

Background Information and Overview

Police Detention Cells, the So-called “Daiyo-Kangoku (Substitute Prison)”¹

1. The UN Human Rights Committee stated clearly that “the substitute prison system should be made compatible with all requirements of the Covenant” in the Concluding Observation in 1998² (para.23 of the Observation). The issue concerning the Police Detention Cells has been one of the controversial points for many years both internationally and nationally, then, the Human Rights Committee’s statement supra is based on these critical discussions.

2. The so-called “Daiyo-Kangoku” or Substitute Prison system has symbolized human rights violations, especially torture, in Japan for a long time. The police detention cells which were originally intended to be used to hold arrestees temporarily until being brought before judges, then, should not be used to detain suspects in the cells for long periods of time in order to investigate them.

3. The old Prison Law³ provided that the police detention cells could be used as substitutes for prisons⁴ tentatively. The government’s report says that “approximately 1,300 police detention cells are established in police stations” (para.139 of the government’s report)⁵. According to some statistics data, during at least these 10 years, the capacity of police cells has been increasing more than that of detention centers which are controlled by the Ministry of Justice⁶.

4. Furthermore, the number of inmates in police detention cells has been increasing. The government’s report says “The number of suspects detained in police detention cells was approximately 190,000 during the year 2003”(para.139)⁷. The following table shows the “number” of inmates and “cumulative number” of inmates in police detention cells, which includes not only suspects, but also defendants and sentenced inmates. The data shows the increasing trend.

Year	Cumulative Number of Detainees in Police Detention Cells (persons)	Indices 1995=100
1995	2,559,473	100
1996	2,733,575	107
1997	3,028,010	118
1998	3,291,208	129
1999	3,650,765	143
2000	4,028,551	157

¹ The following information is especially concerning paras.139-143 of the government’s report (see Appendix 1).

² UN Doc. CCPR/C/79/Add.102[19 November 1998]

³ The Prison Law which was applicable to all inmates in criminal institutions has been revised. See infra [para.16].

⁴ In this report, “prison” is basically used as a generic term which includes both correctional institutions for sentenced prisoners, and detention houses mainly defendants who are detained and death sentenced prisoners. However, many suspects and defendants are detained in police detention cells in Japan.

⁵ See Appendix 1.

⁶ According to the statistical data which the government issued to the Diet, the capacity of police sells has been increased from 17,559 (year 1996) to 19,713 (2005). On the other hand, the capacity of detention centers for pre-trial detainees has been 16,193 to 17,137 during same period.

⁷ See Appendix 1. This number (190,000 in 2003) seems “the number of inmates” in Police Detention Cells. We could not find this type of number in official statistics but could find some of them in an article written by one of police officers (Masahiro Nakagawa, Journal of Police Science, Vol.56, Part.10, p.143). According to his article, the number of detainees were 125,679 (1995), 129,537 (1996), 136,855 (1997), 141,927 (1998), 148,949 (1999), 158,556 (2000), 164,864 (2001), 173,695 (2002).

2001	4,442,951	174
2002	4,851,662	190
2003	5,273,923	206
2004	5,441,386	213

* Cited from the White Paper on Police (2005).

5. A significant feature of this “Daiyo-Kangoku” system is that interrogators themselves detain the suspects, control them, and exercise authority over detainees’ daily life. The police officers can provide privileges to those who admit to the charges and on the other hand, they can disturb those who don’t. The latter suspects are investigated for a long time and finally they become exhausted mentally and physically to such an extent that they confess, even if there is no physical violence.

6. The police authorities often describe the chances of abuse of the rights of detainees will decrease because they have separated the department to which the officers who are in charge of *detention* belong, from the one to which officers in charge of *interrogation* belong. The essential feature of this system can not be changed even after the detention officers are separated from the interrogators in the same organization. Some members of the Human Rights Committee also voiced the same concerns during the proceedings at the session to examine the 4th periodic report by the Japanese government, and the Committee said that “The Committee is concerned that the substitute prison system (Daiyo Kangoku), though subject to a branch of the police which does not deal with investigation, is not under the control of a separate authority” in the Concluding Observation in 1998 (para.23 of the Observation). In fact, if the interrogators assert the necessity for investigation of the cases, the detention officers could not refuse them. It is still same today, the police as a whole have to realize their purpose (to obtain suspects’ confession) through the “Daiyo-Kangoku” system.

7. Members from NGOs, the Japanese Federation of Bar Associations, and academics have been working for abolition of the “Daiyo-Kangoku” system for a long time, but they could not succeed when the new Prison Law was enacted in May, 2006 (see para.16 infra). The New Law retains police detention cells as the substitute prison, and also includes the provisions which give them the legal status of the institutions to detain arrestees, then it seems to promote detaining most suspects and defendants in police detention cells.

8. However, the Diet members passed a resolution which requires the related authorities to make efforts to decrease use of police detention cells progressively. The Diet’s resolution also requests the authorities to review the way of criminal investigation including interrogation and the “Daiyo-Kangoku” system. Especially, the following ideas should be taken into consideration: recording interrogation; presence of defense lawyers; and alternative measures to custodial ones at pre/pending-trial stage.

Prisons

A. Harsher Punishment and Overcrowded Prisons – Background of Torture and Ill-treatment

9. Overcrowding beyond our experience is progressing in Japanese prisons now. Under this situation, the risk of torture and ill-treatment is increasing.

10. The prison population (the average daily number of inmates) had consistently been trending down since 1950, the number of 103,170 as a peak, had been stabilized at nearly 50,000 by 1999. However, since 1999 it has been changed into a steep increasing trend. The number of prisoners which was 53,947 in 1999 has increased by 44.5% to 77,932 in 2005. When the proportions of prisoners to the entire population are measured, Japan has remained one of the countries which have small prison populations, but the growth rate in Japan is extremely high among the whole world.

11. As a result of this increasing trend, the ratio of the actual number of imprisoned inmates to the

capacity in overall prisons went beyond 100% in 2001. To deal with this growth of inmates, the government has made extensions to the existing facilities and built semi-privatized prisons by the measures of Private Finance Initiative. However, the ratio of prisoners to the capacity has been increasing. Especially, the ratio of sentenced prisoners reached 117% in 2005.

12. Concerning the reason for this trend, the government and we, NGO members, have different analysis. The government explains that prisoners' growth is caused by a rise in crime, then, they stressed tougher policy on crime including enhanced control by police and harsher punishment. On the other hand, our view differs from this explanation as follows: The official statistical data referred to as "the number of committed crimes" only shows the number of cases (or suspects) whose occurrence came to be known to the police/prosecutors through reporting, filing a complaint or other reasons, then, the steep increase of the number was caused by efforts to strengthen control on incidents by investigative authorities amid mounting concerns about safety in Japanese society. Excessive tougher policy on crime without objective evidence about effective measures will lead to more overcrowding of prisons.

13. It is evident that there is a limitation in the capacity of prisons, so the government has to change their policy in the direction of decrease of prisoners' number. For example, about 20% of prisoners who suffer from drug addiction can be treated in the community.

B. Nagoya Prison Cases and Recommendation of the Council on Prison Administration Reform

14. Notorious torture cases occurred in a chronic overcrowded prison. Three sentenced prisoners died or were injured as a result of the guards' assaults in the Nagoya Prison⁸ from 2001 to 02. On December 14th, 2001, a 43 year male prisoner who was detained in a "protection room" (isolation room to detain a prisoner who shows signs of suicide or self-injury) died after guards sprayed a high-pressure hose at his naked buttocks. The prisoner died because of severe injury to his rectum and bacterial shock. On May 27th, 2002, a 49 year male prisoner died after being left in a protection room. The prison guards fastened the prisoner's leather handcuffs too tight and he died of heart failure. On September 25th, 2002, a 30 year male prisoner was severely injured because of intraabdominal bleeding and hospitalized outside after he was also bound too tightly with leather handcuffs by guards.

15. Eight prison guards involved in a series of these cases, were indicted for "Causing Death or Injury by Violence and Cruelty by a Special Public Official" (Article 195 of the Penal Code). Concerning the case which occurred on December 2001, one guard as a defendant was finally found guilty in the criminal case (other defendants appealed), and the court ordered the government to pay compensation to the victim's family on November, 2006. These assaults on prisoners by guards clearly consist of torture. Especially, concerning the incident which occurred on September 2002, the guards did violence to the prisoner for the purpose of forcing him to dismiss his complaint to the Bar Association. Therefore, it can fall under the category of torture under article 1 of the Convention which requires the purpose.

16. Amid amounting criticism of these incidents in the Nagoya Prison, the Minister of Justice established the Council on Prison Administration Reform composed of academics, lawyers, and others (cf. para.85⁹ of the government's report). The Council issued recommendations for reform plans of Japanese prisons (mainly for convicted prisoners) to the Minister of Justice. According to this recommendation and some draft revisions of the Prison Law, the new law called the "Law Concerning Penal Institutions and the Treatment of Sentenced Inmates" was enacted in the Diet on May 2005 and in force since May 2006. On May 2006, the amendment of this law was enacted and it added provisions on treatment of detained suspects and defendants and also death sentenced prisoners to the new law. This amendment of the new law will be in force by June 2007. Hereafter, both the new law which was in force since May 2006 and its amendment will be referred to as "New (Prison) Law".

⁸ Nagoya Prison detains mainly sentenced male adult prisoners.

⁹ See Appendix 1.

Overview of the Prison Law's Revision and its Subject

May 2005 ----*the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates* was enacted

May 2006 ----*the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates* went into force

May 2006 ----Amendment of *the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates*: was enacted and renamed it as *the Law Concerning Criminal Institutions and the Treatment of All Criminal Inmates*

From May 2006 to the date of effect of the amendment law

----*the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates* went into force

>>>(applicable to)>>> Sentenced Prisoners

---- the old Prison Law

>>>(applicable to)>>> Suspects and Defendants who are Detained; and Death Row Prisoners

By Spring 2007 *the Law Concerning Criminal Institutions and the Treatment of All Criminal Inmates* will go into force

C . Positive Aspects and Concerns of the New Law

17. For the prohibition of torture, the positive aspects¹⁰ of the New Law are the following: (1) Expansion of the opportunity to contact those outside of prison; (2) Establishment of independent committees for visiting prisons (the government explained as “the Board of Visitors for Inspection of Penal Institutions”) in each prison; (3) Improvement of the complaints system.

18. Regarding (1), under the old Prison Law, usually, sentenced prisoners could exchange letters with only their family members and they could see only their family members. But under the New Law, sentenced prisoners are usually free to exchange letters with any persons outside except “the person who is suspected of disturbing discipline and order in the institution or to hamper rehabilitative treatment for prisoners”. Concerning visits, prisoners can be allowed to meet their friends when the warden/prison governor identifies the person as “who wouldn’t hamper the prisoner’s rehabilitation”. This development is expected to open the prison gates to the outside world, and help to prevent torture and ill-treatment. However, we have to raise a concern about the fact that visiting hours are limited because of overcrowding and lack of places for visits.

19. Regarding (2), “the Board of Visitors for Inspection of Penal Institutions”, independent committees for visiting prisons which consists of lawyers, doctors, academics, and other community members has been established in each prison, in reference to “Boards of Visitors” in the UK and similar systems in other countries. The Boards’ members have authorization to interview inmates and request the prison governor to give some information about management of the prison and treatment of inmates, and submit recommendations to the prison governor. We are expecting that the Board will work actively and check prisons constantly in order to prevent torture and ill-treatment.

20. Regarding (3), under the old Prison Law, the complaints system for prisoners was only a petition to the Minister of Justice which totalizes the prison governments. Under the New Law, the complaints system has been improved. We welcome that some points of improvement: for example, definition of responsibility to examine and judge the complaints, and to notify the results to the prisoner and setting up a standard period for examination of the complaint. On the other hand, as a remaining issue, we urge the government to establish an independent mechanism from the Ministry of Justice which includes prison governments. If a prisoner wants to make a complaint to the independent bodies besides the prison authority, they can only go to court. (About this detail, see paragraphs infra about Article 13 of our report).

21. We can see one more positive aspect in practice. The government stopped the use of leather handcuffs which had been used usually as a restraint instrument on prisoners, and imposed limitations on

¹⁰ The following positive aspects are described mainly about sentenced inmates, because we can assess administrative documents and practices only for sentenced prisoners at the present moment.

the use of solitary confinement and detention in the so-called “Protective Rooms”. However, we are concerned about the following: The government can revalidate the period of the solitary confinement many times, and there is no limitation; it introduces a new type of handcuffs and uses them together with solitary confinement which will cause degrading treatment of prisoners especially at meals and toilet breaks. We are also concerned that there is no definite provision about investigation of death cases in prisons.

D. Remaining Issues under the New Law

22. Even after the New Law has come into force, we raised 3 issues concerning prevention of torture and ill-treatment in prison as follows, except the problem of police detention cells: (1) to ensure prisoner’s rights to medical treatment; (2) to abolish longer solitary confinement; (3) to expand the range of subjects prisoners can complaints about and to establish independent mechanisms for investigation of the complaints. We mentioned the issue (2) in our comments about article 2 & article 16 and the issue (3) in that of article 13, then, the following description will be about the issue (1).

23. The medical condition in Japanese prisons is critical. As to the reason for this, firstly the number of doctors working in prison is extremely small. Secondly, prison officers who are qualified as nurses often examine and administer a dose to prisoners instead of doctors. The prison government usually explained the reason for this treatment because many prisoners pretend to sick, but this should be considered a separate issue.

24. Furthermore, when a prisoner needs medical treatment by the certain medical specialist who works for exterior institutions, the prison governor/warden often refuses to bring them outside because of the small number of prison guards who accompany and supervise the prisoner.

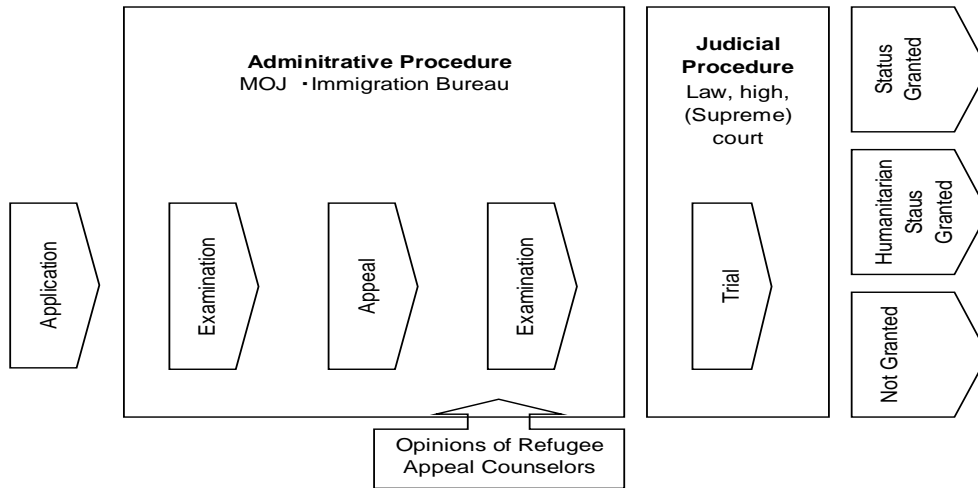
25. To solve this problem, we suggest that the jurisdiction over prison medical administration should be changed from the Ministry of Justice to the Ministry of Health, Labor and Welfare Ministry, which leads to ensure medical practice independency from security issues in prison and to integrate into the ordinal medical system in the community where the prison exists and to get more doctors. Inadequate medical practice will lead to ill-treatment of prisoners, then, this should be considered one of the urgent issues together. Additionally, the issue of investigation of death in prison should be considered.

Asylum Seekers and Refugees

A. Overview of the Asylum Procedure

26. Japan joined the Refugee Convention in 1981 and Refugee Protocol in 1982. In the same year, the Immigration Control and Refugee Recognition Act (ICRRA), which sets the procedure for asylum procedure, came into effect. Since then, the law had hardly been amended until 2005, which was the first amendment of ICRRA for asylum recognition.

27. Asylum application is decided by the Minister of Justice after interview and review have taken place when an application is filed with the Immigration Bureau. If applicants disagree with the decision, they may file an appeal to the Minister of Justice once again. Since the 2005 amendment, private-sector persons of experience or academic standing began to review the process of appeal. When the appeal is rejected, it is possible to proceed to the judicial procedure for its revocation. However, state founded legal aid is not provided through public assistance.



28. Since 1982, from the time when the refugee recognition system was implemented up until the end of 2005 (for 23 years), 3928 persons have applied for refugee status, 376 (including those who were granted after an appeal) have been granted refugee status, 381 have been given the special permission to stay on humanitarian grounds. It is defined in the Immigration law, Article 61-2-2-2 only as “under certain circumstances to be permitted to reside,” and not mentioned if Article 3 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is taken into consideration, nor making any clarification on the regulations or rules for implementation.

B. Recent Developments

29. Since the 2005 Amended Immigration Law and its implementation, deportation is prevented in the system of refugee recognition procedure (during the administrative procedure, not judicial procedure). Legal status of the asylum seekers were a little more stabilized due to the introduction of provisional stay.

30. Through the judicial procedure, there are cases that concept of “persecution” is discussed and deportation order and/or refugee rejection decision are cancelled based on the Convention Regarding the Status of Refugees and/or Convention Against Torture in some cases (the numbers of the cases are limited but both in district and high court).

C. Challenges of Refugee Recognition Procedures

31. The following problems are brought up by related parties/agencies:

- Overly strict burden of proof is imposed on the applicants (Ref. The State of the World’s Refugees, UNHCR, 2002)
- Bias for nationalities of those who are granted refugee status (i.e. few Chinese and 0 Turkish Kurds out of more than 450 cases)
- Although it is different depending on each applicant, the usual waiting period for recognition takes about one year or more, and work and daily life are not guaranteed for this time period.

Immigration Detention Institutions

A. Foreigners in Japan

32. This report focuses on migrant workers and asylum seekers except for so-called Westerners whose legal status is comparatively stable and the people from former colonies (i.e. special permanent residents) prewar and during World War 2nd. These people can be described as follows in the timeline: (1) Indochina refugees since 1975 (Vietnam, Laos and Cambodia), which led Japan to ratify the 1951 Convention in 1981. (2) Influx of migrants since the middle of 1980s. There has been on the increase in the number of migrants from the Philippines, Thailand, Iran, the Republic of Korea, Bangladesh and Pakistan, who came to work in Japan. These people worked at construction sites, factories or snack bars. In 1990, the Japanese government amended the Immigration Control and Refugee Recognition Act to establish a policy to remove so-called "unskilled" migrant workers. Since then, the government has labeled those people as illegal migrants. Instead, the government introduced the alternative solution, which is to accept those of Japanese ancestry from Latin America as a labor force. (3) Then, after the 1990s, many people from Peru, Brazil and Bolivia came to Japan seeking job opportunity. (4) Around the same time, the number of asylum seekers from Burma and China to Japan gradually increased because of the suppression of the democracy movement. (5) The trainees from foreign countries has increased. (6) Japanese who were left in China and their families at the end of World War 2nd started to go back to Japan. (7) The asylum seekers from Pakistan, Kurdish areas, Afghanistan and China increased in the late 1990s. It still continues today.

33. Migrant workers seemed to be temporary guest workers as the authorities expected at first. However, they have started to resettle in Japan and stay here longer and longer although they think they want to go back to their home countries sometime in the future. This trend contradicts the government's expectation. A new migrant policy will be started in order to solve the manpower shortage problem because of the decrease of Japanese population and birthrate. The problem is that migrants are not a temporal social phenomenon but could be a persistent one.

B. Xenophobia and Deteriorating Conditions of Immigration Detainees

34. It is hard to say that the government's policy for foreigners is tolerant. There is a rumor that "foreigners" are dangerous. The rumor doesn't have any concrete basis and it frequently comes from the Police Agency and the Immigration Bureau of the Ministry of Justice since 1992 when the bubble economy burst. As a result, many undocumented migrants have been arrested, prosecuted, detained, and deported. Moreover, the immigration control has been strengthened and they refuse many people from Asia, Africa, and Latin America entry to Japan as an interdiction measure. From 1991 to 1994, the capacity of detention at immigration facilities reached 100%. The treatment for detainees and violence against them happened frequently. They became a social problem. Furthermore, there is an increasing number of asylum seekers and almost all of them are denied refugee status from the late 1990 to the present. Most of them are detained in immigration detention facilities for a long and indefinite period. This causes the friction between the officers at Immigration Bureau and immigration detainees. It also triggers officer's violent behavior against the detainees and their bad psychophysical conditions, such as frequent self-injury and attempted suicide. It highlights the problems of the health care system in detention facilities.

35. On November 6, 1998, the United Nations Commission on Human Rights expressed concerns about these situations and made an exceptional recommendation for the improvement of the Immigration Bureau in Japan as follows: (1) the Committee is concerned about allegations of violence and sexual harassment of persons detained while pending immigration procedures, including harsh conditions of detention, the use of handcuffs and detention in isolation rooms, (2) detainees in immigration detention centres may remain there for limited periods of up to six months and, in some cases, even up to two years, (3) the Committee recommends that the State party review the conditions of detention and, if necessary, take measures to bring the situation into compliance with articles 7 and 9 of the Covenant, (4) the Committee requested strongly that the government should prepare for the establishment of any domestic human rights organization to provide independent and effective functions to observe ill and illegal

treatments by police and immigration officers in detention centers.

36. On October 17, 2003, the Joint Declaration on Enhancing Control of Illegal Foreigners in Tokyo was issued by the Tokyo Metropolitan Government, the Tokyo Metropolitan Police Department and the Immigration Bureau. This aims at reducing the number of illegal immigrants by half over next five years. In addition, on February 16, 2004, the Immigration Bureau under the Ministry of Justice started the system to gather "information on illegal and other foreigners" through their homepage on the web. The system seems to hunt undocumented foreigners. The system gathers very private individual information such as name, nationality, address and working place, and relevant information of "the person who seems to be illegal." The information is automatically sent to each regional Immigration Bureaus by E-mail. Anyone can provide such information anonymously.

37. In 2006, during the Diet session, the amendment bill on Immigration Control and Refugee Recognition Act got passed by the Diet and proclaimed on 24 May, 2005. The revised act aims to tighten the control of foreigners under the name of preventive measure against terrorism: (1) At the Required Landing Examination to provide personal identification information (fingerprints and photographs) in an electromagnetic form. Except for persons who are under sixteen; special permanent residents; engaged in the activity of diplomat or official. (2) Deportation of the person who is possibly a terrorist. (3) By registering fingerprints and photographs in advance, the person will be permitted to pass through the automated gate at the time of entry and departure.

38. A series of amendment on the immigration act and its system result in a sharp rise of the number of people arrested and detained. Because of these new and tightened measures, violence against detainees frequently happen in the immigration facilities.

C. The Purpose of Management and Detention of Foreigners in Japan

39. Foreigners in Japan are subject to the Immigration Control and Refugee Recognition Act (hereinafter ICRAA) and "Alien Registration law". Both of them aim at control over foreigners and do not mention their human rights. Therefore, in the court cases on foreigners' human rights, their human rights are based on the human rights related provisions in the Japanese Constitution or international standards on human rights. Under current legislation, there is no basic law related to foreigners' human rights.

40. Japan accepts foreigners in accordance with the status of residence. Status of residence is, that is to say, this is provided by ICRAA and typifies to whom acceptable and what kind of activity they do. Therefore, this system does not take a position from the side of foreigners' human rights. Rather, it works as a limit on their activity. For instance, if you enter Japan as a tourist, it is categorized as "a temporary stay" in the status of residence and they are not allowed to work except for receiving temporary compensation.

41. In January 2006, according to the statistics issued by the Immigration Bureau, the number overstaying is 193,745. If we add the number of persons who did not enter under proper processes, the number of irregular migrants would increase to 3,000,000. Irregular migrants are subject to arrest by the Immigration of Bureau. If an irregular migrant is found, he or she should be detained in the process of deportation.

42. There are two types of detention facilities in Japan: long-term and short-term. As for the long-term one, there are three immigration detention centers: one is located in Omura in Nagasaki, a second one is located in Ibaraki in Osaka and the third one is located in Ushiku in Ibaraki prefecture. The combined detention capacity is 1,800 in total. As for the short-term ones, there are fifteen regional and branch offices, whose total capacity is 1,610. The number of total immigration detainees is around 2,000 per a day.

D. Agendas for Implementation of Treaty and its Rights

43. (1) Newly introduced good measures and systems

----A new type of leather handcuff was introduced in Nov. 2003. Because of its stretchness, it mitigates any pressure on wrists of detainees.

----Detainees may make a phone call if they want. The detention facilities permit detainees to make a phone. This is good because it prevents human rights abuse inside the facilities leading to transparency. However, the authorities set the time table and it means any detainee can freely make a phone call anytime. For example, at East Japan Immigration Center, it sets the time rule to make a phone call outside, 9:00-11:00 and 13:00-16:30. Under this rule, it is impossible to call to friends who have day-time jobs and difficult to call anybody in foreign countries because of time-lags. The East Japan Immigration Center explained that they don't permit any phone call to outside anytime. They allow them depending on individual reason. Thus, this is not a perfect system providing the right to call for detainees and should be improved.

----Some immigration centres are allowing access to detainees without the presence of officers. This seems to be positive in terms of transparency of the procedure, but the measure seems to be taken just only to avoid troubles of officers and not in the light to secure transparency.

44. (2) Adequate medical care in the centre

Interpreters should be provided while having a medical care. Access to external medical agency is to be eased. A procedure to suspend the detention according to discretion made by a doctor should be introduced if a person's medical or mental health is worsened and in trouble.

45. (3) "Mandatory detention policy" should be amended and elements for detention should be clarified.

Remove the following persons from the list of detention. Persons in ill, minors, elderly persons, pregnant women, asylum seekers, persons pending before courts, persons pending before Labor Standards Agencies for non-payment and accidents from labor, persons without prospect of deportation, and other persons who were found not eligible for deportation.

Detention should be decided at the judicial system given the fact that such decision is identical to criminal procedure.

A system should be set up to proceed deportation while staying in the house for persons not eligible for detention.

46. (4) Set a limit to detention terms for deportation orders.

A limit of 30 days with additional 30 days of extension, so maximum of 60 days, is provided for detention for detention orders. However, no limit is set for detention for deportation orders. This should be amended to avoid indefinite detentions or long term detentions. (It could be suggested that a maximum of 4 months combined with the term for detention order is to be considered.)

47. (5) Remove reciprocity clause of Article 6 of the State Redress Law.

The reciprocity clause of Article 6 of the State Redress Law is set as a burden for foreigners to file a claim for protection of human rights. The clause should be removed respectively.

48. (6) Transparency for immigration procedures

----Support casework by lawyers and non-governmental organizations.

Support casework by providing regular communication and information sharings with authorities, free visits to the sites, unconditional meetings to be allowed without attendance of officers, disclosure of internal documents, allow caseworkers to state recommendations for improvements, and providing financial support from the government.

---Set up an independent monitoring scheme with full authority

An independent monitoring scheme should be set up with a full authority of receiving allegations for human rights abuses, to carry out non-restricted on-site visit to any detention centres without warrant and in regular basis, to make interviews to detainees without any condition, to make recommendations otherwise to issue an order for improvement to immigration authority, to issue an order to suspend deportation and detention pending other judicial or administrative procedures.

Mental Health Institutions

49. Ninety percent of institutional mental health services in Japan are privately owned and operated. There are currently 330,000 people still in psychiatric inpatient facilities in Japan, leaving Japan with the highest number of psychiatric in-patients in the world. Additionally, 25% of total hospital beds in Japan are used for psychiatric hospitalization.

50. The Japanese Law Pertaining to the Mental Health and Welfare of People with Mental Problems allows psychiatrists to hospitalize people involuntarily as well as restricting their behavior. This is different from many countries that require the court to review or order these actions. In many countries the right to restrict freedoms in this way is reserved for the public sector. However in Japan these rights are ceded to psychiatrists in the private sector. Additionally, Japan has begun to implement neo-liberal policies of the privatization of many public services. Thus, the number of private psychiatric hospitals is increasing, as is the number of public sector psychiatrists who are moving into the private sector. Consequently, it is unclear who in the broad mental health system has the responsibility for interpreting and implementing the mental health law. This leaves room for many human rights abuses, both historically and currently.

51. The current mental health law has two types of hospitalization: Article 29, Involuntary Hospitalization Ordered by the Prefectural Governor, and Article 33, Hospitalization for Medical Care and Custody. Article 33 includes hospitalization consented to by family members and local officials such as city or town mayors.

52. Under Article 36 the Director [the designated psychiatrist] of the psychiatric hospital may impose necessary restraints on a person hospitalized within the limits essential for his/her medical care and custody. This includes placing the person in a locked ward, a seclusion room, and physical restraints. The one day statistics from June 2003 of 1,662 psychiatric hospitals indicated that there were 140,075 individuals in 24 hour locked inpatient wards (42.6% of total psychiatric hospitalizations), 7,741 people restricted to seclusion rooms, and 5,109 individuals under physical restraint. However, Japanese practice also allows people to be placed in seclusion rooms for under 12 hours without the consent of the designated psychiatrist. As a result, although many say that punishment is not a part of medical practice, the restriction of behavior and short-term seclusion without the review of a designated psychiatrist allows for the punishment of individuals.

Specific Information Relating to the Information of Articles 1 to 16, 19 and 22 of the Convention

Article 1

Definition of Torture and Japanese Legislation

Questions to the Government

53. How is “torture and cruel punishment” under Article 36 of the Constitution different from “torture and other acts of cruel, inhuman or degrading treatment or punishment” under Articles 1 and 16 of the Convention, or how is the former one the same as the latter one?

54. What kind of public officers can be punished under Articles 194 to 196 of the Penal Code? Especially, how about officers belonging to the Self Defense Forces and immigration detention centers, and doctors or nurses of psychiatric hospitals?

55. The government should describe their interpretation of “acquiescence of a public official” under the Convention. Is “acquiescence of a public official” under the Convention punishable under the Japanese Penal Code?

56. In order to conform to the definition of the Convention and to establish international jurisdiction on torture, does the government have a will to establish “torture crime” under the Penal Code or other legislation?

Current Situations and Our Concerns

57. As the government’s report mentioned at paragraphs 2 and 17, article 36 of the Constitution of Japan absolutely forbids “the infliction of torture and cruel punishment by any public official”. However, it is unclear whether “torture and cruel punishment” under the Constitution include both “torture” and “other acts of cruel, inhuman or degrading treatment or punishment”¹¹ under Articles 1 and 16 of the Convention against Torture. Although, “torture and cruel punishment” of the Constitutional provision should be interpreted the same as “torture” (article 1) and “other cruel, inhuman or degrading treatment or punishment”(article 16) of the Convention, even after Japan ratified it, the government report described clearly about this point (para.17 of the government’s report)¹². If there were some differences between the two, the government should describe how the Constitution’s interpretation differs from the Convention’s, and why. In addition, whether “public officials” in the Constitution covers all factors the Convention requests is also not clear.

58. The government’s report says “Any person who commits an act of torture, including an attempt to commit torture, an act which constitutes complicity or participation in torture, is punishable under the Penal Code and other criminal laws for various offences and their complicity” (paras.17, 31 and 32)¹³. However, even if the case is punishable as an ordinal type of offence, such as violence, injury, and others, the government’s report doesn’t show the specific statistical data concerning how many public officers have

¹¹ “Ill-treatment” is used in this report as a collective term of “other acts of cruel, inhuman or degrading treatment or punishment” in Articles 1 and 16.

¹² See Appendix 1.

¹³ See Appendix 1.

been prosecuted and sentenced by charging them with offences which result from acts of torture, and also to what extent in public officers' cases the gravity of the offences were taken into consideration at prosecution and in court. Thus, it will be difficult to assess whether implementation of the Penal Code and other criminal laws fully meets the requirements of the Convention in practice.

59. Furthermore, Article 194 to 196 of the Penal Code is applicable only to certain public officers, i.e. "a person performing or assisting in judicial, prosecution or police functions" or "a person who is guarding or escorting another person detained or confined in accordance with laws" (para.31)¹⁴. It seems to be narrower than "a public official or other person acting in an official capacity" under Article 1 of the Convention. For example, whether or not all types of officials such as the Self Defense Forces, immigration detention centers, and doctors or nurses of psychiatric hospitals can be included in the above terms is unclear.

60. Although the government's report says that "an attempt to commit torture, an act which constitutes complicity or participation in torture, is punishable", whether or not "acquiescence of a public official" under Article 1 of the Convention is included in the above crime categories is also undefined.

61. As the government's report mentioned (paras.33-54)¹⁵, Japan can establish its jurisdiction on the suspects who committed certain offences in foreign countries. There are some legal provisions for detention and extradition of criminals and providing of international assistance in investigation. However, as we explained *infra* about Article 4, Japanese Penal Code which is applicable to torture cases applies only to certain types of Japanese public officers. This is flaw in legislation under the Convention.

¹⁴ See Appendix 1.

¹⁵ See Appendix 1.

Article 2 and Article 16

Japanese Legislation and Effective Measures to Prevent Torture

Questions to the Government

62. How can the Self-Defense Forces personnel and the police officer resist it when ordered to do the act like torture?

63. What kind of measures has the government taken such as the effective legislative, administrative, judicial or other measures based on the viewpoint of prevention of the acts of torture, according to the guideline of the initial report (CAT/C/4/Rev.3) to the Committee?

Current Situations and Our Concerns

64. Concerning para.19¹⁶ of the government's report, there is no specific explanation about the practices and measures to prevent acts of torture. Moreover there is no assessment of effectiveness in the government's report according to the guideline of the initial report (CAT/C/4/Rev.3). For example, the government's report mentioned training concerning prohibition of torture and ill-treatment to public officers as one of the measures to prevent torture (para.56)¹⁷. The government should also explain the goal and effectiveness of this training.

65. Concerning para.20¹⁸ of the government's report, article 5 paragraph 2 of the Law on Measures to Protect Citizens in Response to Foreign Military Attack provides that minimum necessary limitations can be imposed on people's liberty and rights in an emergency. However, this law has no derogable clause on the right against torture and cruel punishment under Article 36 of the Constitution.

66. Concerning para.21¹⁹ of the government's report, there is no provision of domestic law which allows disobeying an order to commit acts of torture, and it is compatible with article 2 paragraph 3 of the Convention. For example, article 57 of the Self Defense Forces Law provides that any member of the Self Defense Forces shall obey a superior's order in exercise of their duty. However, there is no provision that excludes the superior's order to engage in torture. We can raise the same concern about police officers. (cf. the Self Defense Forces Law, article 57, and the Police Law, article 63)

Police Detention Cells

Question to the Government

67. What are the obstacles against abolishment of the so-called "Daiyo-Kangoku" or the substitute prison system?

Current Situation and Our Concerns

¹⁶ See Appendix 1.

¹⁷ See Appendix 1.

¹⁸ See Appendix 1.

¹⁹ See Appendix 1.

See supra [paras.1-8]

Related Cases

68. Many cases of violence, threats, and long time interrogation carried out inside of “Daiyo-Kangoku” causing false confessions have been reported for a long time. Especially, in the 1980s, 4 defendants who had been sentenced to death were exculpated at review trials. All 4 defendants made false confessions in “Daiyo-Kangoku”.

69. Regarding the recent cases, a suspect who was arrested on charges of drug related crime and detained in a police cell, insisted that he had been interrogated for 12 hours each day, and he was forced to confess in return for meal, sleep, and message to his mother. He was also shouted at by interrogators many times and forced to stand up for 90 minutes. As a result of these harsh interrogations, he admitted another charge of murder. However, judges denied admissibility of the record of his confession and found him not guilty (Osaka District Court in March 17th 2003).

70. On April 2003, 15 suspects were arrested on charges of election irregularities and detained in police cells. Most suspects were interrogated from 9AM to 9PM almost every day and forced to make false confessions. Interrogators shouted, kicked and beat a desk saying “Don’t lie” and “You must be sentenced to death”. Sometimes they used prevarication and influence peddling. Eventually, 13 suspects were prosecuted but all of them denied their charges at the trial. After that, on February 23, the Kagoshima District Court found 12 defendants not guilty (One defendant passed away during the trial). The court ruled that the confession by defendants were possibly obtained as a result of forcible interrogation by the police. Furthermore, one of arrestees (but was not prosecuted) wan a compensation for damage against the Kagoshima Prefectural Government and the Kagoshima Police (January, 2007). (Asahi News Papers, January, 6th, 2006, and February, 24th, 2007; Nishinohon News Papers, March 6th, 2007)

Prisons

Question to the Government

71. What kind of measures have been taken at legal and practical levels, to improve on the issues which the Human Rights Committee raised concerns in the Concluding Observation in 1998, including excessive limitation to prisoners’ liberty, harsh disciplinary measures, use of restraint devises, and solitary confinement?

A. Longer Solitary Confinement

Question to the Government

72. Under the new Prison Law, all sentenced prisoners are supposed to be classified into the 1st, 2nd, 3rd and 4th grade, depending on their security levels. The 1st grade means that the modest limitation shall be imposed on prisoners’ liberty and rights and the 4th grade means the strictest limitation shall be imposed. What factors are taken into consideration when the prisoner is classified into the strictest limitation category, the 4th grade? Are there any protective measures guaranteed to prevent excessive limitation on the prisoner’s liberty and rights?

Current Situations and Our Concerns

73. The Human Rights Committee raised serious questions of compliance with articles 2, paragraph 3 (a), 7 and 10 of the Covenant, about “use of harsh punitive measures, including frequent resort to solitary confinement” in the Concluding Observation to the Japanese government (para.27(b) of the Observation). However, as far as the solitary confinement issue, any remarkable improvement has never been seen since then (cf. para155²⁰ of the government’s report). Especially we are concerned that there are about 30 prisoners each year, who have been detained in solitary confinement for more than 10 years as a sum total. Several prisoners have been detained for over 30 years. The number of these prisoners has never decreased during these 5 years.

74. Solitary confinement is widely known to have a severe damaging effect on the prisoners and some prisoners are suffering from such damages. The government explained that they could not stop the use of the solitary confinement, “because the prisoners are deeply disturbed” or “the prisoners urge to be in solitary confinement”. However, some prisoners are mentally disturbed because of longer solitary confinement. Moreover, detaining deeply disturbed person for 30 to 40 years in solitary confinement is no longer effective punishment. We insist that longer solitary confinement, which has been continued for more than 10 years will at least consist of ill-treatment.

75. Under the New Law, the name of continual solitary confinement has been altered to “Segregation” as a defined name (article 53). Under the old law, the same treatment was called “solitary confinement for the purpose of correctional treatment to prisoner”, however, we have received the reports on many cases which the prisoners were detained in solitary confinement when they brought a lawsuit against the prison authorities. The New Law requires the more detailed conditions when “Segregation” shall be imposed on prisoners, then we expect this new provision would decrease these cases. The period of solitary confinement shall be shortened by basically 3 months and can be revalidated in each one month after the period exceeds (under the old law, it was basically 6 months and could be revalidated in each 3 months).

76. However, even after the New Law went into force, the authorities can continue the solitary confinement forever. We NGO and the Bar Association has been insisting that the government should consider amendment of the New Law, so as to establish the definite maximum limitation of solitary confinement’s period, and the prisoner should be released from the confinement after the maximum period exceeds and reviewed to ensure whether they really need to be in solitary confinement more or not.

77. Furthermore, under the New Law, all sentenced prisoners are supposed to be classified into the 1st, 2nd, 3rd or 4th grade of restriction, depending on their security levels. The 1st grade means that the modest limitation shall be imposed on prisoners’ liberty and rights and the 4th grade means that the strictest limitation shall be imposed. If the prisoners are classified into the 4th grade, they have to stay in their own single room all day, then, it would be almost same as solitary confinement (except they can communicate with other prisoners about once a month and more). In addition, when solitary confinement as “Segregation” shall be imposed, the law provides the limitation of maximum period and complaints system, but when solitary confinement as the 4th grade shall be imposed, the law has no such protective measures. We are concern that the number of prisoners who are imposed solitary confinement as “the 4th grade restriction” would increase because it is easier to categorize prisoners into this grade than to impose “Segregation” on them.

Statistical Data and Related Cases

78. The number of prisoners who are detained in solitary confinement for more than 10 years and their period (the data resulted from 4 times research by one of the Diet members from 2000 to 2005)

	Research on November 10th, 2000	Research on July 10th, 2001	Research on October 1st, 2002	Research on November 1st, 2005
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²⁰ See Appendix 1.

1	37Y 00M*	37Y 08 M	38Y 11 M	42Y 00 M
2	36Y 07M	37Y 03 M	38Y 05 M	41Y 06 M
3	35Y 06 M	35Y 07 M	36Y 07 M	39Y 08 M
4	34Y 11 M	35Y 05 M	29Y 01 M	38Y 07 M
5	34Y 09 M	27Y 10 M	24Y 00 M	27Y 01 M
6	27Y 10 M	22Y 10 M	23Y 07 M	26Y 08 M
7	22Y 06 M	22Y 04 M	22Y 10 M	26Y 00 M
8	22Y 02 M	21Y 07 M	22Y 04 M	25Y 05 M
9	21Y 05 M	21Y 01 M	22Y 02 M	25Y 00 M
10	20Y 11 M	21Y 00 M	21Y 01 M	24Y 10 M
11	20Y 05 M	19Y 10 M	21Y 00 M	23Y 11 M
12	20Y 04 M	19Y 09 M	21Y 00 M	23Y 11 M
13	19Y 04 M	19Y 09 M	20Y 10 M	23Y 06 M
14	19Y 03 M	19Y 07 M	20Y 09 M	21Y 07 M
15	19 Y 01M	19 Y 06 M	18 Y 10 M	20 Y 03 M
16	18 Y 11 M	17 Y 07 M	18 Y 06 M	19 Y 08 M
17	18 Y 10 M	17 Y 03 M	16 Y 01 M	18 Y 05 M
18	17 Y 00 M	15 Y 10 M	15 Y 09 M	17 Y 01 M
19	16 Y 07 M	14 Y 10 M	13 Y 10 M	16 Y 01 M
20	15 Y 02 M	14 Y 07 M	13 Y 10 M	15 Y 09 M
21	14 Y 05 M	12 Y 10 M	12 Y 12 M	15 Y 03 M
22	14 Y 02 M	12 Y 07 M	12 Y 02 M	15 Y 02 M
23	13 Y 11 M	11 Y 09 M	12 Y 01 M	14 Y 01 M
24	12 Y 02 M	11 Y 00 M	11 Y 06 M	13 Y 07 M
25	11 Y 11 M	10 Y 10 M	11 Y 00 M	13 Y 05 M
26	11 Y 01 M	10 Y 05 M	10 Y 06 M	13 Y 04 M
27	10 Y 04 M		10 Y 04 M	13 Y 04 M
28	10 Y 02 M		10 Y 04 M	13 Y 01 M
29			10 Y 03M	10 Y 06 M
30			10 Y 00 M	10 Y 00 M
Total number of persons	28	26	30	30

* “Y” refers to year and “M” refers to month.

79. On January 2002, we asked for an investigation by the Bar Associations in 6 regions having prisons where they have detained prisoners in solitary confinement for over 10 years. However, no prison authorities cooperated with these investigations such as disclosure of the name of prisoners who have been in solitary confinement and we cannot see any progress.

B. Death and Injury Cases Caused by Leather Handcuffs and Detention in “Protective Rooms”²¹

Questions to the Government

80. Since the Human Rights Committee raised concerns about frequent use of and “Protection Rooms”, the many cases of death in the room have been reported. What measures have the government taken in order to prevent death and injury in the protection rooms?

81. When the prisoner who suffers from any disease or is mentally disturbed is detained in the

²¹ This part is especially about paras.150, 151 and 152 of the government’s report. See Appendix1.

protection room, how often are they examined by doctors? (Because these types of detention have often resulted in death in the room)

Current Situations and Our Concerns

82. Leather handcuffs is one of the restraint instruments in prison, which has a waist belt with 2 wrist bands made of leather in order to fix both wrists on waist. In some cases, prison guards fasten the belt so tightly that many prisoners' abdomen and intestine become severely damaged.

83. The Concluding Observation of the ICCPR in 1998 raised concerns about frequent use of "protective measures, such as leather handcuffs" and the organ mentioned that these use "may constitute cruel and inhuman treatment"(para.27(d) and (f) of the Observation). Leather handcuffs and protection rooms were often used in punitive way or for harassment, when prisoners tried to complaint to outside such as the Bar Association and NGO and write to the Commission on Human Rights of the UN.

84. These inadequate uses of handcuffs and "protection rooms" might be a breach of the Convention against Torture. There are some court decisions such as the Chiba District Court's decision on February 7th 2000 and the Osaka District Court's decision on May 29th, which say that the use of leather handcuffs constitutes violation of the (old) Prison Law.

85. In October 2002, after the cases which a prisoner died during detention in protection room with leather handcuffs became public, the prison government stopped using leather handcuffs on October 2003. Then, the government altered the type of leather handcuffs to nylon ones for pain relief, but it has been reported that these handcuffs have been used with prisoners' hands tied behind them. This practice might be in breach of article 33 of the Standard Minimum Rules for the Treatment of Prisoners.

Related Cases

86. Nagoya Prison Cases

See supra [para.14-15].

87. Takamatsu Prison Case

On October 4th, 2001, a prisoner imprisoned in Takamatsu Prison was assaulted by his roommate and taken to the protection room and restrained with leather handcuffs by guards. After that, another guard fastened them tighter and left the prisoner alone in the room for more than 26 hours. This treatment caused the prisoner's serious injury and he made a complaint against the prison government for compensation but he lost on May 8th, 2006.

88. Hamada Detention Center Case

At Hamada Detention Center in 1996, a prisoner who seemed to be suffering from alcohol withdrawal disorder died because of thermal fever. He was left in a protection room, where the air temperature was 28.9 degrees Celsius and humidity was about 70%, for around 4 days. His bereaved family filed a suit against the government seeking compensation and the Matsue District Court decided that the prison government failed to provide adequate medication for the prisoner and admitted its responsibility for his death and ordered the government to pay compensation to his family.

89. Kawagoe Juvenile Training Center Case

On November 13th, 2001, a prisoner was detained in a protection room because he behaved violently. At that time, he was bound with metal and leather handcuffs for more than 24 hours and had

aftereffects such as his thumb's palsy. (Kyodo Press, December 4th, 2002)

C. Disciplinary Measures / Punishment²²

Questions to the Government

90. The Human Rights Committee raised its concern about “use of harsh punitive measures, including frequent resort to solitary confinement” in the Concluding Observation in 1998 (para.27(b) of the Observation). Have the government made efforts to avoid disciplinary measure by solitary confinement as much as possible?

91. The Human Rights Committee raised its concern about “lack of fair and open procedures for deciding on disciplinary measures” in 1998 (para.27(c) of the Observation). What measures has the government taken in order to develop the due process for disciplinary measures in prison? Does the government have the will to add amendments to the Law to request independent person's (such as a lawyer) presence during the disciplinary process for the future? If their answer is no, what is an obstacle?

Current Situations and Our Concerns

92. We welcome that the New Law has regulated more detail about the disciplinary measures including what kind of measures will be imposed upon prisoners, and what procedure will be carried out for imposing these measures.

93. However, the Law has a lack of clarity about the conducts constituting a “disciplinary offence” because what kind of conducts should be subject to disciplinary measures and whether a prisoner should be imposed or not are mostly supposed to depend on each warden/prison governor's discretion. (cf. Rule 29 of the Standard Minimum Rules for the Treatment of Prisoners)

94. Furthermore, concerning the procedure for imposing disciplinary measures, it does not fully guaranteed due process. The prisoners cannot examine the details of their own cases and are not guaranteed the right to call witnesses or appoint a counsel (or other independent representative) for their defense. The Panel to examine the cases and make a judgment also consists of prison officers. An assistant person from the prison officers is supposed to assist or represent the prisoner. According to a result of investigation by one of the Diet members in 2002, there was no record which shows that this “assistant officer” insisted to not impose the punishment for the prisoner. Eventually, prison officers are supposed to play roles of prosecutor, judge, and defense attorney.

95. In addition, this process has a lack of transparency. Under the old Prison Law, most judicial decisions said that the procedure for disciplinary measures is different from that for criminal punishment as the case infra, but some decisions also said that it should guarantee due process as much as possible. Moreover, the Human Rights Committee raised concerns that “lack of fair and open procedures for deciding on disciplinary measures” in the Concluding Observation of 1998 (para.27(c) of the Observation).

96. The most serious disciplinary measure is almost the same as solitary confinement. The prisoner shall be limited in taking a bath and exercise. Additionally, the prisoners might be have more restrictions imposed on them depending on the governor's discretion such as work and contact with outside. The Human Rights Committee raised concerns that “use of harsh punitive measures, including frequent resort to solitary confinement” in the Concluding Observation of 1998, but after that, disciplinary measure by solitary confinement has been mostly used. This harsh type of measure should be avoided as much as possible.

²² This part is about especially para.157 of the government's report. See Appendix1.

Related Cases

97. According to a result of the investigation by one of the Diet members in 2002, 30,432 prisoners out of 37,411 who had disciplinary measures imposed on them, were in solitary confinement. The limitation of the period of this confinement shall be 60 days at maximum, and in fact the average period was 12.5 days per case during 1998-2000. The reasons for imposition of this type of measure were “assaults to another prisoner”(5,507 persons), “omission of duty”(4,799), “quarrel”(3,162), “back answer/disobedience to orders”(2,985), and “giving and receiving objects illicitly”(2,832). We raise concerns that the confinement is too harsh to punish these conducts.

98. Hiroshima District Court Decision June 29th, 2004
The prisoner as a plaintiff filed a suit for compensation because disciplinary measure were imposed on him illicitly and this treatment constitutes a violation of the due process principle under the Japanese Constitution. 10 days solitary confinement was imposed on him and prohibition of reading because he used offensive language against prison guards. However, the judge decided there was no violation. Because the procedure for disciplinary measures in prison is different from that of criminal punishment and it doesn't require following the due process principle. The details about disciplinary procedures depend on each warden/prison governor. The plaintiff also insisted disproportionality between his conduct and the imposition on him but it was not accepted by the court.

D. Rape

Question to the Government

99. What measures has the government taken to prevent sexual violation against inmates?

Current Situation and Our Concerns

100. We have received many reports concerning rape or sexual abuse cases in detention centers or special area of prisons for pre-sentenced detainees (because female and male detainees are detained in the buildings) as follows. These violations often occurred during a male guard's patrolling at night. This might constitute violation of rule 53 of the Standard Minimum Rules for the Treatment of Prisoners.

Related Cases

101. Nagoya Prison Toyohashi Branch Case

In June 24th, 2004, one of male prison officers in Nagoya Prison Toyohashi Branch was arrested on a charge of crime of “Violence and Cruelty by a Special Public Official” under the Penal Code. He had sexual relations with a 20's aged female detainee 6 times, using a key to make her room unlocked without permit during female officer's absence. The female detainee has become pregnant and the fact was unveiled. The officer was sentenced to 3 years imprisonment in January 13th, 2005. (Jiji Press, June 24th, 2004)

102. Fukuoka Prison Iizuka Branch Case

During the end of July to the beginning of August in 2004, one male prison officer in Fukuoka Prison Iizuka Branch was dismissed in disgrace because of his sexual abuse to a female detainee having forced her to become naked many times. (Yomiuri News Paper, September 22nd, 2004)

103. Nagoya Detention Center Ichinomiya Branch Case

In December 2000, in Nagoya Detention Center Ichinomiya Branch a 34 year old male prison officer developed a rapport and had a sexual relationship with a female detainee soon after she was released. Although the prison authorities didn't the fact, the officer quit the job later. The woman certified that she was sexually abused by the officer twice when he patrolled at night in 1996. (Kyodo Press, February 7th, 2002)

104. Kanagawa Prefecture Police Station Izumi Branch Case

In January 2002, in Kanagawa Prefecture Police Station Izumi Branch, a 42 year old police officer broke into a room for a female detainee using a duplicate key and had sexual relations with a female detainee several times. He was arrested on a charge of crime of "Violence and Cruelty by a Special Public Official" under the Penal Code and was sentenced 3 years imprisonment in August 9th, 2002. (Mainichi News Paper, January 24th, 2002)

E. Treatment of Female Inmates during Pregnancy

Questions to the Government

105. What is the reason for frequent use of ecbolic (medicine for inducement of labor) on female inmates during pregnancy? Why is it not always necessary for the doctor to obtain inmate's consent about use of ecbolic on her?

106. What is the reason for binding pregnant prisoners in her bed until just before the birth?

Current Situations and Our Concerns

107. At a female inmate's child-birth, the authorities usually make arrangements for the child birth place not to be a criminal institution, and the pregnant inmate is taken to an outside hospital. However, for reasons of the hospital's own, an inmate was virtually forced to agree with using ecbolic beforehand. In 2004, 8 out of 30 inmates who were imprisoned in detention centers over the country were forced to use ecbolic. It is cruel for female inmate because she cannot choose other options for bearing her child.

108. Furthermore, when inmates who are suffering from some diseases become hospitalized in outside institutions, basically, they are supposed to be bound in their bed with handcuffs and rope, for the purpose of prevention of escape.(According to the record of the Diet's Commission on Health, Welfare and Labor on October 25th, 2005) Similarly, pregnant female inmates have been also restrained until just before the birth. We consider these practices must consist of the violation of the Convention (especially, articles 2 and 16).

Related Cases

109. In February 2005, a female defendant, who had been pregnant when she was arrested and detained in Tokyo Detention Center, was taken to an outside hospital about one month before the expected date of birth. The hospital tried to persuade her to agree with using ecbolic for her child-birth, but she refused it. Then, she was moved to another hospital and was bound in her bed with handcuffs and rope until just before her birth. The authorities of Tokyo Detention Center said that it was no problem because it was usual practice.

F. Violence against Prisoners

Question to the Government

110. What kind of measures to prevent violence against prisoners by prison guards/officers has the government taken?

Current Situations and Our Concerns

111. Violence against prisoners by prison officers is said to be caused by the relatively large number of prisoners per one officer (4.3 prisoners per one officer in 2004). In order to control prisoners some officers are likely to resort to use of force, but sometimes it exceeds the limit and caused serious injury and aftereffects. The use of force should be a last resort and kept to the minimum.

Related Cases

112. Miyagi Prison Case

In Miyagi Prison, from June 2004 to April 2005, some prison officers did a favor for some prisoners, including giving alcohols, cigarettes, sweets, and letting them use cellular phones. For the purpose restoring disturbed order in the prison caused by this misconduct, prison officers used force to control disobedient prisoners. An officer who hit a prisoner in January and March in 2005 received disciplinary sanction. In December 2005, 3 prisoners who were injured by the officers' violence filed a suit for compensation, but one out of them had his suit dismissed because of pressure by the prison authorities.

G. Long Imprisonment of Prisoners Sentenced to Life²³

Question to the Government

113. Why has the period of imprisonment of prisoners sentenced to life become longer year by year?

Current Situation and Our Concerns

114. The number of new prisoners who had been sentenced to life conclusively in 2005 was 119, on the other hand, the number of prisoners released on parole was only 3 in the same year. Moreover, at the end of February, 2002, there was a life sentenced prisoner who has been imprisoned for 52 years and 10 months. Long imprisonment like this will deteriorate prisoners' health physically and mentally and might consist of degrading and ill-treatment under the Convention. And what is worse, the Public Prosecutor's Office issued an administrative order to its branch offices, which will virtually limit the chance of release on parole for prisoners sentenced to life very strictly (in the case of very serious offences and when the victim's family have very severe feelings to the prisoner, release on parole will be more difficult). This practice will be compatible with due process principle because the administrative order has established a new type of punishment of life imprisonment without parole.

²³ In Japan, life imprisonment doesn't mean that the prisoner has to be imprisoned all through his/her life de jure.

Statistical Data

115. The number of prisoners who had been sentenced to life imprisonment and released on parole by the period of imprisonment

Year (the period of imprisonment by the release)	Total	Within 12 years	Within 14 years	Within 16 years	Within 18 years	Within 20 years	Beyond 20 years
Average number during 1976-80	51.0	0.8	7.6	24.2	11.0	4.2	3.2
Average number during 1981-85	46.4	1.2	9.6	18.4	10.8	3.8	2.6
1986	28	—	3	15	6	2	2
1987	25	2	2	12	7	2	—
1988	11	—	1	5	2	1	2
1989	13	—	—	5	1	3	4
1990	17	—	—	5	3	4	5
1991	33	—	1	12	8	6	6
1992	21	—	—	6	1	6	8
1993	16	1	—	4	5	4	2
1994	15	—	—	—	8	3	4
1995	15	—	—	1	5	4	5
1996	9	—	1	—	—	5	3
1997	13	—	1	—	—	4	8
1998	14	—	—	—	—	5	9
1999	9	—	—	—	—	3	6
2000	6	—	—	—	—	—	6
2001	14	—	1	—	1	—	13
2002	5	1	—	—	1	—	3
2003	13	—	—	—	—	—	13
2004	8	—	—	—	—	—	8
2005	3	—	—	—	—	—	3

* Based on White Paper on Crime in Japan by the Ministry of Justice.

H. Overcrowding of Prisons

Current Situation and Our Concerns

116. Overcrowding beyond our experience is progressing in Japanese prisons now as supra *paras.9-13*]. Under this critical situation, prisoners and officers feel strongly stressed, and they sometimes act as a trigger of violence resulting in injury or death. It means that overcrowding prisons increases the risk of torture and ill-treatment.

Related Cases

117. Kobe Prison Case

In May 3rd, 2006, in Kobe Prison (a correctional institution), a male prisoner in his 50's who shared a single room with another prisoner, was assaulted by his roommate and died. Soon after the prisoner was assaulted, officers checked his injuries but did not take him to a doctor. The next morning, they found the

prisoner lay unconscious and took him to a hospital but he died there. Kobe Prison accommodated about 2,180 prisoners which are beyond its capacity of 1,800 at that time. To cope with this overcrowding situation, 2 prisoners were detained in a single room and 9 prisoners were in a room for 6.

I. Disclosure of Related Information

Current Situation and Our Concerns

118. The government is reluctant to disclose data concerning prison administration and facts there. We can request disclosure from the Ministry or each prison authority, but most data in documents are blackened. Concerning medical records, if a prisoner requests his/her own record to disclose, it will be denied because of "protection of privacy". Therefore, it is difficult for NGOs and academics to examine the facts in prison.

Immigration Detention Institutions

A. Violence by Immigration Officers against Foreign Detainees

Questions to the Government

119. The UN Human Rights Committee stipulated its concern and called for improvement on 6 Nov. 1998²⁴ for cruel, inhuman and degrading treatments, such as violence, sexual harassment, use of handcuffs and protection cells, against foreigners detained in immigration centers during the deportation procedure. What sorts of measures for improvement have been adopted following the recommendation? (cf. paras.3 and 68 of the government's report²⁵)

Current Situations and Our Concerns

120. Torture occurs when officers force foreign suspects to sign on legal documents for the forced repatriation.

121. Cases mentioned below are examples of the torture in Immigration institutions, attained through evidence in courts, hearing investigations conducted by NGOs and interviews by migrant supporters.

---Forcible and physical thrust by officers after detaining suspects from their residencies to interrogation rooms

---Padded restraints with blankets and ropes

---Kicking, punching and sweeping feet or lifting to hurl suspects onto the floor

---Repeat violence until a suspect kneels and bows

---Enforced isolation after violence.

²⁴ The Human Rights Committee raised concern about "allegations of violence and sexual harassment of persons detained pending immigration procedures, including harsh conditions of detention, the use of handcuffs and detention in isolation rooms" in the Concluding Observation in 1998 (para.19).

²⁵ See Appendix 1.

122. The instruments used for torture are: metal handcuffs (category 1), reformed leather handcuffs (category 2), rope (category 1), rope with metal core and fixable metal rings (category 2), gags, blankets, bamboo swords, cores of facsimile rolls for beating, leather gloves for punching and others.

123. Triggers for violence are usually small violations of rules in the detention facilities. Admonitions eventually turn into violence. 'Small violations' are things such as smoking at night, making noise by chasing roaches at night, noise demanding changes of treatments and others. Additionally, a case is reported in which a suspect was forced to repatriate whilst bundled with blankets and rope.

Related Cases

124. Torture for forced agreement of repatriation

A Pakistani, detained in an immigration detention facility on August 2003, was asked to sign a document for his repatriation. On his rejection, he was beaten on his neck. Since then he has felt constant pain in his neck as well as a pain and numbness in his left arm. ("Hurt Foreigners in Japan", Junpei Yamamura, ["Medical Asahi", December 2004]. This example is similar to one of the cases in article 14[56-year-old Pakistani man's case].)

125. A case of forced repatriation under padded restraint

This case took place on 7th November 2004 at Nishi-Nihon Immigration centre. A Vietnamese female (Ms. G) was subjected to forced repatriation under padded restraint. The report below is from direct interviews by a migrant supporter.

"Shortly after one o'clock on the 7th of November, immigration officers visited Ms G's residence and told her to 'Come downstairs, we will give you the result of your provisional release status,' hence she left to the ground floor where officers waited. There, a number of documents were spread in front of her and she was told 'Sign this document, we will deport you from Japan.' After she rejected signing the documents, about 10 officers entered, opened a blanket on the floor and pushed her down on the blanket. She was handcuffed, her legs tied with rope and her waist down bundled with the blanket and rope. She was carried into a microbus then taken to Kansai International Airport. As the boarding time approached, she was forcibly carried onto an aircraft by about 6 officers, despite her resistance by claiming 'I do not wish to be on board.' In the aircraft, she was repeatedly thrown to the floor and then dragged to the bottom by about 4 officers. As she shouted 'I do not wish to be home.' on her seat, one of the officers kneeled onto her stomach, two of them held on her legs, one on her hands that are metal handcuffed and another on her face and neck. Then, they tried to gag her mouth with a kind of a bar. The bar was approximately 3 centimetres in diametre, 20 centimetres in total length, wrapped with cloth and had strings attached to the both ends. She was released off those instruments 20 to 30 minutes after the aircraft departed. Both her legs and arms were swollen and bruised."

B. Role of the Isolation Room (the Protection Room)

Current Situation and Our Concerns

126. The isolation room is a chamber aimed to seclude detainees whom are likely to commit suicide or an act of self-destruction, to defy officers or to provoke other detainees. In several cases, this very room has been the locality for the abusive treatment of detainees. In such a room, one is to be under 24 hours surveillance in a space as big as 5 square metres. Both a toilet and a sink are embedded into the floor, so that every surface of the room stays flat. Even flushing a toilet cannot be done without an officer treading on a pedal outside the room. There is an account: "It was impossible to clean myself after relieving as there

was no toilet paper”. In 1993, a one-legged Iranian named Nabdhi gave a testimony that he was beaten in an interrogation room, stripped to a piece of underwear and eventually hanged from bars with his hands handcuffed.

C. Adoption of Metal Core Rope as Instrument of Restraint²⁶

Questions to the Government

127. Binding rope Type 2 which is used from 2003 has a wire inside the rope. This is feared to be used for human rights abuse. Please illustrate the structure and speculation of the rope by drawing. Please clearly specify the difference with the Type 1, especially on how to use it and the aim of its usage. Together, please show us statistics from 2003 to 2006 on its usage, the reason of its usage, and the center-by-center figures of its usage. (cf. paras.153 and 154 of the government’s report²⁷)

Current Situation and Our Concerns

128. In the aftermath of a case involving leather handcuffs in Nagoya prison, there have been changes to the selection of instruments used for restraint in immigration institutions. Instruments adopted after November 2003 are 4 kinds consisting of metal handcuffs (category 1), reformed leather handcuffs (category 2), rope (category 1) and metal-core rope (category 2). According to Immigration Detention Guidelines, reformed leather handcuffs (category 2) are defined as: “A ring expandable by arbitrary locking mechanics aimed for fixing wrists, assembled to the sides of a trapezoidal joint of metal or optional materials with equal strength, with the whole part covered by either leather or chemical fibers”. Rope is adopted in two kinds as following. Rope (category 1) is the same as the one applied before, defined as: “Rope within 3 to 15 millimetres in diameter, less than 6 metres in length and made with either linen or chemical fibers”. Rope (category 2) is: “The same as category 1, provided that metal wire is run through the core and a retractable metal instrument, less than 10 centimetres in total length, is attached to one end”. It seems that possibilities for abusive usages still remain despite the revocation of leather handcuffs.

Related Cases

129. Examples of how metal-core rope is used

A detainee who recently attempted suicide and was placed in an isolation room describes the experience possibly involving the reformed leather handcuffs (category 2) and rope as following: “leather handcuffs are no longer used but my stomach was tied with rope. An instrument on my hands (handcuffs category 2) is ‘Something harder than leather’, roughly 10 centimetres in width. ‘Something harder than leather’ is blackish and very hard as if there is metal inside. My waist is bound tightly with thin rope (unproven whether it is Rope category 2). It was very agonizing through pains both of rope and of heavy compression. The rope and the handcuffs are fixable together at the position of stomach.”

D. Use of Drugs for Calming Detainees

Current Situations and Our Concerns

²⁶ November 2003, Immigration Bureau

²⁷ See Appendix I.

130. It has been indicated that substantial amount of antipsychotics, sleep agents, antianxiety agents as well as others are possibly prescribed to detainees. It is used to calm agitated detainees and ultimately to make them easier to handle. According to the previously mentioned report by Dr. Yamamura (“Hurt Foreigners in Japan”), a 28 year old male Pakistani, put into custody in May 2003 and deported in June 2004, was dosed with a substantial amount of drugs and deported while unconscious.

131. Although purposeful usages of drugs by the authorities have been increasingly reported through parole evidences by a number of detainees, the Immigration Bureau continues to deny the cases.

Related Cases

132. Drugs prescribed to a man deported in June 2004 upon his departure (Higashi-Nihon Immigration Centre)

		Morning	Day	Evening	Night
HIRNAMIN (5mg)	Antipsychotic	2 tbls	2 tbls	2 tbls	
SOLANAX (0.4mg)	Anxiolytic (Antianxiety Agent)	2 tbls	2 tbls	2 tbls	
LOXONIN	Analgesic (Pain Reliever)	1 tbls	1 tbls	1 tbls	
EBASTEL	Antiallergic (Hypnotic side effect)			2 tbls	
NEOMALLERMIN	Antihistamine (hypnotic side effect)			1 tbls	
PURSENNID	Laxative				3 tbls
MYSLEE (5mg)	Hypnotic				3 tbls
PAXIL (20mg)	Antidepressant				1 tbls
LENDORMIN (0.25mg)	Hypnotic				1 tbls
ROHYPNOL (2mg)	Hypnotic				1 tbls

133. On an account by the man (whose medication is exemplified in the above list), ”I was surrounded by a number of officers telling me ‘This is your medication’, the officers handed me the drugs and I eventually fell asleep after taking the drugs. Then I was carried out of the prison onto an aircraft while I was sedated.”

134. Dr. Yamamura pleads the case: ”The fact that the authorities brought the victim into a state of the unconsciousness through substantial drug dosing could have lead to fatal consequences. It is a case against medical ethics and is in no way an act of a medical treatment if a doctor was responsible for the prescription of such drugs.” (Junpei Yamamura “Hurt Foreigners in Japan”, Medical Asahi, December 2004)

E. Acts of Self Destruction and Various Health Hazards Due to Long Term or Indefinite Detention

Questions to the Government

135. Is the government preparing for amendments to the law to provide a term for detention for deportation orders? (cf. para.156 of the government's report²⁸)

Current Situations and Our Concerns

136. Although the maximum period for a detention, according to the written detention order, is limited to up to 30 days, plus another 30 days by extension, the cap is undefined for a detention by the written displacement order. This is the cause of both long term and indefinite detentions. From 2001 to 2002, such detentions and subsequent mental and physical problems amongst detainees surfaced as social issues. During this period, a number of cases consisting of self-destructive behavior and attempted suicide in prisons were documented.

137. Dr. Yamamura states instances of health hazards and inadequate healthcare conditions in prisons collected through diagnostic interviews with detainees in prisons and direct examinations with ex-detainees. ("Hurt Refugees in Japan" Medical Asahi, February 2004)

138. In 2005, several changes took place in the procedure to attain refugee status, following the revision of the immigration law in which 'Provisional Stay Permit' was introduced. However, the condition to attain such a permit is limited to the conditions of: 1. 'a person who submitted a registration form within 6 months after his landing' and 2. 'a person who has entered Japan directly', hence the condition does not apply to everyone seeking refugee status. Those in trial succeeding the denial of applications are also excluded from the condition. Appropriately, the revision does not offer a complete resolution to the indefinite custody. These structures in which such indefinite detention is legalized are still in place to this day. Consequently a number of detainees are still kept in such conditions and their provisional releases rarely approved.

F. Mandatory Detention Regime --Detentions of People Inappropriate to Be Detained

Questions to the Government

139. Is the government preparing for systematic change on procedures including improvement on independent monitoring agencies, to remove the following from the list of detention?: Ill persons, minors, elderly persons, pregnant women, asylum seekers, persons pending before courts, persons pending before Labor Standards Agencies for non-payment and accidents from labor, persons without prospect of deportation, and other persons who were found not eligible for deportation. (cf. para.24 of the government's report²⁹)

Current Situation and Our Concerns

140. As well as asylum claimants, aged individuals, pregnant women, teenagers and those with mental and/or physical disabilities are also detained due to the Mandatory Detention Regime that the current immigration authority has adopted as its public stance. It is a serious situation bearing in mind the poor healthcare conditions in prisons.

²⁸ See Appendix1.

²⁹ See Appendix1.

Mental Health Institutions

Questions to the Government

141. There are very large differences in the rate of involuntary hospitalization and the duration of hospitalization in each of the prefectures. Why does the government allow this differential condition to persist?

142. Patients dislike ECT intensely, and often view it as punishment. Will the government take action to limit, regulate or abolish its use in Japan?

Current Situations and Our Concerns

143. The Mental Health Law of 1987 introduced the concept of human rights that purported to guarantee that patients have the right to communicate and have visitors. However, the conditions are still not good. Additionally, there are problems with other conditions in the hospitals that are not specifically guaranteed in the law.

144. Long term inpatients, most of whom are aging, share rooms with many other patients and so have no privacy for periods of time extending over many years. Additionally many hospitals still do not have regular daily activities, for example the opportunity to enjoy fresh air outside of the hospital.

145. In emergency admissions and acute hospitalization and treatment, orders for seclusion and IV neuroleptics are often made automatically. The use of IV neuroleptics in these cases also requires physical restraint. These conditions cause severe trauma to the affected patients, perhaps even worsening their conditions.

146. Japan is notorious internationally for its practice of polypharmacy in psychiatry. Polypharmacy is the use of different medications for each symptom, resulting in patients taking many medications with unknown interaction effects. Also, recently there has been a revival of the use of ECT (electro-convulsive therapy, or “shock treatment”) in Japan. This creates fear for patients who often associate it with punishment. Additionally, although the protocol and technology for ECT has been revised in much of the world, this is not the case in Japan. Japan has too few anesthetists in general, and their use in psychiatry is a low priority. Additionally, non-modified ECT is the norm in Japan.

147. Adolescents and adults are often treated in the same wards in Japan. This practice has been abandoned in most of the developed world, since adults can be abusive of adolescents when treated together. For example, Tokyo To has only one adolescent psychiatric facility. As a result, only 50% (191 patients) of adolescents receiving psychiatric hospitalization were treated in that special facility. The other 50% received treatment in mixed wards with adults. In some prefectures there is no special facility or ward for adolescents.

148. The Medical Observation Law guarantees that each patient will be treated in a private room, which is a great improvement over the conditions of other patients. However, all patients hospitalized under this law are treated in the same locked ward. This means that acute patients are under the same conditions as patients who are receiving social rehabilitation. This is very different than similar treatment in other countries where distinctions are made in the conditions of those in the acute phase of their treatment and those who are receiving social rehabilitation leading to their discharge.

The Death Penalty

Questions to the Government

149. The Human Rights Committee recommended in the Concluding Observation, that the government should “take measures towards the abolition of the death penalty and that, in the meantime, that penalty should be limited to the most serious crimes, in accordance with article 6, paragraph 2, of the Covenant” (para.20 of the Observation), however, why are the number of death penalty sentences increasing recently?

150. The Human Rights Committee also recommended that “the conditions of detention on death row be made humane in accordance with articles 7 and 10, paragraph 1, of the Covenant”. What measures have the government taken to improve conditions of detention on death row?

Current Situations and Our Concerns

151. The government report says “application of the death penalty for individual cases is made carefully and strictly based on the standard established by a Supreme Court judgment” (para.146 of the government’s report³⁰) however the number of death sentences is increasing significantly these days shown as infra. In fact, the similar cases which had previously been sentenced to life have been sentenced to death recently.

152. Concerning the background of increase in the death sentence, more defendants have never appeal or dismissed the appeals which their defendant lawyers carried out. The description of the government’s report (para.147 of the government’s report³¹) is different from the reality for the following reasons: there is no system to make appeals compulsory when the defendant would receive the death penalty; the possibility to start a review trial is excessively small. There is no effective measure to prevent wrongful death sentence and execution in the Japanese criminal justice system.

Statistical Data

153. The number of death sentences and executions:

	The number of executions under the death penalty	The number of sentenced to death conclusively	The number of sentenced to death at the first trial	The number of death row prisoners at the end of the year
1993	7	7	4	56
1994	2	3	8	57
1995	6	3	11	54
1996	6	3	1	51
1997	4	4	3	51
1998	6	7	7	52
1999	5	4	8	50
2000	3	6	14	53
2001	2	5	10	55
2002	2	3	18	57
2003	1	2	13	56

³⁰ See Appendix I.

³¹ See Appendix I.

2004	2	14	14	66
2005	1	11	13	77

* Annual Report of Statistics on Prosecution, Annual Report of Judicial Statistics, and Annual Report of Statistics on Correction

Article 3

Questions to the Government

From the perspectives of preventing “refoulement”:

154. What kinds of systematic measures do you provide for asylum seekers (esp. who are detained) to access lawyers right after rejection of their appeal in administrative procedure.
155. Is state-funded legal aid available?
156. Through the asylum procedure, especially judicial procedure (it takes about 2 to 4 years including high court), how are the asylum seekers livelihoods secured either by work permit or providing financial assistance.
157. Why did Japanese Officials visit asylum seekers places of origins in Turkey with military police, in 2004 and share the fact of their asylum application?
158. In considering complementary forms of protection, how do you interpret and set up the guidelines of “under certain circumstances to be permitted stay,” (Immigration Control and Refugee Recognition Act, Article 61-2-2-2) in terms of interpreting Article 3 of CAT ?

Current Situations and Our Concerns

159. The 2005 Amendment on (article 61-2-6 Section 3 of) the Immigration Law guarantees the right for applicants of refugee status not to be deported during the recognition procedures. However, there is a reported instance of which asylum seekers were deported despite the regulation which allows asylum seekers to file suits within 6 months of the rejection after administrative procedures.
160. **Access to judicial review is not necessarily guaranteed for all asylum seekers and sometimes they are deported right after the administrative procedure has ended.**
---- Asylum seekers have legal right to bring a lawsuit demanding for their refugee status. However, there is no legal aid and assistance financed from the national treasury, therefore, actually, not all asylum seekers can access to judicial review. According to the statistics data in 2006, 389 asylum seekers were rejected their application by the Immigration Bureau, the Ministry of Justice, and 59 cases were brought to the courts (same person might filed a suit several times since they have to make 2 litigations [1 is for cancellation for rejection of asylum claim, and the other is for cancellation of deportation order]). It is difficult to ensure that deportation (not voluntary repatriation) does not taken place within 6 months which is the time frame necessary to bring an action to the court after rejection of an appeal. The case infra represents such a case. Therefore, repatriation before 6 months should be consulted with international organizations in order to assess, if it is voluntary.
161. **Asylum seekers’ data are shared with governments of their origin.**
---- Since June 22 the new Immigration law went into force, and it is officially written that information of applicants/asylum seekers will be shared with foreign governments including the one the asylum seeker who is applying for refugee status, is from. This makes the personal data and the fact that he/she applied for refugee status shared with the government of his/her origin, which further creates a risk of persecution.
162. **Asylum seekers are not allowed to legally work or to obtain public assistance making it difficult for them to sustain life.**
---- During the judicial procedure, asylum seekers are not qualified as any resident status, nor permitted to work. Moreover, there is no public assistance for life. It usually takes several years to complete judicial

proceedings, which makes it so hard for them to sustain life without any aid. This is not ensuring the principle of non-refoulement. The minimum standard of life should be guaranteed and work permits should be given during the trial.

163. Complementary forms of protection and its detailed standards are not clearly written and a concrete description of Article 3 is not stated.

---- Since the amended 2005 Immigration Act, even if a refugee application is rejected, when there is “under certain circumstances to be permitted stay,” (Immigration Control and Refugee Recognition Act, Article 61-2-2-2) they are granted the right to stay. However, there is no clear statement on qualification, and how many persons who had been rejected their refugee application could be permitted this kind of status in fact is not clearly disclosed in official statistics, since the disclosed number includes the duplication. There is a need for regulations to be written clearly in order for the intent of the Article 3 of the CAT to be reflected in the law.

Related Cases

Case Example of Deportation Right after the Administrative Procedure Ended Against Their Will:

164. Kurdish asylum seekers were deported on the same day of the rejection on appeal (the end of the administrative procedure) on January 27, 2006. According to their attorneys, they were given the papers which explained that they could file a suit within 6 months, but were not allowed to contact their attorneys, and deported against their will. (February 1, 2006, Tokyo Shinbun News Paper)

Article 4

The Penal Legislation and Practice over Torture

Question to the Government

165. Why has the number of cases of guilty verdicts on charges of crimes under article 194-196 of the Penal Code been so few? (cf. para.105 of the government's report³²)

Current Situations and Our Concerns

166. Although articles 194 to 196 of the Penal Code may be applicable to aggravated offence categories including torture by public officers, it is rare to impose these punishments as seen in para.105 of the government's report.

167. The government's report says "Any person who commits an act of torture, including an attempt to commit torture, an act which constitutes complicity or participation in torture, is punishable under the Penal Code and other criminal laws for various offences and their complicity" (paras.17, 31 and 32³³). However, even if the case is punishable as an ordinal type of offence, such as violence, injury, and others, the government's report doesn't show the specific statistical data concerning how many public officers have been prosecuted and sentenced by charging them with offences which result from acts of torture, and also to what extent in public officers' cases the gravity of the offences were taken into consideration at prosecution and in court. Thus, it will be difficult to assess whether implementation of the Penal Code and other criminal laws fully meets the requirements of the Convention in practice.

168. Furthermore, we can raise some points which are undefined in relation to Article 194 to 196 in the government's report as follows:

169. Articles 194 to 196 of the Penal Code are applicable only to certain public officers, i.e. "a person performing or assisting in judicial, prosecution or police functions" or "a person who is guarding or escorting another person detained or confined in accordance with laws". It seems to be narrower than "a public official or other person acting in an official capacity" under Article 1 of the Convention. For example, whether or not all types of officials such as the Self Defense Forces, immigration detention centers, and doctors or nurses of psychiatric hospitals can be included in the above terms is unclear.

170. According to Article 4 of the Penal Code, only "Japanese public officials" are punishable under Article 194 to 196. If the suspects of the acts of torture are foreign national public officers, they can not be charged with aggravated offences, but can just be punished by charging them with other ordinal types of offences, such as violence, injury, and others. Thus, it doesn't seem to meet the requirement of Article 4 paragraph 2 of the Convention, which says "make these offences punishable by appropriate penalties which take into account their grave nature" (See also infra the paragraph about Article 5 to 9).

171. We have received some reports of cases involving staff of private psychiatric hospitals (most hospitals are under private management in Japan) or employees of private companies who work for immigration detention facilities. But whether or not these kinds of persons are punishable under articles 194 to 196 is uncertain from the government's report. In addition, privatization of prisons is also progressing in Japan, and staff from private companies who work in public detention places will be one of the points to be discussed.

172. Although the government's report says that "an attempt to commit torture, an act which

³² See Appendix1.

³³ See Appendix1.

constitutes complicity or participation in torture, is punishable”, whether or not “acquiescence of a public official” under Article 1 of the Convention is included in the above crime categories is also undefined.

Statistical Data

173. The number of suspects prosecuted or not prosecuted under articles 194, 195 and 196

Article 194 (Abuse of Authority by special public officer [incl. causing death or injury thereby])

Year		1999	2000	2001	2002	2003	2004	2005
(1) Prosecuted	Total number	0	0	0	0	0	0	0
	Request of trial proceedings	0	0	0	0	0	0	0
	Request of summary order	0	0	0	0	0	0	0
(2) Not Prosecuted	Total number*	30	110	109	87	88	145	140
	Suspension of prosecution	0	1	0	0	1	0	0
	Lack of suspicion	5	31	17	5	3	16	27
	No suspicion	15	47	72	59	63	82	88
	Not applying any offence	10	27	20	23	21	47	25
Percent of Prosecuted Suspects (1)/(1)+(2)		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Article 195 (Violence and cruelty by special public officer)

Year		1999	2000	2001	2002	2003	2004	2005
(1) Prosecuted	Total number	4	7	6	2	0	3	4
	Request of trial proceedings	4	7	6	2	0	3	4
	Request of summary order	0	0	0	0	0	0	0
(2) Not Prosecuted	Total number*	273	222	211	211	243	379	384
	Suspension of prosecution	3	9	7	20	6	8	5
	Lack of suspicion	52	34	57	51	59	86	72
	No suspicion	208	148	121	95	130	254	228
	Not applying any offence	10	31	26	35	48	30	79
Percent of Prosecuted Suspects (1)/(1)+(2)		1.4	3.1	2.8	0.9	0.0	0.8	1.0

Article 196 (Violence and cruelty by special public officer Causing death or injury thereby)

Year		1999	2000	2001	2002	2003	2004	2005
(1) Prosecuted	Total number	0	1	0	21	4	0	0
	Request of trial proceedings	0	1	0	21	4	0	0
	Request of summary order	0	0	0	0	0	0	0
(2) Not Prosecuted	Total number*	84	115	114	141	212	224	279
	Suspension of prosecution	3	5	8	7	7	3	1
	Lack of suspicion	35	31	38	36	74	57	49
	No suspicion	44	58	49	69	80	136	186
	Not applying any offence	2	21	19	29	51	28	43
Percent of Prosecuted Suspects (1)/(1)+(2)		0.0	0.9	0.0	13.0	1.9	0.0	0.0

Based on "Annual Report of Statistics on Prosecution for 1999-2005 (Ministry of Justice)"

* This total number includes other reasons than those below.

Articles 5-9

174. As the government's report mentioned (paras.33-54)³⁴, Japan can establish its jurisdiction on the suspects who committed certain offences in foreign countries. There are some legal provisions for detention and extradition of criminals and providing of international assistance in investigation. However, as we explained supra about Article 4, the Japanese Penal Code which is applicable to torture cases applies only to certain types of Japanese public officers. Accordingly, the government and Japanese society tend to consider acts of torture less serious. We can see this tendency from the treatment of the former president of the Republic of Peru, Alberto Fujimori who stayed in Japan from 2000 to 2005.

175. Fujimori was suspected of massacres and abductions using his secret army during his presidency, and in 2003 the Peru government requested the Japanese government to extradite him on grounds of international legal standards including the Convention against Torture. Survivors and the families of victims also urged his extradition. However, the Japanese government rejected these requests because Fujimori was deemed a Japanese national and a domestic law prohibits extradition of its own citizens to foreign countries. Additionally, the government didn't move forward with the investigation process. This fact is an important issue which has a possibility of violation of the Convention.

³⁴ See Appendix1.

Article 10

General Issues

176. Since 1995, there have been some efforts to promote human rights education to law enforcement officers in the wake of the resolution on “Decade for Human Rights Education” adopted by the United Nations. In particular, we can see some developments on human rights education practices to officers of prisons and immigration detention centers in recent years.

177. However, we are skeptical about the effectiveness of the current education programs. Most programs include only one-way lectures given by senior officers in the same governmental agency. There are more examples than before in which they invite speakers, such as academics and NGO members from outside of the agency, but they are limited. Additionally, lectures are usually about only general ideas, and give the same ideas to all kinds of professionals. We think that more specific human rights education which is tailored for the specific types of public officers should be given.

Mental Health Institutions

Questions to the Government

178. Concerning paragraph 70³⁵ of the government’s report: The Training of Designated Psychiatrists, does the government directly supervise and approve the curriculum for the training of designated psychiatrists?

179. Moreover, does the government require that the curriculum comply with the international standards for the protection of human rights, and that this topic is afforded enough time in the course of the curriculum such that designated psychiatrists will be adequately trained?

³⁵ See Appendix1.

Article 11

Police Detention Cells and Prisons

Questions to the Government

180. How will the review of the New Law be carried out, 5 years after the enforcement of the law?

181. What are the positive aspects of the New Law for abolition and prevention of torture and other ill-treatment and punishment?

A. Police Detention Cells

Current Situation and Our Concerns

182. Concerning “interrogation rules” under article 11 of the Convention, even after a suspect is brought before a judge, he/she is usually supposed to return to a police detention cell (usually in a police station) not to a detention center administered by the Ministry of Justice. Almost all suspects are detained in this place, so-called “Daiyo Kangoku” or substitute prison for 23 days at the maximum, until they are indicted by a prosecutor. During these days, police officers and prosecutors can interrogate the suspect, almost freely.

183. There is no limitation for interrogation at a police station and especially, the suspect who denies the charges or keeps silence is likely to be interrogated until midnight. In that case, police officers sometimes don’t make any record of the interrogation during the suspect’s denial. In addition, the records of interrogation often have been switched or altered.

184. There is no system for recording interrogation by police in Japan now, thus, no one can review whether the proceedings had been carried out adequately or not. Accordingly, we reject the government’s comment saying that “the interrogation rule ...are systematically reviewed by the relevant organizations, and revisions are made to relevant regulations as necessary” (para.76)³⁶ In fact, we have received many reports such as coerced confession caused by mental torture including threat and influence peddling, and physical torture including assault and sexual abuse.

185. The Human Rights Committee was “deeply concerned about the fact that a large number of the convictions in criminal trials are based on confessions”. And it “strongly recommends that the interrogation of the suspect in police custody or substitute prisons be strictly monitored, and recorded by electronic means” in the Concluding Observation of 1998 (para.25 of the Observation). Members of NGOs and the Japanese Federation of Bar Associations have continued to urge the governments to introduce the recording system during interrogation of suspects, however the government mostly shows a negative attitude on this. Recently, the head of the Supreme Public Prosecutor Office suggested that recording system would be introduced partly during their interrogation of suspects, but which cases will be recorded is depending on the prosecutors’ discretion and the purpose of recording might be for only prosecutors’ advantage. Then, this suggestion will be not only inadequate but also be an obstacle for the defense of suspects.

186. Concerning “the supervision and direction at police detention cell” mentioned in the government’s report (para.79)³⁷, “regular inspections of police detention cells” mean inspection by the same governmental body. This system is regulated not by law but by administrative rules. Although the same system will be regulated by the New Law which will go into force by next Spring, we think that it might not be an effective measure to prevent torture.

³⁶ See Appendix I.

³⁷ See Appendix I.

Related Cases

187. The Existence of a Secret Manual for Interrogation to Encourage Forcing Confession

In April 2006, a press published a paper including a manual to interrogate suspects, which had been leaked accidentally from a computer of a police officer working for the Aichi Prefecture Police. This manual describes police officers' attitudes when they interrogate suspects. It includes some descriptions which encourage officers to break up suspects who denied their charges, for example, "Once you come into the interrogation room, you must not get out until obtaining a suspect's confession" and "The suspect who denies his/her charge must be interrogated morning till night"(for the purpose of weakening the suspect). This manual also encourages interrogators to control suspects' liberty on a 24-hour basis in order to exploit to obtain suspects' confession by breaking them up.

The manual is presumed to be used for training of police officers according to other documents leaked at the same time, and the government did "not" deny its existence during a session of the Diet. We consider that what the manual says is similar to situations which have been reported to us, and police officers have learned it as a legitimate method to obtain a suspect's confession through means of long-time interrogation resulting in exhaustion of the suspect.

B. Prison

Current Situation and Our Concerns

188. Correctional institutions, rules, instructions, and practices for treatment of prisoners are showing some progress these days including the New Law. Especially as to communication with outside, disciplinary procedure, complaints system, and establishment of the so-called "the Board of Visitors for Inspection of Penal Institutions", we can see positive aspects. However, there are many limitations on prisoners' liberty and rights. Since the New Law is supposed to be reviewed 5 years after the date of enforcement, the government should record, save, and disclose related factual data for an extensive discussion (as much as possible with no violation of inmates' privacy).

Mental Health Institutions

Questions to the Government

189. Related to seclusion: The Mental Health Act allows for 12 hours of seclusion prior to review by a Designated Psychiatrist. Why is the restriction of behavior so long?

190. The general medical law allows for the number of psychiatrists to be only 1/3 the required number of other physicians in hospitals for other medical specialties, and it allows for nurses to be 2/3 of nurses in other medical specialties. Why is there a difference in staffing requirements between psychiatry and all other medical specialties?

Current Situations and Our Concerns

191. In the 1987 the former Mental Health Act³⁸ was reformed. Then, in 1999 the Mental Health Law was changed to include welfare issues, and became the Mental Health and Welfare Act. Subsequently, other minor changes and additions were made to the law. This continual review and revision of the law mostly has been positive, and should be encouraged to continue in the future.

192. Concerning paragraph 92³⁹ of the government's report:

This law differentiates between two types of involuntary hospitalization. Article 29 requires that two designated psychiatrists examine the patient and make hospitalization decisions. By contrast in Article 33 hospitalizations, which are the vast majority of involuntary hospitalizations, families are designated as making hospitalization decisions.

In 2005, involuntary hospitalizations represented 35.5% of total hospitalizations. Article 29 hospitalizations were only 1% of these. The vast majority of Article 33 hospitalizations (34.4%) are at the consent of family members. However, many of these hospitalizations are recommended by psychiatrists, with families encouraged to consent. In most Article 33 hospitalizations the families accede to the recommendations of the designated psychiatrists. Because of the nature of the traditional role of authority in Japanese society, this amounts to a kind of coercion in the decision to hospitalize. Thus, in fact the designated psychiatrists are making the decision to hospitalize in both Article 29 and Article 33. This is especially problematic on Article 33 hospitalizations: They often include seclusion, and thus again family agreement avoids legal responsibility and potential judicial review.

193. Concerning paragraph 94⁴⁰ of the government's report:

The Law on the Medical Care and Observation for Mentally Incompetent Persons who Committed Serious Harm on Others (Medical Observation Law) was implemented in July 2005. This law requires review by a judge and a mental health judge (psychiatrist), but allows for two months of hospitalization before this review. This two month period has problems that have already been identified. However, there is an additional problem. It is possible to convert a patient from an Article 29 hospitalization to a Medical Observation Law hospitalization, and when this is done, it allows for an additional two months of involuntary hospitalization for forensic report before Court review. It is potential violation of patients' rights that the law did not anticipate.

194. There is another problem related to the review of treatment and patients' condition. The Mental Health Act created no mechanism for independent examination and assessment of patients' rights and possible abuse. The new Medical Observation Law has replicated this fundamental problem.

³⁸ The preliminary report mis-cited this as 1997.

³⁹ See Appendix 1.

⁴⁰ See Appendix 1.

Article 12

Police Detention Cells and Prisons

Questions to the Government

195. The government's report says "the competent authorities" including police conduct an investigation "when there are reasonable grounds to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed" (para.98)⁴¹. Especially, when the suspect of torture act is a public officer such as a police officer, is there any special measures to take for the purpose of prompt and impartial investigation?

196. Can "the Board of Visitors for Inspection of Penal Institutions" established under the New Law investigate when they suspect the existence of torture in prison? (Do they have any authority to do so?)

A. Police Detention Cells

Current Situation and Our Concerns

197. The government's report describes only general information on the function of the Japanese police organization (para.8)⁴². They should present to the Committee the specific cases in which the police proceeded with prompt and impartial investigations on the torture or other ill-treatment cases of which the suspects/perpetrators were the police officers. We think that the police organization can not be a competent authority to proceed with an impartial investigation on cases which involve police officers.

Related Cases

198. Wakayama Higashi Police Station Case

In April 2004, in a cell at Wakayama Higashi Police Station, a male detainee died caused by asphyxia after a restraint instrument covering his mouth to prevent roaring was attached. This suspect seemed to scream and yell, then, his mouth was covered and his body was restrained with a body-suit and nylon handcuffs. Moreover, he was covered almost the entire length of his body (from his forehead to his foot) with a blanket and left alone for a long time.

Regarding this case, 3 police officers as perpetrators were prosecuted without their arrest and sentenced to fines of 500 thousand yen (about 3,200 EURO on March 22nd), and a head of the Wakayama Higashi Police Station and other 2 officers were given a disciplinary warning or admonition as their supervisors. The bereaved family filed a suit seeking for fact-finding and compensation and it is pending now. In March 25th, 2005, in Fukaya Police Station, Saitama Prefecture Police, a suspect came from Thailand died while his body was restrained with a body-suit. It was said that autopsy is planned to be carried out, but no result of the investigation has been made public until now.

Even concerning the cases involving police officers, we have only the system that the cases are supposed to be investigated by the police themselves. Then, there is virtually no competent authority to carry out a prompt and impartial investigation on the torture cases.

⁴¹ See Appendix I.

⁴² See Appendix I.

B. Prison

Current Situation and Our Concerns

199. During the process to investigate and examine the Nagoya Prison incidents (cf. paras.14-15 of this report), it has been realized that any investigation system and practice in prison have never worked effectively. Especially, concerning death in prison, lack of medical examination to confirm the existence of torture, sloppy medical records and lack of effective autopsy system must be improved. Although the New Law introduced “the Board of Visitors for Inspection of Penal Institutions” system, they don’t have any authority to investigate cases in which they are suspicious of torture or ill-treatment by themselves.

Related Cases

200. Nagoya Prison Cases (especially about investigation of the cases)

After a series of incidents were published by press, amid mounting criticism by society, the Ministry of Justice organized a team which consisted of the ministry’s officials to investigate the facts and background factors. Then, in 2003, the Correctional Administration Reform Council (members came from academic, legal profession, journalism, doctors, community groups) was organized in order to examine some issues to reform Japanese prison legislation and practices (para.82⁴³ of the government’s report). We welcome that the government has taken these measures. Because the investigation by the government’s team and the examination by the Reform Council have brought forth certain information about prison issues which had been hidden behind prison walls to light, and the prison reform including enactment of the New Law are making progress.

However, these achievements are mostly owed to those outside of the Ministry including the Diet members, lawyers, and NGO members, and most information, especially, what we really need to know for reform has been hidden even now. Therefore, we urge the government to take prisoners’ human rights issues seriously, and take adequate measures including prompt and impartial investigation and disclosure of related information. We also urge them to establish an independent body which is authorized to investigate promptly and impartially.

⁴³ See Appendix 1.

Article 13

Independent Authority to Investigate Complaints of Human Rights Abuses

Question to the Government

201. After the Concluding Observation by the Human Rights Committee in 1998 which raised concern about the lack of independent authority to deal with complaints from detainees, have the government taken any measures to improve this issue?

Current Situations and Our Concerns

202. Under articles 12 and 13 of the Convention, when there are reasonable grounds to believe committal of torture, independent bodies are necessary as the government's duty. A remarkable characteristics of human rights violations during detention in police custody is that it occurs behind closed doors. To make the fact of violation public, an independent body from the government having the authority to step into institutions, interview detainees and officers, and access any kinds of documents, is necessary. The government presented the bill relating to the establishment of a body for redress of human rights violations to the Diet. This bill provides that the body is under control of the Ministry of Justice, therefore, the body is short of independency, and has a provision to limit the liberty of the press. Thus, many human rights NGOs were against this bill. Moreover, politicians from the ruling parties also have come to be against it for different reasons from that of human rights NGOs, and it seems to become difficult to be enacted.

Police Detention Cells and Prisons

A. Police Detention Cells

Question to the Government

203. Does the government have a plan to establish any independent bodies to deal with complaints from detainees in Police Detention Cells? If they don't have any ideas about it, what is the obstacle against it?

Current Situations and Our Concerns

204. There is no effective and independent complaints system regarding torture or ill-treatment in police detention cells.

205. Under the New Law which will be enforced by Spring of 2007 (the amended Prison Law), a new complaints system will be established, but an independent body has not been introduced. There is no independent body to examine complaints for detainees in police detention cells.

206. Under the same law, "the Board of Visitors for Inspection of Police Detention Cells" will be established but we don't have enough information about the detail and whether it will be similar to the one in prisons or not.

B. Prison

Questions to the Government

207. Under the New Law, a new complaints system has been temporarily applied to prisons in Japan. How effective has this been in fact for these 10 months?

208. How does the government repute the work by the Advisory Committee for reviewing complaints from prisoners, which was temporarily established? What are the obstacles to establish any independent bodies to investigate or examine the complaints from prisoners?

Current Situations and Our Concerns

209. Through the process to investigate and examine a series of the Nagoya Prison incidents, the main problem about the complaints system and practices were brought to light. In fact, prison officers often blocked prisoners' petitions to the Minister of Justice and outside organs. Concerning the system of complaints to the Minister of Justice, if prisoners could present their petitions, the complaints could not reach the Minister as a more independent authority (they were dealt with by the officers of the Ministry) and rarely resulted in success.

210. Under the New Law, we welcome that the complaints system has been reformed, because the new provisions as follows are included into the Law:

---the authorities to deal with complaints⁴⁴ can withdraw provisionally the disposition by the warden/prison governor (however within discretion of the authorities to deal with complaints)

---setting up a standard period for examination (the decision have to be made within 90 days as much as possible from the date of petition)

---definition of responsibility to examine and make decision on the complaints, and to notify the inmate of the results

---decision by the authorities to deal with complaints legally binds the warden/prison governor and it can withdraw the disposition, or the authorities themselves can take necessary measures to prevent recurrence of the violation.

211. Although we don't have enough information about its practice, we can raise concerns at this time. Firstly, the new complaints procedure is complicated and is not user-friendly. It has 2 different kinds of procedures, depending on what kinds of subjects the inmate wants to complain about. Inmates have to write the certain format for complaints and call an officer to send the paper to the authority. Moreover, the duration which inmates can petition is very short (within 30 days from a day after the disposition is notified), and inmates can not ask for help or representatives from outside (they only ask for help from prison officers).

212. Secondly, the range of the subject of the new complaints system is narrow. The subject on which inmates can ask for withdrawal or change are limited only to the certain type of disposition by the warden/prison governor including imposition of disciplinary measures, segregation, and relatively harsher limitation on prisoners' liberty. Inmates can not use a new complaints system about what they really need to be withdrew or changed, concerning things such as inadequate medical treatment by prison

⁴⁴ The authorities to deal with complaints from prisoners are the superintendents of the regional correction headquarters which is one of agencies of the Correction Bureau, and the Minister of Justice at the appeal stage. Roughly, prisoners can appeal to the Minister of Justice after their complaints are dismissed by the superintendents of the regional correction headquarters.

doctors/nurses, limitation on receiving goods from family and friends, and others.

213. Thirdly, even under the new complaints system, it is still the officers from the Correction Bureau, the Ministry of Justice, who examines prisoners' complaints. The Human Rights Committee was "concerned that there is no independent authority to which complaints of ill-treatment by the police and immigration officials can be addressed for investigation and redress" in the Concluding Observation in 1998. The independent authority to deal with complaints is necessary also for prisons. We can see some progress about this issue as follows, and urge the government to promote this achievement and reconsider an inadequate point.

214. As a result of the recommendation by the Correctional Administration Reform Council (see supra), since January 2006, the Advisory Committee for reviewing complaints from prisoners has been temporarily established. The Committee consists of 5 independent members including 2 professors, a lawyer, a doctor, and the director of the prison volunteers' organization, and they are reviewing some cases which were previously raised by prisoners and rejected by the authorities⁴⁵. They had examined 204 cases by July, 2006, of which 11 cases were decided to be re-examined by the authorities, and 3 cases were decided to be reasonable. Therefore, they seem to yield some results.

215. However, we have to raise a concern on this Committee in terms of independency. The Committee doesn't have its own secretariat, and officers from the Ministry of Justice are working for it. The Committee has no power to investigate the cases from the first, which means that can not directly interview prisoners and officers, and directly access any related documents.

Immigration Detention Institutions

Questions to the Government

216. Have you got any example of improvement by using a newly institutionalized complaint system on the Ministry of Justice regulation for treatment of detainees, which is corresponding to the amendment of immigration law adopted in November 2001? Please show examples of any of your efforts on improving the effectiveness of the complaint system defined in "the Treatment of Detainee Regulation" by the Ministry of Justice. (paras68, 86, 88, 117, and 119⁴⁶ of the government's report)

Current Situations and Our Concerns

217. Rights to Appeal: In November 2001, the "Regulation on the Treatment of the Detainees (decree of Ministry of Justice)" based on the Immigration Laws was passed.

218. The purpose of this regulation is to improve the treatment of the detainees by the immigration officers. According to this new system introducing the concept of submitting what it's called the "Appeal of Complaint". Detainees could file a complaint against any unsatisfactory treatment by the immigration officers within 7 days after the event happened to the Immigration Bureau authority via submitting the "Appeal of Complaint" which states their reason of discontent.

219. However, this new system - the "Testimony of Complaint" - is far from what one would consider as functional. According to the report by Asahi Newspaper; 2003 May 30th issue, there were 68 cases of complaints against violence and abuse by the immigration officers inside the detention facility (20 testimonies in year 2001, 33 testimonies in 2002, among 16 testimonies between January and March in year

⁴⁵ See supra note 44.

⁴⁶ See Appendix1.

2003, one case had been withdrawn).

220. When the complaint testimony gets issued, the director of the detention facility must investigate the case and come up with a decision either to make an effort of improvement or just simply drop the case by saying "insufficient evidence". Unfortunately, even if there was enough evidence to back the case, the Immigration Bureau would in either way finalize all the cases from the detainees as "insufficient evidence". As a result, there hasn't been any single improvement based on the complaint testimonies from the detainees. By taking a close look at the reasons of discontent among the detainees, there are: 5 cases of power abuse and assaults by the immigration officers; 12 cases of verbal insult, physical abuse and neglect (ex. treating them with contempt, serving food on the footwear, does not listen to any requests, breaks possession of the detainees such as a watch, etc.); and 8 cases stating discontent for the medical treatments inside the detention facility. There were some comments made from the detainees stating that they want to go back to their country which is outside the margin but there were many that are more serious. Such were: "received physical abuse from several officers" or "got hurt emotionally through verbal insults". They have also mentioned that even though there is a system of "Testimony of Complaint" and they write their issues down, there seems to be no follow-up and no one comes to talk about it. Therefore, there were 4 cases in which the detainees demands for improvement in such system and increase the number of workers that would take care of the problems faced by the detainees. Out of 68 cases which involves charges against physical abuse by the immigration officers, 23 cases were declared to the Ministry of Justice due to the objection against its denial, however; all 23 cases were dismissed.

Mental Health Institutions

Questions to the Government

221. How does the government evaluate the approved 6.4% requests to be discharged? Is this the number anticipated when the law was created?

222. How does the government evaluate the small number of requests for improved treatment compared to the large number of inpatients? Is the conclusion reached that this means that patients are satisfied with the conditions of their treatment?

223. Although the condition of patients is often stable, many times the PRB does not approve a request for discharge because the patient does not have a place to go. That is, the decision is made based on social conditions and the limitation of social resources, resulting in longer lengths of stay in the hospital. What policy does the government have for this situation and are there plans to change it?

Current Situations and Our Concerns

224. Concerning paragraph 122⁴⁷ of the government's report, a provision for the establishment of a Psychiatric Review Board (PRB) was created for the first time in Japan under the 1987 Mental Health Law (see below). It has not worked effectively.

225. In 2004, there were 330,000 psychiatric inpatients in hospitals in Japan. That year, there were 1,902 formal requests to be discharged (0.6% of total inpatients). The PRB accepted 122 of these requests (6.4% of total requests). However, only 1 or 2 of these accepted requests were actually discharged. The rest of the cases were converted to other types of hospitalizations, including Article 33

⁴⁷ See Appendix I.

and “voluntary” hospitalization. Additionally, there were 177 formal requests for the improved treatment. This includes various issues such as better food, more freedoms, improved conditions, etc. Only 16 of the 177 requests were approved. Moreover, no appeal mechanism exists for the cases that were not accepted, thus leaving no process for resolving disagreement.

Article 14

General Issues

Questions to the Government

226. How many cases were there in which the detainees in police detention centers, prisons, and immigration detention centers, and patients in mental health institutions filed lawsuits from 1999 to the latest year? And what were the results of these cases, including the amount of compensation for damage?

227. What does the government consider the obstacles for detainees and patients to call for compensation for damage caused by any violation in each institution?

228. Can the plaintiff who has been determined to be a victim of torture receive redress other than compensation including rehabilitation?

Police Detention Cells and Prisons

A. State Compensation for Victims of Torture during Police Interrogation

Current Situations and Our Concerns

229. Generally, the violence occurred during interrogation in closed room and there is no recording system there, and it is difficult for detainees to access independent medical professionals. Therefore, securing evidence of torture is almost impossible, and at the trial against the police, if the plaintiff could obtain some evidence, judges rarely admit the fact.

230. In Japan, there are no organizations such as rehabilitation centers for survivors of torture as seen in other countries. It is important to take measures for redress, which is not only compensation, but also to establish some rehabilitation centers supported by the competent authorities.

B. State Compensation for Victims of Torture in Prisons

Current Situations and Our Concerns

231. It is difficult for prisoners to win compensation for damage during their detention in prisons as follows:

232. Suing the prison officers and authorities will be the cause of retaliatory treatment such as solitary confinement. Inmates in prisons don't have a right to be present in the court for their litigation. Mostly, finding an attorney at law is not easy for inmates at the first stage. If they could not employ their own attorney, getting an award of compensation might be more difficult. Collecting evidence of torture and other ill-treatment will also be extremely hard, because most important evidentiary documents were held by the prison authorities (as the defendants). We know of some cases which their related documents were altered or missing. The plaintiff will have no or few witnesses, who are mostly officers or other prisoners and have difficulty giving testimony.

233. In addition, according to many experiences of lawyers who have dealt with many prison cases, judges, especially higher courts' judges, have a tendency to allow prison authorities to exercise wider discretion on inmates' treatment and they are reluctant to find responsibility to compensate for the

damages.

234. Furthermore, the statute of limitations (3 years) will be another obstacle especially for detainees to begin the legal process.

235. For foreign national inmates, the principle of reciprocity (para.128 of the government's report)⁴⁸ under the State Redress Law often virtually makes it difficult to receive compensation under judicial decision. This kind of limitation seems to be a violation of article 14 of the Convention and the provision of the Law should be abolished.

236. Concerning the positive aspect, in the case of sentenced prisoners, since May 2006 when the New Prison Law has been in force, some progress has been shown. Once, at the first stage of the litigation, a prisoner as a plaintiff could not meet his/her lawyer without being supervised and recorded by a prison officer belonging to the organ of the defendants. This practice will be changed and prisoners will now meet their lawyers in private.

Related Cases

237. An Iranian Prisoner Case of Violation in a Correctional Institution

An inmate, who came from Iran and was imprisoned in Japanese prison, filed a lawsuit for compensation from his damage by prison guards' violation. He tried to call for help to outside including the United Nations, lawyers, and human rights NGOs, but he couldn't. Then, after release, he filed a suit. The judgment by the Tokyo High Court, on August 31st, 2005, admitted the facts of violation which the plaintiff insisted, however they rejected the redress for the plaintiff because the statute of limitations had expired. The plaintiff appealed to the Supreme Court. His leg is suffering from severe thrombosis as an aftereffect of injury in prison until now. The judges didn't play their role adequately because they rejected his redress, nevertheless they realized the fact of violation.

Immigration Detention Institutions

A. No Compensation is Expected

Current Situations and Our Concerns

238. Generally, the detainees sent to the detention facilities should be deported so even if they get assaulted at the detention facilities, it is rare for these victims to obtain compensations from the Japanese government. There are a couple of cases where these ex-detained victims demanded state compensation by bringing their cases to the court. The chart indicates the list of cases we follow.

239. The detention facilities are like a "hidden room" where it's hard to know what's going on inside, especially since all the detainees would sooner or later get deported and leave the place. In such an environment, cases that have demanded national compensation is just a tip of the iceberg. As shown on the chart below out of 8 confirmed cases: 2 cases have obtained aid due to the loss of the national side and 1 case won by charging against the security company of the Landing Prevention Facility; summing up to only 3 cases which were able to obtain some assistance.

240. There are 2 main reasons why it is difficult to obtain state compensation at the court in the cases of violation of human rights inside the detention facilities. First, there are no third party checking inside the

⁴⁸ See Appendix1.

detention facilities; therefore, it is difficult to submit any evidence from the defender's side. Second, there is a lack of understanding of human rights among the judges as well as carelessness in acknowledging the truth.

241. Also, the Japanese government emphasizes the principle of reciprocity which is stated in article 6 of State Compensation Law.

Related Cases

242. The court cases on Treatments Inside Immigration Detention Facilities Demanding for National Compensation

Date of Incident	Case	Regional court	High Court
May 1993 Tokyo Immigration 2nd Bldg.	Iranian man, physical abuse, locked up in the isolated room for long term	Plaintiff won the case (partial) charges against physical abuse lost	Plaintiff won the case (partial) charges against physical abuse lost
June 1994 Osaka Immigration Detention Center	South Korean man, physical abuse	Plaintiff lost the case	Plaintiff lost the case
Nov. 1994 Tokyo Immigration Bureau	Chinese woman, physical abuse during the interrogation	Plaintiff won the case	—
Aug. 1997 Tokyo Immigration 2nd Bldg.	Iranian man, Mr. Mir excessive violence resulting in death	Plaintiff lost the case	Dismissal of an appeal, Plaintiff lost the case
1997 East Japan Immigration Center	Kurdish man, was not allowed to get outdoor exercise	Plaintiff won the case	Plaintiff lost the case
June 2000 Narita Airport Landing Prevention Facility	Tunisian man, entry denied, physical abuse, trial held in civil court including national compensation	Civil court won, Lost the national compensation	—
May 2001 West Japan Immigration Center	Nigerian man, physical abuse & sexual harassment	Plaintiff won the case	Plaintiff won the case
2002 West Japan Immigration Center	Ethiopian man, insufficient medical treatments	Plaintiff won the case (a fault made by the immigration medics got accepted)	Dismissal of an appeal, Plaintiff lost the case
April 2002 West Japan Immigration Center	Chinese man physical abuse	Plaintiff lost case	Pending
July 2003 East Japan Immigration Center	Pakistanese man, physical abuse, medical misconduct	Pending	
April 2004 East Japan Immigration Center	Turkish man, physical abuse, medical misconduct, case on demanding for the national compensation	Pending	
May 2004 East Japan Immigration Center	Iranian man, physical abuse, medical misconduct, case on demanding for the national compensation	Pending	

243. Case Regarding Mr. Mir's Death Caused by Excessive Assaults

On August 1997, the sudden death of an Iranian man named Mr. Mir took place in the second building of

the Tokyo Immigration Bureau. The Akabane Police Dept. investigated the case and suspected 8 immigration officers of excessive violence which caused Mr. Mir's death. However, the District Public Prosecutor's Office did not prosecute this case. The photographs taken at the hospital where Mr. Mir was sent after his death show numerous wounds and marks around his wrists and feet indicating that he had been handcuffed and tied up. Apparently, this would indicate that Mr. Mir had been severely beaten up. In October 1998, Mr. Mir's family decided to prosecute the Japanese government in order to gain National Compensation. The following testimonies given by the immigration officer as a witness had been settled during the trial.

"Mr. Mir was taken to a different room, since one night he got caught using a lighter something which was prohibited during the late night hours. Five officers were in charge of this case. Inside the room where Mr. Mir was brought into, his wrists were tied at his back with metallic handcuffs fixed by leather cuffs. Both his feet were tied together with a rope. His handcuffed wrists and rope-tied feet were then tied together by another rope; curving his body backward. Then they rolled Mr. Mir inside a blanket and tied a rope around it. Mr. Mir was taken to a narrow isolation room where he laid on the floor. At one point Mr. Mir tried to sit up; he then fell, hit his head on the wall and killed himself."

It is extremely difficult to accept this testimony given by the immigration officer, stating that no one had witnessed the exact moment of Mr. Mir's death, knowing that within the small isolation room where there were supposedly five officers at the time and Mr. Mir was lying on the floor with his whole body strapped. One would find it impossible to imagine anyone in such condition, with both their arms and feet strapped together and rolled up in a blanket, manage to hit their head on the wall and die.

Later on, a testimony given by an Iranian witness who was there in the same detention facility at the time was obtained. His testimony was, "His death was caused by assaults from the immigration officers." He also described that the immigration officers carried Mr. Mir and banged his head against the wall. In March 2003, based on the Iranian witness' testimony, lawyers appealed to Tokyo District Public Prosecutor's Office and Investigation Committee to revise the disposition of not prosecution of 8 immigration officers in charge of Mr. Mir's death. As a result, the Investigation Committee found this case as "suitable for revision". However, the investigators dropped the case and did not continue this case.

Nevertheless, Mr. Mir's family went to court and demanded national compensation but his family lost both the trials against the District Court and the Supreme Court. In the end, the Japanese Administration of Justice finally did not reach out their hands for justice regarding the incident of Mr. Mir, an Iranian man's death most likely caused by the Japanese civil officers.

B. There Is No Rights to Receive Any Type of Rehabilitation Treatment

Current Situation and Our Concerns

244. There are no rights guaranteed to obtain any sort of rehabilitation treatments to heal the wounds caused by physical abuse by immigration officers. Every action made by immigration officers is considered to be legitimate so that most abusive cases are not considered to be any violence and physical abuses. Therefore, there is no necessity of any type of rehabilitation treatment is not guaranteed. The following case, a detained Pakistani man's case, shows a typical example of medical treatment condition inside detention facilities.

Related Cases

245. Abandoned Without Any Treatment After being Beaten

Mr. A, a 56-year-old Pakistani man, was severely beaten by a couple of immigration officers in the East Japan Immigration centre after he refused to sign to accept Mr. A's deportation order. The immigration officers physically abused Mr. A by pushing his head forcibly on the desk; swung his head violently in

every direction; and struck the backside of his neck.

After this incident, Mr. A started to feel the pain and numbness around his neck and his left arm. He claimed his symptoms and then he got sent to a hospital located inside the detention centre six times, but the doctor never even touched him and gave him no diagnosis for a long time. Meanwhile, Mr. A's symptoms got worse and he was finally taken, after one month, to a hospital outside of the detention centre where he took MRI (magnetic resonance imaging). As a result, they found compression on his left cervical nerve (spondylosis) and also at his narrow inter-vertebral space.

Mr. A began preparing for taking his case to the court. However, one day in June 2004, around 30 or 40 immigration officers came into Mr. A's room suddenly and took him to a different, bigger room where he was then forced to accept to leave Japan. Then Mr. A was handcuffed and was taken to Narita Airport where he got deported.

Mr. A's supporters, who were preparing for bringing his case to the court, say that this is obviously an intention to deter to bring his case to the court by the Immigration Bureau. (December 2004 edition of "Medical Asahi"; Documents from a December 27th 2005 press conference by lawyers)

Article 15

Question to the Government

246. How many criminal cases excluded the defendants' confessions from the admissible evidences because the statement had been obtained as a result of torture?

Current Situations and Our Concerns

247. As the government report describes, the Japanese Constitution and the Criminal Procedure Law provide that confessions which were made involuntarily shall not be admitted in evidence (paras.133 and 134 of the government's report)⁴⁹. However, there have been extremely few cases in which the judges decided the statement had been made involuntarily under these provisions and excluded from the admissible evidences in criminal trials.

248. Since we don't have any electric recording system during interrogation at police station, what defense lawyers can do to prove their clients confessed involuntarily is only to examine the defendants and interrogators (police officers and prosecutors) at the proceeding. To prove effectiveness of the article 15 of the Convention, implementation of recording system by electric devices during interrogation is a necessary measure as the Human Rights Committee recommended in the Concluding Observation in 1998.

⁴⁹ See Appendix1.

Article 19

Question to the Government

249. Why was the government's report submitted to the Committee after expiration of the due date ? And the reason that the report covers only information from 1999 to March 2004 in spite of new legislation having been enacted or went into force after that period, should be made clear to the Committee.

Current Situations and Our Concerns

250. Despite Japan's accession of the Convention was 1999, the submission of the initial report to the Committee was delayed to a large extent. Moreover, the report only covers information during 1999 to March 2004. As supra of this report, important legislative and practical changes have occurred after this period, then, the government should make efforts to add new information to the report.

251. Two "consultations" with NGOs were carried out, before the submission of the Governmental report. However, these consultations took the form of each side stating its position. There was no actual discussion. Moreover no document was made available before or during consultations and it was completely impossible for the NGO side to know what the government was preparing and intending to publish in the report. NGOs are frustrated that the process appears to be little more than window dressing, the appearance of the consultation but with no substance.

Article 22

Current Situations and Our Concerns

252. The government says that "(the individual communication) system needs careful examination as it may cause problems in relation to the judicial system including the independence of the judiciary guaranteed by the Constitution" and this same argument on the First Optional Protocol (which provides for the individual communication) of the ICCPR has been repeated for long a time. Scholars and lawyers argued against this, the government's opinion.

253. In relation to this issue, we would like to add information about the Optional Protocol of the Convention Against Torture. Since 1999 when the Protocol was adopted by the UN, we NGO members have talked with the government and held some campaigns to promote the government's ratification, but little progress has been seen until now. As far as prison matters, the independent visiting bodies have been established since May 2006. These bodies are expected to develop into one of the National Preventive Mechanisms under the Protocol. Then, the International Preventive Mechanism can become more effective. We would like to know the government's intentions with regard to ratification or accession to the Protocol if any circumstances change.

[End of Alternative Report]