

TABLE OF CONTENTS

1) INTRODUCTION 1

2) FACTS ABOUT THE DEATH PENALTY 3

3) AMNESTY INTERNATIONAL'S CONCERNS 5

Prisoners selected on an arbitrary basis for execution 5

Forced confessions; denial of access to lawyers; inadequate system of judicial review 7

The death penalty imposed on the elderly and mentally ill 13

Cruel, inhuman and degrading treatment of prisoners under sentence of death 15

Long-term imprisonment under sentence of death 20

4) JAPAN'S OBLIGATIONS UNDER INTERNATIONAL LAW 21

International Covenant on Civil and Political Rights 21

The Second Optional Protocol to the ICCPR 22

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 23

5) THE DEATH PENALTY DEBATE IN JAPAN 24

Public Opinion Polls 24

Ministry of Justice views 26

Growth of the abolitionist movement 27

6) CONCLUSIONS AND RECOMMENDATIONS 28

7) CASE STUDIES 30

HAKAMADA IWAO 31

ODA NOBUO 33

OKUNISHI MASARU 34

TOMIYAMA TSUNEYOSHI 35

OHAMA MATSUZO 36

AKIYAMA YOSHIMITSU 37

ARAI MASAO 38

HARUYAMA HIROMOTO 38

NAGAYAMA NORIO 41

ISHIDA TOMIZO 43

TABLE 1: List of prisoners under finalized sentence of death 44

TABLE 2: Executions in Japan, 1984 - 1994 49

TABLE 3: Number of defendants sentenced to death by courts of first instance, 1981 - 1992 50

TABLE 4: Homicides: Reported Cases, Sentences, and Death Sentences, 1981 - 1992 51

JAPAN

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

1) INTRODUCTION

The death penalty is a violation of human rights. Executions violate the right to life. The death penalty is the ultimate cruel, inhuman and degrading punishment. Amnesty International opposes the death penalty in all cases and is working for its abolition worldwide. Some 96 countries today, nearly half the countries in the world, have abolished the death penalty in law or practice. Japan is one of the few industrialized countries which has not yet abolished the death penalty: with the exception of the USA, all other states of the Organization for Economic Cooperation and Development (OECD), and the other members of the "Group of Seven" largest industrialized nations, have abolished the death penalty.

Between 1983 and 1990 five prisoners who had spent decades under sentence of death were released after courts acquitted them at retrials. They included Menda Sakae¹, who believes that other prisoners may have been executed despite their innocence.

Seven prisoners were executed in Japan in 1993, more than in any other year since 1976. This spate of executions ended a *de facto* moratorium on executions that lasted more than three years, from November 1989 to March 1993.

In March 1993 the Minister of Justice signed warrants for the execution of three men: Tachikawa Shujiro, Kawanaka Tetsuo and Kondo Seikichi. The three were executed on 26 March at detention centres in Osaka and Sendai. It is not known why the Ministry of Justice chose to break the three-year moratorium and go ahead with executions at all; it is also unclear why, of almost 60 prisoners then under sentence of death, these three were selected for hanging. One of the three prisoners was suffering from a mental illness.

The rate of violent crime went down during the moratorium. In fact the rate of violent crime in Japan dropped by two-thirds between 1970 and 1990 and has continued to drop since: more than 1,100 days without executions did not affect that downward trend.

Advocates of abolition of the death penalty maintained that the executions were carried out to show a strong political will to retain the death penalty, at the expense of human lives. Ministry of Justice bureaucrats had reportedly wished to make it clear that the death penalty was still in force, despite more than 1,100 days without executions. The advocates also reported a perception that a growing section of

¹In Japan the family name is written first, followed by the given name.
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The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

the Japanese public supported abolition and accused the Ministry of Justice of attempting to slow this evolution by carrying out executions.

The executions caused a strong public reaction. Dozens of politicians, several newspapers, as well as lawyers and respected personalities expressed strong opposition to the executions. Many were concerned that by "stopping the clock" of the moratorium, the government had taken the risk of causing a public uproar in order to allow for more executions to take place in future.

The fear of further executions was confirmed on 26 November 1993, when four prisoners were executed on the same day - one in Tokyo Detention Centre, two in Osaka Detention Centre and one in Sapporo Detention Centre. It was the first time in decades that four executions had taken place on the same day. Those executed included a 70-year-old man who had been awaiting execution for over ten years.

Two prisoners were executed in December 1994, days after the government had published the results of an opinion poll indicating that over 70% of the population still support capital punishment. The executions were ordered without giving abolitionists an opportunity to study the results. Past opinion polls have been criticized for asking leading questions and have been used by the government as a justification for executions.

One of the two prisoners executed in December 1994, Sasaki Kazumi, was aged 66. The other, Ajima Yukio, had been under sentence of death for 16 years and had recently filed a civil law suit against the government for denying him access to his foster parents. There is no apparent reason why these two prisoners were singled out for execution.

Conditions of detention for prisoners sentenced to death are often harsh. They can receive visits from only a very small number of people - some have even been denied access to foster parents or children - and the number of letters they may write is strictly limited.

While conditions vary from one detention centre to another, opportunities for these prisoners to meet and talk to other prisoners are strictly limited, as is access to television. Daily prison routine is often strictly enforced and even small breaches of discipline, such as shouting or lying down outside rest hours, are liable to punishment. Some prisoners are not allowed to speak with or meet anyone in prison, except guards and visitors, not even other prisoners. Closed-circuit cameras are installed in some cells of prisoners under sentence of death. This very harsh regime is not substantially relaxed even for prisoners who have spent several years under sentence of death.

This document describes the legal provisions governing the use of the death penalty and the way it is used in Japan; sets out Amnesty International's concerns about the death penalty in general; summarizes arguments which have been made in recent years by abolitionists in Japan; and describes cases of prisoners who have been executed or currently face execution. Some of these prisoners may have been convicted unfairly.

Amnesty International calls on the Japanese government immediately to end the use of the death penalty and to abolish the death penalty in law as a matter of urgency. Pending abolition of the death penalty it calls on the government to end all forms of cruel, inhuman and degrading treatment or punishment of prisoners under sentence of death and to commute all death sentences.

2) FACTS ABOUT THE DEATH PENALTY

Japanese law provides for the death penalty for 17 offences but since 1967 it has been imposed only in cases involving murder, usually murder with robbery or abduction, or homicide caused by explosives. Capital offences are normally heard in the first instance by a district court. Decisions of a district court may be appealed twice - to a high court and to the Supreme Court. After all appeals have been exhausted the prisoner is then treated as a prisoner under "finalized" sentence of death.

After a sentence has been finalized by the courts it is possible to reopen the procedure by requesting a retrial if new evidence indicating innocence is discovered or if evidence on which the original judgment is based is proved false. Prisoners may also apply to the government for individual amnesty of their sentence.

Prisoners often spend several decades under sentence of death. Execution is by hanging and is carried out in secret on the order of the Minister of Justice. Executions are not announced and the authorities do not confirm the names of executed prisoners. The Ministry of Justice maintains that such secrecy is necessary to protect the family of the prisoner from the shame of having it known that their relative has been executed and also to prevent adverse influence on other prisoners under sentence of death.

Defendants aged under 18 at the time of the alleged offence may not be sentenced to death, and if the prisoner is insane or pregnant, executions must be stayed until recovery or childbirth. Executions take place in one of the seven detention centres where prisoners sentenced to death are held: they are Hiroshima, Sapporo, Sendai, Tokyo, Nagoya, Osaka and Fukuoka. At the time of writing there are some

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

90 prisoners under sentence of death, including 57 whose sentences have been finalized. The youngest is aged 21 and the oldest is 77 years old; three are over the age of 70. There are three women under finalized sentence of death. At least four prisoners have been under sentence of death for over 20 years.

3) AMNESTY INTERNATIONAL'S CONCERNS

Amnesty International opposes the death penalty in all cases 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.

As part of its international campaign against the death penalty, Amnesty International has repeatedly appealed to the Japanese Government to cease executions and to abolish the death penalty for all offences. Some of Amnesty International's principal concerns about the death penalty in Japan are described below.

Prisoners selected on an arbitrary basis for execution

"It was scary. Cold sweat chilled my body, but I couldn't help staring at the officers' faces from the small window of my cell. . . The sound [of officers opening the door of another cell] released me. Every time I heard it, I thanked God I'd made it through another day".

Menda Sakae, acquitted in 1983 after 34 years under sentence of death, describing his daily fears.

In recent years the courts in Japan appear to have applied criteria for the imposition of a death sentence put forward in July 1983 by the Supreme Court in a ruling in the case of Nagayama Norio. The court ruled that:

"Under the present legal system which retains the death penalty, when various circumstances are considered such as the nature of the crime, its motivation and its mode, especially the persistency and the cruelty of the method of killing, the significance of the result, especially the number of victims, the impact on society, the offender's age, criminal record and circumstances after conviction, if its liability is considerably heavy and the death penalty is regarded as unavoidable from the point of view of proportionality as well as deterrence, the imposition of the death penalty is allowed".

This ruling implies a careful application of death sentences by the courts. However while this may be the case with the imposition of death sentences, executions appear to have been carried out on an arbitrary basis. Under the Code of Criminal Procedure "the death penalty shall be executed under an order from the Minister of Justice" (Article 475). Once an order is given, "such execution shall be carried out within five days" (Article 476). Thus, after all judicial proceedings are exhausted, it is the Minister of Justice in practice who decides when a prisoner is to be executed. This appears to be a significant factor in the timing of executions, which are carried out at irregular intervals. To outside observers the timing of AI Index: ASA 22/03/95 Amnesty International May 1995

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

executions appears to be directly linked to the personal decision of the Minister of Justice and to the political situation. Evidence to support this is detailed below. The selection of prisoners for execution also appears to be random. There is no apparent reason why the three men executed in March 1993, or the four others in November 1993, were selected.

Several former Ministers of Justice have abstained from signing execution orders, thus effectively suspending executions. Between November 1989 and March 1993 two Ministers of Justice reportedly declined to sign execution orders on account of their own personal opposition to the death penalty.

Gotoda Masaharu, who became Minister of Justice in November 1992, ordered three executions in March 1993. Gotoda Masaharu was appointed in the last cabinet led by the Liberal-Democratic Party (LDP), which stepped down following the LDP's defeat at the general elections of July 1993. Soon after his appointment he made clear that he supported the use of capital punishment. He told reporters:

"Judges hand down capital punishment under the existing system and it is wrong for justice ministers not to carry out decisions out of political considerations. . . If they were not aware of their responsibility, they should have resigned when they realized it".

"If they [did not authorise executions] because of personal beliefs or philosophy or religious reasons, it was a mistake for them to have accepted the post".

The four executions in November 1993 were ordered several weeks after the UN Human Rights Committee had considered a report submitted in 1991 by the Japanese Government under the terms of the International Covenant on Civil and Political Rights (ICCPR). The Committee had recommended to the Japanese Government that it take steps towards abolition of the death penalty. The decision to order executions at this particular time appeared to be a signal to the domestic abolitionist movement and to the international community that Japan had no intention of complying with the UN Human Rights Committee's recommendation.

The two executions in December 1994 were carried out one week after the government had published the results of its latest public opinion poll on the issue. The poll appeared to show that a majority of the general public approved of the death penalty. The two executions seemed to be a hasty response to this poll and an attempt by the government to show the growing abolitionist movement that it would continue to use the death penalty.

Forced confessions; denial of access to lawyers; inadequate system of judicial review

"A total of 58 convicts are currently listed as death row inmates in this country. Do the gallows await them all? Some have been there for years, despite the provision of the Code of Criminal Procedure that a death sentence is to be executed within six months of the final verdict. If recent history is any guide, at least a few of these convicts may be acquitted on appeal and freed. It is no longer rare for convictions based on forced confessions and circumstantial evidence to be overturned by higher courts".

Editorial, *The Japan Times*, 12 April 1994

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

"The death penalty is a very cruel punishment even when the condemned person is really guilty of the crime. But if we consider that whenever the death penalty system is applied it is inevitable that innocent people will sometimes be executed as a result of misjudgment, the death penalty becomes the ultimate epitome of inhumanity and cruelty."

Former Supreme Court judge Dr Dando Shigemitsu, *The case against capital punishment*, paper given at the Forum '90 Conference in Tokyo, 1 December 1990.

Amnesty International believes that some prisoners under sentence of death may not have received a fair trial. It has received reports that some prisoners were ill-treated during police interrogation and that some were denied access to lawyers. In spite of a number of acquittals after retrial in recent years, it is very difficult for a convicted prisoner to obtain a judicial review of his or her sentence once it has been finalized.

At least 11 prisoners under finalized sentence of death claim to have been ill-treated during police interrogation and/or forced to make a "confession". At least 13 have denied some or all of the charges against them. A questionnaire sent to prisoners under finalized sentence of death by the Japan Federation of Bar Associations (JFBA) in February 1993 showed that most of those questioned had experienced difficulties in gaining access to a lawyer after their arrest. In most cases this was either because they did not know of their right to seek counsel from a lawyer or how to request such a counsel or because they were denied permission to do so by police investigators. Some commented that an early meeting with a lawyer might have made a difference to their convictions. Many did not see a lawyer until after they had been charged.

Hakamada Iwao, aged 59, was reportedly interrogated for 50 days after his arrest in August 1966. During this time he was reportedly beaten, denied food and water for lengthy periods and subjected to sleep deprivation. He was reportedly allowed to see his lawyer only three times during this interrogation period. Hakamada Iwao claims that he was forced to make a confession and has applied for a retrial without success.

Tomiyama Tsuneyoshi, aged 77, says that he was denied access to a lawyer during police interrogation in November 1963. His application for a retrial was rejected. Akiyama Yoshimitsu, aged 65, was reportedly subjected to long interrogation sessions after his arrest in September 1975 during which he was beaten and threatened. Arai Masao, aged 67, was arrested in December 1971 and claims to have been denied access to a lawyer and to have made a confession under duress.

Amnesty International has received reports that many criminal suspects, including those held on charges which may result in a death sentence, are held in police custody prior to indictment and have suffered cruel, inhuman or degrading treatment at the hands of police officers. Police detention facilities, known as "substitute prisons" (*daiyo kangoku*) are sometimes used to hold criminal suspects for up to 23 days prior to indictment. Suspects held in *daiyo kangoku* have been coerced into confessing to crimes they did not commit. Nominally separate police departments appear to be in charge of the custody and the interrogation of suspects in *daiyo kangoku*. But in practice interrogators are allowed unlimited access to detainees and are able to deny them adequate rest and access to the outside world for weeks on end.

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Despite the concern that some prisoners under sentence of death may not have had a fair trial, it is extremely difficult for a prisoner to obtain a retrial once his or her sentence has been finalized. This requires the submission of new evidence indicating innocence or showing that evidence on which the original judgement was based has been proved false. Amnesty International knows of seven prisoners currently under sentence of death whose applications for a retrial have been turned down by the courts, in some cases years later. Thirteen prisoners currently under sentence of death have made applications for a retrial which were either rejected or are still pending.

Hakamada Iwao applied for a retrial in 1981 and this was rejected 13 years later, in August 1994. The court ruled that there was insufficient evidence to justify a retrial, although there is evidence which casts doubt on the original ruling before Shizuoka District Court in 1968. Shizuoka District Court reportedly rejected 44 out of 45 different written "confession" statements by Hakamada Iwao which were submitted to it, but does not seem to have queried whether he was forced by the prosecuting authorities to write the successive confessions.

Kawanaka Tetsuo was executed in March 1993. He had given his lawyer power of attorney to prepare for a retrial - a fact of which the Osaka Detention House authorities were aware when they carried out his execution. The execution of Kawanaka Tetsuo appears to have violated point 8 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the United Nations (UN) Economic and Social Council (ECOSOC) in 1984, which states that:

"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".

Amnesty International is concerned that many prisoners under sentence of death may have been denied the possibility of retrial, even though their lawyers have argued consistently that the original trial may have been unfair. These include cases where prisoners were reportedly ill-treated during interrogation, denied early access to lawyers, or where new evidence has cast some doubt on the original conviction. The general failure of the Japanese courts to address these problems heightens the inherent risk of executing an innocent person.

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Five retrials between 1983 and 1990 resulted in acquittals of prisoners under sentence of death. Akahori Masao 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 when he was arrested; when he was acquitted, at the age of 59, he had spent over 30 years under sentence of death.

"Everyone makes mistakes and recognizing a mistake after someone has been put to death is worthless".

Menda Sakae, acquitted in 1983, after 34 years under sentence of death.

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Menda Sakae was acquitted in 1983, having spent 34 years under sentence of death during which time he had applied for retrial six times before his application was accepted. Since his acquittal Menda Sakae has campaigned to raise public awareness about the death penalty and is an active campaigner for abolition. In 1984 Taniguchi Shigeyoshi and Saito Yukio, sentenced to death in 1952 and 1957 respectively, were both acquitted. Shimogami Norio was acquitted in July 1990, having been under sentence of death since 1975.

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

"The evidence against Shimogami Norio was contradictory and 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".

Supreme Court judgement on the case of Shimogami Norio, acquitted in July 1990 after 15 years under sentence of death.

Prisoners may apply to the government for individual amnesty. However, in contrast to some other countries where the executive power of clemency is generously applied, in Japan commutations of death sentences are extremely rare. 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 in which death sentences were commuted was in 1952.

The death penalty imposed on the elderly and mentally ill

Some of the most vulnerable members of society are under sentence of death in Japan. Several prisoners over the age of 70 await execution. Others are believed to be suffering from mental illness.

Seventy-year-old Deguchi Hideo was executed in November 1993 after spending 10 years under finalized sentence of death, never knowing which day would be his last. Japan is virtually alone among the countries of the world in executing such old prisoners. In 1993 Japan also executed another man suffering from mental illness

In 1989 the UN Economic and Social Council (ECOSOC) recommended in resolution 1989/6:

"that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by . . . establishing a maximum age beyond which a person may not be sentenced to death or executed."

Three prisoners aged 70 or over remain under sentence of death in Japan. Tomiyama Tsuneyoshi, aged 77, has been under sentence of death since 1966 - for over 28 years. He has made two applications for a retrial, one of which is still pending. Ishida Tomizo, aged 73, was sentenced to death in 1980 but claims to be innocent of some of the charges against him. He says that after his arrest he was subjected to lengthy interrogation and forced to make a "confession". At the time he was unaware of his right to seek counsel from a lawyer.

Japanese law prohibits the execution of prisoners suffering from mental illness and excludes imposing
AI Index: ASA 22/03/95 Amnesty International May 1995

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

death sentences on people who were under the age of 18 at the time of the offence. The UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty 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" (Safeguard 3).

ECOSOC resolution 1989/6 recommends:

"that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by . . . Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution".

In March 1993, however, Japan executed a man who was mentally ill. Kawanaka Tetsuo's lawyer had obtained authorization from Osaka Detention centre for the prisoner to be examined by a medical doctor. After making his examination the doctor told the lawyer that Kawanaka Tetsuo was on the verge of becoming schizophrenic and that he was hallucinating. According to his lawyer, Osaka Detention House personnel were fully aware of Kawanaka's mental illness and he was under medical supervision. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions raised the case of Kawanaka Tetsuo with the Japanese authorities, expressing concern at reports that the prisoner had been mentally ill at the time of his execution.

In several other cases, death sentences have been imposed on people who were reportedly mentally ill or mentally retarded. Ohama Matsuzo is said to have been mentally ill at the time of the offence. He was sentenced to death in 1975 and his sentence was finalized in 1976. Expert evidence from a psychiatrist attesting that he had not been responsible for his actions had been submitted to the courts.

Nagayama Norio was aged 19 at the time of his arrest and conviction. In 1981 his death sentence was commuted by the High Court, largely on the grounds of his young age and the fact that he was considered to have had a mental age lower than 18 at the time of the crime. But this ruling was overturned following a further appeal by the Public Prosecutor's Office and the death sentence was reinstated.

In a similar case, Kanagawa Hajime's lawyers argued that he had a mental age of less than 18 years at the time of offence and that this rendered his written confession unreliable. He was sentenced to life imprisonment in 1982 but when he appealed to the High Court in 1983 it overturned the lower court's decision and sentenced him to death.

Cruel, inhuman and degrading treatment of prisoners under sentence of death

"The Committee further recommends that Japan take measures towards the abolition of the death penalty and that, in the meantime, that penalty should be limited to the most serious crimes; that the conditions of death row detainees be reconsidered; and that preventive measures of control against any kind of ill-treatment of detainees should be further improved".

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Excerpt from recommendation of the UN Human Rights Committee, October 1993. The recommendation was made after the Committee had considered the Third Periodic Report submitted by the Japanese Government under the International Covenant on Civil and Political Rights (ICCPR).

Japan's Prison Law states that prisoners sentenced to death shall be treated like unconvicted prisoners. However, in recent years the authorities have imposed arbitrary restrictions on contacts with the outside world by prisoners under sentence of death, in particular on those under finalized sentence of death. In its Third Periodic Report submitted in December 1991 under Article 40 of the International Covenant on Civil and Political Rights, the Japanese Government stated:

"The Prison Law provides that the warden of the institution decides whether the persons sentenced to death receive visitors on a case-by-case basis according to the purpose of the detention (Article 45, paragraph 1 of the Prison Law). In practice the persons sentenced to death are allowed to receive visitors such as their family members and lawyer in the presence of officials, except where there is a probability of obstructing the realization of the purpose of the detention such as jeopardizing the security of the custody".

Some prisoners can only meet close relatives and may only correspond with those allowed to meet them. In most cases prisoners under finalized sentence of death are not permitted to receive letters from friends and supporters. Some relatives by adoption have filed lawsuits alleging that they were prohibited from meeting prisoners under sentence of death. The authorities state that this practice is justified as it helps to keep the prisoner emotionally "stable".

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".

Ajima Yukio, sentenced to death in 1978, was not permitted to meet his foster parents. He filed a civil law suit against the Ministry of Justice to obtain access to them. He was executed before the court's verdict rejecting the suit, in December 1994.

Kanegawa Hajime has no family but one of his supporters was adopted by him in 1989. Since then, his adopted daughter has only been allowed to visit and correspond with him once every four months.

Prisoners under sentence of death are subjected to unnecessary and largely arbitrary restrictions. Most of them can meet only some of their relatives, at the discretion of the director of their detention centre. Daidoji Masashi, sentenced to death in 1989, can see only his mother, adopted younger sister and a cousin. Two adopted sisters tried to see him and were denied access.

Not only are meetings restricted, so is the sending of articles from outside the prison: for example, only

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

the three relatives who can meet Daidoji Masashi are allowed to send articles to him. Others cannot do so, following a decision to that effect reportedly made orally, without official record, by the Director of the Tokyo Detention Centre, where Daidoji Masashi is held.

A guideline (not legally binding) from the Ministry of Justice, dating back to the 1960s, reportedly forbids prisoners under sentence of death from meeting anyone. The guideline being informal, its text is not publicly available, but Ministry of Justice officials have indicated to Amnesty International that access to visitors by prisoners sentenced to death is restricted in order to ensure that these prisoners remain "quiet".

Daidoji Masashi is not allowed to speak with or meet anyone in the detention centre, except guards and visitors, not even other prisoners. Closed-circuit cameras are installed in some of the cells of prisoners under sentence of death.

According to lawyers, all prisoners sentenced to death are held in cells where the lights are never switched off, only dimmed at night. Sometimes, to accommodate the need for light for the surveillance cameras, lights are not dimmed. A lawyer working on behalf of prisoners under sentence of death told Amnesty International that cameras are reportedly installed in the cells of prisoners who "do not accept" their death sentence: those who appeal against their sentence, or are deemed likely to commit suicide.

There are strict rules on every aspect of prison life, including on how prisoners under sentence of death sit in their cell during the day. Prisoners must sit in the centre of their cell, they are not allowed to walk freely, to lean on the wall of the cell or to lie down outside sleeping time. They may sit in one of three positions only: cross-legged; in the *seiza* position (sitting on one's heels when kneeling on the floor); or sitting on the floor with legs on one side. To sleep outside normal hours, prisoners need special permission. Prisoners normally exercise outside their cell for 15 minutes, twice a week, sometimes in a courtyard if the weather is good.

Prisoners who disobey these rules are liable to punishment, which may include solitary confinement (*keiheikin*) for many days, or cancellation of visits, of permission to send letters or to receive reading material. Most prisoners sentenced to death have experienced *keiheikin*.

Horie Morio, sentenced to death in September 1988, developed symptoms of mental illness from March 1991. For one year, until March 1992 when he was diagnosed as mentally ill, he suffered hallucinations and shouted in his cell. He was punished for disregarding prison rules. In March 1991, he was first sent to a "protection cell" (*hogobo*), a cell with protective material on the walls normally intended for prisoners who are deemed likely to commit suicide. He was kept in *hogobo* for five days, wearing a leather strap tying his hands. As he persisted in disregarding the rules, he then underwent a cycle of punishment in *keiheikin* and *hogobo*, the longest being 20 days' *keiheikin*. In 1992, he was finally diagnosed as mentally ill and punishment stopped. Before his illness was diagnosed, he had received only sleeping pills and sedatives; his condition was not considered as amounting to illness, and he was therefore considered punishable. According to Horie Morio's lawyer, the detention centre authorities failed to diagnose the illness. It was only formally acknowledged when an outside psychiatrist designated by the Supreme Court was able to meet with the prisoner.

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Some detention centres allow prisoners under sentence of death occasional access to television and organize some events where prisoners can speak to each other. In Nagoya Detention House, for example, prisoners under sentence of death were able, according to reports in 1993, to see one video film per month and 30 minutes of television per week. They could not talk to each other while watching television or films, but they could talk at a weekly "tea party". Prisoners sentenced to death held in Tokyo Detention Centre can watch television twice every month and see a film and have a luncheon with other prisoners once every two months. None of these facilities are reportedly available in Sapporo Detention Centre, whose director apparently argued that there was insufficient space.

Long-term imprisonment under sentence of death

"There is an instinctive revulsion against the prospect of hanging a man after he has been held under sentence of death for many years. What gives rise to this instinctive revulsion? The answer can only be our humanity; we regard it as an inhuman act to keep a man facing

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

the agony of execution over a long extended period of time".

Judicial Committee of the Privy Council in England, judgment of 2 November 1993 in the case of *Pratt V. Jamaica*.

"The cruelty involved in capital punishment is not concerned only with the execution itself. The marginal psychological situation experienced by condemned persons while they are waiting to be killed may well be even more cruel than the execution itself. . . Among those who are condemned to death, there are some who can attain a state of spiritual enlightenment, peace or purity of mind. However, these people are few in number. How pointless it is to execute such people."

Dr Dando Shigemitsu, *The case against capital punishment*, paper given at the Forum '90 Conference in Tokyo, 1 December 1990.

The very long periods that some prisoners have been under sentence of death in Japan exacerbate the already cruel, inhuman and degrading experience of being under sentence of death. At least four prisoners in Japan have been under sentence of death for over 20 years. Tomiyama Tsuneyoshi, aged 77, has been under sentence of death for 28 years; Hakamada Iwao and Oda Nobuo for 26 years each; Okunishi Masaru for 25 years; Ohama Matsuzo and Akiyama Yoshimitsu for 19 years each. Others have spent between ten and 20 years awaiting execution. These prisoners are some of the world's longest serving prisoners under sentence of death.

In Japan the 57 prisoners whose sentences have been finalized awaken each day not knowing whether it will be their last. Executions are carried out in secret and no advance warning is given to prisoners, their relatives or their lawyers. Tomiyama Tsuneyoshi's sentence was finalized in 1976; each day for the past 19 years could have been the day of his execution. Hakamada Iwao's sentence was finalized in 1980 - he has been forced to spend the last 15 years in a state of perpetual fear. Oda Nobuo's sentence was finalized in 1970 and he has spent 25 years awaiting his execution, never knowing when it will be.

4) JAPAN'S OBLIGATIONS UNDER INTERNATIONAL LAW

Japan has often repeated its appreciation of, and willingness to abide by, international human rights standards. In 1993, Japan's representative at the World Conference on Human Rights in Vienna stated that *"human rights conventions and international mechanisms to ensure their observance are part of the precious heritage of mankind"*.

International Covenant on Civil and Political Rights

Japan has ratified the International Covenant on Civil and Political Rights (ICCPR) and is therefore bound by its terms.

Article 6 of the ICCPR states that:

AI Index: ASA 22/03/95 Amnesty International May 1995

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime.

Article 7 of the ICCPR states that:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 14 (3) of the ICCPR states that:

In the determination of any criminal charges against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(d) To be tried in his presence and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right and to have legal assistance assigned to him. . .

(g) not to be compelled to testify against himself or to confess guilt.

In October 1993 the UN Human Rights Committee considered the Third Periodic Report submitted by the Japanese Government under the ICCPR. The Committee expressed concern about the use of the death penalty, stating that:

"The Committee is disturbed by the number and nature of crimes punishable by the death penalty under the Japanese Penal Code. The Committee recalls that the terms of the Covenant tend towards the abolition of the death penalty and that those States which have not already abolished the death penalty are bound to apply it only for the most serious crimes. . .

"The Committee recommends that Japan becomes a party to both Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

"The Committee further recommends that Japan take measures towards the abolition of the death penalty and that, in the meantime, that penalty should be limited to the most serious crimes; that the conditions of death row detainees be reconsidered; and that preventive measures of control against any kind of ill-treatment of detainees should be further improved".

The Second Optional Protocol to the ICCPR

The Second Optional Protocol to the ICCPR, referred to by the Human Rights Committee, was adopted by the UN General Assembly in December 1989. Aiming at abolition of the death penalty, it states under Article 1:

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

(1) No one within the jurisdiction of a State party to the present Optional Protocol shall be executed.

(2) Each state Party shall take all necessary measure to abolish the death penalty within its jurisdiction.

The Second Optional Protocol entered into force in July 1991. Twenty-six states to date have become parties to the Second Optional Protocol and five others have signed it, indicating their intention to become parties at some future date. Amnesty International is urging the Japanese Government to sign and ratify the Second Optional Protocol.

Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment

The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment was adopted by the UN General Assembly on 9 December 1988. In many cases, the treatment of prisoners under sentence of death in Japan has contravened the following principles:

Principle 1

All Persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 17

(1) A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

Principle 21

(1) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

(2) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

5) THE DEATH PENALTY DEBATE IN JAPAN

Public Opinion Polls

"Most members of the public have been found to possess very limited knowledge about the circumstances in which murder takes place, the characteristics of murderers and all aspects of capital punishment. Without such knowledge their immediate opinions are a dubious basis upon which to form policy."

Roger Hood, *The Death Penalty, a Worldwide Perspective, A Report to the United Nations Committee on Crime Prevention and Control (1989)*, Chapter 7, para 181.

The Japanese Government's main argument for retaining the death penalty is that public opinion supports it, yet experience from other countries has shown that public opinion on the death penalty is often based on an incomplete understanding of the relevant facts. If the public were given more information about the cruelty surrounding the death penalty in Japan and the very real possibility of a miscarriage of justice, they may choose to support abolition.

Public opinion polls on the death penalty in Japan and in other countries have been found to be superficial and misleading; results have differed according to how the questions were asked. According to the criminologist Roger Hood (*The Death Penalty, A Worldwide Perspective*),

"[opinion polls] record immediate opinions and responses which are, of course, affected by the nature and specificity of the questions posed, their order in the sequence of questioning and the context within which the survey takes place". (Chapter 7, para 181)

Public opinion polls conducted by the Japanese Government have been criticized by abolitionists as being imprecise and not fairly interpreted. Of the 71% of respondents to a 1967 poll conducted by the Prime Minister's office, 61% thought the death penalty should be retained because of its (unproven) "deterrent" effect and 74% favoured retention on the basis of their inaccurate assumption that the rate of violent crime was increasing. The rate of violent crime reportedly decreased by two thirds in Japan from 1970 to 1990. A total of 49% of respondents agreed with the idea of temporary suspension of the death penalty.

Another opinion poll by the Prime Minister's office was carried out in 1989 and suggested that 66.5% of the population supported capital punishment. However, the poll was carried out shortly after a series of violent crimes had been reported in the media and appeared to play on people's fears by asking them whether they felt violent crime would increase if the death penalty was abolished. In response to one question, 90.8% of respondents said they thought that violent crime had increased, but in actual fact the crime rate had gone down in recent years - a fact of which respondents were not made aware.

"The death penalty is not a deterrent force to protect our society from the danger of murderers as, before their crime, the subjects, despite their knowledge of the existence of the death penalty, were incapable, because of their impulsiveness and their inability to live

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

except in the present, of being inhibited by the thought of capital punishment".

Prison psychiatrist Dr Kogi Sadataka, quoting his study of 145 people convicted of murder from 1955 to 1957. He found none who remembered having thought before committing the crime that he or she might be sentenced to death.

Since the mid-1950s the number of homicides in Japan has fallen steadily from a peak of 3,081 in 1954 to 1,233 in 1993. The rate of homicides has likewise fallen from 3.5 per 100,000 inhabitants in 1954 to 1.2 per 100,000 inhabitants in 1988. On the basis of the figures available it is impossible to establish any clear relationship between the very small and varying annual number of executions and the decline in homicides that would indicate that the death penalty has any unique deterrent effect on homicide. In relation to the total number of homicides per year, the probability of execution is so tiny that the death penalty cannot have other than a symbolic purpose. (See Table 4).

Results of the government's latest opinion poll were published on 25 November 1994 and suggested that 73.8% of the population felt the death penalty was unavoidable in certain circumstances. Abolitionists argued, however, that the poll also showed a rising number of respondents who thought the current death penalty system should be reviewed. A high proportion of the 73.8% who felt the death penalty to be unavoidable in certain circumstances agreed that it could be abolished if circumstances changed in the future. The total number of abolitionists and "conditional" abolitionists was higher than the number of people in favour of retention. These figures coincide with the results of a public opinion poll conducted by the television station NHK. The results of this poll showed that 47% of respondents supported abolition, including a number whose support was conditional upon the imposition of a life sentence; 43% supported retention.

The executions of two men on 1 December 1994 appeared to be a hasty response to the latest poll's results and abolitionists said that they had been given insufficient time to analyze the results. They are concerned that the authorities may have commissioned the opinion poll at this time in order to halt the growth of the abolitionist movement and to justify continued use of the death penalty.

Ministry of Justice views

"I was Minister of Justice for ten months until [November 1991] and I am known to the public for not having signed an execution order during my term of office. I am a Buddhist priest . . . and I refused to sign mindful as a religious person of the importance of human life."

Sato Megumu, Minister of Justice (1990/91).

"Judges hand down capital punishment under the existing system and it is wrong for justice ministers not to carry out decisions out of political considerations. . ."

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

If they [did not authorise executions] because of personal beliefs or philosophy or religious reasons, it was a mistake for them to have accepted the post".

Gotoda Masaharu, Minister of Justice (1992/93), reported comments following executions in March 1993.

In July 1994 Maeda Isao took office as Minister of Justice. Asked for his views about the death penalty he said that it should be carried out "prudently and strictly" in accordance with court decisions and that his own personal feelings should not interfere. However, he acknowledged the growing calls for abolition saying:

"I am aware that various opinions have been expressed about the system. I would like to tackle the issue on a long-term basis and find a future direction that reflects the majority opinion".

In November 1994 he said that the government would consider releasing more information about the death penalty in future. In a meeting with Amnesty International's Secretary General, Pierre Sané, in November 1994 Minister Maeda said that he hoped the death penalty discussion would deepen, but that he felt the death penalty should be retained unless a majority of public opinion called for abolition.

Growth of the abolitionist movement

In recent years the abolitionist movement in Japan has gained strength and generated a vigorous public debate of the issue.

A former Supreme Court judge, Dr Dando Shigemitsu, has campaigned for several years for an end to capital punishment. Dr Dando began to have serious doubts regarding the death penalty when he was appointed justice to the Japanese Supreme Court in 1974 and took charge of cases involving capital punishment. In November 1991 he published *On Abolishing the Death Penalty (Shikei Haishi-ron)* which sold 10,000 copies within the first three weeks of its publication.

Political parties in Japan have not adopted an abolitionist position officially, with the exception of the Japan Communist Party which has openly declared its support for abolition. However, a growing number of individual members of parliament have joined the abolitionist movement. In April 1994 a group of Diet (parliament) members in favour of abolition was established, with over 120 members from a range of political parties. Its purpose is to encourage discussion about the death penalty and to promote abolition through making representations to the government, discussion in the Diet and the introduction of legislation. After the two executions in December 1994, the Minister of Transport, Kamei Shizuka, called for executions to be suspended pending the outcome of a national debate on capital punishment.

A growing number of lawyers have joined the abolitionist movement. Although its current president is an abolitionist, the Japanese Federation of Bar Associations has not taken an official position for or against capital punishment but it has set up a working group to study the issue. In June 1994 a survey of members of the Tokyo Bar Association showed that the majority of Tokyo lawyers (61%) believe the death penalty should be abolished. They gave as their main reasons the possibility of a miscarriage of justice and humanitarian concerns.

There are some 50 organizations working for the abolition of the death penalty in Japan. Forum 90, a Amnesty International May 1995AI Index: ASA 22/03/95

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

coalition of non-governmental organizations (NGOs) working against the death penalty, was established in February 1990 by the Conference to Stop Executions, the Japanese Council of Crime and Delinquency, Lawyers Against the Death Penalty and Amnesty International's Japanese Section. Since 1990 it has tried to increase public awareness about the death penalty by holding public events, lobbying and generally taking an active part in the death penalty debate. Forum 90 has over 5,000 members, including a large number of parliamentarians and lawyers.

For many years Amnesty International has called for the abolition of the death penalty in Japan. In October 1983 Amnesty International published its first major document on the death penalty in Japan: *The Death Penalty in Japan (ASA 22/02/83)*. This report, based on the findings of a research visit to the country, was widely disseminated in Japan and throughout the world. The report concluded that there was no reason to retain the death penalty.

Over a decade later, in 1995, the need for abolition is more pressing than ever before. The death penalty is still a cruel and inhuman treatment, prisoners still spend decades under sentence of death and executions are still arbitrary. Since 1983 Amnesty International has published many other reports and appeals about the death penalty, including: *Japan, the death penalty and the need for more safeguards against ill-treatment of detainees (ASA 22/11/90)* issued in 1991.

Amnesty International's Japanese Section is a leading member of the abolitionist movement. Working alongside other abolitionist organizations in Japan, it has helped to keep the death penalty debate alive through an extensive program of publicity, campaigning and lobbying work.

6) CONCLUSIONS AND RECOMMENDATIONS

The death penalty is a denial of the fundamental right to life. It is the ultimate cruel and inhuman punishment. It has no unique deterrent value. It denies the possibility of rehabilitation. It may be inflicted on the innocent.

The way in which the death penalty has been inflicted in Japan exacerbates the cruelty of this punishment. Prisoners often spend decades under sentence of death, often in poor prison conditions with restricted access to the outside world. Those subjected to death sentences and executions include people over the age of 70 and people with mental illness.

Executions are carried out in secret without the prisoner being informed in advance and they appear to be carried out in an arbitrary fashion, upon the orders of the Minister of Justice. The difference between one prisoner who is executed and another who is not depends not only on the crime but also on the decision of the Minister of Justice. The evidence suggests that in recent years this decision has sometimes been based upon personal conviction or political expediency.

Prisoners under sentence of death who claim to have been ill-treated and denied access to lawyers during police questioning are being denied the opportunity for retrial. The current legal system makes it extremely difficult for prisoners to have their cases reviewed, and yet in five cases since 1983 prisoners who managed to obtain a retrial were acquitted. It is possible that other prisoners who are applying for a retrial, or whose application for retrial has been rejected, may be innocent.

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Public opinion polls commissioned by the government have been used to justify the continued use of capital punishment. But these opinion polls have not given the public a true picture of the death penalty and the way it is carried out in Japan. The death penalty is unnecessary and has not proved to be an effective deterrent. Studies throughout the world have shown that the death penalty is not a uniquely effective deterrent.

The death penalty has a brutalizing effect on all who are involved in the process. An execution can place a terrible burden on those who are required to carry it out and can present serious moral dilemmas.

On the basis of its extensive research on the subject of the death penalty in Japan and throughout the world, Amnesty International makes the following recommendations to the Japanese Government:

- ◆ All executions should cease permanently, no further death sentences should be imposed and all existing death sentences should be commuted.
- ◆ The death penalty should be abolished in law for all offences.
- ◆ Pending the commutation of all death sentences, the Ministry of Justice should ensure that the treatment of prisoners under sentence of death conforms to international human rights standards and does not exacerbate the already cruel, inhuman and degrading experience of being under sentence of death. In particular, the regulations and practices which permit long-term solitary confinement and which give detention authorities a wide scope to restrict access to outside visitors should be rescinded.
- ◆ The government should order an independent inquiry into reports of illegalities at the pre-trial stage, including reports of ill-treatment, coerced confessions and inadequate access to legal counsel.
- ◆ The Japanese Government should sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at worldwide abolition of the death penalty.
- ◆ In preparation for abolition of the death penalty, the Japanese Government should lead the death penalty debate by giving the public information about the use of the death penalty in Japan, including information provided by Amnesty International and other abolitionist groups.

7) CASE STUDIES

The following pages contain case studies of 10 prisoners under sentence of death in Japan. They are followed by a list of prisoners under finalized sentence of death. Amnesty International opposes the death penalty in all cases and is seeking the commutation of all death sentences in Japan.

The cases featured in this document are illustrations of the cruel and inhuman nature of the death penalty as a form of punishment. They are also intended to show cruel and arbitrary way in which this penalty has been inflicted in Japan.

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

HAKAMADA IWAO

Hakamada Iwao has been under sentence of death for 26 years. He may have been convicted unfairly, on the basis of a confession extracted under ill-treatment which may have amounted to torture. His family are concerned about his mental health because of his years of confinement under sentence of death.

Hakamada Iwao, aged 59, has been in prison for 28 years and under sentence of death for 26 years. He was once a boxer and then left sport to work in a miso (fermented soybean) plant in the city of Shimizu, Shizuoka Prefecture. He was arrested on 18 August 1966 on charges of murdering the managing director of the miso plant, his wife and two children and setting fire to their home.

Following his arrest Hakamada Iwao was reportedly held in a police cell for some 50 days. He was interrogated over a period of 23 days for periods lasting on average some 12 hours a day, with one period alleged to have lasted over 16 hours.

During interrogation he claims to have been denied food or water, refused access to a toilet, kicked and punched, his arms and ears were twisted and he was dragged by the hair. He also said he was subjected to sleep deprivation and denied access to medicine and medical treatment for a sinus and middle ear infection. He only met his lawyer three times during the interrogation period: on 22 August for seven minutes and on 28 August and 3 September for 15 minutes on each occasion.

According to his supporters Hakamada Iwao said:

"I was interrogated for an extremely long time, during which time I was not allowed to go to the toilet. I told them I urgently needed to have a bowel movement, but they said: 'We'll only allow you to go to the toilet if you say you did it. If you want to go, sign here'. When I said, 'No', they said, 'then do it right here on the floor. Sign, and we'll bring a potty for you to do it in right here.'"

In a letter to his sister on 15 March 1977 Hakamada Iwao said:

"I could do nothing but crouch down on the floor trying to keep from defecating. At that moment one of the interrogators put my thumb onto an ink pad, drew it to a written confession record and ordered me, 'write your name here!', shouting at me, kicking me and wrenching my arm. Thus, they robbed me of my signature."

Hakamada Iwao has consistently claimed that he was forced to confess to the charges of which he was convicted. 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 during the period he was under interrogation. All were submitted by the prosecution at his first trial before the district court - the court apparently accepted just one of the confessions. 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 applied for a retrial and had to wait 13 years for the result of his application - a rejection of which he received on 9 August 1994. His lawyers had submitted new evidence that reportedly
Amnesty International May 1995AI Index: ASA 22/03/95

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

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.

Hakamada Iwao and his lawyers have not given up; on 12 August 1994 they filed a further application for a retrial.

Hakamada Iwao is detained in Tokyo Detention Centre. He is said to be in poor health as a result of his long imprisonment.

◆ **Amnesty International is urging the Japanese Government to commute the death sentence imposed on Hakamada Iwao. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life.**

◆ **Amnesty International is calling on the Japanese authorities to order an investigation into reports that Hakamada Iwao was ill-treated during interrogation and forced to make a confession, factors which may have jeopardized the fairness of his trial.**

◆ **Amnesty International is concerned that Hakamada Iwao has spent 26 years under sentence of death. Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.**

ODA NOBUO

Oda Nobuo has been under sentence of death for 26 years. He may have been convicted after an unfair trial. Four applications for a retrial have been rejected.

Oda Nobuo, aged 47, was a car mechanic. He was sentenced to death by Fukuoka District Court on 24 December 1968 on charges of murder, robbery and arson. Oda Nobuo claims to be innocent of some of the charges against him. He says he did not know of his right to see a lawyer after his arrest and that during interrogation he was threatened and intimidated by police officers. During one interview they apparently told him that a surviving victim of an arson attack had implicated him. Later he told lawyers:

"It was unavoidable for me to confess under such coercion and intimidation. I thought that it would be all right to make a retraction during the trial, even after making a confession. I found out later that the victim died of smoke inhalation. If I had had advice from an attorney at the time, I believe I would not have confessed so readily."

An article in the *Asahi Shimbun* of 30 September 1983 reported a Fire Prevention Department official who said that "[the] investigation indicated that the fire [Oda Nobuo] was accused of having started may have been caused accidentally".

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Oda Nobuo's sentence was finalized by the Supreme Court on 12 November 1970. Between 1973 and 1978 he unsuccessfully requested a retrial four times. He is held in Fukuoka Detention Centre.

◆ **Amnesty International is urging the Japanese Government to commute the death sentence imposed on Oda Nobuo. It opposes the death penalty in all cases as the ultimate cruel and inhuman and degrading punishment and a violation of the right to life.**

◆ **Amnesty International is calling on the Japanese authorities to order an investigation into reports that Oda Nobuo was forced to make a confession and that this may have jeopardized the fairness of his trial.**

◆ **Amnesty International is concerned that Oda Nobuo has spent 26 years under sentence of death. Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.**

OKUNISHI MASARU

Okunishi Masaru is 68 years old and has been under sentence of death for 25 years. He may have been convicted after an unfair trial.

Okunishi Masaru was arrested on 2 April 1961 on charges of murdering five people and poisoning 12 others. He made a confession but retracted it on 24 April 1961 saying that it was made under duress while under interrogation by the Tsu District Public Prosecutor. At the time he did not know of his right to see a lawyer.

Okunishi Masaru was acquitted after his first trial in December 1964 on the grounds that there was insufficient evidence to prove that he carried out the crimes. But the prosecution appealed against this sentence and in September 1969 the Nagoya High Court sentenced him to death. His death sentence was finalized by the Supreme Court on 10 June 1972.

Okunishi Masaru has made five unsuccessful appeals for a retrial, the last of which was filed in May 1977 and rejected by the Nagoya High Court on 15 December 1988. His lawyers had apparently provided new evidence which cast doubt on the key evidence which was instrumental in Okunishi Masaru's conviction but the High Court ruled that this evidence was not sufficient to obtain a retrial.

In December 1988 his lawyers filed an appeal against the High Court's decision to reject a retrial, but this in turn was rejected by the Nagoya High Court in March 1993. Okunishi Masaru and his lawyers continue to appeal for a retrial.

Okunishi Masaru is detained in Nagoya Detention Centre.

◆ **Amnesty International is urging the Japanese Government to commute the death sentence imposed on Okunishi Masaru. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life.**

◆ **Amnesty International is calling on the Japanese authorities to order an investigation into reports that**

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Okunishi Masaru was forced to make a confession and that this may have jeopardized the fairness of his trial.

◆ Amnesty International is concerned that Okunishi Masaru has spent 25 years under sentence of death. Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.

TOMIYAMA TSUNEYOSHI

Tomiyaama Tsuneyoshi is 77 years old and has been under sentence of death for 28 years.

Tomiyaama Tsuneyoshi worked for a small manufacturing company making boxes. He was arrested in November 1963 on charges of murdering his wife's cousin to obtain insurance money. He was denied access to a lawyer during police questioning.

Tomiyaama Tsuneyoshi claims to have been wrongly convicted. His supporters have pointed to several discrepancies including testimony given to the courts by an insurance agent which, they maintain, was not taken into account. Tomiyaama Tsuneyoshi was sentenced to death by the Mito District Court on 24 December 1966 and his sentence was finalized by the Supreme Court on 1 April 1976. He applied for a retrial in April 1981 but three years later, in January 1984, it was rejected by the High Court. A further application for a retrial has been lodged.

Amnesty International is concerned that any indication that Tomiyaama Tsuneyoshi's trial may have been unfair should be fully investigated.

Tomiyaama Tsuneyoshi is detained in the Tokyo Detention Centre. He is only permitted to meet immediate family members. Pending a full retrial, Amnesty International is calling on the Japanese Government immediately to commute Tomiyaama Tsuneyoshi's death sentence, as a matter of humanitarian concern in view of his advanced age.

◆ Amnesty International is urging the Japanese Government to commute the death sentence imposed on Tomiyaama Tsuneyoshi. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life.

◆ Amnesty International is concerned about the 28-year detention under sentence of death of a 77-year-old man. In view of the advanced age of this prisoner, his sentence should be commuted immediately.

◆ Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.

OHAMA MATSUZO

Ohama Matsuzo is 66 years old and has been under sentence of death for 19 years. He

was reportedly suffering from mental illness at the time of his arrest.

Ohama Matsuzo was a carpenter and day labourer at the time of his arrest in 1975 on charges of murdering three of his neighbours. He is believed to have been suffering from mental illness at the time the crime was committed.

Ohama Matsuzo was sentenced to death by Yokohama District Court in October 1975. An appeal was lodged with the High Court by his lawyer based on psychiatric testimony by a court psychiatrist that Ohama Matsuzo was insane and was not responsible for his actions at the time he committed the murders. He had apparently said that he carried out the murders because he could not stand the noise of his neighbours playing the piano. At the time of the murders he was under psychiatric care for an obsessive sensitivity to noise. According to his lawyer, he believed the family were trying to kill him with their piano scale-playing and he had acted in self-defence.

Ohama Matsuzo withdrew his appeal in December 1976, despite his lawyer's objection. His lawyer filed an appeal against the withdrawal, but it was unsuccessful. On 11 April 1977 Ohama Matsuzo's death sentence was finalized by the High Court. When delivering its verdict the court apparently said that Ohama Matsuzo's wish to die was genuine. Ohama Matsuzo is detained in Tokyo Detention Centre.

◆ **Amnesty International is urging the Japanese Government to commute the death sentence imposed on Ohama Matsuzo. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life.**

◆ **Amnesty International is concerned at reports that Ohama Matsuzo was suffering from mental illness at the time the crime was committed and is urging the government to take these reports into account in deciding to commute his death sentence.**

◆ **Amnesty International is concerned that Ohama Matsuzo has spent 19 years under sentence of death. Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.**

AKIYAMA YOSHIMITSU

Akiyama Yoshimitsu is 65 years old and has been under sentence of death for 18 years. He may have been convicted after an unfair trial on the basis of a coerced confession.

Akiyama Yoshimitsu was arrested on 5 September 1975 and charged with the murder of a friend and factory owner and, with his brother Akiyama Taro, of stealing ¥10,000,000 to pay off debts. He claims to have been wrongly convicted.

Akiyama Yoshimitsu was held in a police cell during police questioning and denied access to his lawyer. There he claims to have been ill-treated and forced to make a confession. His supporters say that he was interrogated continuously for 12 hours on 5 September and for 16 hours on 6 September in the basement of the police station. Interrogators are said to have shouted, threatened and pushed him about. Later, when questioned at the Public Prosecutor's Office, Akiyama Yoshimitsu tried to retract his confession but was

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

intimidated by the presence of a policeman who reported what he had said to the police.

At the time of arrest Akiyama Yoshimitsu was in poor health. He was suffering from a head injury - the result of an assault in June/July 1975 for which he had been hospitalized. During questioning he complained of a headache and fatigue but his complaint was apparently ignored. On 12 September he was admitted to hospital suffering from a heart condition, but questioning resumed the following day. Akiyama Yoshimitsu told Tokyo District Court that he had been ill-treated and forced to make a confession. However, the court sentenced him to death on 16 December 1976 and his sentence was finalized by the Supreme Court on 17 July 1987. He is detained in Tokyo Detention Centre.

◆ **Amnesty International is urging the Japanese Government to commute the death sentence imposed on Akiyama Yoshimitsu. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life.**

◆ **Amnesty International is urging the authorities to order an investigation into reports that Akiyama Yoshimitsu was ill-treated during interrogation and forced to make a confession, factors which may have jeopardized the fairness of his trial.**

◆ **Amnesty International is concerned that Akiyama Yoshimitsu has spent 18 years under sentence of death. Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.**

ARAI MASAO

Arai Masao is 67 years old and has been under sentence of death for 18 years. He may have been convicted after an unfair trial.

Arai Masao, manager of a fish restaurant and sushi bar, was arrested on charges of murdering a man and his family after the former had refused to lend him money. He was denied access to a lawyer during police questioning and claims to have been forced to make a confession.

Arai Masao was sentenced to death by Yokohama District Court on 25 September 1976 and this sentence was finalized by the Supreme Court on 16 October 1990. The court's verdict was said to have been based largely upon Arai Masao's own confession. Supporters also point to a lack of material evidence and to the fact that Arai Masao is handicapped which would have made it very difficult for him to carry out the alleged crime.

In January 1991 Arai Masao applied for a retrial. He is currently imprisoned in Tokyo Detention Centre and his contacts with outsiders have been severely restricted.

◆ **Amnesty International is urging the Japanese Government to commute the death sentence imposed on Arai Masao. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life.**

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

◆ **Amnesty International is urging the authorities to order an investigation into reports that Arai Masao was forced to make a confession and that this may have jeopardized the fairness of his trial.**

◆ **Amnesty International is concerned that Arai Masao has spent 18 years under sentence of death. Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.**

HARUYAMA HIROMOTO

Haruyama Hiromoto is 60 years old and has been under sentence of death for 16 years. He may have been convicted after an unfair trial.

Haruyama Hiromoto, a machine operator, was charged with the rape and murder of two women and sentenced to life imprisonment by the Sapporo District Court on in June 1976. Three years later, in April 1979, the High Court reversed the decision of the lower court and sentenced him to death.

Haruyama Hiromoto was held in a police cell during interrogation. He is said to have been interrogated for 22 days, during which time he was not told of his right to contact with a lawyer. He did not see his court-appointed lawyer until he had been charged. During police interrogation he claims to have been shouted at, threatened and pushed about. He was also given very little food. During questioning he made some 30 confessions which he claims were made under duress and which were used as evidence.

At his High Court trial Haruyama Hiromoto told the court that he had been ill-treated during interrogation and forced to make a number of confessions. Haruyama Hiromoto had voluntarily presented himself for questioning at a police station about a different crime. It was during interrogation on this matter that he reportedly confessed to the rapes and murders.

The Supreme Court finalized Haruyama Hiromoto's sentence on 13 September 1990, 11 years after the appeal was made. The Supreme Public Prosecutor's Office was reported to have said that an inadequate report submitted by local police was the reason the appeal trial had been prolonged.

Haruyama Hiromoto is held in Sapporo Detention Centre. His lawyers are preparing to apply for a retrial.

◆ **Amnesty International is urging the Japanese Government to commute the death sentence imposed on Haruyama Hiromoto. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment.**

◆ **Amnesty International is urging the authorities to order an investigation into reports that Haruyama Hiromoto was ill-treated during interrogation and forced to make a confession, factors which may have**

Amnesty International May 1995AI Index: ASA 22/03/95

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

jeopardized the fairness of his trial.

◆Amnesty International is concerned that Haruyama Hiromoto has spent 16 years under sentence of death. Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.

NAGAYAMA NORIO

Nagayama Norio has been under sentence of death for 15 years. He was 19 years old at the time of his arrest. His trial and appeals lasted 21 years.

Nagayama Norio, aged 45, is a former coffee shop waiter. He was arrested in April 1969 and charged with armed robbery and the murder of four people. After a trial lasting some 10 years, Nagayama Norio was sentenced to death by the Tokyo District Court on 10 July 1979.

On 21 August 1981 at the High Court in 1981 his sentence was commuted to life imprisonment. The court's verdict was based on evidence indicating that Nagayama Norio had a mental age of less than 18 years at the time he committed the crimes and was not mentally responsible for his acts. The court also heard that he had repented and had contributed some ¥7,000,000 to the families of the four victims, part of the royalties he earned on six books he had written in jail. It also noted that the defendant was 19 years old at the time he committed the crimes, only a year older than the legal age limit for the imposition of a death sentence.

In an unusual step, the Tokyo Public Prosecutor's Office appealed to the Supreme Court and on 8 July 1983 the Supreme Court rejected the High Court's ruling. In March 1987 the High Court reversed its own decision and reinstated the sentence of death imposed by the district court.

Nagayama Norio's lawyers appealed to the Supreme Court against the reinstatement of the death penalty but on 17 April 1990 the Supreme Court rejected the appeal and the death sentence was finalized. In his summing up, the presiding judge is reported to have said: *"in the light of the nature of the crimes, their motives and results, and fully considering the childhood of the accused and his age at the time of the crime, I nevertheless cannot help but allow the death penalty to be upheld."*

Nagayama Norio, who was born in the northern island of Hokkaido, is said to have had an under-privileged childhood. Although almost illiterate when he was arrested, he has since become a student of philosophy and has published a number of books and poems which have achieved literary acclaim.

He is held in Tokyo Detention Centre.

◆ **Amnesty International is urging the Japanese Government to commute the death sentence imposed on Nagayama Norio. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life.**

◆ **Amnesty International is concerned that Nagayama Norio has spent 15 years under sentence of death. Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.**

ISHIDA TOMIZO

Ishida Tomizo is 73 years old and has been under sentence of death for 15 years. He is said to have been ill-treated during interrogation and may not have had a fair trial.

Ishida Tomizo, a construction worker, was arrested in October 1974 and sentenced to death for the murder of two women. He has denied some of the charges against him and may not have had a fair trial.

After his arrest Ishida Tomizo was reportedly held and interrogated in a police station for several months, during which time he claims to have been interrogated for long periods, denied the right to take regular exercise and coerced into making a confession. He did not know of his right to see a lawyer. Ishida Tomizo admits to one murder, but says it was not intentional. He denies involvement in the second murder.

Ishida Tomizo was sentenced to death by the Urawa District Court on 30 January 1980 and the sentence was finalized by the Supreme Court on 13 June 1989. He is held in Tokyo Detention Centre. In 1991 his lawyers applied for a retrial.

◆ Amnesty International is urging the Japanese Government to commute the death sentence imposed on Ishida Tomizo. It opposes the death penalty in all cases as the ultimate cruel, inhuman and degrading punishment.

◆ **Amnesty International is urging the authorities to investigate reports that Ishida Tomizo was ill-treated during police interrogation and that this may have jeopardized the fairness of his trial.**

◆ **Amnesty International is concerned about the 15-year detention under sentence of death of a 73-year-old man. In view of the advanced age of this prisoner, his sentence should be commuted immediately.**

◆ **Conditions of detention for prisoners awaiting execution are extremely harsh and may amount to cruel, inhuman and degrading treatment.**

TABLE 1: List of prisoners under finalized sentence of death

(Prisoners under finalized sentence of death who have exhausted their appeals and are awaiting execution. Dates are given as day/month/year)

Name, sex, age	Sentence finalized	Years under sentence of death	Other comments
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The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Akiyama Yoshimitsu (m), aged 65	17/07/87	18 years	Claims to have been ill-treated and denied access to lawyer during police interrogation and to have made a coerced confession.
Arai Masao (m), aged 67	16/10/90	18 years	Claims to have been denied access to lawyer and forced to make a confession. Applied for a retrial.
Daidoji Masashi (m), aged 46	24/03/87	15 years	Claims pressure was put on him not to request a lawyer. Application for retrial rejected. Visitors restricted to members of immediate family and lawyer.
Fujinami Yoshio (m) aged 63	09/09/93	12 years	
Fujii Masayasu (m) aged 52	13/10/89	18 years	Reportedly denied access to lawyers during police interrogation.
Fujioka Eiji (m), aged 39	27/05/83	12 years	
Fujiwara Kiyotaka (m), aged 45	17/01/94	8 years	
Hakamada Iwao (m) aged 59	19/11/80	26 years	Reportedly ill-treated during interrogation and denied access to lawyer. Retrial application pending for 13 years before rejection.
Hamada Takeshige (m), aged 67	08/03/88	13 years	Claims to have been denied access to a lawyer and forced to make a confession.
Haruyama Hiromoto (m), aged 60	13/09/90	16 years	Claims to have been denied access to lawyer, ill-treated and forced to make a confession. Supreme Court appeal lasted 11 years. Applied for retrial.
Hasegawa Toshihiko (m), aged 44	21/09/93	9 years	
Hidaka Nobuko (f), aged 48	14/10/88 (High Court)	8 years	Did not see a lawyer until after indictment.
Hidaka Yasumasa (m), aged 51	14/10/88 (High Court)	8 years	Claims not to have seen a lawyer for at least 13 days after arrest. Visitors restricted to members of immediate family and lawyer.
Hirata Naoto (m) aged 39	18/12/87	14 years	Claims not to have known of his right to see a lawyer and did not see one until after indictment. Visitors restricted to members of immediate family and lawyer.
Hirata Mitsunari (m), aged 58	23/10/88	14 years	Claims not to have known of his right to see a lawyer.

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

Ida Masamichi (m), aged 52	4/87	9 years	
Imai Yoshito (m), aged 54	29/11/85 (High Court)	10 years	Claims not to have known of his right to see a lawyer. Visitors restricted to members of immediate family and lawyer.
Ishida Mikio (m), aged 46	01/07/88	12 years	
Ishida Tomizo (m) aged 73	13/06/89	15 years	Claims not to have known of his right to see a lawyer and to have been ill-treated during police interrogation. Applied for a retrial.
Kanda Hideki (m), aged 40	20/11/89	8 years	Claims not to have known of his right to see a lawyer.
Kanakawa Hajime (m), aged 44	03/04/90	11 years	Reported to have had a mental age of less than 18 at time of the crime. Claims not to have known of his right to see a lawyer and to have been forced to make a confession.
Kimura Shuji (m), aged 44	09/07/87	13 years	Claims not to have known of his right to see a lawyer. Visitors restricted to members of immediate family and lawyer.
Makino Tadashi (m)	16/11/93		
Masunaga Toshiaki (m) aged 46	24/03/87	15 years	Visitors restricted to members of immediate family and lawyer.
Miyawaki Takashi (m)	3/94	5 years	
Morohashi Akie (f), aged 58	31/01/91	14 years	Claims not to have known of her right to see a lawyer.
Morikawa Tetsunori (m), aged 66	24/09/92	8 years	
Muratake Masahiro (m), aged 50	27/04/90	9 years	Claims not to have known of his right to see a lawyer.
Nata Kosaku (m), aged 44	29/09/92	10 years	Claims not to have known of his right to see a lawyer.
Nishio Tatsuaki (m), aged 58	28/03/89	14 years	Claims not to have known of his right to see a lawyer.
Nagayama Norio (m), aged 45	17/04/90	15 years	Aged 19 at time of crime and reported to have had a mental age of less than 18 years. Entire trial process lasted 21 years.
Nagata Hiroko (f), aged 49	19/02/93	12 years	Filed a lawsuit against the government for failure to provide her with proper medical treatment for a brain tumour.
Noguchi Satoru (m),	02/02/90	15 years	Claims not to have known of his right to

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

aged 47			see a lawyer
Oda Nobuo (m), aged 47	12/11/70	26 years	Reportedly ill-treated during interrogation and denied access to Lawyer. Four retrial applications rejected.
Ohama Matsuzo (m), aged 66	11/04/77 (High Court)	19 years	Reportedly suffering from mental illness at the time of the crime.
Okunishi Masaru (m), aged 68	10/06/72	25 years	Claims to have made a confession under duress and did not know of his right to see a lawyer. Five retrial applications rejected.
Omori Katsuhisa (m), aged 45	15/07/94	12 years	Reportedly ill-treated during police interrogation.
Ono Teruo (m), aged 56	16/06/81	16 years	Claims he was denied access to a lawyer.
Ota Katsunori (m), aged 49	10/12/93	10 years	
Sakaguchi Hiroshi (m), aged 47	19/02/93	12 years	
Sagawa Kazuo (m), aged 43	29/11/91	13 years	Claims that police discouraged him from seeing a lawyer. Visitors restricted to members of immediate family and lawyer.
Sasaki Tetsuya (m), aged 41	30/01/92	11 years	Claims not to have known of his right to see a lawyer and not to have seen a lawyer until after indictment.
Satoh Masashi (m), aged 57	18/02/92	14 years	
Sawachi Kazuo (m), aged 55	31/08/89 (High Court)	7 years	Visitors restricted to members of immediate family and lawyer.
Shimazu Shinji (m), aged 62	05/02/91	11 years	Claims not to have known of his right to see a lawyer.
Shinohara Tokujiro (m), aged 67	20/05/88	11 years	Visitors restricted to members of immediate family and lawyer.
Suda Fusao (m), aged 54	19/01/87 (High Court)	8 years	
Sugimoto Yoshiaki (m), aged 47	15/04/88	13 years	
Takada Katsutoshi (m)	7/94		
Takeyasu Yukihisa (m), aged 62	14/12/90	13 years	Claims to have been ill-treated during police questioning, to have confessed under duress and not to have known of his

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

			right to see a lawyer.
Tanaka Shigeho (m), aged 70	23/10/87	17 years	Claims he did not know of his right to see a lawyer
Tomiyama Tsuneyoshi (m), aged 77	01/04/76	28 years	Denied access to lawyer after arrest. Retrial application rejected. Visitors restricted to members of immediate family and lawyer.
Tsuda Akira (m), aged 53	11/06/91	9 years	Claims access to lawyer was discouraged by the police.
Ujikawa Tadashi (m), aged 43	08/12/89	16 years	Claims not to have known of his right to see a lawyer. Reported to have been addicted to drugs and to have had no recollection of his alleged crimes.
Watanabe Kiyoshi (m), aged 46	02/06/88	16 years	Claims not to have known of his right to see a lawyer.
Watabiki Makoto (m), aged 55	28/04/88	15 years	Claims not to have known of his right to see a lawyer. Visitors restricted to members of immediate family and lawyer.
Yokoyama Kazumi (m), aged 41	15/04/88	13 years	

TABLE 2: Executions in Japan, 1984 - 1994

YEAR	EXECUTIONS
1982	1
1983	1
1984	1
1985	3
1986	2
1987	2
1988	2
1989	1
1990	0
1991	0
1992	0

The Death Penalty: A Cruel, Inhuman and Arbitrary Punishment

1993	7
1994	2

TABLE 3: Number of defendants sentenced to death by courts of first instance, 1981 - 1992

Year	Total	Murder	Offence		
			Death caused in the course of robbery	Arson	Others
1981	2	1	1		
1982	11	5	6		
1983	5	2	2		1
1984	6	3	3		
1985	9	4	5		
1986	5	2	3		
1987	6	3	2	1	
1988	10	7	3		
1989	2	2			
1990	2		1		1
1991	3	1	2		
1992	1		1		

TABLE 4: Homicides: Reported Cases, Sentences, and Death Sentences, 1981 - 1992

Year	Homicides			Executions
	Reported Cases	Prisoners Sentenced	Prisoners Sentenced to Death	
1981	1754	902	1	1
1982	1764	891	5	1
1983	1745	1032	2	1
1984	1823	978	3	1
1985	1847	974	4	3
1986	1676	978	2	2
1987	1645	908	3	2
1988	1476	833	7	2
1989	1308	746	2	1
1990	1238	573	0	0
1991	1215	635	1	0
1992	1227	531	0	0