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# JAPAN

## III-Treatment of Foreigners in Detention

### 1. Introduction

Foreigners in Japan are at serious risk of ill-treatment at the hands of the authorities. Asylum-seekers have been detained for lengthy periods, sometimes in solitary confinement, and in some cases have been denied an opportunity to make a formal request for asylum. Families of asylum-seekers have been separated and children have been detained with their parents in conditions which have amounted to cruel, inhuman and degrading treatment.

Foreign workers who have remained in Japan after the expiry of their visas and other alleged illegal immigrants detained pending deportation have suffered arbitrary punishments, humiliation and beatings at the hands of Immigration Bureau officials. They have been detained and beaten on the mere suspicion of holding illegal travel documents. Detainees awaiting deportation have been deprived of adequate access to the outside world, including medical doctors of their own choice, lawyers, friends and human rights activists. Some have died in custody, while others have been denied permission to take medicine for chronic diseases.

Foreign nationals held in police custody on suspicion of having committed a criminal offence have been beaten, denied access to interpreters and lawyers, forced to sign statements in languages they did not understand, and have been punished for attempting to seek judicial redress for alleged human rights violations. Others, serving prison sentences, have been severely punished by prison authorities under rules giving guards wide discretion to apply punishments to inmates for relatively minor breaches of regulations. Prisoners who have attempted to bring lawsuits against the authorities have been placed in solitary confinement, sometimes for months at a time. Forms of solitary detention ostensibly aimed at “protecting” detainees who may harm themselves or others appear to have been used to punish recalcitrant foreign inmates, causing them grave distress and sometimes mental imbalance.

This report gives examples of ill-treatment suffered by foreigners in Japan in recent years and describes situations in which the authorities have prevented adequate scrutiny of reported human rights violations, and in which courts have failed to provide an effective and timely remedy to foreigners who complain that they have suffered

human rights violations. These incidents suggest that, in practice, Japan has failed to fully respect its obligations under international human rights standards.

Amnesty International is submitting this report to the Japanese Government for comment. The organization is calling on the Japanese Government to initiate independent and impartial inquiries into the reports of human rights violations described in this document, and to make their results public. Officials responsible for human rights violations should be systematically brought to justice and victims should receive adequate compensation.

Amnesty International further recommends that the Japanese Government take steps to end all forms of ill-treatment in places of detention. Detailed recommendations are set out in the last chapter of the present document. They include:

- reinforcing the accountability of detention facilities to inspection agencies and relevant non-governmental organizations;
- making public all regulations and procedures concerning the treatment of detainees, including those concerning the rights and duties of detainees, disciplinary procedures, access to medical treatment and complaint mechanisms; and
- strengthening the authority and training of medical doctors and other medical personnel working with detainees.

This document highlights some of the common patterns which characterize the various reports of human rights violations affecting foreigners detained in Japan. Amnesty International believes that, by tackling these patterns systematically, the Japanese Government could significantly reduce the risk of human rights violations. Many of the human rights concerns expressed by Amnesty International in relation to foreigners also apply to Japanese citizens in custody. By addressing Amnesty International's recommendations, the Japanese Government would be helping to improve human rights safeguards for all Japanese citizens and foreign nationals who are arrested and imprisoned in Japan.

## **2. Background**

### ***Discrimination in Japan***

It is often argued that Japanese society and culture are "homogeneous". However, to view Japan as a homogeneous society would be to ignore the existence of minorities, thereby causing their further marginalization. Certain groups in Japan have long been targeted as objects of racial discrimination. They include *Ainu* people, who have recently been formally recognized as the indigenous inhabitants of the Japanese archipelago, and people of Korean descent, whose residency in Japan is largely the result of Japan's

occupation and colonisation of the Korean Peninsula during most of the first half of the twentieth century. Other groups have been targets of prejudice on social rather than ethnic grounds. An example is the long-standing problem of discrimination against the so-called *buraku* people who used to form a distinct social class because their occupations were viewed as demeaning, such as leather-workers or shoe-makers.

In addition to these and other groups, Japanese society has absorbed many foreign workers over recent years. Their numbers have grown phenomenally since the mid-1980s in line with Japan's transformation into a major economic power. According to Ministry of Justice statistics, the number of foreigners entering Japan for the first time for the purpose of work reached a peak of 113,599 people in 1991. The majority of migrant workers come from other Southeast and East Asian countries such as South Korea, China, the Philippines and Thailand. A significant number, however, come from the Middle East (particularly Iran) and South America (which has a large Japanese diaspora community).

The Japanese Government has formally restricted the issuance of work permits to foreign workers with technical skills and expertise, but many unskilled workers have also gained entry on tourist or student visas and managed to find work illegally. Initially, the authorities appeared to turn a blind eye towards the illegal status of such people. Over recent years, however, employment opportunities have been severely restricted by the "bursting" of Japan's "bubble economy" in late 1992, and many foreign workers have been arrested, charged with violating immigration laws, and deported. Statistics reveal that the number of deportation orders issued to those who had stayed in Japan after the expiry of their visa reached 63,197 in 1993, almost double the figure in 1991.<sup>1</sup>

While it is not within the scope of this report, or the mandate of Amnesty International, to campaign against social discrimination, it has become clear that foreign migrants are often more vulnerable to human rights abuses than Japanese citizens, because of their marginalised social and economic position. Indeed, the allegations of human rights violations documented in this report may be evidence that foreign migrants have become a new target of discrimination in Japan.

### ***Rights to legal representation, advice and interpretation***

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<sup>1</sup> Source: Justice Yearbook 1995 (Japanese Ministry of Justice).

Foreigners in any country are often ill-informed or ignorant of their legal rights in that country and may have little knowledge of the language. One of Amnesty International's major concerns in Japan is the large number of reported cases where police and immigration officials make no attempt to inform detainees of their rights to legal representation or to the services of interpreters. Indeed, there often appears to be little or no access to interpretation for those taken into custody, particularly in the case of South Asian languages such as Urdu or Nepali. Amnesty International knows of several cases where foreign detainees have been forced to sign statements they did not fully understand. Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which Japan ratified in 1979, states that "in the determination of any criminal charge against him, everyone shall be entitled...to be informed properly and in detail in a language which he understands of the nature and cause of the charge against him". By failing to ensure access to interpretation facilities to foreign detainees, the Japanese Government is not fulfilling its obligations under this treaty. When access to interpreters is provided, foreign suspects and detainees have frequently reported that interpreters appear to be biased in favour of the authorities. Since all official documents are provided only in Japanese with no written translation, detainees have no alternative but to trust an interpreter's oral translation before they sign a document.<sup>2</sup>

In addition, foreign detainees do not always have an early opportunity to communicate with consular officials from their own country. The Vienna Convention on Consular Relations (VCCR), which Japan ratified in 1964, states that consuls cannot be denied access to their nationals, and foreigners cannot be denied access to their consuls. Article 36(1)(b) of the VCCR states that: "if he so requests, the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state if, within its consular district, a national of that state is arrested or committed to prison or to custody pending trial or is detained in any other manner." It appears however that the Japanese Government leaves it to the discretion of the chief officer at each prison or centre of detention whether or not foreign detainees should be granted permission to contact their embassy or consulate in Japan. Amnesty International urges the Japanese Government to fulfill its obligations under the VCCR by ensuring that all foreign detainees are allowed to contact their diplomatic representatives when taken into detention.

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<sup>2</sup> The ICCPR applies to all individuals within the territory of a state party and subject to that state's jurisdiction (ICCPR, Article 2). In an authoritative comment on the ICCPR, the Human Rights Committee (a body of independent experts who oversee the implementation of the ICCPR by governments) noted that as a "general rule", "each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens". The Committee also noted that aliens detained pending expulsion are entitled to "the safeguards of the Covenant relating to deprivation of liberty" (General Comment 15 (27) c, 9 April 1986).

### **Access to medical treatment**

Several cases documented in this report highlight the lack of access to adequate medical care for foreigners held in prisons, police stations and immigration detention centres (in the case of prisons and police stations, this concern extends to the cases of Japanese citizens in detention). Detainees are often given little more than cursory medical examinations and in a number of cases detention officials have refused to comply with inmates' repeated requests for medical attention. There is little or no provision of treatment for psychological or mental disorders in places of detention. Amnesty International urges the Japanese Government to take measures to ensure that detainees have access to medical treatment in accordance with Article 22 of the Standard Minimum Rules for the Treatment of Prisoners (SMR):

*“At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.”*

### **Foreign detainees and the “daiyo kangoku” system**

The persistence of the *daiyo kangoku* (“substitute prison”) system in Japan increases the possibility that criminal suspects, both Japanese and non-Japanese, will be intimidated into confessing to crimes they have not committed. Despite some improvements in recent years<sup>3</sup>, police interrogation procedures still lack important safeguards to prevent human rights violations and in many cases the main aim of interrogation appears to be to obtain a confession.

*Daiyo kangoku is a system in Japan which allows detention in facilities under police management (generally a police station where detainees also undergo interrogation) to be*

<sup>3</sup> The Japanese authorities have made efforts to improve the structure of “substitute prisons” in recent years by ensuring a physical separation between interrogation rooms and detention cells in police stations and insisting that the two duties of detention and interrogation are carried out by different teams of police officers. However, these structural changes fail to address the key problem that the police themselves have sole responsibility for both the detention and interrogation of suspects.

*used as a "substitute" for detention centres which are not administered by police. This fails to ensure adequate separation between officials in charge of the detention of suspects and those in charge of their interrogation. In Japan suspects may be held in police detention facilities for up to 23 days and are liable to be interrogated throughout the whole of this period. They are often questioned for long periods and are sometimes beaten. Amnesty International believes that the "daiyo kangoku" system contributes to the risk that detainees will face human rights violations during police interrogation.*

In the case of foreign detainees, Amnesty International has received reports that migrant workers have been arrested and charged with minor crimes such as violating the immigration law, only to be interrogated for more serious crimes, even murder (see the case of Govinda Prasad Mainali below). This is in direct contravention of Japanese law which stipulates that detainees may not be arrested on one charge and then interrogated for an unrelated crime.

### ***Xenophobia and racial discrimination***

In several cases, foreigners in detention have reportedly been singled-out for ill-treatment on account of their race or nationality. They cite overtly racist statements by police and detention officials to support their claims. By signing the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in December 1995, the Japanese Government made a commitment not to permit "public authorities or public institutions, national or local, to promote or incite racial discrimination" (Article 4).

Amnesty International is concerned about the number of cases where public officials have allegedly exhibited racist or xenophobic behaviour or made overtly discriminatory remarks to detainees. It urges the Japanese Government to promote human rights education and non-discriminatory practice among law enforcement officers. Any cases of racial discrimination should be treated with the utmost seriousness by the authorities and those found guilty of such behaviour should be punished accordingly.

### ***Prison rules and their enforcement***

Japan's prisons are administered under rules which derive from the Prison Law, passed in 1908 and still in force with minor amendments. However, in the last 50 years, a large body of human rights treaties and regulations has reinforced the safeguards for human rights which governments are obliged to implement. Many countries have overhauled their legislation to take these obligations into account. It appears that Japan has yet to implement prison rules which fully respect Japan's international obligations. In addition to the Prison Law, a vast array of unpublished Ministry of Justice regulations and secret

rules made under the authority of the senior officials in each place of detention govern the lives of prisoners and detainees.

Virtually all the rules, other than the Prison Law, which apply to detainees are kept secret. Detainees and prisoners are told about them when ordered to do or not do certain things, but neither they nor lawyers nor human rights organizations, not even elected members of the Diet, can have access to a set of the written rules. Such secrecy is justified by some officials by the need to ensure “security”. However, many of these rules have little or no bearing on security matters.<sup>4</sup> It appears that many prisoners, Japanese and foreigners alike, only become acquainted with these rules by asking other prisoners or through the process of their own trial and error.

The rules govern the day-to-day lives of prisoners in minute detail covering not only routine activities such as mealtimes and hours of work, but also the times when prisoners may converse together, the situations where they may or may not make eye-contact with each other, the position they may sit in, the tone of voice they may use and the posture they must adopt while walking or working. Inmates are informed of some of these rules by being given orders to do or not do certain things. However, no full and up-to-date set of rules has ever been made public.

The authorities state that “security” considerations prevent the publication of the rules, although it is unclear how this can be the case if prisoners themselves are told of the rules which apply to them. Also, the rules appear to concern minute details of day-to-day life in the prison, such as times and procedures for the washing of hands and face, sitting positions within cells and tone of voice to be used by inmates. The publication of these rules would in no way affect security within the prison. Amnesty International believes that some of these rules, if implemented to the letter, result in inmates being subjected to cruel, inhuman and degrading treatment or punishment.

***“Protection Cells” (hogobo)** are special cells that exist in prisons and detention centres, ostensibly to detain prisoners who are a danger either to themselves or others, those who have caused wilful damage to facilities, tried to escape or refused to follow instructions. In practice prisoners or detainees who commit even relatively minor infringements against the rules have been punished with detention in a “protection cell”. Prisoners detained in “hogobo” may be restrained with leather or metal handcuffs attached to a leather belt, or with a straitjacket. In*

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<sup>4</sup> For example, the rules reportedly prevent a detainee, even after trial, from discussing his or her own case with a visitor other than a lawyer. They prevent foreigners from saying even one word to a visitor in a language other than that agreed in advance by the authorities (a Chinese detainee who had permission to speak in Chinese was reprimanded by a guard when he used an English word in a conversation).

*some cases they have to remain in handcuffs for days on end (in which case they cannot use their hands to eat and cannot undress to defecate). Officially, "protection cells" are not supposed to be used as a form of punishment.*

Minor infractions of these rules may be punished with lengthy periods in solitary confinement, sometimes in "protection cells". Punishment may also be meted out in the form of reduced payment for work or reduced exercise entitlement. While all prison inmates can potentially fall victim to this web of rules, foreign prisoners are at a particular disadvantage if they cannot speak, understand or read Japanese.

#### Amnesty

International believes that the maintenance of such a strict prison regime constitutes "more restriction than is necessary for safe custody and well-ordered community life" (Article 27, SMR) and that some rules and forms of punishment may constitute torture or ill-treatment. It urges the Japanese Government to make all prison rules available for public scrutiny. The reported use of "protection cells", leather handcuffs and straitjackets as a form of punishment also constitutes cruel, inhuman and degrading treatment and is in direct violation of Articles 31 and 33 of the SMR. The Japanese authorities must take the necessary steps to ensure that "protection cells" and instruments of restraint are never used as a form of punishment.

#### ***Inadequate complaints mechanisms***

Amnesty International is concerned that there appears to be no adequate procedure available to detainees to seek the independent investigation of any complaints they may have about their treatment in detention. Existing procedures officially available to detainees appear in practice not to provide for the necessary confidentiality. Under Japan's *jogan* procedure, by which prisoners can theoretically make secret complaints directly to the Minister of Justice, it is common for heads of prisons and detention centres

to be told unofficially when such complaints are made. On a number of occasions, those who voiced their grievances have been subjected to punitive treatment by prison officials. The imposition of penalties for making complaints appears to act in effect as a deterrent that discourages many from reporting human rights violations.

The lack of an adequate administrative procedure for making complaints has led a growing number of victims of ill-treatment to launch suits against the State in an attempt to gain compensation. These cases have been notoriously difficult to win, particularly for foreign nationals who may often be forced to initiate proceedings from outside Japan (for example, if they have been deported after their detention). Many cases have been dropped because of the high expenses that are incurred by complainants in the process.

Since such violations are committed within the prisons or detention centres, it is often extremely difficult for victims to prove their case in court. While an increasing number of compensation claims have been brought against the state in recent years, evidence has often been available only in the form of medical records substantiating the effects of ill-treatment and of testimonies by witnesses to the alleged incident. In a number of cases complainants' repeated requests for centres of detention to submit medical records have been met with repeated refusals from the authorities. Courts have often appeared reluctant to order the submission of medical records when places of detention have refused to do so, and judges have also been reluctant to accept the testimony of victims against that of detention officials even when other prisoners claimed to have witnessed the incident.

### ***Detention of asylum-seekers in Japan***

One particular area of concern to Amnesty International is the detention of asylum-seekers in Japan. Amnesty International recognises that states have the sovereign right to control the entry into their territory of foreign nationals and if necessary, to detain and deport those foreign nationals who have violated the provisions of immigration law. However, this right must be exercised in accordance with that state's obligations under international human rights law. As a state party to the 1951 Convention relating to the Status of Refugees, Japan is obliged to provide protection to those fleeing serious human rights abuses, and afford them effective and durable protection against *refoulement*.

International standards state clearly the circumstances under which refugees, and people seeking asylum, may be detained. Conclusion 44 of the Executive Committee of the UNHCR states that "in view of the hardship which it involves, detention should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers

have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order". No other grounds for detention are permissible, save in the case where the asylum seeker has been charged under law with a recognisable offence, or where there is clear, specific evidence that the asylum seeker would abscond if not detained. Amnesty International is concerned that asylum-seekers are often detained in Japan in contravention of these provisions.

Between January 1990 and May 1997, a total of 575 people made an application to the Japanese Ministry of Justice for refugee recognition. Of these, only 15 people were granted refugee status. In the last three years only one person each year has been recognised as a refugee by the Japanese authorities.

According to Japanese law, applications for refugee status must be lodged within 60 days of arrival in Japan. Amnesty International is concerned that those who apply after this deadline are automatically rejected on the grounds of late application.

Those who apply for asylum upon arrival in Japan are generally detained in immigration detention centres while their application is considered. Their conditions of detention are often poor with inadequate facilities for outside exercise, particularly if they happen to be detained in the so-called "short-term" detention centres. Asylum-seekers who are detained at ports of entry to Japan are often denied access to lawyers.

Until around July 1997, those who applied for refugee status after they had already gained entry to Japan were generally not detained. However, from July to September Amnesty International has received reports of three cases where applicants for refugee status were taken into detention after having been arrested for staying in Japan after the expiry of their visas. The detainees are all Kurdish asylum-seekers from Turkey. Amnesty International is concerned that the Japanese authorities may be targeting this specific group of asylum-seekers for detention in order to dissuade others from applying for refugee recognition in Japan.

Once an asylum-seeker has managed to make an application for refugee status, the process of consideration can last for months or even years, during which time they are liable to be detained. It is often impossible for applicants to receive any information regarding the status of their application and this can lead to serious stress and psychological problems.

An application for refugee status will not automatically lead to a temporary halt in the deportation procedure. Indeed, a number of cases suggest that there is little or no contact between those officials in charge of deportation and those in charge of refugee recognition. Applicants for refugee status must apply directly to a court to obtain an

official suspension of the deportation procedure. Amnesty International is concerned that without the intervention of a lawyer well-versed in immigration legislation, an applicant may be deported while their application for refugee status is being processed.

The vast majority of applications for asylum status in Japan are ultimately rejected by the Japanese authorities. Applicants are often given no specific reasons why their applications are unsuccessful and lawyers have complained that officials who conduct the investigation do not make a genuine attempt to check the truth of applicants' testimonies. In the well-publicised case of Luo Yi (see below), his lawyers contrasted the careful and painstaking lines of questioning conducted by representatives of the UNHCR in Japan with the superficial lines of questioning adopted by the Japanese authorities.

Having ratified the United Nations Convention Relating to the Status of Refugees in 1981, Japan has an international obligation to ensure that its refugee recognition procedure is in keeping with the provisions of this treaty. Under this convention, Japan is obliged to cooperate with the United Nations High Commissioner for Refugees in implementing the Convention. In particular, Japan should afford protection to people who have been recognised as refugees by the UNHCR. The case of Luo Yi is a clear example of how the Japanese authorities have in the past refused to follow the UN ruling and insisted on deporting a refugee recognised in the face of strong public and international criticism.

A major problem in Japan is that it is rare for asylum-seekers to have access to welfare support while their applications for refugee status are under consideration. This may lead to them having to work illegally, which further gives rise to the possibility that they may be detained for that offence.

Two recent amendments to the Immigration and Refugee Recognition Law may have further negative implications for the treatment of asylum-seekers in Japan. In April 1997, a new provision was added to this law which stated that foreigners who land in Japan with no visa may be punished for illegal entry and deported even if they have a valid passport. Amnesty International is concerned that genuine asylum-seekers may be at risk of being deported under this new provision. A second amendment states that those who shelter illegal migrants or help them escape the law will be jailed for up to three years or fined up to one million yen. There is widespread concern among Japanese non-governmental organizations helping refugees and immigrants in Japan, including Amnesty International, that this provision may be used to prosecute those groups and organizations that advise immigrants about their legal status, rights, asylum applications and welfare. Amnesty International urges the Japanese Government to clarify the scope and targets of these new provisions and provide guarantees that the human rights of both foreign workers and asylum-seekers will be respected.

### 3. Victims of Ill-Treatment

Amnesty International has received numerous reports of ill-treatment of foreigners in Japan. Some of the victims are prisoners serving a custodial sentence or suspects held in police custody or pre-trial detention centres. Others are asylum-seekers detained in Immigration Detention Centres pending a decision on their claim to asylum, or foreigners who are illegally on Japanese territory and are detained pending repatriation.

Those alleged victims of ill-treatment who wish to remain anonymous are referred to in this document by initials or pseudonyms. Some of the victims have initiated legal proceedings against those responsible for alleged ill-treatment; information about these proceedings is given where appropriate.

#### 3.1 Ill-Treatment in Prisons and Detention Centres

##### ***“A”, an Egyptian national, Tokyo Detention Centre***

*“When you leave Tokyo Detention Centre you are not a human being. If you have a dog in your house you don’t treat it like this....They do terrible things - I will never forget what they did to me as long as I live”.*

*“A”, interview with Amnesty International*

Two foreign inmates of Tokyo Detention Centre have lodged appeals for state compensation on the grounds of having been subjected to cruel, inhuman or degrading treatment or punishment during their detention. Both appear to have been targeted for ill-treatment because of their foreign nationality (see below case of “B”, a Nigerian national).

The Tokyo Detention Centre mostly houses inmates who are awaiting trial. It also holds prisoners under sentence of death. “A”, an Egyptian prisoner, told Amnesty International that he was the victim of a series of assaults between November 1993 and August 1994. Soon after entering Tokyo Detention Centre, “A” was accused by a guard of breaking an internal rule by talking at an inappropriate time. As punishment, he was

thrown into a “special cell”, in which he was under 24-hour video surveillance by prison guards. This cell was in a particularly smelly and unhygienic condition. He claims that the cell was infested with insects, the floor was covered in dust, and filth remaining from the previous detainee was piled up in the corners of the room. Having been kept in these conditions for several days, “A” began to develop skin problems and after his release from the cell, he had to go into hospital for two months for treatment.

***Keiheikin** is a form of administrative punishment in Japanese prisons whereby detainees are forced to remain motionless in a kneeling or crossed-legged fashion in the middle of a single cell for hours on end for a period of up to two months. Detainees are not allowed to do physical exercise, take baths, meet people from outside the prison, or write letters.*

On coming out of hospital, “A” claims that he was punished with a further 15 days of *keiheikin* (“minor solitary confinement”). During the *keiheikin* period, “A” was made to remain motionless for several hours each day. There was no exercise outside the cell, and only about 15 minutes exercise, inside the cell, twice daily.

Following this harsh treatment, “A” launched a state compensation suit. However, he claims that in March 1994, just before his case was due to be heard in court, he fell victim to further ill-treatment. He alleges that he was rebuked by a guard for using some string to tie up the papers concerning the legal proceedings he had initiated. When he tried to explain that he had been given the string by another detention official, the guard allegedly replied: “Don’t take us Japanese for idiots”. “A” claims that the guard then called about 15 other guards to the scene, who proceeded to kick him all over his body and on his face. “A” claims that the original guard participated in the physical assault by stripping him naked, kicking him hard in the abdomen and forcibly thrusting a prison truncheon up into his anus.

Afterwards, “A” was taken again to a “special cell”. He alleges that the guards who took him there continued to torment him by pulling his pubic hair. “A” was reportedly kept naked in this second “special cell” (which he said was dirtier than the first) for a period of three days. “A” claims that as a result of this violence he sustained a number of serious

injuries including internal and external bleeding and hearing loss in his right ear. His lawyer has stated that after the attack, one of his teeth could be seen sticking out over his lower lip. It appears that “A” was taken out of the “special cell” on the advice of a prison doctor who warned that he would die if left in those conditions.

“A” made a formal complaint about his treatment in March 1994. Four months later, in July 1994, he underwent a medical examination on the order of the Tokyo District Court. The state of his injuries was fully recorded including the bloodstains on his trousers and on the guard’s trousers. Photographs were also taken of the insects that infested the first “special cell”. However, the court refused to send judicial officials to inspect the cell itself or to request the Detention Centre to submit “A’s” medical records.

The hearing into “A”’s case for state compensation began in November 1994. At the same time, he also lodged a criminal complaint to the Tokyo District Public Prosecutors Office against 16 guards from the Detention Centre, accusing them of abuse and violence. However, the Public Prosecutor decided to drop the case in July 1995 despite the July 1994 medical evidence suggesting that violence had occurred. “A” made an immediate appeal to the Tokyo District Court for a re-examination of his complaint but his request was turned down after two weeks, on the grounds that there was no cause to question the decision of the prosecutor and that it was unlikely that guards in a detention centre would commit violent acts without legitimate reason.

The court also cast doubt on “A’s” testimony by saying that it had changed over the course of time whereas the testimony of the guards had been consistent. The judge stated that since two months had elapsed between the time the injuries were sustained and the date of the “preservation of evidence” (when the medical examination was carried

out and photographs were taken), it was not possible to say for certain that the scars on "A's" body had any connection with alleged ill-treatment by prison guards.

When "A" lodged an appeal against this judgement, he finally won a decision from the High Court to order the submission of his medical records. Ordering the detention centre to submit the medical records to the court was the only way in which "A" and his lawyer could have access to them. However, the medical records, which were drawn up by medical personnel employed by the Detention Centre, were not submitted in full: it appears that the Detention Centre only submitted documents in which potentially vital sections had been "blacked out". The name of the doctor who examined "A" at the time of the alleged ill-treatment was also erased, making it impossible for "A" to seek a testimony from that doctor. The case is still under consideration by the High Court. Amnesty International is concerned that "A" appears to have suffered severe ill-treatment, including sexual assault. The organization is concerned that the investigations into "A"'s complaints have been wholly inadequate, and may hamper the emergence of the truth.

### **"B", a Nigerian national, Tokyo Detention Centre**

"B", a Nigerian national, has been detained at the Tokyo Detention Centre since 10 February 1994. He has reportedly been subject to violence from guards on four separate occasions. The first assault happened on the second day of his detention when he claims that a guard arbitrarily decided to confiscate most of his bedding. When "B" protested, five guards allegedly ran into his cell and started punching him. He was then taken to a "protection cell", stripped naked and subjected to further beatings all over his body, including his head and abdomen, for a period of 30 or 40 minutes. As a result of this violence, "B" claims he suffered from headaches, abdominal pains and backache as well as severe anal bleeding. He was kept in the "protection cell" for one day, followed by a ten-day period of *keiheikin* in another cell.

The second incident occurred in April when a prison guard refused to supply "B" with his allowance of soap and toothpaste, apparently insisting that he was only supposed to give these items to Japanese inmates. When "B" asked for verification of this rule, the guard allegedly came into his cell and slapped him in the face. Later on the same day, "B" was told by the guard that he was going to be moved into a different cell. When "B" asked for an explanation for this transfer, he alleges that the guard gestured as if to hit him. "B" raised his arm spontaneously in self-defence and pushed the guard away. At this, the guard called four other guards to take him to a "protection cell". When he arrived there, "B" alleges that he was beaten repeatedly by the guards for around 25 minutes. He was kept in the "protection cell" for two days and then moved to another solitary cell for ten days' *keiheikin*.

Shortly after this incident, “B” was transferred to another building within the detention centre. He alleges that one guard in that building repeatedly made racist verbal attacks on him by calling him a “gorilla”. He claims that when the guard called him by this name on 7 July 1994, he lost his temper and shouted back at the guard: “You stupid bastard!”.

At the beginning of August, “B” discovered that he was to be punished for swearing at the guard. When he refused to agree to the punishment, saying that it was the guard who was guilty of racist insults, seven or eight guards entered “B’s” cell and took him forcibly to a “protection cell”. He claims that as soon as he entered the cell, he was punched and thumped around the head. The physical consequences of this were a broken tooth, pain in his left ear, bleeding from his right ear for two weeks, and blurred vision in his left eye. He was kept in the “protection cell” for five days, followed by seven days’ *keiheikin* for having shouted at the guard, and fifteen days’ *keiheikin* for refusing to obey instructions. “B” claims that a further assault happened on 19 December 1994 when a prison guard kicked him in the groin.

“B” has attempted to have his complaints of ill-treatment considered by the courts, with little success. In his case, “preservation of evidence” was achieved on 1 November 1994 when an independent doctor gave him a thorough medical examination and wrote an “expert statement” testifying to a number of physical scars and injuries. These included the recent loss of a tooth, bruising on his knees, and blurred vision in his left eye.

The Tokyo Detention Centre refused to comply with two successive Tokyo District Court requests to submit the medical records they hold on “B” for court examination. It was only upon the court’s third request that the detention centre finally submitted the documents. However, “B’s” medical records were presented in a similar form to “A’s”: large sections of the records had been blacked out. In “B’s” case, however, the court ruled that the blacked-out portions of the records should also be revealed. Gradually the full contents of the documents were made available to the court, including the name of the examining doctor.

The Detention Centre also sought to present three “witnesses” to the court who, according to “B”, had not been present at the scene of the incidents. It was only after “B” made a formal objection that the Detention Centre allowed other witnesses -- guards present at the scene of the incident -- to testify.

Despite the fact that great pains were taken to preserve evidence, the final outcome was that “B” lost the case. The reasons given for this judgement were that the testimony of the detention officials was more credible than “B’s” testimony since the state of his injuries was not fully recorded in his medical documents and the independent

doctor's "expert testimony" did not necessarily prove that his injuries were the result of the alleged violence. The court also ruled that there was insufficient evidence to prove that "B" had been called a "gorilla" and found that, even if he had been called by this name, this in itself was not something that could be punished. The judge reportedly said:

*"It cannot be proved whether or not the detention official called the plaintiff a "gorilla". Whatever the truth of the matter, while such behaviour should be criticised for being improper, this in itself does not mean that such behaviour should be branded illegal"*

"B" is not satisfied with this judgement and, like "A", has appealed for reconsideration by a higher court.

### **Kevin Mara, a USA national, Fuchu Prison, Tokyo**

Convicted of drug-trafficking, Kevin Mara, a national of the United States of America, began serving a four-and-a-half year prison sentence at Fuchu Prison, Tokyo, in March 1993 and since then has become a victim of Fuchu's harsh regime and arbitrary rules. Ill-treatment in prison has led Mara to take the unusual step of bringing a lawsuit against the state claiming compensation of 10 million yen (about US\$90,000).

It appears from Kevin Mara's testimonies that under one of the rules of Fuchu Prison, prisoners must keep their eyes closed at the meal table until everyone has taken their seat. Mara claims that on 20 June 1993, he opened his eyes prematurely because he heard somebody calling his name. He was rebuked loudly by a prison guard for violating the rule and punished with ten days' solitary confinement.

Just after this period of punishment began, however, Kevin Mara was accused by another guard of throwing a book. He claims that as further punishment, he was forced to lie face down while eight prison officers pinned him down, stripped him naked and secured his hands in leather handcuffs. The handcuffs were attached to a leather belt around his waist which was pulled so tight that he could hardly breathe. He was kept in these handcuffs for 20 hours and transferred to a *hogobo* ("protection cell") for two days. While in the "protection

cell” he was made to wear a strait-jacket and trousers with a slit cut in the seat for defecation.

According to Ministry of Justice regulations, *hogobo* should only be used when it is judged inappropriate to detain a prisoner in a normal cell. Officially, the function of *hogobo* is to protect prisoners who are at risk of hurting themselves or other inmates, or to detain those who attempt to escape, cause damage to prison facilities, or cause a noisy disturbance and refuse to follow instructions. It is unclear in what way Kevin Mara’s behaviour fell into any of these categories. Amnesty International is concerned that in his case, the “protection cell” was used as a form of arbitrary punishment. Indeed, Mara’s case is only one of a number of recent instances brought to the attention of Amnesty International where *hogobo* have been used in this way as an improper form of punishment.

On 14 December 1995, Kevin Mara fell foul of the prison rules once again while working in a prison workshop. A prison guard noticed him look out of the window, apparently an infringement against prison rules, as he raised his hand to scratch his cheek. Although Mara apologized, he was made to stand facing the wall. Surprised at this harsh punishment, Mara muttered “crazy” under his breath. The guard’s reaction was to mete out a further punishment of 15 days’ solitary confinement.

A further incident occurred on 13 February 1996 when Mara wet his hair to smooth it down after a night’s sleep. He was accused of washing his hair outside the stipulated bathing time and given five days’ solitary confinement.

An accumulation of these punishments eventually led Mara to apply for legal representation from the Japanese Federation of Bar Associations in preparation for bringing a lawsuit against the state. He has indicated that his aim in bringing this case is not only to claim redress for his own ill-treatment, but also to improve conditions for others in the prison who do not dare to complain for fear of suffering a further

deterioration in their own prison conditions. The proceedings for Mara's state compensation case began in July last year, and since then his conditions of detention appear to have worsened.

Following Kevin Mara's complaints the Fuchu Prison authorities have placed him into "strict solitary confinement": he is forced to sit alone in the same position in the middle of his cell where he has to work for 40 hours a week making shopping bags. His work remuneration has also been reduced to about 900 yen per month (about US\$9.00) - while other prisoners in Fuchu receive around 3000 yen. His food ration has been cut and he is allowed 30 minutes' outside exercise only two or three times per week. Kevin Mara has been living under these conditions for over a year.

It is customary for prisoners in Japan to be granted the chance to apply for parole after they have served one-third of their sentence. In practice, foreign prisoners are generally allowed to apply after having served half their sentence. It is thought that Mara's previous punishments are being used by the prison authorities as evidence that he is "unrepentant" of his crime and is therefore not eligible to apply for parole. Mara's lawyers believe it is highly unlikely that he will be allowed to apply while he continues to appeal against his ill-treatment. Kevin Mara's complaint has yet to be considered by a court. He is due for release in December 1997.

### ***BD, an Iranian national, Fuchu Prison, Tokyo***

*"I love Japanese culture and was treated very kindly by many Japanese people before I went into prison....But I have been really saddened by the things that happened to me in that prison. I don't want my experiences in prison to lead me to hate Japan."*

*BD, statement made in detention*

BD arrived in Japan in April 1992. In November of the same year he was arrested and charged with causing physical injury. He was tried, found guilty, and sentenced to four years\_ imprisonment which he served in Fuchu Prison, Tokyo. BD claims that he suffered an intolerable degree of ill-treatment and racial abuse in Fuchu and has launched a case for state compensation claiming damages of 15 million Yen. The case is currently being considered by the Tokyo District Court.

BD claims that on 1 April 1994, he was subject to verbal abuse by a prison guard who stated that *\_all Iranians are liars\_*. When he pointed out that *\_Iranians are just the same as Japanese people - some are good and some are bad\_*, he claims he was punished with 10 days' solitary confinement for *\_answering back\_*. On hearing about this punishment, he failed to salute the guard in the stipulated fashion, and claims that as a result of this, he was subjected to further ill-treatment: he alleges that a number of guards handcuffed him tightly in leather and metal handcuffs, pinned him down, forced a cloth bag over his head, and kicked him hard on the back and in the stomach. They then reportedly tried to pull down his trousers but were prevented from doing so because they had handcuffed him so tightly. Apparently believing that it was BD himself who was obstructing them, the guards began kicking him many times in the genital area, shouting: *\_Open your legs!\_* BD reports that he was kept in handcuffs for five hours and then confined in a *\_protection cell\_* for two days.

A second assault occurred on 14 May 1994 when BD alleges that a prison guard punched him hard on the left ear after he apparently broke a rule by standing up to brush his teeth. He claims he was placed in leather handcuffs and beaten once again. He was kept in handcuffs for nine hours and placed in a *\_protection cell\_* for two days. During this period he claims that pus oozed continuously from his left ear and he reportedly still has hearing problems as a result of the guard's assault.

BD claims that he was assaulted, handcuffed, and confined in a *\_protection cell\_* once again on 19 July 1994 for no apparent reason.

BD decided to protest about his treatment by writing a formal letter to the United Nations Commission on Human Rights. However, he claims that the prison authorities refused to allow him to send the letter. In response, BD began a hunger strike on 27 February 1995. He claims that three days later he was injected with some kind of drug without his consent, after which the prison guards physically forced food into his mouth.

Between October 1995 and July 1996, BD claims he was confined in a special cell for mentally ill prisoners. He says that during this period he was constantly troubled by the behaviour of a mentally disturbed prisoner in an adjacent cell who kept hitting himself against the wall and muttering to himself all day and all night. He believes that the prison guards kept him in these conditions in order to break his will and give up on the idea of making a formal complaint. He claims that the guards fabricated a story about him attempting to swallow a razor blade in order to justify his abnormal confinement. He was finally released from the special cell on 15 July 1995 after a prison inspector from the Ministry of Justice accepted his petition. BD filed his case for state compensation on 29 August 1997 and pre-trial investigations into his testimony as well as examinations of his physical health are currently underway. BD left Fuchu Prison on 28 January 1997 and

is currently being held in the East Japan Immigration Detention Centre. An Amnesty International delegation which visited Fuchu prison in June 1997 was not allowed to discuss his case with prison officials.

## **3.2 Ill-treatment in Police Custody**

### ***Death of an Iranian in police custody***

Arjang Mehrpooran, an Iranian national living in Japan, was arrested on 20 June 1994 in Ueno Park, Tokyo, because he could not produce a passport. The following day, he died suddenly while in police detention. He was 31 years old.

Arjang Mehrpooran was arrested with about 35 others, and transported from Ueno Park to Ueno Police Station in Tokyo by armoured bus. The police claim that during the ride, Arjang banged his head against a window frame in the bus and sustained a three centimetre gash on his forehead. Apparently after arriving at the police station his clothing was covered in blood from his wound.

After a short while in detention, Arjang Mehrpooran allegedly began to complain of head pains and shortness of breath and was taken to a local hospital for treatment. Shortly after coming out of hospital he was transferred to Minami Senju Police Station nearby. Arjang Mehrpooran continued to complain of sickness and was taken to hospital once again for further medical treatment in the early hours of the morning of 21 June. Two hours after his return to the police station, he broke into a cold sweat and his complexion turned extremely pale. According to the police report he was then taken by ambulance back to Shirohigebashi Hospital where he died soon after arrival at 7.42 am.

After his death it was confirmed that Arjang Mehrpooran's body was covered in numerous small injuries and wounds that had caused severe internal haemorrhaging. Arjang Mehrpooran's wife claims that when he left the house on 20 June he was in perfect health with no apparent injuries. It is believed therefore that the most likely cause of these injuries was a physical assault by the police and immigration officers during his arrest.

Arjang Mehrpooran's wife and mother have appealed for state compensation on the grounds of unlawful killing by police and immigration officials. The police state that Arjang Mehrpooran's death was the result of self-inflicted injuries caused by hitting his head against the window of the police bus. The case is currently under examination at the Tokyo District Court.

### ***Govinda Prasad Mainali, a Nepali national***

Govinda Prasad Mainali, a Nepali migrant worker in Japan, was beaten, interrogated for long periods and denied access to his lawyer after his arrest in March 1997. He was later charged with murder, and risks being sentenced to death.

Govinda Prasad Mainali was arrested on 22 March 1997 because his visa had expired and taken to Shibuya Police Station in Tokyo. On 30 March he was formally charged with staying in Japan after the expiry of his visa but while he was in police detention he was also questioned about the murder of a Japanese woman in March 1997. This happened despite the fact that it is illegal in Japan for police to investigate a suspect for crimes unrelated to the original charge under which they are held. The police interrogation continued for several days running from early morning to late evening, without translation into and from his own language. He told his lawyers that during interrogation he was pulled by the shirt, shaken, pushed, beaten, kicked and pinned against the wall behind a table.

On 22 April, one of Govinda Prasad Mainali's lawyers tried to visit his client at Shibuya Police Station but was refused access by the police who said that he had been sent to the Prosecutor's office in connection with the murder case. On arriving at the Prosecutor's office, the lawyer was refused access once again and was told that Mainali was undergoing "voluntary" interrogation.

Three other Nepali men who lived with Mainali were called to the police station for questioning about the murder. They also said they were threatened and beaten and signed statements in Japanese which they did not fully understand. Having signed these statements, the three men were forced by the police to move to separate addresses in an apparent attempt to prevent convenient access to them by Mainali's lawyers.

Govinda Prasad Mainali was tried and convicted for remaining in Japan after the expiry of his visa and on 20 May 1997 he was given a suspended prison sentence. This sentence would normally have led to his deportation but instead he was then formally charged with murder and robbery. Under Japanese law the death penalty is the maximum penalty for murder. On 25 April, Mainali was moved to Tokyo Detention Centre where he is currently held awaiting trial. He denies the charges against him and his lawyers are seeking compensation from the authorities for obstructing access to their client.

### ***Khalid Mirza, a Pakistani national***

*"It's not part of our job to consider human rights. We have no concern for human rights ethics".*

Chief, Osaki Police Station

Khalid Mirza, a Pakistani national, was arrested and taken to Osaki Police Station in Tokyo for questioning on 10 February 1995 on suspicion of drug-trafficking. The police had questioned Khalid Mirza's wife, Tsumita Ikuko, a Japanese citizen, prior to his arrest. She alleges that the police banged on the desk, shouted at her and threatened to arrest her and throw her into prison if she refused to sign a statement. It is believed that this statement was then used in order to obtain an arrest warrant for her husband. Tsumita Ikuko also claims that the investigating officer used derogatory and racist comments in reference to her husband during the course of her interrogation: "Why did you marry a foreigner? Don't you know foreigners are bad?"

Shortly after his arrest, Khalid Mirza underwent a medical examination according to detention regulations. During this examination, he claims that he tried to tell the doctor about his history of "acute depression" and about a previous attempt to commit suicide. Because his Japanese is very limited he used the services of an Urdu translator provided by the police. The translator, however, seemed to have difficulties in translating Mirza's complaint and instead appeared to convince the doctor that Mirza's depression was temporary and purely the result of his current circumstances. According to Mirza, the medical examination was very perfunctory and lasted less than five minutes.

Khalid Mirza was held in *daiyo kangoku* at Osaki Police Station in Tokyo for 43 days. During this time, Mirza became increasingly depressed and mentally unstable. His wife claims that the police took advantage of his fragile mental state by questioning him vigorously about his alleged crime and threatening to arrest his wife too if he refused to confess. They also told him that he would only receive a small penalty if he pleaded guilty. During his time in police detention, Mirza received no medical treatment for his depression. Eventually, Mirza confessed to drug-trafficking and possession of marijuana. He claims that the police officers' attitude towards him changed completely after he confessed: this often happens after investigators have obtained a confession. They suddenly became very friendly, offered him coffee and cigarettes, and allowed him to communicate with his wife in English for the first time. Mirza later told his wife that he confessed to the crime in order to protect her, even though he was innocent.

The Chief of Osaki Police Station also appeared to have his own doubts about the confession; Tsumita Ikuko claims that the Chief said to her: "The real truth is known only to God and him". When she mentioned the issue of human rights, she said that his reply was: "It's not part of our job to consider human rights. We have no concern for human rights ethics".

The police apparently found no material evidence that Khalid Mirza was a drug-user and a urine test proved negative. It appears therefore that Mirza's confession formed the main body of the evidence against him. Towards the end of his detention at Osaki Police Station, Khalid Mirza claims that he was in the depths of depression and signed his interrogation records in this state. He claims he did not understand what he was signing since all the documents were written in Japanese.

On 23 March 1995, Khalid Mirza was transferred to a solitary cell in Kosuge Prison, Tokyo, to await trial. Solitary confinement and a lack of proper medical treatment caused a further deterioration in his mental condition. His wife applied for bail on the grounds of his poor mental state, but her request was refused by the judge after opposition from the public prosecutor.

Khalid Mirza's trial began on 26 April, but was postponed for a further two weeks at the request of his lawyer. By this time Khalid Mirza was in a very unstable mental condition and he claims that he had already decided to plead guilty in order to bring the case to an end as quickly as possible. His wife had also recommended him to plead guilty as she was desperately worried about his psychological state and feared that he might suffer permanent mental damage. As soon as he realized that he would have to spend an extra two weeks in Kosuge Prison, Khalid Mirza reportedly became extremely distressed and irrational, and shouted loudly that the judge should give him an immediate punishment. According to his wife, the judge's reaction was merely to laugh at her husband's unusual behaviour.

On 18 May 1995, Khalid Mirza was found guilty and sentenced to one-and-a-half years in prison, suspended for three years. He was also to be deported back to Pakistan. After his trial, he was taken into custody by the Tokyo Immigration Office to await deportation. Although he continued to ask for medical treatment while he was in immigration detention, his requests were repeatedly turned down.

Khalid Mirza claims that he continued to suffer from the ill-effects of his treatment in Japan for several weeks after he returned to Pakistan. On visiting the Japanese Embassy in Islamabad to enquire about his future visa status, Mirza was told that his name appears on a “blacklist” and that it is unlikely that he will ever be allowed to enter Japan again, despite being married to a Japanese citizen. Khalid Mirza’s wife is now attempting to win a retrial for her husband. She is currently awaiting a reply from the Ministry of Justice concerning his eligibility to return to Japan.

**Zhou Bizhu, a People’s Republic of China (PRC) national**

*“I may have been wrong to stay in Japan after my visa had expired,  
but surely my baby had committed no crime?”  
Zhou Bizhu, interview with Amnesty International*

Zhou Bizhu is currently preparing to file a damages suit against the Japanese state on the grounds that she was mistreated in police custody. Zhou Bizhu was arrested and charged with violating the immigration law in March this year and kept in police custody for 29 days. Soon after her arrest, Zhou discovered that she was pregnant and alleges that she was then repeatedly denied appropriate food and medical treatment by detention officials. She claims that her later miscarriage in police custody was a direct result of this mistreatment.

Zhou Bizhu, a Chinese national, told Amnesty International that she was arrested on 3 March 1997 for staying in Japan after the expiry of her visa, and taken to Kikuyabashi Police Station in Tokyo. A few days after her arrest she started vomiting and her stomach began to ache. On 17 March she was taken to a hospital near the police station and a doctor confirmed that she was seven weeks pregnant.

Although she continued to suffer from sickness and had problems sleeping because of her aching stomach, Zhou Bizhu was given no medication. Since she found it hard to digest the food she was given in the police station, she asked for permission to buy extra fruit and juice, but the police officers refused to let her buy anything.

On 19 March, Zhou Bizhu made a formal request to be transferred to a detention centre, where she had heard that it would be possible for her to buy her own food. Her request was turned down - the public prosecutor reportedly told her that she was being selfish and if she kept on complaining she would be kept in the police station right up until her deportation.

On 26 March, Zhou Bizhu discovered that she was bleeding from her vagina and she was taken to see a doctor. An ultra-sonic scan showed that there were no abnormalities and that the foetus was alive. It was only then that Zhou Bizhu appointed a lawyer under Japan's duty-lawyer system. She claims that she did not realize she could have appointed a lawyer earlier (albeit at her own expense) because she was not informed of this right when she was arrested. Her lawyer made a complaint to a policewoman about her lack of appropriate food and the officer agreed that she should be moved to a detention centre as soon as possible.

Zhou Bizhu was finally moved to a detention centre on 2 April having spent almost a month in *daiyo kangoku*. (Unusually, the police were reportedly allowed to keep her in their custody for an extra week after the legal maximum of 23 days to give her time to prepare for her move). On her arrival at Tokyo Detention Centre, Zhou Bizhu was given a medical examination and put on a drip three times on 3 April. After that she reportedly spent most of her time asleep and took no exercise. Although she continued to complain of sickness, she was not allowed to see a doctor for several days.

A nurse came to see her on 7 April and asked her questions through her cell bars. The nurse did not give her a full physical examination and reportedly told her that her

abdominal pains were the result of too much sleep. Zhou Bizhu continued to complain of sharp abdominal pains until 21 April but received no medical attention. Eventually, she was given a thorough examination by a gynaecologist on 22 April and it was discovered that the foetus had died. Zhou Bizhu's lawyer had been appealing for her temporary release from detention since 17 April but this was only granted on the 25th, when she was given two weeks' release on medical grounds. Zhou Bizhu went for another medical examination on 26 April in Tokyo and her dead foetus was aborted.

Zhou Bizhu went to court on 1 May to stand trial for violating immigration regulations. She was given a two-year suspended prison sentence and is currently awaiting deportation. She is now working with her lawyer to complete the necessary procedures for launching an appeal for state compensation before she is sent back to China.

### **3.3 Ill-treatment in Immigration Detention Centres**

#### ***Death of an Iranian in immigration detention***

Mousavi Abarbekouh Mir Hossein, an Iranian national, died suddenly in Kita-ku Immigration Detention Centre, Tokyo, on 11 August 1997. He had been held there since 28 July 1997, awaiting deportation to Iran after having been found guilty of theft by the Tokyo District Court in May.

According to immigration officials, Hossein was reprimanded on 11 August after a cigarette lighter was discovered in his cell. The officials claim that this incident erupted into a scuffle between Hossein and eight officers, after which a blanket was thrown over his head and he was moved into another room. It was in this adjoining room that Hossein reportedly fell down and banged his head on the concrete floor. He then fell unconscious and, according to officials, was taken immediately to hospital where he died from a dislocated cervical vertebrae.

No further information concerning this incident has been made public by the authorities. Amnesty International is calling for an immediate, impartial and thorough investigation to be held into the circumstances surrounding Hossein's death.

#### ***Ill-Treatment of Tao Yaping***

Tao Yaping is a Chinese national who found employment as a hostess in a club in the Shinjuku district of Tokyo. She was arrested along with eight other co-workers during a raid on the club by police and immigration officials on 31 October 1994. The club

workers were taken to Shinjuku Police station to be interrogated on suspicion of violating Japanese immigration laws. Shortly afterwards, Tao and six other co-workers were transferred to the Kita-ku Immigration Detention Centre in Tokyo for further questioning.

At around 10am on the following day, Tao claims she was subject to brutal ill-treatment after she refused to obey the instructions of her interrogators. She alleges that the immigration official in charge of the investigation slapped her on the face with her own wallet. The official then took a photograph out of the wallet and waved it in front of Tao's nose. Tao promptly snatched it with her mouth and swallowed it. Apparently infuriated by her action, the officer in charge beckoned to a number of other officials to surround and restrain her. The investigating officer then punched her several times on the face and on other parts of her body. Tao says she was then kicked by a number of other officers until she fell to the ground, hitting her head twice against the floor. She was handcuffed with her hands behind her back and taken to another room.

In this second room, Tao claims she was forced to sit on a sofa with her hands still restrained behind her back. The officer in charge continued with the physical assault by beating her above the shoulders with sharp, repeated blows. Tao claims that she eventually lost consciousness as a result of this treatment. On the evening of the same day, Tao began to complain of pain in her head and face and shortness of breath. She asked to be taken to hospital, but claims that her request was only granted on the afternoon of the following day.

Several of Tao Yaping's co-workers witnessed this physical assault. Moreover, on 2 November, a lawyer and the manager of Tao Yaping's place of work went to visit her in detention. The manager claims that during this visit, Tao complained of shortness of breath and pain in her head. She also said that the area around Tao Yaping's left eye was dark purple and swollen.

In response to her treatment, Tao Yaping launched a suit for damages against the State as well as a criminal action against the senior immigration official who assaulted her. While the Tokyo Immigration Control Bureau has admitted that Tao Yaping had suffered a physical assault, it affirmed that "only one immigration officer assaulted Tao (...) she was hit only twice in the interrogation room and twice in another room (...) and this was done to stop her acting violently or trying to kill herself."

The case was eventually settled out of court in July 1995. The Tokyo Immigration Authority recognised that the assault had taken place and agreed to pay a sum of one million yen (about US\$10,000) in damages to Tao. However, she has received no official apology.

### ***Ill-treatment of two Peruvian nationals***

Amnesty International was first made aware of this case after a relative of the two detainees contacted the organization's office in the USA. Further details were also provided by human rights activists helping immigrants in Japan. The activists visited South America at the end of 1996 to interview people who had formerly been detained in immigration detention centres in Japan. Their interview with the Peruvian couple was typical of a number of cases which they uncovered. The couple wish to remain anonymous.

Maria and José (not their real names) came to Japan in 1991 and continued to stay there after the expiry of their visas. They were arrested by the police on 13 September 1996, charged with violating the immigration law and held in West Japan Immigration Detention Centre in Osaka for over two months until their deportation on 21 November 1996.

Maria and José claim that on the first day of their detention, they were subjected to harsh and threatening forms of interrogation and were at no time advised of their rights to appoint a lawyer. Maria alleges that at one point an interrogating officer raised his fist threateningly and shouted: "You do not have a right to say a word!". Although José's Japanese was limited and he clearly had problems following the lines of questioning, the authorities allegedly refused his request for the services of a Spanish interpreter. One of the interrogating officers could understand a little Spanish but refused to interpret, saying that it was not officially part of his job. The Peruvian couple also requested permission to contact their embassy in Japan, but the authorities would not allow it. Towards the end of their interrogation, Maria and José claim that they were forced to sign official documents even though they could not understand large parts of what they were signing.

Deportation writs were issued against the couple later the same day and they were told to sign the documents. Although both José and Maria objected to signing without a Spanish translation, they said that the authorities again refused to provide an interpreter. The couple claim that they were told by the staff of the immigration centre that they had no right to appeal against the deportation order or to contact their embassy in Japan.

Between 13 September and 21 November 1996, Maria and José were held in separate cells in West Japan Immigration Detention Centre. During this period the authorities reportedly refused to reveal to them where the other was being held and this caused them unnecessary distress. They have also alleged that their rights to communicate with people outside the facility were severely restricted.

José claims that the authorities would not allow him to make any telephone calls or write to anyone outside the detention centre, ostensibly because his wife had already been granted such permission. Maria was only allowed to make two telephone calls while in detention. The first of these was to her sister in the USA. Before making the call,

Maria claims she was warned by the authorities not to say anything about her conditions of detention and that she should merely ask her sister to send money to pay for airline tickets to facilitate early deportation. Maria ignored these warnings and gave her sister a brief outline of her situation. Her sister subsequently contacted Amnesty International's offices in Washington DC.

Lack of information about her husband and her strict conditions of detention caused Maria great psychological stress and other inmates feared she was approaching a nervous breakdown. She was finally allowed to make a second telephone call to her father in mid-October after the intervention of another detainee who was worried about Maria's mental condition. She claims that her call was monitored by the Spanish-speaking official and this prevented her from talking about her health problems or conditions of detention with her father.

Maria claims she wrote a total of three letters while in detention, two of which were rejected by the immigration authorities. The only letter she was able to send was to her sister, asking whether or not she had sent money to pay for airline tickets as she had requested. Her worries about the tickets were exacerbated by the authorities' failure to notify her when the money for the airline tickets arrived. Maria claims that she only discovered that the money had arrived on the day before her deportation.

Both Maria and José complained that their access to exercise and shower facilities was severely restricted. They claim that they were not allowed to exercise or take a shower for almost a month while in detention and although they were permitted to wash their faces they could not wash their hair. Maria alleges that she was not allowed to buy cleaning solution for her contact lenses and had to use water instead. This caused inflammation to her eyes. An immigration official reportedly told her to throw her lenses away otherwise she would never be allowed to leave the detention centre.

José suffers from an allergic nasal condition and had been taking medicine for this before his arrest. His allergy became worse while he was in detention but he claims that the authorities refused to allow him to take his own medicine. He was examined by a doctor who merely prescribed headache tablets to deal with his condition. In addition to her psychological stress, Maria claims that she also suffered from fever, insomnia, headaches and vomiting. At first the authorities were unsympathetic but eventually she was allowed to see a doctor who prescribed sleeping tablets and tranquillizers which, she says, turned out to be completely ineffective.

Maria and José also claim to have witnessed the ill-treatment of a number of other detainees during their period of detention. They claim 25 Chinese inmates began a hunger-strike to protest against the ill-treatment of another Chinese detainee who was refusing to eat and whose growing ill-health was apparently being ignored by the guards.

Apparently, the authorities' reaction was merely to transfer the hunger-strikers to a different immigration detention centre in Osaka. In a separate incident, Maria and José claim to have seen a Sudanese man being beaten up by the immigration authorities after he became angry at being given contradictory information concerning the circumstances of his deportation. They also claim to have heard a woman screaming regularly for periods of around 30 minutes two or three times a week. The cause of the screaming was unclear.

### ***Ill-treatment of two Korean detainees: Son Jae-woo and Son Yong-jong***

Son Jae-woo and Son Yong-jong (unrelated) were two detainees from South Korea who happened to be held in neighbouring cells in the West Japan Immigration Detention Centre in Osaka. Both claim that they were subject to severe ill-treatment during their periods of detention and Son Jae-woo is currently bringing a case against the state in an attempt to win redress and compensation for the injuries he suffered.

Son Jae-woo was taken to Osaka Immigration Detention Centre on 25 June 1994, having been arrested for remaining in Japan after the expiry of his visa. On 29 June, Son Yong-jong, who was in the next cell, began slapping the wall with a slipper in an attempt to kill a cockroach that was bothering him. Hearing the noise, three guards came into his cell and took him to another room which was usually used for meetings between detainees and visitors. Son Jae-woo claims that a series of terrible screams could soon be heard coming from the meeting room. He asked a guard what was happening and at the same time someone else in his cell kicked the cell door.

Apparently assuming that Son had kicked the door, the guards removed him from the cell and took him to the same meeting room. Son Jae-woo claims that as soon as he entered the room he saw Son Yong-jong lying on the floor, having apparently been beaten. Son Jae-woo claims that he was forced to kneel down on the floor while a number of officers restrained his arms behind his back. When he resisted this treatment and tried to throw them off, he tore the shirt of one of the officers. He claims that three or four immigration officers started pulling his hair and began dealing a series of violent blows to his face and body. Son Yong-jong was also reportedly subjected to a further violent assault by officers wielding sticks.

By the end of the assault, Son Jae-woo's nose was bleeding and he asked for a drink of water. He claims that the officers teased him by holding a glass of water right in front of his face, but refusing to give it to him.

The next day, both Son Jae-woo and Son Yong-jong were taken to a nearby hospital for treatment. Son Jae-woo's face was bruised and swollen. It was discovered that one of his eardrums had been ruptured and even after treatment he reportedly

continues to suffer from hearing difficulties. Son Yong-jong's body was covered in wounds and bruises and he had internal haemorrhaging in his left arm. He was eventually deported on 2 July without receiving proper medical attention, and Son Jae-woo was sent back to Korea on the 12 August 1994, half-way through his medical treatment.

Soon after his deportation, Son Jae-woo filed a plea for human rights assistance from the Osaka Bar Association (OBA) which subsequently conducted an enquiry into his treatment in the detention centre. The results of their investigation corroborated Son Jae-woo's allegations of violent assault and ill-treatment. The Chair of the OBA wrote to the immigration authorities in Osaka, stating that the treatment of the two Korean nationals should be regarded as serious violations of human rights and recommending that steps be taken to clarify responsibility for the injuries caused. The first instance hearing into Son Jae-woo's suit for state compensation began on 30 June 1995 at the Osaka District Court. A judgement is expected in early 1998.

### ***Ill-treatment of a Pakistani man with Crohn's disease***

In July 1996, a foreign worker from Pakistan went to a hospital affiliated to Osaka University to request treatment for chronic Crohn's disease which had caused severe inflammation of his lower intestine. On leaving the hospital he was arrested by the police who had reportedly been informed of his situation by the hospital administration. He was charged with remaining illegally in Japan after the expiry of his visa and held for two-and-a-half months in detention before finally being deported in October 1996. He made frequent complaints of acute pain while in detention and he claims his illness was exacerbated by a lack of adequate medical attention. He was eventually allowed to spend two days in hospital in September. The Japanese non-governmental organization Rights of Immigrants Network in Kansai (RINK) supported him during his period of detention and applied for provisional release on medical grounds on his behalf. The authorities however rejected the application and deported him the next day. Human rights activists believe that his speedy deportation, unusually carried out at the expense of the authorities, was an indication of the seriousness of his illness and that the authorities were keen to deport him as soon as possible to avoid the risk of a foreign worker dying in custody.

### ***Yu Enying, her mother and her baby, PRC nationals***

*"The wanton disregard for human rights and violation of my own civil rights in a country that is supposed to be a democracy has left an indelible impression on me...  
I cannot forgive such neglect of human rights. I insist that our human*

*rights be restored!"*  
*Yu Enying, letter from detention*

Yu Enying, a national of the People's Republic of China, is currently being held in detention with her elderly mother and one-year-old baby, awaiting deportation to China. She claims that she and her baby have suffered severe ill-treatment in detention.

Yu Enying and her 73-year-old mother, Song Juru, were arrested in January 1996 and charged with dishonestly registering a false marriage between Song Juru and a Japanese national. While awaiting trial in Shizuoka Prison, Yu went into labour and was granted temporary release to give birth to her daughter in a nearby hospital. She and her mother were tried on 12 May 1997, found guilty and given a one-and-a-half-year prison sentence suspended for three years.

After the trial, however, Yu, Song and the baby were immediately taken into detention, pending deportation, on the grounds that Yu Enying's visa had expired while they were awaiting trial. They were first held in Nagoya Immigration Detention Centre, where Yu claims that the three of them were kept in an unhealthy and over-crowded cell. Yu reported that the inside of the cell was so hot that they could hardly breathe. To make matters worse, she claims, detainees were allowed to smoke until 10 pm and the room was filled with cigarette smoke all day. During their 36 days in detention in Nagoya, Yu and her family were reportedly allowed to take outside exercise only once, on 13 June. The rest of the time was spent inside the cell and Yu was constantly worried that the conditions inside were causing serious damage to the health of her baby.

In addition to the heat and smoke Yu claims that the cell was infested with mosquitoes, cockroaches and other insects. Her baby was bitten and stung many times on the face and body, and the baby's hands, neck and face became red and swollen. Eventually, Yu was given some ointment after she begged for help from a detention officer.

On 4 June, Yu noticed that her baby's temperature seemed unusually high and that she had a rash. She made a formal request for a medical examination for her baby but the guard reportedly told her that her request would only be allowed if she paid for the examination herself. Concerned for the health of her daughter, Yu reluctantly agreed to pay and was permitted to take the baby to a nearby hospital on 12 June. Her baby was diagnosed as having a cold and a fever and Yu was given some medicine. The accompanying official was also keen to have the doctor sign a prepared form stating that the baby was undergoing "normal development".

Yu also reports that she herself had a pre-existing medical complaint that received scant attention from the authorities. She suffered from chronic Basedow's Disease (a dysfunction of the thyroid gland which causes trembling, anxiety, and other symptoms) for which she had to take medicine every day. She claims however, that her medicine was confiscated as soon as she entered the detention centre. After their lawyer's intervention, Yu and her mother were permitted to have a medical check-up but Yu claims that the doctor only gave them a cursory examination and wrote that their health was "normal". Yu insisted on receiving an examination by a medical specialist and was eventually permitted to undergo tests at a nearby hospital. The results of these tests apparently convinced the authorities to allow her to take her medicine and she was allowed to resume her course of medication. Yu claims however that the intervening period of 24 days with no medicine aggravated her illness. On 17 June 1997 Yu Enying was notified that they were to be transferred to the East Japan Immigration Detention Centre. Yu claims that they were charged a total of 19,620 yen (US\$180) to transport their luggage to their new place of detention.

Yu has been visited by her sister twice since she was transferred to the East Japan Immigration Detention Centre. Her sister reports that Yu's health is getting worse even though she has been allowed to take her medication. She suffers from night sweats, her pulse is irregular and she is exhausted both physically and mentally. She is now confined with her mother and baby in a single cell which is so cramped (roughly the size of two tatami mats) that they all find it difficult to rest. Yu continues to worry about the health of her mother and baby and this causes her great stress which may be aggravating her own illness. According to Yu's sister, her mother is suffering from stomach problems and vomiting. She is extremely unsteady on her feet and pain in her knees makes it impossible for her to get up unaided. Yu's lawyers are currently applying for their provisional release from detention on grounds of improper treatment and for humanitarian reasons.

### **III-treatment of a Danish citizen at Narita Airport, Tokyo**

*"I was detained with other non-Japanese people who had attempted to enter Japan and I witnessed some of them being slapped on the face and beaten on the head - behaviour which seemed normal for the staff of that place...."*

*Hadi Kermani, statement to Amnesty International*

Hadi Kermani (not his real name) claims to have suffered ill-treatment at the hands of an immigration inspector at Narita Airport. His case is currently being dealt with by a lawyer in Denmark and the Danish Foreign Ministry has also conducted an independent investigation. However, the Japanese authorities have denied any wrong-doing in his case and have refused to offer compensation.

Hadi Kermani became a citizen of Denmark after fleeing political persecution in his country of origin, Iran. On 16 September 1996, he left Denmark on a six-week business trip to Asia, including a short visit to Japan. On arrival at Tokyo's Narita Airport on Friday 11 October 1996, Hadi presented his Danish passport to an immigration official. The official apparently doubted his identity and Hadi was taken to the Immigration Department at the airport for further questioning. He was subsequently asked a series of questions about his address, occupation and nationality by an immigration inspector. He claims that she then placed three sheets of paper in front of him and angrily asked him to sign them. One of the papers was in English and reportedly amounted to a confession that he was trying to enter Japan illegally.

When Hadi refused to sign the documents, the immigration inspector allegedly became angry, accused him of travelling with a forged passport and threatened to send him back to Iran. He presented his driving licence to confirm his identity but she allegedly claimed that this was also forged. Hadi claims that when he continued to refuse to sign the documents, the immigration inspector slapped him hard on the face and began hitting him on the head with a cardboard roll containing something heavy. She reportedly hit him on the face around ten times and then kicked his legs. As a result of this assault, Hadi claims that his left eye became bruised and swollen, his left cheek was injured and bleeding and he suffered muscular injury in his legs.

Hadi pointed out to Amnesty International that a number of other immigration officers were standing nearby watching the assault take place but that none tried to intervene to stop it. He asked for permission to contact the Danish Embassy in Japan but was told that he would not be able to do so until the following Monday since the Embassy would be closed at the weekend. He reluctantly agreed to spend the intervening two days in the transit detention centre at a personal cost of US\$260. During his stay in the detention centre, Hadi claims that he saw a number of other detainees being physically abused by the immigration authorities.

Hadi reported that he was forced to leave Japan on Sunday 13 October without being given an opportunity to contact the Danish Embassy in Tokyo. He was sent directly to Malaysia where he suffered further difficulties because the Japanese immigration authorities had cancelled his passport by stamping the word "false" on every page in red ink. He spent eleven days in a crowded and unhygienic cell in Kuala Lumpur Airport before finally being sent back to Denmark on 24 October. Malaysian officials had not

allowed him to contact the Danish Embassy in Malaysia, but he was able to slip a message to that embassy through a fellow inmate.

Hadi went for a medical examination as soon as he arrived home to secure evidence of his injuries. The medical certificate detailed a number of injuries and scars consistent with the facts of the assault as he described them.

When the Danish Foreign Ministry raised Hadi's case with the Immigration Bureau of the Japanese Ministry of Justice, it received an account of the incident from the point of view of the Japanese authorities. The Ministry of Justice claimed that Hadi could not give a satisfactory explanation of his purpose for visiting Japan and that his passport appeared to have been tampered with. The immigration inspector's suspicions were reportedly heightened by the fact that an alleged travelling companion of Hadi admitted to possessing a false passport and attempting to gain illegal entry into Japan.

As his Danish nationality had been confirmed, the Ministry of Justice conceded that Hadi's passport should not have been stamped "false" on every page. The Ministry of Justice has expressed its apologies for this and stated that guidance would be given to all immigration officers to prevent a future repetition of such action.

The Ministry of Justice made the following statement with regard to the alleged assault by the immigration inspector:

*"Immigration inspectors perform their duties with due regard for the human rights of foreigners and do not issue threats or commit acts of violence. In particular, the officer concerned in this case was a female member of staff, about 155cm in height. Her accuser is a man of around 180cm in height. His allegation that she beat him and kicked him therefore lacks credibility".*

By no means satisfied by this response, Hadi has attempted to take legal action to obtain compensation and redress for the injuries he claims to have suffered. He is currently seeking a lawyer in Japan who will help him take the case to court but is worried that he will be forced to drop the case because of the high cost of legal representation in Japan.

### **3.4 III-Treatment of Asylum-Seekers**

#### ***Luo Yi, a PRC national***

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*“The system is terrible for foreigners.....I came to Japan thinking that this is a democratic country, but I feel that what the immigration officials have done is unjust. I wanted to open the way for others subject to persecution in their own country.”*

*Luo Yi, statement after his release*

Born and raised in China, Luo Yi became involved in political protests sparked by the Tiananmen demonstrations in 1989, and was detained by the police in China for two weeks because of his political activities. He eventually decided to flee China and arrived in Japan in July 1995 where his older brother was residing under a “special activities” visa. Although Luo Yi requested legal representation and asylum as soon as he arrived at Kansai airport in Japan, immigration officials refused to grant him entry and began to take the necessary steps to have him deported. He was taken into detention at the airport. Luo Yi claims that there were no forms available at Kansai Airport for him to make an application for refugee status on arrival.

To protest against this treatment and the threatened deportation, Luo Yi started a hunger-strike. He soon became ill and after two weeks he was granted “emergency permission to land in Japan” for ten days to obtain medical treatment. It was at the end of this period on 14 August 1995 that he finally succeeded in making an application for refugee status. He was then taken back into detention in Kansai Airport. Little more than one week later, on 23 August, Luo Yi was told that the Government had rejected his application. The grounds for its decision were that he “had no concrete evidence that substantiated his claim that he feared political persecution in China”. Dissatisfied with this decision, Luo Yi refused to sign his deportation order and vowed to appeal against the judgement.

Luo Yi spent a total of one-and-a-half-years in detention fighting for refugee recognition in Japan. Despite the fact that the United Nations High Commissioner for Refugees recognised him as a ‘mandate refugee’ on 3 October 1995, the Japanese Government continued to uphold its decision not to grant him refugee status. Luo Yi filed a suit against the Government’s decision at the Osaka District Court in November 1995 but lost the case.

Luo Yi spent the majority of his time in Japan in Osaka Immigration Detention Centre which was built to house short-term detainees. As such, it has no facilities for regular outdoor exercise and Luo Yi spent almost all his time there shut up inside his cell.

Eventually Luo Yi gave up his fight to win refugee recognition in Japan and accepted an offer of asylum from the Danish Government which agreed to accept him under the UN ruling. For its part, the Japanese Government granted Luo Yi a special permit of stay allowing him to leave Japan legally without the stigma of deportation. After one final meeting with his brother in Tokyo, Luo Yi flew out of Japan on 5 February 1996 to begin a new life in Denmark.

### ***An asylum-seeker from Iraq***

MD is an Iraqi national who has applied for refugee status in Japan on the grounds that he and his family were subject to political persecution in Iraq. He was held in detention for over a year in Japan while the authorities considered his application.

MD first arrived in Japan as a stowaway on a container ship. The immigration authorities in the port of Yokohama refused to allow him to land in Japan, but he eventually managed to gain illegal entry by swimming ashore on 17 November 1995. When he went to a local police station to ask for help he was transferred to the immigration authorities once again and placed in detention. He was questioned and later told that he had to leave Japan, but he refused to sign the deportation order.

With the intervention of the United Nations High Commissioner for Refugees (UNHCR), who had been alerted about the situation of MD when he first arrived in Yokohama, MD succeeded in making a formal request for refugee status. He was then transferred to a solitary cell in the Yokohama Detention Centre, an action which he believes was punishment for applying for refugee recognition. He submitted his application on 8 January 1996 and was given a preliminary interview on 8 March in connection with his application.

After his interview, MD was transferred to the East Japan Immigration Detention Centre, where he was allowed to exercise outside for only one hour per week. He claims that he was questioned by the authorities again on 12 September 1996, ostensibly because the previous inspector had neglected to ask him some important questions. It was not until the end of April 1997 that all of the necessary documents were ready and that MD could be given his second formal interview. By this time, the immigration inspectors had changed and he claims he was asked the same questions as before.

MD received no information about the progress of his application and made frequent requests to be released from detention while the Government considered his case. His lawyer worked in cooperation with the UNHCR to secure his release and on 4 March 1997 the UNHCR submitted an application for temporary release on the grounds that MD was suffering psychological problems due to his long-term detention and to the uncertainty surrounding his future. The Japanese authorities granted this request on 12 May but only on the condition that someone would act as a guarantor to the value of one million yen (about US\$10,000). While the Tokyo representative of the UNHCR was prepared to act personally as guarantor, the UNHCR was unable to provide the amount sought by the Japanese authorities. Eventually MD's lawyer succeeded in raising the money and agreed to act as guarantor. MD was finally released from detention on 16 May into the care of a church-based charity. He continues to await the outcome of his application.

### ***An Iranian family***

An Iranian couple came to Japan in 1992 with their two young children after having reportedly suffered political persecution in Iran. They were granted temporary visas, but found work and remained in Japan after their visas had expired. Their older child began to attend elementary school in Japan. The couple were arrested in 1994, charged with violating immigration laws and the procedure for their deportation was initiated.

The couple claim that they did not apply for refugee status because they were not informed that such a procedure existed. Instead, they appealed to the Ministry of Justice against their deportation. The authorities rejected their appeal and on 4 July 1995 the family were told that they had to leave. The mother and father finally managed to apply for refugee status on 19 and 21 July respectively.

Since then the family have been held in detention separately for varying periods of time. On 28 July 1995 the mother and two children were taken into Tokyo Immigration Detention Centre but were released just over one week later after their lawyer made a formal complaint about the detention of two young children. Their mother claims that her young children had to listen to the conversations of other detainees sharing their cell, including former prostitutes also awaiting deportation. She also claims that one of these women tried to pull down the trousers of her younger child. They were reportedly kept in a small, dirty, overcrowded cell that had only one toilet with a low partition that afforded no privacy. The father was kept in detention for over two months, but was granted temporary release on 14 September 1995 to undergo a gallstone operation.

The family has now been released from detention, but their legal status remains uncertain. Although the UNHCR has awarded them mandate refugee status, the family are still awaiting a decision on their application from the Japanese Ministry of Justice.

## **4. Conclusion and Recommendations**

As the above cases suggest, foreigners in Japan have suffered human rights violations in a variety of different situations. In some cases, human rights violations appear to have resulted from the actions of officials entrusted with the custody of foreigners. In others cases, such as the detention of asylum-seekers, it is the implementation of Japan's legislation itself which leads to human rights violations. In all cases where alleged victims of human rights violations have sought to complain against actions taken by the authorities, it appears that complaints procedures have been weak and have not led to a timely and adequate solution.

Amnesty International seeks to ensure that no-one in Japan, be they foreign nationals or Japanese citizens, is subjected to torture or ill-treatment. The recommendations detailed below seek to fulfill that aim by minimizing the risk that human rights violations will occur, and by strengthening procedures to investigate complaints, provide compensation to victims and bring human rights violators to justice.

Some of the recommendations apply only to foreigners, while others should also apply to Japanese citizens in custody. Amnesty International urges the Japanese Government to implement these recommendations in consultation with non-governmental organizations and relevant professional groups (such as Bar Associations and Medical Associations).

The recommendations below concern mostly the situation of people in detention. However in many cases, deprivation of liberty should itself be restricted further than it currently is in Japan. In particular, pre-trial detention should be limited, in accordance with the UN Standard Minimum Rules for Non-custodial Measures (also known as the “Tokyo Rules”), and used only as a measure of last resort.

### ***1. Ratify the Convention against Torture and other human rights standards***

Japan is a major power, often seen in recent debates over UN reform as a major contender for a permanent seat on the Security Council. Of all the current permanent members of the Security Council and known contenders for a seat on that body, Japan is the only one which has yet to sign the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. By signing and ratifying the Convention against Torture, and by making a declaration under Article 22 of that Convention to enable the Committee against Torture to consider complaints by individuals in Japan, the Japanese Government would send a clear sign of opposition to all forms of torture and ill-treatment. Ratification would also ensure international monitoring of Japan’s compliance with international safeguards against torture, and would, if a declaration under Article 22 were made, open a further avenue of redress to people who allege they have suffered torture or ill-treatment.

Similarly, by ratifying the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), Japan would ensure that, in addition to the safeguards provided by Japanese domestic procedures, the UN Human Rights Committee could consider appeals by people in Japan who complain that they have suffered human rights violations. While not a substitute for domestic complaints mechanisms, the Optional Protocol provides an added safeguard and by ratifying it, Japan would show its willingness to abide fully by international human rights standards.

## ***2. Inform detainees under any form of detention about their rights***

In many of the cases described above, foreign nationals in police custody, immigration detention centres or prisons are not informed adequately about their rights. In particular, they do not always have prompt access to a lawyer or advice in a language they understand. Amnesty International therefore recommends that the Japanese Government should take the following steps:

- Ensure that foreign nationals detained by police or immigration authorities have regular access to a lawyer from the day they are taken into detention. They should also be allowed to seek advice from their embassy or consulate without undue delay. Foreigners held in immigration detention centres should, in addition, have regular access to non-governmental organizations and to representatives of the UNHCR.
- Ensure that foreign nationals in any form of detention are provided with the services of competent and qualified interpreters and translators during interrogation by police, interviews with immigration officials, and whenever necessary to make themselves understood in their dealings with detention officials, medical personnel and others. No detainee should be asked to sign a document that he or she does not fully understand.
- Ensure that detainees are promptly informed, in a language they understand, of all their legal rights, including the right to lodge complaints about their treatment.

## ***3. Improve access to medical care***

Several people interviewed by Amnesty International have complained about poor standards of medical treatment in centres of detention in Japan. Physical examinations by medical specialists employed in prisons and detention centres or in nearby hospitals have been cursory, and inappropriate forms of medicine have been prescribed. In some cases detainees suffering from pre-existing medical complaints have had their medicine confiscated by detention officials. In a number of cases, detainees have been refused medical treatment by detention authorities and there is a serious lack of access to psychiatric or counselling services in all centres of detention in Japan. The Japanese Government should:

- Improve access to medical care by ensuring that qualified medical staff are available to deal with detainees' complaints on request. Detainees should also be given access to psychiatric and counselling services.

- Ensure that medical records are kept confidential, and can be communicated in full at the detainee's request to his or her lawyer or family. Detention centres must not be allowed to withhold medical information about individual detainees against the wishes of the detainee concerned.
- Give specialist training to medical practitioners who treat detainees to enable them to better identify and treat the particular medical problems (both physical and psychological) that detainees are likely to experience.

#### ***4. Reduce the permissible length of detention of suspects by police***

A number of cases detailed above reveal that despite official attempts in recent years to separate the two security functions of interrogation and detention, the persistence of the *daiyo kangoku* system continues to heighten the risk that suspects will be subjected to human rights violations. Amnesty International recommends that the Japanese Government should:

- Take steps to abolish the *daiyo kangoku* system.
- Reduce the length of time during which the police may detain suspects.
- Implement safeguards, such as video-taping interrogations, to minimise the risk that police officers will resort to ill-treatment or question detainees about a crime unrelated to the original charge.
- Ensure that confessions obtained under duress are never invoked by state prosecutors in legal proceedings against criminal suspects.
- Ensure that all judicial and police official are obliged to report situations in which they have reason to believe that torture or ill-treatment have taken place, and that judicial inquiries are systematically carried out.

#### ***5. Improve the training of officials and the judiciary in human rights issues***

Decisions and statements by public officials reported in some of the cases above illustrate a widespread lack of awareness of international human rights standards.

- Human rights education must be provided for all law enforcement and detention officials and the judiciary should be fully versed in the substance and content of international human rights instruments.

- Officials must be made particularly aware of the need to guard against racist and xenophobic behaviour and must be informed of Japan's international obligations under the United Nations Convention on the Elimination of Racial Discrimination.
- It should be made clear during the training of officials that any form of torture or ill-treatment is a criminal act. Officials should be instructed that they are obliged to refuse to obey any order to torture or commit acts of ill-treatment.
- Human rights training should take particular account of the UN Code of Conduct for Law Enforcement Officials, the SMR and the Declaration against Torture.

***6. Enhance the accountability of centres of detention to independent inspections and to non-governmental organizations***

The secrecy that surrounds conditions in prisons and other centres of detention makes them fertile ground for human rights violations. The following measures should be implemented to ensure the public accountability of centres of detention:

- The Japanese Government should permit regular, independent, unannounced and unrestricted investigations of prisons and immigration detention centres by inspectors appointed by independent national bodies and representatives of international bodies, including NGOs.
- Inspectors should be able to communicate with detainees without detention officials being present.

***7. Bring the Prison Law and all other regulations at places of detention into full accordance with international human rights standards***

The intricate web of rules that governs all aspects of life in Japanese prisons and detention centres creates an excessively harsh regime that violates the human rights of detainees and heightens the risk of abuse of power by detention officials.

- The system of rules and regulations that exists in prisons and other detention centres must be relaxed and all rules must be consistent with the provisions of Article 10 of the ICCPR, which states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Rules which constitute "more restriction than is necessary for

safe custody and well-ordered community life” (Article 27, SMR) should be abolished.

- Rules of detention must be made public, including those drawn up at the discretion of individual heads of detention centres.
- The Government should ensure that minor infractions of the rules by detainees are punished in a way that is commensurate with the offence and that disciplinary decisions are subject to an adequate complaints mechanism.

#### **8. *Bring conditions of detention into accordance with international human rights standards***

The experiences of detainees reported above reveal that conditions of detention in Japan often fail to meet international human rights standards. Detainees have been held in unhealthy and unhygienic conditions in both prisons and immigration detention centres without adequate opportunities for outdoor exercise or contact with their friends and family. The authorities should bring detention conditions into line with the SMR. Particular attention should be paid to the following provisions:

- “All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times” (Article 14).
- “Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits” (Article 21(1)).
- “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits” (Article 37).

#### **9. *End the use of restraints as punishments, and bring other disciplinary measures into conformity with international standards***

The personal experiences of some of the detainees mentioned above suggest that “protection cells”, leather handcuffs and straitjackets have been used as a means of punishment in centres of detention in Japan. This practice violates both Japanese Ministry of Justice regulations and international human rights standards. Amnesty International calls on the Japanese Government to fully respect Article 7 of the ICCPR, which prohibits torture and ill-treatment. In particular, the government should:

- Bring disciplinary measures into line with Article 33 of the SMR by ensuring that *hogobo* and instruments of restraint, such as handcuffs and straitjackets, are never used as a form of punishment.

- Ensure that prisoners punished for infringing prison rules are never detained in dirty or dark cells or in conditions which do not fully accord with international standards.

***10. Ensure that detainees have access to effective, impartial and timely complaint mechanisms for alleged human rights violations***

Detainees who have made complaints about their treatment have often been subjected to a deterioration in their conditions of detention. While in theory complaints mechanisms are supposed to ensure confidentiality, in practice detention officials have often been informed of individual grievances and this has put detainees with grievances at risk of further human rights violations. The Japanese authorities should ensure that, in accordance with Article 2(3) of the ICCPR, any person whose rights or freedoms are violated has an effective remedy. In particular, the authorities should:

- Provide adequate, independent and confidential complaints mechanisms for detainees.
- Ensure that detainees do not suffer a deterioration in their conditions of detention as a result of making a complaint.

***11. Carry out systematic and immediate enquiries into allegations of human rights violations***

By instituting mechanisms that provide for an independent investigation into allegations of ill-treatment, the Japanese Government would show its commitment to improving the country's record on human rights and demonstrate its determination to abide by international human rights standards. Amnesty International calls on the Japanese authorities to conduct immediate, impartial and independent inquiries into any allegations of human rights violations, including deaths in custody. The methods and findings of such investigations should be made public and complainants and witnesses should be protected from intimidation

***12. Reform the rules and practices governing the treatment of asylum-seekers***

Asylum-seekers are particularly vulnerable to human rights abuses in Japan. The secrecy surrounding the criteria used for the consideration of individual claims raises concerns that those with genuine grounds for asylum may be turned away. Japan's lack of welfare provision for those awaiting decisions on their claims means that those asylum-seekers that are not detained may be forced to work illegally in Japan to survive. Those who have been detained have been held in conditions which violate international human rights

standards and this has led to severe stress and psychological problems. Amnesty International calls on the Japanese Government to make the following reforms with regard to its treatment of asylum-seekers:

- Remove the secrecy surrounding the refugee recognition procedure and ensure that individual decisions meet Japan's obligations under the Convention Relating to the Status of Refugees. The body responsible for deciding on claims for asylum must be an independent and specialist authority with expertise on international refugee law and international human rights law.
- Ensure that asylum-seekers are made fully aware of the application procedure and that application forms are readily available at all ports of entry to Japan.
- Ensure that border officials are properly trained to recognise anyone who may be at risk of human rights violations if turned away. All officials involved in interviewing asylum seekers must be instructed and trained to follow the procedural guidance given in the UNHCR's Handbook on Procedures and Criteria for Determining Refugee Status.
- Ensure that asylum seekers are not detained unless they have been charged with a recognisably criminal offence, or unless the authorities can demonstrate in each individual case:
  - that detention is necessary;
  - that it is on grounds prescribed by law; and
  - that the motive for detention is recognised as legitimate under international standards.

If asylum seekers are detained their conditions of detention must be in line with international human rights standards. Those that are not detained should be given access to basic welfare provisions while they await the results of their application.