

Human Rights Now/ Asian Legal Resource Centre

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Office of the United Nations High Commissioner for Human Rights

Written Submission Provided for the Summary of the Human Rights Situation in Japan

Prepared by the Office of the United Nations High Commissioner for Human Rights

I General Concerns

1. Serious Gaps between Japanese Practice and International Standards

Japan has ratified core international human rights treaties, such as ICCPR, ICESCR, CAT, CERD, CEDAW and CRC. However, implementation of the treaties' obligations is largely behind. There is a serious gap between Japanese practice and international standard, as described below.

2. 2. Poor Implementation of Treaty Obligations

Notwithstanding the repeated recommendations made by human rights treaty bodies, the State of Japan ignores most of them, and has little political will to implement the recommendations.

Areas of recommendation include: criminal justice, the death penalty, discrimination against children born out of wedlock. In addition, Japan often delays in submitting periodic reports for treaty bodies. For example, its CAT report and ICCPR report have been delayed over five years.

3. Individual Communications

Japan has not ratified any optional protocol of the core human rights treaties and prevents its own people from filing individual communications to the treaty bodies. Thus, Japan avoids international scrutiny of its human rights practice and neglects implementing treaty obligations.

4. Lack of a National Human Rights Institution (NHRI)

Japan has yet not established an NHRI based on the Paris Principles. In 2002, the government submitted a Human Rights Protection Bill to the Diet, which included provisions for establishing an NHRI. But the Bill was not in conformity with the Paris Principles, in particular on the question of institutional independence. It has not passed the Diet. Although the government has attempted to submit a new bill since then, there has been no serious consideration of the Paris Principles.

5. Problem in Judiciary

Most courts in Japan either disregard international human rights standards or insufficiently understand them. It is extremely rare for a court to judge a case based on a human rights treaty.

II Specific Concerns

1. Criminal Justice

1-1. Pretrial detention and interrogation

1-1-1. In Japan, pretrial detention usually continues for 23 days in a police facility, called *daiyou kangoku*, in which police have power to control the daily life of suspects. Judicial control on pretrial detention is a mere formality, and there is no pretrial bail system. Suspects under custody are legally obliged to face interrogation in a confined, locked room with no electronic monitoring systems. During interrogation, attendance of an attorney is not permitted. There are no rules regulating the time and length of interrogations. The HRC (1998) was deeply concerned about the practice of pre-trial detention and strongly recommended it to be changed in conformity with articles 9, 10, and 14 of ICCPR (21, 23, 25). However, to date, there has been no change in the situation.

1-1-2. The criminal justice system in Japan has been called "hostage justice" insofar as police take

suspects hostage in order to obtain confessions. Such a situation naturally endangers fundamental human rights and increases the danger of suspect abuse by police. Indeed, police interrogations often entail serious misconduct to force self-incrimination, leading to wrongful convictions.

For example, 13 people in Kagoshima, arrested by police for a vote-buying case in 2003, were subjected to abusive police interrogations. Police misconduct included: forcing one man to stomp on the names of his father and grandfather; yelling and threatening, such as “I will bring you to hell”, “I will give you the death penalty”, “I will arrest your family if you do not confess”. All defendants in the case were acquitted in 2007 (Shibushi Case). In 2007, an innocent person who made a false confession to the police was exonerated from his conviction in a retrial of a rape case in Toyama. Alleged abuses of suspects by police during interrogations have been increasingly reported by the media. From 2004 to date, at least 51 cases of alleged abused have been reported by the Japanese media.

1-1-3. In order to prevent such abuse, the HRC (1998) strongly recommended that “the interrogation of the suspect in police custody or substitute prison be strictly monitored, and recorded by electronic means.” However, no official system of video/audio taping has started in Japan. In 2007, prosecutors started a new practice of partially recording suspects’ confessions to prosecutors in their discretion in some parts of Japan. However, this may not exclude all risks of abuse and false confessions. Rather, arbitrary recording may hide the reality of full interrogations, misleading the fact-finder and causing wrongful convictions. The entire custodial interrogation should be recorded.

1-1-4. One cause of such pre-trial detention and interrogation may be attributed to the judiciary. Even though the HRC (1998) was concerned that “a large number of the convictions in criminal trials are based on confessions,” judges still tend to rely excessively on confessions. In 2005, a High Court ordered a retrial for a death row inmate who confessed in 1961 and has been on death row since 1969, based on scientific evidence. One year later, however, another High Court reversed the case by its over-emphasis on the existence of confessions (Nabari case).

1-2. Right to a fair trial

1-2-1. The conviction rate in Japan is above 99.8%, raising serious doubts that the “presumption of innocence” (14-2) is actually guaranteed in Japan.

1-2-2. HRC (1998) recommends that state law and practice enable criminal defense to have access to all relevant materials so as not to hamper the right of defense, in accordance with 14-3, ICCPR. While the revision of Japan’s Code of Criminal Procedure (2004) set forth new provisions with regard to disclosure, the absolute discovery obligations of the prosecutor are quite limited, and the conditions to allow discovery are quite vague in the provisions. A judge could exercise wide discretion in deciding whether to order disclosure through the interpretation of these provisions. In particular, there is still no obligation for a prosecuting attorney to disclose exculpatory evidence. Also, in the case of retrials, including cases of death row inmates, there is no discovery rule for a

condemned person to file the retrial and establish a claim of innocence.

2. Capital Punishment

The government of Japan has not taken any measure to either abolish or introduce a moratorium of the death penalty. Instead, the death penalty has expanded. In 2007, the courts in Japan sentenced 46 defendants to death, which is the largest number since 1980. The number of death row inmates has doubled since 2003, where it was around 50 in 2003, to over 100 in 2007.

3. Torture

Recently, the practice of torture in several Japanese prisons was revealed. In 2001, one prisoner was killed and many injured by the cruel abuse of spraying water against prisoners' hips in Nagoya Prison. In 2007, torture by a doctor in Tokushima Prison was revealed. The doctor inserted instruments into prisoners' anuses, extensively assaulting and injuring the prisoners. Widespread torture in Tokushima Prison caused seven deaths and one suicide among prisoners.

4. Violating core obligations of Economic, Social and Cultural Rights

Japan has not fulfilled its minimum core obligation of economic, social cultural rights, such as providing essential food, essential primary health care, and basic housing.

4-1. While Japan has adopted a "livelihood protection allowance system" for most disadvantaged people in society to fulfil its core obligation, it is a recent nationwide phenomenon that municipal government officers often reject applications for the allowances, as well as strongly encourage applicants to withdraw their applications. It has caused devastating results. In Kitakyushu, a 68 year-old man starved to death in 2005 and a 56 year-old man starved to death in 2006, both after their applications had been rejected. In 2007, a 52 year-old man starved to death after his allowance stopped. The Ministry of Health, Labour and Welfare does not take adequate measures to stop this practice. Instead, it encourages it by strongly urging the reduction of "inappropriate benefits."

4-2. Moreover, the State of Japan adopts retrogressive measures against the vulnerable population on the allowance system. For instance, people above the age of 70 who receive livelihood protection allowances were once guaranteed additional monthly aid. In 2004, the government started to reduce this aid, ultimately abolishing the aid system in 2006. Single mothers who received livelihood protection allowance were also guaranteed additional monthly aid; however, the government started to reduce this aid in 2005.

4-3. Concerning housing, there are around 20,000 homeless people in Japan. The homeless cannot register with the Employment Bureau and use its services, and are prevented from receiving old-age pensions, disability pensions, and livelihood protection allowances because they are unsettled. National and municipal governments provide shelter or housing without helping job-hunting. It is difficult for them to achieve self-help and their transient lives have been prolonged.

5. Discrimination

5-1. Despite repeated recommendations issued by treaty bodies (HRC, CEDAW, CESCR, CRC), discrimination against children born out of wedlock continues, in particular concerning the issues of nationality, family registers and inheritance rights. Article 900, paragraph 4, of the Civil Code, which clearly discriminates the inheritance rights of children born out of wedlock, has not yet been amended; and the Supreme Court, in 2004, found that there is no discrimination under the Constitution regarding the provision. Article 2 of the Nationality Law, which prescribes that the children born out of wedlock cannot get Japanese nationality, has not yet been amended, and the Supreme Court reaffirmed its constitutionality in 2002.

5-2. Despite the concerns of the HRC, a discriminative law which prohibits women from remarrying within six months following the date of the dissolution or annulment of their marriage still exists.

5-3. The Ainu, an indigenous people, face social discrimination especially regarding education, employment and unprotected land rights. Although the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples in September 2007, the Japanese government has not yet recognized the Ainu as an indigenous people whose rights must be protected.

5-4. Foreign nationals

5-4-1. Despite the concerns of the CERD, Japan has not yet adopted specific legislation to outlaw racial discrimination.

5-4-2. Violent actions against resident Korean minorities, mainly children and students, still remain. These actions tend to expand when diplomatic problems occur between Japan and North Korea. Japan has not been able to take resolute measures to prevent and counter such acts.

5-4-3. Since Korean schools are not recognized as official “schools” under the School Education Law, resident Korean students receive unequal treatment, especially with regard to financial support from the government and local offices.

5-4-4. Article 26 of the Immigration Control and Refugee Recognition Act (ICRRA) provides that only those foreigners who leave Japan with a permit to re-enter are allowed to return to Japan without losing their resident status, and that the granting of such permits is entirely at the discretion of the Minister of Justice. Under this law, foreigners who are second- or third-generation permanent residents in Japan and whose life activities are based in Japan may be deprived of their right to leave and re-enter the country.

5-4-5. Due Process in deportation procedures is not sufficiently protected. During investigations in the course of deportation procedures, closed interviews are conducted without any monitoring or recording. The government sometimes deports foreign nationals even within the limitation period legally provided to resort to judicial review against the deportation order. This misconduct is clearly against their right of access to court.

5-4-6. Japan amended Article 6 of the ICRRA and newly introduced a version of the US-VISIT Program, as a means of combating terrorism, where foreign nationals and re-entrants (other than Special Long Term residents) shall have their fingerprints, face photographs, and personal details

taken and recorded upon (re-)entry. This Program was introduced without any restriction regarding the process of collecting and disposing these data or the scope in using the data.

5-4-7. Asylum seekers and refugees. According to the ICRRA, the application for refugee recognition is filed with the Immigration Bureau under the Ministry of Justice, and the Minister of Justice delivers the judgment. To ensure neutral and fair decisions, a politically independent agency to decide the refugee application should be set up. Also, not only are applicants (asylum seekers) not entitled to receive life security and health insurance, they are prohibited from working so they must work illegally at their own risk. Japan has not yet adopted specific regulations to obligate government officials to keep the personal information of asylum seekers confidential. In some cases, the government has leaked data to asylum seekers' countries of origin.

5-5 Moreover, structural discrimination against burakumin, women, and disabled people continues.

6. Freedom of Thought, Conscience, Expression (18,19)

6-1. Freedom of thought and conscience (18 ICCPR). Recently, several local governments required school teachers during public ceremonies to sing the national anthem, *Kimigayo*, under the *Hinomaru* flag, both of which are highly controversial since they were the essential symbol of Japanese Imperialism before and during WW II. In Tokyo, at least 388 teachers were disciplined for refusing the singing *Kimigayo* and standing before *Hinomaru* since 2003. In Feb 2007, the Supreme Court found that a reprimand against a music teacher who refused to play piano for *Kimigayo* does not violate article 19 of the Constitution, which guarantees freedom of thought and conscience to all citizens. Where teachers are imposed, the children also are indirectly imposed to sing the song. It endangers children's right to hold opinions without interference (19-1 ICCPR).

6-2. Freedom of expression (19-2 ICCPR). Recently several people were convicted just for their political activities. In Japan, visits to an individual's home in the course of election, as well as civil servants' political activity such as distributing political pamphlets, are prohibited and criminalized. The court has found the restrictions are neither unconstitutional nor a violation of ICCPR.

7. State obligations toward effective remedy for the victims of human rights violation

The State of Japan has not provided any reparation to the victims of gross human rights violations perpetrated by Japan's military during WW II, such as forced labor and the practice of sexual slavery. The court repetitively rejected the legal responsibility for Japan to compensate the victims, based on the governmental allegation. In April 2007, the Supreme Court declined to order compensation for victims of both sexual slavery and forced labor. Japan has not conducted any comprehensive investigation, identified any responsible parties, prosecuted, nor provided adequate reparation for victims. Also the State fails to take measure to prevent recurrence, including educational measures. Above all, government officials, including the former Prime Minister, denied the occurrence of sexual slavery practices. Such developments re-traumatized victims.