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Chair
Special Committee of the Legislative Council
Ministry of Justice
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Dear Chairman

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

Amnesty International welcomes the appointment of the Special Committee of the Legislative Council in June 2011. We understand that the Special Committee has been prioritising aspects of Japan's criminal justice system in need of further consideration with a view to reforming relevant laws and procedures and building a new criminal justice system which could better prevent miscarriages of justice.

Amnesty International recommends that the Special Committee prioritise two areas for further consideration which are essential components of an agenda for reform of the Japanese criminal justice system:

- The need to abolish or substantially reform the *daiyo kangoku* (substitute prison) system
- The need to introduce electronic recording of the entire process of interrogations

Progress on these areas would contribute towards preventing human rights violations within the criminal justice system and providing effective remedies for any violations which may occur.

ABOLITION OR SUBSTANTIAL REVISION OF THE *DAIYO KANGOKU* (SUBSTITUTE PRISON) SYSTEM

Amnesty International has long pointed out that the *daiyo kangoku* (substitute prison) system generates the potential for miscarriages of justice, including in death penalty cases. This system allows the police to detain and interrogate suspects for up to 23 days with limited access to a lawyer. Amnesty International believes that this system is routinely used to obtain "confessions" through torture or other ill-treatment including beatings, intimidation, sleep deprivation and long periods of interrogation without breaks.

The prohibition of torture and other cruel, inhuman or degrading treatment is absolute in international law, including in treaties to which Japan is a state party, with no exceptions permitted, including in times of war or other public emergency.¹ International fair trial standards are explicit that no one

¹ See for instance the International Covenant on Civil and Political Rights, Article 7, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 1, 2, 16.

should be forced to testify against themselves or to confess guilt. Article 15 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires Japan to “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

Forced “confessions” are also contrary to the provisions of the International Covenant on Civil and Political Rights (ICCPR) ratified by Japan in 1979. In its General Comment on Article 7 of the ICCPR, the Human Rights Committee notes that “It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.”²

Access to a lawyer from the outset of detention is a key safeguard against torture and other ill-treatment, and essential to ensuring a fair trial. The right to a fair trial requires that the accused has access to a lawyer not only during the trial itself, but also immediately on arrest, during detention, interrogation and preliminary investigations.³ The Human Rights Committee has stated: “The assistance of counsel should be ensured, through legal aid as necessary, immediately on arrest and throughout all subsequent proceedings to persons accused of serious crimes, in particular in cases of offences carrying the death penalty.”⁴

Having examined Japan’s last report in April/May 2007, the UN Committee against Torture has stated that it was “deeply concerned with the prevalent and systematic use of the *Daiyo Kangoku*, substitute prison system, for the prolonged detention of arrested persons even after they appear before a court, and up to indictment, which, coupled with insufficient procedural guarantees for the detention and interrogation of detainees, increases the possibilities of abuse of their rights, and may lead to a de facto non respect of the principles of presumption of innocence, right to silence and right of defense.” The Committee against Torture called upon Japan, among other things, to “amend its legislation to ensure complete separation between the functions of investigation and detention (including transfer procedures), excluding police detention officers from investigation and investigators from matters pertaining to the detention of detainees; and to “limit the maximum time detainees can be held in police custody to bring it in line with international minimum standards.”⁵

In 2008 the Human Rights Committee similarly expressed concern, not for the first time, that “despite the formal separation of the police functions of investigation and detention under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the substitute detention system (*Daiyo Kangoku*), under which suspects can be detained in police detention facilities for a period up to 23 days to facilitate investigations, without the possibility of bail and with limited access to a lawyer especially during the first 72 hours of arrest, increases the risk of prolonged interrogations and abusive interrogation methods with the aim of obtaining a confession.” These concerns were expressed under Articles 7 (prohibition of torture and other ill-treatment), 9 (rights to liberty); 10 (right to humane treatment; and 14 (right to a fair trial). The Human Rights Committee recommended that Japan “should abolish the substitute detention system or ensure that it is fully compliant with all guarantees contained in article 14 of the Covenant. It should ensure that all suspects are guaranteed the right of confidential access to a lawyer, including during the interrogation process, and to legal aid from the moment of arrest and irrespective of the nature of their alleged crime, and to all police records related to their case, as well as to medical treatment. It should also introduce a pre-indictment bail system.”⁶

In 2009 Sugaya Toshikazu was acquitted after spending 17 years in prison for a crime he did not commit. Sugaya “confessed” to the crime after being interrogated by police under the *daiyo kangoku*

² Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI/GEN/1/Rev.1 at 30, para. 12.

³ Concluding Observations of the Human Rights Committee: Georgia, UN Doc. CCPR/C/79/Add.74, 9, April 1997, para. 28.

⁴ Concluding Observations of the Human Rights Committee: Trinidad and Tobago, UN Doc., CCPR/CO/70/TTO, 3 November 2000, para.7.

⁵ Conclusions and recommendations of the Committee against Torture: Japan, UN Doc. CAT/C/JPN/CO/1, 18 May 2007, paras. 15.

⁶ Concluding observations of the Human Rights Committee: Japan, UN Doc. CCPR/C/JPN/CO/5, 18 December 2008, para. 18

system. He was acquitted after DNA evidence used to help convict him was found to be inaccurate. During his initial trial Sugaya retracted his “confession” claiming that that he had been forced to confess.

In the Shizuoka District Court, the defence counsel for Hakamada Iwao, during his most recent appeal for retrial, has called into question the accuracy of DNA evidence provided during his initial trial. Hakamada, who has been on death row since 1968, “confessed” after 20 days of interrogation by police without a lawyer present in the *daiyo kangoku* system. He retracted his confession and testified during his trial that police had beaten and threatened him to force him to sign a confession.

INTRODUCTION OF ELECTRONIC RECORDING OF THE ENTIRE PROCESS OF INTERROGATIONS

Amnesty International believes that recent trials of electronic recordings for only parts of interrogations are insufficient to prevent miscarriages of justice. Partial recordings cannot adequately monitor whether interrogations by law enforcement officers are conducted appropriately. Amnesty International urges the Special Committee of the Legislative Council to recommend that the government introduce electronic recordings of the entire process of interrogations including under the *daiyo kangoku* system and to grant criminal suspects unhindered access to legal counsel, including during detention, interrogations and preliminary investigations. Moreover, the Special Committee of the Legislative Council should also recommend that the government also take steps to keep all recordings of interrogations in a secure facility for a reasonable period of time in order to ensure they are available for reviewing by investigators if necessary.

The Committee against Torture recommended that Japan “ensure that interrogation of detainees in police custody or substitute prisons are systematically monitored, by mechanisms such as electronic and video recording of all interrogations, access and presence of the defense counsel during interrogation and that recordings are made available for use in criminal trials.”⁷

The Human Rights Committee similarly recommended that Japan “adopt legislation prescribing strict time limits for the interrogation of suspects and sanctions for non-compliance, ensure the systematic use of video-recording devices during the entire duration of interrogations and guarantee the right of all suspects to have counsel present during interrogations, with a view to preventing false confessions and ensuring the rights of suspects under article 14 of the Covenant.”⁸

Amnesty International believes that reform or abolition of the *daiyo kangoku* system and introduction of recording of the entire process of interrogations would go a long way toward improving the safety of court decisions on the innocence or guilt of accused persons.

The organization would welcome the opportunity to discuss further our concerns regarding the *daiyo kangoku* system with our colleagues at Amnesty international Japan or our staff at the International Secretariat in London.

Yours sincerely,

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⁷ Conclusions and recommendations of the Committee against Torture: Japan, para. 18.

⁸ Concluding observations of the Human Rights Committee: Japan, para. 19.