PARALLEL REPORT
FOR THE EXAMINATION OF THE 2ND PERIODIC REPORT OF THE GOVERNMENT OF JAPAN SUBMITTED TO THE 50TH SESSION OF THE COMMITTEE AGAINST TORTURE

APRIL 13, 2013

THE JAPANESE WORKERS' COMMITTEE FOR HUMAN RIGHTS (JWCHR)

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Introduction

It has been almost 6 years since Japan was strongly advised by the Committee against Torture to re-examine its criminal justice system at the consideration of the First Periodic Government Report.

On May 16, 2007, the Committee expressed in the concluding observation its grave concern at the present situation of the criminal justice system of Japan, especially the problems of the Daiyo Kangoku or the substitute prison system, interrogation and confession, which fall far below the international minimum standard, and recommended the country to improve the system.

The Japanese Government as a state party has international responsibility to thoroughly review the concluding observation and improve inadequate aspects it pointed out, by newly enacting or revising domestic laws, and improving the application of the present laws.

The Daiyo Kangoku system is directly or indirectly related with such problems as the prolonged detention, long-hour interrogation in a closed room without access to the defense counsel, as well as the arbitrary summoning of the suspects by the interrogators, their intimidating attitude to extract confessions, maneuvering through favoritism, overdependence on confession and neglect of scientific investigation. It is essential to abolish or as a transitory measure to promptly improve the system.

The Human Rights Committee has pointed out the problems of the Daiyo Kangoku system for many years, and CAT has also expressed the same concern, but the Japanese government has not changed their attitude to maintain the system nor has tried to improve it.

The courts in Japan have the tendency to place undue importance on confession and to understate the way it has been extracted, which often leads to false accusations and wrong judgments. Recently in two cases, the Ashikaga case and the Fukawa case, the convicted persons were found innocent in retrial after decades of imprisonment. They had been found guilty in the final and binding decision because of the overdependence on the confessions.

In TEPCO Worker Murder Case, in which a woman working for the electric power company TEPCO was murdered, the police arrested and indicted an innocent foreigner based on the scenario the investigators fabricated. The Supreme Court had adjudicated him guilty, but he was released after 17 years of detention as a result of DNA analysis in the retrial. All of the three false accusations above had been brought about by the interrogations in the Daiyo Kangoku.

Not only Mr. Sakurai in the Fukawa case, who had directly brought the case to the Committee against Torture and the Human Rights Committee with the support of his family, but also several other people won acquittal in retrials from 2010 through 2012. The accomplishments have been made owing partly

to the recommendations by the Committees, and we highly appreciate them.

. However, Japan still remains an archipelago of false accusations. We have tried to instill the international standards established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into the criminal justice system in Japan, by revealing the reality the Japanese Government is unwilling to admit. We again submit this alternative report to help make the examination of the second report by the Japanese Government more substantial.

1. Specific report of the situation in Japan grasped by Japan Association for Social Justice and Human Rights (Kyuenkai) and National Network for Retrial of False Charge Cases

Introduction

1. Recently in Japan, three life imprisonment cases (Ashikaga Case in which Toshikazu Sugaya was ruled not guilty in 2010; Fukawa Case of Shoji Sakurai and Takao Sugiyama 2011; TEPCO worker murder Case of Govinda Prasad Mainali 2012) proved to have been false charges, and all the accused were acquitted. You may remember that Mr. Sakurai made a speech and pointed out problems at the last Committee sitting.

Through these cases, some common causes that led to false charges were revealed.

Firstly, false "confessions" of the accused that were forced to make in the "substitute prison"(Daiyo Kangoku) were the key element to rule them guilty.

Secondly, evidences that should have proven the accused's innocence were concealed for many years without being disclosed for perusal, despite the repeated demands of the accused and their defense counsel.

If United Nations Convention Against Torture had been implemented here in Japan, these problems could have been prevented, or at least the accused could have been saved much earlier. The government has not inquired into these problems nor improved the penal system.

Moreover, in case of the murder of the TEPCO worker, although Mr. Govinda was ruled innocent in the court of first instance, the higher court ruled the contrary following the public prosecutor's appeal, and as a result, he was erroneously detained for a very long time.

2. The contents of the report of the Japanese government that was submitted in response to the committee's request are on the whole far from trustworthy--the government simply explains how the system works or concludes that there are no problems at all without making researches of the situations whereas the committee asks questions to make sure that the convention is implemented in Japan. This is an insult to the work of the committee.

Below is a specific report of the situation in Japan grasped by Japan Association for Social Justice and Human Rights (Kyuenkai). It is mainly done in the form of counter-arguments to the government's reply.

Article 2
Concerning Paragraph 11 (disclosure of evidences)

The government reports “a system for disclosing the necessary and sufficient evidence was introduced” and “If there is a dispute over the necessity for disclosure, the court shall make a ruling” and argues as if

sufficient and objective disclosure of evidences was attained by the revised Criminal Procedure Act. However, the Committee states that the government should ”provide defense counsel access to all relevant materials in police records,” and asks the government in particular to explain in detail “steps taken to address the concern at the power of prosecutors to decide what evidence to disclose upon indictment.”

Although the government refers to Article 316 (15) of the 2004 revision of the Code of Criminal Procedure, it provides that “evidence must be disclosed … when (the public prosecutor) thinks plausible,” thereby the disclosure is based on the judgment of the prosecutor; in that sense, it’s a limiting clause, and not enabling the total disclosure of evidences. Also, even when the evidences are disclosed, “the prosecutor can decide the time and method of disclosure, or give conditions to the disclosure when he/she thinks necessary.” The provision enables the prosecutor to give conditions to the disclosing itself, and the authority to judge disclosure is exclusively “given to the public prosecutor.” This is not a faithful response. In other words, the article concerned does not stipulate the “total disclosure of evidences” stressed by the Committee—on the contrary, it has a limiting effect. In implementing the Convention, in principle ensuring the access to all the evidences by the accused and his/her defense counsel should be institutionalized, but this issue has been postponed. In trials, the actual disclosure of evidences at the prosecutor’s or court’s discretion is a long way from what is duly expected.

Furthermore, in retrials, Article 316 (15) is not applied, and whether the evidences are disclosed or not is totally at the prosecutor’s and court’s discretion. The disclosure is extremely insufficient because it has been found in several cases that evidences which should have proven the accused’s innocence was concealed.

The following examples are only the tip of an iceberg.

Example 1: Fukawa Case

A significant case in which the matter of disclosure of evidence became an object of public concern is about Mr. Shoji Sakurai and Mr. Takao Sugiyama (robbery and murder; life imprisonment). They were finally ruled innocent through retrial in 2011, 44 years after the incident took place.

In their second appeal for retrial which started in 2001 (after the Convention took effect), as a result of their defendant’s tenacious, reasonable, and relentless demands for disclosure, several important evidences which the public prosecutor possessed were disclosed, and order of commencement of retrial was issued. Those evidences included a neighbor’s statement that the neighbor saw people other than the two in front of the victim’s house around the time when the incident was said to have occurred, and initial investigation records concerning the diagnosis of “kousatsu” (strangulation by cord, rope, etc.) based on the conditions of the victim (despite the ruling said “yakusatsu” (strangulation by hands) based on the “confessions”)—those present ever since the investigation stage. That means both the prosecutor and the court suppressed them for more than 30 years. Moreover, these disclosed evidences are just a little bit from those stuck in 9 corrugated cartons in all. The prosecutor disclosed only 7 items in the retrial

proceedings. One of them was an item formerly replied “inappropriate” in spite of the defendant’s inquiry.

Mr. Sakurai brought a state compensation suit in 2012. In this lawsuit which tries to clear up the causes of wrong trials and questions who was/were responsible for all these false charges, this time the prosecutor should disclose all the evidences they possess and reveal the reasons why the two innocent men were forced to live in prison for as many as 29 years.

Example 2: TEPCO Worker Murder Case

Here is an example of a case in which the accused would have avoided guilty ruling if the evidences had been disclosed. Mr. Govinda Prasad Mainali (Nepalese, 30 years old at the time of the incident; robbery and murder; life imprisonment)’s innocence was confirmed last year. He was wrongly found guilty for murdering a TEPCO female worker (39 years old at the time) and robbed the money she carried with her in a vacant apartment in Shibuya, Tokyo, in March 1997.

In this case, there were no evidences to directly link Mr. Govinda to the criminal acts, and Tokyo District Court, a court of first instance, ruled innocent, saying “there is a reasonable doubt to conclude that the accused is the culprit.” At that time, he was an illegal overstay resident that should be deported under the Immigration Control Ordinance. The court, however, didn’t expel him, but detained him, a man found not guilty for the reason of the prosecutor’s appeal—an unprecedented act. Then Tokyo High Court sentenced him life imprisonment, the Supreme Court dismissed his appeal, and life imprisonment was the final decision in October 2003.

Mr. Govinda appealed for commencement of retrial at Tokyo High Court in March 2005. Although the defendant demanded disclosure of evidences and requested to have an expert check again the DNA type of the body fluid left on the victim’s body and her possessions, both the prosecutor and the court showed a negative attitude to them at first. It was after June 2009, after Mr. Sugaya, who had been accused in Ashikaga Case (Example 4, described below), was found not guilty and acquitted based on the new DNA diagnosis, that the court began to be positive about retrial. A new DNA diagnosis was conducted in March 2011, order of recommencement of retrial was issued, leading to Mr. Govinda’s innocence.

A following unbelievable fact was revealed in the process of the retrial. So-called “Kubota Report” dated April 3, 1997, which was submitted by the Scientific Investigation Institute, clearly pointed out that the blood type of the saliva left on the surface of the victim’s body (5 places on the upper and lower half of the body) was type O, not Mr. Govinda’s B. It shows that from the beginning, the investigating team could realize that the culprit was not Mr. Govinda, or someone else was the culprit.

Example 3: Osaki Case

Here is a significant case in which both the prosecutor and the court show a very negative attitude to the disclosure of evidences. In this case, Ms. Ayako Haraguchi (10 years’ penal servitude) allegedly murdered her brother-in-law in conspiracy with her ex-husband (8 years’ penal servitude) and two others and

abandoned the dead body. In her second appeal for retrial, the prosecutor will not agree to the disclosure of the evidences although they have already drawn up the list of evidences, saying they have no legal obligation to disclose them. They are even against disclosing the list itself. The court is not eager to disclose, either. Are they proceeding to the retrial without disclosing any evidences?

In 2002, Kagoshima District Court issued order of commencement of retrial, but was rescinded by the prosecutor's appeal. It is in the middle of the second appeal for retrial. Three kinsmen who had been ruled guilty in conspiracy finished serving in prison, and afterwards confessed that their testimonies were false. One of them died from disease, and the other two committed suicide.

Concerning Paragraph 17 ("convictions rendered 'based primarily on confessions'")

The Committee asks the government to provide "information on measures taken by the State party to address these concerns" at "the lack of effective judicial control over the use of pretrial detention," and the resulting confessions and "the large number of convictions in criminal trials based primarily on confessions." The government's reply, however, does not provide "information on measures taken to address these concerns." It only explains penal codes about detention in the first half, and describes how the public prosecutor generally manages trial in the latter.

The government's report is not only insufficient. The statement that "convictions are not rendered 'based primarily on confessions'" is blatantly false. Below are examples showing "convictions rendered based primarily on confessions."

Example 4 Ashikaga Case

This is a case of Mr. Toshikazu Sugaya (charges of obscenity, abduction, murder, and abandoning a dead body; life imprisonment) who was arrested and convicted as a suspect for an abduction/murder case of a little girl that occurred in 1990. The criminal investigation squad made use of the DNA type test to obtain Mr. Sugaya's confessions. The test conducted at that time was technically immature as well as mistaken. The final verdict was based on the suspect's confessions, with the mistaken DNA test the strongest ground to support the confessions.

Mr. Sugaya filed an appeal for retrial of his case in 2002. DNA type test was conducted again, and it was revealed that the culprit's DNA type in the body fluid left on the underwear of the victim and that of Mr. Sugaya's did not match. The public prosecutor approved the fact, stopped the process of execution and set him free even before order of commencement of retrial was issued. Later, the public prosecutor announced him "not guilty" in the final statement in 2010, and his innocence was confirmed. There has been no precedent of stay of execution before the order of commencement of retrial. This "not guilty" ruling showed clearly that the contents of confessions were false.

This is a case in which the Supreme Court confirmed the guilty verdict in 2000, after the Convention

took effect. This is also the case in which the credibility of the confessions was negated by both the prosecutor and the court after the last examination of the government report. Mass media reported this case widely as an example of false charge, and it is well known among Japanese people as a case of typical conviction rendered "based mainly on confessions." Notwithstanding people's criticism about investigation and trials depending on confessions, and growing demands for making visible all the processes of suspect interrogations, the government report omits such information.

Example 5 Hakamada Case

This is a case about Mr. Iwao Hakamada (30 years old at the incident; trespassing on residence, robbery and murder, arson: death penalty) was arrested and convicted for arson, robbery and murder which occurred in 1966. The chief judge, who had a strong belief of the suspect's innocence, nevertheless drafted a death penalty ruling mainly based on "the confessions," as he was "defeated in the judges' arguments"--He couldn't persuade the other judges.

The case is now in the process of the second appeal for retrial. The then Judge Norimichi Kumamoto, the chief judge who had written the guilty ruling at the first trial, confessed that he had written the guilty verdict while he believed otherwise, shedding tears, in 2007, 38 years after the ruling. The TV news programs covered the scene on a large scale.

Judge Kumamoto's confessions (summary)

“I was chief judge in this case, and I was convinced Mr. Hakamada was innocent. I was preparing a decision of not guilty, because I suspected there were forced confessions, altered and fabricated evidences in the prosecutor's proof. But I could not persuade senior judges--I was defeated by 2-1 majority. I tried to convey my indignation in some way that I was being forced to draw up a death penalty ruling, and added in the ruling sentences like "The police were too intent on gaining confessions, and rather neglected searching for material evidence" and "they must be sorry for such a negligence... from the viewpoint of ensuring proper procedures." Still, I regretted my conduct, and I was compelled to resign after all. Nothing can comfort me, and never a day passes without remembering the case. It even led to break-up of my family.”

Police interrogations with Mr. Hakamada lasted 12 hours a day on average, and we know at least 45 confession records were made. The district court rejected 44 of them on the ground that they may have come from forced confessions, and it certified the criminal facts like the lethal weapon and aspects of the crime based on the remaining one record.

The high court made an experiment and confirmed that the pair of trousers that Mr. Hakamada allegedly wore at the time of the crime was in fact too small for him to wear, but still it found him guilty. This proves that even now decisions are made depending on the confessions rather than the objective facts.

These forced confessions and rulings had appeared before the Convention took effect, but the death-row convict Hakamada (at 76 years old) has not yet been saved from detention, and continues suffering from confinement syndrome. No investigation into whether there were forced confessions or not has been made. The ongoing situation does not conform to what the Convention stipulates.

Example 6: Nabari Poisonous Wine Case

This case is about Mr. Masaru Okunishi (35 years old at the incident) who was found guilty of putting agricultural chemical into wine served at a village meeting in 1961, and of causing five deaths and 12 injuries (murder and attempted murder: death penalty). Mr. Okunishi filed an appeal for a retrial of his case for the seventh time, and got an order of commencement of retrial, but it was rescinded after a protest from the public prosecutor in 2006. The decision goes as follows, making it obvious that it relies heavily on the confessions.

Decision upholding objection to order of commencement of retrial (the seventh appeal) (Nagoya High Court, dated December 26, 2006)

"The crime that the suspect confessed having committed is a very serious murder case that one can naturally expect deserves capital punishment. Therefore, it cannot easily be believed that he made false confessions, even if he yearned to get out of the suffering at that time."

Mr. Okunishi was found not guilty in the first hearing, then sentenced to death in the second, and it became final and binding. After that, he got an order of commencement of retrial in his seventh appeal, but it was cancelled as stated above. Then the cancellation itself was repealed, and then again in 2012, the order of commencement was cancelled, on account of "the high credibility of confessions at the time of investigation." He is now pleading his innocence to the Supreme Court. As a matter of fact, though reasonable doubts for the guilty verdict were pointed out three times, he has not been rescued at age 87.

Other examples

Ever since the World War II, Japan Association for Social Justice and Human Rights (Kyuenkai) has supported more than 100 false charge cases. There have also been more than 150 trials concerning suppression of speech and expression. They belong to different categories of false charge and oppression, but what is common to both is the fact that suspects and the accused almost always complain that they were forced to "confess" by the police or the public prosecutor. In most of the cases which Kyuenkai investigated and concluded as false charges, the confessions do not tally with the objective facts. Nevertheless, the suspects are found guilty based on fact finding following the fabricated "story" using confession records.

There is no space to cite such examples, but we know that new "conviction based on forced, false

confessions" is being produced even today.

Concerning Paragraphs 35 and 36 (Ensuring confidential meetings between death-row inmates and their defense counsel)

The government's report does not include any answer to the Committee's question "Is strict confidentiality ensured?" Far from that, it just states "for visits by a lawyer to an inmate sentenced to death for whom an order of commencement of a retrial has yet to become final and binding, measures such as the attendance of a staff member may be omitted at the discretion of the warden of each penal institution when certain requirements stipulated by law are satisfied. Therefore, we understand that the warden of each penal institution makes determinations in an appropriate manner on specific individual cases," and avoids mentioning concrete facts.

The reality is that confidential meetings between the convicts and their lawyers or would-be ones are not ensured at all as a right until the order of commencement of retrial is confirmed. In all the cases that are under appeal for retrial that we deal with, an observer is always present, and we cannot consult confidentially. Getting retrial is a legal right guaranteed for individuals, and to exercise the right, confidential meetings with lawyers need to be ensured. Otherwise, the right to be duly represented for retrial is likely to be violated.

Concrete examples: See Example 6: Nabari Poisonous Wine Case. When Mr. Okunishi and his defense counsel meet, confidentiality is not guaranteed.

Article 10

Concerning Paragraphs 67-75 (Education of International Human Rights Convention to law enforcement personnel)

The government report states, “the police also provide [newly recruited prefectural police officials] official education on international trends of human rights, including with regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, … the International Covenant on Civil and Political Rights (ICCPR), etc.,” “education on various human rights issues, including the international trends in human rights, is also provided at each rank of official at the time of their promotion,” “police officials who are exclusively engaged in such operations as criminal investigation, detention services, and victim assistance are educated to acquire the necessary knowledge, skills, etc. for appropriately performing their duties with due consideration to the human rights of suspects, detainees, victims, etc.,” and “In order to ensure the exercise of prosecutorial authority with full respect to the fundamental human rights, various types of training are provided to public prosecutors and other officials, according to their years of experience and so forth.”

However, curricula in conformity with the Convention are virtually non-existent. The government seems to have an illusion that providing general human rights education equals what the Convention requires.

It is a traditional way of investigation in the Japanese police to give suffering to suspects' mind and body, to gain confessions contrary to the facts, and to indict them based on these false confessions. United Nations Human Rights Committee has again and again blamed the government for investigation and trial in Japan which overemphasize confessions, and demanded to put more emphasis on scientific investigation. In spite of this, the police justify substitute prison (daiyo kangoku) which is a hotbed of human rights infringement, normalize long-term detentions and long-time interrogations, and hand down "wile" to trick suspects into making false confessions.

In the world of Japanese police, to give mental blow is not recognized as a torture. They entrap suspects (make suspects confess lies) using flattery, inducement, embarrassing words, threat, or anything at hand, by making them believe that they themselves might be driven into a significantly disadvantageous situation in terms of family relations, at work, and in social life, if they did not confess.

“Guidelines for interrogating suspects” which was discovered in the Ehime Prefectural Police is a document prepared by the police for their “investigation expert trainees.” If appropriate education in conformity with the Convention were conducted, the police executives in charge of investigation training to their men cannot instruct such skills and manners of interrogation as below.

The document cites 13 concrete tips for gaining confession from a suspect. Here are several of them:

“An interrogator needs to be armed with confidence and perseverance. You must be definitely determined to make the suspect confess by all means.”

“Once you are in the interrogation room, never go out of it until you make the suspect confess.”

“Sometimes you may be moved by what the suspect says, or you are at a loss for what to do when the interrogation reaches deadlock, but you are a loser if you get out of the room at such a time.”

“If the suspect continues denying, summon and interrogate him in the room from morning to evening. This may help him grow weak.”

“You regularly need to cultivate tough strength physically and mentally.”

Basically relying on the interrogators’ mental and physical strength, the police investigation is virtually to give mental damage to suspects and induce their confessions. This is far from scientific investigation—it is none other than a torture. With or without manuals, at police stations all over Japan, this kind of interrogation skills is taught to the personnel in the name of education.

In this way numerous cases of false charges were born such as Ashikaga Case, Fukawa Case, Himi Case, etc., and examples of innocent people detained in police custody for many years have recently been exposed in quick succession.

＊For your information, here’s our Association’s counter report submitted when the Human Rights

Committee examined the 5th Japanese government report in 2008. This is not the latest situation, but it is still applicable.

D. Actual "human rights education" in the report of the Japanese government

Japan Association for Human Rights and Social Justice, based on the information disclosure law, requested the Supreme Court, the Public Prosecutor's Office, the National Police Agency and Ministry of Justice for their "documents issued to the lower organizations in a year following the receipt of and in response to the Human Rights Committee concluding observations of the fourth report." Further, on July 30, 2007, it requested the Supreme Court and the National Police Agency information disclosure of administrative documents to this effect in the past year (hereafter "the second request"). The outcome was as follows. It was found that the Japanese government only communicated (delivered) the concluding observations and other information in a quite formal and superficial way. It even did not provide those documents to some public offices and departments. After all, it was found that there were no specific directions or guidance for improvements issued at all and no effective education on the human rights in the Covenant was provided, not to speak of workshop or training.

1. "Human rights education" of judges

The Supreme Court only issued the following documents to high court administrative chief officers and others (dated on July 23, 1999):

"Office memo" and attached documents ("the Human Rights Committee concluding observations of the fourth report" and "the General Comment of the Human Rights Committee.")

Regarding our "second request," there was a reply that the request was still "under consideration" at August 27, 2007, and there was a communication that they would not be able to reply within 30 days of the day of the request. There has been no reply since then to date.

2. "Human rights education" of prosecutors

The Supreme Pubic Prosecutors' Office only issued the following documents to the lower offices:

"The Fourth Periodical Report of the Japanese Government (gist)," "questions from the Committee and our reply to them during the consideration (gist)" and "the Human Rights Committee concluding observations of the fourth report."

3. "Human rights education" of police officers

According to the reply from the National Police Agency in response to our "second request," the National Police Agency did not issue any document to inform prefectural police of the Human Rights Committee concluding observations of the fourth report (Reply document:Hei 15 National Police Agency information disclosure issue number 47-1, July 11, 2003). To the "second request," the reply was "non-existent."

4. "Human rights education" of general administrators

The Ministry of Justice only issued the following documents to the lower offices:

Documents issued from the international bureau:

"The Fourth Periodical Report of the Japanese Government (gist)," "questions from the Committee and our reply to them during the consideration (gist)" and "the Human Rights Committee concluding observations of the fourth report."
(However, there was no document issued by the Correction Bureau to correctional facilities and by the Civil Liberties Bureau to the lower offices.)

Article 11
Concerning Paragraphs 94-105 (improvement in interrogation techniques)

1. From June to September 2012, serial threat cases via the Internet happened. Someone infected other people's personal computers with a virus which announced warning of murder, bombing, or assault on a website or sent one by email without the computer owner's knowledge. Four men (owners of the infected computers) were arrested as suspects, but when in October the culprit sent email of criminal declaration to the press, the truth came out, and the National Police Agency finally acknowledged that they had arrested the wrong people.

What is important is that two out of these four men were driven to make a false confession. In their confession records, impossible "motives" of the crime were recorded and analyzed. One of them (a 19-year-old boy) submitted a statement which included the screen name which only the culprit and the investigating team could have known. It is obvious that there was inducement in the boy's interrogation.

In the follow-up verification by the police of the mistaken investigation, they concluded that they were only mistaken because they were overconfident that the IP addresses ("addresses" on the Internet) which was identified through access history of each computer was a reliable enough evidence, and they are not sorry for their illegal interrogations at all.

2. Regarding to the interrogations of suspects, the government report claims that the police has (1) established the system for the supervision of interrogation and stipulated in the internal rules stricter management of the hours of interrogation, etc., and (2) ensured propriety of examination, for example, by installing two-way mirrors in interrogation rooms so that those outside are aware of the status of the interrogation.

However, even with the system for the supervision mentioned in (1), supervisors cannot be present at all times. Think about it, one cannot expect supervision in the true sense of word if it is conducted by fellow policemen. It cannot replace the DVD recordings of the status of interrogation. There is no change in the situation where investigation and detention are carried out by the same organization named the police. As before, locked up and interrogated under the roof of the one organization named the police, detainees are in the position of being coerced to confess under the 24-hour-a-day inspection.

An example of the ensured propriety mentioned in (2) is introduced with pictures in *The Police White*

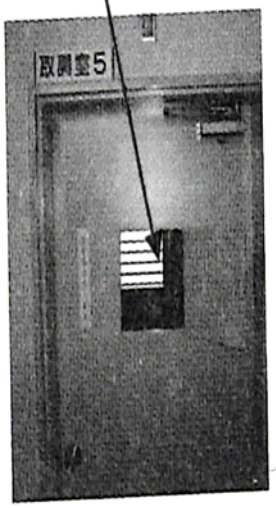
Paper 2010 (See Figure 1). "Better facilities to ensure appropriate interrogation" is to install a screening board under the desk in the interrogation room, and to fasten the desk on the floor. This is done "so that the desk wouldn't move or a foot wouldn't strike the suspect when the examiner kicks the desk." The National Police Agency requested 364 million yen from the national budget for this, and it was approved (*Tokyo Shimbun* newspaper dated December 20, 2008). The fact that they cannot guarantee safety in the interrogation room unless they alter furniture in the room with the taxpayers' big money makes us greatly doubt the human rights consciousness of the interrogators.

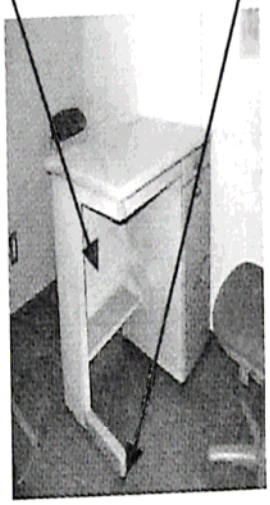
Improving facilities to make supervision of the status of interrogation from outside easier

Clarifying facilities requirements for interrogation rooms

Installing two-way mirrors in all the interrogation rooms

Installing a screen board under the desk and fastening the desk on the floor





(page 80, *The Police White Paper*, 2010)

3. Regarding cases subject to citizen judge trials, what the government report means by "a trial run of an audio/video recording of the part of the interrogations of suspects by police officials, which is recognized as appropriate to the extent that the function of interrogations is not damaged" is in fact only a partial visualization of the process. It records the part in which the police official reads out the confession record to the confessed suspect, and the latter signs the document. This might easily give an impression that the confession was voluntary.

4. As for the "Guidelines" of the Ehime Prefectural Police, though the government report says it was "prepared by an individual," it is internal materials prepared to lecture to "investigation expert trainees." Ever since this document was disclosed, we haven't heard anyone punished because of this.

5. Ashikaga Case (See Example 4 above) in which the second DNA testing confirmed the suspect's innocence for the first time in Japan is an indispensable case in examining problems of police investigation.

False charge victim of Ashikaga Case, Mr. Toshikazu Sugaya, was released in June 2009, that is, 17 and a half years after he had been arrested, and was finally acquitted of his charge in his retrial in March 2010. He wrote a book *Traps of Interrogation* (Jinmon no Wana) and in it explained how he was driven to "confess" during interrogation.

"It was around 7 a.m., December 1, 1991. Six policemen visited me at home. I opened the door, and three of them burst into my house. 'Sit there,' they ordered me to sit in front of a glass door in the house, and said, 'You killed the child." When I said 'No, I didn’t' one policeman elbowed me hard in the chest. I was hurled backward, nearly crushing into the door behind. Although I told them I can't go to the police station because I planned to go to a wedding of a friend that day, they said "You need not go," and I was taken to the police station.

"At Ashikaga Police Station, the interrogation started at 9 a.m. The two interrogating policemen were two of the men who had burst into my house. Except lunchtime, all morning and afternoon, we continued arguing 'You did it' and 'I didn't do it.' Soon after supper the interrogation began again. When night came, they started saying like 'We live in an age of scientific investigation. We have evidence.' They continued telling me, 'You can never get away,' 'Hurry and confess, and then you'll feel easy.' Accusations became more severe. They got violent--they pulled my hair, kicked my shin, and pounded the table several times threateningly. I thought, 'these people are like yakuzas' and was just horrified and shivering. 'You look stupid' were shocking words, too. And a little after 10 p.m., I felt I'd be damned, I'd do anything to get out of this terrible situation this minute, and I confessed, 'Yes, I did it."

As to this Ashikaga Case, in April 2010, just after the not guilty verdict by the retrial, the National

Police Agency and the Supreme Public Prosecutors Office each published a report. Why were the false confessions born? Or why couldn't they see through the false confessions? The former concluded, " It is acknowledged in this case that the interrogations which took no notice of the suspect (Mr. Sugaya)'s personal characteristics prone to alter his behavior and opinions to suit the interrogators caused him to make confessions in accordance with the police's intentions," while the latter described "Keeping in mind that, depending on their specific characteristics, some innocent suspects may imagine as if they were the culprit and confess as if they had experienced the actual facts at the scene and what the culprit actually had done, we will conduct interrogation. We should have examined cooly and deliberately the credibility of the confessions made."

In short, both of them claimed that Mr. Sugaya's personality that was easy to adjust his opinions and behavior to please or flatter his interrogators was to blame, such mental weakness leading to his false confessions. That is why the government report took the trouble mentioning that the police added a point to the internal rules that "an interrogation shall be conducted according to the characteristics of the persons subject to interrogation that are derived from their circumstances, personality, etc., for example, where the nature of the person subject to interrogation is shown as being easy to adjust his/her own opinions and behavior to please or flatter an interrogator, etc." in Paragraph 94.

As long as the police and the public prosecutor are satisfied with attributing the cause of false confessions to the suspects' personality, it is impossible to prevent false confessions gained through torture. In Ashikaga Case, for example, if audio/video recording had been done on all the processes from voluntary appearance to investigation, coercion of confession itself would have been non-existent, and naturally no false confessions, either.

6. Formalistic strengthening of internal rules and upgrading of facilities and equipments are not the alternative measures to meet the criteria the Covenant requires. Under the system of no bail before being convicted, 23 days of detention allowed at the longest in Daiyo Kangoku, and no lawyer's presence during interrogation, visualization of all the processes of interrogation is indispensable.

Article 15
Concerning Paragraphs 162-163 (coercion of “confessions”)

Statistical data which endorse adoption of confessions doubtful in their voluntariness as evidence

The government report says the prosecutorial authority works appropriately in accordance with the Constitution and the Code of Criminal Procedure, but in 2011, statistical data which endorse the adoption of confessions doubtful in their voluntariness as evidence were published.

Results of public prosecutor attitude survey -- Public prosecutors cannot argue against their seniors, and write records using confessions doubtful in their voluntariness as evidence

In February 2011, the Supreme Public Prosecutors Office sent out anonymous questionnaires to all the 1444 prosecutors in Japan, and 90.4% of them answered. (Below is based on reports by various press dated March 11, 2011.)

On March 11, 2011, the Supreme Public Prosecutors Office announced the results of attitude survey of all the prosecutors in Japan, and the press reported it. It included the following figures.

"Have been ordered to make records which are contrary to the suspect's confessions"

Very often: 6.5% Yes:19.6% Very often +Yes: 26.1%

"Have heard of interrogations which might cause trouble in terms of voluntariness, etc"

Very often: 5.4% Yes:22.3% Very often + Yes: 27.7%

"Think whistle-blowers and direct petitioners of dishonest act at work will have disadvantage in the assessment of performance" Yes:22.8%

These figures well endorses the fact that there are a lot of instances of coercion of “confessions” by the public prosecutor, but what is even more important is that this reveals the real situation surrounding public prosecutors; that is, the real situation of public prosecutors who cannot exercise their sense of justice.

The examples and statistics above should prove that on the whole, pubic prosecutors in Japan cannot freely speak their opinions at work.

Preventing coercion of confessions by investigating institution cannot be secured without freedom of speech ensured for each investigator. It shows that originally each investigator has his/her own conscience, and ensuring the working environment where each of them gives full play to his/her conscience will lead to improve the whole human rights conditions.

This is considered indispensable and a universal principle to implement all international human rights conventions.

Concerning Paragraph 164 (complaints concerning unjust interrogations)

The government report refers to "the period from June to September 2010" (only four months!) and then answers, "None of these complaints [from the period] resulted in a lawsuit." Isn't the short period an arbitrary choice?

There are lawsuits. Here are examples of unjust interrogations for which lawsuits are filed that Kyuenkai is aware of:

Since the last examination, there are the following lawsuits against false charge cases.

1. Osaka District Court President Oyaji-gari (Assault or street violence against middle-aged man) Case

When the President of Osaka District Court was assaulted, robbed of his money and seriously wounded, a lot of boys were coerced to make false confessions. After all the five suspect boys were found not guilty, they brought a state compensation suit in 2008. In 2011, a ruling that approved that there was violence during the interrogations with the boys and ordered to pay compensation became final and binding.

2. Fukawa Case

A case of robbery and murder in 1967: Mr. Shoji Sakurai and Mr. Takao Sugiyama were sentenced imprisonment for life, but were found not guilty in retrial in 2011. The not guilty verdict in retrial acknowledged that there is no physical evidence which links the two men and the case, that is there is no evidence except the witness's confessions and those gained from the suspects in investigation. Mr. Sakurai brought a state compensation suit in 2012.

Article 16

Two examples that are thought to violate the first half of Article 16 (1)

1. Osaka City Thought Questionnaire Survey Lawsuit

On February 9, 2012, Osaka City authorities conducted an "employee survey about labor-management relations." This was done as an administrative order, and as it stated that employees will be punished if they didn't give accurate answers, it created a big sensation at each workplace. Though the contents of the questions in it trample on employees' freedom of thought and conscience, and have intention to rule the whole personality of each employee, they have no freedom not to answer them. It is "a severe mental pain or suffering... intentionally inflicted" stipulated in Article 1 of the Convention, which can be interpreted to be done by "other person acting in an official capacity." Currently 55 employees are filing a state compensation lawsuit against Osaka City.

Osaka City Mayor Hashimoto is a joint representative of a political party "Ishin no Kai" to which more than 50 Congress Members belong.

The national government has not acted about this issue.

2. Example 6: Nabari Poisonous Wine Case

Mr. Masaru Okunishi was handcuffed while he was transported from Nagoya Prison to Hachioji Medical Prison after he got pneumonia, though there was no possibility of his running away at all. Moreover, in a private hospital in Nagoya where he stayed temporarily on his way to Hachioji, too, he was handcuffed on account of being transported to prison. He could not move on his own. He was handcuffed on one hand while he was getting medical treatment on bed, until his lawyers and supporters made it stop.

Concerning Paragraph 192 (the real situation in which "adequate medical treatment" was not "provided to inmates")

Example 7: Hinocho Case

Mr. Hiromu Sakahara had been suspected as culprit for a robbery and murder case occurring in 1984, and had been sentenced for life imprisonment since 2000. His sickness got serious while he was appealing for retrial for the second time, and he was transferred to an outside private hospital from the prison. He died in 2011, at the age of 75.

Mr. Sakahara was diagnosed almost incurable pneumonia after he contracted chronic bronchitis in Osaka Prison in 1996. It was before his sentence was final. As they noticed his declining strength such as significant weight losses when they went to see him, his family, lawyers and supporters began to ask for treatment in medical institution.

In 1998, the prison authorities answered, "His chronic pneumonia has recurred, and there is high probability that he might come to a deadly state" (Reply to lawyers' inquiries). Two years later, execution of imprisonment sentence was stopped, and he was transferred to a private hospital. There his weight increased to 45 kilograms (99 pounds), and he could walk on foot and stay overnight at home.

However, after his guilt was final and binding, adequate medical treatment was not given to him in prison except the period when he was in the medical prison, so his family and others again persistently pleaded for treatment at a medical institution.

Still, his weight was not restored to even 40 kilograms (88 pounds), and when his family asked the prison authorities to explain the treatment policy to them, the doctor in charge at Okayama Prison told them, "We will send for an ambulance when he is on the brink of the critical condition." His family and supporters kept pointing out that it might be too late then.

Yet, both the prison and the Ministry of Justice turned a deaf ear to such repeated requests and at last at the end of 2010, after 14 years from the onset of aspiration pneumonia, his condition suddenly became critical including respiratory and cardiac failure (according to the description in Yoshijima Hospital's "Hospital Care Plan" in Hiroshima). He was moved to a private hospital outside the prison in an ambulance, where he remained critically ill until he died in March 2011.

According to the statistics of Ministry of Justice, there were 147 convicts for life imprisonment who died in a criminal institution during the 10 years ending 2011, but there are no figures available for deaths of ex-inmates who died outside the prison like Mr. Sakahara.

【Mr. Sakahara's medical history from onset of the disease to his death】

September 1996	Onset of chronic bronchitis inside Osaka Prison
	His family, lawyers and supporters began requesting treatment outside the prison.
January 1998	Osaka Prison acknowledged "there is high probability that he might come to a deadly

state."

May 2000 Execution of imprisonment sentence stopped, transferred to a private hospital, and fast recovery there.

September 2000 Confirmation of guilt (life imprisonment)

Transferring to Osaka Prison again, then to Osaka Medical Prison, then successively to prisons in Okayama, Onomichi, and Hiroshima. During this period, his weight hovering below 40 kilograms (88 pounds) and significant reduction in body strength. His family, lawyers and supporters kept asking for treatment outside the prison.

November 2002 Doctor in charge at Okayama Prison said, "We will send for an ambulance when he is on the brink of the critical condition."

July 2010 His family noticed extreme worsening of his physical condition (Mr. Sakahara himself told them that he can't eat food because he ends up vomiting, and that only treatment he gets is the medication of over-the-counter pills for headache and constipation), but Hiroshima Prison rejected their requests for explanation of his illness, and answered, "He is not so bad."

December 2010 Hiroshima Prison explained to his family, "When the worst situation happens, we will put him into an outside hospital." Four days after his lawyers and supporters began pleading for transporting to an outside hospital immediately, he fell into unconscious and critical condition, and was transported to an outside hospital. Four days after that, suspension of execution by Hiroshima District Prosecutors Office.

March 2011 Died in the same hospital.

Concerning Paragraph 205 (visits to inmates sentenced to death)

Though the government report says, "the warden of each penal institution determines whether to permit a visit, etc. by a person other than a relative in an appropriate manner in line with the purposes of law on a case-by-case basis," regarding Mr. Masaru Okunishi of Nabari Poisonous Wine Case, no visits by other than 7 supporters are allowed. In actual fact, although there are a lot of supporters who hope to visit him, and whom the person concerned (i.e. Mr. Okunishi) is eager to see, they are not allowed to visit or see him.

Concerning Paragraphs 287-291 (a national human rights remedy institution, etc.)

The government submitted a new bill on a human rights remedy system on November 9, 2012, but it was again discarded due to the dissolution of the House of Representatives.

The government report describes, "Japan considers the establishment of a national human rights

institution independent of the government as an important issue, and intends to continue making necessary preparations for the establishment of the institution." As the bill submitted had the following problems, we were against it, and requested its amendments.

First is that "indication of identifying information" as well as "human rights infringements" are defined as a banned act (Article 2(2) of the bill). In the bill, to indicate publicly the information that enables people to easily identify unjust discriminatory treatment to an unspecified large number of people who have a common attribute such as race for the reason of the said attribute ("indication of identifying information") is banned plus "human rights infringements." In this regard, the outline of the bill announced on December 15, 2011 had called such acts "acts of promoting discrimination," but following criticisms that the term is too ambiguous, it is not used in the bill. Still, whether there are "purposes to promote or induce discriminatory treatment" or not is problematic, and the extent of such purposes is vague, and easily subject to arbitrary judgments. Consequently, the expression "indication of identifying information" should be deleted from the banned acts.

Secondly, the bill sets "an unjust discrimination, abuse or any other illegal infringement of human rights against a specific person" as definition of human rights infringements (Article 2(1) of the bill). "Unjust discrimination, abuse" is not a central concept of human rights infringements, therefore ineligible as an illustration. There is a danger of human rights infringements being interpreted narrowly as "unjust discrimination, abuse" and other similar acts. Therefore, the words "unjust discrimination, abuse" should be deleted.

Thirdly, it is about the planned type of organization (Article 4). The bill intends to establish Human Rights Committee as an external organ under the Ministry of Justice pursuant to the provision of paragraph (2) of Article 3 of National Government Organization Law. However, if it is established as an external organ of the Ministry of Justice, there is no denying of close relationship with the Ministry in terms of staff and organization, because of the possibility of staff assignments within the Ministry, for instance. Considering the frequency of human rights infringements occurring inside prisons and immigration offices which fall under the jurisdiction of the Ministry, the Committee should be established within the Cabinet Office.

Moreover, the bill plans to commission clerical work of local administrative organs of Human Rights Committee to directors of central and local Legal Affairs Bureau, but this poses a big problem from the viewpoint of effectiveness of remedy to human rights infringement cases caused by the public power, especially organizations under the jurisdiction of the Ministry of Justice. We shouldn't commission local organs of Human Rights Committee to those of national institutions, but we should staff enough number of local employees at the Committee as an independent administrative committee, and the Committee itself should be in charge of clerical work.

As noted above, Human Rights Committee assumed by the bill has a lot of problems in terms of the extent of remedied acts, definition, and organization.

The United Nations has repeatedly recommended the Japanese government to establish a national human rights organization, based on Resolution regarding the national institutions for the promotion and protection of human rights adopted by the United Nations in 1993 (Paris Principles). We would welcome it if a national human rights organization, which can rescue human rights infringements by the public power, and which is independent of the government, were established. However, the bill had the above problems which we could not overlook, so we had to oppose it.

2. Report on the applicability of the Convention in times of war by Japan's Association Demanding Damages for the Victims by the Order-Maintenance Law

In Paragraph 11 of CAT/C/JPN/CO/1 dated 3 August 2007, the Committee expressed its regret for the lack of information on the direct applicability of the Convention, particularly in times of war and requested information on the applicability of the Convention in times of war.

In Paragraph 12, the Committee is concerned that acts amounting to torture and ill-treatment are subject to a statute of limitations in Japan. In particular, the Committee regrets the dismissal of cases filed by victims of military sexual slavery during the Second World War, the so-called "comfort women" for reasons related to statutory limitations. The State Party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention, so that acts amounting to torture and ill-treatment, including attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

The Government did not submit reply to these questions and recommendations. In this connection, we would like to report the results of our many years' research on the wartime police practice. We, Japan's Association Demanding Damages for the Victims by the Order-Maintenance Law, are formed to support the victim- survivors of the cruel violence and oppression by the State in the name of "The Public Order and Police Law" which had given police free hand to torture and slaughter. After nearly seven decades, we are still demanding apologies and compensation from the Government so that the same brutalities may never be repeated.

1. We would like to point out that the Government has no regrets over what the State did to its citizens a few years prior to the ratification of the Convention in spite of the fact that those brutal acts were clearly contrary to the spirit of the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". The Government refuses to take the necessary measures to correct the damages done to victims as a respectable member of the Treaty should have done long time ago.

We believe this attitude reflects two aspects of the postwar developments of Japan.

Firstly, Japan has not been committed to fulfill its promise to build peaceful and democratic state provided in "Potsdam Declaration of the Allies ", which Japan accepted in its own "Instrument of Surrender.

Secondly, it also manifests that Japan is not willing to observe peaceful and democratic provisions of Japan's Constitution or provisions of peace and human rights of international law, in particular, the U.N. Charter and the Universal Declaration of Human Rights.

We hope that the Committee would look squarely at the reality of Japan's aspiration for economic

power as well as military power leaving human rights of its own people behind and that the Committee would assist us in our activities of protect human rights in Japan.

2. Definition of torture. We find that the Government's reply submitted in July 2011, is still unclear or ambiguous. In particular, definition of torture as provided by article1 of the Convention is not included while mental torture as per the Convention's definition is not clearly defined under the Penal Code and penalties for related acts such as intimidation are inadequate.

The inadequacy or the ambiguousness of the definition is by design carrying the weight of history from the time of ultra-imperial system, in other word, a vicious tradition. Under the Constitution of the Empire of Japan (Meiji Constitution) prior to the present Constitution, Japan was reigned and governed by the line of Emperors unbroken for ages eternal and it was provided that the Emperor is sacred and inviolable. Government employees were the servants of the Emperor while people were the subjects of the Emperor. Therefore, under the Emperor regime, the State was irresponsible for any damage to the subjects resulted from its acts in the course of execution of the administrative duties. Consequently, public officials were allowed to use violence and humiliation to those who resisted the regime.

The Emperor regime established complete control of the people by the two violent agencies, one, Special Political Secrete Police to maintain the public order with violence and two, Military Police to control the soldiers in military forces. They were active abroad also. They helped the Emperor's Japan advance into aggressive wars against China followed by Japan-Russia war. After Imperial Japan colonized Taiwan and Korean Peninsula, those two agencies were very useful in controlling the people in the colonies by outright racism and violence. Not only in Japan but also in colonized countries as well as other occupied areas abroad, the Emperor worship with violent xenophobia was propagated. Any critical comment of the emperor became the target of attacks from the Special Police.

Articles of Penal Codes quoted by the Government were first written when the old Meiji Constitution was put in effect to show the international community that Japan was a respectable member of modern nations. Under the old Constitution, an interest protected by law concerning the abuse of public office was to prevent the excessive or irregular behaviors of public officials who were the servants of the Emperor. Protection of people's human rights was not their concern. Even today, traces of old habits linger on in practice.

3. Japan's Association Demanding Damages for the Victims by the Order-Maintenance Law have conducted research on the victims of the Public Order and Police Law which was put into force in 1925. They were severely punished by the law (capital punishment at maximum) on the ground of organizing an association to propagate undesirable anti-establishment thoughts which denied the national polity of Emperor's Japan and private ownership.

The reason why we stubbornly demand apology and compensation to the victims (regardless of their

nationality) from the state is because the law gave the grounds to justify police brutality which threatened countless people, by arresting, forcing them to confess and torturing them physically and mentally as much as police pleased.

It was the cornerstones of Emperor's terror regime driving the nation to colonize Taiwan and Korean Peninsula, then on to wage aggressive wars in China, South East Asia and to the Pacific. We believe that victims are the ones who made the first step to break down the dark political system, bring in love for peace and democracy into Japan, and liberation of Taiwan and Korea from the colonial rule.

We have gone through the monthly reports of the Special Political Police, picked up the names of victims, searched victims or their bereaved families, interviewed them and documented whatever we learned from them. We have also collected their writings and records which they left behind. We supplemented our research with the works of academics as well as researchers in private sectors.

We find the followings during 20 years from March 1925 when the law took effect to October 1945 when the law was abolished.

(1). Hundreds of thousands people were investigated by the Special Police and Military Police. They were taken, arrested and held into custody without warrants. They had to endure beating and other acts of violence and were threatened. Even after they were released, police kept following and watching them.

(2.) The numbers of people who were sent to public prosecutors in charge of thought crime were 75,681 in the islands of Japan while 11,681 were sent in Korean Peninsula in 9 years from 1925 to 1933. No records are found in Taiwan.

(3). The numbers of people who went on trial were 5162 in the islands of Japan while 4,464 were tried in the Korean Peninsula in 9 years. No records are found for the other areas.

(4). More than 80 people were killed in the course of investigations including Takiji Kobayashi, novelist. No records were found in this category for other areas.

(5.) 1617 people died in prison. The causes of death varied from repeated tortures in extended imprisonment, abusive treatment and sickness from malnutrition and unsanitary conditions. No records were found in this category for other areas.

In Korean Peninsula, during the above 9 years, 53 people were sentenced to death, 39 people were sentenced to life confinement and 48 people were sentenced to confinement of over 15 years.

In the course of political changes, struggle against the violent oppression of an old regime is inevitable on the way to peace and democracy in any part of the world.

And the newly born Government of peace and democracy has to face the historical wounds in good faith so as not to repeat the same mistakes. In this context, we believe that the Government of the new regime has the natural obligation to offer apology and redress (compensation) not only to the victims of its nationals but also to the victims of foreign origin who suffered serious damages by the aggression.

Germany and Italy after WWII offer good examples of efforts to correct the wrong doings in the past.

Even People's Republic of China that fought hard against Japan’s invasion for peace and democracy was thoughtful enough to forgive Japanese war criminals of lower ranking soldiers in captive under the slogan "tolerance for solidarity" in spite of the fact that they had been at the front battlefield. We also have heard about bright pages in the modern history of human rights that the United States and Canada apologized and compensated for the internment of Japanese American and Japanese Canadian.

Japan switched from the Militaristic Imperialism of Meiji Constitution to the peace-aspiring and democratic Japan under the present Constitution. However, neither apologies nor compensations have been offered to victims who suffered serious damages in terms of their lives, physical wounds, property, culture, etc. either by enforcement of the Public Order and Police Law, by colonial rules or aggressions

Presently Japan has the territorial disputes over Takeshima (Dokdo) with the Republic of Korea and over Senkaku Islands with People's Republic of China. Behind these disputes, we tend to think that the historical issues of perpetration and invasion are lurking, with which people of the two countries are challenging Japan.

In particular, we would like to refer to the issue of comfort women in paragraph 23. Although Japan has been severely criticized by the international community over several years about the issue, Government still refuse to take the necessary measures to correct the matter.

Shinzo Abe was elected as Prime Minister after the victory of general election in December 2012. All through his political career, he has been voicing his intention to revise the official position of the Government from acceptance of the Governmental involvement of the military sexual slavery to something else.

Recently, some aging men in their nineties testified before the public about their experiences of being military medics during the WWII. They told that it was part of official duties of Japanese military doctors and or military medics to inspect women for venereal diseases and that those women were of different origins such as Chinese, Korean or from some other countries. Some of them were forced to accompany military units traveling in between the battlefronts. Yet they were treated rough with contempt. They say that the military's involvement is clear and irrefutable.

4. We fully agree with the Committee about concerns over Daiyo Kangoku (detention in the substitute prison system) in paragraph 15.

Even today, Chief of police has the authority to control facilities to keep suspects in custody (daiyo kangoku). Investigation officers as well as officials who manage a substitute prison are under directive order of the chief of police. Therefore, investigators can call a suspect from the substitute prison as often as they please, and interrogate and force him to confess for as many hours as they please. As far as the substitute prisons are concerned, protection of suspect's human rights is meaningless. Some judges designate specific substitute prison naming facility attached to such and such police station when he decides that a suspect needs to be kept in custody. Using the long-term detention in the substitute prison,

suspects are being forced to confess even today.

The substitute prisons had been the stages of brutal tortures and forced confessions before and during the WWII for those who had been arrested and detained on the ground of Public Order and Police Law violation. Hundreds of thousands of people were detained in the substitute prisons where they were accused of what they had not done, beaten and threatened. If someone received focused attention of Special Police, he was taken out to judo training hall or kendo training hall, where police torture specialist beat him with bludgeon, bamboo sword or hemp rope all over his body.

Or the specialist put the lighted cigarette butts on delicate parts of the body. If it was a woman, she had to endure sexual molestation on her breast and private parts.

As daiyo kangoku has such an ugly past it is a shame that Japan still maintains the system in the 21st century by putting superficial change in the management system.

5. Even after the Constitution of Japan took effect in 1947, the governmental tendency of disregard for human rights or violation of human rights remained unchanged in spite of the people's earnest pursuit of accountability, producing many "false charges" in public order cases as well as in penal cases.

In order to eradicate physical and mental tortures, the first thing to do would be to make a new domestic legislation titled Law against Tortures and similar acts by unifying the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" and provisions of protocol into one, combining the increased penalties for offenders. Government should publish the results of the torture situation in "white paper" every year. Immediate and prompt relief measures should be taken to the victims of governmental violations. Naturally, forced confession should be disqualified and eliminated from evidence. It is also important to revoke the instituted prosecution of the cases if tortures are found at the stage of investigation so as to prevent tortures by public officials. It is also a good way to suppress the confession-centered crime investigations which rely heavily on the suspect's statement.

The second best thing would be to apply and use the international treaty and international laws of human rights more often. As the Committee pointed out in paragraph 11, international law is rarely applied in the Japanese courts. This is a serious defect of the judicial system in Japan.

In the postwar Japan, among all bureaucrats, only judicial officers (judges) of postwar Japan have never been questioned about their responsibility for war crimes and crimes of humanity during WWII. The experience of "acquittal" of war responsibility is one reason why Japanese courts refuse to respect international law as the norm of trial and deliver judgments which are remarkably restrictive of human-rights on the international level.

Under paragraph 27, the Committee encourages the State to recognize the competence of the Committee to receive and consider individual communications, as well as ratifying the Optional Protocol to the Convention. However, the Supreme Court of Japan is said to oppose strongly against the "individual communications procedure". We believe that independence of judiciary system as well as

conscience of judge is for protection of human rights. Thus we hope to have optional protocol ratified at earliest convenience.

3. The Nature of the Prosecution and Police in Japan

- Forcing a confession by concealing evidence leading to innocence, obtaining conviction, not acknowledging a false charge, and then trying to avoid their responsibilities -

The Association for Fukawa Case demanding National Compensation

While, in Fukawa case, there was no evidence related to Mr. Sakurai and Mr. Sugiyama in a large number of material evidence such as fingerprints, they were convicted of robbery and murder by the evidence of witness testimony and their deposition related to alibi and sentenced to 29 years' imprisonment.

On May 25, 2011, they were found innocent after the retrial was admitted. The reasons for the innocence were based on the fact that much evidence, such as the written expert opinion on hair foreseeing their absence at the scene, the recording tape showing that confessions were coerced, the confessions different from the situation of the body and the scene, and the witness testimony, which had been concealed by public prosecutors while there existed from the beginning of the investigation, were disclosed.

In the retrial, the prosecution kept on concealing the early recording tape of the interrogation of Mr. Sugiyama and the polygraph data of Mr. Sakurai. In addition, on the statement evidence of the witness "O", which was disclosed in the petition of retrial, describing that a man on the scene was a different person from the defendant, the prosecution refused to adopt it as evidence in the retrial, regardless of its own document.

It is clear that the police and the prosecution, in general, do not disclose evidence that they possess, refuse to make the truth public, and also avoid their responsibilities in retrials and national compensation trials. In Japan, there is no institution which investigates such misjudgment, accordingly there is no means but filing a suit for national compensation in order to investigate the truth of the case and to search into their responsibilities. In addition, the court itself holds no attitude to analyze and inspect the reason of misjudgments.

On November 12, 2012, Mr. Sakurai filed a suit for national compensation to make clear the reason that he had to live as a robber for forty-four years. The State and the prefecture do not acknowledge the illegality of what they did as ever, and they intend to attend the trial by not disclosing much material evidence, which are reportedly equal to nine carton boxes.

How Mr. Sakurai was distressed by the illegal investigation and uncomprehending judges can be found in the following his own notes.

False charges will never end in such circumstances – the actual conditions of the police, prosecution and trial in Japan in which I have faced

Shoji Sakurai
Ex-defendant of Fukawa Case

The second periodic report of the government of Japan that insists on not violating any article of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), does not acknowledge any widespread violation of human rights in Japan and is full of deceitful words.

As I know that the Government has repeatedly submitted false reports while performing an illegal act against the CAT, I would like to raise an objection against it, by expressing my experience that I have been distressed in most of my life by the false charge called Fukawa Case.

I was interrogated on the charge of murder-robbery and arrested 46 years ago. I was convicted by every trial and then imprisoned for 29 years with a crime he never committed.

Police investigators who demanded the proof of innocence of me

Although I could not clearly prove my alibi by reason of that I was arrested more than 40 days after the case happened, I fundamentally talked about my alibi in accordance with the truth. But the police told me a lie, "Your alibi is different from what we investigated," confusing my memory. And they pressed me for an answer, "Unless you can prove alibi, you must be the criminal." In addition, they interrogated me with a polygraph and forced me to confess everyday until mid-night by saying, "Confess, because the result of the examination showed you must be a murderer." As a result, I gave in to the police who insist, "You and Sugiyama committed the murder," and, acknowledging what they said as it is, falsely confessed. In the trial, police officers and public prosecutors never acknowledged the coercing of confession by saying, "Sakurai confessed on his own initiative." Judges admitted the testimony of concerned investigators and convicted us. The overdependence on confessions was absolutely unfair.

Destruction and forgery of the evidence

There was indeed a lot of evidence that indicate my innocence. But the prosecution concealed them at the final decision in the trial, and not submitting them until the retrial. Among them, there was the investigation report of the inspection of the scene, indicating the impossibility of going in time to the scene of the crime in Ibaraki Prefecture from a pub located in Nakano Ward, Tokyo, by train and certificating the establishment of my alibi. But this evidence has been concealed for 35 years.

The prosecution has kept on concealing the report as well for a long time, which was based on testimony of a woman, a friend of Sugiyama (alleged accomplice), saying," I watched a man different from Sugiyama." There was also the written expert opinion on the hair detected at the scene, indicating the inconsistence with the hair of the accomplice and mine. And this written expert opinion has been hidden for 35 years as well.

The recording tape that recorded my statement was found with tracks of its cutting-off here and there and connection. The fact against the prosecution's argument was erased by the falsification of the evidence. The timetable of the interrogation submitted by the police as evidence of its fair investigation was different from that described in the investigation report, which was submitted in the present retrial. This was also found as tampered evidence.

Considering us to be criminals, making a story of conviction, erasing and tampering evidence, and hardly disclosing evidence of innocence------This is the nature of the prosecution in Japan.

There is still a lot of evidence concealed in Fukawa Case. In the trial of Japan, in general, all evidence collected by the police and prosecution are used for establishing one's guilt and, on the contrary, rarely used for proving innocence. So it becomes very difficult for those who are suffering false charges to establish innocence. Fukawa case was fortunately resolved by submitting a lot of evidence to the court.

Non-disclosure of evidence

In Japan, there exists no legislation that orders the prosecution to submit all evidence it possesses. So that, the prosecution hides evidence except one which is useful in the indictment, not submitting it to the trial. Even if the defense counsel asks the prosecution for submitting evidence, it almost refuses. The prosecution never says, "There's no evidence," responding cleverly, "Not found." It always says so in order to avoid its responsibility when found.

Regarding the written expert opinion on hair as I mentioned before, this opinion was submitted to the court after its existence was made clear, the existence of which had been denied by the then prosecutor. Unless the existence was made clear, the prosecutor calmly tells a false statement to the court. If we could let the prosecution submit the evidence which it continues concealing, the reasons we were arrested as criminals would be verified. But the prosecution continues refusing it by insisting even now that we are still criminals after found innocent.

No repentance of the investigative authorities and the court

It is the prosecution that insists Japan is not against the CAT in the periodic report. Prosecutors in Japan control The Ministry of Justice. And they occupy about 80 percent of managerial posts higher than section managers. Accordingly its public officials continue declaring that we are still criminals as ever.

There have been not a few people who were found innocent so far, including retrial cases of death penalty. But there have been neither police officers who took responsibility, nor prosecutors, nor judges.

The reasons false charges occur in Japan are related to the circumstances in which no investigative authorities are blamed for their responsibility.

They have no awareness to protect human rights. What the police and the prosecution perform is unconditionally permitted, and there is no means to prevent their violation of human rights.

Claim of national compensation is only way left for finding out the truth

I filed a lawsuit against these irresponsible organizations for national compensation. There is no other way but this to find out the truth and search their responsibility. While the defendant, the State, refuses the disclosure of the evidence, we strongly call on the prosecution to change its evidence monopoly system.

4. The Osaki Case of False Charge

* A man was found dead under suspicious circumstances in Osaki-cho, Soo-bu, Kagoshima Prefecture in October, 1979.
* He had a drinking problem. On the same day he was supposed to attend the wedding ceremony of his relations, but he did not go to the wedding. Instead he had been drinking "sake" since morning. He toppled into a sewer of the rice field in his bicycle on his way back from his second trip to a liquor shop for more alcohol. A few hours later, somebody pulled him out of the sewer and left him bottomless on the street at night. A few more hours later, neighbors carried him to his house. However, after that, he went missing. Three days later, he was found dead in the compost bin attached to his house in the same conditions as that of three days ago.
* Without thorough investigation the Shibushi police station determined that it was a murder case. The police arrested his eldest brother, the second eldest brother and the son of the second eldest brother. However, three of them were mentally retarded. The police were afraid that they might not be able to maintain the prosecution. So the police forced them to confess that Ayako, the wife of the eldest brother, instructed them to kill their brother. Then police arrested her as the main culprit.
* There was no evidence except for the statement of those three men. No murder weapon was found although it was confessed that towel was used to choke the throat of the victim.
* The Kagoshima Prefectural Police and the Shibushi police station have the history of false charge cases in the past, such as "the Takakuwa incident", "Tarumizu bar girl murder case". Convicts of the above cases have been found innocent and acquitted by the Supreme Court of Japan. Even after the Osaki Case, the police charged falsely election campaigners with election violation of bribery.
* Although Ms. Ayako denied the charge consistently all through investigation and took the case to the Supreme Court, she was found guilty and was sentenced ten years of imprisonment. As she behaved well in the prison, a prison officer suggested to her that she should admit her guilt so that she could be released earlier on parole. But she refused and served the full term.
* After Ayako completed her full term, she made the first appeal for the retrial at the Kagoshima District Court in 1995. The District Court decided that the case must be retried because there were reasonable doubts about the guilt in 2002. However, the decision was reversed by Miyazaki Branch of Fukuoka High Court in 2004, and her appeal was finally rejected by the Supreme Court.
* Ayako filed the second appeal for retrial in August 2010. The Kagoshima District Court rejected the appeal this time in March 2013. Ayako filed an immediate appeal at the Miyazaki Branch of Fukuoka High Court on March 11, 2013. She is now waiting for the decision.