

**JAPAN:
BRIEFING TO
THE UN
COMMITTEE
AGAINST
TORTURE**

50TH SESSION, MAY 2013

**AMNESTY
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INTRODUCTION

Amnesty International is submitting this briefing to the Committee against Torture (the Committee) ahead of its examination of Japan's second periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or the Convention against Torture) in May 2013. In particular this briefing points to the failure of Japan to meet its obligations under Articles 1, 2, 3, 4, 12, 14, 15 and 16.

Amnesty International is concerned that in the intervening years since its initial review in 2007 Japan has made little or no progress in implementing recommendations made by the Committee.

TORTURE IN JAPANESE LAW (ARTICLES 1 AND 4)

Amnesty International shares the concern expressed by the Committee in its Conclusions and Recommendations in 2007 that a definition of torture as provided by article 1 of the Convention is not included in relevant Japanese legislation.¹ There have been no changes to national legislation to bring it into line with the Convention since those concerns were voiced.

Amnesty International is deeply concerned that the Liberal Democratic Party, the current ruling party, supports an amendment to the Constitution in which the word "absolutely" would be dropped from the current Constitution's Article 36, which now reads: "The infliction of torture by any public officer and cruel punishments are absolutely forbidden." Currently this amendment is a proposal at party level and no bill has been tabled in the Diet (Parliament).

TORTURE AND OTHER ILL-TREATMENT IN JAPAN'S *DAIYO KANGOKU* (SUBSTITUTE PRISON) SYSTEM (ARTICLES 1, 2, 12 AND 15)

Daiyo kangoku (substitute prison) system was established as a substitute for prisons (*kangoku*) under the Prison Law in 1908. As a substitute prison the police use police cells under their authority to detain individuals suspected of criminal offences. The Prison Law was entirely revised and the Act on Penal Detention Facilities and Treatment of Inmates and Detainees entered into force in 2007 in which prisons were renamed as penal institutions (*keijishisetsu*). However, there was no substantial change to the *daiyo kangoku* system of using police cells as a substitute location for detaining suspects prior to charge.²

Amnesty International has long raised concerns that the *daiyo kangoku* system, in which a suspect can be detained for up to 23 days in police cells, generates the potential for miscarriages of justice, including in death penalty cases. For this submission Amnesty International focuses on: interrogation procedures and lack of safeguards leading to forced confessions; limited access to lawyers; and defence counsel's access to evidence that may show their client's innocence.

CONFESSIONS OBTAINED THROUGH TORTURE AND OTHER ILL-TREATMENT

Under the *daiyo kangoku* system suspects are detained in police cell, instead of a detention facility, and interrogated for up to 23 days. Therefore suspects are under the exclusive control of police during this time. During the detention, police interrogators can interrogate suspects with no restrictions on the overall duration or the number of hours per day an

interrogation may last. There are no restrictions in law to regulate time and length of interrogations.

The Japanese justice system relies heavily on confessions, which are typically obtained while a suspect is held under the *daiyo kangoku* system, and often through the use of torture or other ill-treatment. Amnesty International has documented methods such as beating, intimidation, sleep deprivation, forcing detainees to sit and stand in a fixed position for prolonged periods of time and long periods of interrogations without breaks.

A suspect must notify either the police official, or public prosecutor that they wish to see their lawyer and this request is then communicated to their lawyer (or their appointed legal counsel). However lawyers are not permitted to be present during interrogations that take place while a person is being detained.

SUGAYA TOSHIKAZU – FORCED “CONFESSION” AND INACCURATE DNA EVIDENCE

In March 2010 Sugaya Toshikazu was acquitted of murder after spending 17 years in prison for a crime he had not committed. Sugaya “confessed” to a number of murders after being interrogated while held under the *daiyo kangoku* system.

Sugaya “confessed” to the murder of a four year-old girl in Ashikaga, Tochigi Prefecture on the same day he was taken to the police station and where he was initially interrogated without a warrant. He also “confessed” to two other child murders although there was no evidence linking him to these murders and he was not suspected or charged for those murders.

Sugaya was sentenced to life imprisonment in 1993 for the murder. His conviction was largely based on DNA evidence that was later revealed to be inaccurate and a “confession” which he made but then retracted twice during the course of his trial. Sugaya testified that interrogators shouted at him, pulled his hair and kicked him and that he had been forced to “confess”.

After being found guilty, Sugaya appealed for a retrial to the Utsunomiya District Court but this was rejected in February 2008. During the further appeal for retrial, the Tokyo High Court found on the basis of newer more accurate testing that the DNA evidence did not match Sugaya’s DNA and he was released on 4 June 2009 and a retrial was granted on 23 June 2009. The retrial began in October and Sugaya was acquitted on 26 March 2010.

HAKAMADA IWAO – FORCED “CONFESSION”

Hakamadaiwao, who has been on death row since 1968, “confessed” to murder after 20 days of interrogation without a lawyer present while being held under the *daiyo kangoku* system. He retracted his “confession” and testified during this trial that police had pulled his hair and slapped him during interrogations that lasted more than 12 hours every day. He was found guilty and sentenced to death in 1968. His appeals for a retrial were rejected by the Tokyo High Court in 1976 and the Supreme Court in 1980, by the Shizuoka District Court in 1994 and the Tokyo High Court in 2004 and again by the Supreme Court in 2008. His current application for a retrial is currently being considered by the Shizuoka District Court.³

Hakamada appears to have been sentenced to death principally on the basis of a “confession” extracted under torture or other ill-treatment. A key part of the evidence against him is a set of clothing (now undergoing further analysis in his new bid for a retrial), stained with the victims’ blood, which was found abandoned in a tank of liquid miso at the factory where Hakamada worked. The clothes were too small for Hakamada but the prosecution claimed they had shrunk in the miso tank. According to his lawyer, the knife Hakamada was supposed to have used to commit the crime was too small to have made the fatal wounds and the door by which he was supposed to have entered and left the victims’ house had been locked at the time.

Hakamada is one of Japan’s (and the world’s) longest-serving death row inmates and is suffering from mental illness resulting from conditions including solitary confinement and lack of interactions with other inmates. He is at constant risk of being executed.

Despite the concerns raised by Amnesty International and other groups based in Japan in regards to coerced ‘confessions’ and ill-treatment under the *daiyo kangoku* system, the government of Japan has taken no measures to review or abolish this system.

INSUFFICIENT SAFEGUARDS AGAINST THE USE OF TORTURE AND OTHER ILL-TREATMENT

Amnesty International believes that the tentative introduction of video recordings during interrogations have so far involved only partial coverage and therefore have done little to prevent torture and other ill-treatment being used in interrogations to coerce “confessions”. Since April 2011 the Prosecutors Office has introduced trialling of video recordings, for parts of an interrogation or for the entire process of interrogations for certain types of cases. These include cases to be tried under the lay-judge system,⁴ some cases handled by the Special Investigation Department and cases where the suspect has an intellectual disability. From November 2012 partial recording of cases for suspects suffering from mental illness was introduced. Partial recordings typically only cover the interrogator reading suspect’s final confession in front of the suspect.

Amnesty International believes that such limited and partial use of recordings does not ensure that interrogations are conducted in line with the Convention and that there should be no exceptions for recording the entire process of interrogations. In addition, it is of great concern that lawyers are not allowed to be present during interrogations.

In June 2011, the Minister of Justice established the Special Committee within the Legislative Council, which is an advisory committee to the Ministry of Justice, to consider and present recommendations for reform of various aspects within Japan’s criminal justice system. The Special Committee publicly issued a report entitled, “Basic Concept for the New Criminal Justice System for the New Era” in January 2013. The report recommends two options in relation to improving safeguards to prevent torture and other ill-treatment in interrogations during detention: (a) introduction of video recording of the entire process of interrogations for certain types of cases; (b) partial video recording of interrogations.⁵ There was no recommendation to review or abolish the *daiyo kangoku* system in the report.

DEATH PENALTY (ARTICLE 16)

Since January 2008, Japan has executed 34 people. No executions were carried out between 28 July 2010 and 29 March 2012. The majority of death row inmates in Japan are convicted for multiple murders, and/or murder and robbery, or particularly gruesome murders. The implementation of the death penalty is shrouded in secrecy. Inmates are only informed of

their impending execution hours before the execution is carried out. Families are only told of an execution after it has taken place. The crime, along with the name of the individual and the place of execution are announced to the media after the prisoner's death.

Although all death sentences can by law be appealed to a higher court, death penalty cases in Japan do not carry an automatic mandatory appeals process. This has the effect of placing prisoners on a fast track to execution if they decline to appeal and cuts short the review process if they withdraw their appeals.

Efforts to appeal for a re-trial in death sentence cases do not impede executions. Kobayashi Kaoru wrote to his lawyer in February 2013 to discuss preparations for appealing for a retrial. On 21 February 2013, two days after receiving the letter, Kobayashi's lawyer visited the Osaka Detention Centre to meet with him. On arrival, the lawyer was told that the meeting could not go ahead and later that day he was informed that Kobayashi had been executed that morning.

CONDITIONS ON DEATH ROW AND MENTAL ILLNESS (ARTICLES 1 AND 16)

Prison conditions experienced by those under sentence of death in Japan are harsh. Prisoners are prohibited from talking to other prisoners – a restriction enforced by strict isolation. Contact with the outside world is limited to infrequent and supervised visits from family, lawyers or other approved visitors. Visits can last from five to 30 minutes at the discretion of the Prison Director. A guard is always present during visits. Prisoners may send one letter of up to seven pages per day. In principle, prisoners may receive letters from any source but supportive letters from the public are not delivered. Both outgoing and incoming correspondence are subject to censorship.

Death row prisoners are not allowed to watch television or to undertake personal projects or activities though they can undertake work voluntarily. Prisoners are reportedly allowed three books subject to approval. Exercise is limited to two short (30 minute) sessions per week outside their cells in summer and three times a week in winter. A prison staff member observes these exercise periods during which the prisoner is alone. Apart from this and toilet visits prisoners are not allowed to move around their cell but must remain seated.

Prisoners who breach disciplinary rules by, for example, moving within their cell at times when this is prohibited, or making a noise or otherwise creating a disturbance, may be subjected to detention in a punishment cell where conditions are even harsher than in the normal cell. Prisoners with mental illness may be vulnerable to punishment because their behaviour is less likely to be subject to self-discipline than other prisoners. One lawyer told Amnesty International that a prisoner hitting the cell wall in frustration could be subject to detention of up to a week in a punishment cell. During this time, the prisoners have no access to a bath; prisoners must sit for 12 hours each day with breaks only for toilet visits; they have nothing to do but must look at the door.⁶

In addition to pre-existing mental illness that may have been a factor in crimes which led to prosecution, the harsh conditions faced by death row prisoners may lead to progressive mental deterioration and development of significant mental illness. A number of prisoners in Japan have been executed though mentally ill and other possibly mentally ill prisoners remain on death row awaiting execution.

MIYAZAKI TSUTOMU – EXECUTION AND MENTAL ILLNESS

Miyazaki Tsutomu was convicted in 1997 of mutilating and killing four girls aged four to seven between 1988 and 1989. He was arrested in July 1989 after being caught molesting a girl. He reportedly showed no remorse for his crimes. He was given a range of psychiatric evaluations, and was diagnosed as suffering from dissociative identity disorder⁷ or schizophrenia. However, the Tokyo High Court judged that he was still aware of the gravity and consequences of his crimes and he was therefore accountable for them, sentencing him to death by hanging in 1997. His death sentence was upheld by the Tokyo High Court on 28 June 2001 and by the Supreme Court on 17 January 2006. After receiving psychiatric treatment for more than a decade, he was one of three inmates executed on 17 June 2008.⁸

REFUGEES AND ASYLUM SEEKERS (ARTICLES 3 AND 16)

The number of asylum applications in Japan has increased from 1,388 in 2010, to 1,867 in 2011 and 2,545 in 2012. However, recognition of refugees by Japanese authorities remains very low, only 39 in 2010, 21 in 2011 and 18 in 2012.⁹

In 2010 Japan initiated a pilot project aimed at resettling 30 refugees from Myanmar each year, after they have been recognized in Thailand. Only families are eligible to apply for resettlement under this project. Twenty-seven asylum-seekers from Myanmar who status was determined in Thailand were resettled in 2010 under the project, 18 in 2011. In 2012 no asylum-seekers entered Japan under this system after three families withdrew their application. In March 2012 the pilot project was extended for a further two years. Some refugees from Myanmar who entered Japan under the pilot project in 2010 complained publicly that they were given insufficient support by the government, and that they were deliberately misinformed by authorities prior to arriving in Japan.

Under the Immigration Control and Refugee Recognition Act there is no maximum period of detention for individuals being held under a deportation order.¹⁰ Once a deportation order has been issued against a person whose application for refugee status has been rejected, the individual can be detained awaiting deportation, regardless of whether an appeal or further asylum application has been lodged. Children under the age of 18 are also subject to detention on migration-related grounds.¹¹ In this respect, the Committee's unequivocal position has been that "detaining persons indefinitely without charge, constitutes per se a violation of the Convention,"¹²

Since 2011, the Immigration Bureau, under the Ministry of Justice has drastically reduced the initial processing time for asylum applications. However, the processing time for handling appeals has increased so that the total processing time for asylum applications during which a person can be detained has not been reduced. According to the Immigration Bureau statistics as of 5 November 2012, 75 individuals had been detained for longer than a year while 24 had been detained for over six months. This was 26.5 per cent and 8.5 per cent respectively out of a total of 283 asylum-seekers being held in detention at that time.

Amnesty International is concerned about the use of detention to deter and obstruct refugees from seeking asylum. As observed by the Human Rights Committee, in order not to be arbitrary, arrest and detention must be (a) prescribed by law, (b) necessary in the specific circumstances and (c) proportionate to the legitimate aim pursued.¹³ Any custodial or non-custodial measure restricting the right to liberty on migration grounds must be exceptional

and based on a case-by-case assessment of the personal situation of the individual concerned. Any decision restricting the right to liberty on migration grounds must always be based on a detailed and individualized assessment, including the personal history of the individual concerned. Such assessment should consider the necessity and appropriateness of any restriction of liberty, including whether it is proportionate to the objective to be achieved. The person concerned should be provided with a reasoned decision, preferably in a language that they understand. Automatic detention is always unlawful. Even if an asylum-seeker is detained legitimately, detention should not continue for longer than necessary. The reasons for detention and its necessity should be automatically reviewed at regular intervals by a judicial authority. Indefinite detention is unlawful.

In 2010 several detainees in the East Japan and West Japan Immigration Centres went on hunger strike to demand an end to indefinite detention, detention of minors and those suffering from ill-health, as well as improved access to medical care and detention conditions. In response, a psychiatrist began regular visits to the East Japan Immigration Centre to meet with detainees suffering from possible mental illness. However, the stress of indefinite detention and the threat of deportation continue to impact negatively on the health of detainees.

S – INADEQUATE MEDICAL CARE IN IMMIGRATION DETENTION

S, a male Filipino national detained at the East Japan Immigration Centre consulted with a doctor while in detention on 24 and 25 August 2011. According to his medical record S was suffering from a persistent stomach-ache, nausea and vomiting.

On 27 September, results from urine tests he had given during his visit to the doctor in the previous month showed abnormal results. The doctor diagnosed S as having insomnia, functional gastrointestinal disorder and anxiety neurosis. His condition, including vomiting, did not improve and on 7 October he consulted the doctor again. The same diagnosis was given as during his previous visit.

When he was granted a provisional release in October S was still unwell, was having trouble walking and was still vomiting, including after eating. On release, S consulted a different doctor at the Chiba University Medical Centre. He was diagnosed as having various medical complaints including impairment of liver function, jaundice and kidney failure. He was immediately hospitalized. Following further tests, S was found to have acute hepatitis, acute renal failure, acute gastritis and he was dehydrated. His dehydration and renal failure were deemed to be the result of failure to treat his hepatitis and gastritis which had caused the vomiting and led to his renal failure. S was able to recover from his illnesses and was discharged from hospital on 26 October 2011.

Immigration Detention Centre Visiting Committees were established in 2010 to conduct inspections of immigration detention facilities.¹⁴ There are two Committees each consisting of 10 members and usually comprising of lawyers, physicians and former NGO staff. However, rather than being independent and impartial Committee members are appointed by the Ministry of Justice and become part-time civil servants employed by the government for the duration of their time on the Committee. Surprise visits are not permitted and the Committee cannot interview inmates of its own choosing. There is no independent review of the necessity of people being detained, including children below the age of 18, severely ill patients and asylum-seekers.

ABUBAKA AWUDU SURAJ – DIED WHILE BEING DEPORTED

Abubaka Awudu Suraj, a Ghanaian national, spent 20 months in immigration detention centres. Suraj was married to a Japanese woman and had been in Japan for 20 years. He was caught staying in Japan without documentation and was applying for residency, which was rejected. In March 2010, he was taken to Narita airport to be deported. According to his lawyer, during his deportation Suraj's feet were bound and his hands were in plastic handcuffs and a towel covered his mouth. He had been carried onto the airplane by nine immigration officials when he became unconscious. He was removed from the plane but died shortly afterwards. While there are internal guidelines for immigration officials on use of force and use of instruments for restraint, the guidelines are not legally binding. The investigation into his death was completed in 3 July, 2012 but the Public Prosecution Office released a decision not to prosecute.

JUSTICE FOR THE SURVIVORS OF JAPAN'S MILITARY SEXUAL SLAVERY SYSTEM (ARTICLE 14)¹⁵

Women from across the Asia Pacific region were forced into sexual slavery by the Japanese Imperial Army from around 1932 until the end of World War II. The Japanese Imperial Army preyed on women and girls who, because of age, poverty, class, family status, education, nationality or ethnicity, were susceptible to being deceived and trapped into the sexual slavery system. Others were abducted. The vast majority of them were under the age of 20; some girls were as young as 12 when they left or were taken away. Survivors have suffered from physical and mental ill-health, isolation, shame and often extreme poverty as a result of their enslavement.

Despite considerable international pressure, Japan continues to deny justice for the survivors of its military sexual slavery system. The US House of Representatives passed Resolution 121 in July 2007 followed by resolutions in EU, Canada, Netherlands, South Korea and Taiwan. In Japan 39 city and town councils have passed statements calling on the central government to resolve the issue. On 26 March 2013, Kyoto Prefecture Assembly became the first Prefecture-level body to call on the central government to provide redress to the survivors of Japan's military sexual slavery system including compensation.

Amnesty International is particularly concerned by recent comments by Prime Minister Shinzo Abe that he wants to "revise" previous apologies extended to the survivors. This is a worrying sign that Japan will continue to deny justice to the survivors, as is the statement by the Japanese government in their addendum to the Universal Periodic Review that the issue "should not be politicized or turned into a diplomatic issue".¹⁶

The government continues to insist that any obligation to provide reparations was settled in the 1951 San Francisco Peace Treaty and other bilateral peace treaties and arrangements. Amnesty International believes the government's position is untenable, including because these treaties and agreements did not cover acts of sexual slavery, and because they explicitly allowed for further claims and did not preclude further reparations.

KIM BOK-DONG – INTERVIEW WITH A SURVIVOR OF JAPAN'S MILITARY SEXUAL SLAVERY SYSTEM

Kim Bok-dong, a 90-year-old South Korean woman who was taken from her home village and subjected to torture and other forms of cruel, inhuman or degrading treatment as a 'comfort woman' by the Japanese

Imperial Army during World War II gave an interview to Amnesty International in November 2012:

“I was 14 years old when I was forced into sexual slavery by the Japanese government. They said they would hire me as a factory worker, but instead they dragged many of us to Taiwan, Hong Kong, China, Malaysia and Indonesia. I was with the army headquarters so I went almost everywhere with them. There are no words to describe what the soldiers did to me, from noon to 5pm on Saturdays and 8am to 8pm on Sundays. By the end of the day I could not even sit up. After eight years of suffering they placed me as a worker in an army hospital. Their intention was to hide any evidence of ‘comfort women’.

I did not even know when the war ended. When I came back home, I was 22. How could I tell anyone what had happened to me? My parents kept telling me to get married but I could not. So I had to tell them in the end. They did not believe it at first and then said at least it was very fortunate for me to survive all of that. It has been several decades since the end of the war but there has been no proper response from Japan. If our own government is not working on this issue, who should we talk to? This is why we are still fighting.

I got involved in the movement for ‘comfort women’ as soon as it started... One day, they were calling for reports from ‘comfort women’ survivors. So I called them. People came to find me and even a broadcasting company came to me as well. I don’t remember the exact date, but the Korean Council for Women Drafted into Military Sexual Slavery by Japan came to me and I have been with them ever since. It was really difficult at first, but I could not sit back when all these people would come forward at the Wednesday Protests for us. Now, I also protest outside the [Japanese] embassy [in Seoul, South Korea] every Wednesday. We shout to call on the Japanese government to apologize. We have bonded over this period of time.

Although several decades have passed nothing has been resolved. When I hear about supporters from all around the world I am thankful and it gives me hope that this fight may end really soon. ...I am now 90 and this is indeed tiring for me. But I want to receive an apology from the Japanese government myself. I am not doing this for money. I just want the Japanese government to regret their actions, take responsibility for what they did, apologize to all of us, and respect our human rights

NATIONAL HUMAN RIGHTS INSTITUTION

While there is no current bill in the parliament aimed at establishing a national human rights institution (NHRI) there have been worrying developments that Japan may seek to establish an NHRI with inadequate powers to protect persons deprived of their liberty and/or subjected to torture and other ill-treatment. A draft Bill was prepared by the former ruling party, the Democratic Party of Japan, but was not tabled to the Diet (parliament) prior to them losing the elections in December 2012. However, the bill, for example, did not provide for the institution to carry out visits to any place where a person may be deprived of their liberty, including prisons or other detention facilities. There was also a lack of clarity regarding the institution’s authority to submit recommendations to the executive and to examine laws to ensure compliance with national and international human rights standards.

Also under the draft bill the national human rights institution was to be affiliated with the Ministry of Justice, and its funding provided within the Ministry of Justice’s budget. The draft Bill also stipulated that the proposed national human rights institution would delegate work to the Chief of the Legal Affairs Bureau and Regional Legal Affairs Bureaus of the Ministry of Justice. With regard to the selection and appointment of the High Commissioner and other Commissioners to serve on the new human rights institution, the draft Bill states

only that nominated candidates should be of “proper character” and should have “judgment for addressing human rights issues neutrally and fairly”. Amnesty International remains concerned that further attempts to submit any bill to the Diet for the establishment of a NHRI will require substantial revision in order to bring the bill into line with the Paris Principles and to ensure human rights protections for persons subjected to torture and other ill-treatment, including those deprived of their liberty.

RECOMMENDATIONS

Amnesty International calls on the government of Japan:

- to incorporate into domestic law the definition of torture as contained in article 1 of the Convention, encompassing all its constituent elements which characterize torture as a specific crime with appropriate penalties;
- to abolish or reform the Daiyo Kangoku system of detention to bring it into line with international standards, including by implementing safeguards such as electronic recordings of the entire interrogation process, and ensuring that detainees are not questioned without the presence of a lawyer and have prompt and unhindered access to legal counsel;
- that confessions obtained by torture shall not be invoked as evidence in any proceedings;
- to introduce a formal moratorium on executions as a first step toward the abolition of the death penalty, to commute all death sentences to terms of imprisonment.
- pending full abolition of the death penalty, Japan must ensure that a sentence of death is not carried out if the prisoner has a mental disorder or disability that significantly impairs his or her capacity (i) to make a rational decision to forgo or terminate post-conviction proceedings available to challenge the validity of the conviction or sentence; (ii) to understand or communicate pertinent information, or otherwise assist counsel, in relation to specific claims bearing on the validity of the conviction or sentence that cannot be fairly resolved without the prisoner's participation; or (iii) to understand the nature and purpose of the punishment, or to appreciate the reason for its imposition in the prisoner's own case
- to initiate an immediate independent review of all cases where there is credible evidence that prisoners sentenced to death are now mentally ill and could fall within Article 479 of the Code of Criminal Procedure that specifies that "if a person condemned to death is in a state of insanity, the execution shall be stayed by order of the Minister of Justice".
- to ensure that the inmates, their families and their legal representatives are provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication.
- to ensure that the refugee status determination process is conducted in a fair, effective and transparent manner in line with international law and standards, including the International Convention on the Status of Refugees;

- to end indefinite detention of migrants and asylum seekers;
- to ensure that detention of migrants and asylum-seekers is only used as a last resort and only when the authorities can demonstrate that it is necessary, proportionate and grounded in law, that alternatives will not be effective, and that there is an objective risk of the person absconding;
- to accept full responsibility, including legal responsibility, and to issue an unequivocal apology for the military sexual slavery system in a manner that is acceptable to the majority of the survivors and that publicly acknowledges the harm suffered by these women and seeks to restore their dignity, including by providing adequate compensation;
- establishment of a national human rights institution, ensuring that any bill submitted to the Japanese Diet (parliament) for the creation of a national human rights institution fully reflects the Paris Principles and allows for the creation of an independent, impartial and credible institution to effectively uphold human rights of all individuals in Japan.

ENDNOTES

¹Conclusions and Recommendations of the Committee against Torture, Japan, , UN Doc. CAT/C/JPN/CO/1, 3 August 2007, para. 10. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/433/72/PDF/G0743372.pdf?OpenElement>

²Police need a warrant when they arrest a suspect. A suspect arrested without a warrant must be taken to a judge immediately after arrest. The Prosecutors'Office then have time (while a person is detained in the *daiyokangoku* system) to indict the suspect or not. If the Prosecutor office indicts the suspect, he/she is moved to a detention facility and the criminal trial procedure starts

³In late 2011, as part of his current appeal for a retrial the Shizuoka District Court commissioned experts from the prosecution and the defence to carry out new forensic testing, comparing DNA traces on clothing which the prosecution claims Hakamada was wearing at the time of the crime, with DNA traces found on the clothing worn by the victims. The results, submitted by both parties on 22 December 2011, were inconclusive. While the defence found that the DNA traces were not compatible, the prosecution concluded that the DNA types on Hakamada's clothing and those found on the victims' clothing may come from the same person, leading the Shizuoka District Court to commission further testing. As of March 2013, the Shizuoka District Court continues to consider the competing views resulting from the DNA analysis before deciding on whether to grant a retrial.

⁴ On 28 May 2004, Japan enacted the Act Concerning Participation of Lay Assessors in Criminal Court Procedures (the Act). This law establishes the lay-judge system which began on 21 May 2009. Prior to the new lay-judge system serious criminal cases in Japan were heard by a panel of three judges at the district level. One of the judges would be appointed as the Chief Judge and ruling were made by majority decision. Cases heard by lay-judges involve a panel comprising three professional judges and six lay-judges. One of the professional judges is nominated as the Chief Judge. In cases where "it is recognized that there is no dispute concerning the facts at trial as established by the evidence and issues identified by pre-trial procedure" (article 2(3) of the Act) one professional judge and four lay-judges will make up the judging panel. In such cases the one professional judge will be the Chief Judge. Lay judges may question witnesses during trial procedures. Decisions will be based on majority rule provided that at least one professional judge and one lay-judge agree to the decision and sentence. Lay-judges will make decisions determining guilt or innocence and sentencing in accordance with relevant Laws and ordinances. The lay-judge system only applies to the district court level. Supreme Court and High Courts are unaffected by the lay-judge system. All serious crimes including those carrying the death penalty are tried under the lay-judge system

⁵ Final recommendations of the Special Committee related to reforms of the criminal justice system will inform the drafting of proposed amendments to relevant legislation. The Special Committee has established two working groups to take this forward with final recommendations for draft bills expected in early 2014.

⁶ Interview with Yasuda Yoshihiro, February 2009 (see Amnesty International, "Hanging by a Thread: Mental health and the death penalty in Japan", September 2009 ASA 22/005/2009)

<http://www.amnesty.org/en/library/asset/ASA22/005/2009/en/acc1c64b-e5ed-425f-bb93-36be3ec25f59/asa220052009eng.pdf>

⁷ This term comes from the Diagnostic and Statistical Manual (DSM-IVTR) of the American Psychiatric Association (diagnostic code 300.14). The International Classification of Diseases (ICD-10_ of the World Health Organization names the entity “multiple identity disorder” (diagnostic code F44.8)

⁸ According to the Japan based NGO, Centre for Prisoners’ Rights (CPR), Miyazaki had been receiving medication typical of that given to treat schizophrenia. See CPR’s: The Alternative Report on the Fifth Periodic Reports of the Japanese Government under Article 40 of the International Covenant on Civil and Political Rights, September 2008, p8.

⁹ 112 asylum-seekers were permitted to stay in Japan in 2012 for humanitarian reasons. (See, Japan Times, “2012 saw record-high 2545 people apply for refugee status in Japan”, 20 March 2013). The recognition of 18 asylum-seekers in 2012, in addition to the 112 who were allowed to remain in Japan for humanitarian reasons is the lowest rate in 10 years.

¹⁰ Under the Immigration Control and Refugee Recognition Act individuals can be detained under either a deportation or detention order. Under a detention order a person can be detained for up to 60 days but those detained under a deportation order can be detained indefinitely.

¹¹ Children may also be taken by welfare services if both parents are detained.

¹² Conclusions and recommendations of the Committee against Torture: United States of America, UN Doc. CAT/C/USA/CO/2, 18 May 2006, para. 22.

¹³ See Human Rights Committee, communication No. 560/1993, *A. v. Australia*, Views adopted on 3 April 1997, para. 9.2.

¹⁴ This was done through an amendment to the Immigration Control and Refugee Recognition Act in 2009 and the introduction of the Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act which established the Committees.

¹⁵ See also UN Doc. CAT/C/JPN/CO/1, para. 12.

¹⁶ Report of the Working Group of the UPR: Japan Addendum, 8 March 2013, A/HRC22/14/Add.1 page 11. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/JPSession14.aspx>

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