



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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8 August 2017

Excellency,

In my capacity as Special Rapporteur for Follow-up to Concluding Observations of the Human Rights Committee, I have the honour to refer to the follow-up to the recommendations contained in paragraphs 13, 14, 16, and 18 of the concluding observations on the report submitted by Japan (CCPR/C/JPN/CO/6) adopted by the Committee at its 111th session in July 2014.

At its 116th session, held in March 2016, the Committee evaluated the information provided by the State party on 31 August 2015 and 17 March 2016 and requested additional information on the implementation of the recommendations selected for the follow-up procedure.

On 13 June and 27 December 2016, the Committee received the reply of the State party. At its 120th session, held in July 2017, the Committee evaluated this information. The assessment of the Committee is reflected in the Report on follow-up to concluding observations (see [CCPR/C/120/2](#)). I hereby attach a copy of the relevant section of the said report (advance unedited version).

The Committee considered that the recommendations selected for the follow-up procedure have not been fully implemented. Taking into account that the Committee will adopt the list of issues prior to submission of the seventh periodic report of Japan at its 121st session in October 2017, the Committee decided to discontinue the follow-up procedure and to include the additional information requested from the State party in that list of issues given that the replies to that list will constitute the State party's next periodic report.

The Committee looks forward to pursuing its constructive dialogue with the State party on the implementation of the Covenant.

Please accept, Excellency, the assurances of my highest consideration.

Mauro Politi
Special Rapporteur for Follow-up to Concluding Observations
Human Rights Committee

His Excellency Mr. Junichi Ihara
Ambassador Extraordinary and Plenipotentiary
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Report on follow-up to concluding observations of the Human Rights Committee, [CCPR/C/120/2](#):

Assessment of replies¹

- A Reply/action largely satisfactory:** The State party has provided evidence of significant action taken towards the implementation of the recommendation made by the Committee.
 - B Reply/action partially satisfactory:** The State party has taken steps towards the implementation of the recommendation, but additional information or action remains necessary.
 - C Reply/action not satisfactory:** A response has been received, but action taken or information provided by the State party is not relevant or does not implement the recommendation.
 - D No cooperation with the Committee:** No follow-up report has been received after the reminder(s).
 - E Information or measures taken are contrary to or reflect rejection of the recommendation**
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Concluding observations:	CCPR/C/JPN/CO/6 , 23 July 2014
Follow-up paragraphs:	13, 14, 16 and 18
First reply:	31 August 2015 and 17 March 2016
Committee's evaluation (see CCPR/C/116/2):	Additional information required on paragraphs 13 [E][B2] , 14 [B2] , 16 [B2][C2][C2] and 18 [C2][B2][B2][C2]
Second reply:	13 June 2016 and 27 December 2016
Committee's evaluation:	Additional information required on paragraphs 13 [E][B] , 14 [B] [C] , 16 [B][C][C] and 18 [C][B]
Non-governmental organizations:	Center for Prisoners' Rights and Solidarity Network with Migrants Japan , 14 September 2016 Korean Council for the Women Drafted for Military Slavery by Japan , 12 May 2017

Paragraph 13: Death penalty

The State party should:

- (a) Give due consideration to the abolition of death penalty or, in the alternative, reduce the number of eligible crimes for capital punishment to the most serious crimes that result in the loss of life;
 - (b) Ensure that the death row regime does not amount to cruel, inhuman or degrading treatment or punishment by giving reasonable advance notice of the scheduled date and time of execution to death row inmates and their families and refraining from imposing solitary confinement on death row prisoners except in the most exceptional circumstances and for strictly limited periods;
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¹ Full assessment available from [CCPR/C/119/3](#) and http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf

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(c) **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;**

(d) **In light of the Committee's previous concluding observations (see CCPR/C/JPN/CO/5, para. 17), establish a mandatory and effective system of review in capital cases, with requests for retrial or pardon having a suspensive effect, and guaranteeing the strict confidentiality of all meetings between death row inmates and their lawyers concerning requests for retrial;**

(e) **Establish an independent mechanism to review the mental health of death row inmates;**

(f) **Consider acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.**

Follow-up question (see [CCPR/C/116/2](#))

[E]: With respect to the information relating to the recommendations contained in paragraph 13 (a), (b), (d) and (e) of the concluding observations, the Committee notes that the State party repeated information provided in its sixth periodic report and in its replies to the list of issues. The Committee regrets that the State party states that it does not intend to implement the recommendations. The Committee reiterates its recommendations.

[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:

(i) The progress in adopting the bill, including information on the involvement of civil society in the discussions;

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

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

Summary of State party's reply

Concerning paragraph 13 (c):

(i): The bill amending the Code of Criminal Procedure and other laws was passed by the Diet in May 2016 and includes the introduction of a new system disclosing a list of all evidence kept by the prosecutor. Practitioners and criminal law scholars, journalists and acquitted ex-defendants were invited to express their views on the bill during its discussion.

(ii): Under the bill, with regard to a case in a pretrial or inter-trial arrangement proceedings, the prosecutor shall disclose a list of all the evidence upon request by the defendant or his/her counsel. This procedure will also apply to capital cases.

(iii): The bill will introduce a legal duty to take audiovisual recordings of interrogations of suspects, including in capital cases.

Information from non-governmental organizations (Center for Prisoners' Rights)

(i): Opposing views regarding the bill have not been incorporated in the bill. What is made available under the new bill is the list of evidence and not "the evidence itself through disclosure."

(ii): The new criteria will be applicable to death penalty cases.

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(iii): Audio recording was limited to cases subject to lay judge trials and cases in which the prosecutor initiated the investigation. However, even in applicable cases, a waiver is possible if there are technical issues with the equipment, if video recording may obstruct adequate statements of the suspect, and if the crime was committed by a member of an organized crime group.

Recording is not required for the entire process of interrogation. Under the bill, video recording is only used for detained or arrested suspects. Therefore, video recording is not required when persons are being questioned voluntarily prior to an official arrest. When a suspect becomes a defendant upon indictment, such recording is not required for the interrogation of the defendant; thus, the new law can leave loopholes to evade recording.

Committee's evaluation

[E]: The Committee regrets that the State party has provided no information relating to the recommendations contained in paragraph 13 (a), (b), (d) and (e) of the concluding observations since the last evaluation nor indicated an intention to reconsider its position not to implement those recommendations. The Committee reiterates its recommendations.

(c) [B]: The Committee notes the enactment in May 2016 of the bill amending the Code of Criminal Procedure that provides for disclosure of a list of evidence to the defendant as well as for audiovisual recording of interrogations of suspects, and that these procedures will apply in death penalty cases. It requires clarification on the entry into force of the bill; on how the new system of disclosing the list of evidence kept by the prosecutor will ensure full access of the defence to all prosecution materials, and on whether such disclosure will be mandatory in all criminal cases.

The Committee requires additional information on the percentage of criminal cases subject to mandatory recording of interrogations pursuant to the bill, including any exceptions, and clarifications on: (a) whether audiovisual recording is required for the entire interrogation process and for interrogations prior to a formal arrest; (b) whether such recording will be provided in all interrogations in death penalty cases; (c) whether there are plans to make audiovisual recording of interrogations mandatory in all criminal cases; (d) whether a copy of the recording is made available to the defendant. The Committee once again regrets that no measures have been taken to guarantee that confessions obtained by torture or ill-treatment are not invoked as evidence. The Committee reiterates its recommendations.

Paragraph 14: Sexual slavery practices against “comfort women”

The State party should take immediate and effective legislative and administrative measures to ensure:

(a) **That all allegations of sexual slavery or other human rights violations perpetrated by the Japanese military during wartime against the “comfort women” are effectively, independently and impartially investigated and that perpetrators are prosecuted and, if found guilty, punished;**

(b) **Access to justice and full reparation to victims and their families;**

(c) **The disclosure of all available evidence;**

(d) **Education of students and the general public about the issue, including adequate references in textbooks;**

(e) **The expression of a public apology and official recognition of the responsibility of the State party;**

(f) **Condemnation of any attempts to defame victims or to deny the events.**

Follow-up question (see [CCPR/C/116/2](#))

[B2]: The Committee notes the information provided by the State party, but requests further

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information on measures taken after the adoption, on 23 July 2014, of the concluding observations, including on the agreement reached 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 Japan promised a payment of 1 billion yen to provide support for former comfort women. 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.

Summary of State party's reply

The State party repeats information from its [additional follow-up reply dated 17 March 2016](#) (paras. 2 and 3) on the agreement reached with the Republic of Korea in December 2015 and informs of the 1 billion yen contribution made on 31 August 2016 to the foundation established by the Republic of Korea on 28 July 2016 to provide support to the former comfort women.

(a) and (c): A full-scale fact-finding study on the comfort women issue was conducted since the early 1990s and included inter alia document analysis, hearings of relevant individuals, and analysis of testimonies collected by the Korean Council; the results and relevant documents were made public.

The State party refers to the International Military Tribunal for the Far East, GHQ military tribunals in Tokyo, and Allied countries' tribunals that dealt with war crimes committed by Japanese during the Second World War, and states that it is not considering prosecuting and punishing perpetrators owing to extreme difficulty in investigating the facts of individual cases retrospectively.

(b): The State party repeats information from its [first follow-up report](#) (para. 25) and its replies to the list of issues ([CCPR/C/JPN/Q/6/Add.1](#), para. 239) on reparation settled through the San Francisco Peace Treaty and other relevant agreements, and adds that, nevertheless, various measures have been taken to offer realistic relief to former comfort women of advanced age, as indicated in its follow-up report.

(d): The State party has no intention of denying the issue of comfort women; it quotes from the Prime Minister Abe's statement of 14 August 2015 commemorating the 70th Anniversary of the end of the war.

(e): The State party repeats information from its [first follow-up report](#) (para. 31).

Information from non-governmental organizations (The Korean Council for the Women Drafted for Military Slavery by Japan)

The newly elected (9 May 2017) president of the Republic of Korea, Jae-in Moon, promised during the election campaign to resolve the sexual slavery issue by annulling the 2015 agreement with Japan and returning the 1 billion yen. The new Korean government has a clear position, endorsed by the Korean people, on the re-negotiation or abrogation of the 2015 agreement due to unfulfilled legal responsibility by the Japanese government including official apology, reparations, fact-finding investigation and ceasing of history distortion.

Committee's evaluation

[B]: The Committee welcomes the 1 billion yen contribution to the foundation established to provide support to the former comfort women. The Committee requires additional information on any further measures taken to implement its recommendations on full reparation to victims and their families.

[C]: The Committee notes that the State party provides no new information on measures implementing the recommendations contained in paragraph 14 (a), (b), (c) and (e) of the concluding observations. While noting the general statement with respect to paragraph

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14(d), the Committee regrets the lack of information on measures taken to specifically condemn, officially and publically, attempts to defame former comfort women. It also regrets the State party's statement that it is not considering prosecuting and punishing perpetrators. The Committee requires additional information on any further measures taken to implement its recommendations, including on condemnation of attempts to defame victims or to deny the events, and education of students and the general public about the issue of comfort women including through references in textbooks. The Committee reiterates its recommendations.

Paragraph 16: Technical intern training programme

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. In the meantime, the State party should increase the number of on-site inspections, establish an independent complaint mechanism and effectively investigate, prosecute and sanction labour trafficking cases and other labour violations.

Follow-up question (see [CCPR/C/116/2](#))

[B2]: The Committee welcomes the changes proposed in the bills submitted to the Diet in March 2015 and requests information on the content of the bills, their progress towards 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 prevent the practice of recruiting low-paid labour.

[C2]: The Committee acknowledges the efforts of the Labour Standards Inspection Office, the Immigration Bureau and the Ministry of Justice in conducting on-site inspections. 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. The Committee also requires information on the number of inspections conducted in the last three years and on the results thereof.

[C2]: The Committee reiterates its recommendation concerning the establishment of an independent complaint mechanism.

Summary of State party's reply

The Technical Intern Training Bill was submitted to the Diet in March 2015. It imposes criminal punishments for: (a) coercing an intern trainee into training; (b) establishing monetary penalties for breach of a contract; (c) entering into an agreement to control technical intern's savings; (d) retaining the passport or residence card against the trainee's will; (e) total or partial prohibition on communications or meetings outside training hours; and (f) unfavourable treatment of a trainee on account of his/her reporting of violations by implementing organizations.

The new system is expected to establish the criterion of payment of not less than "remuneration of an amount that a Japanese national would receive for comparable work" as one of the criteria required for approval of the technical intern training plan. An "Organization on Technical Intern Training" would be commissioned by relevant ministries to monitor compliance with the new criterion and to carry out on-site inspections and provide guidance.

Labour standards inspection offices carried out inspections in over 2,318 workplaces in 2013 and 3,918 in 2014 and reported 1,844 violations in 2013 and 2,977 in 2014. 12 cases of serious or malicious violations were referred to the Public Prosecutor's Office in 2013, and 26 in 2014. The Immigration Bureau conducted 359 on-site investigations in 2014 and 486 in 2015 (no statistics available on their outcome). The State party repeats information from its [first follow-up report](#) on measures taken against organizations engaged in

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misconduct (para. 36) and adds that 273 organizations were notified of an illegal act in 2015.

Information from non-governmental organizations (Solidarity Network with Migrants Japan)

The Technical Intern Training Bill was deliberated eight times in 2016 but failed to be adopted.

No sanctions can be imposed on infringements by sending organizations.

Trainees complaining against training implementing organizations or supervising organizations may risk deportation, thus they often refrain from claiming their rights. The issue of deportation has not been addressed by the government.

The bill has been included on the agenda of consultations on foreign resident policies but there was not sufficient time for consultation. The government did not provide briefings on the bill to civil society.

The bill provides for sanctions against training implementing organizations and supervising organizations only. The absence of sanctions against sending organizations is problematic given that trainees cannot easily discontinue their relationship with sending organizations even upon return home.

There are no criminal penalties for forcible return or low-paid labour. The “forced training” prohibition applies to supervising organizations only, so are the sanctions for “name lending” practices, i.e. training provided by other agency than the implementing organization originally promised, despite such practices being mostly used by training implementing organizations. The forced labour prohibition in article 5 of the Labour Standards Act was never applied to practices related to the technical intern training.

The State indicated no intention to fix a minimum trainee’s wage.

In 2014, the Japan International Training Cooperation Organization, the Labour Standard Office, and the Immigration Bureau conducted on-site inspections in 7,210, 3,918 and 359 cases, respectively (figures thus suggest that inspections were conducted by the respective bodies at 28.9 percent, 15.7 percent, and 1.4 percent of the total number of implementing organizations). There was a twofold decrease (from 2,941 to 1,459) in the number of staff in charge of inspections at the Labour Standards Office and at the Immigration Bureau between 2010 and 2015.

The Foreign Technical Intern Training Organization would comprise 80 staff at headquarters and 250 in 13 proposed local offices and would conduct on-site inspections once a year to supervision organizations and once in three years to implementing organizations. Such periodicity will hardly lead to a remarkable improvement.

The Foreign Technical Intern Training Organization will not be an independent complaint mechanism owing to its status of “authorized corporation” to exercise some authority on behalf of competent ministries. On one hand, it will receive complaints addressed to a competent Minister, and provide consultation or other services concerning the protection of trainees, on another hand. 138 complaints were submitted to the Labour Standards Office or JITCO annually, while there had been more than 190,000 technical intern trainees. This raises doubts about the effectiveness of the complaint system.

Committee’s evaluation

[B]: The Committee notes the information on the content of the Technical Intern Training Bill submitted to the Diet in March 2015, and also the concerns on the limited reach of penalties as reported by NGOs. The Committee requires information on the status of the bill, including on any amendments to the original bill submitted to the Diet in March 2015, and clarification as to whether the State party plans to address violations committed by sending organizations, for forcible return of intern trainees and for low-paid labour; to

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expand the prohibition of forced training to training implementing organizations; and clarification about safeguards in place against reprisals and deportation of trainees complaining of violation of their rights. While noting that the bill would provide for the same level of wages for trainees as those paid to Japanese nationals for comparable work, the Committee requires clarifications on whether, pending adoption of the bill, the State party plans to implement measures to prevent recruitment of low-paid intern trainees .

[C]: The Committee appreciates the statistics on the number of labour inspections conducted in 2013 and 2014, but notes with concern the low number of serious violations referred to the Public Prosecutor's Office, as well as the lack of information on measures taken to increase the number of onsite inspections since the Committee adopted its concluding observations. The Committee reiterates its request in that regard . It further regrets the lack of information on the outcome of cases of serious violations referred to the Public Prosecutor's Office, and on the results of on-site inspections conducted by the Immigration Bureau. The Committee also notes the twofold decrease in the number of staff in charge of on-site inspection since 2010 reported by the NGOs, the proposed number of staff of the Foreign Technical Intern Training Organization and the proposed periodicity for inspections. The Committee requires updated information on the number of inspections conducted by the Labour standards inspection offices and the Immigration Bureau since 2015 and their outcome, and on the number of cases of violations relating to the technical intern trainees referred to the Public Prosecutor's Office since the adoption of the concluding observations and their outcome. It also requires information on measures taken to ensure that human resources allocated to the Foreign Technical Intern Training Organization and the periodicity of its inspections will enable it to carry out its functions effectively.

[C]: The Committee notes that an independent complaint mechanism has yet to be established, and that the number of complaints submitted annually by trainees is very low compared to their number and the number of violations attested during inspections. It also notes the reported lack of independence of the Foreign Technical Intern Training Organization that would be established under the bill. The Committee requires additional information on the number of complaints submitted annually by trainees since the adoption of the concluding observations, and on measures taken to establish a genuinely independent complaint mechanism.

Paragraph 18: Substitute detention system (Daiyo Kangoku) and forced confessions

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:

(a) **That alternatives to detention, such as bail, are duly considered during pre-indictment detention;**

(b) **That all suspects are guaranteed the right to counsel from the moment of apprehension and that defence counsel is present during interrogations;**

(c) **Legislative measures setting strict time limits for the duration and methods of interrogation, which should be entirely video-recorded;**

(d) **A complaint review mechanism that is independent of the prefectural public safety commissions and has the authority to promptly, impartially and effectively investigate allegations of torture and ill-treatment during interrogation.**

Follow-up question (see [CCPR/C/116/2](#))

[C2]: (a) The Committee regrets that no action has been taken to guarantee that alternatives to detention, such as bail, are duly considered during pre-indictment detention. The Committee reiterates its recommendation.

[B2]: (b) The Committee notes the submission to the Diet in March 2015 of the bill on

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ensuring that suspects are informed of the procedure for appointing counsel and that State-appointed counsel is available to all suspects in detention. Further information on the progress of the bill is required, including on whether the bill complies fully 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 requires information on the participation of civil society in the discussions of the bill.

[B2]: (c) The Committee notes that no action appears 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 that would require the video recording of interrogations; it requires information on the progress of the bill, the participation of civil society in the discussions and the conditions on video recording established in the bill. It wishes to be informed as to whether the bill will be applied in all interrogations.

[C2]: (d) The Committee reiterates its recommendation that the State party establish an independent complaint review mechanism.

Summary of State party's reply

(b): The State party repeats information from its [first follow-up report](#) (para. 42) on the provisions of the Code of Criminal Procedure regarding the right to counsel and on the requirement in the bill amending the Code of Criminal Procedure to inform suspects of the procedure for appointing counsel. The bill was passed by the Diet in May 2016. It eliminates the criteria of a statutory penalty and enable all suspects in detention to have a court-appointed counsel. Various people such as practitioners and criminal law scholars and acquitted ex-defendants were invited to express their views about the bill.

(c): The bill passed in May 2016 will establish the legal duty to take audiovisual recordings of interrogations of suspects. The State party repeats information from its [first follow-up report](#) on efforts to use recording in four categories of cases (para. 45) and on the pilot program of audio-visual recording started in October 2014 for cases such as those in which a suspect is likely to be indicted and the recording is considered necessary (para. 46). It also informs that from April 2015 to March 2016, recordings were made in 2,897 cases (approx. 91.2 percent) subject to lay judge trials, and in 1,231 cases (approx. 97.7 percent) involving a suspect with an intellectual disability.

Information from non-governmental organizations (Center for Prisoners' Rights)

The bill enacted in 2015 does not virtually guarantee the right to legal aid upon apprehension. The right to appoint a defence counsel is notified at the time of apprehension; for serious crimes however it is often the case that a suspect had been asked to "come to the police voluntarily" for interrogation, and then formally arrested if a confession had been made during the interrogation. The court-appointed counsel system becomes available only following a detention request by the prosecutor, i.e. usually about two or three days following apprehension; in many cases suspects confess to a crime meantime.

The bill does not prescribe the right to have a defence counsel present during interrogation.

The shortcomings identified by the persons who commented on the bill have not been addressed.

The law enacted in May 2016 does not set forth time limits for the duration of interrogation.

The NGO further reiterates the information on the use of video recording provided in relation to paragraph 13(c) above.

Committee's evaluation

(a) (b) (c) and (d) [C]: The Committee once again regrets that no action has been taken to guarantee that alternatives to detention, such as bail, are duly considered during pre-



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indictment detention. The Committee reiterates its recommendation. It also regrets that, despite the Committee's request to reconsider its position so as to ensure that defence counsel is present during all interrogations, the bill enacted in May 2016 does not appear to include such provisions. It also regrets that no measures have been taken to set strict time limits for the duration and methods of interrogation. It also regrets that no information has been provided on measures taken to establish an independent complaint mechanism, and reiterates its recommendation.

(b) and (c) [B]: The Committee notes that the bill was enacted in May 2016 and that it would enable all suspects in detention to have a court-appointed counsel. Further information is required on the entering into force of the bill, on eligibility criteria for court-appointed counsel and availability of such legal assistance from the moment of apprehension, and on how the bill ensures that all suspects are guaranteed in practice the right to counsel from the moment of apprehension. The Committee notes the information provided on the issue of audiovisual recording of interrogations, reiterates in this respect its evaluation and request for additional information and clarification contained in paragraph 13(c) above.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested will be included in the list of issues prior to submission of the seventh periodic report of Japan.

Next periodic report: 31 July 2018
