

Japan Federation of Bar Associations Report on the
Japanese Government's Implementation of
the Convention against Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment

January 18, 2007

Japan Federation of Bar Associations

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Part I Introduction - Executive Summary

1. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture) was adopted by the UN General Assembly in December 1984 and entered into force in June 1987. Countries which have ratified and acceded to it number 144. Japan is the 139th, making it the latest accession of all the industrialized countries.
2. The government of Japan acceded to the Convention Against Torture in June 1999. It was required to submit its first report within one year of accession, which would have been in 2000, but did not do so until 2006, which is an indication that Japanese government wanted to avoid international scrutiny. This fact alone is sufficient grounds to doubt the government's enthusiasm in meeting the challenge of banning torture and other cruelty.
3. Below we describe in detail the government's implementation of the convention by category, but here we point out a number of basic problems relating to implementation.
4. (1) Declare acceptance of the system for communications from individuals under Article 22 and ratify the optional protocol.
5. In Article 22 the convention provides for a system for communications from individuals in which torture victims can send communications to the Committee against Torture, and that the committee is empowered to consider these communications and render its views. However, the Japanese government takes the position that this infringes the judicial power of the state, and on that basis did not declare acceptance under Article 22 when acceding to the convention. The system for communications from individuals does not infringe the judicial power of the state, and the Japan Federation of Bar Associations (JFBA) strongly requests its acceptance.
6. The convention's optional protocol is a watershed document which provides a framework within which an international Subcommittee on Prevention of Torture (Article 2) works in tandem with domestic inspection agencies to inspect detention facilities in order to prevent torture, but despite the forceful demands from JFBA and human rights NGOs, the Japanese government has not ratified this protocol. JFBA strongly requests that the government ratify this protocol.
7. (2) Articles 12 and 13 of the convention provide that if torture has been committed, competent authorities perform prompt and impartial investigations, and that an individual who has been tortured has "the right to complain to, and to have his case promptly and impartially examined by, its competent authorities." Institutions created by the government are all contained within the government and lack independence and transparency, therefore not satisfying the convention's Articles 12 and 13. The Human Rights Commission proposed by the government to the Diet based on the Human Rights Protection Bill would be created inside the Ministry of Justice (MOJ) and would not be sufficiently independent of the government (see Part II, Chapter 2, Item 60-65). It is essential that a competent authority that is independent of the government, and that has authority for the investigation and redress of human rights abuses be created.

8. Further, the “concluding observations” adopted by the Human Rights Committee, which is the implementing agency of the International Covenant on Civil and Political Rights, in response to the Japanese government’s fourth periodic report of October 1998 on implementation of the covenant recommended that the Japanese government improve its *habeas corpus* system (item 24), and even now that recommendation is totally ignored.

9. (3) There should be full discussion on the definition of torture (Article 1), and a crime of torture newly established.

10. Article 1 defines the concept of torture as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.” The government says that torture as defined by the convention can be punished as a domestic crime under current criminal law. But “mental torture” in the convention’s definition is not covered by the “violence and cruelty by special public officials” in Articles 195 and 196 of the present Japanese criminal code, and although intimidation is found in Article 222 of the Criminal Code, the statutory penalty of imprisonment under two years is too lenient. Therefore in Japan’s legal system the severeness of serious mental torture is not fully considered.

11. (4) Implementation of the convention should be reviewed with full consideration of the “concluding observations” based on the review of the Japanese government’s fourth periodic report by the Human Rights Committee.

12. The “concluding observations” adopted by the Human Rights Committee on the review of the Japanese government’s fourth periodic report on the implementation of the International Covenant on Civil and Political Rights pointed out a variety of human rights violations caused by long-term detention in police detention facilities (substitute prison system, or *Daiyo Kangoku*), and lack of transparency in interrogations, as well as those in criminal institutions, and immigration detention facilities. It also recommended human rights education for judges and law enforcement officers (see Part VII), and the creation of agencies for the redress of human rights abuses that are independent from the government.

13. These items in the concluding observations are closely related to the provisions of the Convention against Torture, and we seek rigorous investigations by the Committee against Torture about how the government has or has not addressed these concerns.

14. (5) Eliminate overcrowding and improve treatment in criminal facilities (Part II).

15. There was a certain amount of progress with respect to the treatment in Japanese penal facilities, an object of strong international concern. The MOJ made the first amendments in about 100 years to the Prison Law, the leather handcuffs which had been used for torture were abolished, and the scope of communication with the outside world was expanded. Additionally, the government established a “Review and Investigation Panel on Complaints by Inmates in Penal Institutions” which includes external commissioners for complaints. The government also established Boards of Visitors for Inspection of Penal Institutions comprising lawyers and physicians and having citizen participation. Both bodies have begun activities. Legislation for this purpose incorporated JFBA opinions to a significant degree. Although an inadequate medical care system, long-term solitary confinement, and other serious problems remain, it bears mentioning that the government’s

attitude has changed, and it can now share these problems with JFBA and NGOs.

16. (6) The government should abolish the *Daiyo Kangoku* system, which makes long-term police detention possible, institutionalize video and audio recordings of interrogations for transparency, and create an independent system for the redress of human rights abuses in police detention facilities (Part III).

17. The biggest barriers to implementation of the Convention against Torture in Japan are long-term police detention and non-transparent interrogations. Although suspects receive detention hearings within 72 hours of their arrest, but even after detention decisions are made, over 98% of them remain in police detention cells (this is called the *Daiyo Kangoku* system).

18. Further, it is possible to conduct interrogations from early morning to late at night over the entire period of a suspect's detention, and it is reported that in some cases in which suspects denied the allegations, the interrogations by police involved violence and intimidation.

19. The *Daiyo Kangoku* system, which enables police to continue interrogations for 20 days or more, still exists despite JFBA's strong opposition to it. Demands for total video and audio recording of interrogations have yet to be realized. In conjunction with amendments to the law that are to be enforced by June 2007, Board of Visitors for Inspection of Police Custody is to be established in each prefecture, but there are still no effective abuse redress agencies to guard against human rights violations in police facilities. There is no pre-indictment bail system.

20. (7) Reduce the number of death penalty judgments, and change the inhumane capital punishment system (Part IV).

21. Death row inmates are not given advance notice of their executions, but are told only on the morning of that day, which is very inhuman. As a rule, inmates whose death sentences were finalized are kept in solitary confinement and away from contact with other inmates. In the concluding observations of the Human Rights Committee, the committee recommended that "Japan take measures towards the abolition of the death penalty". But in recent years, courts are handing down far more death sentences, and there is a trend toward severe punishments. JFBA seeks moratorium on executions. It is obvious that the death penalty is widely used in recent Japan and the government's report which says that death penalty is applied in the strictly limited way is wrong.

22. (8) Improve treatment in immigration detention facilities for foreigners, and improve the refugee certification system to conform with Article 3 of the convention (Part V).

(a) Immigration detention centers

23. There is a continual string of reports on violence, abuse, sexual harassment, lack of access to proper healthcare, and other problems in immigration office detention centers for foreigners.

24. There is no independent agency to which detainees can report human rights violations

by Immigration Bureau staff members. Under the current Immigration-Control and Refugee-Recognition Act, there is no specified limit to detention time after a deportation order is issued, and there are cases of indefinite and long-term detention. Improvements should include clarification of the requirement for detention after issuance of a written deportation order, and a standardized limit to the length of the detention period.

(b) Refugees

25. Article 3 of the convention provides that a government must not send or extradite a person to a country where there is a danger he may be tortured (the principle of “non-refoulement”). To ensure this principle is carried out, refugee recognition screening procedures must adopt the convention’s Article 3 as a criterion of protection, there should be a review body independent from the Minister of Justice to review objections, and other improvements must be made for a fairer system.

26. (9) Confirm the rule that children are put in facilities only in exceptions, and appoint child rights ombudsmen (Part VI).

27. The government should respect the 1998 and 2004 concluding observations addressed to the Japanese government and adopted by the Committee on the Rights of the Child in response to the review of the Japanese government’s reports on the implementation of the Convention on the Rights of the Child, and follow the observations by rethinking and eliminating the legal system whereby it charges young children with criminal responsibility and wants to detain them in facilities. Child rights ombudsmen, which hear complaints by children where there are problems involving facility treatment of children should be appointed to hear complaints.

28. (10) Police officers, immigration security personnel, and judges should be given practical and effective human rights education (Part VII).

29. Human rights education for prison guards is required by law, and is now in fact widely conducted, but such education for police officers, immigration security personnel, and others is insufficient.

30. Human rights education for judges is not given to all judges. What is more, it consists mostly of lectures, and does not assume the form of a discussion.

Part II Detention in Penal Institutions

Chapter 1 Overview

31.

<p>1 JFBA welcomes the positive stance of the Ministry of Justice Correction Bureau on reforming the penal system based on recommendations by the Correctional Administration Reform Council, and desires that this stance continue to grow.</p>
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1. Nagoya Prison Incident: The Exposure of Torture in Modern Japan

32. Appearing also in the government report is the Nagoya Prison incident, which came to light in October 2002, in which prison officials inflicted injury and death on prisoners. One of the victims, who was in the process of filing an appeal for human rights relief to a bar association, was being pressured to withdraw the filing, and subjected to violence after refusing. This violence therefore had a clear purpose, and was not mere abuse. As such, it appears to correspond to torture as defined by the Convention against Torture. This human rights violation against prisoners, which resulted in the deaths of two inmates and serious injury to another, led to charges of “violence and cruelty by a special public officer resulting in death or injury.” Already guilty judgments against several defendants and a judgment in favor of plaintiff in a claim for damages have been handed down regarding in this case, but some criminal case and state compensation cases are still in progress.

2. The Nagoya Incident: Tip of the Human Rights Violation Iceberg

33. This incident was merely one of many in which leather handcuffs caused the injuries and deaths of prisoners. After this incident, JFBA conducted a survey of prisons and detention centers, which corroborated information that cruel human rights violations using leather handcuffs and protection cells were widespread throughout Japan.

34. In March 2003 a record of about 1,600 inmate deaths over the previous 10 years was submitted to the Diet at the request of the House of Representatives Committee on Judicial Affairs. Legislators found many cases in which protection cells and leather handcuffs played a part in deaths, and in which there was suspicion of insufficient medical care.

3. Launch of the Correctional Administration Reform Council by the Minister of Justice, and JFBA Support

35. In response to the revelation of such problems, the MOJ in April 2003 announced the intention to overhaul the penal system, and created the Correctional Administration Reform Council.

36. JFBA has always called for across-the-board amendment of the Prison Law to bring it up to the level of international human rights standards, and we gave our total cooperation, including support for a former JFBA president who was a member of the Council.

37. In a General Assembly resolution of May 2003, JFBA requested the following

improvements.

- Create an agency to redress human rights abuses which is independent of the MOJ, and provide a system for processing everyday complaints which sends problems directly to superior agencies.
- Relax restrictions on visits and personal correspondence, and broadly allow inmate contact with the outside as through the telephone. In particular, guarantee private meetings and uncensored correspondence for people involved in consultations and investigations over complaints.
- Ratify the Optional Protocol of the Convention against Torture.
- For the improvement of healthcare in prisons and police detention centers, quickly take measures to secure enough physicians and budgets, and switch control of healthcare from the MOJ to the Ministry of Health, Labor and Welfare.
- Give prison officials thorough education in human rights. To address prison overcrowding, enhance facilities and substantially increase the number of prison officials in order to alleviate their work burdens.

38. A measure of trust between the MOJ Correction Bureau and bar associations arose through some lessons learned from the Nagoya Prison incident, and the December 2003 recommendations of the Correctional Administration Reform Council were given a positive evaluation by JFBA.

4. Enactment of the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates (2005 New Law) Having JFBA Approval

39. The Correctional Administration Reform Council's recommendations (below, "recommendations") seek, as the basis for prison inmate treatment, respect for the humanity of inmates, and treatment that gives them the desire for improvement and rehabilitation of their own accord.

40. The recommendations state that penal reform will guarantee the human rights of prison inmates and improve the working conditions of prison officials, which will in turn help inmates rehabilitate and return to society, which benefits the whole nation.

41. Although the recommendations did not include ratification of the convention's optional protocol or the independence of prisoner medical care from prison authorities, they did include a number of important improvement measures sought by JFBA, including the creation of Boards of Visitors for Inspection of Penal Institutions, expanded inmate contact with the outside, and legally required human rights education for prison officials.

42. JFBA and the MOJ cooperated on legal reforms along the lines of the recommendations, resulting in the May 18, 2005 passage by the Diet of the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates (below, "2005 New Law"), which was the first amendment of the Prison Law in about 100 years.

5. No Change in Situation, but State Clearly Set for Improvement

43. This new law entered into force only recently, on May 24, 2006, and the situation in penal institutions is almost unchanged. However, the stage is clearly set for improvement —

even though it required the sacrifice of precious human lives, and it is very important that a system of cooperation for effecting improvements is emerging between the MOJ and bar associations.

44. We hope the Committee against Torture will state an opinion which frankly approves of this orientation toward improvement, which strongly encourages the MOJ to cooperate with JFBA and human rights organizations in constantly observing the human rights situation in prisons and continuing to make improvements, and which urges further development of such cooperation.

Chapter 2 Discussion by Item

1. Article 2.1

(1) Creation of Boards of Visitors for Inspection of Penal Institutions

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| 1 | Members of Boards of Visitors for Inspection of Penal Institutions must be able to meet in private with and freely interview all prisoners, including pre-trial detainees with whom interviews with outside visitors are prohibited. |
| 2 | Those chosen as members of Boards of Visitors for Inspection of Penal Institutions must be people who are truly “enthusiastic about improving the operation of penal institutions.” |
| 3 | Legal authorities must to the greatest practicable extent respect the opinions of Boards of Visitors for Inspection of Penal Institutions. |

46. The Boards of Visitors for Inspection of Penal Institutions can be seen as the biggest achievement of the 2005 New Law (Articles 7 and following). Because a board is established at each penal institution, this makes use of the new system possible for pre-trial detainees and those sentenced to execution not only in prisons, but also in detention centers.

47. Although the boards are not meant for the redress of individual issues, they are meant to increase the transparency of facility operations, prevent recurrences of violence, and contribute to the betterment of institution operations, in accordance with the Correctional Administration Reform Council’s recommendations. Board members are appointed by the Minister of Justice as part-time national government employees from among people of high character and insight who are enthusiastic about improving the operation of penal institutions, are limited to under 10 members (Article 8.1), and may have 4 or more members depending on institution size.

48. To ensure that board investigations are effective, it is possible for prisoners to meet board members without attendance by facility officials, and documents addressed to boards are free from censorship (Article 9.4). Each facility installs a “suggestion box” so that inmates can send suggestions and other communications to boards other than by letters. Suggestion boxes can be unlocked only by board members.

49. Based on inspections and other information thus obtained, boards are to state their

opinions on facility operation to penal institution directors at least once a year (Article 7.2), and every year the Minister of Justice is to summarize the opinions stated by boards to the directors of penal institutions and the measures taken by the directors in response, and publish an overview (Article 10).

50. Each board must have at least one lawyer recommended by a bar association, a physician recommended by a local medical association, and an official of the municipality. Although some boards include university researchers specializing in criminal law, constitutional law, and the like, many board members are from local organizations such as neighborhood associations, crime-prevention associations, police station councils, and social welfare councils. Board members drawn from such organizations sometimes lack sufficient understanding of what the board system is meant to achieve, and even refused to meet inmates. In some instances the requirement for “people of high character and insight who are enthusiastic about improving the operation of penal institutions” is not fulfilled. This state of affairs arises because organizations from which board members are drawn are determined solely on the basis of selection by penal institutions. Thus it is necessary to make the board member appointment process transparent and create a system that appoints more appropriate people.

2. Article 13 (paragraphs 115 and 116 of the government report)

(1) Complaint System

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| 1 | For complaint filing, JFBA welcomes the creation of the “Review and Investigation Panel on Complaints by Inmates in Penal Institutions” (Complaint Review Panel) that is independent of prison operation, and requests that this panel’s legal independence be guaranteed, and that it be given a secretariat function, such as having a staff to perform investigations. |
| 2 | Enact a human rights protection law that includes a human rights commission system that is truly independent of the government but does not include provisions for media restrictions that could violate human rights. |
| 3 | The government should allow attorneys to represent inmates when filing complaints. |
| 4 | The government should reconsider the severe 30-day limit for filing complaints. |

(2) Complaint Filing System under the 2005 New Law

52. The former Prison Law had highly inadequate means for inmates to file complaints, but the 2005 New Law includes a new system for this purpose. Specifically, these are “Applying for Examination” in the case of complaints about actions by wardens (Articles 112 and following), “Stating Facts” about the illegal use of force or mechanical restraints and protection cells by prison officials (Article 118 and following), and “Making a Complaint” (Articles 121 and following).

53. Applying for Examination and Stating Facts are addressed to the Regional Correction Headquarters director, and if inmates are dissatisfied with the results, they can apply for

re-examination and state facts, this time to the Minister of Justice.

(3) Establishment of the Complaint Review Panel, and Its Problems

54. If the Minister of Justice desires to reject these applications, he is to refer the matter to the “Review and Investigation Panel on Complaints by Inmates in Penal institution” (Complaint Review Panel) and handle the cases while honoring to the maximum the Panel’s recommendations.

55. Based on a recommendation by the Correctional Administration Reform Council, the Complaint Review Panel was created in January 2006 as a “provisional and de facto measure” until the establishment of an agency for the redress of human rights abuses that is independent of the MOJ. It has five members and had already begun activities before the 2005 New Law entered into force.

56. According to the panel, it examined 204 cases by July 2006. It said 11 were to be reinvestigated, and three had sufficient grounds and should be accepted.

57. However the Complaint Review Panel does not have its own secretariat staff, a function performed by officials of the Secretarial Division of the Minister of Justice’s Secretariat. JFBA suggested that the formation of a secretariat setup which has the participation of people including lawyers and is independent from the MOJ, but this was not adopted. For this reason it is virtually impossible for the panel to perform investigations itself, and accepted cases all concern restrictions on sending letters, about which there are no disputes over facts.

(4) How the System Should Be Reformed

58. Despite JFBA’s position, the government has not permitted inmates to have lawyers or other third parties as representatives for complaint filing procedures, and therefore inmates themselves must perform these procedures.

59. Further, the 30-day time limit on complaint filing does not assure enough time for consultations with outside family, friends, or experts. Even if a time limit is allowed, it must be longer. A more effective complaint filing system must be fashioned.

(5) Human Rights Protection Law and Committee Unrealized

60. A Cabinet-proposed “Human Rights Protection Bill” meant to establish a domestic human rights protection agency (Human Rights Commission) had been submitted to the Diet several times, but there was growing criticism of the bill because the committee would be created as a MOJ extra-ministerial bureau. Critics pointed out that by placing this committee under the MOJ, which governs prisons, immigration facilities, and the many other agencies at which human rights violations are said to occur, the committee would lack independence from state power.

61. In addition to the lack of independence, opposition to the bill includes these points.

62. Because the committee would make human rights violations by the media a special area for redress, opposition has emerged from media organizations, claiming that this infringes freedoms of expression, the press, and newsgathering. Although the government promised to freeze restrictions on the media, it did not accede to demands to delete the provision.

63. Additionally, nationalistic politicians in the ruling party attacked the bill because the system would allow foreigners to become committee members. Further, the bill was said to limit the freedom of political activities because the committee would be able to perform investigations and recommendations on statements that racially discriminate against foreigners and minorities.

64. Hence opposition from both the ruling and opposition parties has prevented passage of the bill, and the bill's prospects are uncertain.

65. JFBA continues to seek passage of a human rights protection bill which is truly independent of the government and which does not include provisions for media restrictions that could violate human rights.

3. Article 16

(1) Restraining Devices and Protection Cells (paragraphs 150-152 of the government report)

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| 1 | JFBA welcomes the abolition of leather handcuffs, which caused many human rights violations, and seeks the appropriate use of their replacements, the type 2 handcuffs and metal handcuffs, so that human rights violations do not occur. |
| 2 | A time limit should be placed on confinement in protection cells, and such confinement should be conditional based on regular inspections by a physician, and physical examinations to determine fitness for such confinement. |

(a) Abolition of Leather Handcuffs, Appearance of New Restraining Devices

67. Leather handcuffs have been used as torture devices and are responsible for many human rights violations. In 1998 the UN Human Rights Committee expressed concerns about the "frequent use of protective measures such as leather handcuffs, that may constitute cruel and inhuman treatment." In 2003 deaths and injuries to prisoners in the Nagoya Prison incident came to light and triggered reform of the Prison Law. A prisoner injured in this incident had filed an appeal to a bar association for human rights relief, and prison officials placed leather handcuffs on him tightly as retaliation, making this a clear case of torture.

68. Leather handcuffs were finally abolished on September 31, 2004, which JFBA welcomes. The new "type 2 handcuffs" introduced as a replacement have cuffs for both arms, and the cuffs are joined by a rigid connector. But when these handcuffs are used in front of the body, it is possible to raise and lower both arms, so they are often used by putting the prisoner's arms behind his back. Used in the manner for a long time, the cuffs can cause great suffering, but there are no legal time restrictions. Therefore tougher restrictions and strict

monitoring of their use is necessary.

(b) Metal Handcuffs.

69. The use of metal handcuffs, which are known as “type 1 handcuffs,” is allowed by Article 55 of the 2005 New Law in the following situations: When transferring a prisoner, or when there is a possibility that the prisoner will (1) escape, (2) harm himself or others, or (3) damage the equipment in penal institutions.

70. In March 2006 it was found that, under orders from the warden, a prisoner from the Kakogawa Prison (Hyogo Prefecture) who had been admitted to an outside hospital for an examination had handcuffs on his feet with a rope attached. A guard held the end of the rope.

71. In May 2005 a female defendant from the Tokyo Detention Center was admitted to the Tokyo Metropolitan Police Hospital for childbirth. During her stay there, one end of a set of handcuffs was on one of her ankles, and the other end was secured to the bed by a rope.

72. Such use of metal handcuffs is inhuman. The use of metal handcuffs must, just as the use of type 2 handcuffs, be strictly controlled and monitored.

(c) Protection Cells

73. A report by a team that the studied death registers of penal institutions shows that a considerable number of people have weakened and died after repeatedly being put in protection cells, and JFBA has called for time limits on protection cell use. The Law Concerning Penal Institutions and the Treatment of Sentenced Inmates specifies 72 hours as a general rule, and prescribes extension every 48 hours, but there is no limit on the number of extensions, and none on the length of time protection cells may be used.

74. Needless to say, prisons apply a proportional rule that is a general rule of discipline and order, and in view of circumstances, authorities must stop protection cell use when no longer necessary. And although not legally required, video recordings are to be made while prisoners are in protection cells.

75. Although the opinion of a physician is to be obtained when confining a prisoner in a protection cell, there is no requirement for a physician to perform an examination before stating his or her opinion.

76. We hope that to eliminate human rights violations in protection cells, these requirements are instituted: a confinement time limit is established, sufficient consideration is given to observing that limit, physicians regularly observe conditions in cells, and confinement is allowed after a physical examination.

(2) Solitary Confinement as Part of Treatment (government report, paragraph 155)

77.

1 JFBA seeks a change in the legally evasive practice of using a prisoner’s

2	<p>treatment category to put him in isolation even when it is not permitted by law.</p> <p>Prison authorities should use a specialized psychiatric and psychological approach for the prisoners in the separate table who have been in solitary confinement for very long time periods, and switch them from solitary confinement to normal treatment.</p>
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(a) Isolation Not in Accordance with Legal Provisions

78. Long-term round-the-clock solitary confinement is criticized in Japan and other countries as a serious human rights violation. A 1998 recommendation by the UN Human Rights Committee expressed concerns about the “use of harsh punitive measures, including frequent resort to solitary confinement.” In response to this criticism, Article 53.1 of the 2005 New Law strictly sets forth these requirements on prisoner isolation (round-the-clock solitary confinement): “when contact with other inmates could damage penal institution discipline and order,” and “when an inmate may be harmed by other inmates, and there is no other way to avoid this.” A prisoner can also file a complaint about this punishment.

79. However, after the 2005 New Law took effect, it was found that round-the-clock solitary confinement in violation of these provisions was still being widely practiced. Specifically, prisons were dividing inmates into four restriction categories, and category-four prisoners were kept in cell blocks except when especially necessary to do otherwise, and they were in conditions totally like isolation except for two points: Category-four prisoners exercise and bathe with other prisoners, and they are given opportunities to have contact with other prisoners at least once a month (in actuality only once a month). Such treatment constitutes isolation that is nearly the same as that specified by the 2005 New Law, but does not comply with the law’s provisions. This is clearly illegal and must be immediately rectified.

(b) Very Long-Term Isolation

80. Under the 2005 New Law isolation is set to within three months as a rule, but there is no limit on renewal. Therefore very long-term isolation continues even now.

81. A study conducted in November 2005 before the 2005 New Law entered into force found 30 prisoners who had been in isolation at least 10 years, and many of them were serving life sentences (Table 1). One person serving a life sentence had been in solitary for 42 years of his 50 years and 11 months in prison. Two prisoners had been isolated since the day they entered prison. As of November 1, 2005 there were 1,452 prisoners serving life sentences in Japan, of which 8.61% or 125 individuals were being held in isolation.

82. It is clear that this long-term isolation is inhuman treatment that brings great harm to prisoners both physically and mentally.

Table 1

Prisoners in solitary confinement 10 years or more	As of November 1, 2005
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Prisoner name (pseudonym)	Sentence	Rank in total isolation time	Total time in solitary confinement (years, months)	Term of sentence already served (years, months)	Times released from solitary confinement and allowed to work in prison factory
Kitakyushu Medical A	Life	1	42, 0	50, 11	9
Kyushu A	Life	2	41, 6	45, 6	2
Kitakyushu Medical B	Life	3	39, 8	49, 8	0
Kyushu B	Life	4	38, 7	44, 5	9
Hiroshima A	Life	5	27, 1	52, 6	3
Osaka A	Life	6	26, 8	36, 7	6
Gifu A	Life	7	26, 0	35, 11	7
Kitakyushu Medical C	Life	8	25, 5	40, 5	0
Tokushima A	Life	9	25, 0	28, 8	29
Gifu B	Life	10	24, 10	28, 3	2
Miyagi A	Life	11	23, 11	38, 9	1
Gifu C	Life	12	23, 11	34, 1	5
Kitakyushu Medical E	Life	13	23, 6	35, 11	37
Miyagi B	Life	14	21, 7	33, 8	16
Kyushu C	Life	15	20, 3	42, 3	25
Kitakyushu Medical D	Life	16	19, 8	20, 1	3
Kitakyushu Medical I	Life	17	18, 5	27, 8	3
Kitakyushu Medical F	Life	18	17, 1	32, 4	8
Miyagi C	Life	19	16, 1	22, 9	2
Kitakyushu Medical G	Life	20	15, 9	39, 1	4
Miyagi D	Life	21	15, 3	29, 5	8
Kitakyushu Medical H	Life	22	15, 2	19, 0	13
Gifu E	20 yrs, 8 mo	23	14, 1	14, 5	1
Gifu D	20 yrs	24	13, 7	13, 7	0
Miyagi E	Life	25	13, 5	34, 5	1
Miyagi F	Life	26	13, 4	30, 4	9
Gifu F	Life	27	13, 4	20, 11	0
Fuchu A	17 yrs	28	13, 1	13, 6	7

Tokushima B	Life	29	10, 6	10, 6	0
Miyagi G	Life	30	10, 0	19, 7	1

(3) Health, Hygiene, Medical Care

83.

- 1 Perform a thorough review of the inadequate system of medical care in prisons resulting from the insufficient numbers of physicians and medical personnel, and quickly set up a medical care system which is independent of the prison security division and reliably provides appropriate medical care at the appropriate times.
- 2 Change the practice of allowing prisoners in disciplinary confinement to exercise and bathe only once a week, and increase their opportunities for exercise and bathing.
- 3 Allow prisoners to have ordinary haircuts.

(a) Establishing General Rules for Health, Hygiene, Medical Care

84. The 2005 New Law enacts measures to provide prisoners with appropriate health, hygiene, and medical care compared with the level thereof for society in general (Article 33). The law also provides that prisoners are to be given the opportunity to exercise outdoors every day to the extent possible, except for holidays (Article 34). Prisoners should bathe appropriately for health and hygiene (Article 36). These provisions on general rules are meant to improve conventional practices.

(b) Exercise and Bathing

85. Article 107 of the 2005 New Law provides that prisoners in disciplinary confinement have limits on exercise to the extent that their health is not compromised. Under the law's enforcement regulations, prisoners in disciplinary confinement are to exercise and bathe at least once a week. But once-a-week exercise clearly violates 21(1) of the Standard Minimum Rules for the Treatment of Prisoners, and bathing once a week is not enough in Japan because of the high humidity during the summer and rainy season, and because Japanese prisons are not air conditioned.

86. In a recently revealed incident, a prisoner was hardly allowed to bathe for about nine months for "medical reasons." An inmate in Niigata Prison was unable to perform prison work because of lumbago, and the prison disallowed bathing for 278 days from December 2003 to September 2004, except for eight occasions when a physician's permission was obtained. During this time the prisoner was allowed only to sponge bath without removing his underwear, and was not allowed to wash his hair. Outside exercise was not allowed for 450 days from September 2003 to March 2005. Niigata Prison insists that it "made him change underwear every day and took care in cleanliness." Although this is a case under the old law, it is absurd not to take appropriate steps for hygiene for reasons related to medical care.

(c) Inadequate Medical Care

87. Recommendations by the Correctional Administration Reform Council also distinctly pointed out the inadequacy of medical care in penal institutions. The main reasons cited for this were the insufficient number of physicians, the deficient quality of medical care, intervention by security divisions into medical care, and the lack of transparency in medical care. As of August 2006, 18 of Japan's 74 penal institutions have fewer than the full staff of physicians, and seven of them have no physicians at all. And due to very limited medical care budgets, prisons totally lack systems for providing the necessary medical care.

88. In particular, owing to the outright shortage of physicians, prisoners have difficulty getting a physical examination even if they want one, and because physicians neglect to take proper action even when performing examinations, there is serious medical malpractice.

89. About February 1993 at the Asahikawa Prison, a male inmate complained of chest and lower back pain, which are early symptoms of spinal caries, but he was granted neither a medical examination nor treatment. His pain worsened, and he was repeatedly put in a cell for ill prisoners, but his condition worsened. In August he developed tuberculous meningitis, and was treated at an outside hospital, but he suffered aftereffects including paralysis of the lower half of his body. Maebashi District Court recognized the prison doctor's negligence and ordered the payment of government compensation.

90. In April 2004 a male prisoner at Saga Juvenile Prison requested a medical examination because of melena, but was not granted one. He received an examination by the prison physician for the first time in January 2006 just prior to his release, and was diagnosed with hemorrhoids by palpation alone. However, the next month after his release he underwent tests at an outside hospital and was diagnosed with advanced colon cancer that had already metastasized to his lymph glands. The man has filed a lawsuit against the government demanding payment of compensation.

(d) Hairstyles

91. Prisoners' hairstyles are strictly specified by government notification. In the case of men, close-cropped hair is required except in special cases such as prisoners who are about to be released. One of the reasons for this tight restriction on hair styles given by the MOJ is, including hygiene, the rationale that if prisoners are allowed to freely choose hairstyles, some prisoners will use unconventional hairstyles as a means of coercion against other prisoners. Therefore prisoners who refused to shave their heads are usually isolated from other prisoners.

92. But hairstyle freedom derives from the dignity of the individual, and therefore such excessive restriction is inhuman.

(4) Overcrowding

93.

To eliminate overcrowded conditions, which destroy the foundation of all constructive treatment, JFBA recommends the introduction of programs other than imprisonment for drug offenders, the review of sentences, expansion of the parole
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system, the comprehensive institution of community sanctions, and taking all other judicial and administrative measures.

94. Overcrowding in Japan's penal institutions is severe. Putting nine prisoners in a six-person cell, and putting two prisoners in a single cell that is only about 5 m² is now normal practice, and prisoner stress is extreme.

95. An inmate's death occurred at Kobe Prison because of overcrowding. Late on the night of May 3, 2006, an inmate in his 50s was violently attacked by another inmate, also in his 50s, who shared the cell. Although the guard checked the victim for injuries, he did not have the victim examined by a physician. The next morning the victim was found unconscious with dilated pupils, and taken to an outside hospital, but he died on that day.

96. This is a tragic case which highlights not only the inhuman overcrowding of prisons, but also the problems of correctional medical care in prisons.

(5) Female Prisoners

97.

- 1 Prison units housing women should prohibit rounds by lone male prison officials, and should totally prohibit rounds by male prison officials at night, even if not alone.
- 2 Substantially increase the number of female prison officials.

98. Under the 2005 New Law, prison officials who conduct physical searches of female inmates must as a general rule be women, and that when that is not possible, it is possible for female prison staff members to conduct searches under the supervision of male prison officials (Article 16.2, 52.2). But in other situations there are no provisions that prohibit treatment of female inmates by male prison officials, and therefore male prison officials make inspection rounds day and night of units housing female inmates, which clearly violates Rule 53 of the UN Standard Minimum Rules for the Treatment of Prisoners.

99. In fact, there is a never-ending stream of incidents in which male prison officials at Japanese prisons abuse female inmates.

100. In April 2004, a male prison official at the Kisarazu Detention Branch of the Chiba Prison was dismissed for disciplinary reasons for allegedly entering the cell of a female criminal defendant, wherein they hugged and showed themselves naked to each other. In June 2004 at the Toyohashi Branch of the Nagoya Prison a male prison official was arrested on charges of violence and cruelty by a special public officer for having sexual relations with a female criminal defendant held there. In January 2005 the Nagoya District Court sentenced this official to three years imprisonment.

101. In addition to human rights education for preventing the abuse of female prison inmates, it is also urgent to substantially increase the number of female prison officials.

Part III Police Detention

Chapter 1 Overview

Concerning Japan's *Daiyo Kangoku* ("substitute prison") system (paragraphs 139-143 of the government report).

102.

- | |
|---|
| <ol style="list-style-type: none">1 The Japanese government should totally implement the 1998 recommendations on <i>Daiyo Kangoku</i> made by the UN Human Rights Committee.2 In accordance with the supplementary resolution by the Diet to the 2006 Law Concerning Penal and Detention Facilities and Treatment of Inmates, the government should examine, in connection with overall criminal procedure, not only the state of police investigations including interrogations, but also the use of substitute penal facilities. |
|---|

103. Already for over 30 years JFBA has been active domestically in trying to get the government to abolish the *Daiyo Kangoku* system.

104. In its reviews of the Japanese government's third periodic report (1993) and fourth periodic report (1998) on the implementation of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee released concluding observations that include solving the *Daiyo Kangoku* problem.

105. The 1998 concluding observations state: The Committee is concerned that the substitute prison system (*Daiyo Kangoku*), though subject to a branch of the police which does not deal with investigation, is not under the control of a separate authority. This may increase the chances of abuse of the rights of detainees under articles 9 and 14 of the Covenant. The Committee reiterates its recommendation, made after consideration of the third periodic report, that the substitute prison system should be made compatible with all requirements of the Covenant."

106. This *Daiyo Kangoku* system is unique to Japan, and consists in using police detention facilities as substitute "prisons" for the detention of arrested suspects even after they are handed over to the court, thereby keeping suspects in police detention facilities. This is based on Article 1.3 of the 1908 Prison Law, which provides that "detention facilities belonging to police stations may be used as substitutes for prisons," which constitutes the grounds for using police detention facilities as "substitutes" for "prisons."

107. The Prison Law was revamped by the 2005 New Law, wherein "prisons" are called "penal institutions." Semantically, disappearance of the word *kangoku* ("prison") meant the disappearance of the word *Daiyo Kangoku*. In June 2006 The Law Concerning Penal and Detention Facilities and Treatment of Inmates (below, "2006 New Law") was enacted, which added provisions on unsentenced inmates to the 2005 New Law. In other words, there has been no actual change at all because the *Daiyo Kangoku* system was not abolished, and "substitute prisons" are merely changed to "substitute penal institutions."

108. But on the occasion of this legislation, the Advisory Panel on Treatment of Unsentenced Inmates issued a February 2006 recommendation which stated: “In consideration of the strong view that the substitute penal facility system should be abolished in the future, and that we are coming to a time of great change in the overall criminal justice system, we believe that henceforth when considering the state of the criminal justice system, the government should not neglect to consider not only the state of police investigations including interrogations, but also the matter of substitute penal facilities, in connection with criminal procedures overall.” A supplementary resolution in the Diet expressed the same sentiment, and abolishing the *Daiyo Kangoku* system is a task left for the future.

109. The *Daiyo Kangoku* system continues in existence despite the repeated recommendations of the Human Rights Committee. In fact, 98.3% of detainees are held in police detention units which “substitute” for the detention centers under control of the MOJ. Without a doubt, this is the biggest problem facing implementation of the Convention against Torture in Japan.

Chapter 2 Discussion by Item

1. Article 11: Systematic Examination of Interrogation Rules

(1) Criminal Justice Considerations

(a) Interrogation Rules (paragraphs 76 and 77 of the government report)

110.

1 To assure the transparency of police interrogations, immediately create a system to produce video and audio recordings of the entire process and make the recordings available for use in criminal trials.
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A. Government Report Explanation

111. In connection with Article 10 of the Convention against Torture, the government report says that “any public official who committed violence against a person arrested, taken into custody, or detained is subject to... strict disciplinary measures” (paragraph 55), and, citing the provisions of laws and regulations on criminal investigations, reports that there is sufficient guidance and education on the banning of torture and other such treatment.

112. Regarding Article 11, it cites the same laws and regulations and states: “Interrogation rules... are systematically reviewed by the relevant organizations, and revisions are made to relevant regulations as necessary.”

B. No Means of Verifying the Proper Conduct of Interrogations

113. But in Japan interrogations of detained suspects are conducted behind closed doors without video or audio recordings, or the presence of the defense counsel, and therefore there is no means of verifying afterwards whether the interrogation was properly conducted. In that sense, it is quite hard to say whether the guidance, education, and rules cited by the Japanese

government in its report are actually carried out to the letter in investigations. In fact, there are numerous reports of interrogators taking advantage of questioning behind closed doors to force confessions using intimidation, the promise or offer of inducements, or other means, as well as physical torture such as violence and indecent acts. For example, reports of acts committed by police officers during questioning in 2005 in Shiga Prefecture, Osaka Prefecture, Metropolitan Tokyo, and other prefectures included violence against suspects and indecent acts against female suspects. There are also reports of instances in which, for example, prosecutors made reckless statements such as “I’ll kill you” to suspects during questioning, which was found by the court to negate the voluntary nature of the confessions.

114. Indeed, suspects in Japan can in many cases be kept in police custody (*Daiyo Kangoku*) for a maximum of 23 days per charge, and interrogated more or less daily (when there are multiple charges against a suspect, the 23-day detention period is repeated over and over, sometimes coming to several months). Interrogation in one day sometimes exceeds 10 hours and continues until late at night. As noted above, this kind of interrogation itself causes heavy mental suffering to suspects and can be considered torture.

C. JFBA Proposals

115. The most effective way to prevent this kind of torture-like interrogation behind closed doors is to make video and audio recordings of the entire interrogation process, and JFBA has repeatedly recommended to the Japanese government the introduction of such a system.

D. Concluding Observations of the Human Rights Committee Seeking Interrogation Visibility

116. Item 25 of the UN Human Rights Committee’s concluding observations states: “The Committee is deeply concerned about the fact that a large number of the convictions in criminal trials are based on confessions. In order to exclude the possibility that confessions are extracted under duress, the Committee strongly recommends that the interrogation of the suspect... be strictly monitored, and recorded by electronic means [meaning audio tape and other means].”

E. Government Response to JFBA’s Recommendations

117. However, the Japanese government strongly opposes the introduction of video and audio recording of interrogations, claiming, for instance, that it would make it difficult to obtain confessions from suspects and therefore hinder determination of the truth. At last in May 2006 the Public Prosecutors Office announced that it would carry out a test of video and audio recording in a few District Public Prosecutors Offices of interrogations by prosecutors in a small number of major cases, and at the discretion of those offices. But as only a very few cases are affected, and because the recordings exclude questioning by police and cover only the parts of questioning that are favorable to investigative authorities, there are problematic for reasons including the danger of inducing mistaken judgments from courts. As this shows, efforts by Japan’s investigative authorities to perform proper interrogations are highly inadequate, and although the government claims that “interrogation rules... are systematically reviewed by the relevant organizations, and revisions are made to relevant regulations as necessary,” this cannot be regarded as adequate. It is essential that video and

audio recordings be made of the entire interrogation process.

(2) Measures Related to Detention and Treatment

Supervision and Direction in Police Detention Cells (paragraph 79 of the government report)

118.

1 The Boards of Visitors for Inspection of Police Custody that are to begin activities in 2007 should each select a lawyer recommended by a bar association as a member.
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(a) Inadequate Internal Inspection System

119. The government's report claims that police officers in positions of leadership perform planned inspections of police detention facilities, provide individual guidance to officials in charge of cells, and otherwise endeavor to ensure the proper control and management of police detention cells, but this is not a legally prescribed system, and further does not constitute proper measures.

(b) Boards of Visitors for Inspection of Police Custody

120. The same kind of board as the Boards of Visitors for Inspection of Penal Institutions, already in action under the 2005 New Law, is to be created for police detention facilities as well. But because of the very large number of facilities, boards are to be organized for each prefecture and district headquarters, and board members are appointed by Public Safety Commissions. Boards of Visitors for Inspection of Penal Institutions comprise lawyers recommended by bar associations and physicians recommended by medical associations. Establishing third-party bodies such as this is laudable because they will improve treatment and transparency at police detention facilities.

121. This system is scheduled to begin operating in June 2007, but whether these boards are effective depends on whether appropriate members are chosen, including lawyers recommended by bar associations and physicians recommended by medical associations, as "people who are enthusiastic about improving facility operations."

122. Cases of Harm due to Closed-Door Interrogations Reported in the Press (Recent Examples)

Example 1

1996, Maebashi District Public Prosecutors Office (Gumma Prefecture), March 19, 2004
Kyodo News

Maebashi District Public Prosecutors Office ordered a 5% (one-month) pay cut for a male administrative official who made romantic gestures toward a woman who had caused a traffic accident and was being questioned for bodily injury caused by negligence in the performance of duties. The official has already resigned. He had previously extended an invitation for dining to another woman he was questioning about a traffic accident she had caused, and been refused. He was sternly cautioned by his superior. The Deputy Chief Prosecutor stated, "This is disappointing because it was unbecoming behavior for our staff." According to the

office, in 1996 the woman hit a scooter with a passenger car, causing the male rider minor injury, and was being questioned by the official for bodily injury caused by negligence in the performance of duties. The official felt affection for her, and that June when telephoning to inform her that she would not be prosecuted, he asked her to meet him. Apparently this did not influence the criminal punishment. The official and the woman saw each other several times a year until last year. This February he received an anonymous phone call threatening to tell the newspapers about his dating. The officer consulted with this superior, and his actions were discovered.

Example 2

October 1999, Special investigation unit of Osaka District Public Prosecutors Office (Osaka Prefecture), April 28, 2005, *Asahi Shimbun*

A decision by the Osaka Appellate Court on two defendants, the former president and vice-president of the failed Kofuku Bank, who allegedly wrongly lent ¥9.3 billion to an affiliated company and caused a loss for the bank, and were charged with crimes including violating the Commercial Code (special breach of trust). Although the voluntariness of the confession documents prepared by the prosecutor was repudiated, the district court's guilty judgment was supported on the strength of the other evidence. The defendants' appeals were dismissed. The court's decision said that the interrogating prosecutor stood imposingly on his chair, demanded that the defendants sign the document he had already written on a word processor, and did not listen to their objections about the contents.

Example 3

December 1999, Tajimi Police Station (Gifu Prefecture), November 30, 2005 *Yomiuri Shimbun* (November 29, 2005 judgment by the Gifu District Court Tajimi Branch)

An 18-year-old juvenile from Mizunami City, Gifu Prefecture was arrested in December 1999 on the charge of extortion. Claiming that this was unjust because of an improper investigation by the police and prosecutor, the youth filed suit against the government and Gifu Prefecture for state compensation, and on November 29, 2005 the Gifu District Court Tajimi Branch observed that the youth, arrested by Tajimi Police Station, was interrogated for long hours and forced to confess, and that the prosecutor trusted the police and sent him to Gifu Family Court. Of this the court said, "Despite circumstances which should have given rise to doubts about the credibility of the intimidated youth's statement, the prosecutor overrated the evidence and could not see through the false statement." Stating further that "although there is no proof of an overly aggressive investigation by the police, the prosecutor's negligence in sufficiently keeping watch on the police is unlawful," the court ordered the government to pay ¥700,000.

Example 4

March 2001, Saga District Prosecutors Office (Saga Prefecture), December 28, 2005, various newspapers (September 13, 2005 final judgment by Fukuoka Appellate Court)

On the 28th the Yokohama District Prosecutors Office issued a stern caution to a prosecutor (age 40) at the Yokohama office's Odawara Branch because when working at the Saga District Prosecutors Office he had made reckless statements such as "I'll kill you" in the interrogation of a former director (age 76) of the Saga City Agricultural Cooperative, who had been arrested for breach of trust. The prosecutor resigned on that day. On March 18, 2001, the prosecutor had prepared a confession document and threatened the former director with threats like "Don't lie to me, you son of a bitch. I'll kill you." The document was not

admitted as evidence in the trial and the district court acquitted the defendant. In September the appellate court upheld the district court decision, and the acquittal became final. Saga District Prosecutors Office Deputy Chief Prosecutor Takaaki Mibu held a press conference and said, “This was very inappropriate conduct for a prosecutor, and we lost the public’s trust.”

Example 5

November 2001, Gotemba Police Station (Shizuoka Prefecture), November 1, 2005 *Mainichi Shimbun* Shizuoka local edition (October 27, 2005 judgment by Shizuoka District Court Numazu Branch)

“Parts of the statements by the youths appear to have been elicited by the investigators’ inducement and suggestion.” “[The police] believed the victim’s report and neglected to corroborate it with an investigation.” On October 27, 2005, the Numazu Branch in its decision on an attempted rape by 10 juveniles pointed out problems in the investigation that had come to light during the trial. The decision could be appraised as calling for greater caution in juvenile case investigations.

Example 6

November 2002, Miyakojima Police Station (Osaka Prefecture), October 21, 2005, *Asahi Shimbun*

On October 20 it came to light that a man in his 50s from Hirakata City, Osaka Prefecture filed a suit against the prefecture for about ¥3.1 million in compensation, claiming that he was subjected to violence during interrogation by an investigator at the Hirakata Police Department. Osaka District Court found the violence a fact, and the decision ordered payment of approximately ¥330,000 as compensation for damage. The prefecture denied the violence, but the court ruled that the man’s statement was credible. According to the decision, on November 5, 2002 the man bought a stolen car from an acquaintance, and voluntarily went to the police station for questioning, where he was interrogated by a senior police officer of the station’s criminal affairs section and a sergeant of the Miyakojima Police Station criminal affairs section. The sergeant put a full nelson on the man and constricted his neck, breaking three false teeth in his upper jaw. The director of the prefectural police inspection office commented that he would closely examine the court’s decision and decide what to do after discussions with involved agencies.

Example 7

April 2003, Toyokawa Police Station (Aichi Prefecture), January 1, 2006, various newspapers (Nagoya District Court judgment of January 24, 2006)

In July 2002 a boy was abducted from a van in the parking lot of a game arcade, and found dead in Mikawa Bay about 4 km away. Nagoya District Court examined the confession of the drifter and former truck driver (age 38) charged with homicide and kidnapping a minor, and although admitting its voluntary nature, noted that “there are many inconsistencies in the confession concerning the circumstances of the kidnapping and murder, and of the motive. The court cannot reject the possibility that the confession was induced by investigators, and it lacks credibility,” and acquitted the defendant (the prosecutor had asked for 18 years in prison).

Example 8

April 2003, Shibushi Police Station (Kagoshima Prefecture), June 30, 2004, Kagoshima

sections of various newspapers

A former suspect of a violation of the election law in a prefectural assembly election was interrogated, during which he was forced to step on paper with sentences such as “I never intended to raise you into a son like this,” “Grandpa, hurry up and become honest,” and “I never intended to give my daughter in marriage to a man like this.” The man filed suit for state compensation on the grounds of a humiliating and illegal interrogation. The defendant (Kagoshima Prefecture) admitted some of the claims of the plaintiff (the former suspect) and made excuses such as, “We placed those pieces of paper by the plaintiff’s feet where he would see them because we wanted to appeal to him visually our feeling that we wanted him to be truly contrite and tell us truth.”

<Addendum> Further, there were interrogations in which another suspect was forced to step on a piece of paper on which were written the names of his family members. Concerning this matter, Kagoshima District Court handed down a decision on January 18, 2006 ordering Kagoshima Prefecture to pay 600,000 yen because “the interrogation deviated from normal methods and insulted the plaintiff by taking advantage of public power, thereby causing great emotional suffering.” The decision was finalized.

Example 9

May-July 2003, Shibushi Police Station (Kagoshima Prefecture), January 13, 2006 *Yomiuri Shimbun*

A man (age 67) from Shibushi City questioned by the prefectural police in connection with a violation of the Public Election Law in the So County district in a Kagoshima Prefectural Assembly election (April 2003) announced through his attorney that an investigator had forced him to confess, and that the the prepared confession document was false. The prefectural police are asking that investigator about the matter and trying to determine the facts. According to the attorney, the man was questioned voluntarily a total of 12 days in May and July of 2003 for allegedly receiving cash from an elected prefectural assembly member (who resigned in July 2003). He denied the allegation but the investigator threatened that he would again investigate the man’s wife thoroughly, and the man admitted to the allegation. To determine the monetary amount, the investigator showed pieces of paper with amounts written on them. Showing “5” [¥50,000], the man said, “No”; showing “40,” the man said, “Seems too high”; showing “20,” the man indicated agreement. The man was also forced to confess as to how he distributed the money, and to sign and seal a confession. The investigator apparently said, “Never tell anyone about this.” The man was not prosecuted, but says he is incensed and cannot forgive the police.

Example 10

October 2003, Amagi Police Station (Fukuoka Prefecture), March 24, 2005 *Asahi Shimbun*

On March 25 the Fukuoka District Court handed down a not guilty decision in a case against the previous mayor of Haki Town in Fukuoka Prefecture, who was arrested and indicted on charges including tax refund fraud. On April 9 her acquittal became final. At issue was the credibility of testimony by a former town tax official, who stated, “In March 2003 I explained the intent of the crime to the previous mayor in the mayor’s office, and received payment.” During the interrogation the accused was subjected to continuous yelling and threats such as, “I’ll drill you until you’re limp.”

Example 11

June-July 2004, Iida Police Station (Nagano Prefecture), September 21, 2004, various

newspapers

The daughter of one of four elderly people murdered in Nagano and Aichi prefectures claimed that “the police treated me like a criminal,” and protested to the station authorities. The daughter, who was the first to discover her murdered parent, was interviewed by the police once a week, on lengthy occasions from 9:00 a.m. to midnight. She was given a lie detector test, and although it registered nothing, the investigators said, “You probably killed your parent unconsciously.” The daughter’s daughter (age 28) was taken to the police substation in neighboring Takamori Town and placed in a room with door locked and blinds drawn, where investigators told her for two hours to urge her mother to give herself up.

Example 12

December 2004 to September 2005, Yamagata Police Station (Yamagata Prefecture), December 19, 2005, various newspapers

A sergeant (age 49) at the Yamagata Police Station who was accused of having sexual relations from December 2004 to September 2005 with the wife of a man who had been arrested as a suspect was accused by the woman and his file sent to the prosecutor. He was disciplined with a six-month suspension, and the same day resigned voluntarily. According to the police, the sergeant had been made responsible for the arrested man’s interrogation the previous year, and became acquainted with the man’s wife through police interviews and other opportunities. It appears that after charges had been brought against the husband, the sergeant had sexual relations with the wife at hotels in Yamagata City, and otherwise carried on inappropriate relations for over half a year. When summoning another woman to the station for reasons including interviews as an unsworn witness and to receive physical evidence, the sergeant apparently touched the woman and committed other indecent acts whenever the two of them were alone in a room.

Example 13

April 2005, Kofu Police Station (Yamanashi Prefecture), October 27, 2005 *Mainichi Shimbun* Yamanashi edition

In April 2005 a captain at a Kofu Police Station police box by JR Kofu Station questioned a Peruvian-Japanese woman (age 34) who did not speak Japanese on suspicion of embezzlement of lost articles, and made her sign and fingerprint a blank piece of paper as an oral statement. On the 26th, the Kofu district prosecutor’s office decided not to prosecute the captain because he did not write a false statement on the document, and because the matter had already been processed internally. According to the prosecutor’s office and other sources, on April 21 the captain made the woman sign and fingerprint a document for disposition for a minor offense, then copied the contents of a report prepared previously on the basis of her statement to the blank part of the signed form. In September the prefectural police sent the captain’s file to the prosecutor’s office on the charge of drafting a false signed official document.

Example 14

May 2005, Osaka Prefectural Police (Osaka Prefecture), February 4, 2006 *Mainichi Shimbun* (February 3, 2006 ruling by Osaka District Court)

In May 2005 a man was arrested for arson of an inhabited structure for allegedly setting fire to his own apartment in Osaka’s Kita Ward and causing the deaths of two people. Osaka District Court’s Judge Munehisa Sugita held that the defendant’s confession document was involuntary on the grounds that “the defendant confessed because he could not endure harsh

police interrogation,” and did not allow the document as evidence. Prior to arrest, the defendant told police that “the cause was probably a hotplate short,” but subsequently he confessed that “I set fire to the apartment with a lighter to vent my work frustration,” and was arrested. In the public hearing the defendant said, “The police screamed ‘Don’t lie to me, confess!’ in my ear and held me by my hair, so I gave an untrue confession,” thereby insisting on his innocence. His explanation for the fire was, “I was going to grill some meat and turned on the hotplate, but then fell asleep. I woke up and noticed smoke.” On the witness stand the interrogating police officer claimed, “I did yell ‘Be honest!’ and put my arm around his shoulders, but the idea was to get the defendant to open up. I was moderate and didn’t use violence or threats.” Judge Sugita said, “Even though the fire’s cause was unknown, the officer relied on the detective’s sixth sense alone and did not listen to the defendant. Putting your arm around the shoulders of a defendant there for voluntary questioning and speaking in a scolding manner is out of line. This is clearly illegal and infringed the defendant’s right to remain silent.”

Example 15

June 3, 2005, Torahime Police Station (Shiga Prefecture), July 14, 2005 *Yomiuri Shimbun*

The file of a male assistant inspector in the Criminal Affairs Section of the Torahime Police Station was sent to the public prosecutor on the charge of violence and cruelty by a special public officer for allegedly committing violence during the interrogation of a man arrested on suspicion of theft. And although the man was arrested by mistake, there was no disciplinary action.

Example 16

July 16, 2005, Higashi Sumiyoshi Police Station (Osaka Prefecture), July 27, 2005 Kyodo News story

During questioning of a female suspect, a male assistant inspector in the Criminal Affairs Section of the station touched her breast and committed other indecent acts. Inspector admits he did it. Prefectural police intend to arrest him on charge of violence and cruelty by a special public officer.

Example 17

July-August 2005, Settsu Police Station (Osaka Prefecture), December 10, 2005, various newspapers

Osaka Prefectural Police Special Criminal Investigation Unit on December 9 arrested a sergeant (age 47) in this station’s Criminal Affairs Section on charge of violence and cruelty by a special public officer for allegedly committing indecent acts to a female suspect during questioning. According to the investigation, on multiple occasions between approximately July 7 and August 22 the sergeant, when questioning a female suspect in a fraud case in the station’s interrogation room, kissed her, touched her breasts and thighs, and committed other indecent acts.

Example 18

August 2005, Takashima Police Station (Shiga Prefecture), September 16, 2005 *Asahi Shimbun*

In the pre-dawn hours of August 16 the Shiga Prefectural Police arrested a sergeant at the Takashima Police Station on charge of violence and cruelty by a special public officer for allegedly committing indecent acts to a female during questioning. According to an

investigation by the Prefectural Police Inspection Office, in mid-August the sergeant allegedly committed indecent acts against a woman in her 30s during questioning in the interrogation room. Apparently in early September this woman contacted the prefectural police and said she had been molested.

Example 19

October 13, 2005, Kakegawa Police Station (Shizuoka Prefecture), October 15, 2005
Shizuoka Shimbun

On the basis of witness testimony and other information, the Kakegawa Police Station arrested a 16-year-old youth, judging him a suspect, at his home about 7:00 a.m. on October 13. According to the investigation, at first the youth denied committing the crime, saying, “I didn’t do it. I had nothing to do with it,” but during the interrogation he switched to an admission. However, when ultimately asking the male victim for confirmation, it turned out the youth was not involved. The youth was released after about 13 hours of detention, from 7 a.m. to 8 p.m. on the 13th.

2. Article 13: Filing Complaints Against Torture

(1) Measures Available to Detained Persons (paragraphs 109 and 110 of government report)

123.

1 For the review process of requests for re-examination submitted to Public Safety Commissions, the government should establish a third-party agency that is different and independent from the Public Safety Commissions.
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124. If inmates are subject to unjust treatment including torture in police detention facilities, it is possible to file a quasi-appeal to a criminal court about detention decisions or refusal to allow meetings with a defense attorney.

125. When the actions of an investigator constitute a criminal offense, it is possible to make an accusation, but investigations are performed by police and public prosecutors, and when a decision is made not to indict the investigator, one can ask a criminal court for a trial, but there are hardly any cases in which a trial was held.

126. It is possible to make civil claims for state compensation or other compensation for the illegal acts of investigators, and there are some rare cases in which the plaintiffs’ arguments were accepted, while it is nearly impossible to bring a case into a criminal court, but this likewise cannot be considered an effective means of redress.

127. Until now there have been no other effective measures to register complaints with external agencies. Although measures for filing complaints at detention centers and prisons were provided by the 2005 New Law, the 2006 New Law, which is scheduled to take effect in 2007, contains provisions like those of the 2005 New Law on filing complaints (Applying for Examination, Applying for Re-Examination, Stating Facts, and Making a Complaint) about treatment in police detention facilities. However, it is the public safety commissions which conduct re-examinations. In addition to the problematic nature of the commission independence from police organizations, it is the divisions of police offices which actually

receive and act on complaints filed. Hence this system totally lacks independence and third-party character.

128. Recommendations by the Advisory Panel on Treatment of Unsentenced Inmates (February 2005) called for the creation of a third-party agency like the Review and Investigation Panel on Complaints by Inmates in Penal institution” (Complaint Review Panel), which comprises outside experts. For the re-examination procedure by Public Safety Commissions, the government should establish a third-party agency that is different and independent from the Public Safety Commissions, and have that agency perform the procedure.

3. Article 15

129.

1 Create a system that negates the admissibility of confessions as evidence simply on the grounds that they were obtained through illegal interrogations.

(1) Legal System on the Admissibility of Confessions as Evidence

130. The Convention against Torture prescribes that statements obtained using torture should be excluded from evidence (Article 15). Japan’s Code of Criminal Procedure prescribes that confessions obtained through torture or threats, confessions obtained after unjustifiably long custody or detention, and confessions or other statements unfavorable to the defendant which are otherwise suspected of not being voluntary, are not to be used as evidence (Code of Criminal Procedure, Articles 319 and 322).

131. The provisions of this Code of Criminal Procedure do not directly negate the admissibility of confessions as evidence by reason of an illegal interrogation; instead, the provisions make an issue of whether a confession was voluntary or not. As such, there is still room to admit a confession given voluntarily even if the investigation was illegal.

(2) Case Trends

132. Although there are actually a considerable number of instances in which the voluntariness of confessions was negated on the basis of these provisions, that number is surprisingly small when considered in the light of the harshness of the process by which Japanese police obtain confessions. Further, the Supreme Court is cautious especially about negating the voluntariness of confessions.

133. There is a homicide case in which the Supreme Court admitted as evidence a confession obtained from a young man who went to the police station voluntarily at 11:00 p.m. and was interrogated for 22 hours without opportunities for sleep or rest (Supreme Court July 4, 1989 decision, *Collection of Criminal Precedents*, vol. 47, no. 7, p. 581).

134. There is also the case of a confession obtained during a period of time when the defense lawyer requested an interview with the defendant, but was refused an immediate meeting for the reason that the suspect was being interrogated about other charges. In this

instance the Supreme Court affirmed the confession's voluntariness for reasons including the fact that the suspect had been interviewed by another lawyer (Supreme Court January 23, 1989 decision, *Hanrei Jiho*, no. 1301, p. 155).

(3) Interrogation Visibility Deters Illegal Confessions

135. Because there is no system for making video and audio recordings of interrogations, the only way to prove that a confession was not voluntary or that an interrogation was illegal is to refer to the statements of defendants and to examine police officers and prosecutors.

136. Among the few cases in which the voluntariness of confessions was negated are instances in which the suspect spoke to his defense counsel about the situation in the interrogation room immediately after interrogations and the counsel recorded the conversions.

137. Limiting the absolute time of interrogations and introducing video and audio recording systems for their transparency are the actions needed to decisively prevent authorities from illegally obtaining confessions.

4. Article 16

138.

- 1 In the *Daiyo Kangoku* system, police officers can detain and control suspects in police custody for 23 days per charge, and for longer terms through repeated re-arrest and re-detention, and can interrogate them from early morning until late at night. This very system creates pressure leading to coercion of confessions, and markedly increases the opportunities for torture and inhuman treatment. It must therefore be quickly abolished.
- 2 The time that suspects can be kept in police custody should be limited to 24 or 48 hours.
- 3 Video or audio recordings should be made of the entire interrogation by an investigator, and recordings should be available for use in court.
- 4 The use of gags whose use is abolished in detention centers shall be immediately banned in police detention facilities.
- 5 When for unavoidable reasons suspects are kept in police detention facilities for long time periods, an adequate medical care system must be provided in case of accidents requiring medical attention.

(1) The Essential Nature of *Daiyo Kangoku*

139. The essential nature of the *Daiyo Kangoku* (substitute prison) system is that the police, who have primary investigative authority, arrest and take suspects into custody, and exercise total control over their lives. Suspects who comply with police intentions are provided with favors such as smoking and meals in interrogation rooms, but if suspects deny charges, the police make them feel apprehensive about what unfavorable treatment they will receive during their detention if they maintain an attitude that does not accord with the investigating authority's intentions, and subjected to long hours of interrogation. The police coerce

suspects into making confessions by interrogating them from morning to night, totally debilitating them both physically and mentally, until damaging and destroying the suspects' personalities. After interrogation, suspects return to police cells, which constitute the substitute prison, and they spend day after day under 24-hour police control. Under this system, even if suspects are not subjected to direct violence and threats, this total control of suspects' lives by the investigating authority acts as physical and mental pressure on them, and induces them to ingratiate themselves to the investigators.

(2) Coercion of Confessions in Substitute Prison

140. As explained above, *Daiyo Kangoku* functions as a system to force confessions, intrinsically breeds false confessions, and works to uphold false confessions. No matter how well the division responsible for an investigation is separated from that for detention, which is merely separation inside the same police station (that alone is not enough, as shall be discussed below), intrinsically there is no change, and the system is a breeding ground of confession coercion and false accusations. In all four of the capital punishment retrial cases described below, the forcing of confessions in *Daiyo Kangoku* produced false confessions and caused miscarriages of justice.

141. During a period of somewhat over five years, retrials resulted in acquittals in four cases in which the Supreme Court decisions had confirmed death sentences: July 15, 1983 in the Menda case (defendant: Sakae Menda), March 12, 1984 in the Saitagawa case (Shigeyoshi Taniguchi), July 11, 1984 in the Matsuyama case (Yukio Saito), and January 31, 1989 in the Shimada case (Masao Akabori). These cases all happened in the 1950s, but even now *daiyo kangoku* is still the scene of confession coercion and a breeding ground of false accusations.

142. Concerning these cases in which JFBA points out the harm of *Daiyo Kangoku*, the Japanese government rebuttal is that these are merely problems with interrogations, not with the *Daiyo Kangoku* system itself. JFBA believes that this is a problem of the system itself because it exercises total control over suspects.

143. Specifically, even if illegal or improper interrogations occur under *Daiyo Kangoku*, it is often the case that suspects who fear some kind of unfavorable treatment cannot even complain to custody officers, and even if they do, cannot have their complaints addressed. Fixed daily schedules mean that even if hours-long interrogations continue until late at night, custody officers can only ask interrogators to "consider ending the interrogation," and have no authority to make them stop. This makes it possible to tire suspects with questioning until late at night and make them confess.

(3) Substitute Prison: a Breeding Ground of Human Rights Violations

(a) *Daiyo Kangoku* Causes Various Human Rights Violations

144. *Daiyo kangoku* is a breeding ground of not only forced confessions, but also of various human rights violations, which is evident from the attachment listing recent examples.

145. As police authorities were obliged to admit in the course of Diet hearings, providing inmates with favorable treatment is a normal everyday occurrence, and cellmates are used in improper investigations. Women tend to be subject to indecent acts.

(b) Inadequate Medical Care System, Including Lack of Full-Time or Staff Physicians

146. Police detention facilities had no full-time or staff physicians, and it was not clear who would be responsible in case of a medical accident. This was a serious problem addressed by the 2006 New Law, which contains the provision, “[Police detention managers] shall take appropriate health, hygiene, and medical care measures in view of the level of health, hygiene, and medical care level of society in general” (Article 199), and a provision for diagnosis and treatment by designated physicians (Article 202). It also clearly requires “measures for diagnosis, treatment, and other medical care” by “physicians and other personnel commissioned by police detention managers” (Article 201), and is therefore praiseworthy for clearly defining the legal responsibility of detention facility managers for medical care.

147. However, facilities still lack full-time physicians, and due to the shortage of personnel for taking suspects outside, many people held in police detention in fact cannot be diagnosed and treated at outside medical institutions. Detaining suspects for long time periods in police detention facilities, which are not meant to detain people for long periods creates situations which may cause loss of life because they cannot provide adequate medical care to suspects with medical problems.

(c) Continued Use of Gags

148. Due to their danger, gags have already been abolished at penal institutions (prisons and detention centers) under MOJ control, but they are still used at police detention facilities. The Japanese government (National Police Agency) insists that it has no choice but to use gags because many police detention facilities have no protection cells. An accident involving a gag occurred on April 21, 2004 when a suspect in detention at Wakayama Higashi Police Station in Wakayama Prefecture became violent, and police put a gag on him and covered him with a futon. Left in that manner, he suffocated. In response to a JFBA request, the National Police Agency directed prefectural police headquarters to temporarily suspend the use of gags, but in May 2006 when the 2005 New Law entered into force the use of gags was resumed with the claim that they had been “improved.” Their use was limited, however, to detention facilities without protection cells, and to situations in which detainees continue to be loud and disturb the peace of the facility despite restraining by detention officers, and there is no other way to keep them quiet. Further, under the 2006 New Law their use is limited to within three hours, and the detention officer must solicit the opinion of the facility’s commissioned physician about the detainee’s health condition.

149. But gags not only endanger life and health, they also constantly present the risk of abuse, just like other mechanical restraints. There is an undeniable risk that gags would be used for corporal punishment or as a means of forcing confessions. Further, as they have already been abolished at penal institutions, they should be abolished at police detention facilities as well.

150. In Diet hearings on the 2006 New Law, judicial affairs committees in both houses of the Diet resolved, “In addition to ensuring that the way gags are used is reported to Boards of Visitors for Inspection of Police Custody, in an effort to eliminate the use of gags at police detention facilities in the future, police detention facilities should proceed in a planned manner with building protection cells, and positive action should be taken to quickly transfer hard-to-handle detainees to penal institutions.” Immediate steps should be taken to abolish gags.

(4) Separation of Investigation and Detention

(a) The Government’s Explanation

151. The Japanese government claims that investigation and police detention were separated by a 1980 communication from the National Police Agency to prefectural police headquarters, and that this became law by the 2006 New Law.

(b) Separation Also Insufficient Institutionally

152. However, unlike “prison official,” there is no “detention officer” job title, and such personnel are hired along with police officers. Further, police officers in charge of detention sometimes are transferred to criminal affairs divisions after a certain number of years. Additionally, according to explanations given by the National Police Agency in the Diet, even police officers who are not in charge of detention sometimes perform jobs like detainee transfer, and although they cannot be involved in an investigation while transferring that detainee, they can take over the investigation after the transfer.

(c) Separation System Puts Investigations First

153. A further problem is that, as described above, even in situations when interrogations are conducted for long periods or until late at night, detention officers can only ask interrogators to “consider stopping the interrogation,” but do not have the authority to make them stop. In reality, this gives precedence to the needs of investigations, and provides no means of restricting interrogations over long hours or until late at night.

(d) In Practice, Investigations and Detention Not Sufficiently Separated

154. A questionnaire survey of people who had been in police detention facilities revealed that interrogators provide meals in interrogation rooms (“Questionnaire on the Reality of *Daiyo Kangoku*, by the nonprofit organization Center for Prisoners’ Rights), and the National Police Agency had no choice but to admit this in questioning during a Diet session (June 1, 2006 House of Councilors Judicial Affairs Committee). Questionnaire results show how suspects who deny charges get inhospitable treatment, while those who confess are allowed to smoke in interrogation rooms, and there treated to takeout meals which are not available in detention facilities.

155. Hence investigation and detention are certainly not separate, and that is why, even since 1980 when the National Police Agency said it had separated them, the Human Rights Committee has been calling for the organizational separation of investigation and detention,

including the abolition of *Daiyo Kangoku*.

(5) “Guidelines for the Interrogation of Suspects” Leaked

156. In April 2006 it was discovered that documents had been leaked from the personal computer of a police captain in the Ehime Prefectural Police, apparently due to a virus in the file exchange software “Winny.” Among the documents was one called “Guidelines for the Interrogation of Suspects.” In 13 items it described rules for investigators to follow in interrogations. These include instructions such as “Don’t leave the interrogation room until you get a confession,” “If you start wondering that the suspect’s claim is true or if the investigation is getting nowhere, you will want to call it quits, but if you leave the room then, you’ll have lost,” and “If a suspect denies the charges, keep him in the interrogation room from morning until night (this also weakens the suspect),” which tell investigators to “weaken” suspects who deny charges by interrogating them for long hours until confessions are obtained. Instructions such as “Always greet the suspect at times such as cell inspection” indicate that it is natural for police to make the maximum use of their 24-hour custody of suspects to psychologically push suspects into a corner.

157. In Diet hearings the government has not denied the existence of the “Guidelines for the Interrogation of Suspects,” and judging by the interrogation records and other documents leaked with the guidelines, the guidelines are used for internal training of police officers.

158. Despite denials by the National Police Agency, the mentality of investigators is a firm belief that weakening suspects by long hours of interrogation to obtain confessions is a justifiable investigation tool, and it is none other than the *Daiyo Kangoku* system that is the institutional underpinning which makes this possible.

(6) The Convention against Torture and *Daiyo Kangoku*

159. Because police detention facilities were originally designed and built for temporary detention, their cells have no windows and no sunlight, and inadequate ventilation. Exercise spaces are just small, indoor spaces that are virtual smoking areas. Thus the facilities do not have enough space for exercise, and the living conditions are poor.

160. Facilities have no permanent physicians, and due to the shortage of detainee transport personnel and other factors, it is difficult to quickly obtain the services of outside cooperating physicians.

161. Meals at many detention facilities are merely lunches purchased from outside vendors, apparently making it difficult to get hot meals.

162. At detention facilities that do not have protection cells with sufficient soundproofing, the use of gags is permitted on detainees who are noisy due to drug side effects, mental problems, or other reasons.

163. These very characteristics of police detention facilities could well be “inhuman or degrading treatment,” and when they serve as “substitute prisons,” it is possible to perform long interrogations and to keep detainees for long time periods through repeated re-arrests

and re-detentions. Combined with additional problems such as the inability to provide quick medical attention, use of these facilities can definitely be called “inhuman or degrading treatment.” When such conditions are used to obtain confessions, and when confessions are coerced with violence and threats, there is no doubt that this constitutes “severe pain or suffering, whether physical or mental... intentionally inflicted on a person,” and should therefore be considered “torture” as defined by the convention.

164. Recent Examples of Harm by *Daiyo Kangoku*
Coercion of False Confessions by Violence

Example 1

C. 2002, Osaka Prefectural Police (Osaka Prefecture), March 17, 2003 Osaka District Court decision

A case in which two suspects possessed about 700 g of stimulants in collusion. The court rejected both defendants’ confessions because the court “recognizes that from arrest and detention to interrogation, [defendants] were subject to continuous violence.” Defendants claimed they “were subjected to considerable violence,” which the police officer denied by saying it was “to control them.” Both were acquitted.

Example 2

April 2003, Kameoka Police Station (Kyoto Prefecture), April 22, 2004 Kyoto Bar Association Warning

During interrogation, police applied restraining devices to suspect’s wrists, ankles, and abdomen, stepping on him and pushing him down with their knees. Beginning on the 11th, suspect repeatedly complained of chest pains and asked to be seen by a physician, but was not granted medical attention until the 16th.

Forcing Confessions by Providing Favorable Treatment

Example 3

June 1994, Nagata Police Station (Hyogo Prefecture), January 6, 1999 Hyogo Prefecture Bar Association Request

A detainee was given various favors: allowed to smoke in the detention facility, horse racing bets placed, sushi and fruit purchased and made available in interrogation room, whiskey and other treats purchased for partying in detention facility, sex with female detainee in his cell, etc. Defense attorney objected that confession was not voluntary. Prosecutor did not prove voluntariness of confession and retracted the request for the examination of the confession document.

Example 4

January 1996, Koriyama Police Station (Nara Prefecture), February 10, 1998 Osaka Bar Association Warning

Interrogator slugged suspect in the side and back for protesting during interrogation that the interrogator did not hold up his end of a bargain in which suspect would provide a false confession of theft in return for “police not searching his relatives’ homes or the crime syndicate office he frequented, and favors including allowing him to write two letters daily, and meals.”

Using Cellmates

Example 5

April 2004, Higashi Police Station (Fukuoka Prefecture), April 20, 2004 written request by defense attorney

The case detective obtained a forced confession by telling the suspect's cellmates and detainees in neighboring cells that "there are other charges against the suspect, so if he doesn't stop resisting and tell us the truth, the interrogation could last a long time," "We'll arrest him over and over again," and "The defendant is going to prison," which the other detainees told the suspect.

Example 6

July 2004, Yawata-Nishi Police Station (Fukuoka Prefecture), "*Freedom and Justice*" (JFBA'S periodical), September 2005 issue

Police transferred suspect, who denied charges, to a detention center and asked his former cellmate to cooperate with police in the investigation. Police obtained a written statement by the cellmate describing the suspect's actions in his cell, then re-arrested suspect and his cellmate, and put them all in the same cell in Yawata-Nishi Police Station. From that day forward, police questioned the cellmate about suspect's actions in the cell, and recorded in the form of written statements. During this time period, suspect was hardly interrogated. Documents recording cellmate's statements said that suspect had confessed to the cellmate, and suspect was prosecuted using these documents and others as evidence.

Example 7

December 2000, Totsuka Police Station (Metropolitan Tokyo), JFBA symposium on February 24, 2006

Falsely accused of groping. Person from personnel department of suspect's employer came for interview, and suspect was pressured to write resignation in presence of five or six guards, even though usually there is only one guard. Suspect requested presence of defense counsel, who had just come for meeting, but guards refused, claiming no connection to case. Police document contained statements the suspect had not made, on the basis of which interrogator heaped abusive language on suspect. Suspect had been pressured by *Daiyo Kangoku* cellmate, who repeatedly told him, "It's no use denying the charges." Acquittal was confirmed, and former suspect got his job back.

Confessions Obtained by Coercion with Long Interrogations

Example 8

November 2002, Tsu Police Station (Mie Prefecture), November 19, 2002 Tsu District Court Decision

Suspect was changing statement, denied charges in during remand procedure presided over by judge, interrogation lasted until 12:20 a.m. one night and 12:15 a.m. the next night, and suspect told lawyer that interrogator had said, "Unless you do the right thing, your house will be in danger. If there's something you want to tell your mother, I'll arrange it. And I'll make arrangements so that you get your civil suit documents in jail. If you don't do that, you'll lose your house. I'll help you if you write a statement saying you committed murder." Because a confession could have been forced, the court decided to transfer suspect from Tsu Police Station to Mie Police Detention Center.

Example 9

April 2003, Kagoshima-chuo, -Minami, -Nishi, Kokubu, and Kajiki police stations (Kagoshima Prefecture), JFBA symposium on April 9, 2005

Suspect was questioned for long periods nearly every day from 9 a.m. to 9 p.m. Suspect's lawyer told suspect to write descriptions of interrogations in notebook, but detention personnel hampered this by not giving him a pen and limiting writing time. Interrogator said to suspect, who was not permitted contact with any outside people except his lawyer, "If you write a letter to your wife I'll be nice and mail it for you. Write that you spent the bribe money you got on pinball, say that it's true, and say that you're telling the detective that." Suspect wrote a letter to his wife as told. The letter was not mailed to suspect's wife. Instead, the prosecutor submitted it to the court as evidence.

<Addendum>This incident was a violation of the Public Office Election Law involving cash paid for votes in a prefectural assembly election in Kagoshima Prefecture, but on February 23, 2007, all 12 defendants charged were acquitted by the Kagoshima District Court, and the decision became final.

The court recognized, for example, that during their detention the defendants were subjected to high-pressure, pushy, quite severe interrogation by investigators, making it likely that false confessions were elicited. In this case, it was found in court that false confessions were obtained even though it was claimed the interrogations were voluntary because, for example, a defendant who had received an IV in the hospital owing to poor health and could not even sit up underwent long interrogation while having to lie on a cot, while another defendant was quite exhausted both physically and mentally due to the long detention and interrogations.

Despite the illegal interrogations such as examples 8 and 9 in "Cases of Harm due to Closed-Door Interrogations Reported in the Press" and the case described above, the police responsible for those investigations have not been disciplined at all, claiming that there has been no misfeasance. Although the director-general of the National Police Agency issued a stern written warning to the person who headed the Kagoshima Prefectural Police at the time, said warning was merely procedural guidance, not a disciplinary action under the National Civil Service Law.

Psychological Pressure

Example 10

February 2001, Miyakojima Police Station (Osaka Prefecture), *Criminal Defense Quarterly* no. 35, November 27, 2002 and Osaka District Court judgment

In a case of false accusation of groping, interrogator yelled at detainee and made statements such as, "If you admit you did it, you'll get off with a 100,000 or 150,000 yen fine, but if you don't admit it, you'll be in here a long time." Interrogator brought up the traffic-accident death of suspect's son three years earlier and tried to force a confession by saying, "Your son's spirit is here in this room, so tell the truth." Acquitted.

Example 11

February 2004, Metropolitan Police Department Tama Branch (Metropolitan Tokyo), JFBA symposium on February 24, 2006

An incident in which people were arrested in connection with leafleting by the anti-war group Tachikawa Tent Village. Because a female suspect maintained silence, communication

with everyone except lawyers was banned to psychologically back suspect into a corner. Suspect was subjected to abusive language such as, "I'll smash your group." "You're an iron woman with a dual personality. You're a parasite. You're a street urchin of Tachikawa City." Interrogator lied to woman, telling her the people arrested with her would pin all the blame on her, and in other ways tried to force a confession. Acquitted by district court, but fined by appellate court. Now appealing to the Supreme Court.

Indecent Acts

Example 12

June 2005, Metropolitan Police Department Kikuyabashi Branch (Metropolitan Tokyo),
December 5, 2005 Jiji Press story

During interrogation in stimulant case, assistant inspector in Metropolitan Police Department Organized Crime Division Section 5 allegedly subjected female defendant to indecent acts and was charged with violence and cruelty by a special public official. Tokyo District Court called it "a bold and incredibly shameless criminal act," and handed down a sentence of three years imprisonment (five years sought by prosecutor).

Guidelines for the Interrogation of Suspects (see paragraphs 156-158 of this report)

165. October 4, 2001

For Trainees in the Special Course on Lawful and Proper Investigative Techniques

Guidelines for the Interrogation of Suspects

1. Thoroughly familiarize yourself with the case in advance.
 - Personally inspect the crime scene and put it firmly in your mind.
 - Peruse the investigation record until you've fully understood it.
 - If you have problems or doubts, always resolve them.
(Interrogators get misled here if they have not done their homework well enough.)
2. Find out everything about the suspect.
 - Find out as much as you can about the suspect including personal history, personality, level of intelligence, home environment, household circumstances, personal circumstances, and interests.
 - The more knowledge gained about the suspect, the more of an advantage the interrogating officer has.
 - It is also important to get information about the suspect from interrogating officers who were involved with the suspect's previous convictions.
 - It is also important to imply to the suspect that you are somewhat different from other interrogating officers.
3. Interrogators must have the drive to always get a confession with persistence and tenacity.
Interrogators must be motivated by drive replete with the self-confidence and tenacity which can "definitely get a confession."
4. Don't leave the interrogation room until you get a confession.
 - If you start wondering that the suspect's claim is true or if the investigation is getting nowhere, you will want to call it quits, but if you leave the room then, you'll have lost.
 - Both suspect and interrogator find it tough going, so you must never give up.
5. Never take your eyes off the suspect during questioning.
 - Keep watching the suspect's eyes during questioning. Never turn your eyes away.
 - Boldly confront the suspect and take control. If the opposite happens, you've lost.
6. Quickly get into the suspect's head (develop mind-reading skills).
It's a one-to-one contest in which suspect and interrogator are trying to figure each other out. If you get into the suspect's head quickly, your victory will be that much sooner.
7. Don't use deception or make deals.
You must speak the truth. Lies and deception will always be discovered later, and consequences are irrevocable.
8. Always be careful about your manner of speech.
Never use insulting or contemptuous language toward the suspect. Though it may seem like nothing to you, it could be what the suspect hates most.

9. You must also earnestly listen to what the suspect says.
 - Listen seriously to anything the suspect says, whether about family or relatives, even if it has nothing to do with the case.
 - You must also be sympathetic.

10. Interrogators must also bare themselves.
 - Interrogators can show that they too are human beings and build feelings of empathy by talking about their own origins, school life, private life, and other personal matters.
 - Although interrogators must always maintain dominance, they must sometimes in a sense play the fool.

11. Greet and talk to the suspect.

Always greet the suspect at times such as cell inspection.

12. Put the suspect in the interrogation room as much as possible.
 - Just because the suspect won't confess, leaving him in the cell will only make matters worse. In the process of talking you can get into the head of any suspect, and the suspect will also open up. Therefore you should have as much contact with the suspect as possible.
 - If a suspect denies the charges, keep him in the interrogation room from morning until night (this also weakens the suspect).
 - Interrogators must always keep themselves spiritually and physically strong.

13. Have close communication with assistants.
 - Interrogators and assistants must have good rapport. Sometimes if their timing is just right, it will trigger a confession.
 - Sometimes suspects will lower their guard and casually say things to assistants that they would not say to interrogators.

Part IV Capital Punishment System

Chapter 1 Article 1

166. The government report argues that Japan's capital punishment system corresponds to the "lawful sanctions" in Article 1.1 of the convention, and that it is not torture (paragraph 145). But as we shall state below, Japan's capital punishment system has a serious flaws which violate international law and standards. Death penalties carried out under this system cannot be considered "lawful" sanctions in a strict sense.

Chapter 2 Article 16

167.

- | | |
|---|---|
| 1 | Death row inmates are not notified in advance when they are to be executed, which is clearly inhuman treatment. |
| 2 | We welcome the enactment of a law which broadens visiting and correspondence for death row inmates. The law should be appropriately implemented, and visits and communication should be permitted to an appropriate extent. |
| 3 | Reconsider the solitary confinement of death row prisoners. To maintain their humanity, change their treatment to allow contact with other inmates. |
| 4 | Death row inmates should be guaranteed, in a clearly defined form, private meetings and uncensored correspondence with defense attorneys for retrials. |

168. In Japan the government keeps the operation of its capital punishment system a total secret. However, it is clear from available documents that Japan's capital punishment system violates Article 16 of the convention.

1. No Advance Notice When Carrying Out Death Sentence

169. In Japan the established practice when carrying out death sentences is to give a death-row inmate about one hour's notice, while relatives, lawyers, and others are given no advance notice at all. Even the 2006 New Law includes no provisions on giving advance notice before carrying out an execution.

170. But the lack of advance notice is inhuman because it makes death row inmates live in daily fear, not knowing when they will be executed. In its concluding observations on the Japanese government's fourth periodic report, the UN Human Rights Committee wrote: "The Committee remains seriously concerned at the conditions under which persons are held on death row. In particular, the Committee finds that the undue restrictions on visits and correspondence and the failure to notify the family and lawyers of the prisoners on death row of their execution are incompatible with the Covenant. The Committee recommends that the conditions of detention on death row be made humane in accordance with articles 7 and 10, paragraph 1, of the Covenant."

171. What is more, the lack of advance notice about executions completely deprives death row inmates of the means of disputing the legitimacy of their executions, thereby violating Article 14.3 of the ICCPR, UN Economic and Social Council Resolution 1996/15

(Safeguards guaranteeing protection of the rights of those facing the death penalty), and its Resolution 1989/64 (Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty), which was endorsed by General Assembly Resolution A/RES/44/162.

2. Visits and Correspondence

(1) Conventional Practice

172. Wardens have allowed death row inmates to communicate only with people deemed to “contribute to the mental stability of the inmate,” excepting relatives and lawyers for their counsels and retrials. In actuality, there are hardly any instances in which they have been allowed to communicate with people except relatives and lawyers. This severe restriction has been criticized domestically and internationally as inhuman, and, as noted previously, was the subject of a 1998 recommendation by the Human Rights Committee.

(2) Changes by the 2006 New Law

173. Under the 2006 New Law, death row inmates will have the right to meetings and correspondence with the following persons.

- Relatives
- People who must meet with a death row inmate to take care of matters which are closely related to the interests of the inmate relevant to his or her status, or legal or professional situation.
- People deemed to contribute to the inmate’s mental stability.

174. When it is necessary to visit death row Inmates to maintain friendships or otherwise allow visits, and it is deemed these visits will not result in harm to discipline or order, the law says that “these may be permitted” in a discretionary manner.

175. With appropriate discretion, this represents considerable improvement, and this makes it necessary to carefully monitor practice under the 2006 New Law.

3. Remaining Problems

176. Despite improvements related to correspondence, the 2006 New Law still allows the inhuman treatment of death row inmates.

(1) State of Treatment

177. As a rule, death row inmates are kept in single cells around the clock, and in general may not have contact with other inmates even outside of their cells (Article 36). In other words, as a rule death row inmates are isolated.

178. But isolation is allowed even for sentenced prisoners only when there is a very strict need for it (Article 76), and continued isolation has a very bad effect on inmates physically and mentally. There is no determined limit on the isolation time period for death row inmates, who are as a rule to be isolated, which is a serious problem.

(2) Correspondence

179. Inmates will probably be able to have more visitors than before, but even under the new law, inmates as a rule meet visitors in the presence of prison personnel. When there are circumstances deemed appropriate for protecting a death row prisoner's legitimate interests, such as trial preparation, the law provides only that the presence of prison personnel may be omitted (Article 121). Thus it is possible that they will be present, just as before, at meetings between inmates and their retrial defense attorneys. Further, even under the new law, letters between inmates and their retrial defense attorneys are all subject to censorship. Such treatment violates Article 14.3 of the ICCPR.

Chapter 3 Sharp Rise in Death Sentences (rebuttal of paragraphs 146-149 of the government report)

180.

- | | |
|---|--|
| 1 | We have serious concerns that even though the crime situation in Japan has not worsened in particular, there has been a sharp rise in the number of death sentences, including such judgments against juveniles. |
| 2 | The government should create a mandatory appeal system for death sentences. |
| 3 | In the case of life sentences, prosecutor appeals seeking the death penalty should be prohibited. |
| 4 | The government should create a system to definitively prohibit the execution of people who are insane. |

1. Sharp Increase in Death Sentences

181. The government's report maintains that the death penalty is made carefully and strictly in accordance with the precedent established by a Supreme Court judgment, and imposed only on people with grave criminal responsibility for heinous crimes (paragraph 146).

182. But even though in recent years there is no statistically significant increase in the number of heinous crimes reported, such as homicide (see Table 1), courts are sentencing far more people to death (see Table 2). This is because the criteria on whether or not the death sentence is chosen are beginning to differ from those of former cases. In other words, there is a trend toward capital punishment in cases where formerly life imprisonment would have been chosen.

183. There is also a sharp increase in the annual number of death sentence convictions from two in 2003 to 14 in 2004, 11 in 2005 and 19 in 2006.

Table 1

Number of reported crimes					
Year	Homicide	Robbery	Arson	Kidnapping/abduction	Totals

1996	1,218	2,463	1,846	251	5,778
1997	1,282	2,809	1,936	284	6,311
1998	1,388	3,426	1,566	221	6,601
1999	1,265	4,237	1,728	249	7,479
2000	1,391	5,173	1,743	302	8,609
2001	1,340	6,393	2,006	237	9,976
2002	1,396	6,984	1,830	251	10,461
2003	1,452	7,664	2,070	284	11,470
2004	1,419	7,295	2,174	320	11,208
2005	1,392	5,988	1,904	277	9,561
No. of apprehension					
Year	Homicide	Robbery	Arson	Kidnapping/abduction	Totals
1996	1,197	1,974	1,749	250	5,170
1997	1,225	2,232	1,804	279	5,540
1998	1,356	2,614	1,369	211	5,550
1999	1,219	2,813	1,458	244	5,734
2000	1,322	2,941	1,372	272	5,907
2001	1,261	3,115	1,540	211	6,127
2002	1,336	3,566	1,234	215	6,351
2003	1,366	3,855	1,448	231	6,900
2004	1,342	3,666	1,513	232	6,753
2005	1,345	3,269	1,361	204	6,179

Source: 2006 *White Paper on Police* (National Police Agency), pp. 73-75.

Table 2

Year	No. of executions	No. of new death row inmates	1st instance death sentences	No. of death row inmates at year end
1996	6	3	1	51
1997	4	4	3	51
1998	6	7	7	52
1999	5	4	8	50
2000	3	6	14	53
2001	2	5	10	55

2002	2	3	18	57
2003	1	2	13	56
2004	2	14	14	66
2005	1	11	13	77
2006	4	19	13	94

2. Filing Appeals Against Guilty Judgments

184. The government's report emphasizes that defendants can file appeals, and that after conviction, prisoners can request that proceedings be reopened (paragraph 147).

185. But a characteristic of death sentences in recent years is an increase in cases in which they become finalized without appeal by the defendant, or when the defendant withdraws an appeal filed by his or her attorney. As appeals are not considered mandatory, there is a period of time when a defendant is without counsel, from the time of the lower court judgment until a counsel for the upper-court hearing is newly appointed, and a considerable number of appeals are withdrawn during this time.

186. On the other hand, prosecutors are permitted to appeal on the grounds of inappropriate sentencing, and there are instances in which a lower court handed down a judgment of life imprisonment, and the prosecutor appealed to get a death sentence. There are also instances in which courts took on such appeals and changed life sentences to death sentences.

3. Death Sentences Imposed on Juveniles (paragraph 148 of the government report)

187. There is also a trend toward more death sentences imposed on minors.

188. In Japan people under age 20 are treated as juveniles, and the death sentence may not be imposed on people under age 18. In the 1990s there was only one finalized death sentence on a defendant who was least 18 but under 20. This was in 1990, to a person who was 19 when the crime was committed.

189. But in 2001 a court finalized a death sentence on a person who was 19 years and one month old when the crime was committed. And in June 2006 the life imprisonment judgment handed down to a juvenile who was 18 when committing the crime was reversed by the Supreme Court and remanded to the Hiroshima Appellate Court, where there is a high possibility it could be changed to a death sentence.

4. Execution of the Insane

190. Although not mentioned by the government's report, the Code of Criminal Procedure prohibits executing insane individuals (Code of Criminal Procedure, Article 479.1), but there is no way to verify if this provision is being observed because even death-row inmates cannot access their own medical records, and outside specialists have not even been allowed to visit death-row inmates for diagnosis or treatment. In one instance, an execution was carried out in March 1993 on death-row convict Tetsuo Kawanaka, who was suspected to be insane due to

schizophrenia.

5. Executions of the Elderly

191. The UN Economic and Social Council resolution Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty asked member states with the death penalty to establish a maximum age beyond which a person may not be sentenced to death or executed. The American Convention on Human Rights prohibits imposing the death sentence on anyone who was over 70 at the time he committed a crime. The four death row prisoners executed on December 25, 2006 were 77, 75, 64, and 44 years of age. After executions were resumed in 1993, the oldest person executed until 2005 was 70, but in last December two of the four executees were even older. According to a letter left by the 75-year-old inmate to his relatives, during his time in the patient cell of the detention center due to a physical disorder, he was unable to either stand up or walk. It would seem the execution of such an elderly person is an inhuman punishment, but under Japan's capital punishment system, it is impossible to obtain specific information on how executions are carried out.

6. Conclusion

192. The foregoing discussion shows clearly that in Japan death sentences are used often in recent years, and that the government report is mistaken in saying that death sentences have a very limited application.

Part V Human Rights of Foreigners

Chapter 1 Immigration Detention Facilities

1. Introduction: Overview of the Immigration-Related Detention System

193. Foreigners refused entry into Japan are put under detention in landing prevention facilities located in airports, or in nearby hotels or other facilities, without any express legal grounds (discussed in detail below).

194. Foreigners who have no residence status or for other reasons are subject to deportation can under the law be placed in detention with a detention order even if there is no danger they will flee (discussed in detail below). Judicial authorities are not involved in issuing these detention orders, and the Immigration Bureau can place people under detention at its own discretion. Maximum detention period under a detention order is 60 days, but under deportation orders the Immigration Bureau can detain people until they are deported. In other words, it can detain people for indefinite periods of time, and there are no periodic checks to see if detention is necessary. As a result, people are sometimes detained for several years under deportation orders.

2. Article 9 (paragraph 67 of the government report)

195. The government's report states that it always takes into consideration the human rights of detainees in Immigration Bureau detention facilities (paragraph 67 of the government report).

196. But from the very moment people set foot in Japan they are placed under detention that follows no legal provisions, and there are no rules at all concerning their treatment. People are placed in immigration detention facilities even when not necessary. This is arbitrary detention that is prohibited by Article 9.1 of the ICCPR. Treatment during detention is inhuman and degrading.

(1) Problems upon Landing

197.

The government should change the unlawful detention, and the inhuman and degrading treatment, which happens to some foreigners during disembarkation procedures.

198. (a) Foreigners refused entry into Japan are, until leaving the country, placed in "landing prevention facilities," which are government facilities in Narita International Airport and Kansai International Airport, or in nearby private-sector hotels.

199. But there are in fact no express legal grounds for placing people in such facilities under what amounts to detention. This itself clearly violates Article 9.1 of the ICCPR, which reads: "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

200. (b) And because there are no clear legal grounds for detention, there are also no legal

rules concerning treatment in these facilities.

201. For that reason, there was a time when 10-odd people were crammed into five-person rooms because there were so many people refused entry that the authorities could no accommodate them.

202. Men and women are not completely separated, and there is limited access to medical care institutions.

203. In view of the absence of any clear legal authority for restricting telephone calls, visits, and other communication with the outside, these should as a rule be unrestricted, but the immigration authorities explain that basically communication is restricted, and allowed when circumstances warrant it, so that in practice they reverse the implementation of theoretical rules and exceptions.

204. Facilities lack windows and exercise spaces, and therefore prevent detainees from even getting some outside air. Detainees confined in nearby hotels are kept under the same conditions, in virtual house arrest.

205. Confining people to landing prevention facilities and nearby hotels and subjecting them to such treatment at the least is equivalent to the “inhuman and degrading treatment” in Article 16 of the Convention against Torture. And when the purpose of confining people in facilities with such treatment is deemed to be a way of making those foreigners give up trying to enter Japan, it corresponds to “torture” as defined in the convention’s Article 1.1.

206. Therefore, these should be changed to conform with the treaty.

(2) Problems in Detention Facilities

207.

Measures should be enacted to prevent excessive violence used by officials in immigration detention facilities.

208. (a) A lawsuit demanding state compensation was filed on December 27, 2005, alleging that in 2003 and 2004 detainees sustained injuries due to violence and to acts to control detainees committed by officials at the immigration detention center of the East Japan Immigration Control Center, and also did not receive proper attention from the center’s physician.

209. On January 21, 2003 a decision (recorded in case reports) by the Osaka District Court ordered the government to pay ¥200,000 for “excessive violence” in a case in which a Ugandan man detained at the immigration detention center of the West Japan Immigration Control Center demanded state compensation for sexual harassment and violence against him by immigration security personnel. Osaka Appellate Court upheld the decision, which was finalized on December 11, 2003.

210.

The Immigration Bureau should amend its practice of detaining all non-regular foreigners

(those not having proper visas) without first checking the need for detention.

211. (b) The Japanese government's view is that as long as there are grounds for deportation, it is possible to detain anyone without screening for the need to detain them because of risks such as escape (mandatory detention regime). This resulted in the very inhuman treatment of detaining a couple, who were applying for refugee recognition and did not have residence status, and who were the parents of children one and three years of age (December 16, 2004 *Tokyo Shimbun* article). There are many similar examples. The mandatory detention regime corresponds to the arbitrary detention prohibited by Article 9.1 of the ICCPR, and causes the inhuman treatment described above. It should therefore be corrected immediately.

3. Article 11 (paragraphs 86-88 of the government report)

(1) System for Complaints about Treatment

212.

The government should create an independent authority to review complaints about treatment in immigration detention facilities.

213. Paragraph 86 of the government's report says that Articles 41-2.1 and 41-3.1 of the Regulations for Treatment of Detainees provide a system for filing complaints about treatment.

214. However, this system comprises only internal procedures in the MOJ, which has jurisdiction over immigration administration, and it has no independence. Thus according to a May 30, 2003 article in the *Asahi Shimbun*, the authorities did not recognize even one of the 68 complaints and appeals filed between November 2001, when the system was instituted, and March 2003 (data subsequent to this period have not been released). Simply citing "no reason" as the reason for judgments and for rulings on appeals is not being accountable. As the implementation of this system shows, a system for filing complaints indeed exists, but it does not function at all.

(2) Bringing Detainees under Control

215. According to paragraph 87 of the government's report, when a detainee commits or tries to commit acts which violate the rules of a detention facility, officials take measures to an extent judged reasonably necessary to make the detainee stop or to deter those actions.

216. But sometimes actions to control detainees are excessive, and courts recognize the government's responsibility for compensation.

217. In addition to the previously noted decision by the Osaka District Court recognizing the government's responsibility for compensation for excessive acts to control detainees, a June 28, 2001 Tokyo District Court decision (*Hanrei Times*, no. 1124, p. 167) denied the violence by Immigration Bureau personnel, but judged that (1) the isolation period under Article 18.1 of the Regulations for Treatment of Detainees was unsuitably long, exceeded the discretionary authority given to the director of the Tokyo Immigration Bureau, and must be

considered unlawful, and (2) the use of metal handcuffs (Regulations for Treatment of Detainees, Article 19) extended beyond the necessary time period and was judged unlawful. The court ordered the government to pay a solatium of ¥1 million, and the decision was finalized.

4. Articles 13 and 14 (paragraph 117 of the government report)

(1) Reciprocity Principle

218.

The reciprocity principle for state compensation responsibility should be eliminated.

219. Paragraph 117 of the government's report states, "[A]ny detainee of an immigration center who claims that he has been tortured may... file a civil or administrative lawsuit."

220. But Article 6 of Japan's State Tort Liability Law works by mutual guarantee, i.e., if a Japanese citizen is harmed by a public official of another country, and does not have the right to seek compensation from that country's government, foreign nationals of that country who suffer torture or other harm in Japan cannot demand state compensation, but this is diametrically opposed to Article 14 of the Convention against Torture. The provisions of Article 6 should be immediately deleted to bring the law in line with the Convention against Torture.

221. (2) Institutionalize Sufficient Rehabilitation Guarantee for Torture Victims

222. As means of redress, Article 14 of the Convention against Torture states: "including the means for as full rehabilitation as possible." but such means are not guaranteed under the current system. Paragraph 131 of the government's report allows only that expenses for rehabilitation may be covered by compensation.

5. Use of Restraining Devices (paragraph 153 of government report)

223. The government should eliminate the use of unlawful restraining devices for deportation.

224. (1) Paragraph 153 of the government's report states: "The use of restraining devices is permitted but kept to a minimum, in accordance with the Regulations for Treatment of Detainees formulated based on the Immigration Control and Refugee Recognition Act, only when there is the risk of escape, violence or suicide by the detainees and it is considered that there is no other way to prevent such acts."

225. However, five Bangladeshis who were deported on January 21, 2005 filed suit for state compensation on charges including the illegality of the deportation method used on them. The government contends that when deporting detainees it can use handcuffs under internal rules called "Rules for Investigating Violations and Implementing Orders" and "Guidelines for Escorting Detainees," not the Regulations for Treatment of Detainees. It is a serious problem that the requirement for using restraining devices, which can lead to grave human rights violations, is not pursuant to statute law, but can be decided merely on the basis

of internal administrative rules. What is more, those internal rules have no restrictions stipulating “situations when it is deemed that there is no other way to prevent this” or “the smallest possible extent.”

226. In the lawsuit by the five deported persons cited above, video recordings of the five Bangladeshis taken at the time reveal no sign of escape or violent behavior, but the government maintains that merely because the five were not granted the special residence status they desired, there was an elevated danger that they would flee. In view of this claim, there is no point in using behavior like “risk of escape” as a requirement.

227. (2) The government should enact measures to prohibit unlawful acts when deporting detainees, such as wrapping them in blankets and making them bite on wooden sticks.

228. On November 7, 2004 at the West Japan Immigration Center, a Vietnamese woman (“Ms. G”) was wrapped in a blanket and deported. It is reported that because Ms. G had refused to be deported, authorities not only placed metal handcuffs on her and tied her feet with rope, but also wrapped the lower half of her body in a blanket and rope, and in the plane when she raised her voice and made statements such as, “I don’t want to go back,” authorities tried to put a stick in her mouth.

229. Restraining devices allowed by the internal administrative rules (“Rules for Investigating Violations and Implementing Orders” and “Guidelines for Escorting Detainees”) are only metal handcuffs and the arresting rope, not wrapping detainees in blankets and making them bite on sticks. The authorities flagrantly commit illegal acts.

Chapter 2 Legal Framework for Procedures Against Terror Suspects in Deportation Procedures

230. 1. In 2006, Article 24-3.2 was added to the Immigration Control and Refugee Recognition Act (ICRRA), making terror suspects subject to deportation.

2. Vague and Excessively Broad Criteria

231. Current provisions for the deportation of terror suspects stipulate vague and excessively broad requirements. They should therefore be revised and based on clearly defined criteria.

232. Foreigners subject to deportation are defined thus:

“Persons identified by the Minister of Justice as having considerable reason sufficient to suppose that they might conduct preliminary actions (preparations) for acts of terror meant to threaten the governments of Japan, other countries, or other entities” and “Persons identified by the Minister of Justice as having considerable reason sufficient to suppose that they might carry out actions which facilitate acts of terror meant to threaten the governments of Japan, other countries, or other entities.”

These definitions are too vague.

“Might conduct preparations” means they are not yet making preparations. No specifics are given on the kind of situation in which persons “might” do something.

Concerning “actions which facilitate acts of terror,” the former ICRRA and domestic

criminal law do not include the term “facilitate.” There is a danger that “facilitate” includes not only material and monetary support, but also verbal behavior. Thus, despite the vagueness of “actions which facilitate,” it is too broad to say that if persons “might” do these their actions fall under the law.

233. What is more, the concept of “having considerable reason sufficient to suppose that a person might” commit a certain act is wording that has been used in Japanese statute books to establish the requirement for authority to take temporary measures, for example to detain a person for questioning, but in this case it is the requirement for the final action of deportation.

3. Designation Procedures

234.

The government should guarantee due process of law in designating persons subject to deportation and the right to trial to review designation procedures.

235. Concerning designation procedures ICRRA says only “persons designated by the Minister of Justice” can be deported.

236. There is no law which says that this authority for “designation” is delegated to the Minister of Justice.

237. The MOJ says that this designation “is not administrative disposition,” and has explained to the Diet that legal delegation of this authority is unnecessary, and that there is no applicable administrative procedure law that prescribes a guarantee of procedures.

238. Because designation precedes deportation procedures, no one can dispute the legality of the designation or overturn it in the course of deportation procedures, and it is possible that the documents and facts which are the grounds for designation will not be disclosed. And because the MOJ says designation is not administrative disposition, the government might deny that designation is subject to legal dispute.

239. Under current procedure, designation is not based on rule by law and violates the guarantee of due process of law. A situation could also arise that would negate the right to trial.

240. 4. At this point in time, there are no reports of these procedures having been used.

241. If these designation procedures are applied, detainees would be placed under detention based on deportation procedures and ultimately deported.

Chapter 3 System for Ensuring Implementation of the Convention against Torture Article 3

242.

1. The Immigration Control and Refugee Recognition Act should have express provisions to ensure implementation of Article 3 of the Convention against Torture.
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243. (1) Immigration Control and Refugee Recognition Act (ICRRA) has no express provisions on the Convention against Torture Article 3.

244. In spite of this lack, the ICRRRA was not amended in response to Japan's accession to the convention.

(2) Procedures Specifying Deportation Destination in Deportation Order

245. The government's report says that implementation of the convention's Article 3 is guaranteed by the designation of the deportation destination in deportation procedures (ICRRRA Article 53).

246. But neither Article 53 nor any other article of the ICRRRA expressly prohibits deportation to countries where there is a risk of torture.

247. Moreover, ICRRRA-based procedures for determining deportation destinations give deportees no right to object that they might be tortured in their country of citizenship, the right to submit documents, or the right to assistance from a lawyer. There is also no law or regulation requiring the authorities who decide on deportation destinations to investigate conditions in the destination country, and there is no store of information on human rights situations or the implementation of torture bans in other countries. Authorities do not announce the reasons for deciding on certain deportation destinations.

248. As this shows, ICRRRA Article 53 does not guarantee implementation of the convention's Article 3.

(3) Number of Lawsuit Victories by People Claiming Refugee Status, and Examples

249. The government's report states there are no court decisions recognizing violation of the Convention against Torture Article 3.

250. Although that is not in error, there are decisions in which courts awarded victory to plaintiffs seeking revocation of actions which did not recognize them as refugees. In these cases it is likely that without redress through court victories, the plaintiffs would have been in situations violating the convention's Article 3.

251. In 2004 there were at least 10 lawsuits (including first and second instances) in which plaintiffs sought revocation of actions which did not recognize them as refugees, or sought cancellation of deportation orders by reason of being refugees, and in which refugee recognition applicants were awarded partial or total victory.

252. Of the 62 court decisions handed down in 2005, the government won 52 according to the MOJ, and it is estimated that refugee recognition applicants won partial or total victories in at least 10 cases (including first instances and appeals).

253. In 2006 there were at least four appeals in which victories by refugee recognition applicants were finalized. In three of them, courts finalized decisions canceling deportation orders as prerequisites for decisions granting refugee status. Nevertheless, as of November 30, 2006, the authorities have not formalized the residence of refugee recognition applicants.

254. Compared to the number of people granted refugee status, discussed below, this

number of lawsuits cannot be considered small. Moreover, in judgments on refugee status, courts still do not have the practice of adopting “benefit of the doubt” and other criteria set forth by UNHCR.

255. (4) Systematic investigations are not performed of cases in which foreigners were repatriated without recognition of refugee status and without being granted residence permission, and were persecuted or put in danger of persecution.

256. The following examples involved Turkish citizens.

(a) Mr. C, D, E

About 1993, the three men came to Japan.

In 1996 and 1997 they applied for refugee status.

In 1997 they were denied refugee status. Reason cited was expiration of application time period.

In 1999 they returned to Turkey.

On their return, they were immediately detained by military police, which at first made no official record of the detention. It is reported by the British government’s Home Office and by other agencies that detention without records in Turkey is a breeding ground for torture. The repatriates claim that during their detention they were subjected to torture such as beatings, electric shocks, and striking the testicles, and signs of corroborating physical damage were found, such as to their molars and testicles.

Several days after that they were officially arrested, and later indicted for the crime of assisting an illegal organization. They were released after more than two months, and about a year later acquitted of charges.

One of the three came to Japan again in 2001. At first he was denied entry and detained for nearly two months, but later permitted to stay. He was not, however, granted refugee status. The court decision in a lawsuit seeking revocation of the action which did not recognize him as a refugee did not give credence to the plaintiff’s statement that he had undergone torture with cruel methods such as electric shocks, but it did recognize the possibility of violence during interrogation by saying, “There is still suspicion that the plaintiff underwent severe interrogation, and that unfortunately he received treatment such as beatings.”

Another one of the three came to Japan in 2005 and applied for refugee status, but in 2006 was denied that status, and as of December of that year was still in a detention center.

(b) Mr. H

Mr. H came to Japan and applied for refugee status, but was refused. Reason cited was expiration of application time period. After returning to Turkey he was put on a list of suspects, and in 2000 put on detention. He claimed he was interrogated while blindfolded and handcuffed, beaten, sprayed with a high-pressure hose, shocked, and in other ways tortured. Subsequently he was indicted for the crime of assisting an illegal organization, released while the trial was in progress, and came to Japan again.

2. Asylum Procedures

(1) Guaranteeing Article 3 of the Convention against Torture in Refugee Recognition Procedures

257.

In response to applications for refugee status, reviewing authorities should investigate whether Article 3 of the Convention against Torture applies, and if so grant the applicants residence.

(a) Overview of Refugee Recognition Procedures

258. Refugee recognition procedures constitute a system that is closely related to the implementation of Article 3 of the Convention against Torture. Those procedures were established by the ICRRA and took effect on January 1, 1982.

259. Under these procedures, people who desire asylum can apply for refugee status, and the Minister of Justice makes the decision.

260. Before May 2005, the law stipulated that application for refugee status had to be made within 60 days of coming to Japan. Because of this, the government has ritually refused recognition merely because an applicant went over the time limit. A May 2005 amendment to the law eliminated this time limit.

261. Asylum-seekers can file an appeal if they are not recognized as refugees. The Minister of Justice renders judgment on appeals.

262. If an appeal is rejected, the applicant can file a lawsuit, whose outcome is decided by the ordinary court.

(b) Special Residence Permission in Refugee Recognition Procedures

263. Even when the Minister of Justice does not recognize someone as a refugee, he “shall conduct a review to see if there are special circumstances that call for specially permitting residence, and if such circumstances are recognized, he can specially permit residence.”

264. It is possible in this system for special residence permission to take the Convention against Torture Article 3 into consideration, but the criteria for review when making the decision for residence are not prescribed by law. The MOJ claims that it makes these decisions at its own free discretion. Only part of the administrative guidelines have been publicly released (<http://www.moj.go.jp/NYUKAN/nyukan52.html>), and they make no mention of the Convention against Torture Article 3. Reasons for the judgments made in each case are not given.

265. It is not legally clear whether refugee recognition applicants can file appeals if the MOJ does not grant special residence permission, and the MOJ does not recognize the right to do so.

266. As explained below, applicants are not allowed to appoint representatives in the primary review for refugee recognition procedures, and also cannot receive legal assistance from representatives in the reviews for special residence permission.

(2) Non-Independence of Refugee recognition Authorities

267.

Refugee recognition procedures, including judgments on the application of Article 3 of the Convention against Torture, should be performed by an authority that is independent of the government ministries and agencies in charge of immigration control, and public security policy, and foreign policy.

268. (a) The MOJ is in charge of refugee recognition, and decisions are made in the Minister of Justice's name, although actual decisions are made in accordance with the MOJ's ordinary decision-making procedures (approval line) with the participation of prosecutors and senior members of the political divisions. As this shows, decision-making authorities have no independence at all from the government.

269. Examinations of refugee status applications are performed mainly by refugee examination officers in the Refugee Recognition Office in the MOJ Immigration Bureau's General Affairs Division, but sometimes these officers are the same Immigration Bureau personnel who are responsible for deportation procedures. Therefore the recognition authorities for refugees are likewise not independent of the government.

(b) Numbers of Refugee Status Applications and Approvals, and Special Residence Permits

270. The following table shows the numbers of refugee status approvals and the number of residence permits granted other than for recognized refugees up to 2005.

<Number of Refugee Recognition Applications and Number Processed>

Year	Applicants	Recognized (*1)	Not recognized	Withdrawn applications	Humanitarian residence (*2)
1982	530	67()	40	59	
1983	44	63()	177	23	
1984	62	31()	114	18	
1985	29	10()	28	7	
1986	54	3()	5	5	
1987	48	6()	35	11	
1988	47	12()	62	7	
1989	50	2()	23	7	
1990	32	2()	31	4	
1991	42	1()	13	5	7
1992	68	3()	40	2	2
1993	50	6()	33	16	3
1994	73	1()	41	9	9
1995	52	2(1)	32	24	3
1996	147	1()	43	6	3
1997	242	1()	80	27	3
1998	133	16(1)	293	41	42

1999	260	16(3)	177	16	44
2000	216	22()	138	25	36
2001	353	26(2)	316	28	67
2002	250	14()	211	39	40
2003	336	10(4)	298	23	16
2004	426	15(6)	294	41	9
2005	384	46(15)	249	32	97
Totals	3,928	376(32)	2,773	475	381

Note 1 Parenthetical figures in the “Recognized” column are those people who were refused refugee recognition and who were later recognized after they filed appeals. They are included in the totals.

Note 2 “Humanitarian residence” means the number of people denied refugee recognition but granted residence for humanitarian reasons. Includes both permission for changing residence status and permission for renewing residence period.

271. When the refugee recognition system was first instituted, it recognized many refugees from Indochina and the recognition rate was high, but with the decline in the number of Indochinese applicants, the overall rates of recognition and application, and the number of people recognized, have dropped precipitously.

272. The reason cited for most cases of non recognition is that applications were tendered too late.

273. In response to public criticism, in 1998 the number of applicants granted recognition and special residence permission finally climbed into the double digits, but recognition is still lower than the international standard.

274. While Japan granted recognition to 161, or 25%, of the 636 applicants from 1982 to 1984, it granted recognition to only 215, or 6.5%, of the 3,292 applicants from 1985 to 2005, and even adding the 381 people to whom residency was granted for humanitarian reasons raises the percentage to only 16.4%.

275. In 2005 both the recognition number and rate were higher than usual. Almost all these people were recognized just before the Refugee Adjudication Councillor System was introduced (see item 286), making it possible that this was an unusual phenomenon just preceding system change.

(c) Recognition Skewed by Nationality

276. This table gives government-released figures on refugee recognition applicants and statistics according to nationality.

Refugee Recognition in Last Five Years According to Year and Major Nationalities

Year	Nationality	Recognized individuals
2001	Myanmar	12
2002	Afghanistan	6
2003	Myanmar	5
2004	Myanmar	9
2005	Myanmar	29

Refugee Recognition in Last Five Years According to Year and Major Nationalities (Top Three Countries)

Year	Nationality	Number not recognized
2001	Turkey	165
	Afghanistan	39
	Myanmar	35
2002	Afghanistan	40
	Pakistan	38
	Turkey	30
2003	Myanmar	73
	Turkey	65
	China	32
2004	Turkey	136
	Myanmar	46
	Iran	13
2005	Myanmar	118
	Bangladesh	28
	Turkey	27

277. Although the government does not publish all the figures on the numbers of people granted refugee status according to nationality, using information which enables one to determine this reveals that recognition is skewed far from the international trend.

278. For example, although the government has not released figures, only a mere handful people of Chinese nationality have been granted refugee status since 1982.

279. Not a single person of Turkish nationality has been granted refugee status.

(e) Political Non-Independence

280. JFBA argues that the government should amend the current arrangement, in which the MOJ Immigration Bureau is in charge of refugee recognition procedures, and that it should set up refugee recognition procedures performed by a third-party authority that is independent of the government agencies in charge of immigration and foreign policy. Our view takes into consideration the current situation, which has arisen because the present refugee recognition system results in a recognition regime which is distorted by immigration administration and foreign policy considerations.

281. According to a July 16, 1998 article in the *Tokyo Shimbun*, immigration officials say that “It’s difficult with countries like China. One factor is pressure from politicians,” thereby admitting that politics underlie non-recognition, although the MOJ officially denies this.

282. Strengthened cooperation by MOJ with the public security authorities of other countries to combat terrorism increases concerns about the fairness of judgments made by the MOJ when a victim of human rights violations by the anti-terror agency of an applicant’s native country applies for refugee status in Japan.

283. As discussed below, MOJ refuses requests for the disclosure of documents related to enquiries made to the governments of applicants’ countries of origin. The reason cited is that disclosure of those documents would damage diplomatic trust with those countries’ governments.

(3) Appeal Review Authority

284.

- | |
|--|
| <ol style="list-style-type: none">1 To ensure the effectiveness of the system for filing complaints in refugee recognition procedures, the government should establish a complaint review authority that is independent and has a high level of expertise.2 Even under the current system, expert panels should increase their independence and level of expertise. |
|--|

285. (a) The Minister of Justice likewise renders judgments on appeals, and MOJ performs administrative duties. There is no independent organization to review appeals.

286. A 2004 law amendment created a system in which third-party refugee adjudication councilors (below, “councillors”) are involved in procedures dealing with appeals against non-recognition filed by applicants, and the law now requires the Minister of Justice to hear the opinions of the councillors when making decisions on appeals (Articles 61-2-9.3 and 61-2-9.4).

287. Councillors are to be appointed by the Minister of Justice (Articles 61-2-10.1 and 61-2-10.2), and they do not have their own secretariat; instead, the Immigration Bureau performs administrative duties. As such, establishing the councillor system did not result in the creation of a complaint review authority that is independent of the government agencies in charge of immigration and foreign policy.

288. UNHCR and JFBA observe that improvements must be effected so that an authority independent of the MOJ is created, and that said authority performs reviews of appeals.

289. UNHCR’s comments can be found here: “UNHCRs COMMENTS ON THE BILL TO REFORM THE IMMIGRATION CONTROL AND REFUGEE RECOGNITION ACT OF JAPAN.” (http://www.unhcr.or.jp/protect/pdf/040520comm_e.pdf)

(b) Selection of Councillors

290. Under the law (Articles 61-2-9.3 and 61-2-9.4), the Minister of Justice appoints a number of people to be councillors from among candidates who “are of noble character,” “can make fair judgments about appeals,” and “have knowledge and experience concerning law and the international situation.”

291. On the occasion of implementing the refugee recognition procedures after the May 16, 2005 amendment, the Minister of Justice appointed 19 people as councillors based on recommendations from relevant organizations, not from applications taken publicly. The breakdown was six members from the legal profession, four from universities, one formerly from the House of Representatives Cabinet Legislation Bureau, two former diplomats, and six others.

292. Councillors formed teams of three persons each and discussed cases.

293. Two of the councillors from the legal profession are former prosecutors and therefore connected to the MOJ, and two members were formerly diplomats. Two members were recommended by JFBA and one by UNHCR.

294. The councillors’ secretariat is staffed entirely by Immigration Bureau personnel, and therefore the councillors as an institution do not have guaranteed neutrality in relation to the Immigration Bureau.

295. In consideration that immigration administration and sensitivity to foreign policy could distort the administrative procedures for refugee recognition, JFBA has made the following requests to the MOJ: establish refugee recognition procedures performed by a third-party authority that is independent of the government agencies in charge of immigration administration and foreign policy, former prosecutors and former diplomats should not be selected as councillors, UNHCR recommendations should be further respected, and the councillors’ secretariat should be made independent of the Immigration Bureau.

(c) Training for Councillors

296. There are no regular meetings or training sessions that councillors are required to attend.

297. Training for councillors should be upgraded on the basis of a continuous plan that is set up with the involvement of people such as UNHCR personnel and researchers who have a high level of specialized knowledge about refugee recognition practice.

(4) Lack of Respect for UNHCR Views

298. UNHCR views should be respected in refugee recognition procedures.

299. (a) There is no system and no practice for allowing the involvement or accepting the advice of the UN High Commissioner for Refugees (UNHCR) in refugee recognition procedures.

300. (b) From 1982 to February 25, 2005, 82 refugee applicants in Japan who were refused recognition by the Japanese government were recognized as refugees by the UNHCR office

in Japan under the office's own rules. But after the UNHCR's judgment, only seven of those applicants were recognized as refugees by the government. Nearly all the applicants sought asylum in third countries and were accepted. Some of them are still in Japan with non-regular residence status and therefore are not eligible for any social security at all.

301. (c) On January 18, 2005 the Japanese government deported two members, father and a son, of a Kurdish family of Turkish nationality whose members had been recognized as refugees by the UNHCR office under its own rules.

302. The UNHCR Regional Office for Japan and the Republic of Korea is working on measures to enable this seven-member Kurdish family to live in a third country other than Japan, and the government has been informed of that.

303. The office has expressed its concerns about this situation (<http://unhcr.or.jp/news/press/pr050118.html>).

304. (d) Similarly, on February 7, 2005 a Kurdish man of Turkish nationality who had been recognized as a refugee by the UNHCR was detained by the Tokyo Immigration Bureau in preparation for deportation. The MOJ later released the man in consideration of public criticism.

305. (e) The MOJ has not yet adopted a policy of not deporting people who are not convention refugees but are people of concern to the UNHCR.

306. In this respect people with nationalities such as Sierra Leone, Afghanistan, Sri Lanka, and Iraq are not exceptions.

307. In another instance, the government upheld a deportation order for a Shiite man of Afghan nationality from Kandahar in spite of the UNHCR's view.

308. Among the refugee recognition applicants in Japan who are not recognized as refugees by the government, the UNHCR Japan office has recognized as persons of concern those who are not convention refugees but whose safety cannot be guaranteed because of civil war or other conditions in their native countries. However, the MOJ upholds deportation orders against these people and has put them in detention facilities.

(5) Procedural Guarantee for Refugee Recognition Procedures

309.

Improvements should be made to ensure full procedural guarantee in refugee recognition procedures.
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310. (a) The MOJ denies refugee recognition applicants the right to select representatives in the primary examination. Therefore even lawyers cannot be present during primary examination interviews, or state their legal opinions.

311. The MOJ does allow refugee recognition applicants to select representatives for appeals.

312. (b) The Law on Integrated Legal Assistance provides that legal assistance is paid by the government, but it does not give eligibility for government legal assistance to foreigners with non-regular residence or to foreigners with residence permits of under one year. For this reason hardly any refugee recognition applicants can receive government legal assistance. Assistance is provided by the UNHCR and private foundations, but this is insufficient.

(c) Interpreters

313. There is no program to assure the capabilities or otherwise require certain qualifications of the interpreters used in refugee recognition procedures.

314. There are cases in which lawyers pointed out that the interpreters used in appeal procedures were unqualified. Because lawyers cannot be present at the interviews for primary examinations, there is no way to know if interpreters are qualified.

(d) Nondisclosure of Evidence

315. In appeal procedures as they now stand, those filing appeals are not allowed to see the information from their native countries, including materials gathered by refugee examination officers, or the records from primary examination procedures, such as records of oral statements.

316. This also holds for additional documents gathered by refugee review officers in the course of appeal procedures. Applicants filing appeals therefore cannot determine the content of records provided to councillors.

317. (e) There is no system of special consideration for child refugee recognition applicants, who cannot be accompanied by their guardians.

318. There is also no system that respects the presence of guardians for child refugee recognition applicants who have guardians. In one case (2006), a 16-year-old refugee recognition applicant whose father lives in Japan underwent examination while in detention by reason of non-regular residence, but the father was not notified of this interview in advance.

(6) Country of Origin Information Used in Refugee Recognition Procedures

319.

Refugee recognition authorities should have the responsibility to fairly investigate country of origin information.

320. There is no law or regulation requiring the Minister of Justice to investigate country of origin information. A large proportion of the actual activities of refugee examination officers consists of finding ways to impeach the credibility of statements made by refugee recognition applicants.

321. The MOJ does not work with Amnesty International or other international NGOs when gathering and assessing country of origin information. In the actual work of making judgments on refugee recognition, the MOJ has no practices which include verifying country of origin information by using multiple sources.

322. As discussed in detail in paragraphs 339-349 of this report, the MOJ makes inquiries to the authorities in refugee recognition applicants' countries of origin and asked for information on the human rights situations in those countries. It assumes that information obtained from those countries' authorities is credible.

(7) Recognition Criteria

323.

In its refugee recognition procedures, Japan should respect the judgment criteria set forth by UNHCR.

324. (a) The MOJ does not respect the UNHCR's refugee recognition handbook, the decisions of its Executive Committee, or its recommendations. We demand a more stringent standard of proof.

325. (b) Neither the refugee recognition procedures nor the courts use the so-called "benefit of the doubt" practice recommended by the UNHCR.

326. For example, the court decision which gave no credence to the statement of a refugee recognition applicant that he had been tortured using electric shocks and other exceptionally cruel methods (section 1 (3) (a)) cited the lack of proof to back up the applicant's statements.

(8) Training and Materials for Public Officials Involved in Refugee Recognition

327.

Training for public officials taking part in refugee recognition should be enhanced on the basis of continuous plans formulated with UNHCR involvement, and content should be rigorously fair and politically neutral in recognizing refugees.

328. (a) Public officials who perform administrative tasks for refugee recognition do not necessarily undergo special training. Especially prosecutors and those responsible for affairs of state receive no training.

329. Refugee examination officers and others do receive training, but it is inadequate. There is hardly any training on international standards for human rights and their application, or on how to judge country of origin situations. Training materials on country of origin situations do not focus on human rights conditions, and sometimes offer only explanations on diplomatic relations with Japan.

(b) Training Materials

330. "Training Materials: Immigration and Refugee Recognition Law IV (Refugee Recognition)" were first prepared in 1983, issued by the Ministry of Justice Research and

Training Institute, and used for the training of Immigration Bureau personnel until 1997. They contained these passages: “If you have two foreigners A and B who both present about the similar objective conditions and are applying for refugee recognition, but A is a citizen of a friendly nation while B is a citizen of an unfriendly nation, it is possible that, for Japan, even if there is comparative freedom to grant refugee status to B, one must be somewhat cautious about granting said status to A.” “In realistically dealing with this case, it would seem one cannot deny the possibility that A would be denied recognition on the grounds that examination officers do not find that he meets the requirements for a refugee, while B would be recognized as a refugee because he is seen to meet the requirements.” And, “When seen in this way, the question of whether or not an applicant meets the requirements for refugee recognition is not so much a matter of checking if simple facts apply, but instead involves somewhat delicate elements.”

331. These passages were mostly deleted from the revised version, but “...is not so much a matter of checking if simple facts apply, but instead involves somewhat delicate elements” remained, and the revision did not include any instructions that judgments should not be influenced by diplomatic relations.

332.

(9) The government should institute a system that assures appropriate measures for refugee recognition applicants who have been tortured.

333. The MOJ has no specialists who can medically verify the claims of refugee recognition applicants who insist they have been tortured. Even if refugee recognition applicants claim that they have physical signs of having been tortured, the MOJ does not examine the signs or even make photographic records of them.

334. The MOJ has no specialists who can provide psychological care when refugee recognition applicants might suffer from trauma caused by torture. The government extends no assistance at all to NGOs which offer such care.

335.

(10) Public officials should be required to protect the confidentiality of applicants in refugee recognition procedures.

336. (a) There is no special law or regulation requiring public officials to protect the confidentiality of refugees or refugee applicants.

337. (b) Additionally, under the newly added Article 61.9 of the Immigration Control and Refugee Recognition Act (ICRRA), the Minister of Justice can provide information to the immigration authorities of other countries, and can agree that said information may be used by those countries in investigations. Although the article makes an exception for use in political crime investigations, it sets forth no criteria for political crimes, and guarantees no procedures for complaints by people whose personal information has been provided to another country.

338. The article makes no exception for information on refugee recognition applicants.

(c) Field Investigations and Inquiries Using Real Names

339. 1. At least since 2000 part of the evidence submitted by applicants and plaintiffs for refugee recognition procedures and refugee-related lawsuits has been shown to the governments of refugee applicants' countries of origin by the MOJ through the Ministry of Foreign Affairs, and the MOJ continually asks those governments for their opinions on the authenticity of the evidence. Applicants are not informed about these investigations, nor is their consent sought.

340. These inquiries have been conducted in ways that enable government agencies of applicants' countries of origin to identify the applicants.

341. The number of enquiries from 2000 to 2003 by country are as follows.

2000	Ethiopia	1
	Iran	1
	Cameroon	1
2001	Afghanistan (Taliban government)	2
	Iraq (Saddam Hussein government)	1
2002	Afghanistan	4
	Turkey	3
	Ethiopia	1
	Tunisia	1
	Sudan	4
2003	Afghanistan	5
	Iran	5
	Turkey	7
	Myanmar	4
	Pakistan	1

342. 2. MOJ personnel visited the Republic of Turkey and leaked to Turkish government officials the names, addresses, and other personal information identifying refugee applicants, and the fact that they are applying for refugee status (information identifying individuals). MOJ personnel also went with Turkish police and security force personnel on visits to the families of applicants to ask questions.

343. Some of the Kurdish asylum seekers of Turkish nationality in Japan have, as proof that they are refugees, submitted documents titled "Arrest Warrant" which were supposedly issued by the Turkish government. Prosecutors with the MOJ Immigration Bureau and personnel from the Refugee Recognition Office of the Immigration Bureau's General Affairs Division (below, "employees") at that time visited Turkey from late June until mid-July 2004 for purposes including verifying the authenticity of the supposed arrest warrants.

344. In Ankara the employees met with bureaucrats from the Ministry of Justice, provincial governors, prosecutors from the National Security Court, and others. After explaining the purpose of their investigation, they showed the totally unredacted arrest

warrants and other documents bearing the applicants' real names and dates of birth, and asked the Turkish authorities to confirm their authenticity.

345. MOJ employees also had a record of an oral statement made in Turkey by a person arrested and indicted in 1998 for allegedly supporting the Kurdistan Workers Party, which is claimed to be a dissident organization. This statement, which included Applicant A's name, was shown to the director of the anti-terror unit of the police headquarters of a certain province, who was asked to confirm its authenticity, and replied that the statement was real.

346. To investigate the kind of lives led by asylum seekers when in Turkey, the employees went with security units to visit asylum seekers' native villages, and met with their relatives. Turkish security units asked the relatives questions such as whether people from families in that area had gone to Japan, and if people were receiving any money from their sons. Employees further were led by police to visit the home of Refugee Applicant B's father, and in the presence of police asked why the applicant had gone to Japan. Applicant B's family members invited only the MOJ employees into their home and explained that Applicant B was being persecuted.

347. Despite the results of this investigation, the Japanese government has still provided no asylum whatsoever to A, B, and other refugee applicants whose names were revealed by MOJ employees, and maintains deportation orders against them.

348. Concerning these cases, JFBA has warned MOJ that it should not infringe asylum seekers' right to not have identifying information provided to the governments of their countries of nationality (secrecy right).

349. Amnesty International has also published a critical statement (<http://www.incl.ne.jp/ktrs/aijapan/2004/0409020.htm>).

(11) Legal Status of Refugee Recognition Applicants

350.

Refugee recognition applicants (including those in litigation) should be given stable statuses, and exceptions should be minimized. Further, applicants should be allowed to work or give livelihood assistance for their support during the application process.

(a) Temporary Residence System

351. 1. In general, refugee recognition applicants are granted "temporary residence."

352. This is a new system launched in 2005, before which refugee recognition applicants were given no legal status at all. That gave precarious statuses to all refugee recognition applicants with non-regular residence.

353. Temporary residence permission grants provisional residence that keeps applicants from being subject to deportation procedures.

354. 2. However, the system has many loopholes for making exceptions.

355. A few examples in which permission is not granted are: (1) application for refugee status was made over six months after arriving in Japan, and (2) applicant did not enter Japan directly from a region where he might have been persecuted and (3) there is considerable reason to believe that applicant may well flee (ICRRA Article 61.2.4.1).

356. The UNCHR and JFBA have pointed out the risk that these reasons for exceptions will be broadly applied. Further, applicants for whom refugee recognition procedures have concluded but who cannot be protected, and are preparing or have begun lawsuits lose their temporary residence permission.

3. Work Prohibition

357. Under the present temporary residence system, all applicants are granted temporary residence with the condition that “prohibits activities running businesses that pay an income, and activities that receive compensation” (ICRRA Enforcement Regulations Article 56-2.3.3).

358. Current protection measures for refugee applicants are performed under commission from the MOJ by the Refugee Assistance Headquarters of the Foundation for the Welfare and Education of the Asian People, but the monetary amount dispensed is far lower than the amount for public livelihood assistance considered necessary to guarantee a minimum livelihood, and it is dispensed to only some refugee applicants.

359. Considering these circumstances, prohibiting all people with temporary residence from working threatens the survival of refugee applicants.

(b) Detention

360. The legal status of people who were not granted temporary residence, and of those who have lost their temporary residence permission because they have concluded refugee recognition procedures but cannot be protected, and are preparing or have begun lawsuits, is exactly the same that that of non-regular residents in general.

361. Especially those who are preparing lawsuits are generally involuntarily detained, whether or not they are thought likely to flee.

362. There are no special detention facilities for asylum seekers. People in litigation as refugees are placed in the same detention facilities as non-regular residents in general.

(c) Criminal Punishment

363. Refugee recognition applicants who have no legal status because they could not receive temporary residence sometimes could be booked under criminal procedures as non-regular residents even if their refugee recognition procedures have not concluded. There is a case in which an applicant was sentenced to prison because his non-regular residence during refugee recognition procedures was subject to punishment.

(d) Stopping Deportation Procedures During Trial Preparation or Litigation

364. Even in cases when temporary residence is not granted, repatriation by deportation procedures is to be stopped when refugee recognition procedures are in progress, but deportation procedures are resumed when an appeal has been dismissed or rejected (Article 61-2-6.3).

365. Although it is possible to stop repatriation by judicial procedures, the decision ordinarily takes at least a month. This makes it legally possible to carry out repatriate an applicant as soon as he is served notice of the decision to dismiss his appeal, and there are instances in which refugee applicants have, during preparations for filing lawsuits, been forced to board aircraft against their will and returned to their countries of origin.

3. Extradition Law

366. The Extradition Law was not amended when Japan acceded to the Convention against Torture.

367. The government's report explains that implementation of Article 3 of the Convention against Torture is assured by Articles 4.1.3, 4.1.4, and 14.1 of the Extradition Law, but these articles provide that the Minister of Justice decides on extradition at his discretion, but do not impose on the Minister of Justice any obligations corresponding to those of Article 3 of the Convention against Torture.

Chapter 4 Extradition of Torture Suspects (Article 8)

368.

Statutory law should specify the obligation and procedures for extraditing torture suspects.
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369. The government has made no amendments to laws in particular about the obligation and procedures for extraditing torture suspects, and this leads to concerns about ensuring the implementation of Article 8 of the Convention against Torture.

Part VI Human Rights of Children

370.

- 1 In accordance with the 1998 and 2004 Committee on the Rights of the Child (CRC)'s concluding observations on the Japanese government's reports, prepare a legal system based on the philosophy and provisions of the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Reconsider the amendments to the 2000 Juvenile Law such as those for referral to the public prosecutor, involvement of prosecutors in juvenile hearings, and lengthening of the limit on custody period, and restore the pre-amendment provisions. Retract law amendments now being pursued for tougher interrogations and detention of juveniles who have committed illegal acts and pre-offenders.
- 2 Legally prohibit corporate punishment in child welfare facilities.
- 3 Public officials or other persons acting in an official capacity, and who are also in positions that involve contact with children, especially judges, prosecutors, police, personnel at juvenile classification homes, juvenile training schools, and penal institutions, and personnel at child welfare facilities, should be given continuous, planned, and systematic training on the philosophy and provisions of the Convention against Torture and the rights of children, and on the characteristics of children.
- 4 Create a data compilation system that ascertains and reports the facts when torture or other cruel treatment or punishment that is inhuman or degrading occur in the processes of guidance, interrogation, trials, and detention, and in schools and child welfare facilities.
- 5 Set up a system for children's ombudsmen who have the clearly defined authority to quickly and with meticulous consideration take complaints and grievances from children and remedy violations of rights.

Chapter 1 Children Ignored in Government Report

371. 1. The government report makes no mention at all about Japan's children in connection with the convention with respect to children's circumstances, legislation, problems that have arisen with respect to convention implementation, their causes, the policy measures and outlook for solutions, and other matters.

372. 2. In Japan, people under age 20 are treated as minors or youths who are still in the process of development, and accorded treatment different from that of adults under the law. If these people are called children, then as of October 1, 2005 the child population was 24,178,000, representing 18.923% of the Japan's total population of 127,768,000.

373. 3. Children too have association with, and are affected and controlled by the "public officials or other persons acting in an official capacity," which are covered by this convention. The main situations are as follows.

374. (1) Children suspected of delinquent behavior or allegedly have other problems are subject to direct guidance and interrogation by the police, detention, put on probation by

judicial proceedings, could receive criminal trials if their cases are referred to prosecutors, placed in penal institutions, and receive the death sentence. In such situations they are affected by “public officials or other persons acting in an official capacity.”

375. In 2005, 1,367,351 children underwent police guidance for delinquency, 455,634 children were booked or received guidance by the police for traffic violations, 186,467 children were booked or received guidance by the police for other reasons, 258,040 children were sent to family courts on charges of delinquency, 18,974 children were placed in custody and sent to juvenile classification homes, 28,585 children were placed on probation by family courts, of which 4,878 were placed in juvenile training schools, 6,099 children were referred to prosecutors for criminal punishment, and 81 children were incarcerated in penal institutions as a result of criminal trials.

376. (2) Even if children are not suspected of delinquent behavior or have other problems, many children are under the control of “public officials or other persons acting in an official capacity” in school. In 2005, 16,538,964 children were receiving compulsory education, accounting for 68.405% of the child population.

377. (3) Outside of schools, children in social welfare facilities for whatever reason are under the control of “public officials or other persons acting in an official capacity.” In 2004 there were 2,090,374 children in nursery schools, 2,938 children in homes for infants, 30,597 children in orphanages, and 1,872 children in correction schools.

Chapter 2 Problems Involving Guidance, Interrogation, and Detention

1. Special Responses with Consideration for Children Needed

378. (1) Children are vulnerable. They have little capacity to protect themselves, and their growth and development require special responses and consideration. The International Covenant on Civil and Political Rights Article 24.1 says, “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” When the actions of police officers, prosecutors, judges, and correctional facility officials concern children, giving children the same treatment as adults makes it impossible to prevent torture or “cruel, inhuman or degrading treatment or punishment.” Therefore the government must guarantee responses which take special consideration and are suited to each child’s characteristics.

379. (2) To prevent such treatment, internationally the Convention on the Rights of the Child, Beijing Rules, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Riyadh Guidelines, and others ask that in these procedures the exercise of power be limited to an extent that is proportional to the “circumstances of both the offenders and the offence” (Beijing Rules, 5-1; 17-1(a), Convention on the Rights of the Child, Article 40.1), violations of privacy are prohibited (Beijing Rules, 8-1.2; Convention on the Rights of the Child, Article 40.2(b)(vii)), that due process is observed as in providing counsel to supplement the capability of defense (Beijing Rules, 7; Convention on the Rights of the Child, Articles 37 (d) and 40.2), and that an enabling environment should be provided so as to not

hurt the dignity of children and to fully accomplish their development and social rehabilitation.

380. Especially when children are detained, they are forced from their parents and deprived of their basic growth environment and guardians, and placed under 24-hour control, with authorities looking to get confessions and punish their delinquent behavior. Therefore detained children lack adequate capacity to defend themselves, and torture and other problems readily arise. For this reason, international standards limit detention of a child to use as the last resort, and for only the shortest appropriate time (Convention on the Rights of the Child, Article 37 (b); Beijing Rules 10-2, 13-1, 17-1 (b) (c), 19-1; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Preamble 1).

2. Safeguards for Children and Their Rollback in Japan

381. (1) In Japan, children under 14 years of age have no criminal responsibility, and may not be the subject of crime investigations. The law has procedures that give precedence to protecting children so that, in principle, authorities may only respond to child crime with a welfare approach. Children who exceed this age and are also subject to investigation are all left to protective procedures which, under the idea of “sound upbringing,” use scientific studies to look for ways for children to overcome their problems. This is done in closed family courts which do not allow the presence of investigative agencies. After these procedures, only children who are 16 or older and for whom “criminal punishment is recognized to be appropriate in view of the nature of the crime and the circumstances” can then be punished after the same criminal trial as adults. Even if it comes to a criminal trial, a variety of safeguards that adults do not enjoy have been put in place.

382. (2) Amendments to the Juvenile Law in 2000 allow the presence of the prosecutor in cases such as when the victim has died “when it is deemed necessary that the prosecutor be involved in hearings that recognize the facts of delinquency,” and allowed prosecutors to lodge complaints in cases such as these. In cases in which the child is at least 16 and caused the death of the victim, in general they are referred to the prosecutor (meaning that procedures for a criminal trial start). The amendments also allow referral to the prosecutor of cases involving 14- and 15-year-old youths, which was not permitted previously. Additionally, the time limit for detention until judgments are rendered was lengthened from four to eight weeks, limits on punishments were relaxed, and in other ways safeguards for children were rolled back, thereby strict punishment more likely.

383. (3) These 2000 amendments to the Juvenile Law were made while ignoring the June 1998 recommendations by the Committee on the Rights of the Child (CRC) to the Japanese government, expressing concerns that present conditions in Japan do not comply with the Convention on the Rights of Child or UN standards, and recommending that juvenile justice should be reviewed “in light of the principles and provisions of the Convention and of other United Nations standards.” Building on this, on February 26, 2001 the CRC wrote that the committee is concerned that many of the changes, especially lowering the age of criminal prosecution from 16 to 14, and lengthening the time limit for detention until judgments are rendered from four to eight weeks, are not based on the spirit of the principles and provisions of the Convention on the Rights of the Child and international standards. The CRC also expressed concern that more children are being tried as adults in criminal trials and being

sentenced to prison, and that it is possible children will be sentenced to life imprisonment. It recommended that the Japanese government make improvements.

3. Changes in Practice at Approximately the Time of 2000 Amendments

384. (1) About 2000 when the amendments became an issue, practice in Japan responded to them by developing a strong trend toward rolling back safeguards for children.

385. (2) To begin with, about 2000 there was an increase in the number of detentions. The change in public opinion toward demanding the tougher punishments of the 2000 amendments was prompted by the Kobe incident of 1997, and the amendments entered into force in April 2001. As shown in the table below, characteristics of change in the number of child detentions at about that time were that the number of children booked was level until 2004 when it started declining, while the total number of children in police detention facilities, and the number of children newly put in juvenile classification homes and juvenile training schools each year both started increasing in 1997, and in 2004 and thereafter declined somewhat in response to the lower number of bookings, but are still at higher levels than in 1997.

Detention and Institutionalization of Children					
Year	Bookings	Total children in police detention facilities	Children newly put in juvenile corrective institutions	Children newly put in juvenile training schools	Children newly put in penal institutions
1995	193,308	115,619	14,265	3,828	56
1996	196,448	127,883	15,569	4,208	41
1997	215,629	147,709	17,837	4,989	32
1998	221,410	168,410	19,421	5,388	37
1999	201,826	187,976	20,382	5,538	36
2000	193,260	210,224	22,525	6,052	41
2001	198,939	236,785	22,978	6,008	47
2002	202,417	244,781	22,767	5,962	77
2003	203,684	256,633	23,063	5,823	68
2004	193,076	232,609	21,031	5,300	84
2005	186,467	212,546	19,627	4,878	81

386. (3) Problems corresponding to the “cruel, inhuman or degrading treatment or punishment” described below occur under circumstances in which children are readily put in detention.

(a) Authorities refuse to allow guardians who have come with their child to be present at the interrogation, and conduct interrogations during class time, until late at night, and for long time periods.

(b) In one instance, authorities took advantage of circumstances in which a junior high school student was in a temporary holding facility, questioning him for a total of 76 days and forcing a confession.

- (c) In another instance, a slipshod investigation was conducted when authorities showed the victim a lineup consisting solely of the suspect child instead of several people, thereby inducing the victim to identify the suspect, and then using the victim's statement as the clinching evidence for the arrest.
- (d) There are many cases of improper arrest and detention such as arresting an innocent child on no other grounds than because a witness says the child "resembles" the perpetrator; arresting a junior high school student who has confessed everything and shows remorse because the accomplice denies the crime; and arresting a high school student while the student was sleeping.
- (e) A policy has been developed under which, with grounds of a certain extent, authorities investigate child suspects by releasing their names, likenesses, and other information. Releasing likenesses, putting children on wanted lists, and other such actions is an invasion of children's privacy.
- (f) Authorities violate legal norms through acts such as arresting children for misdemeanors, for which the law does not allow arrests, and detaining children longer than the allowed time.

387. (4) Since introduction of the general rule for referral to the prosecutor when the victim of a crime has died, there has been a clear and sharp rise in the percentage of cases sent to prosecutors. Especially in cases of injury resulting in death, the previous 9.1% rate of referral to prosecutors jumped nearly six-fold to 53.4%.

388. Action Taken in Cases Covered by Referral Rule (April 1, 2001 to March 31, 2004)

Crime	Suspects charged	Referred to prosecutor	Percentage of total	Percentage prior to amendment
Homicide	43	23	53.5	24.8
Injury resulting in death	146	78	53.4	9.1
Dangerous driving resulting in death	22	21	95.5	-
Desertion resulting in death	2	0	0	-
Robbery resulting in death	25	15	60.0	41.5
Totals	238	137	57.6	-

389. (5) As a result of these changes, courts now argue that there are no extenuating circumstances due to the seriousness of these crimes and their heavy impact on society, and now in fact mete out severe punishments that were inconceivable before, so that the handling of child crime, which is highly malleable, has created a situation corresponding to "cruel, inhuman or degrading treatment or punishment" that deprives children of their lives and hampers survival and growth, and deviates seriously from international principles which hold that punishment must be limited to an extent that is proportional to not only the circumstances of the crime, but also to the circumstances of the offender.

- (a) In a serial murder case by three youths aged 18 and 19 at the time of the crime, a high court overturned the decision of a district court which had sentenced two of the offenders to life imprisonment, and gave all three the death sentences.
- (b) In a case of the rape and murder of a mother and her baby by a youth age 18 at the time, the Supreme Court Third Petty Bench reversed the life sentence in the original judgment, citing the seriousness of the crime and the lack of decisive circumstances that dictate avoidance of the death sentence, and remanded the case, saying that hearings should be thorough.
- (c) A life sentence was handed down against a 17-year-old child, something that would not have been allowed before the 2000 amendments.
- (d) A 15-year-old child who killed his parents and committed other crimes was sentenced to imprisonment for the long term of 14 years, which would have been an impossible criminal punishment before the 2000 amendments.
- (e) In a case in which a youth with Asperger's syndrome who was 17 at the time killed and injured three people, the court handed down a long imprisonment sentence of 12 years, adding the opinion that long-term and continuous therapy and education guidance would be appropriate.
- (f) In relation to sending children to correction schools, courts often hand down probation decisions that allow long-term enforcement measures of six months, one year, or two years.

390. (6) In decisions as well as sentencing, treatment in criminal trial procedures now hardly differs from that for adults, and there is hardly any consideration of the offenders being children, giving rise to problems corresponding to "cruel, inhuman or degrading treatment or punishment."

- (a) Bail is not readily permitted in "serious cases," and detainment once criminal trials begin continues for four to over 16 months. In one case, during this time the suspect was abandoned in solitary confinement with no one to talk to, became mentally unstable, became violent because he could no longer endure it, and was disciplined.
- (b) There are no instances in which trials of children were closed to the public to protect privacy. In almost all cases, defendants are even led into court in handcuffs and an arresting rope in front of onlookers. There are reports of instances in which children appearing to be the defendants' schoolmates fill the gallery, and in which defendants were not easily able to show their faces due to fear or tenseness. A variety of prejudicial factors make defendants hesitate to reveal facts compromising their privacy, hamper their social rehabilitation, and cause other problems.
- (c) Because criminal trials use an adversary-accusatorial system, defendants must concentrate on defending themselves from attack. This makes it hard for them to feel contrition over their own actions, and has led to a situation that takes advantage of a child's false step and closes off the path that allows him or her to overcome those circumstances him/herself.
- (d) Judges and prosecutors do not seriously consider, based on the spirit of the Convention on the Rights of the Child, Article 40.1, the feelings of children, or together with a child think about why the child took such action or what is necessary to overcome those circumstances. Judges and prosecutors have no awareness of the responsibility to provide for the child's best interests. There are many instances in which they cannot understand how children express themselves, and make no effort to understand, denounce children's attitudes from the same

stance as they take toward adults, and sometimes mount severe attacks that question their integrity. This hurts children and closes off their futures.

(e) Article 55 of the Juvenile Law states, “When as a result of a hearing a court recognizes that it is suitable to put a youth defendant on protective measures, it must with that decision send the case to family court,” but even if courts understand that protective measures is appropriate to help children get back on the right track, they are strongly governed by the idea of sending children to prison by reason that a crime was serious and had a heavy social impact, thereby often not providing an opportunity for referral to family court. Not a few decisions say, “There is a possibility that protective measures will achieve rehabilitation, but then sentence a youngster to imprisonment instead of referring the case.”

391. (5) Not enough consideration is given to how treatment in penal facilities might assure child growth. Putting children in such facilities, especially for long periods, not only hampers self-examination, but also cuts off contact with society, deprives children of opportunities for growth and development, and distorts a child’s entire life. Here too there are problems corresponding to “cruel, inhuman or degrading treatment or punishment.”

(a) Article 49.3 of the Juvenile Law states, “Juveniles must be separated from adults in penal institutions,” but in reality children are not kept in penal institutions that are just for children. Actually a few children are imprisoned in large penal institutions for adults, the only difference being that they receive different treatment.

For example, in a penal institution holding 700 prisoners, only eight of them are children.

(b) What is more, most of those penal institutions are removed from urban areas where people are living, which imposes difficulties for family visits. Child inmates are isolated from the local community and cut off from its social environment. Due to chronic prison overcrowding, authorities have all they can do to prevent trouble, and there are limits to providing individual treatment in terms of cell assignments as well. In this and other ways, facilities themselves are not appointed to be appropriate for juvenile growth and development.

(c) Not a few of the juveniles who commit serious crimes and are imprisoned in penal institutions have developmental problems and require the continuous help of psychiatrists or clinical psychotherapists, but not enough is done to respond to these needs.

4. No Defense Counsels

392. Japan’s legal system does not provide sufficient safeguards in the area of attorney assistance for children to supplement their capacity to defend themselves, prevent the occurrence of torture or other such treatment, and take appropriate action in the event it does occur. The welfare approach does not assume the help of lawyers who serve as counsel. Police guidance has no provisions that enable court-appointed lawyers to act as counsel. What is more, even during investigations a suspect is entitled to a court-appointed lawyer if certain requirements are met, and in that connection an avenue will likely open in the near future to provide children too with court-appointed lawyers if requirements are fulfilled, but in the transition from investigation to protective procedures, assistance from court-appointed lawyers is limited to cases with prosecutor involvement, and therefore the legal system is inadequate to prevent treatment such as torture. Additionally, unlike France and Britain, where the entire investigation is videotaped, Japan has no way to prevent treatment such as torture.

5. Proposed Juvenile Law Amendments: Further Rollback of Safeguards for Children over the 2000 Amendments

393. A Juvenile Law amendment bill currently before the Diet would give the police investigative authority over juveniles who have committed illegal acts and pre-offenders, which are not considered crimes. Police do not now have such authority. The amendment would not only enable police to continue investigations even after a child guidance center has received notification and taken the child into custody, but provide that as a rule a child's case is sent from a center to family court for in cases where a juvenile who has committed an illegal act has caused the death of the victim. Thus the bill proposes an arrangement by which the inclination of the police virtually overrules the judgment of the child guidance center. Children under age 14, who now cannot be sent to juvenile training schools, could be sent under the bill, and it is also proposed that if children under probation and observation do not abide by their conditions, they could be sent to juvenile training schools even if they have not committed any other acts of delinquency. As a result, the problems created by the 2000 amendments would be expanded to even younger children, and to those who have received the welfare approach. There are concerns that if this bill is passed, torture and other problems arising from the amendments will widen to children who have benefitted from the welfare approach.

Chapter 3 Corporal Punishment and Bullying in Schools

1. Corporal Punishment and Indecent Acts

394. The Ministry of Education, Culture, Sports, Science and Technology (MEXT) has released figures on the number of public school teachers disciplined for corporal punishment and sexual harassment, which are acts of violence against defenseless children. Data for 2004 reveal that 420 teachers were disciplined for corporal punishment and 168 for sexual harassment, but these figures do not include private schools, and very likely do not include all the incidents that occurred in public schools. In any case, because the victims are children and students who cannot resist, they suffer not only physical shocks, but also powerful mental shocks. This causes serious problems which distort children's growth and development. Below are some of the most recent cases in which bar associations were asked to help victims, and which appeared in newspapers. There is no doubt that these incidents are torture or "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture."

(1) A public junior high school teacher took an upper-grade female student into a conference room and tried to force her into indecent acts, but failed because she started crying.

(2) At a public junior high school, teachers acted in concert against a ninth-grade male student who had dyed his hair brown and blond, keeping him out of the classroom for the first two trimesters and ordering him to teach himself with handouts in a conference room. Further, the teachers proceeded with yearbook editing under the assumption that the student's photograph would not appear.

(3) A public elementary school teacher forced his students to hit one of their classmates, and made them slap the student. One of the students who did the slapping stopped attending school due to the shock.

- (4) A female student who was to attend a certain public high school participated in a volleyball camp, where a male teacher kissed her and had her sit in his lap.
- (5) A teacher at a private junior high school repeatedly slapped students as punishment, but the school did nothing about it, and expelled a student who protested.
- (6) The manager of a private high school's sports club repeatedly committed corporal punishment against club members, and those members' senior students imitated the manager by using violence against their juniors.
- (7) At a public junior high school a teacher took a female student into the women's rest room, hit her cheeks, made her fall by lifting her left leg, straddled her, and assaulted her.
- (8) At a public high school, a teacher convinced himself that a certain student was responsible for a broken chair, grabbed the student's collar and hair in back, took the student to the classroom with the broken chair, and hit the student on the right cheek with his left hand in front of 20 other students.
- (9) At a public elementary school, children who had not finished eating their lunches were made to transfer food remaining on their plates to their handkerchiefs or hands, and then eat the food from their hands or eat it like dogs.

2. Bullying or Complicity Therein

395. Although not corporal punishment or indecent acts, there have been not a few instances in which problems arise because teachers commit bullying-like acts against students. Also reported are cases, as described below, in which for example teachers are complicit in bullying of a student by others, and drive that student to suicide. These are acts that are "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," and just as with corporal punishment, are torture or "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture."

- (1) At a public elementary school, a teacher not only persistently made comments about a student such as, "He's got American blood mixed in," but also violently harassed the child, causing traumatic stress syndrome.
- (2) At a public elementary school the principle was merely asked by students for an explanation about raising the Japanese flag at the graduation ceremony, and the principle submitted to the board of education a report which suggested that the students had demanded he take down the flag and kneel down before them to apologize. The children were hurt when newspapers ran articles on the report.
- (3) An eighth-grader at a public junior high school committed suicide because of bullying that was triggered by the teacher when he revealed to the student's friends the substance of a consultation with the student's parents, who had discussed the student's internet viewing habits with the teacher the previous school year. Admitting that he had triggered the incident, the teacher remarked that the student was easy to make fun of.

Chapter 4 Corporal Punishment and Bullying in Institutions

396. Just as in schools, defenseless institutionalized children are subjected to the violent acts of corporal punishment, indecent acts, bullying, or complicity in bullying. Especially homes for infants and orphanages are also where children call home, and they are faced with

the serious problem that bringing up problems could cost them a place to live. Some recent instances are described below. Like the school examples given above, these should be seen as torture or “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.”

1. At a deaf-mute child facility in Metropolitan Tokyo, a male staff member in his 20s repeatedly touched the breasts of a teenage female resident.
2. At an orphanage in Hokkaido, when a male staff member used slapping as punishment, an elementary school orphan said, “I’ll tell on you,” whereupon she was slapped. The staff member also habitually hit a girl who was frequently absent from school.
3. At an orphanage in Kagoshima Prefecture, when a high school student came later than the appointed time, an orphanage staff member told him to run 500 m instead of letting him on the bus, and as punishment for not obeying, made him sit in the formal Japanese style for two hours.
4. At an orphanage in Saitama Prefecture, the director screamed, “Get out!” and hit the head of a seventh-grader who was late home from school.
5. For 10-odd years, seven staff members at an orphanage in Metropolitan Tokyo would hit children 50 to 100 times with a “whip of love” that was a piece of metal from a calendar wrapped in newsprint and packing tape, push children’s faces into water in the bathtub, make children go to sleep with their feet bound together, and in other ways abuse them physically and mentally. Some of the children developed post-traumatic stress syndrome.

Chapter 5 Article 10 through 13

397. At least as far as the foregoing examples go, in terms of training, one would have to say that the “public officials or other persons acting in an official capacity” with whom children have association with, and by whom they are affected and controlled, are interacting with children while having hardly any understanding of the characteristics of children and what considerations those considerations require, and the rights of children to achieve growth and development. In particular, public officials have almost no properly understood knowledge about the Convention against Torture, which is basic, or the Convention on the Rights of the Child or the United Nations Rules. And there is little to suggest that sufficient training is provided to make them useful. With regard to rules, directives, and methods for interrogations, there are the “Crime Investigation Regulations,” “Police Activity Rules for Juveniles,” and other rules used by the National Police Agency, which has also issued notifications including “What to Keep in Mind while Conducting Police Activities for Juveniles,” but there has been some regression from the former “Principles on Police Activities for Juveniles.” In addition to content that is somewhat lacking, there is no training at all for thorough implementation of that content.

398. Even when problems arise, there are hardly any investigations or other responses, and therefore the conditions do not exist for problems themselves to be lessons learned.

399. Further, it is safe to say that there are hardly any efforts establish agencies suited to having children voice complaints, or to create circumstances allowing children to use them.

Part VII Human Rights Education

400.

- 1 We welcome changes that require human rights education training by law in prisons, and its resulting broad implementation. We request human rights education that employs new ideas and inventiveness.
- 2 Human rights education is insufficient for other law-enforcement officers, especially police officers, and we feel deep concerns over the teaching of interrogation methods which use coercive interrogation to force confessions. The government must resolve to set up a program with human and material resources which conducts sufficient human rights education for police officers and other personnel.
- 3 We request systematic human rights training for judges using the UNHCR-issued human rights training manual for judges.

Chapter 1 Recommendations of the Human Rights Committee

401. Article 10 of the Convention against Torture states, “Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.”

402. Its second paragraph reads, “Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.”

403. Paragraph 32 of the concluding observations to Japan of the Human Rights Committee’s 64th session in November 1998 makes the following recommendations to the Japanese government. “The Committee is concerned that there is no provision for training of judges, prosecutors and administrative officers in human rights under the Covenant. The Committee strongly recommends that such training be made available. Judicial colloquiums and seminars should be held to familiarize judges with the provisions of the Covenant. The Committee’s general comments and the Views expressed by the Committee on communications under the Optional Protocol should be supplied to the judges.”

Chapter 2 Human Rights Education for Prison Officials

404. After the review of the Japanese government’s fourth periodic report of October 1998 on implementation of the International Covenant on Civil and Political Rights, and the final recommendations, the Nagoya Prison incident and many other instances of improper treatment by prison and immigration officials at detention facilities came to light, and this became closely watched in Japan. In March 2003 the Correctional Administration Reform Council was launched under the Minister of Justice, and JFBA put together its recommendations that December.

405. The Council's recommendations said, “The relationship between prison officials and prisoners tends to be one in which the former overwhelmingly dominate the latter. It is thus

crucial to have officials be aware of this and to gain the ability to deal with prisoners in a cool-headed manner, such as by putting themselves in the prisoners' shoes and persuading them through dialog" (4-5 (2), paragraph 45), and sought the implementation of practical human rights education.

406. JFBA emphatically asked the MOJ to incorporate the aims of these recommendations into the bill for the 2005 New Law. This matter was taken into Diet hearings, and a proposal from opposition parties succeeded in adding provisions such as the following to the bill.

407. For prison officials, conduct "training needed to have them gain an understanding of inmates' human rights, master and improve the knowledge and skills necessary to give inmates proper and effective treatment" (Article 13).

408. The Correctional Administration Reform Council also recommended training that incorporates techniques like those of behavior science and psychology that have practical application, such as role playing and experiencing prison life in a mock cell block, and these are being implemented.

409. The July 2004 issue of *Keisei* ("Prison Governance"), a magazine published by an MOJ auxiliary organization called the Corrections Society, and subscribed to to all prisons, includes an article titled "Risks Inherent in Organizations: The Psychological Mechanism by which Human Rights Violations Occur in Organizations" by Professor Motonari Maeda from the Art Department of the Womens College of Fine Arts. The article has a detailed description of mock prison experiments, and explains in an easy-to-understand manner how the more passionate prison officials are about their work, the more easily they lapse into human rights violations. The explanation cites for example the Milgram experiment, which demonstrated that when role behavior is locked into an organization and people have the consent of their superiors, they lose their hesitation to commit human rights violations.

410. Joji Yamamoto, a former member of the House of Representatives who wrote about his prison experience in *Gokusouki* ("The Prison Window"), spoke at the 2004 national conference of prison wardens. Also in 2004 the Corrections Society published a Japanese translation of *A Human Rights Approach to Prison Management*, a book written by Andrew Coyle, who is world-famous for advocating a balance between security and guaranteeing human rights, and published by the British Commonwealth. These facts show that the MOJ is more enthusiastic than before about human rights education for prison officials.

411. But the awareness of many prison officials is still that of an outmoded era, and therefore it is hard to find much improvement in the actual prison treatment. At the same time, it is a fact that human rights training in prisons is now conducted and in a practical form, based on the Council's recommendations and the new law, and it is hoped that in the near future this will take shape as specific changes in treatment. The committee should positively evaluate the activities of the MOJ Corrections Bureau in this area, greatly widen such practices, and make positive efforts on human rights education for prison staffs.

Chapter 3 Immigration Facilities

412. A certain amount of progress has been realized in the treatment of inmates of immigration facilities, and in the discipline of their staffs. For example, in 2005 the Refugee Review Councillor System was instituted for immigration facilities.

Chapter 4 Human Rights Education for Police

413. The National Police Agency claims that human rights education is conducted as part of its “basic education on professional ethics” at the police academy, but because the content of that education has not been released, the specifics of the program are unknown. Also unknown is exactly what kind of education is given to provide officers with the sophisticated knowledge needed for the management and operation of detention duties.

414. Those responsible for police detention facilities have no authority to interrupt interrogations which ignore sleeping periods and mealtimes. They can only ask that investigators consider suspending interrogations.

415. Interrogators have been educated to force confessions, and have obviously received training that differs from international human rights standards.

416. In April 2006 an interrogation manual prepared by the Ehime Prefectural Police (including “Guidelines for the Interrogation of Suspects” dated October 4, 2001) came to light. The existence of the manual was revealed when the personal computer of a police officer in the Ehime police force was infected with a virus, causing the data on his hard drive to be sent out over the internet.

417. Concerning the existence of the manual, the National Police Agency remarked in the Diet that it would not answer questions about the matter that would help people find it on the internet and multiply damage such as privacy invasion. However, even if the National Police Agency answers questions about the existence of authenticity of the interrogation manual, there is no reason to think that it would multiply damage, and because it does not deny the manual’s existence, this can be seen as an affirmation of its existence.

418. The “Guidelines for the Interrogation of Suspects” include passages such as, “Don’t leave the interrogation room until you get a confession” and “If a suspect denies the charges, keep him in the interrogation room from morning until night (this also weakens the suspect).” “Weakening the suspect” is none other than forcing a confession. Japanese police officers are educated not to listen to what a suspect has to say; instead, their mission is to continue the interrogation for a long time in order to extract a confession. It is extremely important that police officers be given human rights education whose keynote is to respect the human rights of suspects.

Chapter 5 Human Rights Education in the Military (Self-Defense Forces)

419. Supposedly human rights education conforming to “Aims of Service” prescribed in Article 52 of the Self-Defense Forces Act is conducted in the National Defense Academy and the Officer Candidate School, but the content has not been disclosed.

Chapter 6 Human Rights Education for Judges

420. In the past, only criminal judges received human rights education when becoming a lower court judge. It is doubtful if the opportunities and program exist to give all judges human rights education.

421. Apparently human rights training for judges on compliance with the International Covenant on Civil and Political Rights included education and guidance delivered by a lecturer who were international law expert. He taught that, in accordance with the “new duality theory,” there is no need to abide by international human rights conventions if they are recognized as not conforming with one’s own constitution domestically, and that international human rights conventions need only be observed outside of a country’s own jurisdiction. It seems this training uses expressions which could easily bring about major misunderstanding, and JFBA has requested improvements. Nevertheless, Japanese judges, including Supreme Court justices, have handed down only a few decisions which show a sufficient understanding of international human rights law, while many decisions are highly doubtful rulings which hold that human rights conventions are not violated because the constitution is not violated. The UNHCR-issued human rights training manual for judges was translated into Japanese by private organizations, but there is hardly any human rights education for judges which uses this manual. There is a great need for practical and discussion-based human rights education which uses such materials.

Chapter 7 Psychiatrists

422. Designated mental health psychiatrists, who are psychiatrists involved in the compulsory medical treatment of mentally ill people, are required to undergo training every five years before and after being designated. That training supposedly includes “education on patients’ human rights,” but the specific content of this education has not been disclosed.

Chapter 8 The State of the United Nations Decade for Human Rights Education

423. From 1995 to 2004 the UN ran a campaign called the Decade for Human Rights Education, and the MOJ and other Japanese government authorities conducted activities to implement a human rights education action plan which went by the name of “Domestic Action Plan for the United Nations Decade for Human Rights Education.”

424. But this consisted almost entirely of guidance through lectures, and the plan did not include judges, lawyers, or Diet members. Thus its actual effectiveness is quite in doubt.

425. The action plan for the United Nations Decade for Human Rights Education included producing a series of practical human rights education manuals called “Training for Law Enforcement Officials” under UN supervision. However, the government has not translated these manuals into Japanese, and only a manual for judges was translated privately with JFBA cooperation. No human rights education is being conducted with these manuals.

Annex

1. Statistics on Isolation by Article 53 and "Category-4" by security reasons

Name of prison	As of Oct.10, 2006(*)		As of Nov.30, 2006(*)	
	Total number of prisoners	Category-4 prisoners (percentage)	Total number of prisoners	Prisoners in solitary confinement (percentage) under § 53
Sapporo	1,639	219 (13.7%)	1,696	1 (0.06%)
Sapporo Branch (wemen)	295	25 (8.6%)	318	0 (0.00%)
Asahikawa	351	48 (14.4%)	356	0 (0.00%)
Kushiro	362	3 (0.8%)	361	0 (0.00%)
Obihiro	490	37 (8.4%)	499	0 (0.00%)
Abashiri	928	58 (6.5%)	955	2 (0.21%)
Tsukigata	767	40 (5.4%)	797	0 (0.00%)
Hakodate Juvenile	1,083	3 (0.3%)	1,096	0 (0.00%)
Aomori	672	60 (9.6%)	683	0 (0.00%)
Miyagi	1,077	56 (5.9%)	1,105	4 (0.36%)
Akita	642	15 (2.5%)	645	0 (0.00%)
Yamagata	988	52 (5.6%)	1,035	0 (0.00%)
Fukushima	1,200	38 (3.4%)	1,202	0 (0.00%)
Fukushima Branch (wemen)	445	3 (0.7%)	487	0 (0.00%)
Morioka Juvenile	395	74 (21.1%)	418	0 (0.00%)
Tochigi (wemen)	833	34 (4.2%)	830	0 (0.00%)
Kurobane	2,218	97 (4.5%)	2,234	9 (0.40%)
Maebashi	1,039	136 (14.4%)	1,022	0 (0.00%)
Chiba	998	33 (3.8%)	1,012	0 (0.00%)
Ichihara (**)	476	0 (0.0%)	472	0 (0.00%)
Hachioji Medical	287	22 (7.9%)	292	1 (0.34%)
Fuchu	3,204	279 (9.0%)	3,244	59 (1.82%)
Yokohama	1,475	277 (20.2%)	1,481	0 (0.00%)
Yokosuka	251	0 (0.0%)	248	0 (0.00%)
Niigata	988	92 (10.1%)	991	0 (0.00%)
Kofu	687	34 (5.3%)	688	0 (0.00%)
Nagano	1,059	17 (1.7%)	1,123	0 (0.00%)
Shizuoka	1,281	47 (4.1%)	1,298	0 (0.00%)
Mito Juvenile	680	5 (0.8%)	591	1 (0.17%)
Kawagoe Juvenile	1,661	37 (3.0%)	1,666	0 (0.00%)
Matsumoto Juvenile	453	22 (5.5%)	462	3 (0.65%)
Toyama	538	46 (9.3%)	545	3 (0.55%)
Kanazawa	804	29 (4.0%)	790	0 (0.00%)
Fukui	539	7 (1.4%)	531	0 (0.00%)
Gifu	984	124 (12.8%)	992	5 (0.50%)
Kasamatsu	665	11 (1.7%)	659	1 (0.15%)

(wemen)				
Okazaki Medical	207	31 (15.3%)	206	0 (0.00%)
Nagoya	2,342	129 (6.0%)	2,350	3 (0.13%)
Toyohashi Branch	262	2 (0.8%)	296	0 (0.00%)
Mie	936	9 (1.1%)	925	0 (0.00%)
Shiga	795	12 (1.6%)	793	0 (0.00%)
Kyoto	1,968	67 (3.7%)	1,872	0 (0.00%)
Osaka	3,030	104 (3.6%)	3,041	5 (0.16%)
Osaka Medical	156	26 (16.8%)	159	0 (0.00%)
Kobe	2,205	69 (3.3%)	2,173	3 (0.14%)
Kakogawa	1,289	72 (5.8%)	1,259	0 (0.00%)
Wakayama (wemen)	678	31 (4.7%)	685	0 (0.00%)
Himeji Juvenile	452	50 (11.4%)	475	0 (0.00%)
Nara Juvenile	796	15 (2.0%)	790	0 (0.00%)
Tottori	715	73 (10.6%)	715	1 (0.14%)
Matsue	684	61 (9.4%)	706	0 (0.00%)
Okayama	855	11 (1.4%)	870	6 (0.69%)
Hiroshima	1,433	146 (11.0%)	1,479	9 (0.61%)
Onomichi Branch	381	2 (0.6%)	381	0 (0.00%)
Yamaguchi	639	16 (2.7%)	651	2 (0.31%)
Iwakuni (wemen)	468	5 (1.1%)	463	0 (0.00%)
Tokushima	1,026	55 (5.5%)	1,038	4 (0.39%)
Takamatsu	989	22 (2.5%)	963	0 (0.00%)
Matsuyama	998	61 (6.7%)	990	0 (0.00%)
Saijo Branch	85	7 (10.8%)	80	0 (0.00%)
Kochi	506	40 (8.4%)	526	2 (0.38%)
Kitakyushu Medical	258	81 (32.0%)	252	1 (0.40%)
Fukuoka	1,934	50 (2.7%)	1,985	7 (0.35%)
Fumoto (wemen)	399	2 (0.5%)	404	0 (0.00%)
Sasebo	630	69 (11.1%)	638	1 (0.16%)
Nagasaki	886	26 (3.1%)	886	6 (0.68%)
Kumamoto	735	84 (11.5%)	729	5 (0.69%)
Oita	1,415	55 (4.0%)	1,431	3 (0.21%)
Miyazaki	463	6 (1.4%)	447	0 (0.00%)
Kagoshima	738	11 (1.6%)	725	1 (0.14%)
Okinawa	535	8 (1.6%)	527	0 (0.00%)
Yaeyama Branch	3	0 (0.0%)	4	0 (0.00%)
Saga Juvenile	675	0 (0.0%)	671	0 (0.00%)
Grand total	65,020	3,588 (5.9%)	65,409	148 (0.23%)

* All data given by Adult Correction Section, Correction Bureau of Ministry of Justice, responding to the request by Mizuho Fukusima, a member of the House of Councilors

** Ichihara is a semi-open prison and accomodates only traffic offenders classified as Category-1.

2. Supreme Court Third Petty Bench decision of June 20, 2006 (*Hanrei Times* no. 1231, p. 89; *Hanrei Jiho* no 1941, p. 38; this decision held that, for a crime by a child who was 18 years old at the time, there were no decisive circumstances which called for avoiding the death sentence, reversed the original judgment for life sentence, and remanded the case.)

The original decision and the district-court decision maintain that there were circumstances which called for avoiding the death sentence, making these observations: it appeared that the defendant had in his own way developed feelings of contrition; he was 18 years and 30 days old when committing the crime; he did not display a noticeable proclivity toward crime; conditions of the environment in which he was raised induce sympathy, making it undeniable that in certain ways those circumstances formed the defendant's character and behavior; the results of the social study that was part of the juvenile hearing proceedings do not deny that the defendant's character could be remolded by correctional education; and the possibility of correction and rehabilitation through correctional education. However, records show that although the defendant, except for the very early part of the investigation, basically admits to the facts of the crime, as far as one can see from his statements, behavior, attitude, and other conduct up to the original decision, including the juvenile hearing stage, there is little indication that the defendant has squarely faced the seriousness of his crime or gone into greater self-examination, and indeed the original decision also comments that the defendant's extent of self-examination is insufficient. With respect to the environment in which the defendant was raised, it was undeniably in some ways unfortunate and unstable. For example, the defendant's mother committed suicide while he was in junior high school, his father subsequently remarried, to a younger foreign woman, and about three months prior to the crime a half brother was born. At the same time, the defendant was able to attend high school, and his circumstances could not be considered especially deficient. Further, although the defendant has no prior conviction or record of delinquency to speak of, he readily planned the rape of housewives who were strangers to himself, and in the process of the crime, murdered the victims without any apparent hesitation to speak of. While carrying out these brutal crimes, the defendant stole the victim's wallets, tried to conceal the evidence of his crimes such as by hiding the bodies in closets, then fled the scene. Further, he flaunted the merchandize coupons that he had taken from the stolen wallets to his friends, and used the coupons for purchases such as the cards for arcade card game machines. Judging by these actions, the defendant's criminal tendencies have some elements which certainly cannot be taken lightly.

In sum, it would seem that the circumstances which are worthy of being taken into consideration in this case are that the defendant was barely 18 years old when committing the crime, and that, in view of his plasticity, the possibility of correction and rehabilitation. Article 51 of the Juvenile Law (prior to amendment under Law no. 142 of 2000) says that the death penalty shall not be imposed on youths under the age of 18 at the time they commit crimes, and in view of the law's intent, the circumstances deserve careful consideration in determining whether to choose the death penalty because the defendant was then barely 18 years old. Nevertheless, there is no decisive circumstance which dictates that the death penalty be avoided, and the above extenuating circumstances are but a single factor to be taken into account when judging, through contrast and overall synthesis of these circumstances, the seriousness of the nature of the crime, the motive, the mode, and its results, as well as the survivors' feelings of injury and other factors.

Therefore the circumstances which the original decision and the district-court decision that it endorsed state as factors to be taken into account are, either when considered

individually or together, not recognized as sufficient reasons for not choosing the death penalty for the defendant. For this reason it is difficult to uphold the sentencing judgment of the original decision for the its reasons alone.

Hence this court's view is that the original decision, as a result of wrongly assessing facts that should have been taken into consideration when sentencing, approved the sentencing of the defendant to life imprisonment by the district court, which was made without exhaustively examining the existence of circumstances that should especially be taken into account and would be sufficient to avoid choosing the death sentence. Because determination of the sentence was highly unwarranted, not reversing it would be exceedingly contrary to justice.

3.

Number of detainees as of the end of the year in the prisons where juveniles are detained

Name of prison	Sex of detainees	2001			2005		
		Total number of detainees	Juvenile male	Juvenile female	Total number of detainees	Juvenile male	Juvenile female
Sapporo	male	1,042	1				
Hakodate Juvenile	male	859	1		1,029	5	
Miyagi	male	1,003	1				
Sendai	male/female				192	1	
Morioka Juvenile	male	454	1		461	1	
Tochigi	female	558		1	831		4
Chiba	male				1,252	1	
Fuchu	male	831	1				
Yokohama	male/female	594	1				
Shizuoka	male/female	1,025	2				
Mito Juvenile	male	558	2				
Kawagoe Juvenile	male/female	1,390	7		1,729	22	
Matsumoto Juvenile	male/female	414	2				
Kasamatsu	female	460		1			
Okazaki Medical	male	238	1				
Nagoya	male	1,975	3		2,341	1	
Osaka	male	2,443	1				
Kakogawa	male	682	1				
Wakayama	female				655		1
Himeji Juvenile	male				435	4	
Nara Juvenile	male	756	2		862	12	
Saga Juvenile	male/female	633	1		633	1	
Fukuoka	male/female				727	8	

In Japan, juveniles are detained in the penal institutions for adults. The reality is that a very small number of juvenile detainees are detained together with a dominantly large number of

adult detainees. This table is created based on the data in the Annual Report of the Correction Statistics.

4. The following information details the state of human rights education, as determined from documents obtained in January 2006 by a Diet member.

(1) Ministry of Justice: The situation for the nearly 10 months from April 2005 to January 16, 2006

A. Human rights training in the Training Institute for Correctional Officials, 280 items

- Advanced course training in the advanced training curriculum, 15 items (includes lectures on the history of the constitution and human rights by university professors, state of child abuse by clinical psychotherapists, and the state of survivors of crime victims and support for victims by personnel of victim support centers)
- Management course training in the mid-level management training curriculum, 10 items (includes lectures on mental health fundamentals by hospital department directors, the state of sexual harassment explained by lawyers, and training by instructors to experience being a detainee)
- Special course training in the judicial affairs technical officials training curriculum, 1 item (lecture by staff member from the Victim Support Center on the perspective of crime victims and what survivors desire)
- Elective course training in the specialized training curriculum, 14 items (lectures by university professors on the characteristics of Japan's punishment practices and on human rights, hospital department directors on workplace mental health, university professors on the psychological mechanism of human rights violations, etc.)
- Elementary course and intermediate course training in the prison officer training curriculum, 132 items (lectures by university professors human rights issues and other constitutional issues, practical training by company employees on private-sector operations, etc., welfare facility staff members on practical nursing care training in social welfare facilities, etc.)
- Basic course and applied course training in the judicial instructor training curriculum, 51 items (university professors on international standards, tour of Osaka Human Rights Museum (Liberty Osaka) led by branch instructors, lawyers on the human rights of crime victims, etc.)
- Applied course training in the judicial affairs technical officials training curriculum, 10 items (lectures by university lecturers on the constitution (human rights of detainees and prisoners), UN Asian Far East crime prevention training instructors on juvenile justice and international standards, etc.)
- Specialized course training in the specialized training curriculum, 47 items (Corrections Bureau personnel on the trends in human rights thought regarding detainees and prisoners, lectures by staff members of the Center for Preventing Violence against Women on domestic violence and sexual harassment, lectures by branch head instructors on human rights and international standards, etc.)

B. Home Agency Training on Human Rights in Correctional Facilities, 472 items

- Chief and supervising correction treatment officer training, 88 items (systematic training in a private-sector program on the verbal and nonverbal levels of appropriate methods to handle people who might resort to violence)

- Training for supervising correction treatment officers and supervising specialists, 122 items (consisted entirely of role plays involving staff and detainees and prisoners, and discussion of observations)
- Training for supervising correction treatment officers and supervising specialists, 111 items (consisted entirely of seminars on subjects such as “trends in thought on human rights of detainees and prisoners”).
- Training for section and department directors of all prisons, juvenile training schools, and juvenile classification homes, 151 items (sexual harassment, human rights of detainees and prisoners, protection of personal information, human rights violations by public officials, etc.)

C. Human Rights Education in Immigration Facilities, 29 items

- Immigration Bureau personnel training, 7 items (lectures on human trafficking, human rights of foreigners by IOM, private shelters, Amnesty Japan, and others)
- Training for officials who recognize refugees, 3 items (lectures by university professors on human rights of foreigners, refugee recognition, and other subjects)
- Home agency training for newly hired personnel, 12 items (instruction from the General Affairs Section director on subjects including what immigration personnel should keep in mind, hospitality, etc.)
- Home agency training at Tokyo Immigration Bureau, 1 item (lecture by university professor on the trend in human rights)
- Home agency training for combatting human trafficking, 4 items (instruction from the General Affairs Section director on the state of foreigners’ human rights)

D. Human Rights Training for Prosecutors, 23 items

- Practical education for new prosecutors, 1 items (lecture by crime victim support official from the Tokyo District Prosecutors Office on victim protection and support)
- General training for prosecutors, 9 items (conducted twice annually since 2000 for prosecutors in their third to fifth years since appointment) (lectures by the secretary-general of the Victim Support Center and prosecutors from the Criminal Affairs Bureau on the opinions of crime victims, international human rights conventions, and other subjects)
- Specialized training for prosecutors, 6 items (for prosecutors in their seventh to 10th years since appointment) (lectures by the secretary-general of the Victim Support Center and prosecutors from the Criminal Affairs Bureau on crime victim support and international conventions)
- Practical education for new assistant prosecutors, 3 items (lectures by prosecutors from the Criminal Affairs Bureau and clinical psychology counselors on crime victim support and victim psychology)
- Training for assistant prosecutors, 4 items (lectures by prosecutors from the Criminal Affairs Bureau and clinical psychology counselors on crime victim psychology and victim support)

(2) Supreme Court

- A. Training for new justices: Lectures by university professors on “international human rights trends” every year for about one week. Lectures include the final recommendations to the Japanese government by the UN concerning the

International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights.

- B. Branch directors' seminars: Training for directors of district and family court branches. Every year for about three days, lectures on "human rights protection" by the director of the MOJ Human Rights Bureau.
- C. Seminars for department supervising judges: Seminars for department supervising judges of district and family courts. About four days each year, lectures by university professors on "the international covenants on human rights, and lectures on "human rights protection" by the director of the MOJ Human Rights Bureau. These include the final recommendations to the Japanese government by the UN concerning the international covenants on Civil and Political Rights, and Economic, Social and Cultural Rights.
- D. Other: So that all judges know about the final recommendations to the Japanese government by the UN concerning the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights, they are distributed to judges at the time of training sessions held for groups of judges depending on years of experience.

(3) Police

- A. Human rights education in police academies at all levels: Lectures on human rights, including professional ethics and law (29,000 training participants)
- B. Human rights education in the workplace: Directives on various human rights problems given during morning assembly, lectures by outside experts, small-group activities in which police personnel themselves give thought to human rights, etc.
- C. Human rights education for those who provide guidance in occupational ethics: Guidance on professional ethics with emphasis on respect for human rights (350 training participants)
- D. Education on helping crime victims: Guidelines for responding to victims, counseling education, and the like given by personnel responsible for helping victims (1,000 participants)
- E. Human rights education for personnel responsible for detention operations: Education on the proper treatment of detainees and on professional ethics (2,900 participants)
- F. Human rights education for personnel responsible for cases of violence against women: Education on the proper way to handle human rights problems involving women (30 participants)
- G. Human rights education for police officers dealing with juveniles: Counseling, guidelines for juvenile consultations, guidelines for handling child abuse cases, education on helping victims (1,000 participants)

(4) Self-Defense Forces

- A. Education in the National Defense Academy, National Defense Medical College, and Officer Candidate School about the philosophy of respecting human rights in the constitution and the Geneva Conventions on protecting the wounded and sick on the battlefield
- B. Moral education based on respect for character, conforming to "Aims of Service" prescribed in Article 52 of the Self-Defense Forces Act

- C. Lectures by outside lecturers in Officer Candidate School on international humanitarian law
- D. Personnel training sessions on human rights