

**£JAPAN**

**@Human Rights: Open Letter to the Prime Minister**

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

18 August 1993

Dear Prime Minister Hosokawa,

Your government is taking office at a time of widespread public expectations for change in the Japanese political system and in some government policies. While taking no position on political reform issues, Amnesty International hopes that your administration will also undertake reforms needed to better protect human rights in Japan. This Open Letter sets out Amnesty International's concerns in Japan and formulates recommendations which if implemented would considerably enhance human rights guarantees in Japan.

Amnesty International is an independent and impartial movement which works to prevent violations of fundamental human rights anywhere in the world. Amnesty International promotes human rights by, among other activities, campaigning for the ratification by governments of international human rights treaties. It works for the eradication of torture and for the abolition of the death penalty, as well as for the release of prisoners of conscience and for fair trials for political prisoners.

Amnesty International takes no position on issues outside its own mandate. It does not support or oppose any government or political system. Amnesty International's national sections and members campaign for the abolition of the death penalty in their own country and the ratification of human rights treaties by their own government and work on behalf of refugees. However, national sections and members have no involvement in Amnesty International's research on human rights violations in their own country.

Amnesty International is concerned that Japan has yet to ratify some major international human rights treaties; that the right of detainees to be safeguarded against cruel, inhuman or degrading treatment is not adequately observed; that the death penalty continues to be used and prisoners under sentence of death continue to be ill-treated; and that protection for refugees and asylum-seekers is inadequate in view of Japan's international commitments.

In the light of these concerns, Amnesty International recommends that Japan should implement the following measures:

*1. Ratify international human rights standards*

Japan has over the years repeatedly affirmed its appreciation of, and willingness to abide by, international human rights standards. Most recently, 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 International Covenant on Civil and Political Rights (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 group 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.

## *2. Provide safeguards against ill-treatment for all 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 need for the interrogators to justify the length of the detention or even to record it in files accessible to suspects or their lawyers.

Different police departments appear to be in charge of the custody and 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 a visit to Japan in May and June 1993, an Amnesty International representative interviewed several former *daiyo kangoku* detainees, lawyers and experts, and met senior National Police Agency officials. From this and earlier research, Amnesty International has concluded that *daiyo kangoku* as currently used for the lengthy detention of suspects prior to indictment is a source of human rights violations.

Amnesty International is calling on the Japanese Government to end *daiyo kangoku* detention as currently practiced – that is, to abolish the lengthy detention of suspects in police custody.

## *3. Abolish the death penalty and end the ill-treatment of prisoners sentenced to death*

Under the Penal Code and other laws, seventeen offences are punishable by death in Japan. There are currently about 90 prisoners under sentence of death, including about 56 whose death sentences have been finalized by the Supreme Court.

In March 1993, three men were executed, including one, Kawanaka Tetsuo, who was suffering from mental illness and whose lawyer was preparing to apply for a retrial. These executions ended almost 40 months of a *de facto* moratorium on executions, as no death sentence had been carried out since November 1989.

Since 1992, a former Minister of Justice, a former Supreme Court judge, more than 230 members of the Diet, lawyers and members of religious communities have expressed public support for a growing campaign for abolition of the death penalty. The Japan Federation of Bar Associations has set up a working group to study the 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. In several cases known to Amnesty International, prisoners have been denied medical attention when they requested it, or given only perfunctory and inadequate medical treatment. Prisoners sentenced to death who appeared to be in urgent need of hospitalization for medical or psychiatric treatment have remained in solitary confinement despite requests for treatment made by themselves, their relatives or their lawyers.

Conditions, while they may vary from one detention centre to another, appear to be often 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. They have no access to relative or lawyer in the crucial period immediately preceding execution.

These conditions of detention amount in Amnesty International's view to cruel, inhuman or degrading treatment, prohibited under the ICCPR 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 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.

#### *4. Provide adequate protection for 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 threatens others with deportation.

An Amnesty International fact-finding mission visited Japan in October 1992 and concluded that a thorough reform of Japan's asylum policy is needed to bring the country into line with its international obligations under the 1951 Refugee Convention.

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 fled, have been detained for months. Others, despite being clearly entitled to refugee status, had applications refused and were kept in a legal limbo on visas which must be renewed every 30 days, with the a 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.

In March 1993, Amnesty International published a report on the protection of refugees and asylum-seekers in Japan, in which it urged Japan to:

- establish an independent advisory body, composed of impartial members with a recognized expertise, to review the entire system of refugee protection in Japan;
- ensure that all asylum-seekers have effective access to the asylum procedure;
- ensure that asylum procedures are fair and satisfactory;

- undertake not to detain asylum-seekers except in cases of absolute necessity in accordance with relevant international standards.

The Japanese Ministry of Justice, which replied to Amnesty International's report in March, disputed many of its findings and stated that existing procedures met Japan's international obligations. However, Amnesty International stands by its March report and continues to urge Japan to implement the specific recommendations which that report details.

\* \* \* \* \*

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

We look forward to your response.

Yours sincerely,

Anne Burley  
For the Secretary General