

Urgent Action In Focus

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The death chamber © HAKAMADA Net

Japan – a long way to go

In our work on Japan, we have been using UAs in two key areas: imminent executions and imminent forcible return of asylum-seekers to countries where they would face grave human rights violations. The UAs have had different and important impacts in both areas.

UAs and the Death Penalty in Japan

Japan retains the death penalty, and is likely to do so for the foreseeable future. Government officials justify this by citing public opinion surveys showing 80% of the population in favour. However, it is unlikely that those in favour are aware that a shocking one in ten of the prisoners now awaiting execution in Japan are believed to have been wrongly convicted.

Most have been sentenced to death on the basis of confessions extracted under duress. The potential for miscarriages of justice is built into the system: confessions are typically extracted while suspects are held in *daiyo kangoku*, or "substitute prisons", for interrogation before they are charged. In practice these are police cells, where detainees can be held for up to 23 days after arrest, with no state-funded legal representation. They are typically interrogated for 12 hours a day: no lawyers can be present, no recordings are made, and they are put under constant pressure to confess. Once convicted, it is very difficult to obtain a

re-trial and prisoners can remain under sentence of death for many years.

The sentencing court does not specify a date when prisoners are to be put to death. Executions are usually by hanging, and take place in secret after an order from the Minister of Justice. They are usually carried out during holidays, when the Diet (parliament) is not in session, to avoid media attention. Condemned prisoners are usually informed only hours before they are put to death. Afterwards there is a brief message to the media about the number of people who have been executed, with no mention of their names. Their relatives are informed after the execution, so they can claim the bodies.

In August 2005, nearly a quarter of the 74 prisoners under sentence of death had been in prison for over 10 years, knowing that every day could be their last. Some inmates have been under sentence of death for over 30 years and are in poor health. They are confined in small solitary cells and prevented from taking part in communal activities: no one has access to them except their immediate families and lawyers.

The entire death penalty system in Japan is shrouded in secrecy. When a group of Diet members visited a new execution chamber at the Tokyo Detention Centre in July 2003, it was reportedly the first

time in three decades the Justice Ministry had allowed people from outside the penal and justice systems to examine a death chamber.

Hakamada Iwao

One of the prisoners we are especially concerned about is Hakamada Iwao, aged 69, who has been under sentence of death for over 36 years, and is held in Tokyo Detention Centre. He is said to be in poor mental and physical health as a result of his long imprisonment.

A former boxer, Hakamada Iwao was accused of the murder on 30 June 1966 of a couple and their two children. The husband was the managing director of the Kogane Miso plant at Yokosuna, Shimizu City. Hakamada Iwao was first arrested, without a warrant, in July 1966, but released after interrogation. The police had announced before his arrest that pyjamas found in a closet in his room were stained with blood, but during the investigation no bloodstains had been found on the pyjamas. He was arrested again the following month, and reportedly interrogated for, on average, 12 hours a day, and once allegedly for over 16 hours, for a period of 23 days (to 9 September). It was reported that he was held in a police cell for some 50 days (to 7 October). Hakamada Iwao claims that during his interrogation, he was denied food or water, not allowed to use a toilet, was kicked and punched, had his arms and ears twisted and was dragged by the hair. He also claimed that he was subjected to sleep deprivation: he was allotted five hours sleep per night, but this was frequently interrupted. During his detention, it was alleged that he was only allowed to meet his lawyer only three times: on 22 August for seven minutes, and on 28 August and 3 September for 15 minutes on each occasion.

Hakamada Iwao has consistently claimed that he was forced to confess to the

murders. During his trial at the Shizuoka District Court in December 1966 he retracted his confession and claimed he was innocent. He is said to have made 45 written statements while he was under interrogation. The prosecution submitted all the statements at his first trial before the district court, but the court apparently accepted just one of these confessions, which contained nothing of substance. On 11 September 1968 Hakamada Iwao was sentenced to death. His sentence was upheld by the High Court on 18 May 1976 and finalized by the Supreme Court on 19 November 1980. He appealed for a retrial in 1981, and this was rejected by the Shizuoka District Court thirteen years later, in August 1994.

Hakamada Iwao's lawyers had submitted new evidence that reportedly challenged the validity of his confessions but the court rejected the new evidence on the grounds that it was not sufficient to justify a retrial. On 12 August 1994 his lawyers filed a further application for a retrial. In February 1998 the Tokyo High Court ordered DNA tests to be carried out on five garments police alleged he had worn when he committed the crimes. The garments had been found 14 months after killings. It has been alleged by a support group that the bloodstained clothes, which were found at the bottom of a miso tank, did not fit Hakamada Iwao (the police had stated previously that he had been wearing pyjamas, which they said they had found in his clothes closet).

The Japanese authorities have ignored Amnesty International's request to investigate the claims that Hakamada Iwao was ill-treated during interrogation and forced to make a confession, factors which may have jeopardised the fairness of his trial.

UAs have been a flickering candle in the darkness and secrecy which surround the death penalty system in Japan. None of the prisoners for whom we have issued

UAs has been executed. This could well be because UAs have sent a strong signal to the Ministry of Justice officials that the world is watching; and it is this pressure that is important.

It is true that our campaigning has not stopped the Japanese state from executing those under sentence of death; it has not led to a reform of the system. The Ministry of Justice has not responded to our actions. Despite this, it is clear that UAs have contributed – and our contacts in Japan have emphasised this – by breaking the silence in Japan on the death penalty, and drawing the attention of the Japanese public and mass media to this sensitive issue.

We will continue the campaign against the use of the death penalty in Japan, and we will be asking the UA network to respond whenever we hear reports that executions are imminent. August and December are bad times for the death penalty in any year, as the Diet is in recess and many people are on holiday; this year, media attention is focussed on Lower House elections scheduled for September.

We hope to draw attention to the fact that many of those facing the death penalty are innocent. The death penalty has no place in Japan or any other country, and we call on the UA network to help us in keeping pressure on the Japanese government to ensure it is abolished.

UAs and asylum-seekers in imminent danger of forcible return:

UAs have been effective in stopping asylum-seekers facing imminent risk of forcible return. In 2003, we issued UAs on Afghan asylum-seekers who had been detained: all were released to continue their applications for asylum.

In January 2005, we issued a WARN and later UA 20/05 (ASA 22/001/2005, 21 January 2005) expressing concern for two families, that of Erdal Dogan and the Kazankiran family – two of whom had already been forcibly returned to Turkey

despite being recognised as refugees by the UNHCR. The two families had staged a demonstration in front of the UN University in Tokyo, which lasted 72 days. The WARN and UA did have an impact: neither family was forcibly returned, and both are now being resettled in a third country. Our actions did raise the profile of the case; the Japanese media also highlighted it, and all this has led to the Japanese government, including PM Koizumi and Minister of Justice Noono, stating that they will not remove refugees recognised by the UNHCR.

Ahmet Kazankiran with supporters

There is now a greater awareness of the secretive and arbitrary nature of the refugee recognition system in Japan. Amendments were made to the Immigration Law in May 2005, which opened the system up to very limited outside scrutiny, but the Japanese government has some way to go before its refugee recognition system meets the international obligations it has undertaken, in particular the 1951 Refugee Convention. This is revealed in the cases of the two Kurdish asylum-seekers we expressed concern for in UA 33/05 (ASA 22/003/2005, 11 February 2005, and follow-up). One of the two, who had been recognized as a refugee by the UNHCR, was released in February, and the other was released in May.

The situation of asylum-seekers in Japan still gives cause for concern. Very few of the people who apply for recognition as refugees are accepted. In 2004, out of 426 people who applied, only 15 (14 of them Myanmar nationals) were granted asylum. Despite improvements in 2005, when between January and May 2005, 15 asylum-seekers (all Myanmar nationals) were recognized as refugees, the number of appeals against rejection of asylum applications has also increased. In 2003 Japan granted asylum to 10 people (out of 336 who had applied), and long-term residence permits, on humanitarian grounds, to a further 16. The government recognized 10 asylum claims from Myanmar, Burundi and Iran: six

were recognized as refugees in the first instance and four on appeal. Japan rejected almost 300 claims, making its acceptance rate two percent.

Another area of concern emerged when we received reports that in August 2004, Japanese officials, assisted by the Turkish police, visited Turkey to investigate the families of Turkish nationals seeking asylum in Japan. We believe that such investigations exposed asylum-seekers and their families to increased danger, as information regarding individual applications was given to the Turkish authorities.

The refugee recognition system in Japan remains arbitrary, and while the government have undertaken to improve the situation, there remain instances where asylum-seekers are forcibly returned to their home countries with no consideration of the risk that they could face torture and ill-treatment. When we hear of people at imminent risk of being forcibly returned to countries where they are at risk of serious human rights violations, our first recourse to highlight their plight and put pressure on the Japanese government will be to the UA network. We count on your support.

The UA network has made a real difference in Japan: it puts pressure on the government by showing that the world is watching. Your immediate response has made the difference between life and death in desperate times, and you have done it time and again. Everyone contributing to the network deserves our heartfelt thanks and congratulations. The fight continues against this human rights violation in Japan: we need your support in this fight. So keep writing appeals, keep the flame alive and keep spreading the message of hope.