add.102

²³ A/58/38(SUPP) (CEDAW, 2003)

²⁴ E/C.12/1/ADD.67 (CESCR, 2001)

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ABOUT THE PUBLICATION

The *Treaty Body Monitor* forms part of the Human Rights Monitor Series produced by ISHR. It reports on each country reviewed by the seven treaty bodies and provides an overview of every treaty body session. It is currently an online publication that can be found at <http://www.ishr.ch/hrm/TMBs>.

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