

Prisons

A. Harsher Punishment and Overcrowded Prisons – Background of Torture and Ill-treatment

1. Overcrowding beyond our experience is progressing in Japanese prisons now. Under this situation, the risk of torture and ill-treatment is increasing. The prison population (the average daily number of inmates) had consistently been trending down since 1950, the number of 103,170 as a peak, had been stabilized at nearly 50,000 by 1999. However, since 1999 it has been changed into a steep increasing trend. The number of prisoners which was 53,947 in 1999 has increased by about 49% to 80,335 in 2006. When the proportions of prisoners to the entire population are measured, Japan has remained one of the countries which have small prison populations, but the growth rate in Japan is extremely high among the whole world. The ratio of prisoners to the capacity has also been increasing. Especially, the ratio of sentenced prisoners reached 115% in 2006.

2. Concerning the reason for this trend, the government and we, NGO members, have different analysis. The government explains that prisoners' growth is caused by a rise in crime, then, they stressed tougher policy on crime including enhanced control by police and harsher punishment. On the other hand, our view differs from this explanation as follows: The official statistical data referred to as "the number of committed crimes" only shows the number of cases (or suspects) whose occurrence came to be known to the police/prosecutors through reporting, filing a complaint or other reasons, then, the steep increase of the number was caused by efforts to strengthen control on incidents by investigative authorities amid mounting concerns about safety in Japanese society. Excessive tougher policy on crime without objective evidence about effective measures will lead to more overcrowding of prisons.

3. It is evident that there is a limitation in the capacity of prisons, so the government has to change their policy in the direction of decrease of prisoners' number. For example, about 20% of prisoners who suffer from drug addiction can be treated in the community.

B. Nagoya Prison Cases and Recommendation of the Council on Prison Administration Reform

4. Notorious torture cases occurred in a chronic overcrowded prison. Three sentenced prisoners died or were injured as a result of the guards' assaults in the Nagoya Prison from 2001 to 02. Amid amounting criticism of these incidents in the Nagoya Prison, the Minister of Justice established the Council on Prison Administration Reform composed of academics, lawyers, and others. The Council issued recommendations for reform plans of Japanese prisons (mainly for convicted prisoners) to the Minister of Justice. According to this recommendation and some draft revisions of the Prison Law, the new law called the "Law Concerning Penal Institutions and the Treatment of Sentenced Inmates" was enacted in the Diet on May 2005 and in force since May 2006. On May 2006, the amendment of this law was enacted and it added provisions on treatment of detained suspects and defendants and also death sentenced prisoners to the new law. This amendment of the new law will be in force by June 2007. Hereafter, both the new law which was in force since May 2006 and its amendment will be referred to as "New (Prison) Law".

C. Positive Aspects and Concerns of the New Law

5. For the prohibition of torture, the positive aspects of the New Law are the following: (1) Expansion of the opportunity to contact those outside of prison; (2) Establishment of independent committees for visiting prisons (the government explained as “the Board of Visitors for Inspection of Penal Institutions”) in each prison; (3) Improvement of the complaints system.

6. We can see one more positive aspect in practice. The government stopped the use of leather handcuffs which had been used usually as a restraint instrument on prisoners, and imposed limitations on the use of solitary confinement and detention in the so-called “Protective Rooms”. However, we are concerned about the following: The government can revalidate the period of the solitary confinement many times, and there is no limitation; it introduces a new type of handcuffs and uses them together with solitary confinement which will cause degrading treatment of prisoners especially at meals and toilet breaks. We are also concerned that there is no definite provision about investigation of death cases in prisons.

D. Remaining Issues under the New Law

7. Even after the New Law has come into force, we raised 3 issues concerning prevention of torture and ill-treatment in prison as follows: (1) to ensure prisoner’s rights to medical treatment; (2) to abolish longer solitary confinement; (3) to expand the range of subjects prisoners can complaints about and to establish independent mechanisms for investigation of the complaints. We mentioned especially description will be about the issue (1) as follows.

8. The medical condition in Japanese prisons is critical. As to the reason for this, firstly the number of doctors working in prison is extremely small. Secondly, prison officers who are qualified as nurses often examine and administer a dose to prisoners instead of doctors. The prison government usually explained the reason for this treatment because many prisoners pretend to sick, but this should be considered a separate issue. Furthermore, when a prisoner needs medical treatment by the certain medical specialist who works for exterior institutions, the prison governor/warden often refuses to bring them outside because of the small number of prison guards who accompany and supervise the prisoner. To solve this problem, we suggest that the jurisdiction over prison medical administration should be changed from the Ministry of Justice to the Ministry of Health, Labor and Welfare Ministry, which leads to ensure medical practice independency from security issues in prison and to integrate into the ordinal medical system in the community where the prison exists and to get more doctors. Inadequate medical practice will lead to ill-treatment of prisoners, then, this should be considered one of the urgent issues together. Additionally, the issue of investigation of death in prison should be considered.

Asylum Seekers and Refugees

A. Overview of the Asylum Procedure

9. Japan joined the Refugee Convention in 1981 and Refugee Protocol in 1982. In the same year, the Immigration Control and Refugee Recognition Act (ICRRA), which sets the procedure for asylum procedure, came into effect. Since then, the law had hardly been amended until 2005, which was the first amendment of ICRRA for asylum recognition. Asylum application is decided by the Minister of Justice after interview and review have taken place when an application is filed with the Immigration Bureau. If applicants disagree with

the decision, they may file an appeal to the Minister of Justice once again. Since the 2005 amendment, private-sector persons of experience or academic standing began to review the process of appeal. When the appeal is rejected, it is possible to proceed to the judicial procedure for its revocation. However, state founded legal aid is not provided through public assistance. Since 1982, from the time when the refugee recognition system was implemented up until the end of 2005 (for 23 years), 3928 persons have applied for refugee status, 376 (including those who were granted after an appeal) have been granted refugee status, 381 have been given the special permission to stay on humanitarian grounds.

B. Recent Developments

10. Since the 2005 Amended Immigration Law and its implementation, deportation is prevented in the system of refugee recognition procedure (during the administrative procedure, not judicial procedure). Legal status of the asylum seekers were a little more stabilized due to the introduction of provisional stay. Through the judicial procedure, there are cases that concept of “persecution” is discussed and deportation order and/or refugee rejection decision are cancelled based on the Convention Regarding the Status of Refugees and/or Convention Against Torture in some cases (the numbers of the cases are limited but both in district and high court).

C. Challenges of Refugee Recognition Procedures

11. The following problems are brought up by related parties/agencies:

- Overly strict burden of proof is imposed on the applicants
- Bias for nationalities of those who are granted refugee status (i.e. few Chinese and 0 Turkish Kurds out of more than 450 cases)
- Although it is different depending on each applicant, the usual waiting period for recognition takes about one year or more, and work and daily life are not guaranteed for this time period.

Immigration Detention Institutions

A. Foreigners in Japan

12. This report focuses on migrant workers and asylum seekers except for so-called Westerners whose legal status is comparatively stable and the people from former colonies (i.e. special permanent residents) prewar and during World War 2nd. Migrant workers seemed to be temporary guest workers as the authorities expected at first. However, they have started to resettle in Japan and stay here longer and longer although they think they want to go back to their home countries sometime in the future. This trend contradicts the government’s expectation. A new migrant policy will be started in order to solve the manpower shortage problem because of the decrease of Japanese population and birthrate. The problem is that migrants are not a temporal social phenomenon but could be a persistent one.

B. Xenophobia and Deteriorating Conditions of Immigration Detainees

13. It is hard to say that the government’s policy for foreigners is tolerant. There is a rumor that “foreigners”

are dangerous. The rumor doesn't have any concrete basis and it frequently comes from the Police Agency and the Immigration Bureau of the Ministry of Justice since 1992 when the bubble economy burst. As a result, many undocumented migrants have been arrested, prosecuted, detained, and deported. Moreover, the immigration control has been strengthened and they refuse many people from Asia, Africa, and Latin America entry to Japan as an interdiction measure. From 1991 to 1994, the capacity of detention at immigration facilities reached 100%. The treatment for detainees and violence against them happened frequently. They became a social problem. Furthermore, there is an increasing number of asylum seekers and almost all of them are denied refugee status from the late 1990 to the present. Most of them are detained in immigration detention facilities for a long and indefinite period. This causes the friction between the officers at Immigration Bureau and immigration detainees. It also triggers officer's violent behavior against the detainees and their bad psychophysical conditions, such as frequent self-injury and attempted suicide. It highlights the problems of the health care system in detention facilities. On November 6, 1998, the United Nations Commission on Human Rights expressed concerns about these situations and made an exceptional recommendation for the improvement of the Immigration Bureau in Japan.

C. The Purpose of Management and Detention of Foreigners in Japan

14. Foreigners in Japan are subject to the Immigration Control and Refugee Recognition Act (hereinafter ICRAA) and "Alien Registration law". Both of them aim at control over foreigners and do not mention their human rights. Therefore, in the court cases on foreigners' human rights, their human rights are based on the human rights related provisions in the Japanese Constitution or international standards on human rights. Under current legislation, there is no basic law related to foreigners' human rights.

15. Japan accepts foreigners in accordance with the status of residence. Status of residence is, that is to say, this is provided by ICRAA and typifies to whom acceptable and what kind of activity they do. Therefore, this system does not take a position from the side of foreigners' human rights. Rather, it works as a limit on their activity. For instance, if you enter Japan as a tourist, it is categorized as "a temporary stay" in the status of residence and they are not allowed to work except for receiving temporary compensation.

16. In January 2006, according to the statistics issued by the Immigration Bureau, the number overstaying is 193,745. If we add the number of persons who did not enter under proper processes, the number of irregular migrants would increase to 3,000,000. Irregular migrants are subject to arrest by the Immigration of Bureau. If an irregular migrant is found, he or she should be detained in the process of deportation.

D. Agendas for Implementation of Treaty and its Rights

17. Interpreters should be provided while having a medical care. Access to external medical agency is to be eased. A procedure to suspend the detention according to discretion made by a doctor should be introduced if a person's medical or mental health is worsened and in trouble.

18. "Mandatory detention policy" should be amended and elements for detention should be clarified. Remove the following persons from the list of detention. Persons in ill, minors, elderly persons, pregnant women, asylum seekers, persons pending before courts, persons pending before Labor Standards Agencies for non-payment and accidents from labor, persons without prospect of deportation, and other persons who were

found not eligible for deportation. Detention should be decided at the judicial system given the fact that such decision is identical to criminal procedure. A system should be set up to proceed deportation while staying in the house for persons not eligible for detention.

19. A limit of 30 days with additional 30 days of extension, so maximum of 60 days, is provided for detention for detention orders. However, no limit is set for detention for deportation orders. This should be amended to avoid indefinite detentions or long term detentions. (It could be suggested that a maximum of 4 months combined with the term for detention order is to be considered.)

20. The reciprocity clause of Article 6 of the State Redress Law is set as a burden for foreigners to file a claim for protection of human rights. The clause should be removed respectively.

21. An independent monitoring scheme should be set up with a full authority of receiving allegations for human rights abuses, to carry out non-restricted on-site visit to any detention centers.

Mental Health Institutions

22. Ninety percent of institutional mental health services in Japan are privately owned and operated. There are currently 330,000 people still in psychiatric inpatient facilities in Japan, leaving Japan with the highest number of psychiatric in-patients in the world. Additionally, 25% of total hospital beds in Japan are used for psychiatric hospitalization.

23. The Japanese Law Pertaining to the Mental Health and Welfare of People with Mental Problems allows psychiatrists to hospitalize people involuntarily as well as restricting their behavior. This is different from many countries that require the court to review or order these actions. In many countries the right to restrict freedoms in this way is reserved for the public sector. However, in Japan these rights are ceded to psychiatrists in the private sector. Consequently, it is unclear who in the broad mental health system has the responsibility for interpreting and implementing the mental health law. This leaves room for many human rights abuses, both historically and currently.

24. The current mental health law has two types of hospitalization: Article 29, Involuntary Hospitalization Ordered by the Prefectural Governor, and Article 33, Hospitalization for Medical Care and Custody. Article 33 includes hospitalization consented to by family members and local officials such as city or town mayors.

25. Under Article 36 the Director [the designated psychiatrist] of the psychiatric hospital may impose necessary restraints on a person hospitalized within the limits essential for his/her medical care and custody. This includes placing the person in a locked ward, a seclusion room, and physical restraints. The one day statistics from June 2003 of 1,662 psychiatric hospitals indicated that there were 140,075 individuals in 24 hour locked inpatient wards (42.6% of total psychiatric hospitalizations), 7,741 people restricted to seclusion rooms, and 5,109 individuals under physical restraint. However, Japanese practice also allows people to be placed in seclusion rooms for under 12 hours without the consent of the designated psychiatrist. As a result, although many say that punishment is not a part of medical practice, the restriction of behavior and short-term seclusion without the review of a designated psychiatrist allows for the punishment of individuals.