

Center for Prisoners' Rights Japan

**The Alternative Report on the Fifth Periodic Reports
of the Japanese Government under Article 40
of the International covenant on civil and political rights**

By Center for Prisoners' Rights Japan

September, 2008

The Alternative Report on the Fifth Periodic Reports of the Japanese Government under Article 40 of the International covenant on civil and political rights

Japan, 9th September, 2008

The Center for Prisoners' Rights Japan

The Center for Prisoners' Rights Japan (CPR):

The Center for Prisoners' Rights is a non-profit, non-governmental organization established in 1995, with the objective of improving prison conditions and prisoners' treatment in Japan to comply with international human rights standards. Our members include lawyers, academics, and human rights activists. The CPR is working with international NGOs such as Amnesty International, Human Rights Watch, Penal Reform International, International Federation for Human Rights and others, and together we have held many international human rights seminars and conferences in Japan.

The CPR is a part of the CAT Network and had sent a submission to the Task Forces¹ on 27th February, 2008.

Address: c/o KIKUTA LAW OFFICE, Raffine Ochanomizu #807,
3-28-13, Kanda Ogawa-machi, Chiyoda-ku, Tokyo, 101-0052, Japan
Tel&Fax: +81(0)3-3259-1558, E-mail: cpr@jca.apc.org

The Purpose of this Alternative Report

This alternative report on the fifth report of the Japanese government under the International covenant on civil and political rights was compiled for the purpose of rendering the additional information. And this is concentrated on the interested issues of the CPR. Because of our limited resources and experiences, this report focuses on issues concerning Article2 paragraph3 (a), Article6, Article7 and Article10 of the Covenant.

Contact Person about this Report is as Follows:

Emi Akiyama (Ms)

Fax: +81(0)3-3259-1558, E-mail: cpr@jca.apc.org

¹ <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CATNetworkJapan1.doc>
<http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CATNetworkJapan2.doc>

Contents

*the CPR refers to paragraph number / page

Background Information and Overview

- A. Harsher Punishment and Overcrowded Prison – Background of Torture and Ill-treatment 1-6/01
- B. Nagoya Prison Cases and Recommendation of the Council on Prison Administration Reform 7-10/02
- C. Positive Aspects and Concerns of the New Law 11-15/03
- D. Remained Issues under the New Law 16/04

Article 6

- A. Critical Situations Surrounding the Death Penalty in Japan 20-25/05
- B. Serious Problems on Communication with Outside 26-33/06
- C. Isolation 34-35/07
- D. Execution of Mentally Ill Prisoners 36-37/08
- E. Secrecy 38-42/08
- F. No Possibility of Commutation of Sentence 43-45/09

Article 2 paragraph 3 (a), Article 7 and Article 10

- A. Longer Solitary Confinement 46-54/11
- B. Disciplinary Measures / Punishment 55-63/14
- C. System for Investigating Complaints by Prisoners 64-80/16
- D. Death and Injury Cases Caused by Leather Handcuffs and Detention in “Protective Rooms” 81-90/20
- E. Medical treatment 91-103/21
- F. Long Imprisonment of Prisoners Sentenced to Life 104-112/23
- G. Violence against Prisoners 113-115/25
- H. Rape 116-121/26
- I. Treatment of Female Inmates during Pregnancy 122-126/27
- J. Overcrowding of Prisons 127-128/28
- K. Disclosure of Related Information 129/29

APPENDIX :

Conclusions and recommendations of the Committee against Torture² Concerning Prison (CAT/C/JPN/CO/1)

² CAT/C/JPN/CO/1

Background Information and Overview

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

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

2. 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 48.9% to 80,344 in 2006. This increasing trend still continued.

3. 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.

4. 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 and has lasted to be beyond 110% since 2002.

5. 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.

6. Obviously 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

7. 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 Prison¹ 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.

8. 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 7 of the Covenant.

9. 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. The Council issued recommendations for reform plans of Japanese prisons (mainly for convicted prisoners) to the Minister of Justice.

10. 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 adopted in the Diet in May 2005 and came into force in May 2006. In May 2006, the amendment of this law has passed the Diet 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 came into force in June 2007. Hereafter, both the new law which came into force sin May 2006 and its amendment is referred to as "New (Prison) Law".

¹ Nagoya Prison detains mainly sentenced male adult prisoners.

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* came into force
>>>(applicable to)>>> Sentenced Prisoners

---- the old Prison Law

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

July 2007 *the Law Concerning Criminal Institutions and the Treatment of All Criminal Inmates* came into force

C . Positive Aspects and Concerns of the New Law

11. For the prohibition of torture, the positive aspects² 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.

12. 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”. This development is expected to open the prison gates to the outside world, and help to prevent torture and ill-treatment. 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”. However, we have to raise a concern about the fact that many friends are not allowed to see inmates as the governor considers they don’t have necessary to see them and that visiting hours are limited because of overcrowding and lack of places for visits.

13. 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

² 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.

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.

14. 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 64 - 80 of our report).

15. 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 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

16. Even after the New Law has come into force, we especially raised concerns about four issues still remaining 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. (4) longer imprisonment of prisoners sentenced to life. We mentioned these issues in our comments about article 3(a), article 7 and article 10.

Article 6

Question to the Government

17. What measures to restrict the use of the death penalty have been taken since the last examination by the Committee in 1998?

18. How many capital cases have been finalized without trial at the appellate court?

What is the reason for the rapid increase in the number of executions in the recent years?

19. Is there a system which allows prisoners including death row inmates to access their medical records kept by prison medical authorities? If not, what is the reason for it?

Current situation and Our Concerns

A. Critical Situations Surrounding the Death Penalty in Japan

(a) Expanded Use of Death Penalty

20. In 1990's, Japan was repeatedly recommended by Human Rights Committee that Japan should reduce the number of offences punishable by death and limit the use of death penalty. Since then, the number of recognized cases of heinous crimes has continued to decrease and there has been no obstacle for Japanese government to follow the recommendations by HRC and limit the use of the death penalty. But, in 2000, the new capital offence, indiscriminate mass murder, was added and the number of capital offences increased from 17 to 18.

21. Number of death sentences, as well as long-term imprisonment including life imprisonment, has increased remarkably (See "Statistical Data" below). In 1990's, the average number of death sentences at the first instance court was 4. But for the last 8 years, the corresponding number is 14. Obviously public prosecutors tend to seek more harsher punishment than before, taking the advantage of voices of crime victims which strongly call for tough penal policy. Courts accordingly accept the prosecutors' argument and the criteria for the death penalty have been practically changed from that of the precedents. Nowadays in a case where life imprisonment or even fixed term imprisonment should have been sentenced years ago, death penalty tends to be sentenced.

22. Similarly, in 1990's the average number of annual executions was around 3, but in 2007, the number was 9 and after former Justice Minister Kunio HATOYAMA took his office, who expressed his strong support for the death penalty at his inauguration in August 2007 and said executions should be carried out automatically like 'belt conveyer', executions took place almost every two months and the total

of 13 people were executed by his order. Current Justice Minister also expressly supports death penalty and more executions are likely to be carried within this year.

(b) Defiance to International Community

23. On top of these expanded usage of death penalty, Japanese government has made it clear that it will never respect the recommendations made by international community regarding the death penalty, instead of just ignoring these recommendations.

24. In February 2008, Japanese government submit 'note verbale' to the Secretary General of United Nations, which shows strong opposition to the General Assembly's Resolution 62/149, entitled Moratorium on the use of the death penalty, together with other 57 countries. Furthermore, Japanese government intentionally failed to provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing the protection of the rights of those facing the death penalty, which is called on by the resolution. And in June 2008, at the session of the Universal Periodic Review by Human Rights Council, Japanese government said that Japan is not in a position either to consider granting a moratorium on executions or to abolish the death penalty (A/HRC/8/44/Add.1).

25. Now Japan is openly going against the international voices and this means Japan does not have a will to carry out its responsibility in the human rights area.

B. Serious Problems on Communication with Outside

(a) Lack of Confidential Communication between Lawyers and Death Row Inmates

26. In May 2006, Prison Law was totally revised and the New Prison Law entered into force in June 2007. The new law stipulates that the meetings of the death-row inmates must be attended by prison officials except when there are justifiable reasons for the meeting without them, like preparation for a lawsuit or other reasons for the protection of the inmates' rightful benefit (Article 121). Therefore it is legally possible for the official to attend the meeting between the inmate and his or her attorney for retrial, but during the discussion in the diet session, Justice Minister said that in principle this kind of meeting would be confidential.

27. However, after the enforcement of this new law, observers attended the all meetings for retrial nationwide. JFBA strongly demanded the Ministry of Justice to improve that situation. But it is still a routine that the officials attend the meetings and only few inmates are allowed to see their lawyers without presence of guards.

28. Also, this new law provides that all the correspondence between an inmate and outside people including his or her attorney for retrial should be censored. As for these restrictions on the access to lawyers, the Committee against Torture expressed serious concern, stating "the limitations imposed on death row prisoners concerning access to their legal representatives, including the impossibility to meet with them in private, while on appeal requesting retrial; the lack of alternative means of confidential communication and the lack of access to state defense counsel after the final sentence is handed down."

(paragraph 20).

29. Censorship on the letters exchanged between inmates and their legal representatives clearly violates article 14 paragraph 3 of the Covenant.

(b) Strict Limitation on Communication with Friends or Acquaintances

30. The New Prison Law relaxed the limitation on communication between inmates and persons other than family and lawyers. That is; (1) people who are considered to contribute to the inmate's mental stability can visit and correspond with the inmate, and, (2) when there is necessity of meeting, for example maintaining friendly relationship, and the meeting is considered not to cause any disturbance to discipline and order of the penal institution, it can be admitted by discretion of the authorities.

31. These criteria themselves are far from sufficient, since they leave wide discretion with the authorities and a judgment of whether someone contributes to inmate's mental stability or not also depends on the authorities. Even so, if the new provision was properly applied, considerable improvement would have been seen in the practices. Actually, however, restriction on the communication clearly against the new law is frequently seen.

32. The authorities of all the seven detention centers, which detain convicted death-row inmates, let the inmates submit the list of names of 5 persons they want to meet or exchange letters. Detention center authorities examine each person on lists and then about three of them are admitted for communication, although the new law does not limit the maximum number of the people. In case the conditions required by the new law are met, inmates must be allowed to meet or correspond with whoever they want to, regardless of the number of the people.

33. Therefore, the current practice means that detention authorities have created new rule beyond the law.

C. Isolation

34. The inhuman practice of isolation of death row inmates has been approved by the new law. Death row inmates are put into solitary confinement and not to have any contact with each other outside their cells (Article 36), which means isolation is principle.

35. However isolation of sentenced inmates in general is only admitted under the severe requirements (Article 76), because the new law itself recognizes that continuous isolation gives serious influence on the inmates' physical and mental conditions. The Committee against Torture expressed its concern, saying that "The principle of solitary confinement after the final sentence is handed down. Given

the length of time on death row, in some cases his exceeds 30 years". Treatment of this kind is inhuman and must be improved immediately.

D. Execution of Mentally Ill Prisoners

36. The Code of Criminal Procedure prohibits execution of the inmate in a state of insanity (Article 479 paragraph 1). However it is impossible to verify if it has been observed. Because even inmates themselves cannot get access to their own medical records, and the medical specialists outside of prison had not been admitted to visit them for medical examination. Based on this situation, The Committee against Torture expressed serious concern on "the absence of a review mechanism to identify inmates on death row who may be suffering from mental illness" (Paragraph 20).

37. But even after the examination by CAT, Japanese government has continued to execute those who suffered mental illness. Seiha FUJIMA, one of the three prisoners who were hanged on December 7, 2007, was mentally ill and after the trial at the first instant court he was found legally incompetent by the Supreme Court. However, his death sentence became final and was carried out without any examination of his mental condition by the third party. On June 17, 2008, Tsutomu Miyazaki was executed as well as two other inmates. Miyazaki had been mentally ill and receiving psychiatric treatment in the detention center for more than a decade. Medicines prescribed for his symptom indicated that he was suffering from schizophrenia. Miyazaki's lawyer was preparing for filing a request of retrial and sent a letter which required the Justice Minister not to execute him. But two weeks after receiving the letter, the Minister executed Miyazaki without any examination on his mental condition.

E. Secrecy

(a) Lack of Prior Notice of Execution

38. Secrecy is another serious concern. In Japan, death row inmates are not informed of the date of execution until just an hour before it actually takes place. This practice gives great sufferings to inmates themselves as well as their families. Moreover, lack of prior announcement totally deprives inmates of the opportunities to challenge the legitimacy of executions, as seen in the case of Tsutomu Miyazaki.

(b) Insufficient disclosure of information

39. On December 7, 2007, the Ministry of Justice disclosed the names of the three death row inmates who were hanged on that day, as well as the summary of the crimes they were convicted of and the locations where they were hanged. Some media said this is an important step toward transparency of the death penalty system, but this argument is totally away from the point.

40. The ministry said that 'disclosure of such information is important to explain to the public that

executions are being properly carried out, since the voice of the public including crime victims which demands disclosure of related information has increasingly become louder'. However, obviously there has been no movement by family members of crime victims which calls for disclosure of the information concerning the executions. Moreover, even in previous practice, the ministry informally provided the media with the names and other information which identified the hanged inmates. That is, there is substantially no progress but the ministry pretends to take an important step on the grounds that victims are demanding disclosure.

41. By referring to rising of victims' voice, the ministry tried to justify both the previous hidden practice and its modification. It can be said that the ministry does not have any intention to disclose much more information, such as why these inmates were selected for executions or whether the inmates had any mental disorders or not, and to drastically review its secrecy policy.

42. But having the start of new lay judge system close at hand, essential information of death penalty system and executions should be disclosed widely.

F. No Possibility of Commutation of Sentence

43. After the death penalty is confirmed, actually there is no possibility of commutation of the sentence. The amnesty system does exist, but the last time it was applied to a death-row inmate was 1975, when the death penalty was commuted to life imprisonment. On December 7, 2007, Noboru IKEMOTO, age 74, was executed 11 years after the conviction of his sentence, while the Committee against Torture recommended that 'the State Party should ensure that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in the implementation of the death sentence.' Ikemoto had been rendered life imprisonment at the first instance court, which was overturned by the High Court.

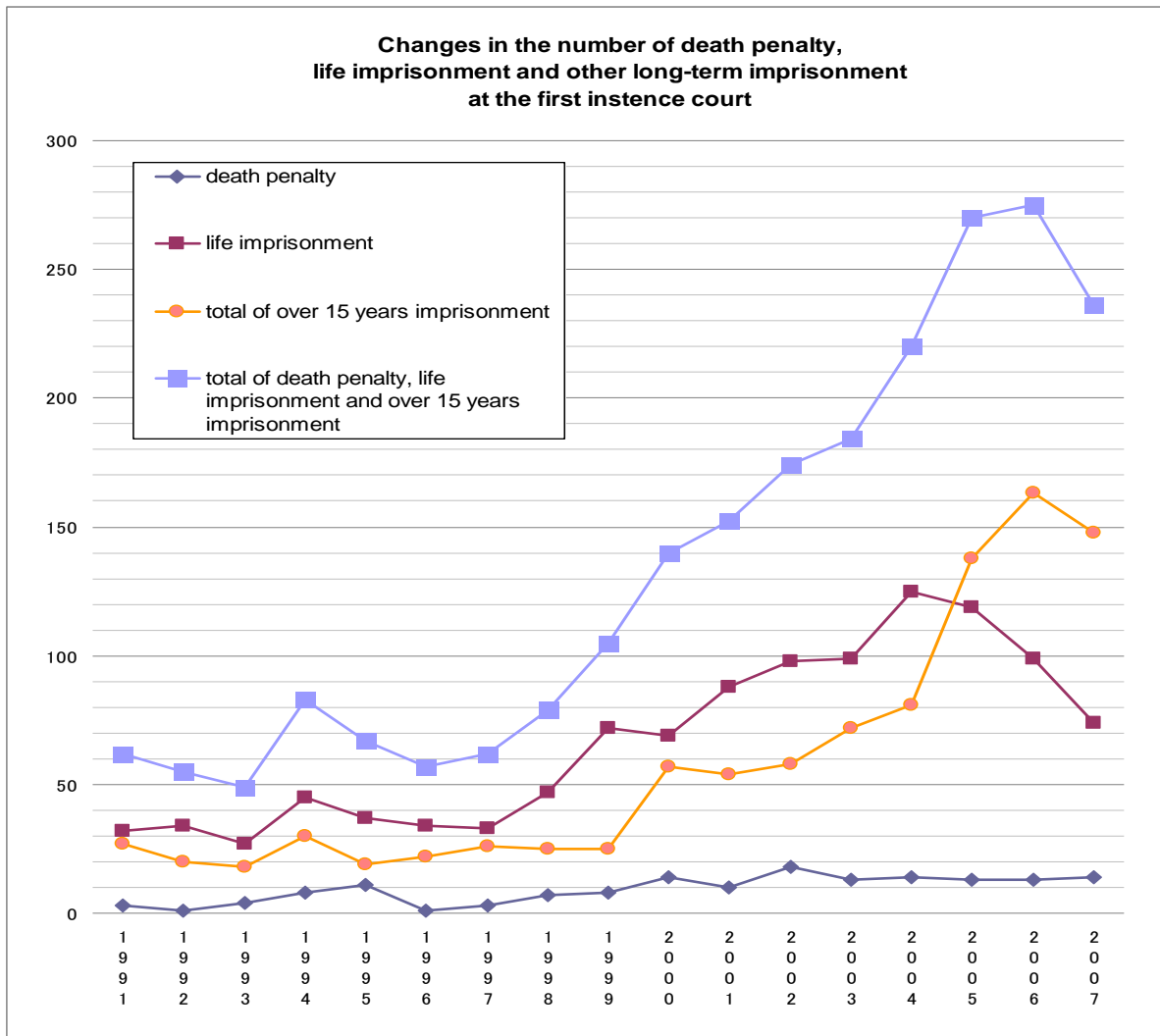
44. As of May, 2008, 25 inmates have been on death row for more than 10 years, three of them for more than 30 years. However even elderly inmates are not granted amnesty, and some of them die of illness in detention centers. Currently there are at least four death row inmates who are in their 80's.

Statistical Data

45. Table and Graph (Source: Annual Report of Judicial Statistics)

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999
death penalty	3	1	4	8	11	1	3	7	8
life imprisonment	32	34	27	45	37	34	33	47	72
25-30years imprisonment									

20-25years imprisonment									
15-20years imprisonment	27	20	18	30	19	22	26	25	25
total of over 15 years imprisonment	27	20	18	30	19	22	26	25	25
total of death penalty, life imprisonment and over 15 years imprisonment	62	55	49	83	67	57	62	79	105
Year	2000	2001	2002	2003	2004	2005	2006	2007	
death penalty	14	10	18	13	14	13	13	14	
life imprisonment	69	88	98	99	125	119	99	74	
25-30years imprisonment							9	7	
20-25years imprisonment						3	17	38	
15-20years imprisonment	57	54	58	72	81	135	137	103	
total of over 15 years imprisonment	57	54	58	72	81	138	163	148	
total of death penalty, life imprisonment and over 15 years imprisonment	140	152	174	184	220	270	275	236	



Article2 paragraph 3 (a), Article7 and Article10

A. Longer Solitary Confinement

Question to the Government

46. 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

47. 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). And the conclusion and recommendation by the Committee against Torture in 2007, raised their concerns on inadequate use of solitary confinement, about "the State party should amend its current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with international minimum standards. In particular, the State party should consider systematically reviewing all cases of prolonged solitary confinement, through a specialized psychological and psychiatric evaluation, with a view to releasing those whose detention can be considered in violation of the Convention" (para.18 of Conclusions and recommendations by the CAT). However, as far as the solitary confinement issue, any remarkable improvement has never been seen since then. 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 and the longest one has been for 52 years. The number of these prisoners has never decreased during these 5 years.

48. 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 50 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.

49. Under the New Law, the name of continual solitary confinement has been altered to

“Segregation” as a defined name (article 76). 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).

50. 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.

51. 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

52. (1) The number of prisoners who are detained in solitary confinement for more than 10 years and their period (the data resulted from 5 times research by one of the Diet members from 2000 to 2008)

	Research on November 10th, 2000	Research on July 10th, 2001	Research on October 1st, 2002	Research on November 1st, 2005	Research on April 10th, 2008
1	37Y 00M*	37Y 08 M	38Y 11 M	42Y 00 M	52Y03M
2	36Y 07M	37Y 03 M	38Y 05 M	41Y 06 M	43Y00M
3	35Y 06 M	35Y 07 M	36Y 07 M	39Y 08 M	39Y01M
4	34Y 11 M	35Y 05 M	29Y 01 M	38Y 07 M	35Y10M

5	34Y 09 M	27Y 10 M	24Y 00 M	27Y 01 M	26Y06M
6	27Y 10 M	22Y 10 M	23Y 07 M	26Y 08 M	26Y05M
7	22Y 06 M	22Y 04 M	22Y 10 M	26Y 00 M	25Y06M
8	22Y 02 M	21Y 07 M	22Y 04 M	25Y 05 M	23Y11M
9	21Y 05 M	21Y 01 M	22Y 02 M	25Y 00 M	23Y05M
10	20Y 11 M	21Y 00 M	21Y 01 M	24Y 10 M	20Y05M
11	20Y 05 M	19Y 10 M	21Y 00 M	23Y 11 M	20Y01M
12	20Y 04 M	19Y 09 M	21Y 00 M	23Y 11 M	16Y05M
13	19Y 04 M	19Y 09 M	20Y 10 M	23Y 06 M	16Y02M
14	19Y 03 M	19Y 07 M	20Y 09 M	21Y 07 M	16Y00M
15	19 Y 01M	19 Y 06 M	18 Y 10 M	20 Y 03 M	15Y11M
16	18 Y 11 M	17 Y 07 M	18 Y 06 M	19 Y 08 M	15Y09M
17	18 Y 10 M	17 Y 03 M	16 Y 01 M	18 Y 05 M	13Y01M
18	17 Y 00 M	15 Y 10 M	15 Y 09 M	17 Y 01 M	12Y08M
19	16 Y 07 M	14 Y 10 M	13 Y 10 M	16 Y 01 M	12Y06M
20	15 Y 02 M	14 Y 07 M	13 Y 10 M	15 Y 09 M	11Y11M
21	14 Y 05 M	12 Y 10 M	12 Y 12 M	15 Y 03 M	11Y09M
22	14 Y 02 M	12 Y 07 M	12 Y 02 M	15 Y 02 M	11Y03M
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	28	26	30	30	22

* "Y" refers to year and "M" refers to month.

53. (2) The total number of the prisoners detained in solitary confinement

	Research on November 10th, 2000	Research on September 10th, 2003	Research on October 10th, 2006	Research on April 10th, 2008
Segregation	-	-	148	95
4th grade of restriction	-	-	3,588	3,539
Total number	2,036	2,108	3,736	3,634

54. 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 couldn't see any progress.

B. Disciplinary Measures / Punishment

Questions to the Government

55. 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?

56. 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

57. 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.

58. 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)

59. 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.

60. 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).

61. 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.

Related Cases

62. 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.

Hiroshima District Court Decision June 29th, 2004

63. 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.

C. System for Investigating Complaints by Prisoners

Question to the Government

64. 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, has the government taken any measures to deal with this issue?

65. Under the New Law, a new complaints system has been temporarily applied to prisons in Japan. How effective has this been in fact since this enforcement?

66. 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 Situation and Our Concerns

(a) New bill to establish independent body

67. 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 not fully autonomous, and has a provision to limit the freedom of the press. Thus, many human rights NGOs were against this bill. Moreover, politicians from the ruling parties are also against it but for different reasons from those of the human rights NGOs. Thus the new bill might prove to be difficult to get enacted.

(b) Board of Visitors for prisons

68. During the process to investigate and examine the Nagoya Prison incidents (cf. paras.7 - 10 of our report), it has been realized that any investigation system put into practice in prisons has never been able to work effectively. Especially, concerning deaths in prison, lack of medical examination to confirm the existence of torture, sloppy medical records and lack of an effective autopsy system must be improved. Although the New Law introduced "the Board of Visitors for Inspection of Penal Institutions" system, this board don't have enough authority to investigate cases in which they are suspicious of torture or ill-treatment by themselves.

69. As to efficiency of this Board of Visitors, we can mention the following items:

- The Board consists of lawyers (nominated from the JFBA), doctors (nominated from the Japanese Medical Association), persons nominated from the local government as a community delegate. Sometimes the director of the prison asks directly for academics.
- The secretariat of the Board is supposed to be in charge of each prison's staff under the regulation. We don't know enough evidences to prove whether this system have affected on independency of the Board. Some members gave us a testimony that the prison authority's help is convenient for smooth proceeding of its job, but it also make difficult to keep proper tense relations between the Board and prison authority.
- Moreover, under the law, the Board members can request the prison government to disclosure any related information and allow them to meet prisoners privately, at the same time, the government has a duty to meet their demand. In fact, lawyers and professors who are enthusiastic and have sufficient knowledge of prison issues are very active. But on the other hand, other professions are not always so enthusiastic.
- In order to make the Board more effective, the purpose and role of the Board should be clarified as protection of human rights of prisoners and improvement of their treatment, and standards of nomination should be set up accordingly. For independency of the Board, they also need their own secretariat separated from the government.

(c) New complaints system

70. 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.

71. 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 complaints³ 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

³ 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.

withdraw the disposition, or the authorities themselves can take necessary measures to prevent recurrence of the violation.

72. Under the law, there are 3 kinds of measures to complaints. As to one of these system, during approximately one year since enforcement of the new system (May 26 2006 to February 28 2007), subjects about which inmates ask complaints most are "limitation on letters" and "disciplinary punishment (punitive measures)". And we can also see some "limitation on reading books and newspapers", "rejection/stop of medical treatment", and "segregation" cases. Moreover, during the same period, total number of cases inmates asked were 1848, but only 6 cases were accepted.

73. 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).

74. 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 doctors/nurses, and limitation on receiving goods and visits from family and friends. According to the government's explanation, the range of the subject which inmates can ask, is depending on each prison governor (warden)'s discretion. However, inmates should be provided "right" to complaints under the law.

75. 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.

76. 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 authorities. They had examined 635 cases by May, 2008, of which 43 cases were decided to be re-examined by the authorities, and 11 cases were decided to be reasonable. Cases which resulted in "Need to re-examine" or "MOJ's result is inappropriate" mainly include cases regarding to letters, but also medical treatment and violence.

77. We can recognize certain efficiency on this committee's work, then, we think that the government should take an effort to develop this experience to establishment of independent body to receive and investigate complaints.

78. 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.

Related Cases

(a) Nagoya Prison Cases (especially about investigation of the cases)

79. 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. 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.

80. 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.

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

Questions to the Government

81. 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?

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

83. 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.

84. 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.

85. 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.

86. 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

(a) Nagoya Prison Cases

87. See supra paragraph. 7 – 10.

(b) Takamatsu Prison Case

88. 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.

(c) Hamada Detention Center Case

89. 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.

(d) Kawagoe Juvenile Training Center Case

90. 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)

E. Medical treatment

Questions to the Government

91. Please inform any program on human rights education for prison medical staff.

92. Is there any plan to place medical services in prisons under the control of Minister of Health, Labor and Welfare?

Current Situation and Our Concerns

93. The medical condition is in urgent crisis for most prisoners detained in Japanese prisons. NGO members for supporting prisoners and lawyers have received many letters of complaints on refusal of

medical treatment and receiving inappropriate treatment, which sometimes resulted in serious injuries and death. 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. 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. In addition, we raise concerns about ensuring prisoners rights to access their medical records, including the records of medication which they are taking and the results of their medical examinations.

94. Insufficient medical service would consist of torture or ill-treatment under the international human rights standards. In fact, the Committee against Torture recommended the government to ensure “adequate, independent and prompt medical assistance be provided to all inmates at all times” in their Conclusion and Recommendation in May, 2007.

95. 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.

Related Case

(a) Gross violation by a prison doctor in Tokushima Prison

96. In February 2008, a group of 22 inmates including relatives of a deceased inmate and ex-prisoners in Tokushima Prison filed a criminal complaint against the medical chief doctor, the former prison governor, and a guard in its medical section, saying that they had suffered abuse by a prison doctor while practicing from May 2004 to November 2007.

97. Some inmates said that the doctor injured them by placing his finger into their anus when there was no apparent need for a rectal examination and without their consent. In one case, an inmate who suffered dizziness was pinched on his inner thighs, had his ankle stepped on and was given a rectal check, causing an infection that required surgery at a private hospital. Moreover, another inmate who was wasting away because of high fever requested intravenous feeding but was refused by the prison governor at that time and after that. This inmate later killed by himself.

98. The Center for Prisoners' Rights identified 100 complaints including that by above plaintiffs, and

among them, 31 are abuse suffered from rectal examination, 26 from abstinence from food or reduced diet due to inappropriate treatment, 14 cases were refusal of medical treatment or examination, and 20 were the cases where the doctor refused to offer medication.

99. Although the prison authorities insisted that rectal examinations by the doctor were part of proper medical practices, the doctor was removed from the duty of medical treatment in Tokushima Prison (but he has not been recalled until now),

(b) Many death cases caused by insufficient medical care and neglect

100. Some cases resulted in death of prisoners which seem cause of lack of appropriate medical treatment have been reported by press recently.

101. In one case of Osaka prison occurred in February, 2008, the inmate had been given a dose of his psychiatric problems and he died during detention in solitary confinement at a preventive room.

102. In Toyama prison, members of the independent committees for visiting prisons raised their concerns about lack of proper medical treatment, no full-time doctor and frequent occurrence of trouble relating medication to prisoners, based on their own inquiry, in their report. One prisoner who suffered from cancer has died because of insufficient treatment and examination. Although he received his test result as "more close examination is necessary" firstly, he had never been provided any more examination and special care until he came down with severe pain.

103. Moreover, a case which an ex-inmate in Yamagata prison seek for complaints against the prison authorities caused by improper medical treatment have come reach settlement in this February. Even after his examination showed a shadow in the lung, the prison doctor didn't provide any more close examination for him, but after that, he was given a diagnosis of end-stage lung cancer.

F. Long Imprisonment of Prisoners Sentenced to Life⁴

Question to the Government

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

105. What are the obstacles to make release on parole of lifers so difficult ?

⁴ In Japan, life imprisonment doesn't mean that the prisoner has to be imprisoned all through his/her life de jure. And most life imprisonment means life imprisonment with labor.

Current Situation and Our Concerns

106. The number of new prisoners who had been sentenced to life conclusively in 2007 was 74, on the other hand, the number of prisoners released on parole was only one in the same year. The number of life sentences has been increasing. Moreover the average imprisonment period of lifers has been longer and the number of lifers released on parole has been markedly decreasing (See “Statistical Data” below).

107. As to treatment, at the end of December, 2007, there was a life sentenced prisoner who has been imprisoned for more than 58 years (See “Statistical Data” below). Long imprisonment like this will deteriorate prisoners’ health physically and mentally and might consist of degrading and ill-treatment under the Covenant.

108. 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.

Statistical Data

109. (1) Number of prisoners sentenced to life imprisonment

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Number	883	894	909	923	938	968	1,002	1,047	1,097	1,152	1,242	1,352	1,467	1,596	1,670

Source: Annual Report on Corrections

110. (2) Number of defendants sentenced to life imprisonment in the court of first instance

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Number	32	34	27	45	37	34	33	47	72	69	88	98	99	125	119	99	74

111. (3) Number of prisoners served term in prison as lifer as of December 31, 2007

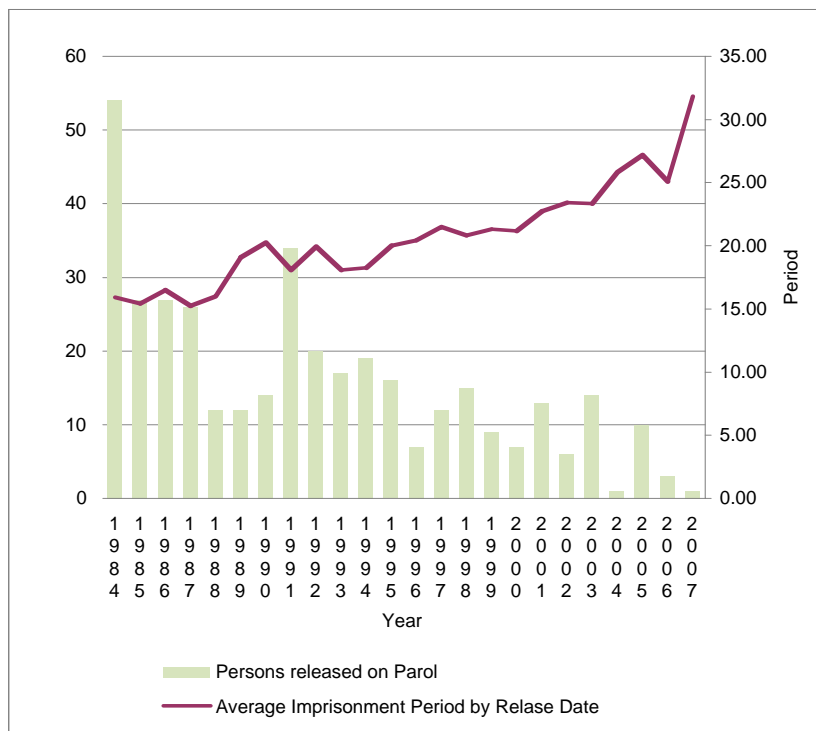
Served term	Less than 5 years	5 - 10 years	10 - 15 years	15 - 20 years	20 - 25 years	25 - 30 years	30 - 35 years	35 - 40 years	40 - 45 years	45 - 50 years	50 - 55 years	55 - 59 years
Number	632	315	171	182	198	97	38	19	8	5	4	1

Source: Research by one Diet member on July, 2008

112. (4) Number of prisoners who had been sentenced to life imprisonment and released on parole by the period of imprisonment (Table and Graph)

Year	Persons released on Parol	Average Imprisonment Period by Release Date	Year	Persons released on Parol	Average Imprisonment Period by Release Date
1984	54	15Years11Months	1996	7	20Y5M
1985	27	15Y5M	1997	12	21Y6M
1986	27	16Y6M	1998	15	20Y10M
1987	26	15Y3M	1999	9	21Y4M
1988	12	16Y	2000	7	21Y2M
1989	12	19Y1M	2001	13	22Y9M
1990	14	20Y3M	2002	6	23Y5M
1991	34	18Y1M	2003	14	23Y4M
1992	20	19Y11M	2004	1	25Y10M
1993	17	18Y1M	2005	10	27Y2M
1994	19	18Y3M	2006	3	25Y1M
1995	16	20Y	2007	1	31Y10M

Source: Annual Report on Corrections



G. Violence against Prisoners

Question to the Government

113. What kind of measures to prevent violence against prisoners by prison guards/officers has

the government taken?

Current Situations and Our Concerns

114. 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

Miyagi Prison Case

115. 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.

H. Rape

Question to the Government

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

Current Situation and Our Concerns

117. 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

(a) Nagoya Prison Toyohashi Branch Case

118. 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)

(b) Fukuoka Prison Iizuka Branch Case

119. 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)

(c) Nagoya Detention Center Ichinomiya Branch Case

120. 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) He resigned his post in prison government "voluntarily".

(d) Kanagawa Prefecture Police Station Izumi Branch Case

121. 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) He was arrested on a charge of crime under the Penal Code and was sentenced 3 years imprisonment by the Tokyo District Court in August 2002, after that, he also sentenced guilty by the Tokyo High Court in January 2003.

I. Treatment of Female Inmates during Pregnancy

Questions to the Government

122. 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?

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

Current Situations and Our Concerns

124. 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 ecbohc beforehand. In 2004, 8 out of 30 inmates who were imprisoned in detention centers over the country were forced to use ecbohc. It is cruel for female inmate because she cannot choose other options for bearing her child.

125. 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 degrading and ill-treatment of the Covenant.

Related Cases

126. 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 ecbohc 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.

J. Overcrowding of Prisons

Current Situation and Our Concerns

127. Overcrowding beyond our experience is progressing in Japanese prisons now as supra paragraphs 1 – 6 of our report. 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

Kobe Prison Case

128. 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, two prisoners were detained in a single room and nine prisoners were in a room for six.

K. Disclosure of Related Information

Current Situation and Our Concerns

129. 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.

[APPENDIX]

Conclusions and recommendations of the Committee against Torture¹ Concerning Prison

Conditions of detention in penal institutions

Paragraph17. The Committee is concerned over the general conditions of detention in penal institutions, including overcrowding. While welcoming the abolition of the use of leather handcuffs in penal institutions, the Committee notes with concern allegations of instances of improper use of “type 2 leather handcuffs” as punishment. The Committee is concerned at allegations of undue delays in the provision of medical assistance to inmates as well as the lack of independent medical staff within the prison system.

The State party should take effective measures to improve conditions in places of detention, to bring them in line with international minimum standards, and in particular take measures to address current overcrowding. The State party should ensure strict monitoring of restraining devices, and in particular adopt measures to prevent them being used for punishment. In addition, the State party should ensure that adequate, independent and prompt medical assistance be provided to all inmates at all times. The State party should consider placing medical facilities and staff under the jurisdiction of the Ministry of Health.

Use of solitary confinement

Paragraph18. The Committee is deeply concerned at allegations of continuous prolonged use of solitary confinement, despite the new provisions of the 2005 Act on Penal Institutions and the Treatment of Sentenced Inmates limiting its use. In particular, the Committee is concerned at:

- (a) The de facto absence of a time limit for solitary confinement, as there is no limit on the renewal of the three-month rule;
- (b) The number of detainees who have been in isolation for over 10 years, with one case exceeding 42 years;
- (c) Allegations of the use of solitary confinement as a punishment;
- (d) The inadequate screening of inmates subject to solitary confinement for mental illness;
- (e) The lack of effective recourse procedures against decisions imposing solitary confinement upon persons serving sentences;
- (f) The absence of criteria to determine the need for solitary confinement.

The State party should amend its current legislation in order to ensure that solitary confinement remains an exceptional measure of limited duration, in accordance with

¹ CAT/C/JPN/CO/1

international minimum standards. In particular, the State party should consider systematically reviewing all cases of prolonged solitary confinement, through a specialized psychological and psychiatric evaluation, with a view to releasing those whose detention can be considered in violation of the Convention.

Death penalty

Paragraph19. While noting the recent legislation broadening visiting and correspondence rights for death row inmates, the Committee is deeply concerned over a number of provisions in domestic law concerning individuals sentenced to death, which could amount to torture or ill-treatment, and in particular:

- (a) The principle of solitary confinement after the final sentence is handed down. Given the length of time on death row, in some cases this exceeds 30 years;
- (b) The unnecessary secrecy and arbitrariness surrounding the time of execution, allegedly in order to respect the privacy of inmates and their families. In particular, the Committee regrets the psychological strain imposed upon inmates and families by the constant uncertainty as to the date of execution, as prisoners are notified of their execution only hours before it is due to take place;

The State should take all necessary measures to improve the conditions of detention of persons on death row, in order to bring them into line with international minimum standards.

Paragraph20. The Committee is seriously concerned at the restrictions imposed on the enjoyment of legal safeguards by death row inmates, in particular with respect to:

- (a) The limitations imposed on death row prisoners concerning confidential access to their legal representatives, including the impossibility to meet with them in private, while on appeal requesting retrial; the lack of alternative means of confidential communication and the lack of access to state defence counsel after the final sentence is handed down;
- (b) The lack of a mandatory appeal system for capital cases;
- (c) The fact that a retrial procedure or a request for pardon do not lead to suspension of the execution of sentence;
- (d) The absence of a review mechanism to identify inmates on death row who may be suffering from mental illness;
- (e) The fact that there has been no case of commutation of a death sentence in the last 30 years.

The State party should consider taking measures for an immediate moratorium on executions and a commutation of sentences and should adopt procedural reforms which include the possibility of measures of pardon. A right of appeal should be mandatory for

all capital sentences. Furthermore, the State party should ensure that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in its implementation. The State party should ensure that all persons on death row are afforded the protections provided by the Convention.

Prompt and impartial investigations, right to complain

Paragraph 21. The Committee is concerned at:

- (a) The lack of an effective complaints system for persons in police custody. It regrets the fact the 2006 Penal Law does not introduce an independent body with such a mandate. The Committee notes the lack of information on the Board of Visitors for Inspection of Police Detention Cells, to be established in June 2007;
- (b) The lack of authority of the Board of Visitors for Inspection of Penal Institutions to investigate cases or allegations of acts of torture or ill-treatment;
- (c) The lack of independence of the Review and Investigation Panel on Complaints by Inmates in Penal Institutions, as its secretariat is staffed by personnel of the Ministry of Justice, and its limited powers to investigate cases directly, as it cannot interview prisoners and officers, nor does it have direct access to any related documents;
- (d) The statutory limitations on the right of inmates to complain and the impossibility of defence counsel assisting clients to file a complaint;
- (e) Reports of adverse consequences to inmates as a result of having filed a complaint and of law suits rejected on the grounds that the term for claiming compensation had expired;
- (f) The lack of information on the number of complaints received, as well as the number of investigations initiated and completed and their outcome, including information on the number of perpetrators and sentences received.

The State party should consider establishing an independent mechanism, with authority to promptly, impartially and effectively investigate all reported allegations of and complaints about acts of torture and ill-treatment from both individuals in pre-trial detention at police facilities or penal institutions and inmates in penal institutions. The State party should take all necessary measures to ensure that the right of inmates to complain can be fully exercised, including the lifting of any statute of limitations for acts of torture and ill-treatment; ensuring that inmates may avail themselves of legal representation to file complaints; establishing protection mechanisms against intimidation of witnesses; and reviewing all rulings limiting the right to claim compensation. The State party should provide detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions.