

£JAPAN

@An Agenda for Human Rights

Open Letter to the Prime Minister

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His Excellency Tomiichi Murayama
Prime Minister
Office of the Prime Minister
1-6 Nagata-cho
Chiyoda-ku
Tokyo 100
Japan

8 July 1994

Dear Prime Minister,

On your appointment as Prime Minister, I am writing to urge you to develop and implement a human rights agenda for your new government. This agenda should be based on international human rights standards and should aim at improving further the safeguards which should be enjoyed by all in Japan.

Amnesty International hopes that your government will demonstrate commitment to reform in the field of human rights by ratifying international human rights instruments to which Japan is not yet a party and by further consulting and cooperating with national and international human rights organizations. We also hope you will express this commitment in your forthcoming inaugural address to the Diet and will use that address to outline an agenda for human rights. The international community expects Japan to play an increasing role in the protection and promotion of human rights.

All governments should give a high priority to reinforcing safeguards for internationally-recognized human rights. Your government is taking office amid expectations of further reform of Japan's political system, trade and foreign policy. Some Japanese laws and policies which lead to violations of fundamental human rights also need to be reformed.

As you may know, Amnesty International is an independent and impartial movement which works to prevent violations of fundamental human rights all over the world. It campaigns for the eradication of torture and ill-treatment, the abolition of the death penalty;

it works against extra-judicial killings and "disappearances" as well as for the release of prisoners of conscience and for fair trials for political prisoners. In Japan, Amnesty International has long-standing concerns about the continued use of the death penalty; reports of ill-treatment in police custody; and inadequate protection of asylum-seekers. It is also campaigning for Japan's ratification of some international human rights instruments.

Amnesty International urges your government to give serious consideration to each of these four issues, for example by designating a task force of respected and competent personalities and Diet members to propose reforms aimed at ending human rights violations in Japan. Such a task force should base its work on international human rights laws and standards and cooperate with government experts and non-governmental organizations to propose relevant reforms.

Amnesty International is particularly concerned that your government should consider the following issues and ensure that reforms are put in place to end violations of universally recognized human rights.

The Ratification of International Human Rights Standards

Japan has over the years repeatedly affirmed its appreciation of, and willingness to abide by, international human rights standards. In 1993, Japan's representative at the World Conference on Human Rights in Vienna stated that "human rights conventions and international mechanisms to ensure their observance are part of the precious heritage of mankind."

Japan has ratified the ICCPR and the International Covenant on Economic, Social and Cultural Rights, as well as the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. However, Japan has yet to ratify the two Optional Protocols to the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

By ratifying the First Optional Protocol to the ICCPR, Japan would make it possible for individuals who claim that their rights under the ICCPR have been violated and who have exhausted all domestic remedies available in Japan, to submit a written communication to the United Nations Human Rights Committee for its consideration. This would enhance the effectiveness of the guarantees contained in the ICCPR and would further demonstrate Japan's commitment to respecting human rights.

The Second Optional Protocol to the ICCPR concerns the abolition of the death penalty. By ratifying this protocol, Japan would join the growing number of countries which have abandoned this form of punishment and made an international commitment to prevent its reinstatement. Amnesty International is unconditionally opposed to the death penalty

which it views as a violation of the right to life and as the ultimate form of cruel and inhuman punishment.

The Convention against Torture is a major human rights instrument which Japan should ratify as a matter of highest priority. Article 36 of the Constitution of Japan prohibits "the infliction of torture by any public officer" and "cruel punishments". Article 7 of the ICCPR prohibits all forms of torture or ill-treatment. These guarantees would be significantly reinforced by Japan's ratification of the Convention against Torture which also institutes a procedure for international control of its implementation by independent experts. The enhanced guarantees would be especially timely in Japan in view of the concern, summarized below, that detainees in Japan may in certain circumstances have been victims of ill-treatment at the hands of officials.

The Death Penalty and the Treatment of Prisoners under Sentence of Death

The death penalty should be abolished. Prisoners under sentence of death should be protected from all forms of cruel, inhuman or degrading treatment or punishment. Under the Penal Code and other laws, 17 offences are punishable by death in Japan. There are currently about 90 prisoners under sentence of death, including about 58 whose death sentences have been confirmed by the Supreme Court.

Seven men were executed during 1993, more than in any year since 1976. These executions ended almost 40 months of a *de facto* moratorium on executions, as no death sentence had been carried out since November 1989. The crime rate continued to drop in Japan during those 40 months.

Since 1992, a former Minister of Justice, a former Supreme Court judge, lawyers and members of religious communities have expressed public support for a growing campaign for abolition of the death penalty. As a member of the Diet, you have yourself, along with more than 230 other Diet members, taken the principled stand of supporting abolition.

A recent survey of the members of the House of Representatives indicated that 47% of them were in favour of abolishing or reconsidering the death penalty, while only 40% had clearly retentionist views. Another study indicated that a majority of lawyers also support abolition. The Japan Federation of Bar Associations has set up a working group to study the issue. Four different city councils have in recent months adopted resolutions calling for abolition of the death penalty.

Executions in Japan are carried out in secret. They are not even announced to the family or lawyer of the prisoners concerned. Prisoners themselves may not be informed of their impending execution until just a few hours before it takes place. In practice they are unable to meet relatives or a lawyer after being informed that they will be executed.

Many prisoners sentenced to death are held in solitary confinement indefinitely. Conditions, while they may vary from one detention centre to another, often appear to be extremely harsh for prisoners sentenced to death. Despite the length of their detention, they are systematically denied access to anyone but some selected relatives and their lawyer. In general, no one else can see or even write to them.

These conditions of detention amount in Amnesty International's view to cruel, inhuman or degrading treatment, prohibited under the International Covenant on Civil and Political Rights (ICCPR), to which Japan is a party, and other international instruments such as the Standard Minimum Rules for the Treatment of Prisoners.

Amnesty International urges the Japanese Government to abolish the death penalty in law and to ratify the Second Optional Protocol to the ICCPR. As a minimum, and pending final abolition of the death penalty, Amnesty International urges that all death sentences be commuted. Amnesty International also urges the Japanese Government to ensure as a matter of priority that the treatment of prisoners under sentence of death be brought into conformity with international human rights standards.

The Protection of Refugees and Asylum-Seekers

Japan has a responsibility to protect political refugees fleeing threats to their life or freedom. Instead, officials often fail to act on asylum applications and even put pressure on individuals to return to countries where they may be tortured, arbitrarily detained or killed. Amnesty International is concerned that the Japanese Government has been shirking its responsibilities towards hundreds of asylum-seekers fleeing human rights violations and routinely threatening others with deportation.

Those asylum-seekers who are allowed to submit a claim are put through a secretive, arbitrary and often obstructive process. Some, including people at risk of serious human rights violations in the countries they have fled, have been detained for months. Others, despite being clearly entitled to refugee status, have had applications refused and have been kept in a legal limbo on visas which must be renewed every 30 days, with the constant risk of deportation.

Restrictive rules and procedures are compounded by a lack of guidance and advice for asylum-seekers. Furthermore, immigration officials display a lack of knowledge about international standards relating to refugees, and often do not have ready access to reliable information on human rights conditions in an applicant's country of origin.

The need to ensure that the fundamental human rights of refugees and asylum-seekers are protected must be paramount. Respecting such rights is an obligation imposed by international law.

Amnesty International has been urging successive Japanese Governments since 1993 to ensure that all asylum-seekers have effective access to the asylum procedure; that asylum procedures are fair and satisfactory; and to undertake not to detain asylum-seekers except in cases of absolute necessity in accordance with relevant international standards. Amnesty International received responses from the Ministry of Justice, following the publication in 1993 and 1994 of two successive reports on the protection of asylum-seekers.

The organization welcomes these response as an indication of the authorities' willingness to engage in a dialogue over this issue. However, Amnesty International remains concerned that many of the comments made by the Ministry of Justice continue to indicate an insufficient level of commitment to the implementation of international obligations.

The Ill-Treatment of Daiyo Kangoku Detainees

Amnesty International has received for several years reports that suspects held in police custody prior to indictment have suffered cruel, inhuman or degrading treatment at the hands of police officers. Police detention facilities, known as "substitute prisons" (*daiyo kangoku*) are used to hold detainees for up to 23 days prior to indictment. Suspects held in *daiyo kangoku* have been coerced into confessing to crimes they did not commit.

Detainees, including women, have been subjected to degrading treatment such as repeated body searches and denial of elementary privacy. Suspects held in *daiyo kangoku* are liable to be interrogated for unreasonably long periods (over 10 hours per day, sometimes for weeks on end), without any responsibility for the interrogators to justify the length of the detention or even to record it in files accessible to suspects or their lawyers.

Separate police departments appear to be in charge for the custody and for the interrogation of suspects in *daiyo kangoku*. However, interrogators are in practice allowed unlimited access to detainees and are in effect able to deny them adequate rest and access to the outside world for weeks on end – with the exception of some meetings with a lawyer.

Amnesty International has studied a large number of reports received over the last decade alleging that suspects have been ill-treated in *daiyo kangoku* or forced to confess to crimes they did not commit. In some cases, suspects have been found guilty and sentenced on the sole basis of such forced confessions, as courts have later recognized.

In October 1993, the UN Human Rights Committee strongly criticized the use of *daiyo kangoku* and urged Japan to bring its policies and practices on pre-trial detention into

line with international human rights standards. Amnesty International is calling on the Japanese Government to end *daiyo kangoku* detention as currently practised -- that is, to abolish the lengthy detention and interrogation of suspects in police custody.

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Amnesty International hopes that you and your government will give careful attention to the human rights concerns raised in this Open Letter and will respond positively to Amnesty International's recommendations. Amnesty International would welcome the opportunity to discuss with you or with representatives of your government the issues raised in this letter.

We look forward to your response.

Yours sincerely,

Derek Evans
Deputy Secretary General