

## Opinion on the Japanese Government's First Report on the Convention against Torture

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Japanese Workers' Committee for Human Rights  
Japan Association for Social Justice and Human Rights  
League Demanding State Compensation for the Victims of the Public Order Maintenance Law  
National Liaison Association on Retrials and False-Charge Cases

### 1. Expectations for ratification and reports

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (below, "Convention against Torture" or "the convention") was ratified by the Japanese government on June 29, 1999, promulgated on July 5, and became effective on July 29.

In November 1993 the UN Human Rights Committee recommended in its comments on the Japanese government's third report on the convention that the government should ratify the convention. In Japan, lawyers and citizens formed the "Society Demanding Ratification of the Convention against Torture" in 1995, and in the Diet there were comments from lawmakers seeking the convention's ratification. It is therefore pleasing that Japan's government ratified the convention, even though it is the 139th government to government to do so (currently there are 144 ratifying countries).

By ratifying the convention, Japan is obligated by Article 19 to submit a report within one year after it takes effect, and thereafter every four years. The government reports are reviewed, and NGOs are permitted to submit their opinions on the reports, which gives hope to lawyers and citizens who are concerned about the judiciary and democracy.

### 2. The Japanese government should correct its tendency for tardy reports

The Japanese government's first report, which should have been submitted in July 2000, came five years late in December 2005. The fifth government report on the International Covenant on Human Rights, which was supposed to have been submitted by October 2002, came four years late in December 2006. It appears that the government is about to start writing its report on the International Covenant on Economic, Social and Cultural Rights, which was due in June 2006. NGOs and other organizations are waiting to see the government's "response" expressed as how it will understand and implement the "concerns" and "recommendations" of the Human Rights Committee.

For example, Japan has not ratified Article 13 (b) and (c) of the International Covenant on Economic, Social and Cultural Rights, which calls for the gradual introduction of free secondary and higher education. The only countries which have not ratified it are Madagascar, Rwanda, and Japan. In August 2001 the Committee on Economic, Social and Cultural Rights (CESCR) asked that the Japanese government consider dropping its reservation.

The All-Japan Federation of Students' Self-Governing Associations (Zengakuren) made a statement about this matter at a August 2006 meeting of the UN Human Rights Subcommittee, and not only students but many parents as well have expectations for the Japanese government's response.

Japan's government ratified the International Covenant on Civil and Political Rights (ICCPR) in 1979, and submitted its reports nearly on time, with the first in 1980, the second in 1987, the third in 1991, and the fourth in 1997. But the fifth report was over four years late, coming in December 2006. Along with the five-year delay in the Convention against Torture report, the Japanese government's recent attitude toward submitting reports is truly insincere and derelict. We strongly demand that the Japanese government, which was a candidate for and became a member of the Human Rights Council in last year's UN reform, will make an honest assessment of its stance, and do something about its tendency to submit reports late.

### 3. The ruins of law

Professor Akira Maeda of Tokyo University of Art and Design, who is also a member of the Japanese Workers' Committee for Human Rights, had this criticism of the Japanese government's first report.

About 45 of the total 84 pages are quotes of convention articles, and "over half of the 39 pages of main text are nothing but repeated explanations of what the quoted articles mean"; "Because this is the first report, the government attempts to paint an overall picture of the related Japanese laws and institutions, and that reasoning makes sense. However, one is struck by the frequent quoting of entire convention passages, followed by repeating the same things. The explanations do not enlarge upon the meaning, but merely repeat it"; "If the

thinking which permeates the Japanese government's report is not the product of a rank amateur who is like a high school student in over his head, then it is the distorted legal positivism which just finds meaning in the existence of legal texts. Because the legal doctrines and value which underlie modern legal principles have lost their substance, the government report merely scrapes together some wreckage from among the ruins of law" (*Falsehood*, April 2006).

The government report quotes Japan's constitution, criminal law, Criminal Procedure Act, and other related laws and regulations. The report notes that Article 36 of the constitution states, "The infliction of torture by any public officer and cruel punishments are absolutely forbidden," and it repeatedly says that torture is also banned by other laws and that those who inflict torture will be punished. Except for the unusual Nagoya Prison case, one would get the impression that "torture" does not exist in Japan. It is basically an explanation which affirms the status quo, and one can only quote Professor Maeda's observation that "it is the distorted legal positivism which just finds meaning in the existence of legal texts."

#### 4. Japan's reality: the *fumie* test remains

Two shocking incidents were reported by the media during the writing of this report.

1. On January 19, 2007 the Toyama Prefectural Police released information on the "Himi false charge case," a case in which the wrong person was arrested. A suspect was arrested in 2002 for rape and attempted rape, the sentence was finalized, and he served three years in prison, but actually he was innocent. The real rapist had appeared. The innocent man denied the charge during two days of interrogation but "confessed" on the third, and the "confession" was maintained during the trial. The man had an alibi, and it was found that the footprints at the crime scene were different from his. There is increasingly serious criticism of police investigations, which are overly dependent on confessions.
2. On February 23 the Kagoshima District Court handed down not-guilty decisions for 12 defendants, including former prefectural assembly members, who had been accused of violating the Public Officers Election Act (corrupt practices) in a prefectural assembly election. The court's decision said, "There is no proof of crimes at all," "There is no proof that a vote-buying meeting was held," and "It appears that the pushy, threatening interrogations claimed by the confessed defendants to have happened actually occurred, and therefore the confessions cannot be trusted." Newspapers and other media also blasted the prefectural police. For example, an *Asahi Shimbun* editorial of February 24 was titled, "Take Responsibility for this Fabrication."

In this case, police interrogators wrote made-up statements that might have been said by parents or grandchildren, placed them on the floor, and made suspects step on them many times, finally eliciting confessions. This was a modern version of the *fumie* ("stepping pictures") from Japan's feudal period when Christians were oppressed by making them step on pictures of the cross during interrogations. The Kagoshima case reminds one of the inhuman torture practiced hundreds of years ago.

Because of these two cases, there are demands in Japan for the police to provide transparency of interrogations through audio and video recordings. However, the director-general of the National Police Agency states that the agency is "not considering" this because it would "make it difficult to build a relationship of trust with suspects, and to ascertain the truth of cases."

#### 5. On the definition of "torture"

Article 1.1 says, "[T]orture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession..." by persons "acting in an official capacity."

According to the "Guidelines on the Form and Content of Initial Reports" by the Committee against Torture, "Information on the definition of torture in domestic law, including indications as to whether such a definition is in full conformity with the definition of the Convention.

The government's report states, "Article 36 of the Constitution absolutely prohibits torture by public officials by stipulating that 'the infliction of torture by any public official and cruel punishments are absolutely forbidden,'" and it quotes Article 195 of the Penal Code, which pertains to Article 4 of the convention. Article 195 reads:

"When a person performing or assisting in judicial, prosecution or police functions commits, in the performance of the person's duties, an act of physical violence or physical or mental cruelty upon the accused, suspect etc., imprisonment with appointed work or imprisonment without

appointed work for not more than 7 years shall be imposed.”

In other words, in Japan for “all acts of torture, attempts to commit torture and acts which constitute ‘complicity’ or ‘participation’ in torture under the Convention” “it is guaranteed that appropriate prosecution shall be instituted, taking into consideration the gravity of the offense and circumstances,” meaning that therefore torture cannot exist in Japan.

The government’s report does not clearly define torture, and it does not coincide completely with domestic law. The convention’s title is “The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,” which was taken from Article 5 of the 1948 Universal Declaration of Human Rights.

In other words, torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, and this must be clearly specified in domestic law as well.

In fact, there have been, and there still are, many acts of mental torture which are degrading and inflict severe suffering in police interrogations of innocent people. Although there is no physical torture, police treat suspects inhumanly by not giving them meals or allowing them to sleep, threaten suspects or give them false information (such as “Your mother also says you should confess”), use polygraphs, or strip them naked while in detention.

Article 38 of the Japanese constitution states, “No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession.” But in reality this is not observed, as one can see from the aforementioned Kagoshima case.

The Horikoshi case of repression under national and public law is an instance in which police unjustly tailed a citizen for a long time, and used secretly taken photographs and other means to fabricate an incident.

#### 6. Communications procedure, and the still unratified Optional Protocol

The government has not yet declared that it recognizes the communications procedure under Article 22 of the Convention against Torture. It also has not ratified the convention’s Optional Protocol, and offers this reason: “There is a risk that [ratification] could create problems in connection with the judiciary system, including the independence of the judicature, which is guaranteed by Japan’s constitution, and it has been observed that this matter requires careful consideration.” The Japanese government’s fifth report on the ICCPR uses the same explanation to refuse ratification of the Optional Protocol.

Since its inception, the Japanese Workers’ Committee for Human Rights has asked the government to quickly ratify the ICCPR first Optional Protocol (communications procedure). In addition to approaching the Ministry of Foreign Affairs and the Ministry of Justice, over the last 10 years we have submitted about 20,000 signatures from organizations. Many NGOs, including the Japan Federation of Bar Associations, to which all Japan’s lawyers belong, have demanded ratification of the Optional Protocol.

In 1979 when Japan ratified the ICCPR, the Foreign Affairs Committees of both houses of the Japanese Diet, the House of Representatives and the House of Councillors, made a resolution which states, “Concerning the Optional Protocol, we will observe its implementation and give positive consideration to signing it.” But even though 28 years have passed since then, it has not been ratified.

The UN Human Rights Committee has many times advised the Japanese government to ratify the Optional Protocol, but the latter keeps ignoring that recommendation.

In the review of Japan’s fourth report of October 1998, Human Rights Committee member Martin Scheinin (Finland) made these observations: There is the curious statement that ratifying the Optional Protocol would be problematic in terms of “the independence of the judicature”; the committee is recognized as an agency which on an international level interprets the covenants, makes general comments, makes concluding observations on reports from member governments, and releases observations on communications from individuals; the committee has no intention of commenting on cases still in Japanese courts, or of intervening in the current judicial system; and there is no real way to justify postponing ratification of the Optional Protocol.”

What is “independence of the judicature?” Japanese junior high school textbooks explain the separation of powers — the legislative, the administrative, and the judicial (*Shakai kagaku gakusei no komin*, published by Teikoku-shoin), and high school textbooks go into it in more detail (*Seiji keizai*, a high-school textbook published by Jikkyo Shuppan).

In Chapter VI, “Judiciary,” Article 76.1, the Japanese constitution says, “The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.” *Horitsu yogo ga wakarū jiten*, a dictionary of legal terms published by Jiyukokuminsha), says, “Together with Article 41, which specifies that legislative power resides in the Diet, and Article 65, which says that Executive power is vested in the Cabinet,

[the constitution] sets forth the separation of powers.” This dictionary also says, “It is necessary that judges be assured circumstances allowing them to conduct trials from a fair and impartial stance, without outside interference, including pressure from within the courts (independence of judges’ authority); “Because Article 76.3 of the constitution declares that ‘All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws,’ many institutions have been created to assure the independence of judges’ authority.” The word “independence” with respect to the judiciary in the constitution appears only in connection with the “conscience” of judges.

Article 98.2 of the constitution states, “The treaties concluded by Japan and established laws of nations shall be faithfully observed.”

The reason cited by Japan’s government, that “[ratification] could create problems in connection with the judiciary system, including the independence of the judicature,” does not stand up.

As the Japanese government has ratified both the Convention against Torture and the ICCPR, it can no longer put off ratifying the convention’s Optional Protocol in order to make the convention effective.

#### 7. Provision of remedies: retrials

The Human Rights Committee’s 1998 Concluding Observations say, “The Committee recommends that the State party take measures to provide remedies to victims of violations of human rights and, in particular, that it ratify the Optional Protocol to the Covenant.”

Mr. **Kaitani**, who was director of the Ministry of Foreign Affairs Human Rights and Refugees Department, and who was a member of the Japanese government delegation in this review, made these statements: “Japan’s judiciary system is efficient, and functions sufficiently as a system to remedy human rights violations,” and “Japan’s judicial system is run extremely well.”

What is Japan’s system for remedies? According to the December 2000 “Government Report Pursuant to International Human Rights Conventions ‘Core Document,’” it consists of “remedies that are available to individuals who file complaints that their human rights have been violated” (1) and, as a judicial remedy, people “can request a retrial.”

However, the door to Japan’s retrial system is very difficult to open and does not function as a system to provide remedies.

In the Ozaki case, despite the decision by the Kagoshima District Court in March 2002 to reopen the case, the Miyazaki Branch of the Fukuoka Appellate Court stated, in a decision turning down a retrial request, that allowing a retrial would “lead to the virtual demolition of the three-tiered judicial system,” a statement which negates the retrial system. In January 2006 the Supreme Court confirmed this unjust appellate court decision.

In the Nabari case (in which the defendant Okunishi, currently in detention, was charged as the perpetrator and sentenced to death), the Nagoya Appellate Court Criminal Section No. 1 handed down a decision in April 2005 ordered the reopening of the case and the suspension of the death penalty. Nevertheless, on December 26, 2006 the Nagoya Appellate Court Criminal Section No. 2 handed down an unjust decision which cancelled the previous decision.

The Yokohama case, which was the biggest case of suppression of free speech, was fabricated under the repressive legislation and the Public Order Maintenance Law during World War II. In 2003 the Yokohama District Court ordered a retrial, which the prosecutor appealed. But in 2005 the Tokyo District Court turned down the appeal and ordered a retrial. Then in the new trial in February 2006 the Yokohama District Court dismissed the case on that grounds that guilt or innocence could not be debated because the Public Order Maintenance Law no longer exists. In January 2007 the Tokyo Appellate Court handed down the same decision as the district court.

In the Fukawa case, two defendants have spent 29 years in prison and maintain their innocence. In September 2005 the Mito District Court Tsuchiura Branch decided on a retrial, but the prosecutor appealed, and the case is now being fought in the Tokyo Appellate Court. The retrial has therefore not begun.

The examples given above are but a few recent cases. Concealed in shadow of Japan’s 99.9% conviction rate is the large number of falsely accused people. Many of them can only resign themselves to this fate. In a number of cases during the 1970s and 1980s, such as the Menda, Saitagawa, Matsuyama, and Shimada cases, retrials for death-row prisoners established their innocence and they made it back from the gallows alive. But at present the retrial system is not functioning as a means of remedy. “Japan’s judiciary system is efficient, and functions sufficiently as a system to remedy human rights violations” is an untrue report.

The Japanese government has yet to ratify the first ICCPR Optional Protocol, which 105 other countries have already ratified, and it has also not ratified or accepted the Optional Protocol and communications procedure of the Convention against Torture. Japan has also not ratified the Optional Protocol of the Convention on the Elimination of All Forms of Discrimination Against Women. Why does Japan’s government dislike

communications procedures so much? One can only conclude that it is because the government lacks self-confidence in the current state of Japan's police, prosecution offices, courts, and other institutions. And if the government claims that is not the case, it should immediately ratify these protocols.

#### 8. No contrition by government and judiciary for past torture

The Japanese government is not sincerely contrite over its aggression and colonialism in Second World War. Every year former Prime Minister Koizumi visits Yasukuni Shrine while claiming that "the Great East Asian War was a war of self-defense and liberation," for which he was roundly criticized by the governments and people in Asia and the world.

Concerning the "comfort women" resolution being debated in the US House of Representatives, the current prime minister, Shinzo Abe, stated on March 5, 2007, "Just because there was a resolution doesn't mean we are going to apologize." Additionally, although the Abe government said that it will carry over the August 1998 media statement by Chief Secretary of the Cabinet Kono, which admitted involvement by the Imperial Japanese Army in the comfort women issue, it claims that this statement is not proof that "comfort women" were abducted.

These facts indicate that the Japanese government does not admit to its past mistakes or learned any lessons from them.

In its view of history, the Japanese government has consistently maintained a posture of no contrition or apologies for the torture committed before or during the war.

According to the League Demanding State Compensation for the Victims of the Public Order Maintenance Law, during the 20 years from 1925 when this repressive law was created until it was abolished, 5,162 people were indicted and 75,681 were sent to the public prosecutor's office. These people were arrested and tortured by the Interior Ministry's special secret service police, thought prosecutors, or other authorities, and this suffering caused them to abandon their beliefs, or die from cruel treatment or imprisonment. Over 80 people were butchered, while 1,617 died in prison from torture, cruel treatment, illness, or other causes.

The writer Takiji Kobayashi was arrested in February 1933 and murdered on that same day at the Tokyo Tsukiji Police Station. The poet Akira Tsuru died under suspicious circumstances in September 1938 of dysentery at the Nokata Police Station in Nakano, Tokyo. Over 30 people were indicted in the Osaka Commercial University incident of 1943 through 1945, and during an air raid alert, only the cells of death row prisoners and thought-crime prisoners were left locked. Three of the prisoners in this incident died and three went insane of causes including torture, filthy cells, and malnourishment.

The League Demanding State Compensation for the Victims of the Public Order Maintenance Law, which was founded in 1968 and has 14,700 members, collects nearly 400,000 signatures every year demanding the creation of a law to provide victims of the Public Order Maintenance Law with state compensation. Nevertheless, the Japanese government treats the matter with silence, neither apologizing or paying compensation.

Under a federal compensation law the German government has apologized to Nazi victims and paid them compensation, and the Italian government pays life pensions to "anti-fascist political offenders" under a state compensation law. In the Republic of Korea victims of the Public Order Maintenance Law are officially commended as patriots, and given pensions.

In Article 10 Paragraph 56 the government report states, "The public officials including local government officials have been provided with education on the importance of human rights, including the prohibition of torture, through various training programs," and it also quotes Articles 36 and 99 of the constitution, but this is a total contradiction.

One of the requests made to the Diet is, "The government should perform a study of Public Order Maintenance Law victims, and make the results public." The League believes that the most important thing in proceeding with human rights education in conjunction with implementing the Convention against Torture is to perform a study on the Public Order Maintenance Law, which victimized the most people by torture, and release the results to the public so that we never forget the past and use it to make the 21st century an era of respect for human rights.

The course taken by the request for a retrial in the Yokohama case highlights the inadequacy of remedies for human rights violations in modern Japan.

The Yokohama case is an incident of extensive thought and speech repression during WWII by the Kanagawa Prefecture police, prosecutors, and judges. From 1942 to 1945 the Kanagawa Prefecture special secret service police arrested a large number of researchers and editors who were communists and critical of the

government's war policy. In total over 60 people were arrested (even now there is no accurate figure), and they were cruelly tortured by the special secret service police. Victims endured violence for several hours with tools including clubs, long strips of bamboo, ropes, and broken chairs. Victims were waterboarded, and women were subjected to unbearable humiliation. Four people died in prison, two died from exhaustion after release, 32 had injuries, and 12 lost consciousness. The torture was meant to make the arrestees falsely confess that they had engaged in communist activities, which violated the Public Order Maintenance Law. Torture was used to make arrestees admit to the stories which the secret police had prepared. Not even one of the arrestees had been involved in substantive activities to rebuild the Communist Party.

The Yokohama courts used these "confessions" as proof to confirm the stories written by the secret police, and found 30-odd people guilty of violating the Public Order Maintenance Law. As this shows, the Yokohama case was fabricated with the integrated cooperation of the police, prosecutors, and courts.

In 1947, 33 of the torture victims jointly charged the torturing police officers. The court recognized the charges of torture, and three high-ranking officers were found guilty. As this sequence of events shows, the fact that the defendants in the Yokohama case were the victims of false charges has become accepted fact in modern historical, and common knowledge among experts.

In 1986, nine of the Yokohama case defendants who had been found guilty filed a request for a retrial, asking that "confessions" forced by torture were inadmissible as evidence and that guilty verdicts based on these "confessions" should be reversed. However, the Yokohama District Court turned down the request. The shockingly reckless and irresponsible reasons given by the court were (1) the Supreme Court recognized torture in the case of only one of the defendants, not for any of the people requesting a retrial, and (2) the trial records from the Yokohama case no longer exist, so there is no way to have hearings (the reason for missing trial records is that at war's end, the courts burned them out of fear the records would be used to prosecute war crimes). The Tokyo Appellate Court upheld this reckless, irresponsible decision. During the last 20 years four retrial requests have been made, but no way has been found to settle the matter.

The third retrial request finally led to a retrial in 2005, but the Yokohama District Court dismissed the case. Its reasoning was that because the reason for bringing the action, the Public Order Maintenance Law, had been abolished in 1945, the defendants were released from the trial procedure, and therefore there is no way to deliver a guilty or innocent verdict. However, what the Yokohama case defendants want is a clear cancellation of their guilty verdicts, i.e., a court decision of "innocent," and the consequent finding of a state crime and an apology. But the Tokyo Appellate Court upheld the district court's dismissal, and hearings are now left to the Supreme Court.

Even though this is clearly a false charge as seen both academically and in terms of common sense, even 20 years of effort have not been enough to erase this false charge. This shows that Japan's retrial system is highly inadequate as a system to redress human rights abuses.

At the same time, Japan's system is extremely timid about recognizing past crimes of the state, and there is a tendency in the courts to continue avoiding such findings. This too makes for difficulty in redressing human rights abuses.

#### 9. Movie: "I Just Didn't Do It": Japan is a backward nation in terms of human rights

The motion picture "I Just Didn't Do It" by director Masayuki Suo, who is famous for his previous picture "Shall We Dance?", was released this January, shown nationwide, and has been favorably received by many young Japanese. In the movie, a young man is arrested for and falsely accused of groping, and in district court is found guilty despite his denial of the allegations. The movie very realistically shows how the police, prosecutors, and courts fabricate false charges, and also depicts the struggles of the accused person's lawyer, mother, and friends. Director Suo quotes the legal maxim "Even if you let 10 real criminals get away, don't punish one innocent person," and says, "I made this movie because I wanted to take a look at the principles of criminal trials."

What prompted Suo to make this movie was a book titled *Father Didn't Do It*, written by Takashi Yatabe and his wife Atsuko. Yatabe had been falsely accused of groping but won a reversal of his conviction in appellate court. In the book's afterword, Atsuko writes, "At the time my husband was arrested, I didn't even know what 'indictment' means, and I have painfully felt how frightful it is to be ignorant of politics and the judiciary. Arrest, detention, and trial are certainly not unconnected with everyday life because the horror of a false charge can assault anyone when they least expect it." This statement hits the nail on the head by pointing out the danger and horror of modern Japan's political and judicial system.

In late January, the Abe government's Minister of Health, Labor and Welfare said that "women are baby-making machines," and for this highly discriminatory statement against women he met with criticism from

throughout Japan.

In late February, the Minister of Education, Culture, Sports, Science and Technology said, “If you eat butter every day, you’ll get metabolic syndrome [visceral fat syndrome]. If we eat nothing but human rights, Japanese society will get human rights metabolic syndrome.” The February 27 *Asahi Shimbun* published an editorial titled “The Minister of Culture’s Terribly Wrong Diagnosis,” which said, “It is very disappointing that the Cabinet minister responsible for Japan’s education and culture made a statement contemptible of human rights. We do not want the minister to send the mistaken message to the world that the Japanese think the current state of human rights is sufficient. Instead of metabolic syndrome, human rights are still greatly undernourished.” Prime Minister Abe claimed there was “no problem with this statement,” and there is no indication the Minister of Culture will be axed.

These show realistically that even though Japan is an economic power, it is a backward nation in terms of human rights.

## 10. Report by the Japan Association for Social Justice and Human Rights

### (1) Treatment of detainees (Article 11, Paragraph 76)

On the treatment of detainees, the government report says, "Interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under Japan's jurisdiction are systematically reviewed by the relevant organizations, and revisions are made to relevant regulations as necessary."

Hardly any improvement has been made in the treatment of detainees. Even the government's written reply to questions by Diet member Mizuho Fukushima (August 25, 2000; below, "Fukushima questions") said with respect to the restrictions on detainees' visits and personal correspondence, and the practice of not informing a death row inmate's family when carrying out an execution, "These do not violate the ICCPR" and "There was no change even after the [fourth UN] recommendation you specified."

Concerning the treatment of death row inmates and especially restrictions on communication with the outside, the government thinks that most important is "mental stability," i.e., making executions easier to carry out. It does not provide any humane treatment that assures human dignity.

#### A selection of cases

1. Nabari poison wine case: Death row prisoner Masaru Okunishi, who maintains his innocence, is denied correspondence and meetings with anyone by his lawyer and one supporter outside of his relatives. He may not receive postcards from supporters in general, and even when postcards are given to Mr. Okunishi through the only supporter allowed to visit him, they are subject to censorship.
2. Hakamada case: Iwao Hakamada, a death row prisoner who maintains his innocence, is in a condition (prisonization) due to long-term imprisonment which makes him unrecognizable to his relatives when visiting. The requests by his lawyer, family, and supporters for extra-institutional specialized treatment are ignored, and his condition is worsening.
3. Miyagi Prefecture, Hokuryo Clinic case (homicide): Unconvicted prisoner Daisuke Mori requested eye treatment and contact lenses but had to wait six months. Further, he was told that lenses could only be purchased from a certain dealer, that where as contacts normally cost about ¥10,000, that dealer charges ¥70,000 to ¥100,000. He was also not allowed to receive a gift of medicine to treat his chronic atopic dermatitis. After the guilty verdict of the district court trial, Mori was not allowed to meet anyone because of "the possibility of destruction of evidence," and for four years could not see any supporters except for relatives.
4. Tokyo, Tokyo Electric secretary case (homicide): Mr. Govinda, a Nepalese in Yokohama Prison, requested dental treatment and had to wait a year.
5. Tochigi Prefecture, Ashikaga case (homicide, etc.): Kazutoshi Kanke requested dental treatment and was told to wait a year.

### (2) Suspect interrogation (Article 11, Paragraph 78)

The government report makes this statement about suspect interrogations: "With regard to the examination on suspects, the Constitution, the Code of Criminal Procedure and other laws provide: (1) obligations to inform the suspect of the right to remain silent; (2) prohibition of compulsion and torture; and (3) procedures for preparing a written statement which is to be read out or shown to the suspect and to be signed and sealed by the suspect after the interrogator makes an addition if the suspect so requests and after the suspect confirms that the contents are correct. The Police supervise and instruct the interrogators to observe these provisions. Should any violation are found, such violator will be severely sanctioned to prevent recurrence of such violation."

But currently if suspects are charged with minor offenses (such as groping or breaking and entering), investigators will detain them for a long term (maximum of 23 days) for reasons such as "destruction of evidence" or "threatening witnesses." In response to the Fukushima questions, the government said, "Judges carry out adequate judicial reviews," and therefore "there are no problems." But the 2003 *Judicial Statistics Yearbook*, which is prepared by the Supreme Court's General Secretariat, gives the following information showing that judicial reviews by courts hardly function at all.



Warrants of detention issued	155,830
Warrants of detention rejected	536
Warrant issuance rate	99.7%

A selection of cases

6. Three citizens who were distributing handbills at the Self-Defense Forces dormitories in Tachikawa City in opposition to overseas SDF deployment were arrested and indicted on the charge of intrusion, and detained 75 days until release (acquitted by district court; prosecution appealed, and case is now before appellate court).
7. Tokyo, Katsushika Ward Condominium leafleting case: In December 2004 a man entered a condominium whose entry was not locked and put fact sheets such as municipal council reports, which had been prepared with public funds, from council members of certain political parties into all the mailboxes, and was arrested for intrusion. Although he admitted to doing so, he insisted it is not a crime, but was detained for 21 days and then indicted.

Disclosure of evidence

Concealing of evidence showing innocence by prosecutors breeds false charges. Prosecutors continue to hide important evidence that compromises their cases, despite the demands of suspects, defendants, and those requesting retrials. At the same time, nearly all judges do not actively preside over their courtrooms as by ordering prosecutors to disclose evidence.

The government says that judicial reform will lead to greater disclosure of evidence, but decisions on what evidence to disclose is still left up to prosecutors, so others do not know what evidence (showing innocence) prosecutors have. Such reform basically solves no problems.

A selection of cases

8. Fukawa case: The prosecution has a huge amount of undisclosed evidence. In 2003, after more than 30 years has passed since the crime, the prosecution released photographs of the homicide scene, the postmortem certificate, alibi testimony, and the expert opinion on hair. There was important evidence that corroborates the defendants' claims of innocence, but much important evidence still remains hidden by the prosecution. The defendants and their counsel are seeking its disclosure.
9. Nabari case: The prosecution has a huge amount of undisclosed evidence, but refuses to disclose it despite the repeated demands of the defense counsel.
10. A Supreme Public Prosecutors' Office report (complete text) titled Retrials which Established the Defendants' Innocence, and which concerns the disclosure of evidence in retrials, decided on non-disclosure.

In Japan during the 1970s and 1980s, four people whose death sentences had been confirmed were acquitted in retrials. In all four cases, the false charge were revealed by evidence disclosed at the retrial stage, and the defendants were acquitted. On the occasion of a retrial acquittal of a person given the death sentence, the Supreme Public Prosecutors' Office held a committee meeting and wrote a report. We requested the release of that report under the Information Disclosure Law, but were turned down (Supreme Public Prosecutors' Office Document No. 244, October 18, 2002). We filed an objection with the government's Information Disclosure Screening Commission, but that was dismissed (Information Disclosure Screening Commission Document No. 177, January 23, 2004). There is a big difference between Japan on the one hand, and on the other the UK and Canada, where the governments perform studies, release the results, and try to make improvements.

Information about this report appeared in the legal journal *Horitsu Jiho* (vol. 61, no. 8), according to which the disclosure of too much evidence in the retrial was a "lesson" for the prosecution, and since then prosecutors have restrained disclosure.

(3) Petitions and complaints (Article 13, Paragraph 109)

On petitions and complaints the government report says, "As a comprehensive provision of domestic laws regarding this Article, Article 16 of the Constitution stipulates that 'every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.' In addition, the right to complain and the protection of the complainant and witnesses provided for in this Article of the

Convention are guaranteed as follows.”

As revealed in the Nagoya Prison violence case, the government did not take the Human Rights Committee’s recommendations seriously. In its written response to the Fukushima questions, the government took this position on the use of leather handcuffs: “Efforts have been made so that their use does not exceed what is judged to be reasonably necessary.” Concerning the complaint system, which is a way to petition the Minister of Justice, the government replied thus: “We issued a directive and made efforts such as speeding up administrative processes, while guaranteeing the fairness of the petition process. Because people are not treated disadvantageously for filing complaints, we have no plans for setting up a new system to protect complainants. However, acts of violence against prison inmates, such as that which occurred in Nagoya Prison, were committed as retaliation for attempts to complain about dissatisfaction over treatment.”

(4) Admissibility of “confessions” (Article 15, Paragraph 133)

The government report states: “It is ensured that any statement which is found to have been made as a result of torture shall not be used as evidence in any proceedings, under paragraph 2 of Article 38 of the Constitution which stipulates, “Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence”, as well as the Code of Criminal Procedure as described below.”

On electronic records of interrogations, the government says, “Very detailed interrogations are conducted in order to fully ascertain the truth in criminal cases,” and it refuses to make such records claiming that transcription takes much time and labor (Materials for External Explanations on Responding to the Concluding Observations of the ICCPR/Human Rights Committee (as of August 15),” below, “External Explanation”). The government also refuses to allow the presence of lawyers during interrogations because “it would have various influences on overall investigation procedures, including the investigation mechanism (External Explanation). The government also maintains that there is no problem whatsoever with the fact that most suspects confess as a result of proper interrogations, and that confessions which are suspected of being involuntary are now admissible in court (External Explanation).

But let us examine the facts. (1) In 99.916% of district court cases, defendants were found guilty (80,223 total, 87 acquitted; *Bureau of Justice Statistics*, 2003 Edition (2003), which is very high. (2) Court decisions hardly ever deny the voluntariness of confessions. (3) If suspects deny charges, they are held for long time periods.

Judging by these facts, it is totally inconceivable that the courts rigorously vet confessions. Further, because of the government’s refusal to institute a system for the transparency of interrogations, which would hamper the securing of confessions, investigating agencies also think getting confessions is most important, giving rise to a vicious circle.

An example case

Shimotakaido arson case: Toshiyuki Takano, who is accused of being the arsonist who set a fire in 2002, denied the charges to the police. But the police told Takano, “If it’s not you, we’ll bring your wife here,” and gave a false confession. In the trial, evidence including scientific testimony proved that the confession was false, and Takano was acquitted (decision finalized).

(5) Other (b), the so-called “substitute prison” (Paragraph 142)

This system falls under the lawful sanctions referred to in paragraph 1 of Article 1 of the Convention and the detention itself in a so-called substitute prison does not fall under the torture referred to in the Convention. In the so-called substitute prison system, officials in charge of detention who belong to a department not in charge of investigation supervise detainees, taking their human rights into consideration in accordance with relevant laws and regulations, and do not conduct treatment or punishment as may be deemed inhumanly cruel with unnecessary mental or physical pain. Therefore, it is understood that the so-called substitute prison system does not cause any problems of cruel, inhuman or degrading treatment or punishment under the Convention as long as it is operated appropriately.

Even the United Nations has repeatedly recommended that Japan’s “substitute prison” (*daiyo kangoku*) system be abolished, but the Japanese government has ignored the recommendation on the grounds that

“abolition is not realistic.”

Suspects are normally detained in police detention centers (*daiyo kangoku*), where suspects are monitored by police 24 hours a day, and interrogated even late at night to pressure them to confess. The forcing of false confessions under these circumstances is a point in common with cases in which innocent people were found guilty.

Long-term detention amounts to virtual sanctions. Suspects employed by companies fear dismissal, and in some cases they admit to crimes even if they want to insist on their innocence. Substitute prison is also a breeding ground of false confessions.

#### A selection of cases

- Nabari poison wine case: Wine offered at a social gathering in 1961 was poisoned and caused the death of five people. Masaru Okunishi was arrested for the crime and indicted. He pleaded innocent and was found not guilty in district court, but the appellate court reversed that decision and sentenced him to death. Confirmed by Supreme Court. Currently this is under special appeal and seventh request for a retrial.
- Hakamada case: A robbery, homicide, and arson incident which occurred at the home of a miso company president. Defendant pleaded innocent, but district court found him guilty. Confirmed by Supreme Court. Request for retrial has been made.
- Fukawa case: A 1967 robbery and homicide case. Suspects Masashi Sakurai and Takao Sugiyama were arrested on other charges, then indicted in this case. Life terms were confirmed. Currently under immediate appeal and second request for a retrial.
- Hinomachi case: A 1995 homicide case in which Hiroshi Sakahara was arrested and indicted. Pleaded innocent, but his life sentence was confirmed. Currently under immediate appeal and request for a retrial.
- Hokuryo Clinic case: In 2001 Daisuke Mori was arrested and indicted for homicide and attempted homicide on the charge of putting muscle relaxant in the IV preparations of five patients. He pleaded innocent, but in the district and appellate courts he was sentenced to life imprisonment, and the case is now before the Supreme Court.

## About the Author Organizations

### **Japanese Workers' Committee for Human Rights**

Founded in 1993 as the "Executive Committee for Appealing to International Public Opinion about Human Rights Violations in Japanese Workplaces." Over the ensuing 15 years, this organization sent over 700 people to the UN Human Rights Subcommittee and Human Rights Committee, taking reports titled "Voice of the People from Japan." During these years it has gathered petitions from organization requesting ratification of the ICCPR first Optional Protocol, and has submitted 20,000 signatures to the Japanese government. On each occasion it has had talks with the Ministry of Foreign Affairs, the Ministry of Justice, and others. In February 2004 it obtained special consultative status from the UN Economic and Social Council.

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### **Japan Association for Social Justice and Human Rights**

Founded in 1928, this organization struggles against unjust repression by those in power, and is active in protecting human rights and democracy. It has 50,000 members and is organized with a central office in Tokyo, prefectural offices in each of the prefectures, and local chapters below them. The organization opposes repression and supports the court battles of victims for the citizens' freedom of speech and expression, and freedom of elections and political activities. It also pursues responsibility for human rights abuses by the police, and provides support for those saddled with false charges, and people who go to court to find redress for death from overwork, occupational illness, or other problems.

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### **League Demanding State Compensation for the Victims of the Public Order Maintenance Law**

Established in 1968, it presently has 14,700 members. Enacted in 1925, the Public Order Maintenance Law was used as a legal weapon to facilitate the prosecution of the war. The Japanese government has yet to give an apology and compensation to the victims of this repressive law. Every year since 1974 the league has petitioned the Diet to enact a "State Compensation Law for Victims of the Public Order Maintenance Law," and the total number of signatures is now 6,450,000.

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### **National Liaison Association on Retrials and False-Charge Cases**

Established in 1973 as the "National Liaison Committee for Retrial Cases." In 1981 it carried over into the "National Liaison Committee for Supporting Retrial and False-Charge Cases" at the call of author Seicho Matsumoto, theater director Koreya Senda, and others, and with representative committee members including Shin Aochi, Toshiki Odanaka, and Setuko Hani. In 1992 the organization changed its name to the present "National Liaison Association on Retrials and False-Charge Cases." Author Yo Sano and others became representative committee members. The association promotes the experience-sharing and mutual assistance in the movement to lend support in retrials and false-charge cases, and works to improve treatment of people in prison.

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