

Information for Prison Inmates

March 2004 (Second Edition)

Japan Federation of Bar Associations

Foreword

For most inmates, it is the first experience staying in prisons. So, it is often difficult for them to solve the problems happen there.

Of course, the prisons provide the inmates with precautions or a guidebook. Such information, however, is not sufficient to prepare the inmates for imprisonment. This booklet consists of advice for the frequently asked questions which need more explanations. We hope this booklet will help the inmates understand more about the life in prisons and to solve their problems.

Since this is our first attempt to make this sort of booklet for the inmates, it may be insufficient. We will improve and revise this booklet, and so we welcome any written comments and opinions from you.

We added chapter XI to the first edition of this booklet for foreign prison inmates, and made an English version. If you wish to have a copy of the English version, please contact us. Both Japanese and English versions are available on our website.

URL: <http://www.nichibenren.or.jp/> (Japanese)

<http://www.nichibenren.or.jp/en/index.html> (English)

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I. Visit and Outside Contact

Q 1 Who can visit an inmate?

1 Legal basis for visit

Article 45, Paragraph 2 of the Prison Law stipulates visit of inmates as, "Only relatives may visit inmates. If deemed necessary, however, non-relatives may visit inmates." Provisions beginning with Article 121 of the Prison Law Enforcement Regulations stipulate more specific provisions such as the duration of a visit, frequency of visits, and the procedure for application. The Guide to Prison Life that you have received from the prison provides prison rules set by the warden based on the above provisions, and should also state rules on visit.

Limiting visit to relatives deviates from the international standards. Maintaining contacts with outside society plays an important role in rehabilitation after release from prison. Described below, however, are the actual practices at prisons.

2 What relatives can visit?

An inmate can receive visits, as a rule, only by relatives. "Relatives," as used here, are interpreted to include common-law spouse, but not boyfriend, girlfriend, or fiancée.

While an adopted child or parent, with whom the inmate has entered into adoption after imprisonment is considered as a "relative," a prison sometimes prohibits visit if it regards that the sole purpose of the adoption was to visit inmates.

3 Visit by non-relatives

The condition under which visit by a non-relative is permitted, "if deemed necessary," is currently interpreted as "when deemed reasonable for the purpose of correction."

In practice, visit by the following individuals are permitted:

Guarantor

An individual who has agreed to be the inmate's guarantor after his/her release from prison may visit the inmate to confirm his/her health or discuss where he or she will reside or work after release from prison.

Counsel for civil case

If the inmate has filed a civil case or one has been filed against him or her, the attorney whom the inmate has retained can visit the inmate to discuss the case. If an inmate requests for visit by a particular attorney so the inmate can retain the attorney for a civil case, the attorney is, in principle, permitted to visit with the inmate to discuss that particular case.

Investigation of human rights relief by the Bar Association

If an inmate requests the Bar Association for human rights relief, an attorney in charge of investigation may visit the inmate to discuss the case with the inmate. Such visit is also permitted.

The above are primary actual examples when non-relatives are permitted to visit an inmate. To receive any other visitor, an inmate must explain to the prison the relationship between the visitor and the inmate, purpose of the visit, and the necessity of the visit, and request the prison's permission.

Q 2 How long can a visit last?

As a rule, a visit is limited to 30 minutes. Extension beyond 30 minutes is subject to approval by the warden. In cases such as an investigation by an attorney in charge of a human rights relief case of the Bar Association as mentioned above, some of these attorneys have successfully negotiated with the prison to extend the visit beyond 30 minutes.

Q 3 Can I receive a visitor without a prison officer in attendance?

Article 127 of the Prison Law Enforcement Regulations requires the presence of a prison officer during visit. Therefore, even when a counsel for a civil case meets with an inmate to discuss the case or an attorney investigates a human rights relief case on behalf of the Bar Association, a prison officer monitors and records the details of the visit.

Although the Bar Association has requested for the absence of a prison officer, especially during visits to discuss a civil case against the penitentiary or a human rights relief case, prisons have so far refused the request. As an exception, inmates who are class 1 under the Ordinance for Prisoner's Progressive Treatment are sometimes permitted to meet visitors without the attendance of a prison officer.

Q 4 To whom and how often can I send letters?

The same rule as for visit applies to the recipient and frequency of letters. In essence, an inmate is, as a rule, only permitted to send letters to "relatives." Only when the warden "deems necessary" can an inmate send a letter to any other individual (Article 46, Paragraph 2 of the Prison Law). The frequency is once a month for class 4 inmates under the Ordinance for Prisoner's Progressive Treatment, twice a month for class 3, once a week for class 2, and unlimited for class 1.

Such rules and practice do not meet international standards, and must be improved. Again, however, only the actual practice is described here.

Non-relatives to whom an inmate can send letters are the same as those as described under Q1. Examples include when the recipient was the inmate's school teacher and the letter serves an educational purpose (i.e., useful for correctional purpose), when the letter must be sent to protect the inmate's own legal rights, such as to solicit for

repayment of a loan, or when it is necessary to file a lawsuit or to exercise the rights of the inmate. Such letters are not included in the restriction on the number of letters that can be sent as described above.

Q 5 What should I do when the prison interferes with the content of a letter?

Every letter sent by an inmate is censored (the content is read) (Article 130, Paragraph 1, Prison Law Enforcement Regulations). If the prison finds, as a result of the inspection, that the letter is "inappropriate," it may delete parts of the letter or refuse to send the letter.

The content that threatens the recipient or extorts a visit or money will be deleted or the entire letter will be rejected.

A problem arises when a letter mentions treatment in the prison. Prisons sometimes delete such contents as being "obviously false" or "may be misleading," or refuse to send the letter at all. Lawsuit is the only means for an inmate to contest such practice.

A letter to the Bar Association for human rights relief would not be, and should not be, rejected for such reasons as described above.

The officer in charge may instruct an inmate to rewrite a letter because it has inappropriate contents. Although the officer may feel that he is doing the inmate a favor to avoid deletion or rejection, the inmate may see the instruction as "inappropriate interference." If the issue can be resolved merely by changing expressions, for example, it would be to the inmate's advantage to agree to the instruction. If the inmate disagrees with the instruction, he may refuse to make changes. In this case, the officer may decide to delete parts of the letter or refuse to send the letter. The inmate may then contest the decision by filing a petition (refer to Q21), appealing for human rights relief (see IX), or, as the last resort, filing a lawsuit (see VIII).

Q 6 Are there restrictions on the letters that an inmate can receive?

An inmate can only receive letters written by "relatives" and letters written by those "deemed necessary" by the warden. There is no restriction on the number of letters an inmate may receive.

The content of each letter is censored. If the content is found to be inappropriate, then parts may be deleted or an inmate may not be allowed to receive the letter.

II. Medical Care

Q 7 I have requested the prison officer in charge and medical staff for medical examination, but I have yet to receive one. What can I do?

There is a serious shortage of physicians at prisons. The Ministry of Justice has acknowledged that not every prison has the required number of physicians and that even prisons which have required number rarely have full-time physicians who work from morning to night, Monday to Friday. As a result, we have received many reports from inmates that they do not receive timely medical care.

Unfortunately, unless medical staff feels that a medical examination by a physician is warranted, practically an inmate cannot receive a medical examination.

Persistently explain the symptoms, but if that fails, appeal to someone outside of the prison, and have that person negotiate with the prison. Sometimes it is effective having a relative appeal to the Correction Bureau of the Ministry of Justice. If you know an attorney, it would be advisable to consult that attorney. You may decide to consult the attorney who was your defense counsel .

If you still cannot receive medical care, you may choose to appeal for human rights relief from the Bar Association. You should note, however, that appealing for human rights relief does not necessarily guarantee that you will receive medical treatment, and it will take considerable time after filing the appeal until you may actually receive medical care.

Q 8 I received a medical examination, but the physician failed to provide appropriate medical care, claiming that the case is minor. What can I do?

Unfortunately, in practice, higher priority is placed on the diagnosis of the physician who performed the examination than on what the inmate claims. Persistently

describe the symptoms and explain that the symptoms have not improved. You may choose to have someone outside of the prison to negotiate. It would be even better if you can have that person explain the symptoms to a physician outside of the prison and ask for that physician's opinion. If your symptoms do not improve, you may choose to appeal for human rights relief from the Bar Association. You should note, however, that appealing for human rights relief does not necessarily guarantee that you will receive medical treatment that you would be satisfied with, and it will take considerable time after filing the appeal until you may actually receive medical care that you would be satisfied with. If the symptoms are severe, it is important that you consult an attorney and take the required legal steps.

Q 9 Since medical treatment in prison is insufficient, I would like to receive medical examination and treatment at an outside medical institution. What can I do?

The Prison Law provides, "If an inmate who falls ill names a physician and requests for medical service at the expense of the inmate, the prison may, depending on the circumstances, approve of said request." (Article 42), as well as, "An inmate who becomes ill shall be treated by a physician and, if necessary, placed in a medical ward" (Article 40).

From this provision, it would seem that an inmate would be permitted to receive medical treatment at an outside hospital provided he pays his/her own expenses. In practice, however, such a request is not approved unless under extraordinary circumstances. Courts also do not approve of the right to receive medical treatment at an outside hospital, while it does recognize the obligation of prisons to provide proper medical care (Tokyo District Court decision on May 20, 1974).

As a result, an inmate has no choice but to obey the decision of the prison physician and that of the warden. On the other hand, with the approval of the physician and warden, an inmate can receive medical care at an outside medical institution at the Japanese government's expense and, if necessary, be transferred to a medical prison or a hospital. As explained under Q8, it is important that you request for the necessary medical care by including seeking for the opinion of an outside physician through a relative or others.

III. Punishment

Q 10 Under what circumstances would I be subject to punishment? What are the consequences of punishment that would be to my disadvantage?

Article 59 of the Prison Law only stipulates that an inmate is subject to punishment "when the inmate has violated a rule," and does not provide in detail the rule violations that give rise to punishment. As a result, an inmate immediately receives a punishment for violating a rule when he/she violates any one of the particular rules in the "Inmate Rules" set out by each prison.

It is a problem that the law does not stipulate the specific rules. It is also a problem that prisons prohibit actions in such a detailed and broad manner. This section, however, discusses the actual practices.

In practice, when an inmate draws the attention of a prison officer, he/she may be subjected to severe punishment for even a minor rule violation.

Primary types of punishment are as follows:

- Reprimand
- Ban on reading books, magazines, etc., for not more than three months
- Partial or total reduction of balance of work bonus
- Solitary confinement for not more than two months

In many cases, actually, the punishment of solitary confinement of a certain duration along with ban on reading books, magazines, etc is imposed. As a result, during this period, the inmate is, as a rule, banned from exercise, bathing, exchange of letters (sending or receiving letters), etc. In solitary confinement, the inmate is forced to sit, either with the legs crossed or tucked underneath their buttocks for almost all the time while being awake. It is pointed out that such practice may cause back pain or detention neurosis.

Furthermore, when an inmate receives punishment, his/her class under the

Ordinance for Prisoner's Progressive Treatment is usually reduced. Consequently, the inmate suffers disadvantages in all aspects of prison life, including less frequent visit and letter exchange, reduced work bonus pay, and less opportunity to purchase items at his/her own expense. In addition, class reduction may also have a more serious implication: refusal of parole.

Q 11 What is the procedure for imposing punishment?

When a prison officer reports that an inmate under his/her supervision has violated a rule, the prison first conducts an investigation. (The supervising officer may conduct the investigation himself/herself.) While the inmate is under investigation, he is placed in a solitary cell. After the investigation, the prison prepares a written statement of the inmate.

Next, to decide whether to impose punishment, the prison holds a meeting of the disciplinary committee. The inmate is called to the meeting. The disciplinary committee is made up of only prison officers at management level, and the inmate is represented by those prison officers such as the Director of Education Division. In practice, however, the committee meeting is very formal, and serves as a place where the prison unilaterally declares a punishment.

Inmates do not have the right to retain an attorney and there is no avenue through which inmates can appeal against the decision. It is pointed that this area also needs improvement.

Q 12 A prison officer accused me of violating a rule, and subjected me to questioning. How can I protect myself from receiving unfair punishment?

First, to prevent receiving punishment, it is necessary to consistently assert the truth during the investigation and prevent the investigator from taking a false confession statement. The same holds true for the disciplinary committee meeting. If

the inmate confesses to the violation, that would only make it easier for the disciplinary committee to impose the penalty.

As mentioned above, however, rarely will the claim by the inmate be taken into account in the disciplinary procedure. In addition, if the inmate denies rule violation, the disciplinary committee may decide to impose even heavier punishment for the reason that the inmate is not repentant.

Q13 I received unfair punishment. How can I contest the punishment?

As described above, there is no avenue for filing appeal against the punishment imposed. The only options are to file a petition or civil suit as general means to lodge an appeal.

A petition may be filed with the Minister of Justice or a visiting officer, but since a visiting officer visits each prison only once every two years, an inmate would normally file a petition with the Minister of Justice.

Next, in a civil suit, an inmate would file a lawsuit claiming moral damages for emotional injury he/she suffered as a result of unjust punishment.

Please refer to separate sections for petition and civil suit. In either case, the inmate would be considered a rebellious inmate and come under the scrutiny of prison officers, and is likely to receive worse treatment. Although this should not happen, as long as it is the reality, it is advisable to carefully make a decision of whether or not to take such legal procedures

IV. Protection Cell

Q 14 Under what circumstances could I be placed in a protection cell?

Article 47 of the Prison Law Enforcement Regulations stipulates that, "An inmate who needs to be isolated for detention shall be placed in solitary confinement." The Japanese government has issued a notice based on this provision.

According to the notice issued on November 1, 1999, placing an inmate in a protection cell is permitted under the following cases:

When the inmate may escape

When the inmate may assault or inflict injury on another individual

When the inmate may commit suicide or inflict injury upon himself/herself

When the inmate yells or causes noise by ignoring prison officer's orders to stop

When the inmate may repeat abnormal behavior such as contamination of cell or destruction of property

In all cases above, it must also be deemed inappropriate to keep the inmate in an ordinary cell.

A danger of escape should not warrant placing an inmate in a protection cell of special construction and it should be sufficient to place an inmate who poses danger of assault or injury to others in solitary confinement. In practice, placing an inmate in a protection cell is occasionally used as punishment.

Q15 How long would I be placed in a protection cell?

According to the notice mentioned above, the duration of confinement in a protection cell should, as a rule, be no longer than three days. If necessary, however, the

duration may be extended every two days.

There is a court precedence that supported the legality of confinement in a protection cell for a total of 1,145 days, although not continuous, out of 2,447 days of incarceration from January 19, 1978 to September 30, 1984. While this is believed to be an exceptional case, it does show that courts have in most cases agreed with prisons' claims concerning the treatment of inmates.

Q16 What are the prison's responsibilities while I am in a protection cell?

First, placing an inmate in a protection cell must be based on the warden's orders. In the event there is an urgent need to place an inmate in a protection cell without seeking for the warden's orders, however, it is said that prison officers may place the inmate in the protection cell first, and immediately report to the warden.

An inmate with either a mental or physical problem may only be placed in a protection cell after he/she has been examined by a physician and found to be capable of withstanding the protection cell. There is urgent need to place an inmate in a protection cell without having him/her examined by a physician in advance; the prison must provide the examination immediately after he/she is placed in the protection cell.

While an inmate is in a protection cell, the prison must have a physician constantly monitor the physical and mental status of the inmate, and provide medical examination as necessary.

Prison officers must patrol or use surveillance cameras to frequently and carefully observe the inmate to properly grasp the movement of the inmate. They must also take the initiative in making attempts to emotionally stabilize the inmate so the inmate can be released from the protection cell as soon as possible.

Whenever an inmate is placed in a protection cell, his/her detention is extended, or he/she is released from the protection cell, the date and time, name of the person ordering the action, name of the person taking the action, the reason for placing the inmate in a protection cell, and an opinion of a physician must be recorded on the protection cell ledger and the observation chart. Since the exposure of the incidents at Nagoya Prison in 2002

(see Q17), it appears that prisons are fulfilling these obligations more so than in the past. It does not appear, however, that the protection cell system will be abolished.

Q17 How can I be quickly released from a protection cell?

According to the notice mentioned above, an inmate must be promptly released from a protection cell when the reason for placing him/her in a protection cell has been resolved. Therefore, if the condition as described under Q14 is eliminated, the inmate would be promptly released.

For example, if an inmate is placed in a protection cell for continuous yelling, he/she should be released if he/she ceases to yell and behaves calmly.

In reality, however, it appears that most cases of placing an inmate in a protection cell are carried out without an order from the warden, whether or not there is urgency. Therefore, there are doubts as to whether the requirements stated in the notice are being properly observed.

Q18 When are leather handcuffs used? Is it ever illegal to use leather handcuffs?

Leather handcuffs are a type of restraining devices whose use is permitted by Article 19 of the Prison Law.

Based on the law, Article 50 of the Prison Law Enforcement Regulations stipulates, "Handcuffs and binding rope may be used only on inmates who may assault another individual, escape, or commit suicide or on inmates who are being transported only when deemed necessary." In most cases, leather handcuffs have been used when inmates are placed in protection cells. Inmates' hands may be bound with one hand in the front and the other behind the back, both hands front, or both hands behind the back.

While acknowledging the need for the use of leather handcuffs along with protection cells, Tokyo High Court ruled that leather handcuffs are illegal when they are used to bind the inmate's both hands behind his/her back because they prevent the inmate from using the toilet, they force the inmate to eat like a dog, and that these acts are degrading, and also that they make sleeping difficult in any sleeping position. .

The notice mentioned above also prohibits compressing the abdominal or other areas, or by over tightening bands connecting a restraining device to an object other than a restraining device.

As a rule, handcuffs must be temporarily removed for an inmate to have a meal or go to the toilet. If removal is impractical, the handcuffs must be removed from one of the wrists or the band must be loosened with either both hands or one hand in front.

The use of metal handcuffs is permitted in conjunction with leather handcuffs, but only when there is a danger that the leather handcuffs may slip off. Otherwise, the joint use of these handcuffs is prohibited.

In October 2002, it was discovered that at Nagoya Prison in May the same year, an inmate whose leather handcuffs were strapped too tight died. Following the arrest and indictment of the prison guards involved in the incident, the Ministry of Justice abolished the traditional leather handcuffs and devised an alternative. The new leather handcuffs do not have the belt wrapped around the abdomen unlike the old ones, and are shaped so the arms are secured to form a triangle. The Ministry of Justice has announced that it plans to use the new leather handcuffs not only to secure both hands in front of the body, but also behind the back. Therefore, there is still a risk that the new leather handcuffs will be similarly used in an illegal manner as the old ones. We must therefore continue to monitor and study how the new leather handcuffs are being used.

V. Complaint

Q19 I was injured in an assault by a prison officer. How can I protest the incident besides accusation?

According to the Prison Law, the means of filing complaints are petition to the Minister of Justice (Article 4 of the Prison Law Enforcement Regulations), petition to a visiting officer (Article 5 of the said Regulations), and meeting with the warden (Article 9 of the said Regulations). As these procedures are processed either within the Ministry of Justice or the prison, their effectiveness is limited. This lack of a system for filing complaints with a third party institution may deviate from international standard. Appealing for human rights relief to the Legal Affairs Bureau would also be ineffective.

Outside of the Ministry of Justice organization, it is possible to appeal for human rights relief to the Bar Association or file a suit for damages against the Japanese government. It would, however, be difficult to win a suit against the Japanese government, and the likely consequences of the suit would be placement in solitary confinement by day and night. There is no special form that is required to appeal for human rights relief. After a preliminary evaluation, if there is likelihood of human rights violation, the investigation is commenced. Be sure to accurately convey all the facts in response to inquiry letters from and visits by the Bar Association. If the investigation finds that there has been a violation of human rights, a warning or recommendation is issued to the prison. While such a warning or recommendation is not legally binding, historically, they have had major effect.

Q20 I have heard that inmates can request for a meeting with the warden. Can I address my grievance directly to the warden?

Unfortunately, direct meetings with the warden do not take place in practice. Article 9, Paragraph 1 of the Prison Law Enforcement Regulations stipulates the warden meeting system, and if an inmate submits a request for a meeting with the

warden in a request form, a "meeting with the warden" will take place. The warden, who receives the request, however, is not obliged to personally meet with the inmate. Therefore, the warden can order a prison officer to meet with the inmate on his/her behalf. As a result, the prison officer who is in charge of you may likely to meet with you under the title of an "acting warden." It is not uncommon to find that the "acting warden" is the prison official in charge of your ward. Such practice negates the purpose of the law, and needs improvement.

Q21 How does a petition work? Is it effective?

The Prison Law recognizes the right of inmates to file a petition with the Minister of Justice. When an inmate requests a prison guard that he wishes to file a petition, the inmate is usually transferred to a solitary cell. The inmate then writes the petition inside the solitary cell. The petition should not only contain comments or opinions, but your specific grievances and requests for improvement about how you have been treated in prison. Once completed, you will place the petition in an envelope and seal the envelope in front of the prison guard. This means that prison guards are prohibited from inspecting the content of the petition and thus must have no knowledge of the petition, at least at that point. The prison guard then submits the envelope to the Ministry of Justice on your behalf.

Petitions should essentially be read by the Minister of Justice, but it was discovered that no Minister of Justice had read any petitions until 2003, and that all the petitions were processed by Correction Bureau staff. After this discovery, the Minister of Justice began to read the petitions, although not every one.

Unfortunately, many petitions are rejected. In other words, inmates' opinions are not taken into consideration. Although the Ministry of Justice may not accept a petition, it sometimes instructs prisons to improve their operations. As a result, it appears that some of the petitions have, at least partially, been successful.

As the decision on whether the petition has been accepted will be reported to the prison, at this point, the prison will have an idea on who filed what kind of petition.

VI. Assault

Q22 I still have prominent scars left from an assault by a prison officer. What should I do to protect the evidence?

First, promptly request for an examination by a physician, and tell the physician the symptoms in detail. It is important that you insist on requesting an examination by a physician. During the examination, ask the physician to accurately record the condition and cause of the injury in the medical records. Ask the physician to take photographs, as some physicians are willing to do so. It is also a good idea to insist on receiving the necessary tests.

It is also important for you to record the condition of the injury before it heals, write to a relative outside of the prison about the injury in detail, and have a relative visit you to directly see the injury in person. Likewise, it is important to draw sketches of the injury in a notebook. When a relative visits you, have the relative record your conditions during the visit, and have the record dated and notarized.

Combined with these steps, if you succeed in retaining an attorney, then have the attorney take the procedure for preserving the evidence. This procedure is taken to preserve evidence that may be concealed or discarded by such means as taking their photographs before the suit is filed. The procedure is presided by a court. As evidence preservation is conducted on the premise that a suit will be filed, the precautions for filing a suit must also be observed (see IX).

. Solitary Confinement by Day and Night (Strict Solitary Confinement)

Q23 What kind of treatment is solitary confinement by day and night?

Solitary confinement refers to an unusual treatment of confining an inmate in the cell, where he/she performs such tasks as making paper bags, and not allowing him/her to work in the prison factory when there is a danger that the inmate would violate rules or disrupt order in prison. Basis for this treatment is Article 47 of the Prison Law Enforcement Regulations that states, "when isolation is necessary for detention."

"Gyokeiho," a text book for training prison officers that was edited by the Correction Bureau of Ministry of Justice, states that the following individuals should be placed in solitary confinement:

1. Individual with a unique personality and is totally unable to lead communal life with others;
2. Individual who has violent tendencies or tends to incite other inmates, and is especially likely to interfere with the security of correctional facilities if allowed to lead a communal life;
3. Individual who is susceptible to psychological or physical pressure from others

As a rule, an inmate in solitary confinement must exercise and bathe, in addition to working all by himself/herself. The inmate is not permitted to participate in recreational activities in the prison. The solitary cell is not equipped with a television while other cells are. In the cell, the inmate is required to sit, not only during work, but also during breaks, until sleep time. The inmate is not allowed to stand up, lean against a wall, stretch his/her legs, or raise a knee. A prison guard will warn the inmate of violation of these rules. If the inmate fails to comply, he/she may be subject to punishment. As such restrictions on indoor actions have come under heavy criticism from both inside and outside of the government that they have been alleviated in recent years, but not abolished.

The inmate is allowed to go outside of the cell only to exercise, bathe, or receive a visitor. Exercise is not permitted on Saturdays, Sundays, national holidays, makeup holidays, government holidays around New Year's Day, bathing days (two or three days a week), and rainy days. Each exercise session is limited to 30 minutes. Whereas inmates in regular cells have access to a large athletic ground, inmates in solitary confinement only have access to a small fan-shaped yard. The narrow rectangular yard is too small for the inmate to fully move around to receive the needed exercise.

Even if an inmate in solitary confinement is allowed to go outside of the cell, he/she is strictly prohibited from speaking to other inmates and to hold casual conversation with prison guards. Unless the inmate receives a visit from a relative, he/she would spend life without speaking a word.

Q24 Is the prison required to provide a reason for placing an inmate in solitary confinement by day and night?

Solitary confinement is, as a rule, limited to six months, but the duration can be extended every three months. Normally, the inmate is not notified of an extension or the reason for the extension. At the very least, the prison should notify the inmate of the reason for the extension, clearly explain to the inmate what he/she needs to do to return to a normal cell, and prevent any extension of solitary confinement.

To this end, the inmate should repeatedly ask for the reason for the extension or appeal for human rights relief to the Bar Association, have the prison explain the reason, and seek for a way to cease solitary confinement.

Q25 What is court precedence on solitary confinement by day and night?

There are many cases in which solitary confinement has been disputed. Although only Tottori District Court in March 1985 and Tokushima District Court in July 1986 ruled that solitary confinement is illegal, unfortunately, both decisions were overturned by appellate courts (high courts).

Although the district courts that ruled the practice to be illegal found such practice to force upon the inmate a closed and unnatural life that is nothing like how the life of human beings should be, most courts have ruled that the form of confinement is within the broad discretion of prison wardens. The guarantee of human rights is being ignored in the case of inmates.

Q26 If I am placed in solitary confinement by day and night, what can I do to be returned to prison factory?

This is an extremely difficult question to answer. First, ask as much as possible why you have been placed in solitary confinement by day and night, and explain that the reason has been resolved. If, even after a persistent effort, the prison does not agree with your assertion, the last resort is to file a suit claiming that solitary confinement by day and night is unjust, and hope for the best. You should file a suit only after careful consideration, however, as many such cases have been lost, and if you do file a suit, there is a risk that you will be placed in solitary confinement while the case is pending

VIII. Lawsuit (Litigation)

Q27 How can I file a lawsuit concerning mistreatment?

As the prison warden has the authority to decide how inmates are treated, you will file a lawsuit claiming that the decision by the warden was illegal.

Such a lawsuit may be carried out in one of two ways.

The first way is to demand the annulment of the prison warden's decision. This would be administrative litigation based on the Administrative Case Litigation Law. The defendant would naturally be the prison warden.

In the second type of lawsuit, the inmate would claim moral damages for emotional injury he/she suffered due to the illegal decision. This type of litigation is often called a lawsuit against the Japanese government for damages, but it is a type of civil suit. The defendant, in this case, would be the Japanese government.

Although the administrative litigation would seem more straightforward and preferable as the plaintiff is demanding for the annulment of the warden's decision, due to the specialized and technical nature of such administrative litigation (e.g., the case would not be accepted without a "benefit of suit"), most cases are dismissed before the trial (i.e., lost lawsuit).

Therefore, normally, an inmate would file a general civil suit claiming for moral damages. Although the amount of damages differs by case, the amounts awarded by courts are generally extremely small.

Q28 Is there a chance that an inmate would win a law suit against the Japanese government (prison)?

Unfortunately, under the current conditions, there is little chance that you would win the suit.

First, courts, as a rule, respect the decisions made by the administration. According to court precedence, in general, prison wardens are deemed to have broad discretion, and the decision of a prison warden is considered illegal only when he has deviated from or abused his/her discretion. In essence, courts inherently envision an extremely limited scope of cases that inmates can win.

Next, witnesses to incidents that occur in a prison are, in most cases, only prison officers. Even if another inmate has witnessed an incident, he is unlikely to give a testimony that is unfavorable to the prison for fear of a backlash. Therefore, there is little chance that you will obtain testimony from a third party. In addition, prison officers keep extensive records every day to prove the righteousness of the prison's decisions. All these records are used as evidence to support the prison's case. On the other hand, the inmate can not use freely even notebooks or pens. In essence, there is extreme imbalance in terms of evidence in hands between the prison and the inmate. Therefore, it would be extremely difficult for the inmate to prove his/her claim to be true.

For all these reasons, although numerous inmates have sued the Japanese government, the reality is that very few have won and most have lost. Moreover, it is not rare that even those who barely won the first instance (district courts) have had the decisions overturned in the appellate courts (high courts).

It may seem that an inmate can leave the prison, even only if temporarily, to appear in court. However, the actual practice of the current Japanese prisons is severely restrictive and they only rarely allow inmates to appear in court, claiming the lack of personnel to accompany the inmate as one of the reasons. This can be deemed as one of the reasons that make it difficult for an inmate to win the case.

Q29 What should I do to preserve evidence to improve my chances in the lawsuit?

Inmates basically cannot become involved in the preparation of documents by prison officers.

You can, however, refuse to sign the written statement after an investigation if the prison officer fails to correctly write your statement. Therefore, it is important that you make an effort to have the officer accurately write in the statement what you remember about the incident.

One of the ways you can correctly record memories is to keep a diary. Although you need to get permission of the prison warden even to keep a school notebook in your cell, you may think of asking for permission for the notebook by stating that you will use it as a notebook for memo, and keep a diary. You may also keep records by receiving permission for the notebook by stating that you wish to keep information for when you file the law suit.

In addition, as prisons, as a rule, properly store all the request forms submitted by inmates, you can submit as many requests as possible so they may serve as records. For example, if you are assaulted by a prison officer, repeatedly write a detailed account of the incident in request forms, and repeatedly request for a meeting with the prison warden and for medical care. Then, at the very least, you will have established evidence that many such requests have been submitted.

Finally, you may use a court procedure called preservation of evidence before filing the civil suit to prevent relevant documents from being altered. This procedure requests a judge to visit the prison, order the prison to provide relevant documents, and take copies of the documents so they can be used for a trial in the future. As this procedure is practically impossible without the services of an attorney, it should only be used if you plan to file a lawsuit by retaining an attorney.

Q30 Is there a drawback to an inmate filing a law suit against the Japanese government (prison)?

When an inmate files a lawsuit against the Japanese government or the prison, the authorities will regard the inmate as a rebellious, and will feel that he/she should not come in contact with other inmates. Therefore, if you file a lawsuit, the chances are great that you will be placed in solitary confinement by day and night strict solitary confinement.

The possibilities are also great that your class under the Prisoner's Progressive Treatment system will remain as class 4. If this happens, you would suffer disadvantages in all aspects of prison life and would be least likely to be granted parole.

Thus , filing a lawsuit is accompanied by great risks.

Furthermore, as mentioned before, as chances of wining the lawsuit are generally slim, you must give consideration with all possible deliberation before actually filing the lawsuit.

Q31 How can I decide whether or not to file a lawsuit?

As described above, under the current conditions, you may have to expect serious disadvantages in treatment as the consequences of filing a lawsuit . Therefore, unless you are mentally and physically capable of withstanding strict solitary confinement until you are released from prison on the expiration of term, it would be difficult to sustain a trial.

As the chances of wining a lawsuit are minimal, it would be impractical to file a lawsuit for the purpose of actually receiving compensation.

It would be worthwhile to file a lawsuit if you cannot forgive the prison for the severe treatment and would like to prevent a similar incident from recurring in the future, even at the cost of being placed in strict solitary confinement until release on the prison term expiration.

Q32 Should I retain an attorney to file a lawsuit?

Since trials require specialized knowledge, you should retain an attorney.

As such cases are extremely complex and there is little chance of winning, it would be difficult to find an attorney who is willing to take the case. Even if you win the case, the amount of compensation would normally be far less than the attorney's fees.

If the case involves censoring of a book or refusal to send a letter that does not require the plaintiff to contest the facts but only the illegality of such an act, the inmate may be able to carry out the lawsuit without retaining an attorney if he studies the litigation procedure (plaintiff representing himself).

When the case requires the plaintiff to contest facts (e.g., in a case where the inmate was assaulted by a prison officer), the trial would entail examination of witnesses, who would be prison officers. Therefore, it would be practically impossible to prepare for the case in prison and to proceed with the trial without an attorney.

IX. Appeal to Bar Association for Human Rights Relief

Q33 What is an appeal for human rights relief to the Human Rights Protection Committee of the Bar Association?

Human Rights Protection Committees of the Bar Association are placed within each Bar Association in an area with a district court and the Japan Federation of Bar Associations in Tokyo. (With the exception of Tokyo, where three Bar Associations exist.) Every Human Rights Protection Committee is staffed by attorneys. The Human Rights Protection Committees actively handle appeals from prison inmates and human rights violations in other public facilities, psychiatric hospitals, etc.

Q34 Under what circumstances can I appeal for relief?

If you feel that there has been a violation of human rights, whether the victim is yourself or another inmate in your cell, you may file an appeal for relief. It is necessary, however, to state in your own words specifically "who's," "what right was" violated, "how". Otherwise, the appeal cannot be conveyed to the committee and the committee cannot take further actions.

Q35 How can I file an appeal for human rights relief?

Write the document (put the title, "Appeal for Human Rights Relief") and mail it to the Bar Association. Mailing the document is the only way to seek for relief in person claiming occurrence of human rights violation from inside a prison. Inmates occasionally try to appeal for human rights relief through family members who visit them, but because the prison officer in attendance during the visit often restricts conversation, it would appear that such means cannot be so much relied upon .

Q36 If the appeal is accepted, how can I receive the relief?

When the Bar Association accepts an appeal for human rights relief, in many cases, members of its Human Rights Protection Committee will investigate the facts. The investigation is conducted to determine whether the facts claimed in the appeal actually exist and, if so, what human right violation such found facts would constitute.

If the committee finds that a human right has indeed been violated, it proceeds to take action: such as making a warning (this is to notify the violator or his/her supervising institution the opinion of the committee and seek for his/her apology), recommendation (this is to request the violator or his/her supervising institution to take appropriate steps to provide relief to the victim or prevent future violations), or request (this is to expect the realization of the purpose of the appeal by conveying to the violator or his/her supervising institution the opinion of the committee). The Human Rights Protection Committees do not, however, provide tangible relief to individuals (e.g., removing the inmate from prison and taking him/her to a hospital). There is no legal basis for providing that type of relief. The actions of the Human Rights Protection Committees are intended to call the attention of an institution that has committed a human rights violation by the authority of the Committees and by announcing their opinions through the press to urge the institution to make an improvement and, at the same time, to prevent a similar type of human rights violation in the future. In this respect, please note that relievable effect to the victim whose human rights are currently being violated is limited.

Q37 If the appeal is rejected, wouldn't I receive even harsher treatment in prison?

There have been reports that prisons improve the treatment of inmates whose appeals are accepted by the committees. The reason for that seems that a prison regards an inmate whose appeal has been accepted as an individual who requires special care, because although he/she may be like any other inmate, he/she does have contacts with the outside world, and fears that it may be labeled as a "violation" if it treats him/her improperly. On the other hand, there is little information on how inmates whose appeals are refused are treated by prisons, but there appears to be little change in how they are treated.

Based on the information above, it is the most critical step, first of all in appealing for human rights relief to have your appeal accepted by the Human Rights Protection Committees. As mentioned before, an appeal for human rights relief is more likely to be accepted if it provides the specific facts in detail. In other words, the document must be written in such a way so the reader can most understand the facts. On the other hand, if the document merely provides a lengthy account of the anger and sorrow of the inmate, the reader would not be able to understand what actually happened, and would refuse to accept the appeal .

Q38 Is there a fee for filing an appeal for human rights relief?

Unlike filing a lawsuit, there is no revenue stamp fee or handling fee required for an appeal for human rights relief. The only cost to the inmate is postage.

X. Legal Aid

Q39 What is legal aid? Is legal aid available to inmates?

Legal aid is a system that attempts to ensure the right to trial to economically disadvantaged individuals by lending attorney's fees when such individuals are unable to take court procedures in a legal dispute due to lack of money that they could otherwise win. Today, the system is primarily run by the Japan Legal Aid Association.

To be eligible for legal aid, an individual must satisfy two conditions:

- Unable to pay for expenses for court procedures on his/her own
- There is a possibility of winning the case

Most prison inmates would satisfy condition . The problem is condition . In particular, when the inmate is filing a lawsuit to claim for damages against the prison defendant for violation of his/her rights (lawsuit against the Japanese government for compensation), regardless of the number of reasons that the one who is filing the suit (plaintiff) may present, he/she would often have difficulty finding evidence to support those reasons. Therefore, to have the Japan Legal Aid Association determine whether there are chances of winning the case, you must submit along with the application for legal aid sufficient evidence to withstand the trial.

As legal aid is a system that lends the applicant the expenses, as a rule, the applicant must repay the money when the trial is finished.

In practice, the attorney whom you consult will most likely file the application for legal aid (this procedure is often referred to as "mochikomi," or the application being brought into the office by an attorney). For further information, please contact a Bar Association in your area or a branch of the Japan Legal Aid Association.

XI. Issues Unique to Foreign Nationals

Q40. Can I exchange letters with my family in my native language?

In principle, you may exchange letters with your family (see Q4). Letters, both those received and sent, are, however, subject to inspection of the contents (censor). It is reported that prison guards tell foreign-national inmates that they cannot exchange letters unless they are written in Japanese or that they must translate the letters into Japanese at their own expense.

At the same time, due to the increase in the number of foreign-national inmates, Fuchu Prison and Osaka Prison have set up international affairs sections, where expert officers are placed to deal with the treatment of foreign-national inmates. Other prisons are also apparently making efforts to accommodate the needs of foreign-national inmates.

Fuchu Prison's International Affairs Section (established in 1995) is staffed by eight international expert officers (as of February 2004) who, with the cooperation of civilians, translate and interpret twenty some languages including English, Chinese, Spanish, Portuguese, and Persian. Osaka Prison's International Affairs Section (established in 1997) is staffed by three international expert officers (as of February 2004) who, with the cooperation of civilians, can generally handle such languages as English, Chinese, Spanish, Portuguese, Persian, Korean, and Vietnamese.

At these prisons, it is possible for a foreign-national inmate to speak in his/her native language with a visitor, provided the attendance of an interpreter. This may not be possible, however, if the language is not handled by the full-time staff.

We have learned that Fuchu Prison is linked to Tokyo Detention Center and Tochigi Prison, and Osaka Prison to Osaka Detention Center and Nagoya Detection Center by teleconference system so inmates at these prisons and detention centers can speak to visitors in their native languages by having an interpreter via the system.

Even if a foreign-national inmate is incarcerated at another prison, if his/her native language is handled by the international affairs sections of the two prisons mentioned above, the prison should be able to inspect letters written in foreign languages by having them translated, although it may take considerable time depending on the

language. Therefore, the inmate should be able to send and receive letters in his/her native language.

If a prison guard denies your request to exchange letters in your native language, ask the guard to request the International Affairs Section at Fuchu Prison or Osaka Prison to translate your letters.

Q 41 Due to religious reasons, I cannot eat certain types of food. Will the prison accommodate my request?

Article 6 of Correctional Facility Inmate Meal Regulations allows prison wardens to provide different menus to inmates who require special food due to religious reasons or great difference in eating customs. For example, the prison may provide bread or noodles instead of rice as the staple food. Meals cannot be substituted merely to accommodate particular eating habits or preferences.

If an inmate declares that he/she is Muslim, the prison will not serve him/her any pork, and should serve him/her halal canned food for meat. If an inmate declares that he/she is Hindu, the prison will not serve him/her any beef.

If a Muslim inmate requests to fast during Ramadan, some correctional facilities will serve meals only after sunset during the Ramadan period.

Q 42 I heard there is a system that allows a foreign-national inmate to serve his/her sentence in his/her home country

As Japan has ratified the Convention on the Transfer of Sentenced Persons, if the home country of the inmate is one of the State Parties of this convention, the inmate may serve his/her sentence in his/her home country under certain conditions.

As of now, the following countries are the State Parties of the convention (according to Council of Europe's web site; 53 countries as of February 16, 2004, listed in alphabetical order).

Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belgium, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Former Yugoslav Republic of Macedonia, Malta, Netherlands, Norway, Panama, Poland, Portugal, Rumania, Serbia-Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tonga, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States of America, Venezuela

The conditions for you to serve your sentence in your home country are that you consent to the transfer, that the crime you committed is also treated as a crime in your home country, that the Japanese government agrees to the transfer, and that the home country agrees to the transfer.

If your home country is among the State Parties on the Convention, the correctional facility is required to inform you of the contents of the Convention. For details, please ask your prison guard.

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