

amnesty international

Japan
Submission to the UN Universal
Periodic Review
Second session of the UPR Working
Group, 5-16 May 2008



8 February 2008

AI Index: ASA 22/001/2008

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Amnesty International Submission to the UN Universal Periodic Review

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Key words: national legislation, death penalty, national human rights institution, refugees, pre-trial detention, impunity

In this submission, Amnesty International provides information under sections B, C and D (as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*¹):

- In section B, Amnesty International raises concern over shortcomings in human rights legislation, the lack of an independent national human rights body, the death penalty and failure to protect the rights of refugees.
- In section C, we describe concerns related to the *daiyo kangoku* (substitute prison) system and the survivors of Japan's military sexual slavery system.
- In section D, Amnesty International makes a number of recommendations in the areas of concern listed.

B. Normative and institutional framework of State

Human rights legislation

1. Lack of adequate human rights legislation in Japan leaves many people vulnerable to a range of human rights violations. UN human rights monitoring bodies, including the Committee on Economic, Social

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, adopted 27 September 2007.

and Cultural Rights, the Committee on the Rights of the Child, and the Committee against Torture (CAT), have made a number of recommendations to Japan to address this problem. These have included recognising the rights of indigenous peoples including the Ainu people, eliminating discrimination in law against children born out of wedlock, and explicit criminalisation in the Penal Code of torture and acts of discrimination. However, the government has failed to implement these repeated recommendations. The government is also not meeting the deadlines set out in human rights treaties for submitting periodic reports to the treaty monitoring bodies. Japan has yet to ratify the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. In its concluding observations in 2007, the CAT expressed concern, among others, that the Penal Code of Japan currently does not include a definition of torture as provided by Article 1 of the Convention, and in particular that the definition of "mental torture" as under articles 195 and 196 of the Penal Code is not clear.² The concluding observations on Japan from the Committee on the Rights of the Child in 2004 noted that "domestic legislation does not fully reflect the principles and provisions of the Convention" and that "legislation discriminates against children born out of wedlock and that societal discrimination persists against ...Ainu children and other minority groups".³
3. Amnesty International is further concerned by an increase in discriminatory measures against non-nationals in Japan. From November 2007, an amendment to the Immigration Control and Refugee Recognition Act introduced fast-track procedures to deport anyone deemed a 'possible terrorist' by the Minister of Justice. Under these procedures, individuals are denied the right to appeal against a decision to deport, including those with a claim to international protection. These measures are combined with plans to develop a 'watch list'. So far, plans to implement the list, including which authority will compile the list and the criteria for a person to be placed on the list, are shrouded in secrecy. There is no mechanism for individuals to challenge their inclusion on the list.

National human rights institution

4. Japan has no independent national human rights institution which fulfils the requirements of the Paris Principle.⁴ The existing Human Rights Commission reports to the Ministry of Justice, which is also responsible for prisons, detention centres and immigration centres. Amnesty International believes that the lack of independence of the human rights mechanism inherent in this arrangement undermines its authority to function effectively and to speak out on human rights concerns in the country without fear of censorship. Its close association with a government ministry may also deter victims, their relatives and other individuals or organisations from submitting complaints to the human rights mechanism for fear of reprisals or lack of expectation that they will obtain justice.

The death penalty

5. Executions in Japan are typically carried out in secret. Prisoners are only informed hours before their executions, and their families receive no notice of their imminent execution. This practice means that prisoners live with the constant fear of execution. Under the current system, a prisoner is notified on the morning of the day of the execution, although in some cases the prisoner is given no prior notification at all. Executions typically take place during periods when the National Assembly (Diet) is in recess or on national holidays. Amnesty International opposes the death penalty in all cases and considers it a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

² Conclusions and recommendations of the Committee against Torture: Japan, UN Doc. CAT/C/JPN/CO/1, 18 May 2007, para. 10.

³ Conclusions and recommendations of the Committee on the Rights of the Child: Japan, UN Doc CRC/C/15/Add.231, 26 February 2004, para. 24.

⁴ Principles relating to the status and functioning of national institutions for protection and promotion of human rights, adopted by the UN General Assembly on 20 December 1993.

6. In September 2007, the Minister of Justice, Hatoyama Kunio, spoke publicly about the need to streamline executions, including scrapping the rule requiring the Minister of Justice to personally authorise executions. This will allow for death row inmates to be automatically executed within six months of the end of their appeals process. Procedures initiated after a death sentence has been handed down, including appeals for clemency, do not automatically suspend executions, contrary to Safeguard 8 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty. Amnesty International is concerned that this will increase the risk of innocent persons being executed.
7. Concerns also arise in relation to the fact that the legal process in Japan is extremely slow. Accused persons spend extended periods in detention waiting to be tried and even longer waiting for appeals to be heard in court. Some prisoners spend a few years on death row while others have been on death row for decades. Okunishi Masaru was sentenced to death in 1961; he is now 82 years old and still on death row. In April 2005 the Nagoya High Court granted a retrial for Okunishi citing new evidence that could prove his innocence.
8. On 23 August 2007 Japan executed three individuals, including Takezawa Hifumi, who had reportedly been suffering from mental illness as a result of a stroke, which made him paranoid and aggressive. According to reports of his trial, doctors acting for both the prosecution and the defence diagnosed Takezawa as mentally ill. However he was deemed liable for his crime and sentenced to death. In 2003 Mukai Shinji, who was reportedly suffering from mental health problems, was executed while his lawyer was preparing an appeal for a retrial. According to Article 30 (1) of Japan's Criminal Law any conduct of a person suffering from 'insanity' shall not be punished. Article 39(2) further provides that, as to the conduct of a person suffering from 'quasi-insanity', the sentence shall be commuted.

Refugees

9. The 2006 Immigration Control and Refugee Recognition Act does not expressly prohibit the return of asylum-seekers to countries where there is a risk of torture. The absolute prohibition on return to a situation of torture and other serious human rights violations is a rule of customary international law. As a state party to the UN Convention against Torture and to the 1951 Refugee Convention, Japan is obliged to uphold the principle of *non-refoulement*.
10. Recognition rates of asylum-seekers for refugee status are low relative to the number of applications and the refugee status determination process can take up to a decade for a final resolution of the claim. In addition, Amnesty International is concerned that there are insufficient guarantees of access to an independent, ideally judicial, review of asylum decisions. In some instances, returns are alleged to have been carried out immediately after the conclusion of the administrative procedure before an asylum-seeker can submit an appeal against a negative decision.
11. Immigration centres often do not provide sufficient access to medical treatment.

C. Promotion and protection of human rights on the ground

Daiyo kangoku system of pre-trial detention

12. Under the *daiyo kangoku* (substitute prison) system a person can be detained in a police cell, under the authority of the police, for up to 23 days without charge. Amnesty International is concerned that there are no rules or regulations regarding the length of interrogations carried out during this period, that access of lawyers to their clients during interrogation is restricted, and that interrogation sessions are not recorded. The justice system relies heavily on confessions, which are typically obtained while a suspect is held under the *daiyo kangoku* system. Amnesty International is concerned that this system is routinely used to obtain 'confessions' through torture or other cruel, inhuman or degrading treatment,

and has documented a variety of such measures, including beatings, intimidation, sleep deprivation, questioning from early morning until late at night, and making the suspect stand or sit in a fixed position for long periods.

13. The potential for violations to occur is compounded by the lack of effective access to legal counsel. Article 39 of the Code of Criminal Procedure provides the right of legal counsel “without having any official watchman present”, and in article 37 the Constitution provides that “[a]t all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State”. In practice, however, investigators often restrict the right of individuals to confer with their legal representative. The Japan Federation of Bar Associations has reported that “counsel cannot see the suspect without the prior permission of the investigator in charge”. It is not unusual for lawyers to be granted permission to meet with their clients only two to three days after applying for permission, and interviews are limited to only 15 minutes.
14. The CAT and the Human Rights Committee have made repeated calls for the government of Japan to bring the *daiyo kangoku* system into line with international standards. In its concluding observations in 2007, the CAT expressed deep concern at the “prevalent and systematic use of the *Daiyo Kangoku* substitute prison system” noting that “insufficient procedural guarantees for the detention and interrogation of detainees increases the possibilities of violations of their rights and may lead to a *de facto* failure to respect the principles of presumption of innocence, right to silence and right of defence”.⁵
15. The National Police Agency issued guidelines for conducting interrogations in January 2008; however, Amnesty International is concerned they fall far short of the recommendations made by the CAT. The guidelines call for a one-way mirror system for interrogation rooms, but do not call for interrogation sessions to be recorded. Amnesty International is concerned that these measures will be insufficient to put an end to torture and other ill-treatment during interrogation. The guidelines refer to “*Ginou Densho Kan*” (Traditional Skill Patrimony Officer), which indicates that techniques for obtaining confessions, including the use of torture and other ill-treatment, may be passed onto the next generation of police officers as a matter of course.

Survivors of Japan’s military sexual slavery system before and during World War II

16. Up to 200,000 women were sexually enslaved by the Japanese Imperial Army from around 1932 to the end of World War II. These women are euphemistically known as ‘comfort women’. Sixty-two years after the end of World War II, survivors of the sexual slavery system continue to be denied justice. Survivors have suffered from physical and mental ill-health, isolation, shame and often extreme poverty as a result of their enslavement.
17. The Japanese Imperial Army preyed on women and girls who, because of age, poverty, class, family status, education, nationality or ethnicity were most susceptible to being deceived and trapped into the sexual slavery system. The vast majority of women enslaved were under the age of 20; some girls were as young as 12 when they were abducted. The Japanese Imperial Army used violence and deception to obtain women and girls.
18. Contrary to the legal position upheld by the government, the ‘comfort women’ sexual slavery system violated many international laws that existed at the time. By 1932, at least 20 international agreements, including the International Convention for the Suppression of the Traffic in Women and Children (1921), prohibiting the slave trade, slavery and slavery-related practices had been concluded and the vast

⁵ *Ibid.*, para. 15. See also, for instance, Concluding Observations of the Human Rights Committee: Japan, UN Doc. CCPR/C/79/Add.102, 19 November 1998, para. 23.

majority of states, including Japan, had prohibited slavery in accordance with international law. However, procedural and substantive barriers in national legislation have led to all cases of 'comfort women' brought before Japanese courts to be dismissed, despite court judgments recognising the Japanese Imperial Armed Forces' direct and indirect involvement. Compensations offered by the government have failed to meet international standards on reparation and are perceived by survivors as a way of buying their silence. The continued denial of justice prolongs the humiliation and suffering of the 'comfort women' survivors. Amnesty International considers this a serious violation of their human rights.

D Identification of achievements, best practice, challenges and constraints

Achievements

19. Amnesty International welcomes Japan's accession to the Rome Statute of the International Criminal Court in 2007 and the introduction of the prohibition of trafficking in persons into the Penal Code. However, the organisation is concerned that protection for victims of trafficking remains insufficient in practice.

Recommendations to the government

20. Implement, as a matter of urgency, the recommendations of all UN human rights monitoring bodies, including to ensure that adequate human rights legislation is introduced and implemented;
21. Sign and ratify the first Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
22. Revise the counter-terrorism law to bring it into line with international standards, including mechanisms of effective appeal against inclusion in a 'watch list';
23. Revise the Immigration Control and Refugee Recognition Act to prohibit the return of asylum-seekers to countries where there is a risk of torture;
24. Introduce a formal moratorium on executions as a first step toward abolition of the death penalty;
25. Take steps to abolish the *daiyo kangoku* system or bring it into line with international standards, and implement safeguards, such as explicit directives for prompt and unhindered access to legal counsel as well as electronic recording of all interrogations;
26. Accept full responsibility and apologise unreservedly for the 'comfort women' system in a way that is acceptable to the majority of the women and which publicly acknowledges the harm that these women have suffered and restores the dignity of the survivors, including by providing adequate compensation.

Appendix: Amnesty International documents for further reference

Death Penalty and daiyo kangoku system of pre-trial detention

Japan: Amnesty International condemns executions, 7 December, 2007 (AI Index: ASA 22/016/2007)

Japan: Three executed ahead of United Nations General Assembly resolution, 7 September 2007 (AI Index: 22/012/2007)

Open Letter to the Minister of Justice of Japan, The Hon. Nagase Jinen, 24 January 2007, (AI Index: TG ASA 22/007.001)

Japan: "Will this day be my last?" The death penalty in Japan, 7 July 2006, (AI Index: ASA 22/006/2006)

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Japan: Open Letter to Prof. Dr. Hans-Gert Pöttering, President of the European Parliament, 14 November, 2007 (AI Index: TIGO ASA 22/2007.001)

Japan/US: US House of Representatives resolution an important step towards justice for 'comfort women', 30 July 2007 (AI Index: 22/009/2007)

Japan: Amnesty International welcomes US congressional committee passing 'comfort women' resolution, 28 June 2007 (AI Index: ASA 22/008/2007)

Japan: Still waiting for justice after 60 years – justice for survivors of Japan's military sexual slavery system, 28 October 2005, (AI Index: ASA 22/012/2005)