

# UNIVERSAL PRINCIPLE

—Human Rights Report from JCLU—

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## Human Rights Committee Questions Japan's Official Report

In June, the JCLU submitted its "Report Concerning the Present Status of Human Rights in Japan (a Counter-Report)" to the United Nations Human Rights Commission. The counter-report was designed to supplement what the JCLU considered an inadequate report that the Japanese Government submitted to the Commission as required under the International Covenant on Civil and Political Rights (ICCPR). Commission members often referred to information contained in the counter-report during the consideration of the Government's report. It is our view that the submission of the counter-report was a great success.

The states parties to the ICCPR undertake to submit reports on the progress made in the domestic enjoyment of human rights every five years. The Human Rights Commission reviews the reports. The Japanese Government submitted its second report in December last year. The substance of the report, however, was not revealed until May of this year. After obtaining a

copy of the report, the JCLU immediately launched a thorough study of its substance. The JCLU found that the report often referred only to the text of current laws, often omitting description of actual situations that are incompatible with the provisions of the ICCPR, and that no reference was made in the report of some important human rights issues. The JCLU thus drew up a report of its own (the Counter-Report) describing the true human rights situation in Japan.

Due to the shortage of time, the JCLU decided to include in the counter-report only nine of the topics with which it had dealt. Upon completion of the report, the JCLU distributed it to every member of the Human Rights Commission. A member of the JCLU, attorney Etsuro Totsuka, who currently works in London, approached every member of the Commission and urged them to consider the counter-report in their deliberations. The public consideration of the Government's report began on July 20 after unofficial in-camera meetings earlier in the month.

A few members of the JCLU also travelled to Geneva to observe the Commission's proceedings. They received the impression that each member of the Commission had thoroughly reviewed the counter-report, as well as other reports supplied by more than ten civic human rights groups. They reported that Commission members rigorously questioned the Japanese Government representatives regarding various issues such as human rights of the mentally ill and the alternate detention system. The Japanese delegation was occasionally compelled either to reserve its replies or to admit the truth of some acute criticisms raised by members of the Commission, they said. Consideration of Japan's report extended over thirteen hours in three days. It was origi-

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nally scheduled to last two days.

The JCLU recorded each senior of the Commission's proceedings and is now transcribing, translating and distributing the record. In addition it is studying how most effectively to convey this information to the public.

## **JCLU Protests Mass-Arrest, Detention in Malaysia and Singapore**

The JCLU sent letters to Mr. Mahathir, Prime Minister of Malaysia, and Mr. Lee Kuan Yew, Prime Minister of Singapore, to protest against detention under the Internal Security Acts.

The contents of such Acts in each country are almost the same in the sense that the Acts relate to detention for the purpose of preventing crimes. Under the Acts, any person who is judged by the government to be likely to act in any manner prejudicial to the security of society may be detained for up to two years after a sixty-day-detention in Malaysia and after a thirty-day-detention in Singapore, and an order of detention may be renewed any time.

Under the Acts more than one hundred persons have been arrested in Malaysia since October of 1987, and twenty-two persons were arrested in May and June of 1987 in Singapore.

Among the persons arrested in Malaysia, there was Mr. Chandra Muzafar, member of the Asian Human Rights Committee, whom the JCLU supported. Also, in connection with detentions in Singapore, Mr. Akinori Hashimura, member of the JCLU, attended, on behalf of Mr. Kenkichi Nakadaira, member of the Asian Human Rights Committee, the International Lawyers Examination Team which is composed of members of the International Commission of Jurists (ICJ), the International Federation of Human Rights (IFHR) and the Asian Human Rights Committee.

The Team's examination discovered that detentions both in Malaysia and in Singapore have infringed human rights for political reasons.

Both governments have been pushed by international public opinion to release many persons, but more than thirty persons in Malaysia and Mr. Vincent Chen, who was deemed to be a leader in Singapore, are still being detained.

## **JCLU Calls for Reconsideration of Aids Bill**

The government is now introducing a new bill to the Diet for the purposes of preventing the spread of Acquired Immune Deficiency Syndrome (AIDS) and improving the level of public health.

However, the above bill obligates doctors to inform prefectural governors of the names and addresses and

other information about sufferers (Article 7) and gives the governors the power to order compulsory medical examinations in order to check whether the reported persons are suffering from AIDS or not (Article 8). Also, the bill gives the governors the power to issue instructions on the daily life of infected persons (Article 9) and a strong power to question the infected persons or suspected persons (Article 10). In addition, a person who gives a false answer shall be punished with a fine (Article 16). Since the above bill may give rise to a significant infringement of civil liberties, there need be discussions among people in various fields and various classes as to whether the above mentioned steps are really necessary or not.

It is needless to say that, in order for compulsory steps to be valued properly, in addition to a thorough understanding of the seriousness of harm, the strength of contagiousness, the manner of contagion and so on, it must be proved not only that the steps are effective to prevent contagion but also that among all possible steps that will lead to equal effects, the steps in question will infringe civil liberties the least and that they are reasonable and necessary. The above bill, however, has not been discussed from such view points among people in various fields and classes. Also, the bill seems to have been drafted without referring it to public health professionals or medical service clinicians.

Although AIDS is spread through very limited routes, considering the serious results of contagion and the fact that it is widespread in foreign countries, it is necessary to deeply ponder measures to prevent contagion of AIDS. However, we should not legislate a rough-hewn bill based only upon people's ambiguous sense of unease without calm discussions.

JCLU has just begun examination of the above-mentioned issue by establishing an "AIDS and Human Rights Committee". We are opposed to the idea that a bill accompanied by measures that would infringe civil liberties would be legislated without full discussion among people in various classes and we hope that the Diet and relevant organizations will consider the issue with full care.

Japan Civil Liberties Union  
May 9, 1987

## **Individual Private Information Protection Bill Passed against JCLU's Request**

The Diet passed into law the Individual Private Information Protection Bill prepared by the government on December 9, 1988, notwithstanding criticism by many citizens groups.

On April 7, 1988, JCLU submitted to the chief of

the Management and Coordination Agency (Somucho) an opinion pointing out problems in the Individual Private Information Protection Bill prepared by the government, and requesting a drastic reform of the legislation.

The current tendency in the world is to establish systems of protecting individual privacy, and most of the advanced countries have privacy protection acts.

However, the above Act in Japan sacrifices individual privacy to convenience of administration. Therefore, the bill was sharply criticized for not *protecting* privacy.

Among other things, the Act contains the following problems: (1) there is no provision to control the collection of sensitive information such as thoughts, creed, religion, family origin and case history; (2) there is no control over the flow of information regarding individual privacy among governmental organizations including corporations having special status and local governments, and therefore the information flows freely among them; (3) since there are many exceptions to the information disclosure system, the public is not privy to what kind of information is collected by the government. Also, people cannot access and examine the information about themselves such as information concerning education, medical treatment and police contact.

Please refer to our booklet "Seeking the Establishment of Individual Private Information Protection System —Serious Problems of the Government Bill—" (¥300.-).

### High Court Denies Courtroom Notetaking Right

Tokyo Appellate Court Denies "Memo Litigation" Appeal.

Mr. Laurence Repeta, an American attorney and member of the JCLU, sued the Japanese government to seek damages suffered when at a Tokyo District Court judge prohibited him from taking notes at a criminal proceeding that he was observing. He claimed that the judge's prohibition was in violation of the Constitution. However, on December 25, 1987 the Tokyo Appellate Court, affirmed the decision of the Tokyo District Court of February 12, 1987, denying his claim.

Mr. Repeta has published many articles on economic regulation Japanese legal system. He started to study the criminal case called "Seibi Jiken" involving a large income tax evasion as a case study of Japanese economic regulation. He began attending the court sessions as a spectator and after several sessions, he requested that the judge presiding over the case allow him to take notes to record what was happening in the session.

However, the judge, Yasuro Kose, denied his request and prohibited his note taking. Despite his repeated re-

quests, the judge did not change the decision.

The decision by the Appellate Court that the take notes is guaranteed by the Constitution as necessary to receiving and communicating information to implement the freedom of expression. However, the court further reasoned that the prohibition of note taking is constitutional because it serves to maintain the quiet and ordered atmosphere of the court so that the judge can concentrate on the trial.

However, through such a rationalization the decision ignores the constitutional right of freedom of expression and access to information. At present, reporters who are members of the court press club may take notes during the courses of court proceedings but private persons and free lance journalism are prohibited. This fact suggests that the prohibition on notetaking is not truly for the purpose of maintaining order in the court, but merely an unconstitutional restraint of a guaranteed right.

Mr. Repeta, Represented by JCLU member lawyers, immediately appealed the decision to the Supreme Court.

### Current Situation and Problems of the Yasukuni Constitutional Suits

On the 5th of March, 1987 the Mrioka district court ruled against the plaintiffs in the Yasukuni constitutional suit filed against the Iwate Prefectural assemblymen.

The decision has had profound influence on the other Yasukuni constitutional damage suits at issue.

The Yasukuni constitutional suits were filed against members of prefectural assemblies and the Diet, as well as prefectural and national governments, for violation of Articles 20 and 89 of the Constitution of Japan. Article 20 of the Constitution guarantees freedom of religion to everyone and prohibits the State and its organs from giving any privileges to religious organizations or engaging in any religious activity.

Article 89 also prohibits the State and its organs from expending public money or devoting other property for the use, benefit or maintenance of any religious institution or association.

These Articles were set forth for the purpose of separation of religious organizations and the state. Japanese people have keenly recognized the need of such separation through the experience of the Pacific War: it is believed that Shintoism protected by the then Japanese Government justified and facilitated the war. So, deeply concerned about the cozy relationship between Shintoism or Shrines, especially the Yasukuni Shrine and the current Government, people filed constitutional suits against the Government and the members of public assemblies and the Diet who advocate Shintoism. The



Yasukuni constitutional suit against the Iwate prefectural assemblymen is one of these suits.

The above-mentioned suit is summarized as follows. The Iwate prefectural assembly passed a resolution, asking the prime minister and other ministers to go to worship at the Yasukuni Shrine. Some assemblymen drew up documents to elaborate on the resolution and went to Tokyo to submit them to the prime minister at the expense of Iwate prefecture. Furthermore, a section chief of Iwate prefecture contributed some official money to the Yasukuni Shrine. Residents in Iwate prefecture filed a suit against the assemblymen and the section chief so as to make them repay the money to Iwate prefecture based on Articles 20 and 89 of the Constitution.

However, the Morioka district court in Iwate prefecture decided that the resolution and the contribution did not violate the articles of the Constitution and the plaintiffs lost the suit.

Not only the plaintiffs of this suit but also the plaintiffs of the other Yasukuni suits were disappointed by this judgment. They fear this decision will be a leading precedent in this kind of suits.

But we should not be discouraged. In order to protect constitutional principles, the suits must win an appeal. In analyzing these cases, we should take into account the following 4 points. (1) Freedom of religion absolutely needs separation of religious organizations and the State. (2) Religious corporations must be independent of the State and must not ask for contributions from the State. (3) The defendants should understand that the State Compensation Act must be interpreted from the viewpoint of freedom of religion. (4) Judges should understand the real principles of the Constitution of Japan and interpret relevant acts in accordance with the principles.

The decision by the Morioka district court was appealed and the case is pending before the Sendai Appeal Court at present.

### **Japan Civil Liberties Union 40th Anniversary Activities Expand to International Issues**

A party for the 40th anniversary of the JCLU was held at Gakushi-Kaikan of Kanda in Tokyo on November 26, 1987. At the party, which started at six o'clock in the evening, philosopher Osamu Kuno, spoke for over one hour on "Nationalism and Human Rights" and people from various fields including law and journalism were impressed by his speech. The participants also took advantage of the opportunity to renew their old friendships. As a part of the commemorative project a complete reduced-size compilation of "Jinken Shinbun" (Human Rights Newspaper of the JCLU) (Nihon

Hyoronsha) and "Mass Communication and Human Rights" (Sanseido) were published.

Following an opening speech by Shoichiro Niwamura, former Executive Director of the JCLU, Hideo Shimizu, Representative Director of the JCLU, gave a short speech noting that the JCLU is as old as the Constitutional Law of Japan and that JCLU will continue to dedicate itself to the implementation of the spirit of the Constitution.

After the above two speeches, philosopher Osamu Kuno spoke about "Nationalism and Human Rights". His humorous speech asserted that since nationalism affects "war and peace", we have to face the issue of nationalism. Following Mr. Kuno's speech, Koichi Nishida, Chief of the Special Committee for the 40th Anniversary, gave a short speech, and two guests, Yuri Takada, Vice-President of the Housewives' Federation, and Kin-ichi Takahashi, Chief of the Civil Liberties Bureau of the Ministry of Justice, delivered congratulatory addresses. Ms. Takada expressed her desire that the JCLU make efforts to establish "the right to know" for citizens and consumers because our society really needs the freedom of information. Also, Mr. Takahashi said that the JCLU and the Civil Liberties Bureau share the same roots and he expected the JCLU to be active on new human rights issues.

Kinju Morikawa, first Executive Director of the JCLU, then lead some cheers, followed by short speeches of representatives from various fields. Katsufumi Amano, former editorial writer of Mainichi Shinbun (one of the three big newspapers in Japan) expressed his desire that the JCLU be active on the issue of "mass communication and protection of human rights". Also, Yayoi Matsui, editor of Asahi Shinbun (another of the three big newspapers in Japan) requested the JCLU to consider all human rights, including those for males and females in the whole of Asia. Further, Fr. Art Balagat, executive director of a civil liberties organization in the Philippines, requested that we understand the human rights situation in the Philippines from the viewpoint of human dignity. Shigeki Miyazaki, professor of Meiji University, reported that a bill regarding the support of Taiwanese who served in the Japanese army during World War II will be finalized in the near future. At the end of the party, Kazuo Ito, representative director of JCLU, stated in his closing address that the JCLU would consider not only domestic human rights but also international human rights and would develop and widen its human rights activities.

# UNIVERSAL PRINCIPLE —Human Rights Report From JCLU—

## ABOUT THE JCLU

The Japan Civil Liberties Union was organized in 1947, the year of the promulgation of the new Constitution of Japan. The American Civil Liberties Union played an important role in its birth. From its beginning, the sole purpose of the JCLU has been to maintain and expand human rights for all person without regard to belief, religion or political position.

Membership in the JCLU is open to anyone who is in agreement with this principle. The JCLU now has more than 500 members, 70% of whom are lawyers engaged in private practice. The JCLU is financed by membership fees and unconditional donations from the members and other persons in sympathy with its goal. An annual business plan is determined by a meeting of all members. Day-to-day matters are left to the board of directors, which is composed of 45 members. The JCLU is represented externally by two representative directors. There are currently more than ten active committees in the JCLU that pursue its various activities.

The JCLU issues numerous opinions, memoranda and advice in specific cases in relation to activities of the national and local governments, the Diet and the courts. The JCLU has also acted as a leader in movements for new legislation. Member attorneys are active in a broad range of civil rights litigation involving police abuse, environmental pollution, well-known criminal cases and other matters.

**JCLU Officers:** Hideo Shimizu, representative director; Kazuo Ito, representative director; Takao Yamada, representative director; Jun-ichiro Hironaka, executive director

**Committees:** Freedom of Information Committee; International Covenants and Rights of Residential Aliens Committee; Mental Patients' Rights Committee; Women's Rights Committee; Asian Human Rights Committee; Foreign Labors Rights Committee; Supreme Court Study Committee; Translation of ACLU Policy Guide Committee; Criminal Procedures Committee; Taxpayers' Rights Committee; Mass Media Committee; Yasukuni Shrine (Separation of State and Religion) Committee; Membership Promotion Committee; AIDS and Infected People's Rights Committee; Special Committee for 40th Anniversary of Universal Declaration of Human Rights; **Jinken Shinbun** Committee (**Human Rights Newspaper; JCLU Membership Newsletter**); Universal Principle Committee (Human Rights Report in English)

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# Universal Principle Supplement

## “JCLU’s Report Submitted to Human Rights Committee”

Human Rights Committee  
United Nations

June 24, 1988

**Topic: Human Rights of the Mentally Ill**

*Relevant Articles: Articles 2, 7, 9 (1) and 9 (4)*

Dear Sir or Madam:

The Japan Civil Liberties Union respectfully submits to you the Report concerning the present status of human rights in Japan in order to provide you with necessary information to review the report submitted by the Japanese government (CCPR/C/42/Add.4).

The sole purpose of the JCLU has been to maintain and expand the human rights of all persons without regard to belief, religion or political position. In order to achieve this goal, we have engaged in many activities throughout its 40 year history.

Among those activities was the movement for ratification of the International Covenant on Civil and Political Rights (“Covenant”), which became effective for Japan on September 21, 1979. Hence it was our concern to know what report the Japanese government would submit under Article 40 of the Covenant. We recently obtained said report and found, quite regrettably, that the report had many defects. It often refers only to the text of present laws and does not state at all the actual practice under these laws, which is very much different from the text itself. Furthermore, the report does not deal with some of the most serious problems. We are afraid that the members of your Committee would misunderstand the situation in Japan without further information.

Therefore, we submit this Report which conveys the information not included in the government report. Due to the shortage of time, we had to select nine topics which we have dealt with, and we are not to be understood to state implicitly that all the problems in Japan are mentioned in our Report.

We sincerely hope that you will find our Report useful in reviewing the government report.

Very truly yours,

Kazuo Itoh  
Representative Director

As the government report states in relation to article 9, due to the amendment of the Mental health Law in 1987, the situation of those who are involuntarily hospitalized as a result of involuntary hospitalization are ameliorated to a certain degree. However, the overall situation of those people is not deemed to meet the provisions of the International Covenant on Civil and Political Rights (“Covenant”) The followings are some of the problems:

### **1. Process of Involuntary Hospitalization and Article 9, section 1**

In order to guarantee that the involuntary hospitalization based on mental disorder is not arbitrary and capricious, it is imperative that the judgment that a person is in need of hospitalization be based on an objective medical opinion. Although the Mental Health law as amended requires that a physician who can render judgment that a person is in need of involuntary hospitalization have special qualifications, it does not require that a judging physician be independent with respect to a hospital which the patient enters.

In view of the fact that 80% of the mental hospitals in Japan are privately owned and 90% of all income of those hospitals derive from hospitalization, the independence of a judging physician from a hospital is indispensable in order to exclude the possibility of arbitrariness of the judgment of physician.

### **2. Review and Article 9, section 4**

The amended Law provides for establishment of a Psychiatric Review Board in each prefecture, which will review the appeal by a patient in hospital. However, this Board is not dependent; it is an organization within the executive branch with a mission of reviewing in response to the request of the governor of prefecture and reporting the result of its review.

The patient’s appeal is directed to a governor, and the result of review is given to the patient by the governor. The patient’s rights are not fully protected in the



process of review. The opinions of relevant persons and relevant information are disclosed neither to patients nor to their counsels. Notice of procedural rights including the right to counsel is not given to patients. What is guaranteed to a patient is a right to meet a certain member of the Board and to be heard. Therefore, the mental patient is not "entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention," which is guaranteed by Article 9, section 4.

### 3. Treatment During Hospitalization and Article 7

Due to the amendment of the Law, the patient who is being hospitalized involuntarily is generally guaranteed a right to communication and visiting. The principle of least control is introduced to the restriction upon behavior during hospitalization. Furthermore, certain principles are also introduced with respect to seclusion and physical restraint. A legal right to appeal is given to patients in case hospital violates these principles. However, the procedure to review these appeals is the same as the one mentioned above in relation to Article 9, section 4, and, hence, in case violations of Article 7 occur, which were not uncommon as in the case of Utsunomiya hospital, there is no guarantee that effective and speedy remedy can be obtained. Habeas corpus proceeding in Japan provide no remedy in relation to the treatment during hospitalization.

### 4. Limitation upon Qualification Because of "Mental Disorder" and Article 2

There do exist many laws in various areas which stipulates restriction upon qualification only by reason of "mental disorder," e.g. driver's license. These provision are patently in violation of Article 2.

## Topic: The Death Penalty in Japan

### *Relevant Articles: Article 6*

1. The Japanese government report gives an account only of number of those who were finally convicted to death in the period from 1981 through 1985. But this report does not convey the accurate information concerning the present situation of the death penalty in Japan. The number of those who were finally convicted to death from 1986 through 1988 (as of June 8, 1988) are shown in Table 1, which clearly reflects the rapid increase starting from 1987 in number of those who were finally convicted to death. Especially, in 1988, seven (7) death sentences became final in the short period of less than six months. At present, in the docket of the Supreme Court are thirty-five (35) cases of those who were sentenced to death in lower courts. In view of the fact that in past ten years there was only one case

in which the Supreme Court reversed the death sentence of the lower court, it is all likely that for the time being the number of those who are finally convicted to death will far exceed the average of two per year stipulated in the government report.

The number of death sentences rendered in lower courts are shown in Table 2. Approximately six people per year were sentenced to death in district courts in the period from 1981 through 1987. In the same period, approximately 4.5 death sentences were sustained in high courts. Furthermore, in the same period there are two cases in which despite the judgments of life imprisonment in district courts, high courts, in response to the appeals by the prosecution, rendered death sentences. On the other hand, there were ten cases in which high courts reversed death sentences in district courts and sentenced defendants to life imprisonment. The number of those who were executed in the period from 1981 through 1987 are shown in Table 3.

2. The government report states that "guarantees [stipulated in the legal system in Japan] quite naturally apply to the trials in which the death penalty is pronounced." However in Japan, there did occur three cases in the short period of one year from mid-1983 to mid-1984, in which although death sentences of defendants had once become final, applications for reopening of procedure were granted and defendants were found to be innocent.

(Furthermore, an application for reopening of procedure has been granted for another defendant, whose death sentence had once become final. It is expected that he will be found to be not guilty in the near future.) The fact that three death sentences which had once become final were later found to be erroneous and the innocent persons were almost on the verge of execution cast grave doubt upon the statement of the government report that "in Japan, the death penalty is applied very strictly and carefully."

Besides, one of the three defendants in these cases were detained for thirty-two (32) years after the death sentence had become final. Since the date of execution is not known to the detained beforehand, these three people felt the terror of execution every day and night for all the period of detention. It needs no power of imagination to see how cruel and inhuman these treatments were.

3. The government report states that those on whom the death penalty has been passed are treated generally in the same manner as those-under detention awaiting sentence. The Prison Act has a provision to the same effect.

In practice, however, the prison authorities put restrictions to those whose death sentence have become final upon letters to and from those people and visiting of relatives. It is to be noted that the same restrictions are not placed upon those under detention awaiting sentence. Furthermore, the degree

and extent of each restriction is up to the discretion of the prison authorities and no rational basis is cognizable among each restriction.

Table 1 *Number of Persons Whose Death Sentence has Become Final*

Year	Total Number
1986	0
1987	7
1988*	7

\* as of June 8, 1988

Table 2 *Number of Persons Sentenced to Death in Lower Courts*

Year	District Courts	High Courts	*1	*2	*3
1981	1		1	0	2
1982	11		3	0	3
1983	5		3	1	1
1984	6		6	0	1
1985	9		4	1	2
1986	5		7	0	1
1987	6		8	0	0
1988*4	7		3	0	0

\*1 Number of cases in which high courts sustained death sentences rendered in district courts

\*2 Number of cases in which high courts rendered death sentences despite life imprisonment sentences in district courts

\*3 Number of cases in which high courts reversed death sentences in district courts and rendered life imprisonment sentences

\*4 as of June 8, 1988

Table 3 *Number of Persons Executed*

Year	1981	1982	1983	1984	1985	1986	1987
Number	1	1	1	1	3	2	2

**Topic: Alternate Detention Facilities** (Extended detention in police stations rather than separate detention facilities)

*Relevant Articles: Articles 7, 9, 10 and 14*

In Japan, even after suspects are held in custody under the supervision of a court, suspects are detained not in prison facilities, but at police stations. (1) Until a suspect is formally indicted in Japan, there is no procedure for release on bail. (2) In *all* cases where serious charges are alleged and where suspects deny charges, suspects are held in the 24-hour custody of the police and they can interrogate the suspects at all hours. (3) Because there is no effective means to seek relief for violations of human rights violations, serious human rights violations are ignored. According to Japan's Code of Criminal Procedure, after custody of a suspect comes under the authority of a court, custody must be maintained in a prison, but according to the Prison Law adopted in 1908, police holding facilities may be used as an alternative to prisons. Under current conditions, this exceptional procedure is applied to approximately ninety percent of all suspects prior to indictment. In general, the period in which suspects are held in police holding facilities after being placed under the supervision of a court is twenty days or less, but if the suspect is rearrested on another charge, this period can be extended.

Thus, suspects are held continuously in the custody of the same police personnel responsible for investigation. The potential for injury to protections for human rights inherent in such a procedure is obvious. In fact, most cases of erroneous judgments in Japan result from false confessions obtained by coercion in police holding facilities. Among a series of recent cases in which verdicts of not guilty were announced following retrials of cases in which final death sentences had previously been rendered, the cause of the initial erroneous verdict in both the Sumidagawa and Matsuyama cases was a false confession which had been coerced in police holding facilities. There is also at least one example of a recent case in which a verdict of not guilty was announced after a confession coerced in police holding facilities was excluded by the court from evidence. (The Asahigawa case, judgment of March 20, 1985.)

Interrogations in police holding facilities may continue for more than ten hours per day. This is the primary cause of the false confessions. There are no restrictions on the interrogation of suspects. There are cases in which interrogations have continued past 11 and 12 P.M. on continuous nights.

The second major cause of false confessions is the bartering of privileges such as food and meetings with family members in exchange for confessions. (On the other hand, suspects who refuse to confess can be subjected to restrictions such as withholding of drinking water and visits to toilet facilities.)

The third major cause of false confessions is the ability of interrogators to utilize violence or threats of violence. Such incidents are prone to occur in the enclosed compartments of police facilities which no third parties are allowed to observe. Pain is inflicted on suspects by squeezing their fingers together while pencils are inserted between the fingers. Suspects are questioned with high-powered lamps continuously trained on their faces. Threats are made that family members will be arrested unless the suspect confesses. Numerous examples of such violence and coercion are reported.



One must conclude that Japan's use of alternate detention facilities is in violation of Articles 7 and 9(3) of the International Covenant on Civil and Political Rights, which provide that criminal suspects must be promptly placed under the supervision of a judge, and also in violation of Article 14(3) of the Covenant, which prohibits coercion of confessions.

Japanese attorneys and human rights advocates have continuously called for abolishment of this system of alternate detention, but the Japanese government not only continues operation of the system, but is also attempting to make the system permanent through two statutes which were submitted to the Japanese Diet in April, 1987.

Articles 9 and 14 of the Report submitted by the Japanese government make no mention of these serious problems; further, in Article 10 of the Report, the Japanese government falsely asserts that the two proposed statutes are designed to provide appropriate treatment of criminal suspects.

## **Topic: Punishments Administered in Detention Facilities**

### *Relevant Articles: Articles 7 and 10*

The first priority in the administration of detention facilities in Japan is the maintenance of order. This tendency has become increasingly strict in recent years. As conducted in Japan, the purpose of detention is not only rehabilitation for return to society, but also to strike the fear of detention into the heart of the suspect with the purpose of causing him to resolve never to return. This latter purpose is heavily emphasized. Infliction of punishment much heavier than necessary has become standard practice.

The total number of persons confined in detention facilities in a recent year for which statistics are available (1983) was 54,000 persons (including both those convicted of crimes and those not convicted). During the same year, the number of cases in which punishments were applied was 37,000.

Our first objection to the system of punishments is that the conditions for application of punishment are not prescribed by law. Among the charges resulting in punishment, the following are especially common: Violence by persons in custody, failure to follow the instructions of guards and other administrative personnel, dilatory performance of work assignments, self-infliction of injuries, arguments, receipt, manufacture or use of improper articles, and unauthorized conversation. Examples of actual administration of punishment include a case where a female defendant was given seven days of *keiheikin* (a form of solitary confinement described below), and another where an inmate disputed the application of medical treatment with a doctor and was sentenced to thirty days of *keiheikin*. These cases have been investigated by bar associations and the bar

associations have issued warnings to the respective detention facilities.

The second major objection to the system of punishments is that there is no guarantee of fair procedures in the administration of punishment. Punishments are determined after a one-sided investigation by a panel made up of members solely of persons from within the facility; the appearance of an attorney or any other person to assist the suspect before the panel is not allowed. The accused has no right to examine evidence gathered by the detention facility and the charges are announced only orally, with no writing presented. Further, there is no right to question witnesses to the incident or call persons to testify. Thus, there is absolutely no protection for the suspect's right to defend himself. Further, in Japan there is no third party institution independent of the detention facilities as in the United States and in European countries. Because judicial proceedings are very costly in terms of both time and money, there is effectively no means to obtain relief.

The third major objection is that punishments are cruel. The most common form of punishment is *keiheikin*, a form of solitary confinement. The content of this punishment is not defined by law, but it is usually enforced as follows. The inmate is made to sit on the bare floor in the center of his cell either in a cross-legged position (*setsuza*) or in the formal *seiza* position (straight-legged with knees bent and legs folded beneath). No variations such as leaning against a wall, standing up, using a chair or any other movement is allowed. All interviews and the receipt of any communications such as mail from anyone except the suspect's attorney (in cases where there is an attorney) are prohibited. Writing is prohibited and all exercise and washing are tightly restricted; showers are allowed approximately once in fifteen days. Newspapers, radios and other forms of media are prohibited, so that contact with information from the outside world is absolutely cut off. Generally, the suspect is also denied access to any reading material. (Although the law does not define the term "*keiheikin*", Article 60 of the Prison Law provides that it may be applied for a maximum period of two months.)

This kind of punishment causes lower back pain, muscle deterioration, degeneration of the spirit, and all of the mental and physical effects of neuroses related to confinement. This kind of punishment can only be judged as uncivilized and immoral.

This type of punishment and its administration violate the first paragraph of Article 7 and Article 10(1) of the International Covenant on Civil and Political Rights.

The Japan Civil Liberties Union has dispatched a detailed report to the United Nations concerning this issue. That report is appended to this statement as a reference.

## **Topic: Bail System**

### **Relevant Articles: Article 9, section 3**

#### **1. The government report does not directly refer to the administration of bail system.**

As bail release procedures are administered in Japan today, the general principle of a right to release on bail appears to have been overturned and replaced by a general principle of denial of bail requests. This is clearly in contravention of Article 9, section 3 of the International Covenant on Civil and Political Rights.

The Japan Civil Liberties Union indicated the above in its "Human Rights Report No. 5- Current Administration of the Bail System in Japan Violates the International Covenant on Human Rights," dated October 1, 1985, which is annexed hereto.

#### **2. The conclusions of our Report are as follows:**

(1) Article 89 of the code of Criminal Procedure, which is the legal provision establishing the right to release on bail, also provides exceptions for the purposes of preventing the recurrence of crime and preventing destruction or concealment of evidence. These exceptions have made possible the reversal of general principle and exception. Detention for such purposes—separate and apart from detention for the purpose of securing the appearance of the defendant at trial—may itself be in violation of Article 9, Section 3 of the International Covenant on Civil and Political Rights.

(2) The Code of Criminal Procedure does not provide for bail for criminal suspects prior to indictment. However, there is no reason to deny such bail requests as a general rule.

(3) The present bail system is conditioned on the payment of bail money, and the required amount of bail money increases every year. This system must be promptly revised and replaced by another, such as use of a guarantee note signed by a family member.

## **Topic: Interview with Defense Counsel**

### **Relevant Articles: Article 10 and Article 14, section (3) (b)**

1. The government report states in "Interview with Family and Defence Counsel" in relation to Article 10 that "persons detained pending trial are allowed to have interviews with their defence counsel or any other person who is going to be their defence counsel without having an official present (Article 39 of the Code of Criminal Procedure)." It also states in relation to Article 14 that "the Code of Criminal Procedure provides that The accused or the suspect under physical restraint may have an interview with his defence counsel or any other person who is go-

ing to be his defence counsel upon request of the person who is entitled to select defence counsel, without having any official present, and may deliver or receive any documents or any other things (Article 39, para.1)". Thus, free interviews and communication between the accused and his counsel are guaranteed. Under Japanese law, the accused is given sufficient opportunity to contact his counsel." It then appears that free interviews and communication between the accused or the suspect with his counsel are fully guaranteed.

However, it is to be noted that the government report does only state that "free interviews and communication between the accused and his counsel are guaranteed," and not state that "free interviews and communication between the accused or the suspect and his counsel are guaranteed." Since the protection guaranteed by Article 14, section 3 of the International Covenant on Civil and Political Rights ("Covenant") extends to "everyone," which naturally covers the suspect, the government report should have referred to the suspect. The fact that the government report intentionally omitted the status of the suspect reveals that the government itself concedes that free interviews and communication between the suspect and his counsel are not fully guaranteed.

2. The Japan Civil Liberties Union declared in its "Human Rights Report No. 4 - Unlawful Violation of the Right to Free Contact Between Attorneys and Criminal Suspects by Investigating Authorities in Japan" dated October 1, 1984, which is annexed hereto, that the right to interviews and communication between the suspect and his counsel faced with grave and serious situation and the current operation in Japan as well as Article 39, section 3 itself of the Code of Criminal Procedure is in violation of Article 14, section 3(b) of the Covenant.

Although the quotation of Article 39, section 1 of the Code of Criminal Procedure in the government report is correct, Article 39, section 3 of said Code provides that "prior to the institution of a public prosecution, a prosecutor, clerk to a prosecutor or judicial police official may, in cases where it is necessary for the purpose of investigation, designate the dates, places and times for interviews and deliveries as described in paragraph one of this Article; provided, however, that such designation shall not unfairly restrict the right of the suspect to prepare his defense."

The practice of designation of interviews by investigating authorities amounts to unfair restriction upon right to interviews with his counsel.

The practice committed by prosecutors relying on Article 39, section 3 is called "General Designation System."

3. In brief outline, the system of general designations is a system under which investigating officers apply an indiscriminate prohibition of free contact between

attorneys and criminal suspects in specified categories of cases. In such cases, contact between attorneys and criminal suspects is allowed only at such times as the investigating officers themselves approve. The system operates as follows.

In cases where a prosecutor recognizes the necessity for designation of attorney's visit with a criminal suspect, the prosecutor prepares a document in Form Number 48 as provided under Article 28 of the Ministry of Justice Order of Regulations for the Processing of Cases (the "general designation paper") and then provides a certified copy of the same to both the suspect and to the head of the facility in which the suspect is held (in nearly all cases the police chief of the police station in which the suspect is detained). In cases where an attorney makes a request to visit the suspect and the prosecutor decides to allow such a visit, the prosecutor prepares Form Number 49 as provided in the above-mentioned Article 28 in which he specifies the date and time of the interview (generally known as the "specific designation paper" or the "interview ticket") and then requests the attorney to come to the prosecutor's office to pick up the document.

In cases where a Form Number 48 general designation paper is issued, the attorney's visit with the suspect is denied unless he carries the Form Number 49 specific designation (or "interview ticket") with him to the detention facility (in most cases, a cell in a police station).

As a result, in cases where form Number 48 general designation papers are issued, a blanket prohibition of attorneys visits with criminal suspects applies; visits become possible only with the issuance of Form Number 49 specific designation papers. The general rule is prohibition of visits; allowance of visits constitutes the exception.

(There is a separate procedure provided by Article 81 of the Code of Criminal Procedure under which a judge can issue an order prohibiting visits. In such cases, prosecutors commonly decide that designation of visits is necessary and arrange for such designation of visits, however, this Article 81 procedure requiring the order of a judge does not require establishment of the "general designation" and is unrelated to the general designation system established under the Ministry of Justice Order Governing the Processing of Cases.)

Since the practice mentioned above has been criticized as unlawful and unfair, the situation was ameliorated to a certain degree: (1) starting from October, 1987, the automatic connection between prohibition of interviews under Article 81 of the Code of Criminal Procedure and the general designation is beginning to be dissolved; and (2) as of April 1, 1988, Article 28 of the Ministry of Justice Order of Regulations for the Processing of Cases, which has been relied upon within the Ministry of Justice for the general designation was amended.

In spite of the alleged modification of the general designation resulting from the amendment of Article 28 of said Order, however, it is said that a prosecutor might send to the head of detention facility or the detention section of the police the notice that power of specific designation in lieu of general designation might be exercised.

In case the above notice that power of specific designation is to be exercised, the situation remains the same that without specific designation by the prosecution interviews with his counsel cannot be obtained.

4. As a result of general designation mentioned above, the following bad phenomena are generated:
  - (1) Dates, times and number of visits are severally restricted;
  - (2) The duration of visits is extremely shorts; and
  - (3) No visit is allowed unless the attorney carries a specific designation paper.  
(For more information, please see our Human Rights Report No.4)

The present system in Japan is patently in violation of Article 14, section 3(b) of the Covenant.

### **Topic: Restrictions on Interviews Between Journalists and Suspects in Custody**

#### **Relevant Articles: Articles 10(1), 10(2)(a) and 19**

1. Meetings between members of the press or other journalists (hereinafter "journalists") and persons held in custody prior to judgment are absolutely prohibited in Japan, to the extent that the purpose of such a meeting is to gather information. Thus, journalists are forced to seek some other means to obtain information concerning persons in custody. Journalists seeking interviews with such persons must first sign a pledge provided by the detention facility in which they promise not to publish any of the content of the interview. This same prohibition applies even though the interview is jointly requested by the journalist and the inmate. If a journalist publishes the content of an interview after signing such a pledge, future requests for interviews may be severely restricted.
2. Such restrictions on interviews between journalists and suspects in detention present the following issues:

#### **A. Violations of the Human Rights of the Detained Suspect**

There is no provision of law that establishes restrictions on interviews between journalists and suspects in detention, nor on interviews for the purpose of gathering information. Further, such interviews with suspects do not contradict the purposes of detention as asserted in the government's report; it is



clear that such interviews would not obstruct administration of such facilities. The government's prohibition of interviews between journalists and suspects is in violation of Article 10(1) and Article 10(2)(a) of the International Covenant on Civil and Political Rights.

#### **B. Violation of the Suspect's Right of Access to the Media**

The suspect in detention has a right of expression concerning facts related to the crime for which he is charged and the conditions of his confinement. This right includes access to coverage by the press and other media. This right of access to the media is particularly important in Japan, where an excessive amount of "media injury" (invasions of privacy, libel and other forms of injury) results from one-sided reporting on criminal matters based solely on information provided by the police. Denial of interviews between journalists and criminal suspects is a violation of the suspect's right of access to the media and a violation of Article 19 of the International Covenant on Civil and Political Rights.

#### **C. Violation of the Media's Freedom to Gather News (Right to Gather Information)**

The freedom to gather information is one form of the freedom of expression and has been held to be included within the freedom of expression guaranteed by Article 21 of the Constitution of Japan. Journalists are endowed with a mission to broadly gather information from all angles and to fairly report the news. To prohibit journalists from gathering information concerning the subject of crime through interviews with persons accused of crime is in violation of the freedom to gather information and the freedom of expression and thus in violation of Article 19 of the International Covenant on Civil and Political Rights.

3. The foregoing shows violations of Articles 10(1), 10(2)(a) and 19 of the International Covenant on Civil and Political Rights. We demand that these violations be eliminated immediately.

### **Topic: Requirement of Nationality as Public School Teacher**

#### **Relevant Articles: Article 26**

According to the government report, the Japanese government is endeavoring to realize the idea of equality under the law, and due considerations are given to the area of education. However, there does exist a problem mentioned hereinafter in the area of education in Japan.

In Japan, in-order to be a teacher in elementary, junior high or high schools, one is required to obtain a teacher's license under the Educational Officers' License Act. (Act No. 147 of 1949). Article 5 of said

Act stipulates the requirements to obtain the teacher's license, and the Japanese nationality is *not* included therein. In fact, among those who have obtained such license are many non-Japanese nationals. As for the requirement of teachers in public schools, they are provided for in Article 16 of the Local Public Service Law and Article 9 of the School Education Law. Japanese nationality is required in neither law.

In Japan, as early as 1973 some local governments, especially those having dense population of foreign nationals, started granting qualification for taking examinations of teachers in public elementary, junior high and high schools to those of foreign nationalities. These local governments did hire them as teachers in public schools. (Most of them are Korean nationals.)

The Prime Minister did not object to the above trend stating that "the problem concerning the employment of local public officials and the nationality should be up to the judgment of each local government" in the Reply paper dated April 13, 1979.

However, in September 1982, the Ministry of Education gave a notice to the chief of each local board of education that "the teachers in public schools shall be limited to Japanese nationals." Furthermore, the Prime Minister, in the Reply paper dated April 1, 1983, changed his previous opinion stating that "with respect to the teachers in public schools, the judgments of local governments should not differ from each other, and those teachers should need Japanese nationality." After that, the trend became clear that foreign nationals were excluded from public schools.

On the other hand, the Japanese government recently takes the policy that foreign nationals without teacher's license may be employed only as English teachers. This new policy makes more conspicuous the arbitrariness and inequality in the area of education.

The situation mentioned above not only runs afoul of the idea that education shall promote understanding, tolerance and friendship among all nations and all racial or ethnic groups stipulated in Article 13, section 1 of the International Covenant on Economic, Social and Cultural Rights but also violates Article 26 of the International Covenant of Civil and Political Rights as the unfair discrimination by reason of nationality.

### **Topic: Prevention of Human Traffic and Remedies for Victims**

#### **Relevant Article: Article 2 and 8 (2)**

#### **1. Rapid Increase of Migrant Foreign Workers**

Recently, the number of migrant foreign workers coming to Japan for a job increases rapidly. Under the present Immigration Law, which does not allow those who engage in simple job to enter Japan, many of those workers come to Japan as tourists, and hence, fall within the category of "Illegal Workers" (those who en-

gage in activities not permitted and those who stay after the lapse of permitted staying period to engage in such activities) subject to deportation once their presence is perceived by the immigration authorities.

The Japanese government does not have the accurate number of those foreign workers. In 1987, 11,307 foreigners were enearthed by the immigration authorities. However, this figure is deemed to be only a tip of iceberg. Some estimate that the actual number of those foreign workers amount to 50,000 or 200,000 as of the end of 1987.

## **2. Actual State of Damage Suffered by Migrant Foreign Female Workers**

(1) Out of those who were enearthed as "illegal workers," approximately 60% were female and 97% of these females came from the Philippines, Thailand or Taiwan. The Ministry of Justice, which is responsible for immigration, estimates that about half of the illegal workers are females.

Most of migrant foreign female workers work as hostesses, strip teasers or prostitutes in such business which is more or less deemed to be immoral. (Among those females who were enearthed as illegal workers in 1987, 6,538 females or 93% worked in such business.) According to private voluntary groups which give aid to these foreign females, e.g. HELP,(n.1) many of hostesses as well as strip teasers and prostitutes are compelled to engage in prostitution. In fact, most of illegal female workers coming from Southeast Asian countries are under thirty.

Judging from this, we have to conclude that Japan imports many young women from Southeast Asian countries in order to force them to engage in immoral activities, especially prostitution.

(2) Many of these migrant foreign female workers does neither by themselves raise the expenses to come to Japan nor find opportunities to work in Japan.

Many of them come to Japan believing that they can work as waitresses, models or plain hostess (those not engaged in prostitution) which were promised by recruiters in their countries. However, the fact is that they are sold from recruiters to promoters (many of them are related to the organized crime) and then to said immoral business. Promoters in Japan pay to recruiters approximate 2,400 US dollars per female. On the other hand, promoters in Japan are paid as rental fee by owners of such business as much as 1,600 US dollars to 6,400 US dollars per female per month.

In order to regain such expenses, the owners of such business force these women to engage in prostitution, knowing that their status in Japan is very weak.

These women are forced to live in the place which is under supervision of promoters or owners and not taught the addresses of such place. Moreover, they often are deprived of return tickets and/or passports and not paid the wages in accordance with their contracts. They are even secluded and beaten, and forced

to engage in prostitution in servitude.

(3) We are aware that the causes of this problem are very much complicated, as in the case of all discrimination. Vast difference in respect of economy between Japan and Southeast Asian countries, contempt among Japanese for foreigners, especially Asian people, traditional contempt among Japanese for females and tolerance for the clients of prostitutes (n.2) are some of them. Therefore, final resolution of this problem cannot be achieved without elimination of poverty in Asian countries, change of policy of Japanese government toward foreigners including foreign workers and improvement of status of women.

And, the proximate cause for their inhuman and degrading treatment is that they are objects of international human traffic. The fact that they are sold accounts for their being thoroughly exploited. Prostitution is the most effective means for such exploitation, and for that reason many violations of human rights mentioned in (2) do occur.

## **3. Prevention of International Human Traffic and Remedy**

Under Article 8, section 2 and Article 2 of the International Covenant on Civil and Political Rights as well as the Constitution of Japan (Articles 13, 18 and 22), the Convention of the Elimination of All Forms of Discrimination against Woman (Article 6) and the Convention for Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Japanese government is under obligation to migrant foreign female workers to guarantee that they are not subject to undue restraint, violation of sexual integrity, inhuman treatment and human traffic.

The government is also obliged to take specific measures in order to give remedy to the victim of human traffic.

Unfortunately, however, the Japanese government has not taken any effective measures to give remedy to the victim of human traffic despite the fact that the actual damage suffered by migrant foreign female workers is severe and the victims are many in number and throughout Japan. The protection of the victim of human traffic is entrusted solely to private rescue associations. Furthermore, medical expenses are borne by victims themselves(n.3).

It is true that penalty is provided for in the Criminal Code, the Prevention of Prostitution Act or the Employment Security Act for those who commit human traffic or have others engage in prostitution.

Nevertheless, the penalty in these laws are not effective measures to prevent international human traffic. Since migrant foreign female workers are illegal workers subject to deportation (n.4), they will, once perceived by the immigration authorities, soon come back to their home countries. For all practical purposes, it is nearly impossible to prosecute those dealers(n.5) and there are only few cases in which these dealers were ac-

tually prosecuted. Furthermore, these provisions are not intended to give remedy to the victims of international human traffic.

We, therefore, have to conclude that the attitude of the Japanese government is patently in violation of Article 8, section 2 and Article 2 of the International Covenant on Civil and Political Rights.

#### Note

1. HELP (House in Emergency of Love and Peace) is activity of Japan Woman's Christian Temperance Union.
2. In 1970's, huge number of Japanese males went to Southeast Asian countries as "Sex Tour". International route of human traffic of Southeast women is said to be formed by connection of Japanese dealers and local dealers.
3. There are only a few rescue association which extend protection to migrant Asian women. All of them are operated by volunteers and contribution from private citizens.

Most of these associations are located in big cities, e.g. Tokyo, Osaka, Nagoya etc., where they can expect volunteers and contribution. However, it is

not rare that migrant Asian women asked for shelter to these associations from rural areas, which indicates that there are many victims of human traffic in rural areas.

In order to be reimbursed medical expenses, one has to obtain any health insurance. However, migrant Asian females cannot obtain health insurance since they are "illegal workers", which means that they have to pay all the medical expenses when they become sick. It is nearly impossible for poor women to bear the medical costs. The situation becomes worse when they are fired, which is common when they become sick.

4. Once these women are identified as illegal workers, they are interviewed by an immigration officer and in most cases subjected to deportation proceedings within one week or 20 days.
5. It is to be noted that in 1985 Minister Abe stated in the discussion of Diet that thorough investigation and control should be made for having females come from abroad and commit prostitution. However, the situation has not been ameliorated so far, and the number of victims has increased from that time.