

JAPAN

Human rights concerns in Japan

*Amnesty International
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**AMNESTY
INTERNATIONAL**



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INTRODUCTION

In this submission, prepared for the UN Universal Periodic Review of Japan taking place in October-November 2012, Amnesty International comments on the implementation of recommendations supported by Japan during its previous UPR in April 2008 concerning the ratification of human rights instruments, establishment of a national human rights institution and reform of the *daiyo kangoku* detention system.

As regards Japan's national human rights framework, Amnesty International is concerned that the draft Bill to establish a national human rights institution does not ensure its independence and effectiveness. Moreover, national legislation on discrimination does not provide adequate protection on the grounds of age, gender, religion, sexual orientation and nationality or include a definition of discrimination in accordance with the Convention on the Elimination of All Forms of Discrimination against Women.

Amnesty International has documented cases of torture and other cruel, inhuman or degrading treatment of detainees in the *daiyo kangoku* system. The organization is also concerned about the vulnerable status of asylum seekers and refugees and the abuses they suffer in detention centers. Amnesty International considers the continued denial of justice to the survivors of Japan's military sexual slavery system to be a serious and on-going human rights violation.

FOLLOW UP TO THE PREVIOUS REVIEW

Japan has made little or no progress in implementing recommendations made to it during its first Universal Periodic Review in 2008. Despite agreeing to consider ratifying a number of human rights instruments, including the First Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of Persons with Disabilities,¹ and the Optional Protocols to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to the Convention on the Elimination of All Forms of Discrimination against Women and to the International Convention on the Elimination of All Forms of Racial Discrimination, none of these instruments have been ratified by Japan.²

Japan had accepted a recommendation to establish an independent national human rights institution in line with the Paris Principles.³ However, the Basic Framework on the Establishment of a new National Human Rights Institute, published by the Ministry of Justice in August 2011, falls well short of the Paris Principles. The Basic Framework forms the parameters for a draft Bill to establish a National Human Rights Institute, which is being prepared for submission to the Diet (parliament).

Japan also committed to ensure appropriate treatment of inmates under the substitute detention system (the *daiyo kangoku*).⁴ However, Amnesty International continues to have concerns about the *daiyo kangoku* system, as detailed below.

NATIONAL HUMAN RIGHTS FRAMEWORK

HUMAN RIGHTS LEGISLATION

In 2009, the Committee on the Elimination of Discrimination against Women noted in its Concluding Observations that the definition of discrimination in national legislation is not in

accordance with the Convention on the Elimination of All Forms of Discrimination against Women, and that other legal provisions should be repealed.⁵ For example, discrimination still exists in the Civil Code regarding the minimum age for marriage and the choice of surnames for married couples. Discriminatory provisions also remain in the Family Registration Law with regard to children born out of wedlock and their mothers.

NATIONAL HUMAN RIGHTS INSTITUTION

Amnesty International is concerned that the national human rights institution envisaged under the Basic Framework published in August 2011 would be affiliated with the Ministry of Justice, and that its funding would be provided within the Ministry of Justice's budget, which might not protect it sufficiently from intervention or influence by the government. Further, the draft Bill to establish a national human rights institute, published in December 2011, stipulates that the proposed national human rights institution would delegate work to the Chief of the Legal Affairs Bureau and Regional Legal Affairs Bureaus of the Ministry of Justice. Such a relationship could seriously compromise the independence of the institution.⁶

With regard to the selection and appointment of the High Commissioner and other Commissioners to serve on the new human rights institution, the draft Bill states only that nominated candidates should be of "proper character" and should have "judgment for addressing human rights issues neutrally and fairly". Amnesty International believes that the Bill must expressly require the High Commissioner and other Commissioners to demonstrate substantial knowledge and experience of human rights issues. Moreover, the Paris Principles provide that such posts should be appointed after a meaningful consultation with different sectors of civil society, including human rights non-governmental organizations and academic experts, whereas the current proposal refers only to appointment "with consent of both houses of the Diet".

The draft Bill also lacks clarity regarding the scope of the proposed national human rights institution. Amnesty International believes this should be defined in the broadest possible terms. The proposal does not provide for the institution to carry out visits to any place where a person may be deprived of their liberty, including prisons or other detention facilities. There is also a lack of clarity regarding the institution's authority to submit recommendations to the executive and to examine laws to ensure compliance with national and international human rights standards.

THE DEATH PENALTY

At the time of its first review in 2008, Japan rejected a number of recommendations regarding the death penalty, including to establish a moratorium on executions and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.⁷ In the interactive dialogue in the UPR Working Group, Japan stated that it believed that "the application of the death penalty is unavoidable, and, therefore, the abolition of the death penalty is inappropriate".⁸

Since 2008, Japan has executed 27 people, although there were no executions in 2011. There are around 130 prisoners on death row, including several prisoners with mental illness. On 29 March 2012, Japan executed three people, the first executions to be carried out since July 2010.

Executions are carried out in secret and the names of those executed are only announced to the families and the public after the execution has taken place. The prisoners themselves are informed only hours ahead of their execution, which means that prisoners live in constant fear. Under the current system, the prisoner is usually notified in the morning of the day of the execution, although in some cases the prisoner is given no prior notification at all.

Amnesty International opposes the death penalty in all cases and considers it a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

HUMAN RIGHTS SITUATION ON THE GROUND

THE *DAIYO KANGOKU* DETENTION SYSTEM

Amnesty International is concerned that the *daiyo kangoku* system (substitute detention system) continues to be used to obtain “confessions” through torture and other cruel, inhuman or degrading treatment, and has documented measures such as beatings, intimidation, sleep deprivation, prolonged questioning and being forced to stand or sit in fixed positions for long periods.

Under the *daiyo kangoku* system a person can be detained by the police for up to 23 days without charge. There are no rules and regulations regarding how long a person can be interrogated while detained. Since August 2006, the Ministry of Justice has piloted electronic recording of interrogations, but only parts of the interrogations are recorded and only for certain crimes. A review by the Ministry of Justice and the National Police Agency into the Criminal Detention Centers and Treatment of Detainees Act looked at the *daiyo kangoku* system, but this did not lead to any amendments. The issue of electronic recording of interrogations was not considered in the review.

Investigators often restrict the right of individuals to confer with their legal representative, and lawyers are often only granted access to their clients two to three days after applying for permission. Interviews are typically limited to only 15 minutes. Lawyers are not permitted to be present during interrogations in contravention of international standards, notably the Basic Principles on the Role of Lawyers.

JUSTICE FOR THE SURVIVORS OF JAPAN'S MILITARY SEXUAL SLAVERY SYSTEM

Women from across the Asia Pacific region were sexually enslaved by the Japanese Imperial Army from around 1932 until the end of World War II. The Japanese Imperial Army preyed on women and girls who, because of age, poverty, class, family status, education, nationality or ethnicity, were susceptible to being deceived and trapped into the sexual slavery system. The vast majority of them were under the age of 20; some girls were as young as 12 when they were abducted. The Japanese Imperial Army used violence and deception to enslave the women and girls, and survivors have suffered from physical and mental ill-health, isolation, shame and often extreme poverty as a result of their enslavement.

Contrary to the position held by the government, the system of enslavement violated many international standards that existed at the time, including the ILO Convention on Forced Labour (Convention No. 29) and the International Convention for the Suppression of the Traffic in Women and Children (1921). At the time, the vast majority of states, including Japan, had prohibited slavery in accordance with international law. However, procedural and substantive barriers in national legislation have led to the dismissal of all cases brought before Japanese courts, despite judgments recognizing the direct or indirect involvement of the Japanese Imperial Armed Forces.

The government continues to deny justice to the survivors of the military sexual slavery system, insisting that any obligation to provide reparations was settled in the 1951 San Francisco Peace Treaty and other bilateral peace treaties and arrangements. Amnesty International believes the government's position is untenable, including because the San Francisco Peace Treaty and other bilateral treaties and agreements did not cover acts of sexual slavery, and because they expressly allowed for further claims and did not preclude further reparations.⁹ The organization considers that Japan should provide full reparations beyond monetary compensation.¹⁰

REFUGEES AND ASYLUM SEEKERS

The number of asylum applications in Japan has increased dramatically in the past few years. In 2011, 1,867 individuals applied for asylum in Japan, up from 1,388 in 2010. Despite this increase, the government recognized only 21 applicants for refugee status in 2011, compared to 39 in 2010.¹¹ In some cases, the application process has taken years to conclude. During this period, asylum-seekers without residence status are detained, often for lengthy periods of time. Those asylum seekers who are not detained are not permitted to work. Because the government does not provide sufficient support for them, many live in poverty and some are forced to work illegally without any labour protection. Once a deportation order has been issued against failed asylum seekers, they can be detained indefinitely, regardless of whether an appeal or further asylum application has been lodged.

In 2011, the then Special Rapporteur on the human rights of migrants, Jorge Bustamante, concluded that “With regard to the detention of irregular migrants and asylum-seekers [...], [c]lear criteria should be established to limit detention to cases where it is strictly necessary. Legislation should provide for alternatives to detention of migrants. The Immigration Control Act should be amended to introduce a maximum period of detention pending deportation. Under no circumstances, should detention be indefinite. The detention of sick persons, minors or parents of minors should be avoided”.¹²

Since 2011, the Immigration Bureau has drastically reduced the initial processing time for asylum applications and limited the number of asylum seekers held in detention during this phase. Overall, however, the processing time has increased due to the increased time taken to handle appeals.

Migrants and asylum seekers held in detention centers often complain of poor conditions, including inadequate access to medical care, and lack of independent inspection of conditions. In 2010, detainees at the East Japan and West Japan Immigration Centres went on hunger strikes to demand an end to indefinite detention, detention of minors and those in ill-health, as well as improved access to medical care. Some improvements have been made in terms of access to medical care; however, the stress of indefinite detention and the constant threat of deportation continue to impact negatively on the health of detainees. Immigration Detention Centre Visiting Committees were established in 2010; however, these are not independent of the Immigration Bureau and there is still no independent and effective process to address complaints about poor conditions.

In 2010, Japan introduced a pilot programme to resettle refugees processed in a third country, aimed at accepting 30 individuals per year. Over the last three year period (2010-2012), only 55 individuals have entered Japan under this programme, all from Myanmar. Some complain that working conditions are poor, that they receive insufficient support from the government, and that they were misinformed by the authorities prior to arrival in Japan.

DISCRIMINATION AND RACISM

National legislation does not provide protection against direct or indirect discrimination on the basis of age, gender, religion, sexual orientation or nationality. Ethnic and other minority groups in Japanese society, including Ainu, Burakumin and Okinawans, continue to face discrimination. Korean and Chinese communities also risk discrimination. There have been demonstrations against the presence of Korean and Chinese communities in Japan. These have led to physical and verbal abuse against Korean or Chinese individuals and, in some instances, damage to their property.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Japan:

Establishment of a national human rights institution:

- To ensure that any bill submitted to the Japanese Diet (parliament) for the creation of a national human rights institution fully reflects the Paris Principles and allows for the creation of an independent, impartial and credible institution to effectively uphold human rights of all individuals in Japan.

Abolition of the death penalty:

- To introduce a formal moratorium on executions as a first step toward the abolition of the death penalty, to commute all death sentences to terms of imprisonment, and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty.

The Daiyo Kangoku detention system:

- To reform the *daiyo kangoku* system of detention to bring it into line with international standards, including by implementing safeguards such as electronic recordings of the entire interrogation process, and ensuring that detainees are not questioned without the presence of a lawyer and have prompt and unhindered access to legal counsel.

Justice for the survivors of Japan's military sexual slavery system:

- To accept full responsibility and to issue an unequivocal apology for the military sexual slavery system in a manner that is acceptable to the majority of the survivors and that publicly acknowledges the harm suffered by these women and seeks to restore their dignity, including by providing adequate compensation.

Refugees and asylum seekers:

- To ensure that the refugee status determination process is conducted in a fair, effective and transparent manner in line with international law and standards, including the International Convention on the Status of Refugees;
- To end indefinite detention of migrants and asylum seekers;
- To ensure that detention of migrants and asylum-seekers is only used as a last resort and only when the authorities can demonstrate that it is necessary, proportionate and grounded in law, that alternatives will not be effective, and that there is an objective risk of the person absconding.

Discrimination and racism:

- To define discrimination in national legislation in line with the International Convention on the Elimination of All Forms of Racial Discrimination, and to prohibit all forms of direct and indirect discrimination, including on the basis of age, gender, religion, sexual orientation, ethnicity or nationality.

ENDNOTES

¹ Japan signed the Convention on the Rights of Persons with Disabilities in 2007, but has not yet ratified it.

² A/HRC/8/44/Add.1, paragraph 1.a, referring to recommendation 60.2 (Algeria, Canada, Mexico, and Qatar).

³ A/HRC/8/44/Add.1, paragraph 1(b), referring to recommendation 60.1 (Albania, UK, Mexico, Brazil, Portugal, Canada and the Netherlands).

⁴ A/HRC/8/44/Add.1, paragraph 2(f), referring to recommendation 60.13 (Algeria, Belgium, Canada, and the UK).

⁵ Concluding Observations of the Committee on the Elimination of Discrimination Against Women, 7 August 2009, CEDAW/C/JPN/CO/6.

⁶ See: Amnesty International, *Open Letter: Japan's current proposal to establish a National Human Rights Institute does not meet international standards*, AI Index ASA 22/004/2012, 16 March 2012.

⁷ A/HRC/8/44/Add.1, paragraph 1(b), referring to recommendation 60.1 (Albania), and paragraph 2(e), referring to recommendation 60.12 (UK, Luxembourg, Portugal, Albania, Mexico, Switzerland, Italy, Netherlands, and Turkey).

⁸ A/HRC/8/44, paragraph 9.

⁹ Firstly, the San Francisco Peace Treaty, bilateral treaties and agreements do not cover acts of sexual slavery at all. Secondly, the San Francisco Peace Treaty expressly allows for further claims in bilateral agreements, in Article 26. As Japan has entered into a number of bilateral treaties involving compensations; under Article 26 states that ratified the San Francisco Peace Treaty should be extended the same advantages, (regardless of whether or not they have entered into bilateral agreements or treaties waiving reparations). Thirdly, several bilateral treaties and agreements do not appear to preclude further reparations. Fourthly, in the absence of a comprehensive report of the sexual slavery system, including where each "comfort station" was located, it is not clear whether treaties and agreements have been concluded with all affected states. States where the existence or extent of sexual slavery has yet to be revealed could also be entitled to seek reparations. For more information see: Amnesty International, *Still Waiting After 60 Years: Justice for Survivors of Japan's Military Sexual Slavery System*, AI Index: ASA 22/012/2005, 28 October 2005.

¹⁰ Japan has only dealt with one form of reparations in the treaties and agreements it claims settled the issue, namely compensation. Under international standards full reparations involve more than monetary compensation. The International Law Commission's Articles of State Responsibility state in Article 34 that "full reparations for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination...". This article addresses only state responsibility to other states, and should not be considered either as an exhaustive list of the obligations to states or to individuals. In addressing the legacy of the system of sexual slavery, Japan's approach should be comprehensive and victim-focused.

¹¹ Ministry of Justice, http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00085.html (in Japanese).

¹² "Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, Mission to Japan (23 to 31 March 2010)", UN Doc. A/HRC/17/33/Add.3, 21 March 2011, para. 82(a), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/27/PDF/G1112127.pdf>, accessed 23 April 2012.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Japan Open Letter: Reforming Japan's criminal justice system must include abolition or substantial revision of the daiyo kangoku (substitute prison) system and introduction of electronic recording of the entire process of interrogations (Index: ASA 22/010/2012).

Japan Open Letter: Japan's current proposal to establish a National Human Rights Institute does not meet international standards (Index: ASA 22/004/2012).

Japan must provide justice for the survivors of Japan's military sexual slavery system (Index: ASA 22/002/2012).

Japan: Hangings in Japan significant step backwards (Index: ASA 22/006/2012).

Still waiting after 60 years: Justice for survivors of Japan's military sexual slavery system (Index: ASA 22/012/2005).

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/japan>.