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UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

Téléfax: (41-22) 917 9008
Téléphone: (41-22) 917 9102
Internet www.ohchr.org
E-mail: jnatat@ohchr.org

Address:
Palais des Nations
CH-1211 GENEVE 10

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Your Excellency

In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture, I refer to our several exchanges to date regarding the examination of the first periodic report of Japan (CAT/C/JPN/CO/1) by this Commission at its 38th session on 16 and 18 May 2007 (CAT/C/SR.778 and CAT/C/SR.779), and to request further information on some aspects of this review under the Follow-up Procedure.

At the end of the session, the Committee's Conclusions and Recommendations (CAT/C/JPN/CO/1) were adopted and transmitted to your Permanent Mission. In paragraph 31 of those Conclusions and Recommendations, the Committee asked, pursuant to its rules of procedures, that Japan provide further information regarding areas of particular concern identified by the Committee in paragraphs 14, 15, 16 and 24. I am writing today to thank you for your Government's communication of 29 May 2008 (CAT/C/JPN/CO/1/Add.1) and to request further clarification as to the following matters.

S.E.M Shinichi KITAJIMA

Ambassador Extraordinary and Plenipotentiary
Permanent Mission of Japan to the United
Nations Office at Geneva
Chemin des Fins 3
Case postale 337
1211 Geneva 19
Fax : 022 788 38 11

Paragraph 14

With regard to the recommendation made in paragraph 14 on non-refoulement, the Committee is pleased to note that the provisions and protections of article 33 of the 1951 Refugee Convention have been incorporated into domestic legislation. However, the protections provided by article 3 of the Convention Against Torture are actually broader than those of article 33 of the Refugee Convention. Article 33 of the Refugee Convention prohibits refoulement of an individual to a country where his or her life, or freedom may be threatened on account of his or her race, religion, nationality, membership of a particular social group, or political opinion; however, article 3 of the Convention against Torture prohibits the refoulement of any person to a country where there is a likelihood that he or she will be tortured regardless of the grounds for such treatment. The Committee remains concerned that the domestic law does not expressly prohibit the deportation of asylum-seekers to countries where they may face a risk of torture as provided by article 3 of the Convention Against Torture. The Committee would appreciate receiving information on any measures taken by the Government or expected to be taken by the Government to incorporate article 3 of the CAT into domestic legislation so as to ensure that asylum-seekers are not returned to countries where there is a risk of torture.

The Committee welcomes the State party's initiative to collect information on the operational status of penal facility visiting committees with a view to considering the pros and cons of such bodies and whether to establish a third-party treatment monitoring system. We reiterate our recommendation that the Government of Japan establish an independent body to review complaints about treatment in immigration detention facilities and hope that our views will be considered in the above-mentioned process already underway. The Committee would be grateful if you could provide updated information on the status of this information collection and consideration of the pros and cons of penal facility visiting committees, and whether a decision has been reached in this regard.

With regard to the Committee's concerns on the length of detention for rejected and case-pending asylum seekers, please provide the Committee with statistical information on the length of detention for asylum applicants in 2008, disaggregated by age, gender, nationality, and location of detention. We would also be grateful for information regarding the number of asylum applicants in 2007 and 2008 who benefited from the special considerations of age, health conditions, and other humanitarian reasons and have been provisionally released despite pending deportation orders, as described in paragraph 15 of your response.

Paragraph 15

With regard to the recommendation made in paragraph 15(a), the Committee is pleased to note the newly established principle of clearly distinguishing the functions of investigation and detention officers and the assurance that the enforcement of the June 2007 Penal and Detention Facilities Act will ensure that detention officers are not involved in investigations, and vice versa. The Committee also welcomes the establishment of the Detention Facilities Visiting Committee. We remain deeply concerned however that suspects can be detained in police detention facilities for up to 23 days without possibility of bail. Please provide the Committee with information on the access of such detainees to a lawyer, especially during the interrogation, and to police records related to their case. The Commission is concerned that prolonged detention, coupled with interrogations in which legal counsel are not allowed to be present may increase the risk of prolonged interrogation and abusive interrogation methods, which may be in violation of the Convention, with the aim of obtaining confessions. The Committee reiterates that the State party should reduce the number of days detainees can be held in police custody and implement safeguards, such as explicit directives for prompt and unhindered access to legal counsel for all level of suspects.

Despite the arguments favoring the use of such gags put forward by the Government in paragraph 29 of your response, the Committee also reiterates its recommendation to ban the use of gags in detention facilities as they may in some circumstances amount to a breach of the Convention. Please provide the Committee with information on the measures taken or planned by the Government to bring the Daiyo Kangoku system in line with these and other recommendations of the Committee.

Paragraph 16

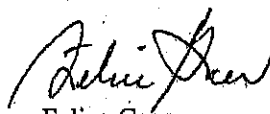
With reference to the recommendations on interrogation rules and techniques in paragraph 16, the Committee remains concerned at the high conviction rate primarily based on confessions, insufficient limitations on the duration of interrogations of suspects in police custody or substitute prisons, the exclusion of defense counsel from interrogations, and the sporadic and selective use of electric monitoring during interrogations. The Committee notes with disappointment that the State party experienced difficulties taking the measures recommended, specifically, implementing strict rules concerning the length of interrogations and systematic monitoring mechanisms such as electronic and video recording of all interrogations. Please provide information on alternative measures the Government has taken to ensure that interrogations of suspects are in accordance with the Convention. The Committee would also appreciate further information on the inadmissibility of confessions extracted by torture or ill-treatment provided in Article 319(1) of the Code of Criminal Procedure and its enforcement. In addition, please provide the Committee with the number of complaints of alleged ill-treatment during interrogations and of the use of torture to extract confessions, the number of these cases that went to trial, and the outcomes of the trials, including information on the kinds of punishments meted out and compensation offered to victims, if any.

Paragraph 24

Finally, with reference to the recommendations in paragraph 24, the Committee would like to reiterate that it views the continued failure to prosecute anyone responsible and to provide adequate rehabilitation for victims of World War II sexual abuse to foster continuing abuse and re-traumatization for these victims, which demonstrates the State party's actions are not in accord with its obligations under the Convention. Please provide the Committee with information on the steps taken by the State party to prosecute perpetrators of sexual slavery during World War II. We would also appreciate information on effective legislative and administrative measures taken by the Government to provide official compensation to all survivors of war time abuse, as well as information on the measures taken (particularly through junior-high school history textbooks), to educate students and the general public about the issue of sexual and gender-based violence. The Committee calls on the Government of Japan to refute publicly and sanction any attempt to defame the victims of wartime sexual abuse or to deny the events.

The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Japan on the implementation of the Convention, and in this context, to receiving clarification to our follow-up questions and further information.

Accept, Mr. Ambassador, the assurances of my highest consideration.



Felice Gaer

Rapporteur for Follow-up on Conclusions and Recommendations
Committee against Torture