

Japan's 'Substitute Prison' Shocks the World

Daiyo Kangoku and the UN Committee against Torture's Recommendations

September 2008



The United Nations Committee against Torture Required the Abolition of Daiyo Kangoku

In May 2007 the UN Committee against Torture reviewed the first report submitted by the Japanese government to the committee in accordance with the Convention Against Torture.*

The committee expressed its concern over the widespread and systematic use of *daiyo kangoku* (“substitute prison”), and, speaking to the Japanese government, said, “The State party should take immediate and effective measures to bring pre-trial detention into conformity with international minimum standards.” In particular, it recommended that “the State party should amend the Law on Penal Facilities and the Treatment of Inmates, in order to limit the use of police cells during pre-trial detention.”** In other words, the committee asked Japan to abolish daiyo kangoku. What kind of institution is daiyo kangoku?

* In full, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Japan ratified in 1999. The government submitted the report in accordance with the convention.

** See page 9-10.



A screening of the film *I Just Didn't Do It*, held for invited members of the Committee against Torture. Viewing the film were about 60 people including three committee members, UN employees, and NGO personnel. The film is a story about a young man who is falsely accused of groping, held in long-term confinement, and put on trial. It received a considerable response, with statements such as, “Is this true? And Japan is an advanced nation?”



Members of the Committee against Torture reviewing the Japanese government's report

What is Daiyo Kangoku?

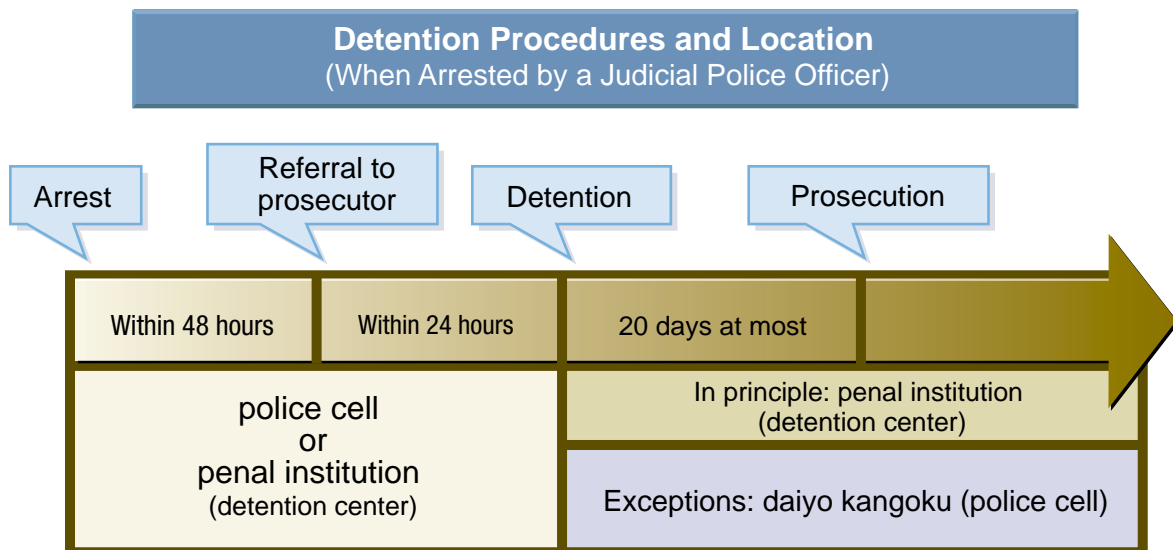
Police cells were originally meant to be places to keep arrested suspects temporarily until taking them to court. They are not places to detain suspects for 10 or 20 days, or still longer periods. Under the law, suspects are to be detained in “prisons” (*kangoku*) under the control of the Ministry of Justice, but in circumstances which unavoidably make it impossible to detain them in “prisons,” provisions of the Prison Law* allow the use of police cells as a substitute. This is the daiyo kangoku system.

* Article 1.3 of the Prison Law says, “Cells belonging to police stations may be used to substitute for prisons.”

The Prison Law was totally revamped for the first time in about 100 years by the Law on Inmate Treatment,* which changed “prison” to “penal institution” and “substitute prison (daiyo kangoku)” to “substitute penal institution.” However, the daiyo kangoku system remains unchanged, and indeed the Japanese word daiyo kangoku has international currency. JFBA therefore continues to use the term daiyo kangoku despite the government’s change in terminology.

* In full, the “Law on Penal Facilities and the Treatment of Inmates,” which entered into force in June 2007.

The following diagram illustrates the procedures followed when a person is suspected of a crime and detained, and the detainment location. After a judge has decided on detention, the suspect should be taken to a detention center under Ministry of Justice jurisdiction instead of being returned to the police cell (daiyo kangoku), but actually in almost all cases suspects continue to be held in daiyo kangoku, which is supposed to be the exception.



Japan is the only country in the world which allows the detention of suspects in police stations for long time periods.

Comparisons of Detention Times by Police

Japan	Arrest 72 hours	Detention 20 days
France	24 hrs	Maximum 24-hour extension possible
Austria	48 hours	
UK	24 hrs	Maximum 72-hour extension possible
Italy	24 hrs	
Taiwan	16 hours	

Let's examine the daiyo kangoku system, which is unique worldwide, to identify its problems.

Cases of False Charges Continue to Arise

In just over five years during the 1980s, there were four cases in which retrials for people whose death sentences had been confirmed ended in not-guilty decisions. On July 14, 2008, Tokyo Appellate Court handed down a decision in the Fukawa Case* which dismissed the immediate appeal by the prosecutor and supported the start of a retrial. In its decision the court observed that the two petitioners for retrials, from whom confessions had been extracted in daiyo kangoku, came to deny those confessions after their subsequent transfer to a detention center, but then were sent back to daiyo kangoku. Concerning this the decision said, "There was a serious problem" in "the sense that the petitioners were placed in circumstances which helped induce false confessions," thereby pointing out the problematic nature of an investigative method which took advantage of the daiyo kangoku system to obtain false confessions. This Fukawa Case is a 1960s case, and the four retrials ending in not-guilty decisions happened up through the 1950s, but false charges continue to this day.

* In this case, the two petitioners were arrested on different charges as the perpetrators of a robbery and homicide incident that occurred in the Fukawa area of Tone Town in Ibaraki Prefecture in August 1967. They were forced to confess during interrogations in daiyo kangoku, but since their first trial in district court until the present they have consistently insisted upon their innocence. The dismissal of their appeal in 1978 finalized their life sentences, but there is no physical evidence at all to tie the petitioners to the crime, and there was only a tenuous basis for establishing their guilt in the form of vague eyewitness testimony and the petitioners' confessions, which were contradiction-ridden and kept changing. Tokyo Appellate Court supported the decision of opening retrial handed down by the Tsuchiura Branch of Mito District Court on September 21, 2005, and issued a decision dismissing the immediate appeal by the prosecutor. This case was addressed as the "Fukawa Case" in questions during the review of the Japanese government's report by the UN Committee against Torture in May 2007.

1. Kagoshima Election Violation Case (Shibushi Case)

In April 2003 10-odd people were suspected of election violations in an election for the Kagoshima Prefectural Assembly. The suspects were arrested and detained in police station

cells (daiyo kangoku), and almost all of them were subjected to long hours of interrogation from 9:00 a.m. to 9:00 p.m., nearly every day.

Interrogators yelled things like “Don’t lie!” and “You’re getting the death penalty!”, kicked and slammed tables, made suspects keep their hands up on tables, and in other ways conducted extremely harsh interrogations. Additionally, they deceived suspects and offered inducements during questioning.

In the trial, all 12 defendants were acquitted. The court’s decision* recognized, among other things, that the defendants’ confessions might be bogus because during their detention they had been subjected to considerably harsh interrogations in which interrogators coerced and pressured them. The prosecutor gave up the appeal, and the defendants’ acquittal was confirmed.

* February 23, 2007, Kagoshima District Court.



Interior of police cell facility
(from the 2004 *White Paper on Police*)

2. Kitakyushu Arson and Homicide Case (Hikinoguchi Case)

In March 2008 a court handed down a decision* on a defendant who had been charged with crimes including murdering her own brother and setting fire to an uninhabited structure, finding the defendant not guilty of homicide and arson of an uninhabited structure. The prosecutor did not appeal, and the decision was finalized (Hikinoguchi Case). In this case, a cellmate put in the same two-person daiyo kangoku cell for women with the defendant said that she had heard the defendant’s “confession to the crime,” but the admissibility as evidence was at issue. The decision stated that “it is safe to say that [the police] took advantage of daiyo kangoku to purposely put the defendant in a cell together with the cellmate for the purpose of obtaining information for the investigation via the cellmate, and therefore cannot avoid criticism for using detention in daiyo kangoku for the investigation,” and it offered this criticism: “One can consider the defendant to have been placed in circumstances equivalent to undergoing interrogation by investigative authorities through the cellmate, and the court must therefore say that detention in a cell, which is supposed to be kept distinct from interrogations, was abused for the purpose of a crime investigation.” Indeed what happened here is that the investigative authorities put the cellmate into daiyo kangoku as a kind of spy, making this a typical example in which investigation and detention were integrated and functioned to obtain the defendant’s confession.

* Fukuoka District Court, Ogura Branch, decision of March 5, 2008.



3. Saga Serial Homicide Case (Kitagata Case)

In 2007, the acquittal of a man who had been arrested and prosecuted for the murder of three women in Saga Prefecture in which the prosecution had sought the death penalty, was confirmed*.

While the man was detained in daiyo kangoku on another charge, he was forced to prepare a statement admitting to homicide, and the statement was used to arrest him for homicide. However, the court did not admit the statement as evidence on the grounds that it

had been obtained illegally.

* Fukuoka Appellate Court decision of March 19, 2007.



4. Haki Town Case

In October 2003 the mayor (a woman) of Haki Town in Fukuoka Prefecture was arrested and detained in daiyo kangoku on the charge that she had swindled someone out of their tax refund.

Interrogators kicked the table, blew cigarette smoke in her face, yelled in her ears, screamed at her all day, and when she had tea in the mornings and afternoons, interrogators accused her of trying to avoid interrogation by drinking tea so she would have to go to the lavatory. As a result, she became unable to drink tea. Even after going to bed, police officers were always present, so that she was deprived of privacy 24 hours a day.

In April 2005 the defendant's acquittal was confirmed.*

* Fukuoka District Court decision of March 25, 2005.

A common attribute of all these cases is that suspects were held in daiyo kangoku for long time periods, and coerced to make untrue confessions or forced to maintain untrue confessions that had been made previously.

Daiyo Kangoku: Breeding Ground for False Charges

1. The Essential Nature of Daiyo Kangoku Is 'Confession-Extraction System'

The essential nature of daiyo kangoku is that the police, who perform the investigations, detain and control suspects, and exercise total control over suspects 24 hours. Suspects who do as the police say are sometimes treated to cigarettes and meals in interrogation rooms, or otherwise given preferential treatment, but suspects who deny charges are interrogated from morning until night, and those who do not do as the police say are anxious about what detrimental treatment they might receive. This system totally exhausts suspects physically and mentally, and casts aspersions on or even destroys their character, until forcing confessions. Even if suspects are not subjected to direct violence or intimidation, the total night-and-day control itself acts as pressure on suspects and pushes them to do as the investigating authorities say.

2. Disclosure of the 'Guidelines for the Interrogation of Suspects'

In April 2006 a file titled "Guidelines for the Interrogation of Suspects" was leaked from the computer of an active-duty police captain in the Ehime Prefectural Police, and became a major issue. The document consisted of 13 guidelines to be followed by police investigators when conducting interrogations.

The manual instructs investigators to "weaken" suspects who deny charges by interrogating them for long hours, to always talk to suspects in cells, and in other ways investigate suspects by making maximum use of the 24-hour physical control over the suspects.

Excerpts from the “Guidelines for the Interrogation of Suspects,” used in an October 4, 2001 for a Special Course on Lawful and Proper Investigative Techniques for Trainees

3. Interrogators must have the drive to always get a confession with persistence and tenacity.

Interrogators must be motivated by drive replete with the self-confidence and tenacity which can “definitely get a confession.”

4. Don’t leave the interrogation room until you get a confession.

- If you start wondering that the suspect speaks the truth or if the investigation is getting nowhere, you will want to call it quits, but if you leave the room then, you’ll have lost.

11. Greet and talk to the suspect.

Always greet the suspect at times such as cell inspection.

12. Put the suspect in the interrogation room as much as possible.

- Just because the suspect won’t confess, leaving him in the cell will only make matters worse. In the process of talking you can get into the head of any suspect, and the suspect will also open up. Therefore you should have as much contact with the suspect as possible.
- If a suspect denies the charges, keep him in the interrogation room from morning until night (this also weakens the suspect).

During a review by the Committee against Torture, the Japanese government admitted that this manual was prepared by a veteran investigator for lectures at a police academy, but it offered the defense that it was written by an individual, not prepared by the police organization. Nevertheless, the very use of this manual for investigator guidance is a serious matter.

It is the daiyo kangoku system which makes it possible to induce confessions by weakening suspects with long hours of interrogation.



Various Damaging Effects of Daiyo Kangoku

The National Police Agency asserts that the evils of daiyo kangoku were eliminated by the “separation” of investigative units and detention units in 1980, but since then there continue to be not only forced confessions and other acts of illegal investigation, but also many problems arising in all aspects of suspects’ lives in detention. Especially to suspects who deny charges, daiyo kangoku is a breeding ground for human rights abuses.

For example,

- There are many instances in which, even when interrogations are conducted in an illegal or improper manner, suspects cannot even complain to custody officers, and even if they do complain, it is very difficult to have their complaints addressed.
- Even when nighttime or very long interrogations are conducted in violation of daily schedules, custody officers can only ask interrogators to “consider ending the interrogation,” and have no authority to make them stop.
- Providing suspects with favorable treatment is not at all unusual, and cellmates are used in improperly conducted investigations.

- Because the lives of suspects are under total police control, women face the danger of indecent acts, and in fact such harm has occurred.
- Police detention cells have no full-time physicians, and due to the shortage of personnel for taking suspects outside, prompt diagnosis and treatment at outside medical institutions are actually close to impossible.
- Citing the lack of cells with sufficient soundproofing (protection cells) in many detention facilities, police sometimes use dangerous gags.

In these and other ways, daiyo kangoku involves countless evils.

What Does the International Community Have to Say? Japan's 'Substitute Prison' Shocks the World

Article 9.3 of the International Covenant on Civil and Political Rights, which Japan has ratified, says that people arrested must be brought “promptly” before a judge. The intent of this is that once a person is taken from the police to a judge, he or she must never be returned to the police. “Promptly” is understood to mean no longer than two or three days.*

Systems like Japan's daiyo kangoku, which keep suspects in police custody for 20 days or longer after arrest, are very rare.

* Human Rights Committee, General Comment 8 (16) 2 (Article 9, personal liberty, and procedures for arrest or detention), adopted July 27, 1982.

In 1993 the Human Rights Committee observed, as its “principle subjects of concern,” that “detention is not promptly and effectively brought under judicial control and is left under the control of the police... and the substitute prison system (Daiyo Kangoku) is not under the control of an authority separate from the police.” Further, in 1998 it said, “The Committee is concerned that the substitute prison system (Daiyo Kangoku), though subject to a branch of the police which does not deal with investigation, is not under the control of a separate authority.” It recommended that the Japanese government abolish daiyo kangoku.

In May 2007 the UN Committee against Torture released concluding observations seeking the abolition of daiyo kangoku. While this obligated Japan's government to tender a reply within one year addressing the abolition of daiyo kangoku, the reply submitted by the government to the Committee against Torture in May 2008 merely restated the necessity of daiyo kangoku.

But criticism from the international community has not stopped, and indeed has further intensified. A review of Japan's human rights situation was conducted in May 2008 by a UN Human Rights Council working group where Algeria, Belgium, the UK, and Canada requested a review of the daiyo kangoku system and restrictions on interrogations, while Germany, Malaysia, and other countries asked questions about the system. In June 2008 the



Committee against Torture reviewing the Japanese government report

Japanese government announced that, with respect to the results of the council based on its review, it would not abide by the recommendations, which shows clearly that Japan is not carrying out its responsibility as a member of the council.

A review of the Japanese government's report by the UN Human Rights Committee is scheduled for October 2008, and scathing criticism of the daiyo kangoku system is expected there as well.

Rebuttals to the Arguments Defending Daiyo Kangoku

1. Have Investigations and Detention Been Separated?

The National Police Agency asserts that since 1980 the evils of daiyo kangoku have been eliminated by the separation of investigative units and detention units. But as written in the Ehime Prefectural Police interrogation manual, investigators enter police station cells, and are sometimes responsible for transferring suspects to other facilities. On the other hand, custody officers lack the authority to ban long and late-night interrogations that ignore daily schedules.

The separation of investigations and detention is totally inadequate.

2. The Claim that Japan's Legal System Differs from Those of the West

The Ministry of Justice and National Police Agency claim that because Japan's criminal procedure differs from those of Western nations, daiyo kangoku is necessary and realistic.

However, a principle of international human rights law is that investigations and detention must be separate, no matter what kind of legal system a country has. Daiyo kangoku is not acceptable because it violates this principle.

3. Why Over 98% of Detained Suspects Are Kept in Daiyo Kangoku

The Ministry of Justice argues that, in view of the fact that 98.3% of detained suspects are kept in daiyo kangoku, it is impossible to build new detention facilities capable of housing about the same number of people.

But before anything else, the Ministry of Justice must establish a policy for abolishing daiyo kangoku, and the government should secure the budget required for correct policies. It should also consider creative ways of effecting change, such as placing existing police cells under Ministry of Justice control.



Let's Abolish Daiyo Kangoku!

From the explanation given in this leaflet, you can see that daiyo kangoku presents the risk of various human rights violations such as coercing false confessions and acting as a breeding ground for false charges.

The Japan Federation of Bar Associations shall continue its utmost efforts to work for the abolition of the daiyo kangoku system.

Conclusions and recommendations of the Committee against Torture JAPAN

Daiyo Kangoku (detention in the substitute prison system)

15. The Committee is deeply concerned at the prevalent and systematic use of the Daiyo Kangoku substitute prison system for the prolonged detention of arrested persons even after they appear before a court, and up to the point of indictment. This, coupled with insufficient procedural guarantees for the detention and interrogation of detainees, increases the possibilities of abuse 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. In particular the Committee is gravely concerned at:

(a) The disproportionate number of individuals detained in police facilities instead of detention centres during investigation and up to the point of indictment, and in particular during the interrogation phase of the investigation;

(b) The insufficient separation between the functions of investigation and detention, whereby investigators may be engaged in the transfer of detainees, and subsequently be in charge of investigating their cases;

(c) The unsuitability of the use of police cells for prolonged detention, and the lack of appropriate and prompt medical care for individuals in police custody;

(d) The length of pre-trial detention in police cells before indictment, lasting up to 23 days per charge;

(e) The lack of effective judicial control and review by the courts over pre-trial detention in police cells, as demonstrated by the disproportionately high number of warrants of detention issued by the courts;

(f) The lack of a pre-indictment bail system;

(g) The absence of a system of court-appointed lawyers for all suspects before indictment, regardless of the categories of crimes with which they are charged. Currently, court appointed lawyers are limited to cases of felony;

(h) The limitations of access to defence counsel for detainees in pre-trial detention, and in particular the arbitrary power of prosecutors to designate a specific date or time for a meeting between defence counsel and detainees, leading to the absence of defence counsel during interrogations;

(i) The limited access to all relevant material in police records granted to legal representatives, and in particular the power of prosecutors to decide what evidence to disclose upon indictment;

(j) The lack of an independent and effective inspection and complaints mechanism accessible to detainees held in police cells;

(k) The use of gags at police detention facilities, in contrast with the abolition of their use in penal institutions.

The State party should take immediate and effective measures to bring pre-trial detention into conformity with international minimum standards. In particular, the State party should amend the 2006 Prison Law, in order to limit the use of police cells during pre-trial detention. As a matter of priority, the State party should:

- (a) Amend its legislation to ensure complete separation between the functions of investigation and detention (including transfer procedures), excluding police detention officers from investigation and investigators from matters pertaining to detention;**
- (b) Limit the maximum time detainees can be held in police custody to bring it in line with international minimum standards;**
- (c) Ensure that legal aid is made available to all detained persons from the moment of arrest, that defence counsel are present during interrogations and that they have access to all relevant materials in police records after indictment, in order to enable them to prepare the defence, as well as ensuring prompt access to appropriate medical care to persons while in police custody;**
- (d) Guarantee the independence of external monitoring of police custody, by measures such as ensuring that prefectural police headquarters systematically include a lawyer recommended by the bar associations as a member of the Board of Visitors for Inspection of Police Custody, to be established as of June 2007;**
- (e) Establish an effective complaints system, independent from the Public Safety Commissions, for the examination of complaints lodged by persons detained in police cells;**
- (f) Consider the adoption of alternative measures to custodial ones at pre-trial stage;**
- (g) Abolish the use of gags at police detention facilities.**

Interrogation rules and confessions

16. The Committee is deeply concerned at the large number of convictions in criminal trials based on confessions, in particular in light of the lack of effective judicial control over the use of pre-trial detention and the disproportionately high number of convictions over acquittals. The Committee is also concerned at the lack of means for verifying the proper conduct of interrogations of detainees while in police custody, in particular the absence of strict time limits for the duration of interrogations and the fact that it is not mandatory to have defence counsel present during all interrogations. In addition, the Committee is concerned that, under domestic legislation, voluntary confessions made as a result of interrogations not in conformity with the Convention may be admissible in court, in violation of article 15 of the Convention.

The State party should ensure that the interrogation of detainees in police custody or substitute prisons is systematically monitored by mechanisms such as electronic and video recording of all interrogations; that detainees are guaranteed access to and the presence of defence counsel during interrogation; and that recordings are made available for use in criminal trials. In addition, the State party should promptly adopt strict rules concerning the length of interrogations, with appropriate sanctions for non-compliance. The State party should amend its Code of Criminal Procedure to ensure full conformity with article 15 of the Convention. The State party should provide the Committee with information on the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence.



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