# NGO Information in Follow-up to the Review of Japan by the Human Rights Committee

In reply to the decisions of the Committee in March 2016

September 14, 2016

Submitted by

Center for Prisoners' Rights
Solidarity Network with Migrants Japan
with support of Asia-Pacific Human Rights Information Center

## Paragraph 13　Death Penalty

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| Recommendation (July 2014)<br>(c) The State party should immediately strengthen the legal safeguards against wrongful sentencing to death, inter alia, by guaranteeing to the defence full access to all prosecution materials and ensuring that confessions obtained by torture or ill-treatment are not invoked as evidence. |
| Follow-up Information submitted by NGO (August 2015<br>Although a bill to introduce the system early 2015, which regulates disclosure of a list of evidence by public prosecutor and audio-recording of the interrogation of suspects in certain limited cases, while potential capital cases will be subject to it. However, these proposed amendments are not responses to the Committee's recommendation but a product of a compromise with actors who demand full disclosure of evidence. As for the current situation, the government has not taken any action to implement the recommendation and has no intention to do so. |
| Request of the Committee based on the review of follow—up information（March 2016）<br>【B2】(c) The Committee regrets the State party's failure to strengthen the current discovery framework to ensure full access to all prosecution materials to the defence. it also regrets that no measures have been taken to guarantee that confessions obtained by torture or ill-treatment are not invoked as evidence. The Committee notes that a reform bill is under discussion to introduce a new system of disclosing a list of titles and other categories of information on evidence kept by the prosecutor. The Committee requires information on:<br>(i) the progress in adopting this bill, including information on the involvement of civil society in these discussions. |
| Information from NGO<br><br>As per the government's information, the bill was enacted in May 2016. In the deliberation of the bill, in addition to the academic expert recommended by the ruling party, a researcher, law practitioner and victim of false charge recommended by the opposition parties delivered their opinions of opposition or discreetness to the bill. However, these opinions were never incorporated in the bill. Under the new act, what is available is the list of evidence, and not evidence itself through disclosure. |

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| Recommendations (July 2014)<br>(c) The State party should immediately strengthen the legal safeguards against wrongful sentencing to death, inter alia, by guaranteeing to the defence full access to all prosecution materials and ensuring that confessions obtained by torture or ill-treatment are not invoked as evidence. |
| Follow-up Information submitted by NGO (August 2015)<br>same as the above |
| Request of the Committee based on the review of follow-up information　(March 2016)<br>(ii) the planned criteria for applying the new system and whether it will be applied in all cases involving the death penalty; |

Information from NGO

As per the government's information, the new criteria will be applied to the case to which death penalty. is applicable.

Recommendations (July 2014)

(c) The State party should immediately strengthen the legal safeguards against wrongful sentencing to death, inter alia, by guaranteeing to the defence full access to all prosecution materials and ensuring that confessions obtained by torture or ill-treatment are not invoked as evidence.

Follow-up Information submitted by NGO (August 2015)

same as the above

Request of the Committee based on the review of follow-up information (March 2016)

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

Information from NGO

As the government's information indicates, use of the audio recording is limited to the case subject to lay judge trials and the case in which the prosecutor initiated the investigation. Even in the applicable cases, when interrogators find one of the followings is appropriate to the case they attend, they can make a decision not to record.

① Due to the mechanical trouble of equipment, recording is interrupted.
② Video-recording may obstruct adequate statements of the suspect in interrogation.
③ The crime under the interrogation was committed by a member of an organized crime group.

Also, recording is not required for "the entire process" of interrogation. The law provides that video recording is only applied to suspects in apprehension and custody. Therefore, a voluntary interrogation prior to an official arrest is not required video recording. Also, when a suspect becomes a defendant upon indictment, video recording is not required for the interrogation of the defendant.

Subsequently, serious problem may be caused in major cases to which a death penalty would be sought. For instance, in the case of murder and abandonment of a corpse, a suspect is first interrogated on a voluntary basis. Then, the suspect is arrested and detained and prosecuted for the relatively petty charge of abandonment of a corpse, and later he/she is again arrested on the charge of murder. Legally, recording is not required for the interrogation about the murder during the period of the pre-arrest of the suspect and after the prosecution for the abandonment of a corpse, and also until he/she is arrested on the charge of murder, even an interrogation is made about the murder case, it is not required for video recording.

Thus, the video recording clause of the new law leaves many loopholes to evade recording.

## Para 16　Technical Intern Training Program

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| Recommendation（July 2014） |
| In line with the Committee's previous concluding observations (see CCPR/C/JPN/CO/5, para. 24), the State party should strongly consider replacing the current programme with a new scheme that focuses on capacity-building rather than recruiting low-paid labour. |
| Follow-up Information submitted by the SMJ (August 2015)) |
| The State party has established a Panel, which has been conducting discussions, and a bill is in discussion regarding the review of the Technical Intern Training Program. However, the actual effectiveness of these measures are rather questionable, while it can be regarded that the State party is still seeing and using the Program to a recruitment system of low-paid labour. |
| Request of the Committee based on the review of follow—up information（March 2016） |
| ＜B2＞The Committee welcomes the proposed changes in the Bills submitted to the Diet in March 2015 and requests information on the content of the Bills, their progress toward adoption and the involvement of civil society in the discussions. |
| Information from SMJ<br>（Below is based on our input to the Committee sent in August 2015 as follow-up information）<br><br>Draft Bill on Appropriate Implementation of the Foreign Intern Training Program (hereinafter, the Bill), drafted and submitted to the Diet by the Government of Japan in March 2015, has been tabled for further deliberation after one time deliberation during the 2015 ordinary session of Diet. During the 2016 ordinary session, the Bill was deliberated eight times by the Judicial Affairs Committee of the House of Representatives for the period of one and a half month, but failed to be adopted, and tabled again for further deliberation at the extraordinary session that starts the end of September 2016.<br><br>One of important issues coming out from the Diet deliberations concerns about no legal binding in bilateral arrangements between two governments, i.e. Japan and a sending country.　To the question pointing out this absence, the government answered that it would　"make an inquiry about a case of inadequate sending organization to a partner country via diplomatic route, and ask to take necessary steps accordingly." It also answered, "We will not stop accepting trainees even if we do not have relevant arrangements with a government concerned." This shows that there is no sanctions to be imposed on infringements committed by sending organizations and their concerned people while demonstrating that restrictions on sending organizations are ineffective.<br><br>When trainees complain or claim about their work or housing conditions or life environment against training implementing organizations or supervising organizations, they may end up with deportation against their will. This puts trainees in very oppressive labor environment. Yet, in the series of government's discussions regarding the review of the Technical Intern Training Program, the government has never touched upon the issue of deportation, and it was not included in the sanction clause in the Bill.　It often occurs that trainees refrain themselves from claiming their rights out of fear that they might be sent back home as insinuated by their implementing or supervising organizations. This is also a fatal defect of the Bill. Therefore, it cannot be expected that the Bill would bring about a drastic improvement to the Program, and |

the technical intern trainees would be left without any protective measures.

Meanwhile, the Bill allows a possible extension of the training period from three years to five years for "excellent" implementing or supervising organizations, and indicates a future expansion of the number of trainees by about two times. Nevertheless, the Bill does not specify criteria for "excellent" nor an exact number of trainees to be expanded, but leave the matter to the relevant ministers. As a matter of course, a system should be expanded after it is improved. In this case, improvement and expansion would go simultaneously. Considering this, one can hardly deny the possibility that easy expansion measures could be promoted depending on criteria of "excellent."

In regard to the involvement of civil society in discussions, regular consultation on foreign resident policies is held twice a year between relevant ministerial offices and NGOs/labor unions, and the Bill has been included in the agenda. However, time constraint does not allow sufficient time for consultation. Concerning the Bill, the government has not given briefings to the civil society.

Recommendation of 2014

In line with the Committee's previous concluding observations, the State party should strongly consider replacing the current programme with a new scheme that focuses on capacity building rather than recruiting low-paid labour.

Follow-up Information submitted by the SMJ (August 2015)

Wages for technical trainees are at the level of minimum wages. Criminal punishment should be applied to sending organizations and its related persons.

Request of the Committee based on the review of follow—up information（March 2016）

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.

Information from SMJ

1. About Criminal Penalties

The Bill contains the clause of criminal punishments, but what are to be punished is limited, thus allowing it to be inadequate. To be specific, punishments are only imposed on training implementing organizations and supervising organizations and their relative personnel, and it has no punishment clauses to be applied to sending organizations and its relative personnel. However, trainees cannot easily disconnect their relationship with sending organizations and its relative personnel even after they return home after completing the program, and it is quite difficult for them to resist against any pressure they might be given. Especially, economic burden caused by a large amount of guarantee money or penalties is one of reasons that force them into harsh work environment. Therefore, with no punishment clause on sending organizations and no effective regulations, the Bill is not expected to help improve the program.

As per the Bill, while criminal punishments are applied to forced training, deposit money and penalty clause in a contract, coercion saving, taking away of passport or residence card, restriction on free private time, and name lending, it is not applied to such practices as forcible

return or low-paid labor.

In the Bill, "forced training" is only applied to the practices done by supervising organizations and its relative personnel, and not to those of implementing organizations and its relative personnel. For the latter, "prohibition on forced labor" is applied under Article 5 of Labor Standards Act. However, there has been no cases in which Article 5 was applied to the practices involving the technical intern training. "Name lending" is the practice that provides trainees with training by other agency than the implementing organization originally promised. However, the Bill only specifies supervising organizations and its related personnel to be applied the punishment, and not training implementing organizations and its related personnel. Fraud cases recognized by the Ministry of Justice demonstrate that most of "name lending" practices were done by training implementing organizations, thus regulations mean little.

2. Minimum wages

The government did not indicate its intention to fix a certain level of wages for technical intern trainees during the Diet session. To the question asked about the minimum wages for technical intern trainees, it answered, "We impose the accountability for wages to be paid to technical intern trainees (the same level or above with wages for Japanese employees engaged in the same job) on an individual implementing organization," and "It is difficult to set a uniform standard for wages to be paid workers including trainees since the size of business, jobs of workers or their duties differ widely."

Recommendation (2014)

The State party should increase the number of on-site inspections.

Follow-up Information submitted by the SMJ (August 2015))

No evidence can be found as to the increase of effective on-site inspections.

Request of the Committee based on the review of follow—up information (March 2016)

<C2> 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 in July 2014.

Information from SMJ

Japan International Training Cooperation Organization (JITCO) conducted the "voluntary self-check on work conditions" by postal mail with the following supervising/implementing organizations:

1) As of June 30, 2015, those supervising organizations which have affiliated implementing organizations which have one or more technical intern trainee.

2) As of June 30, 2015, those implementing organizations which have one or more technical intern trainee.

For 1) it amounts to 1,895, whereas for 2) it amounts to 24,992.

At least, these figures represent the number of organizations to which JITCO, the Labor

Standards Office and the Immigration Bureau can make an on-site inspection. The number of on-site inspection conducted by each of the above three bodies for 2014 was: JITCO 7,210 cases, Labor Standards Office 3,918, and Immigration Bureau 359. With these figures, we can derive the supposition that JITCO conducts the on-site inspection at 28.9% of total implementing organizations, the Labor Standards Office 15.7% and the Immigration Bureau 1.4%. If each institution is to conduct its on-site inspection at implementing organizations with the above percentages, JITCO visits an implementing organization once per three years, the Labor Standards Office once per six years, and the Immigration Bureau once per 70 years.
Meanwhile, the number of staff in charge of on-site inspection at the Labor Standards Office and the Immigration Bureau is 2,941 as of July 2010 and 1,459 as of 2015 respectively. It should be noted that all inspectors of the both institutions are not necessarily engage in the operation relating the technical training.

"Foreign Technical Intern Training Organization" that the government plans to set up under the Bill will be accommodated with 80 staff members at the headquarters and 250 in total at all local offices. In the meantime, the government answered at the Diet session that the planned organization would conduct the on-site inspection once a year for supervising organization and once per three years for implementing organization. As the on-site inspection by the planned organization will be conducted on the legal basis, it is expected to be slightly more effective than the routine visit that JITCO does. However, an on-site inspection once per three years would hardly lead to a remarkable improvement.

Recommendation (2014)

The State party should establish an independent complaint mechanism.

Follow-up Information submitted by the SMJ (August 2015)

Article 49 of Bill on technical Intern Training Program refers to the possibility of complaint to competent ministers. However, no independent complaint mechanism has been established yet.

Request of the Committee based on the review of follow-up information (March 2016)

<C2> Concerning the establishment of the independent complaint mechanism, the Committee reiterates its recommendation.

Information from SMJ

"Foreign Technical Intern Training Organization" is planned to be set up in accordance with the Bill after it is enacted. The Organization will not be part of the government, and set up as an "authorized corporation" to exercise some of authorities on behalf of the competent Ministers (of Justice and of Health, Welfare and Labor). Thus, it will not be an "independent complaint mechanism." The organization will receive complaints addressed to a competent Minister on one hand, it will provide consultation service or other service concerning the protection of trainees on the other. During the deliberation on the Bill in the Diet session, the government explained that a consultation service provided by an authorized corporation will facilitate a swift solution as it can easily get a clue to an illegal act.

However, through our experiences of negotiations with the administration that has licensing

power, supervising power or judicial police power, we have learnt that government offices with a strong power tend to interpret a breach of law that gives competency to their services, in a strict manner due to concerns of being criticized as "abusing power." Therefore, they are not positive to exercise their power at the stage of "a possible breach." As a result, they exercise their power at the last stage where a breach of law has become apparent for anybody. At this stage, however, the infringement of human rights has already gotten in a very serious situation.

In order to improve the situation, the Foreign Technical Intern Training Organization has to be in good personnel, organizational and financial conditions so that its services of "provision of consultation, information, advice and other support" and "protection of technical intern trainees" are proven to be effective. It is totally inadequate to conduct an on-site inspection to an implementing organization once per three years with a total of 330 personnel stationed at 13 different local offices as currently proposed.

At present, 138 complaints are brought to the Labor Standards Office or JITCO annually while there are more than 190,000 technical intern trainees in the country. The number is quite small and it suggests a question on the significance of the complaint system. Below is data gained from information provided by the Labor Standards Office and JITCO.

1. Ministry of Welfare and Labor "2015 records of supervising to program implementing organizations of foreign technical intern trainees and cases sent to prosecution"

1) 138 complaints brought to the Labor Standards Office by technical trainees for a correction of breach of labor standards law.
2) Among them, main concerns relate to unpaid wages or extra wages (131), the contract wage is below the minimum wage (17), and inadequate procedures of discharge (11).

2. "Business Report of JITCO for 2015"

1) Consultation given to technical intern trainees in their respective mother language
Total number: 1,376 (weekdays 966 and Saturdays 410) in Chinese (659: 472 and 187), Vietnamese (559: 361 and 198), Filipino (94: 89 and 5), Indonesian (43: 23 and 20), and other languages 21.
2) Serious and vicious cases were given advice and guidance to solve problem of implementing organizations, and for the protection of rights of trainees.

## Paragraph 18　Substitute Detention System and Forced Confession

Recommendation (July 2014)

The State party should take all measures to abolish the substitute detention system or ensure that it is fully compliant with all guarantees in articles 9 and 14 of the Covenant, inter alia, by guaranteeing that alternatives to detention, such as bail, are duly considered during pre-indictment detention.

NGO Follow-up information (August 2015)

The State Party has taken no action to implement the recommendation. It is widely known to the public that police custody could be and is really carried out not only by arrest, but also by virtue of "voluntarily" accompanying with a police officer, which is in reality equivalent to police arrest. Under police custody, legal or virtual, faulty confessions are still incessantly extracted from suspects by force by law enforcement officers. Every time when a criminal counsel demands to assist a suspect during police interrogation, the police decline the demand under the pretext that it is "legally groundless." As for the protection of the right to counsel from a moment of physical detention, a new legislation is proposed to assign a counsel by a court to anyone who is detained, not to the arrested by police. As for the defense counsel's assistance at the police interrogation, the State Party doesn't make a gesture at all to reform the legislation by making the case against it because of eventual obstruction to police investigation.

Request of the Committee from the follow-up review (March 2016)

【B2】(b) The Committee notes that Bill submitted to the Diet in March 2015. 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 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.

Information from NGO

Unlike the explanation of the government, the Bill enacted in June 2015 does not virtually guarantee the right to a legal aid upon the apprehension. The right to appoint a defence counsel is notified at the time of apprehension, however, in the serious crimes it is often the case that a suspect is asked to "come to the police voluntarily" for interrogation. During the interrogation, if a suspect makes a confession, a formal arrest follows. At the time of apprehension, the suspect is informed of the right to appoint his/her defence counsel. If the suspect cannot afford to hire a lawyer, the court appointed defence counsel system is available only after the prosecutor requests for detention. At this stage, usually two or three days have passed. It should be noted that in many cases, suspects make confession during these two or three days.

Also, the Bill does not prescribe the right to have a defence counsel's presence in the interrogation. Thus, presence of defence counsel at the interrogation of a suspect will continue to be denied by the investigative bureau.

In the process of deliberation of the Bill, it is true that researchers and victims of false charge were invited to give their opinions. However, their opinions pointing out the insufficiency of the Bill and opposition to it have not been reflected in the Bill at all.

Recommendation (July 2014)

The State party should take all measures to abolish the substitute detention system or ensure that it is fully compliant with all guarantees in articles 9 and 14 of the Covenant, inter alia,

c) by guaranteeing legislative measures setting strict time limits for the duration and methods of interrogation, which should be entirely video-recorded.

Follow-up Information submitted by NGO (August 2015)

No improvement can be seen on the limitation of the length of interrogation. A full scale video recording measure is going to be applied, in a law reform bill, to 3% or so of all the cases under indictment (summary proceeding cases omitted), meaning that only 0.8% of all the accused under police interrogation will be subject to the full scale video recording measure. Even in these cases, interrogators are discharged from video recording when "judging from a suspect's behavior, an interrogation officer deems that recording may obstruct adequate statements of the suspect in interrogation."

Request from the Committee from the Follow-up review (March 2016)

(c)The Committee notes that no actions appear to have been taken to set strict time limits for the duration and methods of interrogation. 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.

Information from NGO

The law enacted in May 2016 does not set forth time limits for the duration of interrogation. Regarding the civil society's participation in the discussions, it is mentioned in the (b) above. Regarding the application of the video recording, please refer to the following page.

Center for Prisoners' Rights (for para 13 and 18)
Solidarity Network with Migrants Japan (for para 16)