

EXTERNAL

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RESUMPTION OF EXECUTIONS

JAPAN

In March 1993, three men were executed in Japan, including one who is reported to have been suffering from mental illness and whose lawyer was preparing an appeal for a retrial. The executions, which are reported to have taken place in detention centres in Osaka and Sendai on 25 and 26 March, were the first in over three years and ended a *de facto* moratorium on executions which had lasted since late 1989. This moratorium had prevailed because two former Ministers of Justice had not consented to sign execution warrants, thus effectively suspending executions for the duration of their terms in office.

The three men who were executed were Tachikawa Shujiro, Kondo Seikichi and Kawanaka Tetsuo. It is Kawanaka Tetsuo who is reported to have been mentally ill and whose lawyer contends that he was executed in contravention of Japanese law (see below).

There is a growing abolitionist movement in Japan which includes a number of public figures and the March executions shocked those in Japanese society who are opposed to the death penalty. The moratorium on executions was broken when the then Minister of Justice Gotoda Mashura, who had taken office three months prior, signed the warrants; this appears to reflect the authorities' desire to see executions resume.

Over recent years the abolitionist movement has gained in strength and there has been lively debate on the death penalty. Public support for the total abolition of the death penalty has been expressed by a former Minister of Justice and a former Supreme Court judge. In addition, some 180 members of the Diet (Japan's Parliament) and a growing number of lawyers and academics have also given their support to the movement for abolition and a working party had been set up by the Japan Federation of Bar Associations to study the abolition of the death penalty.

Many expressed their concern at the March executions. Former Supreme Court judge, Dr Dando Shigemitsu, is quoted as saying: "I am greatly shocked. It's regrettable that executions have resumed just at a time when the idea of abolishing capital punishment had finally begun to spread in Japan."

The treatment of prisoners on death row

Prisoners on death row are strictly segregated within the prison and communication with the outside world is only via family and lawyers. Moreover, there are arbitrary restrictions even on these contacts. As a general rule, prisoners sentenced to death may meet only close relatives; the decision on levels of contact appears to be at the discretion of prison warders who also appear to exercise considerable discretionary power over the degree of isolation within the

prison itself. In some detention houses, prisoners are held in solitary confinement almost permanently, only rarely meeting fellow detainees.

Kawanaka Tetsuo

Kawanaka Tetsuo had been on death row for 13 years (the other two men executed, Tachikawa Shujiro and Kondo Seikichi, had been on death row for 15 and 23 years respectively). Although Japanese law prohibits the execution of prisoners suffering from mental illness, it appears that Kawanaka Tetsuo may have been mentally ill at the time of his execution, and his condition is said to have deteriorated in the months prior to execution. According to Kawanaka's lawyer, evidence of mental disturbance was apparent in letters received from the prisoner over the years and, in making inquiries to the prison authorities at Osaka Detention House, he was told by the prison doctor that Kawanaka was "on the verge" of becoming schizophrenic and was hallucinating. The lawyer states that Osaka Detention House personnel were fully aware of Kawanaka's state of mind; he was under some form of medical supervision and was exempted from punishment when he broke prison rules (for example, by shouting). Kawanaka's lawyer maintains that detention house doctors refrained from describing him as mentally ill as this would have prevented his execution.

Prior to the execution, Kawanaka Tetsuo had given his lawyer power of attorney to apply for a retrial, a fact of which the Osaka Detention House authorities were aware. It would thus appear that he was executed before all avenues for review or commutation of his sentence were exhausted and in contravention of the legal prohibition on the execution of the mentally ill.

Many countries with provision for the death penalty stipulate that the mentally ill shall not be executed and this is reflected in the United Nations' *Safeguards Guaranteeing Protection of those facing the Death Penalty* which states

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

Doctors and executions in Japan

Executions in Japan are by hanging and the law provides that they must take place within five days of the Minister of Justice having signed the execution warrant. There are no published regulations about the procedures surrounding executions and it is the Detention House authorities who are in charge of arrangements.

Under a 1947 order issued by the Head of the Correction Bureau, falling under the Ministry of Justice, a doctor is required to check the condition of the prisoner prior to execution and to make a medical report following the execution. Although not specifically written into law, it is believed that the current practice is for a doctor to be present at an execution to observe it and to determine when death has occurred.

Executions in Japan are carried out in secret and are not announced beforehand to the prisoner's family or lawyer. Prisoners themselves may not be informed of the impending execution until just a few hours before it is scheduled and they are thus unable to meet with their family beforehand. Only prison officials - in some cases including a prison doctor - witness the preparations for and the execution of the penalty. When unofficial news of the three March executions was leaked to the press, some of the death row prisoners held in the same prisons as those executed had to send telegrams to their relatives to confirm that they were still alive.

Amnesty International opposes the death penalty without reservation and believes that those working to preserve and promote health can play an important role in working for an end to

executions. In 1981 the World Medical Association passed a resolution against the involvement of doctors in executions. In the same year Amnesty International adopted a Declaration on the Participation of Doctors in the Death Penalty, which was later revised to include reference to other members of the health professions (see appendix). The requirement that in some countries doctors certify a prisoner as fit for execution, advise on, supervise or oversee an execution, has led the medical profession to look more closely at the role of their profession in capital punishment and, over the past decade, numerous international and national medical standards prohibiting medical participation in executions have been adopted.

Some 90 prisoners are currently believed to be under sentence of death in Japan, 58 of whom have had their death sentences confirmed by the Supreme Court. Japanese law provides for the death penalty for 17 offences although, in practice, it has since 1967 been imposed only for murder, usually in cases of multiple murder or homicide caused by explosives.

At least 13 of those under sentence of death are over 60 and four are in their seventies.

Amnesty International
Declaration on the Participation of
Health Personnel in the Death Penalty
(1981, 1988)

Amnesty International,

Recalling

that the spirit of the Hippocratic Oath enjoins doctors to practice for the good of their patients and never to do harm,

Considering

that the Declaration of Tokyo of the World Medical Association provides that "the utmost respect for human life is to be maintained even under threat, and no use made of any medical knowledge contrary to the laws of humanity",

Further considering

that the World Medical Association, meeting in Lisbon in 1981, resolved that it is unethical for physicians to participate in capital punishment,

Noting

that the United Nations' Principles of Medical Ethics enjoin health personnel, particularly physicians, to refuse to enter into any relationship with a prisoner other than one directed at evaluating, protecting or improving their physical and mental health,

Conscious of

the ethical dilemmas posed for health personnel called on to treat or testify about the condition of prisoners facing capital charges or sentenced to death, where actions by such personnel could help save the prisoner's life but could also result in the prisoner's execution,

Mindful

that health personnel can be called on to participate in executions by, *inter alia*:

- determining mental and physical fitness for execution,
- preparing, administering, supervising or advising others on any procedure related to execution,
- making medical examinations during executions, so that an execution can continue if the prisoner is not yet dead,

Declares

that the participation of health personnel in executions is a violation of professional ethics;

Calls upon

health personnel not to participate in executions;

Further calls upon

organizations of health professionals:

- to protect health personnel who refuse to participate in executions
- to adopt resolutions to these ends, and
- to promote worldwide adherence to these standards.

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This declaration was formulated by the Medical Advisory Board of Amnesty International in 1981 and revised in 1988 in the light of developments on the issue.

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To: Medical professionals
From: Medical Office / Research Department - Asia
Date: 5 November 1993

MEDICAL LETTER WRITING ACTION

**THE DEATH PENALTY IN JAPAN:
RESUMPTION OF EXECUTIONS IN 1993**

Keywords

Theme: Death penalty/ medical involvement/ medical care/ mental health/ execution

Profession/association: Doctors

Summary

In March 1993 three executions took place in Japan after three years which had seen a *de facto* moratorium on the death penalty. One of those executed is reported to have been mentally ill. Doctors are apparently in some cases present at executions and Amnesty International is seeking information on the attitude of the medical profession in Japan to this aspect of the death penalty.

Recommended Actions

Letters are requested from medical professionals:

■ *To the Japanese Medical Association*

- introduce yourself as a member of Amnesty International and state that you are writing to express concern at the resumption of executions in Japan after learning of three executions which took place in March this year
- expressing your concern at reports that one of those executed in Osaka - Kawanaka Tetsuo - is reported to have been mentally ill and was thus executed in contravention of Japanese law; further expressing concern that information about Kawanaka Tetsuo's mental state appears not to have been raised with Minister of Justice by any of the staff at Osaka Detention House, including the doctor/s under whose care he would have been

- noting that doctors are required to examine prisoners prior to execution
- seek information on attitudes within the medical profession in Japan towards capital punishment and ask whether there has been any debate on the death penalty or on particular ethical issues it raises for the medical profession (e.g. the presence of doctors at executions or the provision of medical care to prisoners on death row)
- letters could include some, although not necessarily all, of the following specific points
 - is a doctor always present throughout an execution or is death certified at some later stage?
 - is it the prison doctor who certifies death or a doctor from outside the prison service?
 - has the Medical Association adopted any resolution or issued any ethical guidelines for doctors with regard to the death penalty?
- seek information on the purpose of medical examination prior to execution

Your letter should be open and friendly and invite response

■ *To the Minister of Health and Welfare*

- introduce yourself as a member of Amnesty International concerned by the death sentences carried out in March, in particular that of Kawanaka Tetsuo, as above
- raise some of the specific queries listed above about the role of the doctor in procedures surrounding executions and about Kawanaka Tetsuo's execution
- ask the Minister to use whatever influence he has to positively influence any debate on the death penalty and in particular to make clear that health personnel should not participate in this punishment

■ *To the Minister of Justice, Minister of Home Affairs and Director of the Correction Bureau*

- introduce yourself as a health professional concerned by the death sentences carried out in March
- raise the case of Kawanaka Tetsuo and ask what information was made available to the Minister of Justice about his medical examination prior to execution; you could make reference to the UN guideline on execution of the mentally ill
- state that you are also writing to seek information on the conditions in which prisoners sentenced on capital charges are held, and information on the provision which is made for the medical care of death row prisoners
- acknowledge that the problem of violent crime in Japan needs, as elsewhere, an effective response, but politely suggest that there is no evidence to support the use of the death penalty as a solution to such problems

- noting that a number of public figures have spoken out in favour of total abolition of the death penalty and urging that serious consideration be given to ending the use of the death penalty in law

Addresses

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