

JAPAN

The Death Penalty: Summary of Concerns

The use of the death penalty in Japan is a major concern for Amnesty International. Some 90 people are currently imprisoned under sentence of death. Fifty-three of these sentences have been confirmed by the Supreme Court and the prisoners concerned can therefore be executed at any time. Six prisoners were executed in 1996 in conditions of extreme secrecy.

Some of those sentenced to death have been imprisoned for many years pending execution, often in total isolation. The oldest of these prisoners is now aged 80, and has spent 30 years in prison since he was sentenced. Other prisoners sentenced to death have died of old age in prison, often after spending more time in detention than if they had been given a life sentence. In most cases, these long periods of detention are caused by lengthy appeals procedures, by the lack of a formal pardons procedure, and by the fact that in many cases doubts have remained about the guilt of the accused.¹

The debate about the death penalty in Japan

Japan's Penal Code provides the death penalty for a range of offences, but in practice it is only used for murder. In recent decades a few prisoners have been executed virtually every year.

There were no executions between November 1989 and March 1993, partly because Ministers of Justice then in office were personally opposed to the death penalty, and partly because of an active abolitionist campaign. Because executions can only take place after the Minister of Justice has signed an execution order, the successive ministers' abstention from signing during that period had led to a *de facto* moratorium in its use. The moratorium ended in March 1993 when there were three executions, leading to widespread public protests by human rights organizations, religious groups and prominent figures. The moratorium had given hope to the abolitionist movement that the government would take steps towards abolition of the death penalty in law, but this did not happen.

Successive governments in Japan have failed to initiate a parliamentary debate about the death penalty, though a significant proportion of parliamentarians from a variety of political parties are abolitionist. Successive Ministers of Justice have generally made the fight against corruption their main priority, indicating that the role of the government in relation to the death penalty was to administer its use, but not to intervene in its discussion.

The situation of the prisoners sentenced to death

Conditions of detention are extremely harsh for those sentenced to death. Because they are technically "awaiting" execution, they do not have the same legal status as other prisoners, and therefore do not have the rights that other prisoners enjoy in areas such as visitation, correspondence, exercise, etc. In practice their fate depends on the policies imposed by detention centre directors. While in some detention centres these prisoners receive similar treatment to other prisoners, in other detention centres there are examples of very harsh treatment. Some prisoners sentenced to death have been held in almost complete solitude for years.

¹For further information about Amnesty International's concerns see report entitled: *Japan: the death penalty: a cruel, inhuman and arbitrary punishment* (AI Index: ASA 22/03/95), published in May 1995.

One of the striking aspects of the death penalty in Japan is the secrecy and arbitrariness which surround its use. These aspects appear to contradict the official justification for the death penalty, which is that the public wants the death penalty to be used and that it is necessary as a deterrent.

Prisoners whose death sentence has been confirmed by the Supreme Court are liable to be executed at any time, if and when the Minister of Justice signs the execution order. However it is impossible to know who among these prisoners will be the next execution victims. In the last few years, prisoners have been executed in groups of two or three on the same day, sometimes in different detention centres, and those executed seem to have been arbitrarily selected among prisoners awaiting execution. They were neither those who had been awaiting execution the longest, nor even those who had exhausted all possible avenues of recourse against execution. None of the non-governmental organizations in Japan has been able to explain the rationale behind the choices made by the Ministry of Justice, in secret and without any transparency or accountability to the public.

For its part, the Ministry of Justice justifies its refusal to give any public explanation through concern for the reputation of the relatives of those executed. However, these relatives are among the prime victims of the secrecy as they are kept ignorant of the execution orders and generally only find out that their relative has been executed by reading the press, or when they are told by detention centre officials that they can retrieve the body of the executed prisoner. As the authorities specifically avoid making any announcement prior to executions, the relatives of condemned prisoners never know, when they visit their relative in prison, whether their visit will be the last one.

Lawyers themselves remain uninformed of execution orders. Ministry of Justice officials have justified this policy of secrecy towards lawyers by telling Amnesty International that in their view, prisoners whose death sentence has been confirmed by the Supreme Court have, strictly speaking, no lawyer, because legal proceedings are over after the Supreme Court decision has been made. This official position overlooks the fact that many prisoners sentenced to death actually retain a lawyer beyond that point in the procedure, for example to apply for a retrial or pardon. In one recent case a prisoner who was mentally ill was executed even though his lawyer had applied for a retrial and had notified the authorities of the mental illness.

The secrecy surrounding executions causes permanent fear among prisoners sentenced to death and their families, fuelled in part by rumours and severe limits on communications. In March 1993, when three men were executed, the family of a fourth prisoner had to wait for several days to receive confirmation that their relative was still alive.

In December 1996, for the first time, the new Minister of Justice acknowledged that he had signed the warrant of execution concerning the three men hanged that month. However there was still no prior notice of the execution to the lawyers or relatives of the prisoners, and the identity of those executed was not officially made public

To Amnesty International's knowledge, there is no formal procedure for obtaining pardons, although in principle the Prime Minister is empowered to commute a death sentence. In the absence of a clearly defined legal procedure the government authorities have no legal obligation to reply within a given time to a petition sent by a prisoner or his/her lawyer, or to give reasons for refusals. There is no formal rule preventing executions from taking place while a petition is being considered.

Some examples of cruel and inhuman treatment

Some prisoners have spent decades under sentence of death, never knowing if and when they will be selected for execution. Amnesty International is concerned about their long detention in harsh conditions. In addition, it believes that some of these prisoners may have been convicted unfairly.

They include Tomiyama Tsuneyoshi, an 80-year-old man who has spent 30 years under sentence of death. Since April 1976 when his sentence was confirmed by the Supreme Court, he has lived with the constant fear of execution. Furthermore, Tomiyama was denied access to a lawyer after his arrest in 1963 and may have been convicted unfairly. Hakamada Iwao, aged 61, has spent 28 years under sentence of death. He claims that he was beaten and forced to make a confession during police questioning in August 1966 but there appears to have been no adequate investigation by the authorities. His application for a retrial took 13 years to be processed, and was then rejected. He has made a further submission for a retrial. Okunishi Masaru, aged 70, has spent 27 years under sentence of death. He was acquitted after his first trial in December 1964, but a higher court overturned this decision in 1969 and sentenced him to death. Since then, five applications for a retrial have been rejected.

The need for reform

In recent years successive Japanese governments have consisted of coalitions, often with thin parliamentary majorities, and ministers often appeared unable to impose reforms. The new government formed by Prime Minister Hashimoto Ryutaro in November 1996 has stated its commitment to reform the administrative structure. Amnesty International hopes that this commitment will include a change in official attitudes and current practice towards the use of the death penalty, the executions process and the treatment of those sentenced to death.

Amnesty International hopes that the Japanese Government will work towards abolition of the death penalty, and urges it to take the following steps:

Amnesty International opposes the death penalty in all cases, as a violation of the right to life and the ultimate form of cruel, inhuman and degrading punishment. The organization urges all governments which have not yet done so to abolish the death penalty in law. Pending abolition it urges governments to halt executions and to commute all existing death sentences.

- cease all executions, impose no further death sentences and commute existing death sentences;
 - initiate a public and parliamentary debate on the use of the death penalty;
 - order an investigation into the cases of prisoners under sentence of death who were reported to have been ill-treated and denied access to legal counsel during police questioning;
 - ensure that the conditions of detention of prisoners sentenced to death conform to international standards on the treatment of prisoners;
 - set up a formal procedure to handle pardons, ensuring that all decisions in relation to commutations of death sentences are made public, and that no execution takes place while a petition for commutation is pending;
 - end the secrecy surrounding executions and ensure that if an execution is ordered the relatives and the lawyer of the prisoner are informed in advance.
- ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at worldwide abolition of the death penalty.