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## **“Will this day be my last?” The death penalty in Japan**

“Life is precious. One human life is of more importance than the whole earth. The death penalty is certainly the grimmest of all punishments. It is the ultimate one and is indeed unavoidable. The reason is simply that it involves the eternal deprivation of life, the source of dignified human existence”.

*Excerpt from a decision of the Japanese Supreme Court, 12 March 1948*<sup>1</sup>

### **1. Introduction**

At least 87 prisoners currently remain on death row in Japan. The last execution took place on 16 September 2005, when Kitagawa Susumu was hanged for two murders committed in the 1980s. Since 2000, 11 prisoners have been executed. In their cases the appeal process took between 10 to 16 years. Other prisoners have, however, been on death row since the 1960s with their cases still under appeal.

Amnesty International opposes the death penalty in all circumstances considering it a violation of the right to life and the ultimate cruel, inhuman and degrading punishment. The organization continues to hope that Japan, in 2006, will take steps to follow the strong international trend away from the use of capital punishment and abolish the death penalty. Statements made by Minister of Justice Sugiura Seiken upon his appointment in 2005 encouraged these hopes. Speaking at a news conference on 31 October 2005, he was reported to have said:

*“From the standpoint of a theory on civilizations, I believe the general trend from a long-term perspective will be to move towards abolition [of the death penalty].”*<sup>2</sup>

Mr Sugiura went further, stating that he would not sign documents authorizing executions to be carried out. However, shortly afterwards, he retracted his comments saying that they were his personal feelings and that he was not referring to his duties as Minister of Justice.

Japan is one of the few industrialized countries which has not yet abolished the death penalty. With the exception of the USA, all other members of the “Group of

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<sup>1</sup> Hanreishu, 11, number 3 191 (Criminal). English translation in John M. Maki, ed., *Court and Constitution in Japan: Selected Supreme Court Decisions, 1948-60*. Seattle: University of Washington Press, 1964, p.157.

<sup>2</sup> See, text of press conference, at <http://www.moj.go.jp/SPEECH/POINT/sp051031-01.html>

Seven<sup>3</sup> largest industrialized nations have abolished capital punishment. Japan's Penal Code provides the death penalty for a range of offences,<sup>4</sup> but in practice it is inflicted only for murder. All executions are carried out by hanging.

In this report Amnesty International seeks to bring the Japanese authorities' attention to its concerns regarding Japan's continued use of the death penalty, the secrecy surrounding its application, and the failings of the criminal justice system. Amnesty International urges the Japanese government to put an end to the human rights violations which the state perpetrates or facilitates. These include violations of every person's right to humane conditions of detention, freedom from torture and other cruel, inhuman or degrading treatment or punishment and the right to a fair trial conforming to international laws and standards. Such rights are protected through international law to which Japan is a state party.<sup>5</sup> To ensure full protection of an individual's right to life and right not to be subjected to cruel, inhuman and degrading punishment, Amnesty International calls on the Japanese government to abolish the death penalty as a matter of urgency.

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<sup>3</sup> Consisting of France, Japan, Germany, USA, UK, Canada and Italy.

<sup>4</sup> Under the Japanese Penal Code, the death penalty can be inflicted for the following offences: 1) *Murder (Article 199)*; 2) *Death caused in the course of a robbery (Article 240)*; 3) *Death resulting from rape in the course of a robbery (Article 241)*; 4) *Overtaking trains etc., causing death (Article 126)*; 5) *Endangering transportation facilities, causing death (Article 127)*; 6) *Poisoning public water supply systems, causing death (Article 146)*; 7) *Leading an insurrection (Article 77)*; 8) *Inducing armed foreign aggression (Article 81)*; 9) *Military assistance to a foreign state using armed force against Japan, including engagement in the military service of such a state (Article 82)*; 10) *Arson of inhabited structure (Article 108)*; 11) *Destruction of inhabited structures by explosion (Article 177)*; 12) *Damage to inhabited structures by inundation (Article 119)*. In addition, special laws provide the death penalty for the following five offences: 13) *Death during aircraft seizure (Law Punishing Aircraft seizure and Related Crimes, 1970)*; 14) *Death caused by destruction of aircraft (Law Punishing Crimes Endangering Air Navigation, 1974)*; 15) *Death resulting from a duel (Law Prohibiting Dueling, 1889)*; 16) *Use of explosives (Law Relating to Control of Explosives, 1884)*; 17) *Intentional killing of hostage (Law Punishing Hostage Seizure, 1978)*.

<sup>5</sup> For example, the International Covenant on Civil and Political Rights (ICCPR) signed and ratified by Japan in the late 1970s.

## 2. Japan's Application of the Death Penalty

### 2.1. Secrecy around the implementation of the death penalty

In Japan there are no vigils outside prisons on the scheduled day of an execution. Only the authorities know that an execution will take place – and when it does, it usually occurs while Parliament is in recess and unable to debate the issue. According to a former Minister of Justice, Usui Hideo, this policy is designed to deprive opposition politicians of any opportunity "to cause a big public row over the death penalty".<sup>6</sup>

The only information available about the execution of death sentences is in the form of statistics issued periodically by the Ministry of Justice. An executed prisoner's name is not released and only becomes known if the family chooses to disclose it. The Ministry of Justice argues that such secrecy protects the families of prisoners from the shame of having it known that their relative has been executed.

In reality, this practice compounds the strain of having a relative on death row. Families live in fear of repeating the experience of the mother of Kimura Shuji. On the morning of 21 December 1995, she went to visit her condemned son and was told that visiting hours were very busy and to come back at noon. When she returned, she was asked whether she wanted to take her son's body away for burial.<sup>7</sup> The families of those on death row live under the constant pressure of knowing their loved ones face execution and that in many cases their death may come without warning. Many families abandon their condemned relatives in such circumstances either because of the shame of having a family member on death row or an inability to cope with the stress of continuing the relationship.

Under the penal code, executions are carried out by hanging by order of the Minister of Justice. Under current practice a prisoner is notified on the morning of the day of execution. In some cases the prisoner is not notified at all. A Ministry of Justice official reportedly stated that "if we notify the prisoner beforehand the person's emotional state may become disturbed. Therefore we can't notify anyone before the hanging, including the prisoner. After the execution, we inform the family as quickly as possible."<sup>8</sup>

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<sup>6</sup> See, Shimizu, Kaho, "Even Victimised Divided on Death Penalty", *The Japan Times*, 3 October 2002.

<sup>7</sup> Source: report of the rapporteur of the Council of Europe on her visit to Japan to examine the use of the death penalty. See:

<http://assembly.coe.int/Documents/WorkingDocs/doc01/EDOC9115.htm>

<sup>8</sup> French, Howard W., "Japan Carries Out Executions in Near-Secrecy", *New York Times*, 20 December 1999.

This practice means that prisoners live with the constant fear of execution, not knowing from day to day whether they will be alive the next day. Once the appeal process is finalized, a prisoner can wait for years or decades before execution.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated in a recent report on transparency and the imposition of the death penalty:

*"Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation. In the most extreme instances, prisoners have learned of their impending executions only moments before dying, and families have been informed only later, sometimes by coincidence rather than design. These practices are inhuman and degrading and undermine the procedural safeguards surrounding the right to life."*<sup>9</sup>

The Special Rapporteur also stated that the secrecy that Japan maintains around its death penalty system is an official policy, the legality of which is explicitly defended by the Japanese authorities. For example, one of the reasons put forward by the authorities for the denial of information, is the desire to respect the privacy of prisoners awaiting death. However, such a view does not explain or justify why the very person whose privacy rights are being invoked is denied crucial information such as the timing of their death. Furthermore, as the UN Special Rapporteur asserts:

*"[R]espect for privacy cannot offset transparency obligations when the prisoner does not desire his experience on death row or the fact of his execution to be private. "Privacy", in this context, is merely a by-product of enforced secrecy. Because prisoners are not aware of when they will die, they have no opportunity to make this fact public (or alternatively maintain their privacy). Moreover, while on death row they are prohibited from contacting the media or politicians and any contact they do have with permitted visitors is strictly controlled and monitored. By stripping death-row inmates of control over their communications and knowledge of the most crucial aspect of their lives, i.e. the timing of their own death, the Japanese system undermines rather than protects the privacy of death-row prisoners."*<sup>10</sup>

Even Japanese parliamentarians find it difficult to monitor the conditions of detention for condemned prisoners. In 2003, nine executive members of the Committee on Judicial Affairs of the lower house of parliament fought for and won the right to see an execution chamber. They visited a new execution chamber at the Tokyo Detention Centre. It was reportedly the first time since 1973 that the Ministry of Justice allowed people outside the penal and justice systems to see a death chamber.

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<sup>9</sup> Alston, Philip, *Transparency and the Imposition of the Death Penalty*, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2006/53/Add.3, 24 March 2006, para. 32.

<sup>10</sup> *Ibid.*, para. 47.

Despite requests by this group of parliamentarians, they were not granted permission by the authorities to meet with death row prisoners.

A number of organizations, including Amnesty International, have criticized the secrecy surrounding executions for concealing the reality of the death penalty from the public. The Japan Federation of Bar Associations (JFBA) also states that one of the main reasons that capital punishment has not been abolished in Japan is due to the extraordinary secrecy that surrounds the death penalty system and the subsequent lack of information for potential public debate.

In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights called upon all states that still maintain the death penalty "to make available to the public information with regard to the imposition of the death penalty and to any scheduled execution".

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions states that:

*"The extraordinary power conferred on the State - to take a person's life using a firing squad, hanging, lethal injection, or some other means of killing - poses a dangerous risk of abuse. This power may be safely held in check only by public oversight of public punishment."*<sup>11</sup>

And that:

*"Informed public debate about capital punishment is possible only with transparency regarding its administration. There is an obvious inconsistency when a State invokes public opinion on the one hand, while on the other hand deliberately withholding relevant information on the use of the death penalty from the public. How can the public be said to favour a practice about which it knows next to nothing? If public opinion really is an important consideration for a country, then it would seem that the Government should facilitate access to the relevant information so as to make this opinion as informed as possible. It is unacceptable for a Government to insist on a principled defence of the death penalty but to refuse to divulge to its own population the extent to which, and the reasons for which, it is being applied."*<sup>12</sup>

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<sup>11</sup> Ibid., para 7

<sup>12</sup> Ibid., para. 21.

## **2.2. Waiting for death: Geriatrics on death row**

The prospect of losing one's life to the state produces unique mental anguish and suffering regardless of whether the execution takes place within days or years of conviction. The length of time a person spends on death row presents conflicting problems. Too short a time will not allow for an adequate appeals process or for further evidence of the possible innocence of the person to emerge. However prolonged periods on death row – as occurs in such countries as Japan, the USA and Pakistan – leave the individual facing the constant strain of living with the fear of execution, almost always in harsh prison conditions. Amnesty International believes that there is no "appropriate" length of time a prisoner should be held before execution. The dilemma described above provides another important reason why the death penalty should be abolished.

The legal process in Japan is extremely slow. Prisoners spend extended periods waiting to go to trial and even longer waiting for appeals to be dealt with by courts. As many of the cases that illustrate this report demonstrate, even when the appeals process is finished, condemned prisoners still live with prolonged uncertainty. Execution may be many years away or may not happen at all. The process has the appearance of being arbitrary in the extreme. For example, Shimazaki Suelo was convicted of murdering three people (among other crimes) in 1992. His appeals process was completed by 1999 and he was executed in 2004. Several other prisoners have however, been on death row for much longer after completing the appeals process. Oda Nobuo and Hakamada Iwao<sup>13</sup> were convicted in the 1960s and exhausted their appeals in 1970 and 1980 respectively. They remain under sentence of death.

As a result, there are a number of very elderly prisoners on Japan's death row. Okunishi Masaru (who was sentenced to death for poisoning five women in 1961) is now 80 years old. Oohama Shouzou (sentenced to death in 1975 for the murder of a mother and two children) is 78. Both have spent decades in detention, living under the unrelenting strain of the threat of execution.

In Okunishi Masaru's case, in April 2005, the Nagoya High Court granted a retrial citing the existence of new evidence that could prove his innocence. Okunishi Masaru's supporters have requested that the retrial begin soon so that his name can be cleared. He reportedly told supporters who visited him at the end of March 2006: "Please clear my false charge while I am alive".

A number of prisoners sentenced to death spend so long on death row that they die while incarcerated. Tomiyama Tsuneki died in 2003 at the age of 86. He had always maintained that he was innocent.

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<sup>13</sup> Oda was convicted of murder and robbery and attempted murder and robbery. Hakamada was convicted of the murder of four members of a family during the course of a robbery.

Psychologists and lawyers in the USA and elsewhere have argued that protracted periods in the confines of death row can make inmates suicidal, delusional and insane. Some have referred to the living conditions on death row – the bleak isolation and years of uncertainty as to time of execution – as the “death row phenomenon,” and the psychological effects that can result as “death row syndrome.” The origins of this doctrine are often traced to the 1989 extradition hearings of Jens Soering, a German citizen who was charged with murders in Virginia in 1985 and who fled to the UK. Soering argued to the European Court of Human Rights that the conditions he would face during the lengthy period between sentencing and execution would be as damaging psychologically as torture.

In its ruling the court agreed that he could not be sent to a place that would sentence him to death. The court cited not the death penalty itself, but rather the “Death Row phenomenon” by which convicts spent years awaiting execution while their cases were appealed.<sup>14</sup>

The prolonged detention of prisoners under sentence of death has been found to constitute cruel, inhuman and degrading punishment by other courts. For example, in their ruling on the Jamaican case of *Pratt and Morgan*, the Judicial Committee of the Privy Council<sup>15</sup> ruled that executing a person who has spent a prolonged period under sentence of death violates the constitutional prohibition of inhuman or degrading punishment or treatment. In practice, the court has found anything over five years from the imposition of a death sentence to be prolonged and prisoners’ death sentences have been commuted to a term of imprisonment after that period of time.<sup>16</sup>

### **2.3. The execution of those with a mental disability**

While Amnesty International opposes the death penalty in all cases, the organization is concerned that those suffering from a mental disability<sup>17</sup>, either permanent or temporary, face execution in Japan. As described below the organization also fears

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<sup>14</sup>[www.deathpenaltyinfo.org/article.php?&did=1397#DEATH\\_ROW\\_SYNDROME](http://www.deathpenaltyinfo.org/article.php?&did=1397#DEATH_ROW_SYNDROME) DEATH\_ROW\_PHENOMENON

<sup>15</sup> The Judicial Committee of the Privy Council, which sits in the United Kingdom, is the final court of appeal for much of the English speaking Caribbean.

<sup>16</sup> See: <http://www.privacy-council.org.uk/output/Page171.asp>

<sup>17</sup> Standard rules on the Equalization of Opportunities for Persons with Disabilities adopted by the UN General Assembly in 1993 (A/RES/48/96) gives the following definition of disability: "The term 'disability' summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature". Amnesty International uses the term "persons with disabilities" in accordance with contemporary UN usage. See i.e. UN Committee on Economic, Social and Cultural Rights, General Comment no. 5, "Persons with Disabilities"; 11th Session (1994), cited in UN DOC. HRI/GEN/1/REV.5 at paragraphs 3 and 4.

that the conditions under which condemned prisoners are held (the stress caused by living under threat of execution) is detrimental to the mental health of inmates.

Amnesty International urges the Japanese authorities not to impose this punishment on people with serious mental health problems. As the UN Commission on Human Rights has stated, the death penalty should not be imposed or carried out on a person suffering from any form of mental disorder.<sup>18</sup> This view is partly reflected in Japan's own domestic legislation. Article 39(1) of Japan's Criminal Law provides that any conduct of a person suffering from "insanity" shall not be punished. Article 39(2) provides that, as to conduct of a person suffering from "quasi-insanity", the sentence shall be commuted.<sup>19</sup>

These provisions prohibit imposing capital punishment on anyone suffering from a mental illness *at the time* the offence was carried out. However, they fail to address the issue of those who suffer from mental illness during the trial process or after they have been sentenced and incarcerated in harsh conditions. Furthermore, an offender suffering from mental illness can be executed if they recover from their condition.

The "quasi-insanity" provision in the penal code should mean that the "weak-minded" cannot be sentenced to death. However, the legal test for being able to distinguish right from wrong and the mental competence to act on that knowledge is so limited that the JFBA have reported that not all permanent mental disabilities are necessarily included in "weak-minded". According to the JFBA, Japanese courts find even people with the most serious mental disabilities to be mentally competent.<sup>20</sup>

Akahori Masao (see pages 13 and 16) was acquitted in 1989 after 34 years of imprisonment. When he was arrested and questioned by police, he was reportedly suffering from a mild mental disability, which is reported to have contributed to prejudicing the authorities against him. He was reportedly tortured and ill-treated and forced to sign a "confession".

Amnesty International has received reports that prisoners suffering from mental illness have been executed. Kawanaka Tetsuo's lawyer was preparing a request for retrial - a process that had to be suspended due to Kawanaka Tetsuo's mental state - when he was executed in 1993. Kawanaka Tetsuo's sentence had been finalized by the Supreme Court at the time of his execution; however, he was reportedly suffering from delusions and hallucinations. In 1982, before he was

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<sup>18</sup> Resolution 2004/67 of the United Nations Commission on Human Rights, 21 April 2004, para. 4(1).

<sup>19</sup> The terms 'insanity' and 'quasi-insanity' are official translations of the Japanese Ministry of Justice.

<sup>20</sup> See: "Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty", 9 March 2005, UN Doc E/2005/3.

sentenced at his second appeal trial, Kawanaka Tetsuo was allegedly examined by a doctor who suspected him of suffering from schizophrenia.

Similarly, Mukai Shinji was executed in September 2003. He was sentenced to death in February 1988 for the murder of three people in 1985 and had exhausted all appeals against his sentence. Mukai Shinji was reportedly suffering from mental health problems and his lawyer was preparing an appeal for retrial when he was executed.

The Japanese authorities appear willing to continue to execute individuals suffering from mental health problems. Horie Morio was sentenced to death by the Supreme Court on 26 September 2005, despite reports that he suffers from a serious mental illness. The Supreme Court did not acknowledge that Horie Morio is suffering from a mental illness and rejected an appeal to the effect that Horie Morio was incapable of standing trial as documented in psychiatric reports. In previous years the judicial authorities appeared to accept that Horie Morio suffered from mental health problems as his trial was suspended between 1993 and 1998 due to his disturbed state of mind. In a 1998 psychiatric evaluation it was determined that he was capable of standing trial and the trial resumed. Amnesty International has obtained information that Horie Morio is seriously ill and does not understand the meaning of his sentence. Horie Morio's condition reportedly improved after the trial was suspended and he was sent to a hospital but it worsened once he was returned to the detention centre.

Amnesty International urges the Japanese government to ensure that no death sentences are passed or carried out against people suffering from serious mental health disabilities – whether the mental illness was present at the time the offence was committed or if it developed subsequently. Furthermore, in accordance with Japanese law, the trial of a person suffering from a serious mental illness should be suspended. Amnesty International urges the government of Japan to respect international standards on the death penalty including those barring the execution of prisoners with serious mental disorders. It urges the government to establish a procedure, in line with internationally accepted professional and ethical standards, to assess the mental health of prisoners.

### **2.3.1. Medical practitioners' role in executions**

An order issued by the Head of the Correction Bureau (of the Ministry of Justice), dated 27 December 1947, requires a doctor to examine the prisoner prior to an execution taking place. This order also specifies that a doctor is to make a medical report on the execution. Moreover, although not specified in law, under current

practice a doctor is reportedly present during an execution, where he/she may observe the dying prisoner and determine when death has occurred.<sup>21</sup>

Evolving standards of medical ethics hold that it is unethical for a doctor to participate in an execution. The World Medical Association Resolution on Physician Participation in Capital Punishment states that: "...it is unethical for physicians to participate in capital punishment, in any way, or during any step of the execution process."<sup>22</sup> In the USA, the American College of Physicians, along with other organizations, issued a report in which it stated that:

*"...execution is not a medical procedure, and is not within the scope of medical practice. Physicians are committed to humanity and the relief of suffering; they are entrusted by society to work for the benefit of their patients and the public. This trust is shattered when medical skills are used to facilitate state executions."*<sup>23</sup>

The participation of doctors in executions would also appear to strongly contradict the Japanese Medical Association's Principles of Ethics, which state:

*"The mission of medical science and health care is to cure diseases, to maintain and promote the health of the people; and based on an awareness of the importance of this mission, the physician should serve society with a basic love of humanity."*<sup>24</sup>

Several Japanese studies have been based on medical observations during and after execution. In one such study, contained in a document submitted to a district court dated 27 October 1952, a medico-legal specialist reported that in 20 executions between 1948 and 1951, it took an average of 14 minutes and 33 seconds for a prisoner to die after he was dropped from the gallows with a rope around his neck. The minimum time to die was four minutes and 35 seconds, the maximum was 37 minutes.<sup>25</sup>

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<sup>21</sup> Under Article 72 of the Prison Law: "In the case of execution of the sentence of death, the countenance of the dead shall be inspected after hanging, and the halter shall not be unfastened until five minutes have passed."

<sup>22</sup> Adopted by the 34th World Medical Assembly Lisbon, Portugal, September 28 - October 2, 1981 and amended by the 52nd WMA General Assembly in Edinburgh, Scotland during October 2000. The Japan Medical Association is a member of the World Medical Association.

<sup>23</sup> See American College of Physicians et al, *Breach of Trust: Physician Participation in Executions in the United States*, at:<http://hrw.org/reports/1994/usdp/> The World Psychiatric Association also focuses on the role of the psychiatrist in the Declaration of Madrid, (Madrid, Spain, 25 August 1996). Its guidelines on the death penalty state that: "Under no circumstances should psychiatrists participate in legally authorized executions nor participate in assessments of competency to be executed".

<sup>24</sup> See, [http://www.med.or.jp/english/02\\_princ.html](http://www.med.or.jp/english/02_princ.html)

<sup>25</sup> Cited in Saito, Yoshiyuki, *For a Reconsideration of the Death Penalty*, Seibundo, 1980.

### 3. Conditions on Death Row

The little information that is known about conditions on death row comes from the few prisoners who have survived to tell their stories or from rare writings from prisoners that have avoided being censored by prison officials.

Prisoners awaiting execution live under rules set out in a 1908 prison law (reinforced by a 1963 directive). They are banned from talking to other prisoners. Contact with the outside world is limited to infrequent and supervised visits from family or lawyers. They are not allowed to watch television or engage in personal interests or hobbies. A radio is permitted but prisoners have no say over the station to which it is tuned. Some prisons are reportedly allowed videos but this is at the discretion of the prison warden. Prisoners are reportedly allowed three books – although more may be borrowed with the express permission of the prison warden who checks that the content does not preach “subversion of authority”. Exercise is limited to two short sessions per week outside their cells. A number of prisoners reportedly survive the isolation through reliance on sleeping pills.<sup>26</sup>

In one example of the treatment of those about to be executed, Akahori Masao, a former prisoner who spent 31 years on death row, described how he was dragged from his cell by five prison guards one morning in the early 1970s. The guards whispered nervously when they realized they had taken the wrong man. He was returned to his cell and another man was taken away for execution.<sup>27</sup> Akahori Masao also described how during his incarceration, the stress of living under the fear of execution was intensified by the prohibitions on communicating with other prisoners.<sup>28</sup>

Another rare insight into death row conditions was provided by the prison diary of Daidoji Masashi (who was sentenced to death for his role in the bombing of a Mitsubishi Heavy Industries building in 1974 which killed eight people and wounded 380 others). Daidoji Masashi recorded how prisoners have to sleep under a bright light. He reportedly became ill from mental strain and lack of exercise, and vowed to exercise to maintain his health; guards however prevented him from doing push-ups or stretching exercises in his cell. Any exercise that is perceived to disturb others is not permitted.<sup>29</sup>

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<sup>26</sup> See, Wallace, Bruce, “Awaiting Death’s Footsteps” *The Los Angeles Times*, 2 March 2006.

<sup>27</sup> *Ibid.*, (In 1954 Akahori Masao, then aged 24, was homeless. He alleges that he was forced to “confess” to the rape and murder of a school-girl when police beat him. Eventually in 1989 he won a retrial (he had first requested a retrial in 1961) and after nearly 35 years he was declared not guilty and released. He is now 75 years old and lives off the proceeds of the modest settlement he received for his wrongful conviction).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

Most prisoners endure these conditions for many years, in a number of cases for decades, while their appeals make their way through a notoriously slow legal system. Once all appeals are exhausted and death sentences finalized, an execution can take place at any time – all that is required is the official stamp of the Minister of Justice.

The harsh atmosphere on Japan's "death row" often results in despair. Some, such as Takanezawa Tomoaki<sup>30</sup> abandon their appeals despite insisting on their innocence, stating that due to the legal system in Japan, the results of any appeal are a foregone conclusion. Takanezawa Tomoaki's lawyer reportedly claims that his client has become emotionally unstable due to the strain of living on death row.

Correction Bureau officials justify such conditions of detention, stating that the system is designed to prevent prisoners from escaping and to "maintain the mental stability of those waiting for death".<sup>31</sup>

In practice the majority of prisoners sentenced to death in Japan are condemned to a lifetime of solitary confinement under the conditions described above. A number of prisoners suffer mental health problems due to the nature of their incarceration.

Together, these circumstances – including prolonged use of solitary confinement – amount to cruel, inhuman and degrading treatment and are contrary to the international treaties to which Japan has agreed. Such conditions of detention may also facilitate ill-treatment by prison guards.

In October 1998, the UN Human Rights Committee published its response to Japan's Fourth Periodic Report under the ICCPR. Among other recommendations, the Committee addressed the conditions of detention for condemned prisoners:

*"The Committee remains seriously concerned at the conditions under which persons are held on death row. In particular, the Committee finds that the undue restrictions on visits and correspondence and the failure to notify the family and lawyers of the prisoners on death row of their execution are incompatible with the Covenant. The Committee recommends that the conditions of detention on death row be made humane in accordance with articles 7 and 10, paragraph 1, of the Covenant."*<sup>32</sup>

A new law governing the treatment of prisoners in Japan was enacted in May 2005. This law has reportedly broadened the range of visitors allowed to meet detainees awaiting execution, as it includes all relatives, people "necessary" to deal

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<sup>30</sup> Takanezawa was convicted of murdering two people during the course of robbery.

<sup>31</sup> Ibid., quoting Matsumura Kenichi of the Adult Correction Section of the Ministry of Justice.

<sup>32</sup> Concluding Observations of the Human Rights Committee: Japan, UN Doc. CCPR/C/79/Add.102, 19 November 1998, para. 21.

with important matters and those who contribute to the mental stability of detainees. The law provides that other people may also be allowed to visit at the discretion of the head of the detention centre.

Amnesty International welcomes any changes that comply with internationally accepted standards on prison conditions, such as the Standard Minimum Rules for the Treatment of Prisoners.<sup>33</sup> However, there are concerns that these changes giving discretionary powers to heads of detention centres will result in differing practices between detention centres, and will ultimately be unfair. Moreover, while Amnesty International welcomes any changes that will contribute to the mental wellbeing of death penalty prisoners, the organization believes that these changes do not go far enough as they do not address the issue of contact with other detainees, and conditions of confinement such as solitary confinement.

## **4. Pre-trial Detention: The Risk of Abuse, Coerced Confessions and Unsafe Convictions**

### ***4.1. The ever present risk of executing the innocent***

Wherever the death penalty is deployed, there exists a risk of the execution of individuals for crimes they did not commit. Amnesty International has documented numerous cases of possibly innocent people facing the death penalty around the world.<sup>34</sup> In Japan, such risks are increased by the existence of a system of police custody, known as *daiyo kangoku* (“substitute prison”, see *below, page 16*), which allows suspects to be held in a police station cell instead of a prison or other facility under the control of the Correction Bureau, and allows police to interrogate the suspect for long periods.<sup>35</sup>

Four men, Menda Sakae, Akahori Masao, Taniguchi Shigeyoshi<sup>36</sup> and Saito Yukio<sup>37</sup>, were sentenced to death in Japan on separate charges in separate trials, but were released during the 1980s after it was established they were falsely accused.

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<sup>33</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

<sup>34</sup> For example see: *Fatal Flaws: Innocence and the death penalty in the USA* (AI index: AMR 51/69/98). To date, 123 condemned inmates have been released in the USA since 1973 after evidence of their innocence emerged.

<sup>35</sup> Article 1.3 of the Prison Law states that a “police jail may be substituted for a prison”. The system was developed in 1908 as a temporary measure to deal with the shortage of detention centres.

<sup>36</sup> Taniguchi Shigeyoshi died in July 2005, aged 74.

<sup>37</sup> Saito Yukio, died on 4 July 2006, aged 75.

The four had been tortured or ill-treated during interrogation, and as a result they "confessed" to crimes they had not committed. These "confessions" were then used as evidence to obtain convictions and death sentences.

Menda Sakae was acquitted in 1983 having spent 34 years on death row; during this time he had applied for retrial six times before his application was accepted. Akahori Masao (see page 13) was sentenced to death in 1958 on charges of rape and murder. He had consistently claimed that he was innocent of the charges against him and that he only confessed under duress during police questioning. In 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 a retrial. The authorities accepted his fourth application, filed in 1969, and his retrial began in October 1987. Akahori Masao was 25 years old when he was arrested; when he was acquitted, at the age of 59, he had spent over 30 years on death row. In 1984 Taniguchi Shigeyoshi and Saito Yukio, sentenced to death in 1952 and 1957 respectively, were also acquitted.

Since the release of these men, Amnesty International is not aware of any other condemned inmate being exonerated. The organization is concerned that the lack of exonerations over the past 16 years reflects more the legal system's reluctance to admit mistakes than any legal reform which may have lessened the risk of convicting the innocent. Japanese courts have one of the highest conviction rates in the world. It is reported that around 99 percent of all those accused are convicted. Such a high conviction rate may significantly increase the chances of innocent people being sentenced to death.

#### **4.2. The *daiyo kangoku* system: A breeding ground for human rights violations**

The *daiyo kangoku* (substitute prison) system, where a police cell can be used instead of a prison for up to 23 days, violates detainees rights and is a breeding ground for further violations, particularly in a justice system that relies heavily on confessions and where forced "confessions" are rarely ruled inadmissible by courts.

The government has recently submitted its first report to the UN Committee Against Torture, in keeping with its obligations as a state party to the UN Convention against Torture. In its report the government stated that:

*“[T]he so-called substitute prison system does not cause any problems of cruel, inhuman or degrading treatment or punishment under the Convention as long as it is operated appropriately.”<sup>38</sup>*

Reports received by Amnesty International and the Japan Federation of Bar Associations (JFBA) support the view that the *daiyo kangoku* system fails to meet international standards on detention. Suspects are continually under the control of the police; there are no rules or regulations regarding length of interrogation, lawyers’ access to clients during interrogations are restricted and there is no electronic recording of interviews by police. Amnesty International is concerned that this system is routinely used to obtain “confessions”. The organization has documented a variety of measures which are used to obtain “confessions” and which constitute torture or other ill-treatment, such as beatings, intimidation, sleep deprivation, questioning from early morning until late at night and making the suspect stand or sit in a fixed position.

#### **4.2.1. Legal Access in Law and Practice**

The potential for violations to occur is compounded by the lack of access to legal counsel. The Japanese Constitution guarantees the right to legal counsel. Article 37 of the Constitution states that: “At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.” Article 39 of the Code of Criminal Procedure also provides for the right to legal counsel “without having any official watchman present”, meaning that a police officer should not be present during meetings with lawyers.

Legal counsel is therefore permitted to meet detainees any time with no limitation on the duration of the meeting time. The JFBA reports, however, that in practice, when a serious offence is committed and when the suspect denies the charge, investigators often restrict his/her right to confer with counsel. They are authorized to do this under paragraph 3 of Article 39 of the Code of Criminal Procedure which states that investigators (police and prosecutors) “may, when it is necessary for investigation, designate the date, place and time of interview”. The right to counsel is thus drastically limited; the JFBA reports that “counsel cannot see the suspect without the prior permission of the investigator in charge”.<sup>39</sup> It is not unusual for lawyers to be granted permission to meet with suspects only two to three days after applying for permission, with interviews being limited to 15 minutes.

Moreover, although the right to see court-appointed lawyers is provided for in Article 272 of the Japanese Code of Criminal Procedure, this right only applies to those defendants who have been indicted and does not apply to suspects under

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<sup>38</sup> The First Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para, 142, submitted to Committee against Torture in December 2005. UN doc. CAT/C/JPN/1.

<sup>39</sup> *What’s Daiyo Kangoku?!*, Japan Federation of Bar Associations, Sept. 1998, p. 10.

interrogation prior to being charged. A suspect's ability to exercise the right to see a lawyer is therefore inadequate, and fails to comply with international laws and standards pertaining to the implementation of the death penalty. In its General Comment on Article 7 of the International Covenant on Civil and Political Rights (ICCPR – which prohibits torture and other ill-treatment), the Human Rights Committee (the expert body charged under the ICCPR with overseeing its implementation), states that protecting detainees from torture and other ill-treatment,

*"... also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members".<sup>40</sup>*

International laws and standards are clear that anyone potentially facing a death sentence must be provided with legal assistance for the entire legal process. The UN Economic and Social Council *Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty*<sup>41</sup> state that a person facing the death penalty should be provided with:

*"adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases".<sup>42</sup>*

Amnesty International welcomes an amendment to Japan's Code of Criminal Procedure, which is expected to be fully implemented by the end 2006. It will allow suspects who are arrested and detained but not prosecuted to have the right to choose their own counsel at public expense if they do not have the resources to pay for it. While calling for all prisoners to be brought to trial promptly, Amnesty International believes that these amendments will be beneficial in terms of the fulfilment of the right to fair trial. The organization urges that the measure be swiftly and fully implemented.

#### **4.2.2. Risk of torture and ill-treatment and coerced confessions**

The concerns expressed above are illustrated by the cases of those under sentence of death in Japan. For example, Hakamada Iwao, now aged 69, has been on death row and held in solitary confinement for over 37 years. He is reportedly in very poor mental and physical health to the extent that he is unable to recognize close relatives such as his sister. Hakamada Iwao was accused of the June 1966 murder of a couple and their two children. He was reportedly interrogated by police for 23 days, during which time he was denied food and water, not allowed to use a toilet and kicked and punched. He also states that he was subjected to sleep deprivation.

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<sup>40</sup> Human Rights Committee, General Comment on Article 7, ICCPR General Comment 20 (1992), para. 11.

<sup>41</sup> UN General Assembly, *Human Rights in the Administration of Justice*, GA Res. 39/118, UA.

<sup>42</sup> ECOSOC Resolution 1989/64, 24 May 1989, emphasis added. For further information see: Amnesty International, *Fair Trials Manual* (AI index POL 30/02/98), p.145.

Hakamada Iwao has consistently claimed that he is innocent and was forced to "confess" to the murders.

The continued use of the *daiyo kangoku* system, in a manner that can facilitate torture, ill-treatment and coerced confessions, contravenes provisions in the Japanese Code of Criminal Procedure and the Constitution of Japan. Article 38 of the Constitution states that: "Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence". The Human Rights Committee expressed serious concerns around the use of the *daiyo kangoku* system. In November 1998, it stated:

*"The Committee is deeply concerned that the guarantees contained in articles 9, 10 and 14 [of the ICCPR] are not fully complied with in pre-trial detention in that pre-trial detention may continue for as long as 23 days under police control and is not promptly and effectively brought under judicial control; the suspect is not entitled to bail during the 23-day period; there are no rules regulating the time and length of interrogation; there is no State-appointed counsel to advise and assist the suspect in custody; there are serious restrictions on access to defence counsel under article 39(3) of the Code of Criminal Procedure; and the interrogation does not take place in the presence of the counsel engaged by the suspect. The Committee strongly recommends that the pre-trial detention system in Japan should be reformed with immediate effect to bring it in conformity with articles 9, 10 and 14 of the Covenant.*

*"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. This may increase the chances of abuse of the rights of detainees under articles 9 and 14 of the Covenant. The Committee reiterates its recommendation, made after consideration of the third periodic report, that the substitute prison system should be made compatible with all requirements of the Covenant."*<sup>43</sup>

Additionally, the UN Convention against Torture (to which Japan is a state party) provides, in Article 15:

*"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."*

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<sup>43</sup> See Report of the Human Rights Committee, UN Doc. A/54/40 (1999), paras. 164-5. For earlier concerns see UN Doc. CCPR/C/79/Add.28, 5 November 1993, para. 4.

In its report to the Committee against Torture, the Japanese government states that:

*"Public prosecutors are to prove that the confession was made voluntarily, and courts shall not admit the confession as evidence unless such proof is made."*<sup>44</sup>

This suggests that the onus is on the prosecutor to prove that the confession was made voluntarily.<sup>45</sup> In practice, however, as the cases of Menda Sakae, Akahori Masao, Taniguchi Shigeyoshi and Saito Yukio (see page 15) illustrate, on many occasions it is the suspect who has had to prove that the "confession" was not given voluntarily, in violation of the right "not to be compelled to testify against himself or to confess guilt."<sup>46</sup>

The risk of serious violations of an individual's human rights described above is of continuing grave concern to the legal community, both internationally and within Japan. The International Bar Association, supported by the JFBA, issued a report<sup>47</sup> proposing electronic recording of all interrogations carried out by the police and prosecution. This system would enable courts to assess more accurately to what extent confessions have been coerced or given freely. This would substantially decrease the probability of grave miscarriages of justice such as those highlighted above. Electronic recording would also reduce the likelihood of ill-treatment of suspects by police and protect officials from false allegations of torture and ill-treatment. Amnesty International strongly supports this proposal and urges the government of Japan to introduce this system immediately. The organization is disappointed that the Ministry of Justice has, to date, not positively responded to this recommendation.

Amnesty International also calls on Japan to ratify the Optional Protocol to the UN Convention Against Torture,<sup>48</sup> which provides for the establishment of National Prevention Mechanisms in each state that is party to the Protocol as well as an international one – the Sub-Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture.

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<sup>44</sup> The First Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 134.

<sup>45</sup> Moreover, "under the criminal law, there is no obligation on the prosecution to disclose evidence that it may have gathered in the course of the investigation other than that which it intends to produce at the trial... the defence has no general right to ask for the disclosure of that material at any stage of the proceedings." (para. 26, Concluding Observations, Oct/Nov 1998, (CCPR/C/79/Add.102).

<sup>46</sup> ICCPR, Art. 14(3) (g).

<sup>47</sup> International Bar Association, "Interrogation of Criminal Suspects in Japan – the Introduction of Electronic Recording," December 2003, p.7.

<sup>48</sup> Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNGA res. A/RES/57/199, adopted Dec. 18, 2002. The Protocol entered into force on 22 June 2006.

Both these bodies would be able to visit all places of detention and all detainees and prisoners, thus providing further safeguards against torture and other ill-treatment.

## 5. Executions: An Erroneous Answer to Violent Crime

Amnesty International does not seek to excuse the perpetrators of violent crime and recognizes and endorses a government's duty to protect the citizens it serves. However, the organization believes the death penalty is wrong in all cases. Executions are a symptom of a culture of violence rather than a solution to it. By executing a person, the state commits a premeditated killing and shows a similar readiness to use physical violence as the criminal.

Numerous politicians in many different countries and cultures have argued that the death penalty is necessary as a crime control measure, and valued executions for their alleged deterrent effect on criminal acts overall. For this proposition to be true, it has to be believable that violent criminals contemplate the results of their being held accountable for their crimes, and that they then decide that risking being executed is not acceptable, whereas risking a long term of imprisonment is acceptable. In reality, Amnesty International suspects that few criminals think they will be caught when committing a crime. Therefore, rather than harsher punishments, the best deterrent to violent crime lies in guaranteeing a high chance of capture and conviction through effective policing.<sup>49</sup>

Evidence from the USA, Canada and other countries, does not show that violent crime increases in the absence of the death penalty. In 2004 in the USA, the average murder rate for states that used the death penalty was 5.71 per 100,000 of the population, but in states without capital punishment the murder rate was 4.02 per 100,000. Moreover, in Canada, in 2003 – 27 years after the abolition of the death penalty – the murder rate had fallen by 44 percent since 1975 (before the death penalty was abolished).

For over three years (between 1989 and 1993), there were no executions in Japan. This is partially explained by the fact that the then Minister of Justice, Sato Megumu, refused to sign execution orders because of his religious beliefs. Senior former officials and hundreds of Diet members also expressed opposition to the

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<sup>49</sup> Also see “Deterrence Theory and Capital Punishment”, J. Acker *et al* (eds), *America's Experiment with Capital Punishment*. Durham, N.C.: Carolina Academic Press, 1998. p. 158: “...it is unlikely that would be offenders (“killers”) give serious, if any, thought to the death penalty”.

death penalty at the time. During this period, there was no increase in the type of violent crime for which the death penalty would have been imposed.

Regardless of the nature of the offence committed, a punishment that kills is in itself a denial of the preciousness of life. As a punishment, the death penalty also excludes the possibility of rehabilitating the offender.<sup>50</sup> In addition, governments of countries that retain the death penalty often justify it by stating that executions are necessary as a punishment for the crime committed and out of respect for the feelings of victims and their relatives. However, in Japan, as in other countries,<sup>51</sup> some relatives of victims have stated that despite their loss, they do not believe that the death penalty should be used. This raises persistent questions about the rationale of executions, including whether executing perpetrators brings a sense of closure or satisfaction to victims' relatives.<sup>52</sup>

One such case is that of Harada Masaharu whose brother was murdered along with two other people by Hasegawa Toshihiko between 1979 and 1983. Hasegawa's death sentence was finalised in 1993 and he was executed on 27 December 2001. Harada Masaharu had petitioned the Ministry of Justice asking for a stay of execution. He believed that the only way Hasegawa Toshihiko could express remorse and atone for his crime was by living. Harada Masaharu was never informed that Hasegawa Toshihiko would be executed, nor did the Ministry of Justice explain why he was chosen, reportedly stating that they could not discuss an individual case. In an interview with *The Japan Times*, Harada said that after a number of years he visited his brother's murderer in prison. Despite being able to meet with him a few times, Harada felt they never had time to address the issue of the murder and said the execution left him feeling empty: "the execution didn't help (ease the pain) of our family".<sup>53</sup>

## 6. History of the Abolitionist Movement in Japan

Supporters of the death penalty in Japan have claimed it is part of country's historical tradition.<sup>54</sup> However, this ignores long periods of Japan's history where executions have not taken place.

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<sup>50</sup> In accordance with Article 10(3) of the International Covenant on Civil and Political Rights, which states: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."

<sup>51</sup> For example, Murder Victims' Families for Human Rights, <http://www.willsworld.com/~mvfhr/>

<sup>52</sup> See footnote 13.

<sup>53</sup> Ibid.

<sup>54</sup> For example, Sasaki Tomoko, a former member of the Diet, quoted in "Why Japan Still Has the Death Penalty", *Washington Post*, 16 January 2005.

While the death penalty has been officially sanctioned since the early 12<sup>th</sup> century, the death penalty was forbidden in law by Imperial edict as far back as 724, when Emperor Shomu issued an order prohibiting all forms of killing, including the death penalty. For some 300 years spanning the 9<sup>th</sup> to the 12<sup>th</sup> centuries there was no officially sanctioned use of the death penalty. After this period the death penalty was re-introduced with different methods of execution used for different social groups, some of which, such as burning to death, were especially cruel. Following the Meiji Restoration in 1868, these various methods were gradually replaced by hanging in prison.

In modern times, there were no executions in Japan between November 1989 and March 1993, partly because Ministers of Justice then in office were personally opposed to the death penalty<sup>55</sup> and also because of an active campaign to stop state killings. As executions can only take place after the Minister of Justice has signed an execution order, the successive ministers' abstention from signing during that period led to a *de facto* moratorium on the death penalty. The moratorium ended in March 1993 when there were three executions, leading to widespread public protests by human rights organizations, religious groups and prominent figures. The moratorium had given hope to the abolitionist movement that the government would take steps towards abolition of the death penalty in law.

Currently, there is a strong, organized movement calling for the abolition of the death penalty campaigning under the umbrella of the organization "Forum 90". Forum 90 is a coalition of activists including Amnesty International and other human rights organizations, and at least 500 lawyers, 300 members from religious groups and 400 journalists. Furthermore, a significant percentage of parliamentarians, from a variety of political parties, are abolitionist and have formed a parliamentary group against the death penalty and have called for its abolition. The JFBA has also called on the government to suspend all executions and end the culture of secrecy that surrounds the application of the death penalty.

## **7. Global Trend Away From the Use of the Death Penalty**

In recent years there has been a marked international trend away from the use of the death penalty. In total, 125 countries in different regions around the world have now abolished the death penalty in law or in practice. Europe is almost entirely free from

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<sup>55</sup> Between November 1989 and March 1993 two Ministers of Justice reportedly declined to sign execution orders because of their personal opposition to the death penalty. Gotoda Masaharu, who became Minister of Justice in November 1992, ordered three executions in March 1993.

the death penalty with only Uzbekistan<sup>56</sup> and Belarus actually carrying out executions. In the Americas, only the United States of America carries out executions on a regular basis. In Africa, huge strides have been made to see the continent free from executions. Senegal and Liberia have recently abolished the death penalty and in 2005 only three of 53 African countries carried out executions.<sup>57</sup>

Unfortunately the region of Asia stands out as resistant to this global trend. The region contains countries with high rates of executions and no apparent prospect of abolition. As well as Japan, China, Singapore and Indonesia appear to be staunch supporters of capital punishment.

There have been positive developments in the region such as the abolition of the death penalty in Cambodia, Nepal and Timor Leste. Amnesty International also warmly welcomed the decision of the Philippines in June 2006 to abolish the death penalty, after it had been re-imposed in 1994. In East Asia, Amnesty International also welcomes developments in South Korea and Taiwan to consider abolishing the death penalty in law. In February 1998, South Korea implemented an unofficial moratorium on executions pending further debate. A Special Bill to abolish the death penalty for all crimes was introduced by the South Korea National Assembly (Parliament) in February 2005, with 175 Members of Parliament (out of 299) voting for it. This Bill is currently being considered and could pave the way for the abolition of the death penalty in South Korea.

Amnesty International believes that the abolition of the death penalty in Japan would provide the region with much needed human rights leadership on this issue and be a valuable example of a nation progressing towards the full protection of human rights.

The global trend away from the death penalty is further reinforced by resolutions passed by the United Nations Commission on Human Rights; every year since 1997 (until its disestablishment in 2006) the Commission has passed a resolution in favour of abolition of the death penalty.<sup>58</sup>

The international community has also signalled its determination to move away from the use of the death penalty via the punishments available to international courts. Under the Rome Statute of the International Criminal Court, the death penalty is excluded from the punishments that the Court is authorized to impose, despite the fact that the Court has jurisdiction over the most serious and gravest crimes: crimes

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<sup>56</sup> The government of Uzbekistan has committed itself to a moratorium on executions from 2008.

<sup>57</sup> Somalia, Sudan and Libya.

<sup>58</sup> For example see: UN Commission on Human Rights resolution 2005/59, adopted on 20 April 2005, which states that the Commission "expresses its concern at the continuing use of the death penalty around the world". The resolution further calls on states that maintain the death penalty to: "abolish the death penalty completely and, in the meantime, to establish a moratorium on executions".

against humanity, genocide and war crimes. Similarly, in establishing the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty from the punishments which these Courts could impose.<sup>59</sup>

Furthermore, in the European context, in resolution 1044 (1994), adopted on 4 October 1994, the Parliamentary Assembly of the Council of Europe called "upon all the parliaments in the world which have not yet abolished the death penalty, to do so promptly following the example of the majority of Council of Europe member states". The Guidelines to European Union (EU) Policy towards Third Countries on the Death Penalty, adopted by the Council of the European Union in 1998, state that "abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights". They establish that it is an EU objective "to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states".

The Council of Europe, to which Japan has observer status, passed a resolution calling on Japan to temporarily suspend executions and take steps towards abolition of the capital punishment system by 2003. It was reported that the action against Japan stemmed in part from the findings of a week-long inspection visit to Tokyo in February 2001 by the Council of Europe's human rights commission, which found that the treatment of death row prisoners in Japan violated international human rights standards.

Japan's failure to move towards abolition of the death penalty has the potential to negatively affect its ability to take part in inter-governmental organizations such as the Council of Europe. In April 2006 the Council of Europe's Parliamentary Assembly announced that it intended to "include on its agenda by the end of 2006 the question of the suspension of Japan's and the United States' observer status if no progress on this question [of the abolition of the death penalty] has been made by then."

## **8. Conclusion and Recommendations**

Numerous prisoners currently on Japan's death row have completed the appeals process and face execution on a daily basis. For the government to order their execution simply requires the paper work to be completed and signed. Yet, year on year, they remain precariously balanced between life and death. Periodically, one of

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<sup>59</sup> The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were established under UN Security Council resolutions 825 of 25 May 1993 and 955 of 8 November 1994, respectively.

them is taken from their cell at short notice and killed. There appears to be no discernable pattern or logic to the order in which an individual is chosen. In practice, the application of the death penalty in this manner appears as an arbitrary expression of state power.

The majority of prisoners sentenced to death in Japan are condemned to a lifetime under conditions that amount to cruel inhuman and degrading treatment and are contrary to the international treaties to which Japan has agreed. Many prisoners, as this report highlights, suffer from mental disabilities due to the conditions under which they are detained. These mentally ill prisoners, in practice, face execution.

The Japanese government must review the country’s use of the death penalty as a matter of urgency. A death sentence as a result of an unfair trial amounts to the arbitrary deprivation of life.<sup>60</sup> Yet the continuing failure of the Japanese judicial system to reach the minimum standards agreed by the international community<sup>61</sup> for the implementation of the death penalty – as has been repeatedly pointed out by inter-governmental bodies such as the UN Human Rights Committee – is tolerated by the authorities.

In practice, the continued use of the *daiyo kangoku* system means that the potential for miscarriages of justice are built into the system. Faced with prolonged interrogation, threats and violence and the denial of access to legal representation during interrogation, many suspects “confess” to crimes they did not commit. When used in conjunction with the death penalty – an irreversible punishment – *daiyo kangoku* substantially increases the ever present risk of an innocent person being judicially murdered by the state.

The reliance on “evidence” extracted in this manner makes a mockery of the criminal justice system in Japan; it brings into disrepute the most basic tenet of a fair trial – being presumed innocent until and unless proven guilty.

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<sup>60</sup> The UN Committee of Human Rights and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions have both stated that where a death sentence has been confirmed after a trial that fails to meet the rights laid out in Article 14, paragraph 3 (b) of the ICCPR, then the person’s right to life as enshrined in Article 6 of the ICCPR has been violated. The Human Rights Committee, in its General Comment on this Article, and referring specifically to the death penalty, has stated the following: “The procedural guarantees therein [that is, in the ICCPR] prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.” Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.1 at 6 (1994), para. 7. See also Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, UN Doc. E/CN.4/2004/7, 22 December 2003, para. 47.

<sup>61</sup> See *International Standards on the death penalty* (AI index: ACT 50/001/2006).

Successive governments in Japan have failed to initiate a parliamentary debate about the death penalty. Ministers of Justice have also indicated that the role of the government in relation to the death penalty was to administer its use, but not to intervene in its discussion. Amnesty International urges the current government to take heed of the concerns raised by activists in Japan, international human rights groups and organizations such as the UN and Council of Europe who have criticized the way the death penalty is implemented in Japan. The government has an obligation to initiate an informed public and parliamentary debate on the use of the death penalty, which in turn means ending the secrecy surrounding executions in Japan.

**Amnesty International urges the Japanese Government to:**

***Take steps to abolish the death penalty***

- Commute all death sentences;
- Impose an immediate moratorium on executions pending abolition of the death penalty;
- Initiate a public and parliamentary debate on abolition of the death penalty.

***Ratify and implement international law***

- Abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (which commits nations to the permanent abolition of the death penalty);
- Ratify the Optional Protocol to the UN Convention Against Torture.

***Ensure greater transparency around the implementation of the death penalty***

- End secrecy around the application of the death penalty, for informed public debate, by making available all information regarding the use of the death penalty and any scheduled execution;
- Implement procedural safeguards around the right to life and respect the rights of detainees, by fully disclosing information such as the advance notice of executions to both prisoners on death row and their families.

***Take steps to end torture, ill-treatment and coerced confessions***

- Order an investigation into the cases of prisoners on death row who were reported to have been tortured, ill-treated or denied access to legal counsel during police questioning;

- Take steps to abolish the *daiyo kangoku* system which is a breeding ground for human rights abuses and ensure that confessions obtained under duress are never invoked by state prosecutors in legal proceedings against criminal suspects;
- Implement safeguards, such as a system of electronic recording for all interrogations to avoid violations in the future;
- Ensure that anyone who faces the death penalty is provided with state appointed legal counsel, of the defendant's choice, during the entire legal process.

***Improve prison conditions***

- Bring the Prison Law and all other regulations at places of detention into full accordance with international human rights standards, by ending the excessively harsh regime that violates the human rights of detainees. The system of rules and regulations that exists in prisons and other detention centres must be consistent with the provisions of Article 10 of the ICCPR, which states that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person";
- Rules of detention must be made public, including those drawn up at the discretion of individual heads of detention centres.

***Ensure that persons with mental disability do not face execution***

- Ensure that the death penalty is not imposed or carried out on anyone suffering from a mental disability – either permanent or temporary;
- Ensure that anyone suffering from mental disability is removed from death row and given appropriate medical treatment.

**Amnesty International urges medical health professional bodies to:**

- Exercise vigilance to ensure that the ethics of their profession are not violated by the death penalty system;
- Communicate concern to the authorities when widely accepted principles which protect people with mental illnesses are breached.