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JAPAN

THE DEATH PENALTY AND THE NEED FOR MORE SAFEGUARDS AGAINST ILL-TREATMENT OF DETAINEES

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The attached circular is based on a memorandum Amnesty International submitted to the Japanese authorities in April 1990. The two issues it deals with - the death penalty and the need for more safeguards against ill-treatment of detainees - were raised with government officials by Amnesty International delegates who visited Japan in 1989 and 1990.

The first part outlines Amnesty International's concerns about the use of the death penalty. Although provided in law for 18 offences, for more than 20 years it has been imposed only for murder. Fifteen prisoners were executed in the period 1980-1990. Some 90 prisoners are currently under sentence of death and almost half have had their sentences confirmed by the Supreme Court. Commutation of individual death sentences is rare and the last general amnesty that benefited prisoners sentenced to death was in 1952. Amnesty International is campaigning to make the issue better known by the Japanese public and is calling on the authorities to end executions and commute all death sentences and move toward formal abolition of the death penalty.

The second part examines the procedures relating to arrest, detention and interrogation in the light of claims of ill-treatment made by detainees. Amnesty International makes a number of specific recommendations to strengthen safeguards against ill-treatment, such as the introduction of provisions prohibiting the use of threats or interrogation methods which impair a detainee's capacity of decision or judgment; the ratification by the government of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment; and strengthened complaints procedures.

Two important recommendations concern the right of access to lawyers and the place of detention of suspects. Amnesty International is concerned that prompt and regular access by lawyers is impeded by the practice of prosecutors to designate dates, times and number of visits allowed. The Ministry of Justice has informed Amnesty International that it had advised the prosecuting authorities to stop this practice. Most suspects are held in police cells until they are indicted, instead of in detention centres. This practice is known as daiyo kangoku or substitute prison system. Amnesty International recommends that the practice be reviewed without delay and that the authorities responsible for interrogation be formally separated from those responsible for the detention and welfare of prisoners.

This summarises a 14 page document, Japan: The death penalty and the need for more safeguards against ill-treatment of detainees (AI Index: ASA 22/11/90)), issued by Amnesty International in January 1990. Anyone wanting further details or to take action on this issue should consult the full document.

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THE DEATH PENALTY AND THE NEED FOR MORE SAFEGUARDS AGAINST ILL-TREATMENT OF DETAINEES

1. Introduction

Throughout the 1980s Amnesty International has actively campaigned to end executions in Japan and to promote the abolition of the death penalty. In 1983 Amnesty International delegates visited Japan; their findings were published in an Amnesty International report The Death Penalty in Japan. This concluded that a number of factors - such as a decline in executions since 1979 down to one execution a year, the low crime rate and the absence of organized pressure for the retention of the death penalty - should facilitate the abolition of capital punishment. At the time, Amnesty International also hoped that a proposed revision of the Penal Code might provide an opportunity for the reduction in capital offences and abolition, but the revision was subsequently shelved.

In the following years four prisoners convicted of murder in the 1950s were granted retrials and were acquitted after the courts found that there was insufficient evidence of their guilt. This series of cases, which served to illustrate the risk of executing innocent people did not, however, engender a strong abolitionist movement. In the years 1985-1988 the number of executions rose to two or three a year and in 1989 one prisoner was executed. During the same period, the number of death sentences imposed by the courts also increased. At present, some 40 prisoners are believed to be under final death sentences and some 40 others have been sentenced to death by lower courts. All the prisoners have been convicted of murder. The last general amnesty under which death sentences were commuted was in 1952; since then only three prisoners have had their sentences commuted.

In addition to its concern about the death penalty, in recent years Amnesty International has received reports of ill-treatment of suspects in police custody. In March 1989 an Amnesty International delegation, consisting of Professor Christian Tomuschat, a former member of the United Nations Human Rights Committee and a member of the United Nations International Law Commission, and a staff member of the International Secretariat, which visited Japan looked into detention and other legal procedures in order to establish whether these procedures afford prisoners adequate protection against torture or ill-treatment, and whether satisfactory mechanisms exist to enable prisoners to complain against abuses and seek redress.

The Amnesty International delegates met officials of the Ministry of Justice, the National Police Agency and the Supreme Court as well as representatives of the Federation of Bar Associations, the Japan Civil Liberties Union, former detainees who alleged that they were ill-treated by police and lawyers whose clients made such allegations. A draft version of this memorandum was submitted to the Japanese government, and in May/June 1990 the Secretary General of Amnesty International visited Japan and discussed its recommendations with officials of the Ministry of Justice. In September 1990 the office of the Minister of Justice sent Amnesty International comments on the memorandum. The following text takes these into account.

Most ill-treatment allegations known to Amnesty International were made by people who were acquitted of criminal offences after courts found that the evidence against them, including confessions made during police interrogation, was not reliable. Alleged methods of ill-treatment range from actual physical assault to threats of violence and long hours of interrogation leading to exhaustion and mental confusion.

Amnesty International is not in a position to confirm the substance or validity of particular ill-treatment allegations but is concerned that the current procedures governing the interrogation of suspects and accused persons should afford prisoners adequate safeguards against ill-treatment. In this connection, Amnesty International considers that the Japanese authorities should examine all allegations of ill-treatment made by detainees (including complaints dismissed by the prosecution authorities or by the courts) and the cases publicized by the Japan Federation of Bar Associations. The aim of such a review should be to identify those interrogation and detention regulations and practices which have given rise to complaints with a view to amending those that may appear to facilitate ill-treatment or abuse. The areas where, in Amnesty International's opinion, safeguards against ill-treatment most need strengthening include the right of access to lawyers, the independent inspection of detention places, the effectiveness of the complaint procedures and the detention of prisoners in police holding cells instead of detention centres.

2. The use of the death penalty

Japanese law provides for the death penalty for 18 offences but since 1967 the death penalty has been imposed only for murder, usually in cases of multiple murder or homicide caused by explosives. In recent years the courts appear to have applied criteria for the imposition of a death sentence put forward in July 1983 by the Supreme Court in a ruling in the Norio Nagayama case. The court ruled as follows: "Under the present legal system which retains the death penalty, when various circumstances are considered such as the nature of the crime, its motivation and its mode, especially the persistency and cruelty of the method of killing, the significance of the result, especially the number of victims, the feelings of the family of the victims, the impact on society, the offender's age, criminal record and circumstances after conviction, if its liability is considerably heavy and the death penalty is regarded as unavoidable from the viewpoint of proportionality as well as deterrence, the imposition of the death penalty is allowed."

All death sentences can by law be appealed to a higher court. A retrial may be requested after appeals have been dismissed and a sentence has become final if new evidence indicating innocence is discovered or if evidence on which the original judgment was based has been proved false. Prisoners may also apply to the government for special amnesty or commutation of their sentences. Only three prisoners have had their death sentences commuted by individual amnesties, in 1969, 1970 and 1975. The amnesties were granted on the grounds of illness, old age, repentance, and forgiveness on the part of the victim's family. The last general amnesty that commuted death sentences was in 1952; no prisoner under sentence of death benefited from the amnesty granted in February 1989 in honour of the late Emperor Showa.

No public announcement of impending executions is made and executions are not reported in the press. The authorities do not confirm the names of executed prisoners and only release statistics periodically, on the grounds that such secrecy protects the family of the prisoner from the shame of having it known that their relative has been executed.

Some of the main political parties support the abolition of the death penalty. However, debate on this subject in the Diet has been limited. Two opinion surveys in 1989 showed a majority of those polled to be in favour of retention of the death penalty. The first, by the Prime Minister's Office suggested that 66.5 per cent of the general public support the death penalty. This figure compares with the results of other surveys initiated by the government in the last 20 years which suggested that the percentage of retentionists varied between 56.9 per cent and 70.5 per cent. Those who support keeping the death penalty gave as their main reasons a belief that violent crimes were increasing [official statistics showed, to the contrary, that murder and armed robberies had decreased in 1988]. The

percentage of those interviewed in 1989 who support abolition of the death penalty was 15.7 per cent, up 1.4 per cent since 1980. A large number of abolitionists expressed fear that innocent people could be executed and that the death penalty was a violation of human rights.

Another survey conducted by the Institute of Criminology of Meiji University among university professors, law students, judges, prosecutors, lawyers and prison officers, also in 1989, showed that 50.8 per cent of those who responded supported the death penalty and 42.6 per cent opposed this punishment. Over 90 per cent of the prosecutors and prison officers who took part in the survey expressed support for the death penalty, as did over 60 per cent of judges and lawyers. The professional group with a majority in favour of abolition was that of university professors, with 65 per cent of them opposed to the death penalty.

The Japanese Government justifies its retention of the death penalty on the grounds that the majority of Japanese people support it "to punish those who commit vicious offences". In its second periodic report in March 1988 to the Human Rights Committee, under Article 40 of the International Covenant on Civil and Political Rights, the government said the death penalty was applied "strictly and carefully" and that prisoners were guaranteed fair trials. During discussion of Japan's report by the Committee, the government stated that death sentences were usually carried out after an average gap of seven years and that "the [execution] order is given only after many reviews".

In Amnesty International's view, public opinion on the death penalty is often based on an incomplete understanding of the relevant facts, and the results of polls can vary according to the way questions are asked. Many more people might well support abolition if they were properly informed of the facts surrounding the use of the death penalty and the reasons for abolition. Many governments have recognized that the death penalty cannot be reconciled with respect for human rights. The United Nations has declared itself in favour of abolition. In a general comment on Article 6 of the International Covenant on Civil and Political Rights, the Human Rights Committee set up under the Covenant concluded that "all measures of abolition [of the death penalty] should be considered as proper in the enjoyment of the right to life..." Today some 80 countries - over 40 per cent of all countries of the world - have abolished the death penalty in law or in practice.

Amnesty International wishes to encourage the Japanese Government, the academic community, the mass media, politicians and others to inform the public about the facts surrounding the use of the death penalty. It hopes that its report When the State kills...The death penalty v. human rights, published in April 1989 and translated into Japanese will contribute to a greater understanding of the issues involved.

Amnesty International hopes that the death penalty may soon be abolished in law in Japan. In the meantime it urges the Japanese authorities to end executions and commute all death sentences.

3. Safeguards against police ill-treatment of suspects

3.1. Prohibition of ill-treatment under international law

Torture and cruel, inhuman or degrading treatment or punishment are prohibited under international law. The International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly in 1966, and which Japan ratified in 1979, states that "No one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment" (Article 7) and that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (Article 10.1.). The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly in December 1984, defines torture as: "... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." (Article 1)

The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations Body of Principles), adopted by consensus by the United Nations General Assembly in December 1988, has added to this definition that "the term 'cruel, inhuman or degrading treatment or punishment' should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental" (footnote to Principle 6) and that "No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment" (Principle 21.2).

3.2. Allegations of ill-treatment

In the early 1980s a Joint Committee of the Three Tokyo Bar Associations For the Study of the Daiyo-Kangoku (Substitute Prison) System published a survey of 30 people who had been arrested in the period 1949 to 1982 and who were found not guilty by the courts although they had made confessions in police custody admitting the charges against them. Three of them had been arrested in the late 1940s or 1950s; two in the 1960s; 20 in the 1970s and five in the 1980s. In 1989 the Japan Federation of Bar Associations published information on four other cases where people who had confessed to charges against them in the

years 1969, 1981, 1982 and 1985 were acquitted by the courts in the years 1985 to 1987, after the courts found that they had made false confessions. In August 1989 the Joint Committee of the Three Tokyo Bar Associations published the results of a survey of 20 cases involving 26 people arrested in 1983 and later (six of the cases took place in 1988) where police ill-treatment was alleged. One of the detainees died in custody, apparently as a result of beatings for which a police officer is currently on trial.

In March 1989, Amnesty International's delegates interviewed several of the former prisoners whose cases are described in the above-mentioned publications, as well as several other former prisoners or their lawyers who have also alleged ill-treatment in custody. Most cases concerned serious crimes, such as homicide, rape and robbery causing death, though some of the cases related to police investigations of theft or alleged traffic violations.

Former prisoners have alleged the following forms of physical and mental duress: beatings and kickings; threats of beatings or other violence; having their head grabbed by the hair and banged against a wall; being forced to sit upright for hours; suspension of access to the toilet or of meals until the suspect confessed to the offence; threats of a heavy sentence or of trouble to suspects' relatives or friends; long interrogations, including for part of the night, leading to exhaustion and mental confusion.

Amnesty International recommends that the Japanese authorities examine all allegations of ill-treatment made by detainees (including complaints dismissed by the prosecution authorities or by the courts) and the cases publicized by the Japan Federation of Bar Associations, with a view to identifying the interrogation and detention regulations and practices which may appear to facilitate ill-treatment or abuse.

3.3. Procedures relating to arrest and interrogation

Procedures relating to arrest and detention are laid down in the Code of Criminal Procedure and appear generally to be respected. Except in cases of emergency or of flagrant offenders, a warrant issued by a judge is required to effect an arrest. A suspect arrested without a warrant must be taken to a judge immediately after arrest. The law requires arresting officers to inform suspects immediately of the facts of the crime s/he is suspected of, that the suspect is entitled to choose a defence counsel and that the suspect should be given an opportunity to give an explanation. If a police officer decides not to release a suspect he is required to transfer him to a public prosecutor within 48 hours. A public prosecutor who decides not to release a suspect must apply to a judge for a detention order within 24 hours of receiving the suspect. At this point, usually 72 hours after arrest, the suspect sees a judge who will determine whether continued detention is necessary. The judge can order that the suspect be detained for ten days; this period may be extended by

another 10 days upon the request of a prosecutor.

* <48hrs>	* <24 hrs>	* <10days>	* <10 days>	*23 days
police arrest	suspect brought before prosecutor	suspect brought before judge	detention order extended by judge	release or indictment

.... suspect in police station

.... suspect in police station or detention centre

3.4. Safeguards against ill-treatment

The following sections of this report examine the procedures relating to arrest, detention and interrogation in Japan that Amnesty International believes need strengthening in order to provide prisoners with effective safeguards against ill-treatment.

3.4.1. Domestic legislation

The infliction of torture and cruel punishments is prohibited by Article 36 of Japan's Constitution. Article 195 of the Penal Code makes it an offence for a law enforcement official to use violence or cruelty against a detainee, with a maximum penalty of seven years' imprisonment on conviction. Lawyers and civil rights groups in Japan have pointed out that there are no legal provision or jurisprudence which specify that mental cruelty and abuses are covered by these articles.

The Criminal Investigation Rules, a public document issued by the National Public Safety Commission, lay down strict procedures regulating the process of interrogation. According to officials of the National Police Agency whom Amnesty International's delegates met in March 1989 the Rules emphasize that confessions should be voluntary and they prohibit torture and any form of compulsion, threat or inducement.

Amnesty International recommends that the Japanese authorities consider introducing into the Criminal Investigation Rules and Japanese law provisions reflecting the prohibition under Principle 6 of the United Nations Body of Principles of threats or methods of interrogation which impair a detainee's capacity of decision or judgment.

Although the Japanese Government made a unilateral declaration against torture and other cruel, inhuman or degrading treatment or punishment in December 1978, it has not yet ratified or acceded to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Amnesty International recommends that the Government ratifies or

accedes to this Convention at the earliest opportunity.

3.4.2. Prisoners' access to the outside world

All arrested persons appear to see a judge within 72 hours of their arrest. Former prisoners have told Amnesty International that this meeting is usually only a few minutes long and that it is conducted without the presence of police, prosecution authorities or defence counsel. Several people who falsely confessed to offences for which they were later acquitted and who claim that they were ill-treated told Amnesty International that they felt the judge was unsympathetic to their denial of the charges or their complaints of ill-treatment.

Principle 37 of the United Nations Body of Principles states that a detained person shall, when brought before a judicial authority, have the right to make a statement on his or her treatment in custody.

Amnesty International recommends that arrest and detention procedures be amended so as to require arresting authorities to inform detainees of their right to make a statement on their treatment in custody to the judge reviewing the grounds for their arrest and that judges be empowered to investigate or order an investigation into these complaints.

The right of access to a lawyer and to be informed of this right upon arrest is guaranteed under Article 34 of the Constitution and under Article 39 of the Code of Criminal Procedure. Article 39(1) of the Code of Criminal Procedure allows a defendant or criminal suspect to meet an attorney without any official being present. However, Article 39(3) allows, prior to the institution of a public prosecution, a prosecutor or judicial official to "designate the dates, places and times for interviews... in cases where it is necessary for the purpose of investigation... provided that such designation shall not unfairly restrict the right of the suspect to prepare his defence".

In practice, "general designations" and "specific designations" have evolved. The Japanese courts have repeatedly held the system of "general designations" - whereby the prosecutor informs the head of the facility where the suspect is held that the suspect is allowed to see a lawyer - to be illegal as both the Constitution and the Code of Criminal Procedure guarantee the right of access to lawyers. The practice of "general designations" was officially abandoned in April 1988 following a revision of rules governing this area in December 1987. The Ministry of Justice has emphasized to Amnesty International that "general designations" are not used any more. As for the "specific designations", or "interview tickets", Japanese lawyers have complained that restrictions are placed on dates, times and number of visits to their clients. Reasons commonly given for denying visits are that the suspect is not available as s/he is travelling to a distant prosecutor's office;

it is outside regular working hours for government employees; the prosecutor who can authorize the interview is not available; needs of the interrogation; the defence lawyer has already had enough opportunities to meet his client. In 1978, the Supreme Court ruled that "the designation of dates, times, and other conditions by investigating officers must be an exceptional measure to be used only when absolutely necessary... as a general principle [investigating officers] must provide the opportunity for such contact at any time..."

Lawyers denied access to their clients can appeal for court orders directing the police and prosecutor to allow them to visit detainees. In recent years some lawyers have filed actions for damages. Fourteen such actions had been filed by 1987 and in a number of cases the courts have ruled in favour of the attorneys and their clients and awarded them compensation.

Japanese scholars have noted a trend towards fewer and fewer criminal suspects retaining private lawyers. The percentage of those who retained a private lawyer was 50 per cent in 1977 and dropped to 40 per cent in 1984. Defence lawyers appointed by the state see their clients only after the latter have been indicted.

Prompt and regular access to legal counsel is a fundamental safeguard against ill-treatment of detainees because it allows lawyers to assess whether rights have been infringed and if so, to take remedial action.

The practice of "specific designations" contradicts Principle 18 of the United Nations Body of Principles, which allows restrictions on consultations and communications with a lawyer only in "exceptional circumstances... when it is considered indispensable by a judicial or other authority in order to maintain security and good order." Amnesty International therefore recommends that the practice whereby the prosecution authorities designate dates, places and times for interviews between suspects or accused persons and their lawyers be restricted only to exceptional cases. Officials of the Ministry of Justice informed Amnesty International in June 1990 that the Ministry had for two years advised prosecution authorities to stop the practice and that discussions were underway with the Japan Federation of Bar Associations with the aim of ensuring no undue restrictions on lawyers' access to their clients in custody.

Furthermore, Amnesty International is concerned that all suspects, including those who do not retain a private lawyer, should have prompt access to counsel, within a few days of arrest.

Amnesty International therefore urges the authorities and the Japan Federation of Bar Associations to discuss and implement appropriate ways to ensure that all suspects see a lawyer shortly after arrest. Amnesty International was pleased to learn from officials of the Ministry of Justice in June 1990 that discussions were being held between the Ministry, the Japan

Federation of Bar Associations and the Supreme Court to introduce a system whereby all suspects would be able to see a lawyer before indictment.

To Amnesty International's knowledge, there is no automatic provision for suspects taken to police cells to be seen by a medical doctor, although this is the case on arrival at a detention centre. Both the Standard Minimum Rules for the Treatment of Prisoners, approved by the United Nations Economic and Social Council in 1957 and 1977, and the United Nations Body of Principles recommend that a qualified medical officer with some knowledge of psychiatry examine every prisoner as soon as possible after admission and thereafter as necessary (Articles 22(1) and 24 of the Rules and Principle 24). The Standard Minimum Rules for the Treatment of Prisoners also recommend that untried prisoners be allowed to be visited and treated, at their own cost, by their own doctors. Medical examinations of detainees could provide another safeguard against ill-treatment by ensuring that evidence of ill-treatment will be observed by a medical doctor and recorded.

Amnesty International therefore recommends that provisions be made to have all detainees examined by a medical doctor upon admission to all detention places, including police cells, and regularly afterwards if necessary.

3.4.3. Separation of interrogation and detention authorities

The large majority of suspects and accused are held in police cells until they are formally indicted. This practice is allowed by the Prison Law (1908), Article 1(3), which provides that "a police jail may be substituted for a prison..." The practice is known in Japan as daiyo kangoku or substitute prison system. It has given rise to concern among lawyers that this creates conditions facilitating the use by the police of ill-treatment, duress or other illegal methods to obtain information or confessions from prisoners.

Detention centres are under the authority of the Ministry of Justice. There are at present around 150 such facilities, with a total capacity of over 15,000 inmates. As of 1988, the police had around 1,253 detention facilities, some 11 more than in 1985. In 1985, police jails had a holding capacity of over 16,000 inmates.

Amnesty International does not have official statistics on the use of police cells in preference to detention centres, but most suspects are said to be held in police cells for the duration of the pre-indictment period. Estimates by academics suggest that in the years 1985 to 1987 up to 91 per cent of suspects were detained in police cells rather than in detention centres. During 1987, some 42 per cent spent between one and two months in police detention and 12 per cent spent as much as between five and six months in such detention.

It is the judge who decides the place where a suspect will be held during interrogation. The request for detention submitted by the prosecution authorities to the judge also indicates the place of detention they recommend. Practising attorneys and academics agree that judges seldom designate a place of detention different from that requested by a prosecutor.

In large police stations, custody cells and interrogation rooms are separate, maybe on different floors; in smaller police stations they may be contiguous. Maps drawn by former detainees show custody cells laid out in a fan-like shape to allow a guard in the centre to observe the prisoners in all the cells (the cells have contiguous walls but bars at both ends for police observation). The interrogation rooms are said to be quite small and to contain a table and chairs for the detainee and the interrogator. Generally the custody cells in police stations are less comfortable than in detention centres and only the detention centres have medical facilities.

Since 1980, the police personnel in charge of custody have been part of the General Affairs Division while those in charge of interrogation have belonged to the Criminal Investigation Division. It is not certain that this is also the case in small police stations, especially away from the big cities where manpower is obviously more limited.

The Prison Act 1908 was part of the Meiji reforms and was aimed at reducing the use of police cells. When the law was passed, its clause allowing their use was explained as a temporary measure. Several attempts were made to revise the Prison Act between the two world wars and again as part of legal reforms initiated by the United States occupation forces. Since 1958 the Japan Federation of Bar Associations has publicly urged the amendment of the Act and the abolition of the substitute prison system which it sees as a source of human rights abuses. Some academics argue that the Prison Act provisions violate the Code of Criminal Procedure, which does not allow police detention for interrogation purposes.

The Legislative Council, an advisory committee to the Ministry of Justice composed of legal experts, including a few nominated by the Japan Federation of Bar Associations, studied the Prison Act in the mid-1970s. Although it did not recommend the abolition of the substitute prison system in law, it recommended the gradual reduction of its use in practice. The Criminal Institutions Bill and the Police Detention Facilities Bill introduced by the Government in the Diet, first in 1982 and then in 1988, propose to continue to allow the use of police holding cells for suspects. The Ministry of Justice has pointed out to Amnesty International that the bills do not affect the current system, because the actual decision about where a suspect should be detained is and will continue to be made by a judge and, second, because the bills do not alter the exceptional nature of resorting to police holding cells. Concerned Japanese lawyers, however, have pointed out to Amnesty International that in their view the provisions in the Annex to the Police Detention

Facilities Bill do not retain the exceptional and temporary nature of the daiyo kangoku system.

The text of the bills is available only in Japanese and their critics in Japan have focussed on the provisions that relate to the substitute prison system. The Ministry of Justice and National Police Agency officials whom the Amnesty International delegates met in March 1989 emphasized that the bills introduced improvements: firstly, in that police cells would in future be covered by the legislation and rules relating to the treatment of detainees as exist in other detention facilities (while until now there has been no applicable legislation to police cells), and secondly, by the introduction of a strengthened complaints procedure.

The Japanese Government told the Human Rights Committee reviewing its second periodic report under Article 40 of the International Covenant on Civil and Political Rights, in July 1988, that the bills reflected the United Nations Standard Minimum Rules for the Treatment of Prisoners and that it was impossible for the government to build 400 detention centres to replace the police cells (at an estimated cost of $308 million). Members of the Human Rights Committee had expressed concern about the practice of returning suspects to police custody, after their appearance before a judge. One member pointed out that in many countries human rights violations were most frequent when prisoners were not held in (specialized) detention centres. Committee members also referred to reports they had received from Japanese non-governmental organizations of suspects being ill-treated, threatened or interrogated in poor conditions in police stations.

Most Japanese law scholars and attorneys whom the Amnesty International delegates met in March 1989 expressed the view that the use of police cells should be abolished. Lawyers in Japan have also referred to the Declaration adopted in 1959 by an International Congress of Jurists meeting in New Delhi, and a resolution adopted by the Twelfth International Congress on Penal Law held in Hamburg in 1979, which require that after appearance before a judicial authority a detainee should not be returned to the custody of the arresting authorities but remain in the custody of the ordinary prison authorities.

A compromise proposal advanced by some is to allow for the continued temporary use of police cells to detain suspects, but to require that this be allowed only for a few years until the system is abolished, and that people suspected of capital offences or offences punishable by life imprisonment and those who deny guilt or remain silent not be held in police cells. The proposal also suggests that the staff and supervision of police cells be under the authority of the Ministry of Justice.

Based on its experience in documenting instances of torture and ill-treatment throughout the world and seeking to prevent the occurrence of such abuses Amnesty International has concluded that the formal separation of authorities responsible for

interrogation of suspects and accused persons from the authorities responsible for their detention and welfare gives additional protection to detainees. The use of police personnel instead of qualified professional prison officers as recommended by the Standard Minimum Rules for the Treatment of Prisoners (Articles 46 to 54) raises questions as to their suitability to manage detention institutions so as to protect the rights and ensure the welfare of detainees.

Amnesty International therefore recommends that the Japanese authorities review the current practice in this respect and, without delay, introduce measures which guarantee the formal separation of authorities responsible for interrogation from the authorities responsible for the detention and welfare of prisoners and ensure that the measures are such that the separation of responsibilities is clearly perceived by detainees.

3.4.4. Complaints and investigations into allegations of ill-treatment

National Police Agency officials have informed Amnesty International that complaints have to be lodged with the head of the police station and that investigations into the complaints are carried out by the police or by the prosecution.

An additional procedure is available to complainants under Article 262 of the Code of Criminal Procedure. This allows people to appeal to a court against a decision by the prosecution authorities not to prosecute on the basis of their complaints of abuse of authority or violence and cruelty by officials. Under this procedure a court can order that a prosecution be initiated. Between 1975 and 1988 the courts looked at seven complaints referred under this procedure. In two cases, the proceedings resulted in government officials being given suspended sentences and in one case, in an acquittal. The other cases have not yet been finalized, but in three of them the lower courts have acquitted the defendants.

In many cases lawyers have been unable to sue the police for ill-treatment of their clients because of lack of evidence and the number of cases which go to court are very few.

The main problem faced by prisoners who allege that they were ill-treated is often the non-availablity of evidence. In a few cases lawyers have applied to a court for an order of preservation of evidence (such as taking photographs of the victim's injuries). As a result the prisoners' confessions in such cases were not admitted or found not to be reliable as evidence at the trial. Even in these cases the lawyers concerned doubted that the evidence available would be sufficient successfully to sue the police for abuse of authority or violence against prisoners and did not proceed with such actions.

To Amnesty International's knowledge, police records of the interrogation of a suspect are rarely made available to the courts and in some instances officers at some police stations

have refused to make these records available to the courts. This may obviously hamper any investigation of alleged ill-treatment. A further problem in pursuing complaints of ill-treatment is the fact that police officers in Japan wear no identity numbers or other identification visible to prisoners.

Amnesty International recommends that all persons be told upon their arrest of their right to make complaints about their treatment without fear of reprisal and of the procedures for such complaints and that the authorities ensure that the complaints procedures comply with the recommendations contained in Articles 35 and 36 of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Amnesty International also recommends that, in accordance with Principle 23 of the United Nations Body of Principles, police records of investigation be made available upon request to a detainee or his/her lawyer, as of right, and that these records identify the officers who were in charge of the interrogation or present at it.