

£JAPAN

@Resumption of executions and ill-treatment of prisoners on death row

Japanese law provides for the death penalty for 17 offences but since 1967 the death penalty has been imposed only for murder, usually in cases of multiple murder or homicide caused by explosives. Approximately 90 prisoners are believed to be currently under sentence of death. Among them 58 (as of October 1993) have had their death sentences confirmed by the Supreme Court, 14 have denied all or some of the charges against them and eight are either preparing an application for retrial or have already submitted an application, claiming miscarriage of justice. At least three have spent some 25 years on death row, others from 10 to 18 years.

At least 13 prisoners sentenced to death are aged 60 or over, four of them are in their seventies. They include Okunishi Masaru, 67, who has been imprisoned since 1961, and Tomiyama Tsuneki, 76, who was arrested in 1963 and sentenced to death in 1971. His death sentence was finalized by the Supreme Court in 1984.

Amnesty International opposes the death penalty in all cases without reservation on the grounds that it is a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments. Amnesty International has repeatedly appealed to the Japanese Government to cease executions and abolish the death penalty for all offences. Several former Ministers of Justice have abstained from signing execution orders – thus effectively suspending executions. One former minister, Sato Megumu, called publicly for the abolition of the death penalty.

Resumption of executions

A *de facto* moratorium on executions which started in November 1989 was broken in March 1993 when the then Minister of Justice, Gotoda Masaharu, who took office in December 1992, signed warrants for the execution of three men: Tachikawa Shujiro, who had been on death row for 15 years, Kawanaka Tetsuo, for 13 years, and Kondo Seikichi for 23 years. The March executions were reportedly motivated by the authorities' desire to end the *de facto* moratorium on executions, which was respected by Mr Gotoda's two predecessors.

Kawanaka Tetsuo was mentally ill. His condition had reportedly deteriorated in the months preceding his execution. In response to inquiries from his lawyer, the doctor at Osaka Detention House had said that the prisoner was "on the verge" of becoming schizophrenic and was hallucinating. Signs of mental illness were also apparent in many letters sent by Kawanaka to his lawyer over the years. According to his lawyer, Osaka

Detention House personnel were fully aware of Kawanaka's mental illness. He was not punished when he broke prison rules (by shouting, for example), and was under some medical supervision. However, detention house doctors refrained from describing him as mentally ill, apparently because this would have prevented his execution.

Kawanaka Tetsuo before his execution had given his lawyer power of attorney to apply for a retrial – a fact of which the Osaka Detention House authorities were aware. It appears that he was executed before all avenues for review or commutation of his sentence were exhausted. As Japanese law prohibits the execution of prisoners suffering from psychiatric illness, Amnesty International is concerned that his execution may have been illegal. It may have been in breach of the United Nations (UN) Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, which state:

"Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane." (Paragraph 3).

"Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence." (Paragraph 8).

Szczegół

Executions in Japan are carried out in secret. They are not announced to the family or lawyer of the prisoners concerned. Prisoners themselves may not be informed of their impending execution until just a few hours before it takes place. In practice they are unable to meet relatives or a lawyer after being informed that they will be executed.

The government publishes yearly statistics giving the number of prisoners executed. But they do not release the names of those executed. A senior Ministry of Justice official told Amnesty International in June 1993 that no law or regulation obliged the authorities to notify relatives or lawyers of an impending execution. In March 1993, after unofficial news of the three executions were leaked in the press, some prisoners who were not executed (but were held in the same detention houses as those who were) had to send telegrams to their relatives to confirm that they were still alive.

Japanese law provides that executions must take place within 5 days of an execution order being signed by the Minister of Justice. Detention House authorities are in charge of organizing executions, by hanging. There are no published regulations concerning the procedures to be used. In the absence of lawyers or relatives of the prisoner, only officials – and apparently, in some cases, a prison medical doctor – witness the preparation and the carrying out of execution.

Amnesty International is concerned about the involvement of members of the medical profession in the execution process. Under an order of 27 December 1947 issued by the Head of the Correction Bureau of the Ministry of Justice, a doctor is required to check the condition of the prisoner before an execution takes place. This order also specifies that a doctor is to make a medical report of the execution. This report is part of the *shikko shimatsu-sho* (report of execution) submitted to the Ministry of Justice, as described in the Code of Criminal Procedure. Furthermore, although not specified in law, it is believed that under current practice a doctor is present during an execution, where he may observe the dying prisoner and determine when death occurred.

III-Treatment of prisoners awaiting execution

Amnesty International is concerned about the treatment of prisoners awaiting execution. They are subject to strict segregation within the prison and communication with the outside world is only through contact and correspondence with close relatives and lawyers.

Isolation

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states (Principle 19) that:

"A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations."

However, the Japanese authorities have imposed drastic and arbitrary restrictions on contacts with the outside world by prisoners under sentence of death. Prisoners sentenced to death, as a general rule, can meet only some of their relatives. They can receive letters only from those allowed to meet them: letters from friends and supporters, for example, have been censored. Some relatives have filed lawsuits alleging that they were prohibited from meeting prisoners under sentence of death. The authorities state this practice is justified as it helps to keep the prisoner emotionally "stable".

Amnesty International has been unable to ascertain if official guidelines exist on which wardens of institutions may base their decisions on the amount of outside contact allowed to death row prisoners. According to many lawyers and relatives of prisoners, wardens' discretionary decisions in this respect have consistently been extremely restrictive.

Wardens appear also to exercise wide discretion over the degree of isolation within detention houses of prisoners under death sentence. In some detention houses, prisoners are almost permanently held in solitary confinement. They meet fellow detainees only on rare occasions.

Insufficient Medical Attention

Prisoners under sentence of death do not always receive all the necessary medical attention. For example, Nagata Hiroko was sentenced to death on murder charges in 1982 and her sentence was confirmed by the Supreme Court in February 1993. She was operated on in 1984 for a brain tumour but continues to suffer pain and fainting spells. In May 1993, she was so weak that she could barely walk unaided, according to her husband. For several consecutive days in May 1993, she suffered prolonged vomiting spells but was refused a change of clothes by detention house authorities after she soiled her clothes. She was in evident need of sustained medical attention, and requested to be hospitalized, but this request was refused.

Amnesties and Judicial Review of Death Sentences

All death sentences can by law be appealed to a higher court. A retrial may be requested after appeals have been dismissed and a sentence has become final if new evidence indicating innocence is discovered or if evidence on which the original judgment was based has been proved false. A request for retrial may be filed with a court by either the prosecution or the defence.

Prisoners may also apply to the government for special amnesty or commutation of their sentences. Only three prisoners have had their death sentences commuted by individual amnesties, in 1969, 1970 and 1975. The amnesties were granted on the grounds of illness, old age, repentance, and forgiveness on the part of the victim's family. The last general amnesty that commuted death sentences was in 1952; no prisoner under sentence of death benefited from the amnesty granted in February 1989 in honour of the late Emperor Showa.

In the years 1983 to 1989 four prisoners who had been convicted of murder in separate cases and sentenced to death in the 1950s were acquitted after they succeeded in obtaining retrials.

Akahori Masao was sentenced to death in May 1958 on charges of rape and murder. He had consistently claimed that he was innocent of the charges against him and that he confessed under duress during police questioning. On 31 January 1989 the Supreme Court acquitted him, ruling that his confession lacked credibility and that no other evidence linked him to the crime. In appealing against his death sentence in the Tokyo High Court in 1959, Akahori Masao stated: "the interrogators hit me on the head, almost strangled me with their hands and kicked me... I decided to agree with all their questions because I could not put up with the torture."

Following the Supreme Court's confirmation of his death sentence in 1960, he filed three unsuccessful applications for retrial. The authorities accepted his fourth application,

filed in 1969, and his retrial began in October 1987. Akahori Masao was 25 when he was arrested; when he was acquitted, at the age of 59, he had spent over 30 years on death row.

On 27 July 1990, the Nagoya High Court acquitted **Shimogami Norio**, who had been under sentence of death since October 1975, on charges of murder. His death sentence was upheld by the Nagoya High Court on 19 January 1983; in December 1988 he appealed against the sentence to the Supreme Court which, on 22 June 1989, reversed the high court decision and ordered that a retrial be held. The Supreme Court judge presiding at the appeal hearing is reported to have said that "the evidence against Shimogami Norio was contradictory and that the evidence based on his accomplice's confession was untrustworthy... It is strongly suspected that the Nagoya High Court did not examine the facts well, made wrong judgments on evidence and misinterpreted the facts." The retrial found that there was no material evidence proving his involvement in the crime. The High Court judge in acquitting Shimogami Norio was reported to have ruled that while he may have been involved in the murder that there was insufficient evidence to establish his guilt and that confessions detailing his role in the murder were not reliable enough to convict him as a murderer. At the time of his acquittal, he had spent some 18 years on death row. The court sentenced him to eight years' imprisonment on charges of attempted robbery and the attempted murder of his alleged accomplice; he was released on the same day on the basis of the time he had already served.

Amnesty International's recommendations

Amnesty International urges the Japanese Government to abolish the death penalty in law and to ratify the Second Protocol to the International Covenant on Civil and Political Rights. As a minimum, and pending final abolition of the death penalty, Amnesty International urges that all death sentences be systematically commuted.

Amnesty International also urges the Japanese Government to ensure as a matter of priority that the treatment of prisoners under sentence of death be brought into conformity with international human rights standards. In particular, regulations and practices which permit long-term solitary confinement and give detention authorities a wide scope to restrict access to outside visitors should be amended, and prisoners under death sentence should be allowed adequate access to independent medical doctors.

Amnesty International also urges the Japanese Government to establish a maximum age beyond which a person may not be sentenced to death or executed, as recommended in the UN Resolution of 24 May 1989 on the "Implementation of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty.