

# £JAPAN

## @The "substitute prison" system: a source of human rights violations

### ***Introduction: the "substitute prison" procedure***

The *daiyo kangoku* ("substitute prison") system provides for the detention of criminal suspects in police custody until indictment. Article 1 of the 1908 Prison Law (Law No 28, 28 March 1908) states:

1. *The prisons shall be of the following four kinds:*
  - ... (4) *House of detention to detain accused persons, persons detained under the permit of detention, permit of provisional detention or writ of detention or detained upon the warrant of arrest and convicted persons sentenced to death.*  
(...)
  3. *The police jail may be substituted for a prison, provided that a convicted person sentenced to penal servitude or imprisonment shall not be detained therein continuedly for one month or more.*

The legal basis for the "substitute prison" system is Paragraph 1 (3). Since 1908, practice and legal precedent have resulted in the systematic use of police detention facilities to detain suspects until they are indicted, or released if not indicted.

In principle, a detainee must be presented to a prosecutor within 48 hours of being taken into custody. Detention beyond 72 hours, for a further period of up to 20 days, can take place only on the order of a judge or upon application by a prosecutor. Following this period of 23 days, suspects must either be released or indicted and transferred to a prison or detention house. In practice, suspects who have been detained for 23 days have been nominally released, then immediately re-arrested on other charges, and detained for a further 23-day period. In some cases suspects have been held before indictment for over 130 days in a succession of 23-day "substitute prison" periods of detention.

Amnesty International is concerned that the 23-day period, or periods, of pre-indictment detention in police "substitute prisons", by putting suspects under the permanent control of the police for a lengthy period, creates conditions in which human rights violations are likely to occur. The organization has received numerous reports of criminal suspects being ill-treated and threatened by National Police Agency (NPA) interrogators intent on obtaining a "confession" for use in court.

The "substitute prison" system weakens dramatically the nominal safeguards against human rights violations provided by Japanese law and international human rights standards, such as the International Covenant on Civil and Political Rights (ICCPR), the United Nations (UN) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), and the UN Basic Principles on the Role of Lawyers. Suspects are unable to exercise fundamental rights, such as being assisted by a lawyer during interrogation and meeting a medical doctor of their choice. In addition, lawyers and courts have restricted access to official records concerning the period suspects spend in "substitute prison". For example, lawyers have no access to the records concerning a suspect's examination by a doctor and neither courts nor lawyers have access to comprehensive police records of the time, date and duration of each interrogation session.

### ***Amnesty International's concerns related to the "substitute prison" system***

#### **Insufficient access to lawyers**

Article 14(3)(d) of the ICCPR states that "in the determination of any criminal charges against him", everyone has the right "to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him, in any such case if he does not have sufficient means to pay for it". The obligation to provide legal aid in such circumstances necessarily applies to all stages of the proceedings, even before a formal indictment, since the right to prompt access to counsel arises at the moment of arrest. The Body of Principles (Principles 15 to 18) guarantees prompt access to counsel and Principle 17 states that the right to legal assistance applies to any detained person. The Standard Minimum Rules provide that the right to apply for legal aid applies to prisoners detained without charges.

Nevertheless, government-funded legal aid is not available in Japan to suspects held in "substitute prisons", as only defendants against whom an indictment has been drawn up are eligible for government-funded legal aid, if they need it to obtain the assistance of a lawyer.<sup>1</sup>

Article 14(3)(b) of the ICCPR guarantees that any defendant in criminal cases has the right "to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing". Principle 18 of the Body of Principles contains a similar guarantee and the UN Basic Principles on the Role of Lawyers states that "governments shall ensure that lawyers... are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" and are able

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<sup>1</sup> However, in 1992 the Japan Federation of Bar Associations established a fund to subsidise, on a temporary basis, access to legal counsel at the start of detention in a "substitute prison".

"to consult with their clients freely". Nevertheless, these rights are routinely denied in the "substitute prison" system in Japan. Lawyers in practice are allowed short meetings (up to one hour per day) with suspects in *daiyo kangoku*, although such access has reportedly been denied by detention authorities when it was requested outside office hours or on holidays. Lawyers are not present during the interrogation of suspects. Also, it appears that the investigation authorities may delay a suspect's meeting with his or her lawyer until the end of an interrogation session.

**Insufficient access to medical doctor**

The Standard Minimum Rules (Rule 91) provide that every detainee is entitled "to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred". The Standard Minimum Rules (Rules 22 to 26) and the Body of Principles (Principles 24 to 26) set forth detailed obligations on the prison authorities regarding medical care of detainees. Principle 26 clearly states: "The fact that a detained person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law." Nevertheless, "substitute prison" detainees do not have access to independent medical attention or even to their own medical records.

Detainees who request medical attention may meet with medical doctors commissioned by district police authorities. Details of such visits and the findings of the doctor are recorded on a log kept by the authorities in charge of detention, to which detainees, lawyers or courts have no access. Courts which request details of medical findings are, in practice, merely provided by police with a summary of the log entry.

NPA officials told Amnesty International in June 1993 that this procedure was aimed at protecting the privacy of detainees. However, it also results in denying detainees access to their own medical records.

**Ineffective procedures to limit the length of interrogation sessions**

In principle, according to the NPA, interrogation of suspects should take place only during the day, and outside periods assigned for sleep or meals. NPA officials told Amnesty International that detention authorities are responsible to enforce "substitute prison" rules which specify the time at which meals, exercise, etc, are to be taken. According to the NPA, police officers in charge of detention may notify the Chief of the "substitute prison" police station of cases when investigation authorities do not respect a detainee's schedule for meals, rest or exercise.

In practice, however, police investigators may submit suspects to lengthy interrogation sessions, without effective control. Records of the date and length of interrogation sessions are not available to detainees, lawyers or courts. A chronological log noting the time at which

detainees are taken out of their cell for interrogation, and brought back, is kept in each place of detention. Detainees or lawyers have no access to this log. To Amnesty International's knowledge, prosecutors and courts are not provided with such records of the date and length of interrogation sessions.

Lawyers are never present during police interrogation of "substitute prison" detainees. In many cases, detainees have been interrogated for several hours every day, for very long periods.

#### **Inadequate records of interrogation**

Principle 21 of the Body of Principles states:

- "1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.
- "2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement."

However, to Amnesty International's knowledge, there are no comprehensive records of interrogation sessions for prisoners in "substitute prison". "Confessions" signed by suspects during interrogation are statements prepared by interrogators, not records of questions and answers. As a result, there is no record accessible to lawyers or court of the manner in which a confession was obtained, other than a record of the time of day it was signed.

#### **Allegations of ill-treatment of "substitute prison" detainees**

Article 14(3)(g) of the ICCPR states that every defendant has the right "not to be compelled to testify against himself or to confess guilt". Guideline 16 of the UN Guidelines on the Role of Prosecutors states:

"When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."

Nevertheless, several former "substitute prison" detainees interviewed by Amnesty International in 1993 have alleged that they had been forced or threatened into signing confessions admitting to crimes they did not commit. Methods used by investigators to force detainees into confessing to crimes have reportedly included detaining suspects in a

"substitute prison" cell together with one or more inmates requested to "advise" the suspect to confess. Former inmates have reported receiving blows to the head; being deprived of sleep and rest during interrogation sessions lasting over 10 hours per day every day for several weeks; having interrogators shout into their ears from a close distance.

### ***Amnesty International's recommendations***

Amnesty International is concerned that detainees held in "substitute prison" in Japan do not enjoy adequate protection from cruel, inhuman or degrading treatment or punishment. In view of the above concerns, Amnesty International calls on the Japanese Government to place strict and effective time limits on the length of pre-indictment detention permitted in the "substitute prison" system. Amnesty International also calls on Japan:

- ◆ **to ensure that all detainees have early access to a lawyer of their choice** by establishing a scheme for government-funded legal aid effective immediately from the time of detention;
- ◆ **to ensure that detainees have access on request to a medical doctor of their choice** and that the findings of medical doctors visiting detainees be made available to detainees and their lawyers;
- ◆ **to ensure that details of the time and length of interrogation sessions be maintained** in records available to detainees and their lawyers. If any interrogation session takes place at night or is of unusual length, this should be recorded and the reasons for this should be stated;
- ◆ **verbatim records or videotapes of interrogation sessions** should be systematically made, and be made available to the courts upon request;
- ◆ **allegations of ill-treatment** made by detainees in "substitute prisons" should be fully investigated by authorities independent of the National Police Agency, and the result of investigations made public.