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INTRODUCTION

Amnesty International is submitting this briefing for consideration by the Human Rights Committee (the Committee) ahead of its examination in July 2014 of Japan's sixth periodic report on the measures taken to implement its obligations under the International Covenant on Civil and Political Rights (the Covenant).

This submission provides an overview of the organization's main concerns about the Japanese government's compliance with its obligations under articles 2, 3, 6, 7, 8, 9, 10, 12, 13, 14, 17, 19, 20, 26, and 27 of the Covenant. It highlights concerns with respect to the constitutional and legal framework, discrimination and advocacy of hatred; the denial of the military sexual slavery system by public officials; the continuing and increasing use of the death penalty; the *daiyo kangoku* system of pre-trial detention; the recognition of refugees; medical care in immigration detention centers; and the enactment of the Act on the Protection of Specially Designated Secrets.

The document is based on Amnesty International's research over the past five years.

CONSTITUTIONAL AND LEGAL FRAMEWORK (ART. 2)¹

Amnesty International is concerned that the Japanese government has not taken clear steps towards the establishment of a National Human Rights Institution (NHRI). As the Committee notes in General Comment 31, national human rights institutions, endowed with appropriate powers, can contribute to the prompt, thorough and effective investigation of allegations of violations, required by Article 2.² During the last Universal Periodic Review of Japan in 2012, various States made recommendations for Japan to establish an NHRI.³ These recommendations were accepted by the State.⁴ A draft bill was prepared by the Democratic Party of Japan but was not tabled in the Diet (parliament) before the change in government in December 2012. There has been no visible progress since then.

¹ Human Rights Committee, List of issues in relation to the sixth periodic report of Japan, (Hereafter The Committee, LOI Japan) CCPR/C/JPN/Q/6, paragraph 2.

² General Comment 31, para. 15.

³ Report of the Working Group on the Universal Periodic Review, Japan, A/HRC/22/14, 14 December 2012, recommendations 147.47 (Nepal); 147.48 (Spain); 147.49 (Nicaragua); 147.50 (Tunisia); 147.51 (Ukraine); 147.52 (United Kingdom); 147.53 (Benin); 147.54 (Burkina Faso); 147.55 (France); 146.56 (Indonesia); 147.57 (Jordan); 147.58 (Malaysia); and 147.59 (Mexico); Principles related to the Status of National Institutions, adopted by General Assembly resolution 48/134 of 20 December 1993.

⁴ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Japan, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/22/14/Add.1, p. 5/6 – recommendations 147.47 – 147.59

NON-DISCRIMINATION (ARTS. 2(1), 20, 26, 27)⁵

The Japanese government has failed to effectively address discrimination against foreign nationals such as Koreans and their descendants who are commonly referred to as *Zainichi* (literally "residing in Japan") and migrants.

Discrimination against "Korean ethnic schools"

"Korean ethnic schools" have been excluded from a tuition-waiver program introduced in April 2010 for high schools. The program's purported aim is to provide equal opportunities for students to reach higher education by subsidizing high-school tuition fees. In December 2012, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) announced the government's decision to exclude "Korean ethnic schools" from the program. It announced that it was doing so due to the lack of progress into investigations of abductions of Japanese nationals who had allegedly been taken to North Korea. A further ground for the decision was the alleged connection between "Korean ethnic schools" and the General Association of Korean Residents in Japan (Chongryon). The Minister of Education, Culture, Sports, Science and Technology claimed that Chongryon was heavily influenced by the Workers' Party of Korea in the Democratic People's Republic of Korea, and that schools connected to the Association could not receive public funds.

In Japan's response to the List of Issues, it states that

"With regard to education, Article 4 of the Basic Act on Education provides that citizens shall all be given equal opportunities to receive education according to their abilities, and shall not be subject to discrimination on account of race or sex etc."⁶

The decision to exclude "Korean ethnic schools" from this program demonstrates a difference in treatment of a minority on the basis of their national origin, and on the basis of a purported political opinion. The ordinance that classifies "Korean ethnic schools" as ineligible for this support is discriminatory. The state has provided no reasonable justification for this difference in treatment. The government is in violation of Article 26 of the Covenant, as it has failed to guarantee to Korean high school students equal protection against discrimination on the basis of their national origin. "Korean ethnic schools" teach as part of their curriculums Korean language and Korean history. Therefore, the exclusion of "Korean ethnic schools" from the tuition-waiver program may also affect the Article 27 rights of the

⁵ The Committee, LOI Japan, paragraph 4 and 21

⁶ Replies to the list of issues to be taken up in connection with the consideration of the sixth periodic report of the government of Japan, paragraph 20 (Addendum to the List of Issues)

Korean minority to enjoy their culture and use their own language.

Advocacy of hatred

The Japanese government has failed to take effective measures to eliminate advocacy of hatred that constitutes incitement to discrimination, hostility or violence and extreme forms of racial discrimination. In particular, the prohibition of advocacy of hatred contained in Article 20 is not effectively incorporated into Japanese law.

Advocacy of hatred and discriminatory expression are employed by a number of Japanese groups in particular using the internet and specifically YouTube. One high profile group “Zainichi Tokken wo Yurusanai Shimin no Kai (在日特権を許さない市民の会,” meaning Citizens against the Special Privileges of the Zainichi,⁷ oppose granting basic rights to long-term Korean and Chinese residents in Japan as well as other minority groups, such as migrant workers. Known by its shortened name - Zaitokukai - the group has been accused of physical attacks. It uses racially pejorative terms against Koreans, and holds public demonstrations in towns with a high proportion of Korean residents.

There have been a number of court decisions finding Zaitokukai’s activities unlawful. Nevertheless, these decisions do not reflect the nature of the offences committed. In the absence of national legislation prohibiting advocacy of hatred, Japanese courts have only prosecuted these crimes using criminal offences such as defamation.

Public action outside the Suiheisha Museum (Levelers’ Association Museum)

In January 2012, Dairyō Kawahigashi, an executive of Zaitokukai made a discriminatory speech using a loud speaker in front of the Suiheisha Museum in Nara prefecture, during an exhibition highlighting the history of Japanese occupation in Korea. The speech contained numerous discriminatory and intimidating words towards people of *buraku* (the descendants of feudal-era outcasts) origin and Koreans and Chinese residents in Japan, such as

“Look at this museum! Is this eta (many filths) museum, non-human museum, or Suiheisha museum?...They say comfort woman was sex slavery. How stupid they are! You know, it was a sex industry and women were excited to work there. Calling them comfort women or sex slavery impairs their human rights...Come out here. You, eta, non-human dirty people. Non-human is literally not a human being. Are you guys really human beings?”

In June 2012 the Nara District Court decided in favor of the Shuiheisha Museum, which had filed a civil suit against Dairyō Kawahigashi.

⁷ Koreans and their descendants are commonly referred to as *Zainichi* (literally “residing in Japan”), a term that appeared in the immediate post-war years.

MILITARY SEXUAL SLAVERY SYSTEM (ARTS. 2(3), 3, 7 AND 8)⁸

Amnesty International is particularly concerned that the government of Japan continues to deny full and effective reparation to survivors of sexual slavery and those senior government officials and public figures continue to deny the existence of a military sexual slavery system from 1932 until the end of World War II, or to justify the existence of this system. Women from across the Asia Pacific region were forced into sexual slavery by the Japanese Imperial Army from 1932 until the end of World War II. The Japanese Imperial Army preyed on women and girls who, because of their age, class, family status, education, nationality or ethnicity, were susceptible to being deceived and trapped into the sexual slavery system.

In view of Japan's continuing refusal to acknowledge responsibility unequivocally and to ensure full reparations to survivors in accordance with international standards, Amnesty International considers this as an ongoing violation of the above Covenant provisions.

When the first Abe Administration took office in 2007, Prime Minister Shinzo Abe advocated revoking or revising the "Kono Statement,"⁹ saying there was insufficient evidence that the "comfort women" had been coerced into prostitution. High-profile public figures have made remarks implying that military sexual slavery was acceptable during wartime, including Toru Hashimoto, the Mayor of Osaka in May 2013, and Katsuto Momii, head of NHK, Japan's national broadcaster in January 2014.¹⁰

In May 2013, the UN Committee against Torture urged Japan *"to take immediate and effective legislative and administrative measures to find a victim-centred resolution for the issues of 'comfort women'"*¹¹ This recommendation urged the State to publicly acknowledge legal responsibility, refute attempts to deny the facts by government authorities and public figures, disclose related materials, investigate the facts thoroughly, recognize the victim's right to redress, and educate the public about the system.

The government continues to insist 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, mainly because these treaties and agreements did not cover acts of sexual slavery and because they explicitly

⁸ The Committee, LOI Japan, paragraph 22.

⁹ In 1993, then Japanese chief cabinet secretary Yohei Kono issued a statement acknowledging for the first time that the Japanese military had recruited women and coerced them to serve as sexual slaves. Since then, however, Japanese government officials have continued to deny or make excuses for the sexual slavery system.

¹⁰ JAPAN: NHK CHIEF'S SEXUAL SLAVERY COMMENTS AN "INSULT"

<https://www.amnesty.org/en/for-media/press-releases/japan-nhk-chief-s-sexual-slavery-comments-insult-2014-01-27>

¹¹ CAT/C/JPN/CO/2, UN Committee against Torture, Concluding observations on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6-31 May 2013), para 19.

allowed for further claims and did not preclude further reparation.¹²

THE DEATH PENALTY (ARTS. 6, 7, 9, AND 14)¹³

Between January 2008 and May 2014, Japan executed 39 people. As of May 2014, a total of 130 people were under sentence of death.¹⁴ No executions were carried out between 28 July 2010 and 29 March 2012. During the same period, Keiko Chiba, Minister of Justice between September 2009 and September 2010, established a study group within the Ministry of Justice to assess the use of the death penalty in the country.

In its General Comment No. 6 the Human Rights Committee observed that Article 6 of the ICCPR “refers generally to abolition in terms which strongly suggest that abolition is desirable”, and that all measures of abolition should be considered as progress in the enjoyment of the right to life”.¹⁵ It has since consistently called on states parties to abolish the death penalty and accede to the Second Optional Protocol to the ICCPR.¹⁶

The resumption of executions after a twenty-month hiatus marked a regressive step as there had been signals that the authorities were considering moving away from the death penalty and initiating a debate to that aim. During the country's latest Universal Periodic Review in October 2012, the Japanese authorities rejected recommendations made by more than 20 states regarding the death penalty, including introducing a moratorium on executions with a view to full abolition.¹⁷

¹² Amnesty International acknowledges the positive contribution a fund such as the Asia Women's Foundation can make to assisting survivors. However, for a victim centred approach a range of reparations may be needed including symbolic reparations (such as erecting memorials) and legal and administrative interventions (such as disclosing all information held) linking reparation and truth recovery. Survivors want compensation but many want it from the government of Japan, for them this establishes a clear acceptance of responsibility. This in turn may prove more effective in preventing recurrence of the crime of sexual slavery, impunity for perpetrators and denial of reparations for victims.

Amnesty International, *Japan: Still Waiting After 60 years: Justice for Survivors of Japan's Military Sexual Slavery System*, ASA 22/012/2005, <http://www.amnesty.org/en/library/info/ASA22/012/2005>, pp.29-30.

¹³ The Committee, LOI Japan, paragraphs 12 and 13.

¹⁴ Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution. The death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment.

¹⁵ Human Rights Committee, General Comment No. 6 – The right to life (Article 6), adopted at the sixteenth session, 1982, available at: <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/84ab9690ccd81fc7c12563ed0046fae3?Opendocument>, accessed 6 June 2014.

¹⁶ See for example concluding observations on Jamaica (UN Doc. CCPR/C/JAM/CO/3, 17 November 2011) para 10, Guatemala (UN Doc. CCPR/C/GTM/CO/3, 19 April 2012) para 13, Malawi (UN Doc. CCPR/C/MWI/CO/1, 18 June 2012) para 10, Ethiopia (UN Doc. CCPR/C/ETH/CO/1, 19 August 2011) para 19, Mongolia (UN Doc. CCPR/C/MNG/CO/5, 2 May 2011) para 6 and Kazakhstan (UN Doc. CCPR/C/KAZ/CO/1, 19 August 2011) para 12.

¹⁷ Human Rights Council, Twenty-second session, Report of the Working Group on the Universal Periodic Review*, Japan,

Lack of transparency regarding the death penalty

Executions are shrouded in secrecy in Japan. In its 1998 review of Japan¹⁸, the Human Rights Committee stated that "the failure to notify the family and lawyers of the prisoners on death row of their execution" in a state party to the ICCPR is "incompatible with the Covenant". The Human Rights Committee has reiterated this finding in other cases noting that such secrecy amounts to a violation of Article 7 ICCPR.¹⁹

Throughout the period under consideration, executions continued to be carried out without prior announcements being made to the prisoners' relatives and lawyers, and the public at large²⁰. Prisoners are typically given only a few hours' notice, and some may be given no warning at all. The crime, along with the name of the individual and the place of execution were announced to the media after the prisoner's death.²¹

In February 2014, a group of former lay judges urged the Minister of Justice to halt executions until there is greater transparency in the use of capital punishment in Japan.²²

Fair trial rights

As outlined in next section on the *daiyo kangoku* system of pre-trial detention, the prolonged period of pre-trial detention at police stations coupled with extremely lengthy judicial processes has not only exacerbated the risk of executing innocent people and violating fair trial rights, but also has the concrete potential of violating the right to compensation for unlawful detention. These rights are set out in Articles 9 and 14 of the ICCPR.

Conditions on death row

Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 8 March 2013, A/HRC/22/14/Add.1.

¹⁸ Human Rights Committee, *Concluding observations of the Human Rights Committee: Japan*, UN document CCPR/C/79/Add.102, 19 November 1998, para. 21.

¹⁹ For instance, in *Bondarenko vs. Belarus* (CCPR/C/77/D886/1999), the Human Rights Committee has concluded that secrecy surrounding execution: "[has] the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress... [and that the] authorities' initial failure to notify the author of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounts to inhuman treatment of the author, in violation of article 7 of the Covenant [prohibiting torture or cruel, inhuman or degrading treatment or punishment]." (Emphasis added) [UN Human Rights Committee, 77th Session, 11].

²⁰ In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty "to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution".

²¹ See, for instance, Amnesty International, *Japan hangs three in first executions under 'merciless' Abe government*, 21 February 2013, available at <http://www.amnesty.org/en/for-media/press-releases/japan-hangs-three-first-executions-under-merciless-abe-government-2013-02-2>; Amnesty International, *Japan executions show 'chilling' escalation in death penalty use*, 26 April 2013, available at <http://www.amnesty.org/en/news/japan-executions-show-chilling-escalation-death-penalty-use-2013-04-26>

²² The Japan Times, *Lay judges' moral dilemma*, 21 May 2014, available at http://www.japantimes.co.jp/opinion/2014/03/21/editorials/lay-judges-moral-dilemma/#.U5f39nJ_uZc.

In its 2008 review of Japan²³, the Human Rights Committee expressed its serious concern “at the conditions under which persons are held on death row” and recommended “that the conditions of detention on death row be made humane in accordance with articles 7 and 10, paragraph 1, of the Covenant.” It specifically requested Japan to “relax the rule under which inmates on death row are placed in solitary confinement, ensure that solitary confinement remains an exceptional measure of limited duration, introduce a maximum time limit and require the prior physical and mental examination of an inmate for confinement in protection cells and discontinue the practice of segregating certain inmates in ‘accommodating blocks’ without clearly defined criteria or possibilities of appeal.”²⁴

Prison conditions experienced by those under sentence of death in Japan remain harsh. Prisoners continue to be detained in solitary confinement and are prohibited from talking to other prisoners. Contact with the outside world is limited to infrequent and supervised visits from family, lawyers or other approved visitors. Exercise is limited to two short (30 minutes) sessions per week outside their cells in summer and three times a week in winter. A prison staff member observes these exercise periods during which the prisoner is alone. Apart from this and toilet visits, prisoners are not allowed to move around their cell but must remain seated. Prisoners who breach disciplinary rules by, for example, moving within their cell at times when this is prohibited, or making a noise or otherwise creating a disturbance, may be subjected to punishment wherein conditions become harsher than normal.²⁵

In addition to pre-existing mental illness that may have been a factor in crimes for which individuals may be prosecuted, the harsh conditions faced by death row prisoners may lead to progressive mental deterioration and development of significant mental illness.

No mandatory appeals and executions while appeals are pending

Despite recommendations made to Japan by the Human Rights Committee in previous reviews,²⁶ no system of mandatory appeals in death penalty cases has been established in Japan. This has the effect of placing prisoners on a fast track to execution if they decline to appeal and cuts short the review process if they withdraw their appeals at any stage, putting defendants with mental disabilities in particular at risk.²⁷

Procedures initiated after a death sentence has been handed down, including appeals for clemency, do not automatically suspend executions. Theoretically, this means that death row inmates may be executed during their appeals process for clemency, which is contrary to Safeguard 8 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty. Amnesty International is concerned that this is in contravention of the right to

²³ Human Rights Committee, *Concluding observations of the Human Rights Committee: Japan*, UN document CCPR/C/JPN/CO/5, 18 December 2008, para. 21.

²⁴ *Ibid.*

²⁵ Amnesty International, *Hanging by a thread-Mental health and the death penalty in Japan*, ASA 22/005/2009, September 2009.

²⁶ See, for instance, Human Rights Committee, *Concluding observations of the Human Rights Committee: Japan*, UN document CCPR/C/JPN/CO/5, 18 December 2008, para. 17.

²⁷ *Hanging by a thread-Mental health and the death penalty in Japan*, p.34..

seek pardon or commutation under Article 6.

Executions of individuals with mental disabilities

A number of mentally ill prisoners in Japan have already been executed and other prisoners remain on death row awaiting execution that may also have mental illness.

International standards on the death penalty exclude people with mental and intellectual disabilities from those against whom the death penalty may be imposed. Safeguard 3 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "nor shall the death penalty be carried out on pregnant women, or on new mothers, or on persons who have become insane". In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution". In resolution 2005/59, the UN Commission on Human Rights urged all states that still maintain the death penalty "not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person."

In its Concluding Observations following the 2008 review of Japan, the Human Rights Committee urged the Japanese authorities to give consideration "to adopting a more humane approach with regard to the treatment of death row inmates and the execution of persons at an advanced age or with mental disabilities."²⁸

Furthermore, in his 2012 report the UN Special Rapporteur on Torture stated that "It is inherently cruel to execute pregnant women, nursing mothers, elderly persons and persons with mental disabilities and it leads to a violation of the prohibition of torture and cruel, inhuman and degrading treatment."²⁹ The protection against torture or to cruel, inhuman or degrading treatment or punishment is guaranteed in Article 7 of the ICCPR.

In its review of Japan in 2013, the Committee against Torture recommended that Japan ensure "an independent review of all cases when there is credible evidence that death row inmate is mentally ill. Furthermore, the State party should ensure that a detainee with mental illness is not executed in accordance with article 479(1) of the Code of Criminal Procedures"³⁰ Article 479 requires executions of people "in a state of insanity" to be stayed by order of the Minister of Justice.

Hakamada Iwao

²⁸ Human Rights Committee, *Concluding observations of the Human Rights Committee: Japan*, UN document CCPR/C/JPN/CO/5, 18 December 2008, para. 16.

²⁹ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, 9 August 2012.

³⁰ Committee Against Torture, *Concluding observations on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6-31 May 2013), Japan*, CAT/C/JPN/CO/2, 28 June 2013, para. 15.

Hakamda Iwao, now 78 years old, had been on death row since 1968. He was convicted of murdering his boss and his family in 1966 after an unfair trial.

Like most other persons on death row, Iwao was held mainly in solitary confinement for years. His mental health has deteriorated as a result of the decades he has spent in isolation. Within months of the Supreme Court's judgment confirming his death sentence he began to show signs of seriously disturbed thinking and behavior. His communication with his lawyers became ineffective and his letters and verbal communication with his elder sister nonsensical. His letters made absolutely no sense after August 1991, according to his sister, Hideko Hakamada.³¹

THE DAIYO KANGOKU SYSTEM OF PRE-TRIAL DETENTION (ARTS. 7, 9, 10, 14)³²

The *Daiyo kangoku* (substitute prison) system was established as an alternative to prisons (*kangoku*) under the Prison Law in 1908. As a substitute for prison the police used police cells under their authority to detain individuals suspected of criminal offences. In 2007, the Prison Law was entirely revised and the Act on Penal Detention Facilities and Treatment of Inmates and Detainees entered into force. The act renamed prisons as penal institutions (*keijishisetsu*), but there was no substantial change to the *daiyo kangoku* system of using police cells as a substitute location for detaining suspects for up to 23 days prior to charge.

Amnesty International has long raised concerns that the *daiyo kangoku* system violates fair trial rights set out in Article 14, including in death penalty cases, and generates the potential for miscarriages of justice. These issues have also been emphasized by the Committee in its review of Japan's fifth periodic report.³³

The *daiyo kangoku* system presents a number of issues in relation to Article 9 of the Covenant. First, the possibility of detention without charge for up to 23 days does not fulfil the requirement of prompt judicial control of detention as set out in Article 9(3).³⁴

³¹ *Hanging by a thread-Mental health and the death penalty in Japan*.

³² The Committee, LOI Japan, paragraph 14.

³³ The Committee, Concluding observations: Japan, CCPR/C/JPN/CO/5, paragraph 18.

³⁴ The Committee has held that the term *promptly* "must not exceed a few days" (Human Rights Committee, General Comment 8, *Right to liberty and security of persons* (Article 9), para.2), and that deprivation of liberty of more than 48 hours without judicial control is unlawful; see, *inter alia*, Human Rights Committee, *Concluding observations on Thailand*, CCPR/CO/84/THA, para. 13 ("Detention without external safeguards beyond 48 hours should be prohibited"); See also, *inter alia*, Committee against Torture, *Inquiry Procedure on Mexico*, CAT/C/75, para. 220(b); Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report to the Commission on Human Rights*, E/CN.4/2003/68, para. 26(g). For a more detailed discussion

Secondly, as set out by the Committee during its last review of Japan, the system can lead to long period of detention. In practice, it is very rare for the judge to reject an extension of this period of detention. This raises serious concerns for the rights of those detained and the effectiveness of judicial control. As the Committee has noted:

“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.”³⁵

Interrogation procedures³⁶

Amnesty International is concerned that interrogation procedures under the *daiyo kangoku* system may severely limit the rights of detainees to a fair trial and exposes them to torture, ill-treatment and coercion. There are no rules or regulations regarding the length of interrogations carried out during this period, access to lawyers during interrogation is restricted, and interrogations are not recorded.

The justice system relies heavily on confessions, which are typically obtained while a suspect is held under the *daiyo kangoku* system. Amnesty International is concerned that this system is routinely used to obtain ‘confessions’ through torture or other cruel, inhuman or degrading treatment and has documented a variety of such measures, including beatings, intimidation, sleep deprivation, questioning from early morning until late at night, making the suspect stand or sit in a fixed position for long periods, and other techniques to cause the suspect emotional distress such as *fumiji* (踏み字) which is an act to force an individual to trample on the names of his relatives. Amnesty International has recommended therefore that all interrogations are video-recorded. In April 2014, a draft proposal on the introduction of electronic video recording during interrogations was submitted to the special committee of the Legislative Council of the Ministry of Justice. However, the bill proposes that only interrogations in certain cases should be recorded while in many cases, interrogations would be exempt from recording. The proposed arrangement would fail to guarantee transparent interrogations, or prevent forced “confessions” made as the result of ill-treatment.

The “Shibushi case”

In 2013, Shinichi Nakayama, a candidate for the Kagoshima prefectural assembly, and his wife, were accused of buying the votes of residents of Shibushi Village. Thirteen people including Nakayama and his wife were arrested and charged with violating the Public Offices Election Act. Following prolonged detentions in the *daiyo kangoku* system, the individuals accused of this crime were forced to confess. When their case went to the district court, all defendants were found not guilty because of the lack of credibility of the confessions and the

of Article 9 of the ICCPR, please refer to; Amnesty International, Preliminary observations on the Human Rights Committee's new general comment on the right to liberty and security, IOR 40/021/2012

³⁵ The Committee, Concluding observations: Japan, CCPR/C/JPN/CO/5, paragraph 18.

³⁶ The Committee, LOI Japan, paragraph 15.

inadequacy of the evidence to demonstrate their culpability.

Shinichi Nakayamawas was detained for 395 days, 101 days of which were in police detention. It was revealed that the police interrogated the potential suspects using *fumiji*.³⁷ The police officer who forced the individuals to commit *fumiji* was later found guilty of violating their constitutional rights by denying their dignity and inflicting emotional distress.

REFUGEES, ASYLUM-SEEKERS AND MIGRANTS (ARTS. 7, 9, 12 AND 13)³⁸

Asylum decision-making

The number of annual asylum applications in Japan has increased drastically from 336 in 2003 to 3,260 in 2013. In spite of this, in 2013, the Ministry of Justice (MOJ) recognized refugee status in only 6 of 3,777 decisions (0.2%). This represents the lowest recognition rate since 1997. Amnesty International is concerned that such a low recognition rate may be the symptom of a lack of fairness, transparency and accessibility of the asylum system.

Detention of asylum seekers

In many cases, the refugee determination process takes years to conclude, during which time asylum-seekers without residence status can be detained, often for lengthy periods of time. In October 2013, 254 asylum seekers were detained around Japan.³⁹

Detention of irregular migrants

The stress from indefinite detention and the threat of deportation continue to impact negatively on the health of individuals in immigration detention.⁴⁰ This situation is exacerbated by the inadequate medical care in the immigration detention centers.

Restraints are used systematically in situations such as transferring individuals in immigration detention to the hospital and deportation, even when they are not justified in relation to specific circumstances and risks. In 2010, Abubsks Awudu Suraj died due to excessive use of restraint during deportation.

³⁸ The Committee, LOI Japan, paragraph 18 and 19.

³⁹ Immigration Bureau, the Ministry of Justice, November 20, 2013

⁴⁰ Under the Immigration Control and Refugee Recognition Act individuals can be detained under either a deportation or detention order. Under a detention order a person can be detained for up to 60 days but those detained under a deportation order can be detained indefinitely. Amnesty International, Japan: Briefing to the UN Committee against Torture, <http://www.amnesty.org/en/library/info/ASA22/006/2013/en>

The Immigration Detention Facilities Visiting Committee was established in 2010 to ensure openness of treatment and improvement of the operation of the immigration detention facilities. It intends to achieve the abovementioned purpose by presenting its opinion concerning the operation of the facilities to the directors of these facilities. However, the Committee lacks adequate resources and the authority to discharge its mandate effectively. It is established under the Immigration Bureau and its members are paid by this government body, showing a lack of independence. In many cases, letters from detainees addressed to the Visiting Committee are translated by the Immigration Bureau.

Abubaka Awudu Suraj – died while being deported

Abubaka Awudu Suraj, a Ghanaian national, was married to a Japanese woman and had been in Japan for 20 years. He was caught staying in Japan without documentation. He applied for residency but his application was rejected. In March 2010 he was taken to Narita airport to be deported. Prior to takeoff, immigration officials bound his arms and legs and stuffed a towel in his mouth. Abubaka Awudu Suraj died from suffocation during deportation.

Although the public prosecutor's office in Chiba Prefecture did not prosecute the immigration officials, the Tokyo District Court criticized them for using excessive force and ruled that they were responsible for Abubaka Awudu Suraj's death in March 2014. The judge stated that the force used to restrain Suraj was unnecessary and unreasonable. The case is pending at the high court.

THE ACT ON THE PROTECTION OF SPECIALLY DESIGNATED SECRETS (ARTS. 14, 17 AND 19)

The Act on the Protection of Specially Designated Secrets was passed in December 2013, and will come into force before December 2014. This act would allow the government to reclassify as "special secrets" information whose "leak can cause a serious obstacle to national security" in the categories of defense, diplomacy, and so-called "harmful activities" and "terrorism", and increase the penalties for releasing such secrets. Amnesty International has various concerns regarding the Act, in particular its potential to violate the right to have access to information held by public authorities and to violate the rights of those who may be prosecuted for releasing "secrets".

Contrary to Article 19, State Designated Secrets (SDS) are vaguely defined in the Act, which could enable authorities to hide legitimate information about environmental hazards, including ongoing nuclear clean-up and containment efforts, human rights violations and corruption. Furthermore, it provides that persons may be prosecuted for releasing or even requesting information that they did not realize is protected by the act. Those charged under the act would not be informed about the allegations against them as the SDS would remain undisclosed, in violation of their rights under Article 14. The Act provides for surveillance of

persons without adequate safeguards to protect their right to privacy in Article 17. No independent body has been established to monitor its implementation.

The Act allows for information to be classified as SDS for up to 60 years. It also contains an exception which is not defined with precision, creating the risk that material designated as SDS could remain concealed permanently.

There is an ongoing discussion to establish a monitoring body under the Diet, but it is still not clear what the procedure will be to ensure that its members are qualified and independent and whether the members will have full access to the SDS without restriction. Furthermore, there are concerns that this monitoring body lacks its binding power.

Article 22 of the Act mentions that freedom of expression and the right to access information should not be unlawfully violated, yet the Act provides for the possibility that individuals may be held criminally responsible for asking for SDS to be disclosed, even where it would be impossible for those individuals to know that the information they request is classified as SDS. This appears to be inconsistent with Article 19 of the ICCPR.

RECOMMENDATIONS

Amnesty International calls on the Japanese authorities:

Establishment of a national human rights institution:

- To take steps immediately to establish an independent, impartial and credible national human rights institution in line with the Paris Principles,⁴¹ that has competence to consider and act on complaints of human rights violations by public authorities, and that is allocated adequate financial and human resources.

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, and ethnicity or nationality.
- To end discrimination against ethnic minorities in Japan, including by ceasing to implement policies that discriminate against “Korean ethnic schools”.
- To prohibit by law the advocacy of national or racial hatred that constitutes incitement to discrimination, hostility or violence

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

- To accept full responsibility and apologize unreservedly to survivors of Japan’s sexual slavery system in a way that is acceptable to the majority of the women and which publicly acknowledges the harm that these women have suffered and restores the dignity of the survivors.
- Ensure other measures are taken to provide survivors with full and effective reparation, to address the harm they have suffered.
- To refute statements made by government authorities and public figures attempting to deny or justify the military sexual slavery system.

Abolition of the death penalty:

- To introduce an official moratorium on executions with a view to abolishing 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 aiming at the abolition of the death penalty.
- To end the lack of transparency surrounding the use of the death penalty by ensuring that;
 - (i) all processes undertaken in the context of capital punishment are made known to the public;

⁴¹ Principles relating to the status of national institutions, Adopted by General Assembly resolution 48/134 of 20 December 1993

- (ii) more effective systems to regularly assess the mental health of persons under sentence of death;
 - (iii) laws are amended to provide for information flow and access to information by prisoners and their lawyers, by health personnel, by academics and by members of the public.
- To ensure that confessions obtained by torture shall not be invoked as evidence in any proceedings, including and particularly proceedings involving the death penalty.
- To end the routine practice of prolonged solitary confinement of prisoners under sentence of death and ensure that solitary confinement is exceptional and of limited duration.
- To ensure that conditions of detention comply with international standards, such as the UN Standards Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- To ensure that a sentence of death is not carried out if the prisoner has a mental disorder or disability that significantly impairs his or her capacity:
 - (i) to make rational decision to forgo or terminate post-conviction proceedings available to challenge the validity of the conviction or sentence;
 - (ii) to understand or communicate pertinent information, or otherwise assist counsel, in relation to specific claims bearing on the validity of the conviction or sentence that cannot be fairly resolved without the prisoner's participation;
 - (iii) to understand the nature and purpose of the punishment, or to appreciate the reason for its imposition in the prisoner's own case. To ensure an immediate independent review of all cases where there is credible evidence that prisoners sentenced to death are now mentally ill and could fall within Article 479 of the Code of Criminal Procedure that specifies that "if a person condemned to death is in a state of insanity, the execution shall be stayed by order of the Ministry of Justice.

The Daiyo Kangoku system of pre-trial detention:

- To abolish the daiyo kangoku system of detention or reform it to bring it into line with international standards, including by implementing safeguards ensuring that detainees are not questioned without the presence of a lawyer and that they have prompt and unhindered access to legal counsel.
- To implement a system to make audio and video recordings of the entirety of all interrogations which are used in criminal trials as a safeguard to ensure that confessions obtained by torture, ill-treatment and coercion shall not be invoked as evidence in any proceedings.

Refugees, and asylum-seekers and migrants:

- To ensure that the refugee status determination process is conducted in a fair, effective and transparent manner in line with international law and standards 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.
- To ensure the restraints are not used on immigration detainees except in certain limited

situations to prevent escape during a transfer, to prevent the person from injuring himself or others, or to prevent the person from damaging property. They should only be used for as long as is strictly necessary.

- To ensure that effective medical and mental health care is accessible to detained immigrants and asylum seekers, including in emergency situations.
- To strengthen the independence, authority and effectiveness of the Immigration Detention Facilities Visiting Committee, by providing adequate resources and guaranteeing its authority to ensure effective monitoring of detention centers and allowing it to receive and review complaints from immigrants or asylum seekers in detention.

The Act on the Protection of Specially Designated Secrets:

- Narrow the definition of state secrets so that restrictions of the right to access information on the grounds of national security can only be imposed if the government can demonstrate that the restriction is prescribed by law and is necessary and proportionate to protect a legitimate national security interest.
- Revise the Special Secret Protection Act so that it establishes an independent system to review and appeal decisions to classify a matter as a state secret and its classification level.
- Revise the Act on the Protection of Specially Designated Secrets so that no individual can be punished for disclosing information that does not actually harm or is not likely to harm a legitimate national security interest or when the public interest in knowing the information outweighs the harm from disclosure.

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