

FY/UN/315

The Permanent Mission of Japan to the International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit herewith the reply of the Government of Japan to the letter sent by the Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee dated 19 April 2016.

The Permanent Mission of Japan to the International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 10 June 2016

Enclosure mentioned



**OHCHR REGISTRY**

**13 JUN 2016**

Recipients: *HR COMMITTEE*  
*K. FOX*  
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Reply of the Government of Japan

to the letter sent by the Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee dated 19 April 2016

Paragraph 13

(i) the progress in adopting this bill, including information on the involvement of civil society in these discussions.

The bill to amend the Code of Criminal Procedure and other laws was passed by the Diet in May 2016. The amendment includes the introduction of a new system disclosing a list of all evidence kept by the prosecutor. Various kinds of people such as practitioners and scholars of criminal law, journalists and acquitted ex-defendants were invited to express their opinions during the discussions in the Legislative Council and the Diet.

(ii) the planned criteria for applying the new system and whether it will be applied in all cases involving the death penalty;

Under the bill to amend the Code of Criminal Procedure and other laws, with regard to a case which has been placed in a pretrial or inter-trial arrangement proceeding, the prosecutor shall disclose a list of all the evidence, upon request by the defendant or his/her counsel. This procedure will also be applied to capital cases, since they are subject to lay judge trials and shall be subject to pretrial arrangement proceedings.

(iii) whether the audio-recording of interrogations of suspects is included in this bill and how this will be applied in death penalty cases.

The bill to amend the Code of Criminal Procedure and other laws will introduce a legal duty to take audiovisual recordings of interrogations of suspects. This legal duty will be applied to capital cases.

Paragraph 14

The Committee requests further information on measures taken after the adoption of the concluding observations on Japan, on 23 July 2014 (CCPR/C/JPN/6), including on the agreement made in December 2015 between the state party and the government of the Republic of Korea, in which the Prime Minister of Japan reportedly made an apology and the State party promised an 1 billion yen payment that would provide support for former comfort women.

*To be submitted.*

The Committee also requires information on measures taken to (a) investigate all cases and prosecute and punish perpetrators; (b) provide full reparation to victims and their families; (c) disclose all available evidence; (d) condemn attempts to defame victims or to

deny the events; and (e) educate students through references in textbooks. The Committee reiterates its recommendation.

*To be submitted.*

#### Paragraph 16

The Committee requests information on the content of the Bills submitted to the Diet in March 2015, their progress toward adoption and the involvement of civil society in the discussions. The Committee also requires information on whether the Bills establish criminal penalties and a minimum intern's wage, to avoid the practice of recruiting low-paid labour.

The Technical Intern Training Bill was submitted to the Diet in March 2015, and has been carried over to the next Diet session for continued discussion/deliberations.

The bill imposes criminal punishments for the following acts from the perspective of protecting the technical intern trainees.

- 1) Acts of coercing a technical intern trainee to engage in the technical intern training through the use of physical violence, intimidation, confinement, or any other means which unfairly restrict the mental or physical freedom of the technical intern trainee.
- 2) Acts of establishing monetary penalties for breach of a contract pertaining to the technical intern training entered into with a technical intern trainee.
- 3) Acts of entering into an agreement to control the technical intern trainee's savings in relation to the contract pertaining to the technical intern trainee.
- 4) Acts of retaining the technical intern trainee's passport or residence card against the trainee's will.
- 5) Acts of declaring a total or partial prohibition on communications or meetings outside of the training hours, indicating the dismissal of the technical intern trainee, other labor-related disadvantages or property-related disadvantages.
- 6) Acts of treating a technical intern trainee unfavorably on the grounds that the technical intern trainee reported a violation of laws and regulations of implementing organizations to the competent Ministers.

In addition, with regard to wages, as before the new system is expected to establish a criterion to the same effect as the current requirement obligating payment of not less than "remuneration of an amount that a Japanese national would receive for comparable work" as one of the criteria which must be met in order to obtain approval for the technical intern training plan, and an "Organization on Technical Intern Training", which would be commissioned by the Minister of Justice and the Minister of Health, Labour and Welfare, as a centralized system management and operation organization is to check that this criterion is being met. Moreover, in order to ensure a more appropriate judgment, individual implementers of technical intern training are to be made accountable for whether the wages to be paid to the technical intern trainees are not less than "remuneration of an amount that a Japanese national would receive

for comparable work”, and the technical intern training plan of those implementers of the technical intern training, who are unable to fulfill this accountability, will not be approved for meeting the approval criteria.

The Committee requests information on measures taken to increase the number of on-site inspections since the Committee adopted its concluding observations on the sixth periodic report of Japan (CCPR/C/JPN/CO/6), in July 2014. The Committee also requires information on the number of inspections and results of investigations conducted in the last three years.

Based on the Technical Intern Training Bill, which was submitted to the Diet in March 2015, and continues to be pending deliberations, an Organization on Technical Intern Training will be established and the Organization will carry out on-site inspections. When the Bill is enacted, the Organization will strive to strengthen coordination between Labor Standards Inspection Offices, Regional Immigration Bureaus and other government agencies, in order to handle matters more attentively than before.

Labor standards inspection offices have intensively carried out inspections and provided guidance to implementing organizations so far.

Moreover, when human-rights violations such as forced labor are suspected, labor standards inspection offices have worked together with the Immigration Bureau by implementing rigorous joint inspections and investigations. Labor standards inspection offices plan to work together with the Organization on Technical Intern Training to be established.

Labor standards inspection offices carried out inspections of and provided guidance for over 2,776 in 2012, 2,318 in 2013 and 3,918 in 2014 workplaces. Violations of labor legislation were found in 2,196 in 2012, 1,844 in 2013 and 2,977 in 2014 cases, and labor standards inspection offices and the Immigration Bureau conducted joint inspections and investigations 15 times in 2014.

Furthermore, 15 in 2012, 12 in 2013 and 26 in 2014 cases of serious or malicious violations of labor-related laws and regulations related to technical intern trainees were referred to the Public Prosecutor's Office.

The Immigration Bureau of the Ministry of Justice has been proactively engaged in conducting joint investigations together with the Labor Standards Inspection Offices, and since October 2014, the Immigration Bureau has been conducting joint supervision and investigations together with the Labor Standards Inspection Offices in cases where a violation of a technical intern trainee's human rights is suspected and a violation of labor-related laws and regulations is also suspected, and cooperation has been strengthened further.

The number of cases of on-site investigations conducted by the Immigration Bureau in recent years is as follows.

2014: 359 cases

2015: 486 cases

However, no statistics are available pertaining to the outcomes of these investigations.

It should be noted that in cases where an illegal act has been confirmed through an on-site investigation, the Immigration Bureau deals strictly with the organization through such measures as suspending the organization from accepting technical intern trainees for up to a maximum of five years. The number of organizations notified of an illegal act in recent years is as follows.

2014: 241 organizations

2015: 273 organizations

### Paragraph 18

(b) Further information on the progress of the Bill is required, including whether the Bill fully complies with the Committee's recommendations to ensure that the right to counsel is guaranteed in all cases from the moment of apprehension. The Committee requests the State party to reconsider its position with regard to defence counsel with a view to ensuring that defence counsel is present during all interrogations. The Committee also requires information on the participation of civil society in the discussions of the Bill.

The Code of Criminal Procedure stipulates that suspects must be informed of their right to appoint counsel when arrested (Article 203, Paragraph 1; Article 204, Paragraph 1). In addition, under the bill to amend the Code of Criminal Procedure and other laws, suspects must also be informed of the procedure on how to appoint counsel, which is that they may make a request for appointment of counsel by specifying an attorney, a legal professional corporation or a bar association, as well as of the contact point to whom the request should be made.

Furthermore, whereas the current Code of Criminal Procedure stipulates that a judge shall appoint counsel for the suspect upon his/her request in cases punishable with the death penalty, life imprisonment, or imprisonment with or without work for more than three years, when the suspect in detention is unable to appoint counsel because of indigency or other reasons, the bill will eliminate the criteria of a statutory penalty and enable all suspects in detention to have a court-appointed counsel.

The bill was passed by the Diet in May 2016. Various kinds of people such as practitioners, scholars of criminal law, journalists and the acquitted ex-defendants were invited to express their opinions during the discussions in the Legislative Council and the Diet.

(c) The Committee acknowledges the information provided on the Bill regarding the video recording of interrogations and requires information on the progress of the Bill,

participation of civil society in the discussions and the conditions on video recording established by the Bill. Please also inform whether the Bill requiring the video recording will be applied in all interrogations.

The bill to amend the Code of Criminal Procedure and other laws was passed by the Diet in May 2016. The bill will establish the legal duty to take audiovisual recordings of interrogations of suspects. Various kinds of people such as practitioners, and scholars of criminal law, journalists and the acquitted ex-defendants were invited to express their opinions during the discussions in the Legislative Council and the Diet.

The bill will establish the legal duty to take audiovisual recordings of the entire process of interrogation of suspects in custody for cases subject to lay judge trials or for cases in which prosecutors initiated the investigation, excluding certain statutory exceptions.

Prosecutors have been making efforts to take audiovisual recordings of interrogations of suspects in the following cases:

- 1) cases subject to lay judge trials;
- 2) cases involving a suspect who has difficulty in communication capability due to intellectual disability;
- 3) cases involving a suspect whose criminal capacity is suspected of having been diminished or lost due to mental disability, etc.; and
- 4) cases in which prosecutors initiate the investigation and arrest a suspect.

The number of cases in which the audiovisual recording of interrogations was implemented (implementation rate) from April 2015 to December 2015 was 2,333 (99.7%) for cases 1), 827 (100%) for cases 2), 1,933 (99.8%) for cases 3), and 91 (100%) for cases 4).

In addition, since October 2014, prosecutors have started a new pilot program of audiovisual recording for cases such as those in which a suspect in custody is likely to be indicted and audiovisual recording of interrogation of a suspect is considered necessary. Among such cases as described above, from April 2015 to December 2015, the number of cases in which the audiovisual recording of interrogations of suspects was implemented was 35,752.

The police have been implementing the audiovisual recording of interrogations on a trial basis since 2009 in all prefectures. They started the trial implementation for cases subject to lay judge trials, and expanded its range to cases involving a suspect with a disability such as an intellectual disability. In one year from April 2015 to March 2016, recordings were made for 2,897 cases subject to lay judge trials (the implementation rate was approximately 91.2%), and recordings were made for 1,231 cases involving a suspect with an intellectual disability (the implementation rate was approximately 97.7%).

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