

## Japan

### Amnesty International Submission to the UN Human Rights Committee

94<sup>th</sup> session of the UN Human Rights Committee, 13-31 October 2008

September 2008

Amnesty International is submitting this briefing to the Human Rights Committee in view of its forthcoming examination of Japan's periodic report on the implementation of the International Covenant on Civil and Political Rights.

This document is a revised version of the summary of concerns Amnesty International submitted in February 2008 for the information of the Country Report Task Force on Japan. It contains updates and further details on the issue of survivors of Japan's military sexual slavery system and the death penalty. For ease of reference revised and updated parts of the text are marked in Italics. Additional information on the concerns raised can also be found in the updated list of AI publications referred to in the relevant sections below.

#### Article 2

##### **Constitutional and legal framework in which the Covenant is implemented**

In the 1998 concluding observations, the Human Rights Committee noted with concern that the recommendations for Japan issued after the consideration of the 3<sup>rd</sup> periodic report had largely not been implemented. In 2004 the Committee on the Rights of the Child (CRC) had expressed a similar concern about the lack of adequate follow-up given to its recommendations.<sup>1</sup> Amnesty International is concerned that since the consideration of its 4<sup>th</sup> periodic report under the ICCPR the Japanese government has failed again to act on the Committee's recommendations in a number of areas.

Amnesty International also remains concerned that Japan has no independent national human rights institution which fulfils the requirements of the Paris Principles.<sup>2</sup> The existing Human Rights Commission reports to the Ministry of Justice, which is also responsible for prisons, detention centres and immigration centres. Amnesty International believes that the lack of independence of the human rights mechanism inherent in this arrangement undermines its authority to function effectively and to speak out on human rights concerns in the country without fear of censorship. Its close association with a government ministry may also deter victims, their relatives and other individuals or organisations from submitting complaints to the human rights mechanism for fear of reprisals or expectation that they will not obtain justice.

**Amnesty International has called on the government of Japan to implement, as a matter of urgency, the recommendations of all UN human rights treaty monitoring bodies, including to ensure that adequate human rights legislation is introduced and implemented. The organization has also called on Japan to sign and ratify the first Optional Protocol to the ICCPR.**

#### Articles 2(3), 3, 7 and 8

##### **Survivors of Japan's military sexual slavery system**

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<sup>1</sup> Concluding observations of the Committee on the Rights of the Child: Japan, UN Doc. CRC/C/15/Add.231, 26 February 2004, paragraphs 6 and 7.

<sup>2</sup> Principles relating to the status and functioning of national institutions for protection and promotion of human rights, adopted by the UN General Assembly on 20 December 1993.

To date the Government of Japan has failed to assume any legal responsibility for the 'comfort women' system of military sexual slavery under the Japanese Imperial Army before and during World War II. The State report from Japan does not address the 'comfort women' issue or the steps the State plans to take to resolve this issue. Sixty-three years after the end of World War II, survivors of the sexual slavery system continue to be denied justice. Survivors have suffered from physical and mental ill-health, isolation, shame and often extreme poverty as a result of their enslavement. 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. .

Up to 200,000 women were sexually enslaved by the Japanese Imperial Army from around 1932 to the end of World War II. The Japanese Imperial Army preyed on women and girls who, because of age, poverty, class, family status, education, nationality or ethnicity were most susceptible to being deceived and trapped into the sexual slavery system. The vast majority of women enslaved were under the age of 20; some girls were as young as 12 when they were abducted. The Japanese Imperial Army used violence and deception to obtain women and girls.

The impact and trauma of rape extend far beyond the attack itself. Women survivors face emotional torment, psychological damage, physical injuries, disease, social ostracism and many other consequences that can devastate their lives. Survivors did not speak of their ordeal for over 50 years. In many societies, due to cultural injustices and patriarchal norms, loss of virginity and inability to bear children make women unmarriageable; women who have been raped are not perceived as 'virtuous'; once lost, this perceived virtue can never be recovered.<sup>3</sup> Most lived and continue to live in poverty.

In January 2007 the US House of Representatives began debating House Resolution 121, calling on the Government of Japan to "formally acknowledge, apologise and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Force's coercion of young women into sexual slavery". The Japanese Foreign Minister Aso Taro, criticised the resolution, saying that it was 'not based on the facts'. On 1 March 2007, Japanese Prime Minister Abe Shinzo stated that there was "no evidence" that the recruitment of 'comfort women' had been coerced in the narrow sense of the word.<sup>4</sup> Abe said that he would not apologise again for his country's Second World War military brothels, even if the US Congress passed a resolution demanding it.<sup>5</sup> On 26 March, in response to criticism over earlier remarks casting doubt on whether the women were coerced, Abe said in the Japanese Diet "I apologise here and now as Prime Minister" and expressed sympathy for the people who underwent hardships.<sup>6</sup> However, this apology, like ones before it, does not articulate the precise nature of harms done and clearly sidesteps issues of legal obligations arising from violations of international law. House Resolution 121 passed in July 2007, followed by the adoption of similar resolutions in the European Parliament, Canada and the Netherlands.

During the UN Universal Periodic Review of Japan in May 2008, the Japanese delegation reiterated that the government had already extended apologies and remorse. The Japanese delegation stated that "it has been dealing with the issue of reparation and property claims, concerning the Second World War, including the issue of 'comfort women', in good faith, pursuant to the San Francisco peace treaty, bilateral peace treaties, and other relevant agreements" and that "such issues...have been legally settled with the countries of the parties to these treaties." In bilateral treaties between Japan and other states affected by the

<sup>3</sup> Colleen Duggan and Adila Abusharaf, "Reparation of Sexual Violence and Democratic Transition: In Search of Gender Justice" in Pablo de Greiff, editor, *The Handbook of Reparations*. (New York: Oxford University Press), 2006.

<sup>4</sup> "Japan anger at US sex slave bill", *BBC News*, 19 February 2007, available at: <http://news.bbc.co.uk/1/hi/world/asia-pacific/6374961.stm> (accessed on 4 September 2008) and "Abe questions sex slave 'coercion'", *BBC News*, 2 March 2007, available at: <http://news.bbc.co.uk/1/hi/world/asia-pacific/6411471.stm> (accessed on 4 September 2008).

<sup>5</sup> "Japan rules out new apology to 'comfort women'", *The Guardian*, 5 March 2007, available at: <http://www.guardian.co.uk/world/2007/mar/05/secondworldwar.japan> (accessed on 4 September 2008).

<sup>6</sup> "PM apology on sex slaves", *BBC News*, 26 March 2007, available at: <http://news.bbc.co.uk/1/hi/world/asia-pacific/6495115.stm> (accessed on 4 September 2008).

*'comfort women' system, with the exception of the Protocol with the Netherlands, there is no mention of individual claims in clauses seeking to exempt further claims. Compensations offered by the government have failed to meet international standards on reparation and are perceived by survivors as a way of buying their silence.*

*Amnesty International considers that Japan's position is flawed. Firstly, the San Francisco Peace Treaty, bilateral treaties and agreements do not cover acts of sexual slavery at all. Secondly, article 26 of the San Francisco Peace Treaty expressly allows for further claims in bilateral agreements. As Japan has entered into a number of bilateral treaties involving compensations, and under article 26, states that ratified the San Francisco Peace Treaty should be extended the same advantages (regardless of whether or not they have entered into bilateral agreements or treaties waiving reparations). Thirdly, several bilateral treaties and agreements do not appear to preclude further reparations. In bilateral treaties between Japan and other states affected by the 'comfort women' system, with the exception of the Protocol with the Netherlands, there is no mention of individual claims in clauses seeking to exempt further claims.. Fourthly, in the absence of a comprehensive report of the sexual slavery system, including where each 'comfort station' was located, it is not clear whether treaties and agreements have been concluded with all affected states. States where the existence or extent of sexual slavery has yet to be revealed could also be entitled to seek reparations. Finally, Japan has only dealt with one form of reparations in these treaties and agreements: compensation, whereas under international standards full reparations involve more than monetary compensation. In addressing the legacy of the system of sexual slavery, Japan's approach should be comprehensive and victim-focused.*

*Survivors of Japan's sexual slavery system are now elderly; many have died without seeing justice. The Japanese government has vigorously defended its legal position on this issue and has persistently maintained that all issues of compensation have been settled by post war peace treaties. The actions of the Government of Japan in denying and obstructing justice only compounds the human rights violations committed against the women. In this context Amnesty International has repeatedly urged:*

- *the Government of Japan to immediately implement effective administrative mechanisms to provide full reparations to all survivors of sexual slavery;*
- *the Diet (Japanese parliament) to make a full apology to survivors, including accepting Japan's full responsibility for the crimes, acknowledging that the crimes amount to crimes under international law, and acknowledging the harm suffered by survivors in a way that is acceptable to the majority of the survivors;*
- *the Government and Diet to review national laws with a view to removing existing obstacles to obtaining full reparations before Japanese courts. In particular, the right of individuals to claim reparations against the government should be expressly recognized in national law and cases for reparation should be prioritized taking into account the delay in allowing these claims to be brought and the ages of the survivors;*
- *the Government of Japan to issue a comprehensive factual report setting out the full scale of the 'comfort station' system, including, the location of each 'comfort station', the number of women subject to sexual slavery at each station and their nationality, the ages of the women and girls and any other factual information available.*

**Amnesty International has repeatedly urged the government of Japan to accept full responsibility and apologise unreservedly for the 'comfort women' 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, including by providing adequate compensation.**

For more information see:

- *Philippines: Open Letter: House Resolution 124 Calling on the Government of Japan to Apologize for the System of Military Sexual Slavery before & During World War II*, 3 June, 2008 (AI Index: ASA 35/001/2008, <http://www.amnesty.org/en/library/info/ASA35/001/2008/en>)
- *Breakthrough in battle for justice for “comfort women”* 21 December, 2007 (<http://www.amnesty.org/en/news-and-updates/good-news/breakthrough-battle-justice-comfort-women-20071221>)
- *European Parliament adopts resolutions on “comfort women”*, 14 December, 2007 (AI Index: 22/017/2007, <http://www.amnesty.org/en/library/info/ASA22/017/2007/en>)
- *Japan: Open Letter to Prof. Dr. Hans-Gert Pöttering, President of the European Parliament*, 14 November, 2007 (AI Index: ASA 22/015/2007, <http://www.amnesty.org/en/library/info/ASA22/015/2007/en>)
- *Japan/US: US House of Representatives resolution an important step towards justice for ‘comfort women’*, 30 July 2007 (AI Index: 22/009/2007 <http://www.amnesty.org/en/library/info/ASA22/009/2007/en>)
- *Japan: Amnesty International welcomes US congressional committee passing ‘comfort women’ resolution*, 28 June 2007 (AI Index: ASA 22/008/2007 <http://www.amnesty.org/en/library/info/ASA22/008/2007/en>)
- *Japan: Still waiting for justice after 60 years – justice for survivors of Japan’s military sexual slavery system*, 28 October 2005 (AI Index: ASA 22/012/2005 <http://www.amnesty.org/en/library/info/ASA22/012/2005/en>)

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## Articles 6 and 7

### The death penalty

*Amnesty International opposes the death penalty in all cases and considers it a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.*

*Japan has so far executed 10 people this year, which is more than the total number of executions carried out in 2007. Prison authorities carry out executions by hanging in Japan, usually in secret. Officials notify death row inmates just hours before the execution, and inform family members only after the execution has taken place. Once the appeals process is complete, a death row prisoner in Japan may wait for years or even decades before execution. This practice means that these prisoners live in constant fear of execution. In the concluding observations, adopted in October 1998 following the consideration of Japan’s fourth periodic report, the Human Rights Committee expressed concern:*

*“that the undue restrictions on visits and correspondence and the failure to notify the family and lawyers of the prisoners on death row of their execution are incompatible with the Covenant. The Committee recommends that the conditions of detention on death row be made humane in accordance with articles 7 and 10, paragraph 1, of the Covenant.”<sup>7</sup>*

In September 2007, the Minister of Justice, Hatoyama Kunio, spoke publicly about the need to streamline executions, including scrapping the rule requiring the Minister of Justice to personally authorise executions. If carried out, this will allow for death row inmates to be automatically executed within six months of the end of their appeals process. 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 seek pardon or commutation under the ICCPR and will increase the risk of innocent persons being executed.

<sup>7</sup> Concluding Observations of the Human Rights Committee: Japan, UN Doc. CCPR/C/79/Add.102, 19 November 1998, para.21.

Concerns also arise in relation to the fact that the legal process in Japan is extremely slow. Accused persons spend extended periods in detention waiting to be tried and even longer waiting for appeals to be heard in court. Some prisoners spend a few years on death row while others have been on death row for decades. Okunishi Masaru was sentenced to death in 1961; he is now 82 years old and still on death row. *The Nagoya High Court finally agreed to consider Okunishi's appeal at his seventh attempt, and a fresh trial began on 5 April 2005. However, the Nagoya High Court decided not to proceed with the retrial as it was feared that if his death sentence was reversed, others would also challenge their sentences, and public confidence in the judicial system would be undermined. Okunishi has exhausted his appeals, and remains at risk of being executed at any time, unless he is pardoned by the Minister of Justice or granted a retrial.*

*On 17 June 2008 Japan executed three individuals, including Miyazaki Tsutomu, who, according to his lawyer, was mentally ill and had been receiving psychiatric medical treatment in the detention centre for more than a decade. He was executed without any prior notice. On 23 August 2007 Takezawa Hifumi was executed along with two other individuals. He had reportedly been suffering from mental illness as a result of a stroke, which made him paranoid and aggressive. According to reports of his trial, doctors acting for both the prosecution and the defence diagnosed Takezawa as mentally ill. However he was deemed liable for his crime and sentenced to death. In 2003 Mukai Shinji, who was also reportedly suffering from mental health problems, was executed while his lawyer was preparing an appeal for a retrial. According to Article 30 (1) of Japan's Criminal Law any conduct of a person suffering from 'insanity' shall not be punished. Article 39(2) further provides that, as to the conduct of a person suffering from 'quasi-insanity', the sentence shall be commuted.*

**Amnesty International has called on the government of Japan to commute all death sentences, introduce a formal moratorium on executions as a first step toward abolition of the death penalty and initiate a public and parliamentary debate on abolition of the death penalty.**

For further information see:

- *Japan: Amnesty International condemns latest round of executions*, 17 June 2008, (AI Index: ASA 22/004/2008, <http://www.amnesty.org/en/library/info/ASA22/004/2008/en>)
- *Japan: executions must stop, says Amnesty International*, 10 April 2008 (<http://www.amnesty.org/en/for-media/press-releases/japan-executions-must-stop-says-amnesty-international-20080410>)
- *Japan: Amnesty International condemns new round of "streamlined" executions*, 1 February 2008, (<http://www.amnesty.org/en/for-media/press-releases/japan-amnesty-international-condemns-new-round-%E2%80%9Cstreamlined%E2%80%9D-executions->)
- *Japan: Amnesty International condemns executions*, 7 December, 2007 (AI Index: ASA 22/016/2007)
- *Japan: Three executed ahead of United Nations General Assembly resolution*, 7 September 2007 (AI Index: 22/012/2007)
- *Open Letter to the Minister of Justice of Japan, The Hon. Nagase Jinen*, 24 January 2007 (AI Index: ASA 22/001/2007)
- *Japan: "Will this day be my last?" The death penalty in Japan*, 7 July 2006 (AI Index: ASA 22/006/2006)

## **Article 7**

### **Lack of explicit criminalisation in the Penal Code of torture**

Amnesty International is concerned at the lack of explicit criminalisation in the Penal Code of torture. In its concluding observations in 2007, the Committee against Torture (CAT) expressed concern, among others, that the Penal Code of Japan currently does not include a crime of torture as defined in Article 1 of the UN Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment, and in particular that the definition of “mental torture” as under articles 195 and 196 of the Penal Code is not clear.<sup>8</sup>

#### **Article 7, 9, 10 and 14**

##### ***Daiyo kangoku* system of pre-trial detention**

Under the *daiyo kangoku* (substitute prison) system a person can be detained in a police cell, under the authority of the police, for up to 23 days without charge. Amnesty International is concerned that there are no rules or regulations regarding the length of interrogations carried out during this period, that access of lawyers to their clients during interrogation is restricted, and that interrogation sessions 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, and making the suspect stand or sit in a fixed position for long periods.

The potential for violations to occur is compounded by the lack of effective access to legal counsel. Article 39 of the Code of Criminal Procedure provides the right of legal counsel “without having any official watchman present”, and in article 37 the Constitution provides that “[a]t all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his/her own efforts, be assigned to his/her use by the State”. In practice, however, investigators often restrict the right of individuals to confer with their legal representative. The Japan Federation of Bar Associations has reported that “counsel cannot see the suspect without the prior permission of the investigator in charge”. It is not unusual for lawyers to be granted permission to meet with their clients only two to three days after applying for permission, and interviews are limited to only 15 minutes.

Amnesty International remains concerned at the failure of the government of Japan to bring the *daiyo kangoku* system into line with international standards, despite repeated calls by the Human Rights Committee and CAT. In its concluding observations in 1998 the Human Rights Committee recommended, not for the first time, “that the substitute prison system should be made compatible with all requirements of the Covenant.”<sup>9</sup> Similarly, in its concluding observations in 2007, the CAT expressed deep concern at the “prevalent and systematic use of the *Daiyo Kangoku* substitute prison system” noting that “insufficient procedural guarantees for the detention and interrogation of detainees increases the possibilities of violations of their rights and may lead to a *de facto* failure to respect the principles of presumption of innocence, right to silence and right of defence”.<sup>10</sup>

The National Police Agency issued guidelines for conducting interrogations in January 2008; however, Amnesty International is concerned these fall far short of the recommendations made by the CAT. The guidelines call for a one-way mirror system for interrogation rooms, but do not call for interrogation sessions to be recorded. Amnesty International is concerned that these measures will be insufficient to put an end to torture and other ill-treatment during interrogation. The new guidelines also refer to “*Ginou Densho Kan*” (Traditional Skill Patrimony Officer), which indicates that techniques for obtaining confessions, including the use of torture and other ill-treatment, may be taught to the next generation of police officers as a matter of course.

**Amnesty International has repeatedly called on the government of Japan to take steps to abolish the *daiyo kangoku* system or bring it into line with international law and standards, and implement safeguards, such as explicit directives for prompt and unhindered access to legal**

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<sup>8</sup> Conclusions and recommendations of the Committee against Torture: Japan, UN Doc. CAT/C/JPN/CO/1, 18 May 2007, para. 10.

<sup>9</sup> Concluding Observations of the Human Rights Committee: Japan, UN Doc. CCPR/C/79/Add.102, 19 November 1998, para. 23.

<sup>10</sup> *Ibid.*, para. 15.

**counsel as well as electronic recording of all interrogations. Japan, considered to be one of the world's most prosperous and technologically advanced nations, should lead the international community in applying technology-related safeguards for human rights by example rather than lag behind the requirements of international law and standards;**

For further information see:

- *Japan: "Will this day be my last?" The death penalty in Japan*, 7 July 2006, (AI Index: ASA 22/006/2006), section 4, pp 6-8.

### **Article 13, 7**

#### **Refugees**

The 2006 Immigration Control and Refugee Recognition Act does not expressly prohibit the return of asylum-seekers to countries where there is a risk of torture, in violation of the customary international rule of *non-refoulement* and Japan's treaty obligation, including under the Covenant.<sup>11</sup>

Recognition rates of asylum-seekers for refugee status are low relative to the number of applications and the refugee status determination process can take up to a decade for a final resolution of the claim. In addition, Amnesty International is concerned that there are insufficient guarantees of access to an independent, and ultimately judicial, review of asylum decisions. In some instances, returns are alleged to have been carried out immediately after the conclusion of the administrative procedure and before an asylum-seeker can submit an appeal against a negative decision.

Immigration centres often do not provide sufficient access to medical treatment.

#### **Terrorism legislation**

Amnesty International is further concerned by an increase in discriminatory measures against non-nationals in Japan. From November 2007, an amendment to the Immigration Control and Refugee Recognition Act introduced fast-track procedures to deport anyone deemed a 'possible terrorist' by the Minister of Justice. Under these procedures, individuals are denied the right to appeal against a decision to deport, including those with a claim to international protection.

#### **Amnesty International has called on the government to:**

- **Revise the Immigration Control and Refugee Recognition Act to prohibit the return of asylum-seekers to countries where there is a risk of torture, cruel, inhuman or degrading treatment or punishment or other serious human rights violations.**
- **Revise the counter-terrorism law to bring it into line with international law and standards.**

### **Articles 26 and 27**

#### **Discrimination against children born out of wedlock, Ainu children and other minority groups**

The concluding observations on Japan from the Committee on the Rights of the Child in 2004 noted that "domestic legislation does not fully reflect the principles and provisions of the Convention" and that "legislation discriminates against children born out of wedlock and that societal discrimination persists against ...Ainu children and other minority groups".<sup>12</sup>

In its concluding observations in 1998, the Human Rights Committee expressed similar concern over discrimination against children born out of wedlock with regard to the issue of inheritance rights. It reaffirmed its position that pursuant to article 26 of the Covenant, all children are entitled to equal protection, and recommended that the State party take the necessary measures to amend its legislation, including article 900, paragraph 4, of the Civil Code. The Committee was also concerned about the discrimination against members of the

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<sup>11</sup> See e.g. Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), para. 9.

<sup>12</sup> Conclusions and recommendations of the Committee on the Rights of the Child: Japan, UN Doc CRC/C/15/Add.231, 26 February 2004, para. 24. See also the Concluding Observations of the Human Rights Committee, para. 14.

Ainu indigenous minority in regard to language and higher education, as well as about non-recognition of their land rights.

Amnesty International's submission to the UN Universal periodic review of Japan in the second session of the UPR working group, 5-16 May 2008, raised the issue of discrimination against children born out of wedlock and Ainu indigenous minority.

**Amnesty International has called on the government of Japan to amend its legislation so that children born out of wedlock are not discriminated. The organization has also called for the government to take appropriate measures to address discrimination against the Ainu indigenous minority in regard to language, higher education and land rights.**