

EXTERNAL

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MEDICAL CONCERN

Death penalty JAPAN

Nine prisoners have been executed in Japan over the past two years in conditions of secrecy. The condemned are only informed of the impending execution a few hours before it is to be carried out. The families only learn of the execution after the event. Several prisoners held under sentence of death -- in one case for 34 years -- were acquitted after a re-trial, and were released. Four prisoners have been under sentence of death for more than 20 years; two others have been under sentence of death for 19 years. These are among the longest periods of pre-execution detention in the world. In Japan execution is by hanging. The precise role of medical personnel in executions is not known to Amnesty International.

Background

Execution is provided as punishment for 17 crimes in Japan though in practice since 1967 it has been imposed only in cases involving murder: usually murder with robbery or abduction, or homicide caused by explosives. When a prisoner is charged with a capital offence, the case is usually prosecuted in a district court. A conviction can be appealed to a high court and to the Supreme Court. The death penalty is excluded for juveniles (under 18 years). Where a prisoner is insane or pregnant, executions must be staged until recovery of mental health or childbirth. The role of psychiatrists in carrying out this kind of task is under discussion within the medical profession in the USA where there are vigorous arguments being made that it is unethical to treat prisoners with the objective of rendering them fit for execution¹.

Failure to win an appeal in the Supreme Court "finalizes" the death sentence. However, if the convicted prisoner can discover new evidence or if evidence on which the conviction was based is proved false, procedures can be re-opened.

From November 1989 to March 1993 there was a de facto moratorium on executions. Then between March and the end of 1993 seven prisoners were put to death. There is no information available as to why these particular prisoners were selected for execution, nor for the timing of the executions. The choice seems arbitrary and underlines the stressful situation of all prisoners under sentence of death who have no way of knowing if and when they will be executed. Each day could potentially be their last. There are currently around 90 prisoners under sentence of death, 57 of whose death sentences have been finalized. They range in age from 21 to 77 and include four women.

¹See, for example, Bloche MG. Psychiatry, capital punishment and the purposes of medicine. *International Journal of Law and Psychiatry*, 1993; 16:301-57.

Conditions of imprisonment

Prisoners under sentence of death are strictly segregated within the prison and communication with the outside world is only via close family and lawyers. Moreover, there are arbitrary restrictions even on these contacts. As a general rule, prisoners sentenced to death may meet only immediate relatives; in some cases, adoptive relatives have not been permitted access to the prisoner. 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; in others a more liberal regime is in place.

When prisoners commit infractions of prison regulations, they can be removed to a "protection cell" (*hogobo*) where they are forced to observe strict rules regulating their posture and position within the cell; they have their arms bound round their bodies and are kept in this state during feeding and toilet activities.

Innocence

Menda Sakae was condemned to death in 1949 for the murder of a couple in late 1948. He applied for retrial six times before his application was accepted. In 1983 at his retrial he was acquitted -- 34 years after the initial death sentence.

Akahori Masao, then aged 25, was sentenced to death in 1958 on charges of rape and murder. He consistently claimed that he was innocent of the charges against him and that he only confessed under coercion during police questioning. Following the Supreme Court's confirmation of the death sentence in 1960, he filed three unsuccessful applications for a retrial. The authorities accepted his fourth application, filed in 1969, and the retrial began in October 1987. In January 1989 the Supreme Court acquitted him, ruling that his confession lacked credibility and that no other evidence linked him to the crime. He was 59 years old at the time of his acquittal and had spent more than 30 years under sentence of death.

Taniguchi Shigeyoshi was sentenced to death in 1952 and was acquitted in 1984 after 32 years under sentence of death. Saito Yukio was sentenced to death in 1957 and also acquitted in 1984 after more than a quarter of a century under daily risk of execution. Shimogami Norio was acquitted in July 1990 having been sentenced to death in 1975.

These cases raise the very real possibility that innocent people may have been executed in the past.

Long periods under sentence of death

Apart from those cases given above, current cases of concern include the following:

- Tomiyama Tsuneyoshi, aged 77, has been under sentence of death since 1966 -- for nearly 29 years. He has made two applications for retrial, one of which is still pending.

- Ishida Tomizo, aged 73, was arrested in October 1974 and sentenced to death in 1980 for the murder of two women. The sentence was finalised by the Supreme Court on 13 June 1989. In 1991 his lawyer applied for a retrial.

Both these prisoners would probably be excluded from execution if Japan modified its law in line with the resolution of the UN Economic and Social Council (ECOSOC resolution 1989/6) which recommended 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.

Some of the prisoners mentioned below could also come within the scope of an age limitation on executions if it were to be applied at an age between 60 and 70.

- Hakamada Iwao, aged 59, has been in prison since August 1966 and under sentence of death for 26 years. He is alleged to have confessed to the crime of murder under duress.

- Oda Nobuo, aged 47, was sentenced to death by Fukuoka District Court on 24 December 1968 on charges including murder. His sentence was finalized on 12 November 1970. He has made four unsuccessful attempts to request a retrial. He claims to be innocent of some of the charges against him.

- Okunishi Masaru, aged 68, was arrested on 2 April 1961 on charges of murdering five people and poisoning 12 others. He confessed but later retracted the confession saying that it was coerced. He was acquitted at his first trial in 1964 but the prosecution appealed this finding and in September 1969 the judge hearing the case in Nagoya High Court overturned the acquittal and sentenced him to death; the sentence was finalized by the Supreme Court in June 1972.

- Akigama Yoshimitsu, aged 65, was arrested on 5 September 1975 and charged with the murder of a friend -- a factory owner -- and, together with his brother, of stealing 10 million yen. He was sentenced to death in 1976 and the sentence was finalized in July 1987.

- Arai Masao, aged 67, was sentenced to death by Yokohama District Court on 25 September 1976. This sentence was finalized by the Supreme Court on 16 October 1990.

- Haruyama Hiromoto, aged 60, has been under sentence of death for 16 years. In 1976 he was sentenced to life imprisonment for the rape and murder of two women. However, in April 1979, the High Court reversed the sentence of the lower court and sentenced him to death.

- Nagayama Norio, aged 45, was arrested in April 1969 at the age of 19 and charged with armed robbery and murder. After a trial lasting ten years, he was sentenced to death by the Tokyo District Court in July 1979. In August 1981 his death sentence was overturned by the High Court and commuted to life imprisonment. However, the Tokyo Prosecutor's Office appealed to the Supreme Court and on 8 July 1983 the Supreme Court reversed the High Court's commutation and he was again sentenced to death. The death sentence was finalized in April 1990. His trial and appeals lasted 21 years.

- One of the longest-serving female prisoners under sentence of death is Morohashi Aki, aged 58, who has been awaiting execution for 14 years.

Mental illness

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. Whether there were grounds for his contention of an unfair trial will now never be determined. Kawanaka Tetsuo was examined in March 1993 by a doctor following concerns for his health. According to Kawanaka's lawyer, the prison doctor told him that the prisoner was on the verge of becoming schizophrenic; he was reported to be hallucinating. According to the lawyer, the Osaka Detention House personnel were aware of his mental state when he was executed in March 1993.

Horie Morio, sentenced to death in September 1988, developed symptoms of mental illness from March 1991. However he was only diagnosed as mentally ill when a psychiatrist outside the prison service who was designated by the Supreme Court was able to meet the prisoner and make an assessment. During the year between the first symptoms of mental illness and the certification by a

psychiatrist, Horiz Morio was punished for disregarding prison rules. He is still in prison awaiting execution.

Ohama Matsuzo, aged 66 years, was arrested in 1975 on charges of murdering three neighbours and sentenced to death in October of that year. His lawyer lodged an appeal with the High Court based on psychiatric testimony that the convicted man was insane and not responsible for his actions at the time of the murders. At the time of the murders he was under psychiatric care. Ohama Matsuzo withdrew his appeal in 1976 against the objections of his lawyer. In 1977 the death sentence was finalized. Ohama Matsuzo has been under sentence of death for 19 years.

Role of medical personnel

The secretive nature of death penalty practice extends to medical personnel. 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.

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. Nurses' and psychiatrists' associations have also condemned participation in executions.

Resolution on Physician Participation in Capital Punishment

(World Medical Association, 1981)

Following concern about the introduction of an execution method (lethal injection) which threatened to involve doctors directly in the process of execution, the WMA Secretary-General issued a press statement opposing any involvement of doctors in capital punishment. The 54th Assembly of the WMA, meeting in Lisbon some weeks after the issuing of the press statement, endorsed the Secretary-General's statement in the following terms:

Resolution on Physician Participation in Capital Punishment

Resolved, that the assembly of the World Medical Association endorses the action of the Secretary-General in issuing the attached press release on behalf of the World Medical Association condemning physician participation in capital punishment.

Further resolved, that it is unethical for physicians to participate in capital punishment, although this does not preclude physicians certifying death.

Further Resolved, that the Medical Ethics Committee keep this matter under active consideration.

Secretary-General's Press Release

September 11, 1981

The first capital punishment by intravenous injection of lethal dose of drugs was decided to be carried out next week by the court of the State of Oklahoma, USA.

Regardless of the method of capital punishment a state imposes, no physician should be required to be an active participant. Physicians are dedicated to preserving life.

Acting as an executioner is not the practice of medicine, and physician services are not required to carry out capital punishment even if the methodology utilizes pharmacological agents or equipment that might otherwise be used in the practice of medicine.

A physician's only role would be to certify death once the State had carried out the capital punishment.

Declaration on the participation of psychiatrists in the death penalty

(World Psychiatric Association, 1989)

The following declaration was adopted by the General Assembly of the World Psychiatric Association at its World Congress in Athens in October 1989.

Declaration on the participation of psychiatrists in the death penalty

Psychiatrists are physicians and adhere to the Hippocratic Oath "to practise for the good of their patients and never to do harm".

The World Psychiatric Association is an international association with 77 Member Societies.

Considering that the United Nations' Principles of Medical Ethics enjoins physicians - and thus psychiatrists - to refuse to enter into any relationship with a prisoner other than one directed at evaluation, protecting or improving their physical and mental health, and further,

Considering that the Declaration of Hawaii of the WPA resolves that the psychiatrist shall serve the best interests of the patient and treat every patient with the solicitude and respect due to the dignity of all human beings and that the psychiatrist must refuse to cooperate if some third party demands actions contrary to ethical principles,

Conscious that psychiatrists may be called on to participate in any action connected to executions,

Declares that the participation of psychiatrists in any such action is a violation of professional ethics.

Death Penalty and Participation by Nurses in Executions

(International Council of Nurses, 1989)

The International Council of Nurses adopted the following statement at its meeting of the Council of National Representatives in Seoul in May 1989. The text was last reviewed in 1991.

Death Penalty and Participation by Nurses in Executions

The ICN Code for Nurses² states that ... *inherent in nursing is respect for life, dignity and the rights of man* and further states that ... *the fundamental responsibility of the nurse is fourfold: to promote health, to prevent illness, to restore health and to alleviate suffering.*

The International Council of Nurses (ICN) has always fully supported the United Nations Declaration of Human Rights³ in which is established the right of the individual to life; and the right of the individual not to be subject to cruel, inhuman or degrading treatment (a right also upheld in the two ICN position statements: The nurse's role in safeguarding human rights⁴ and The nurse's role in the care of detainees and prisoners⁵).

Although many countries have abolished the death penalty, it still remains a legalized form of punishment in some countries. In a number of these countries, there has been an alarming increase in prisoners sentenced to death.

All efforts to regulate and humanize this form of punishment have thus far only created a vastly complicated, contradictory and ineffective legal and ethical morass.

ICN recognizes the responsibility of the nurse to a prisoner sentenced to death by the state continues until the actual execution procedure is initiated; and considers participation by nurses, either directly or indirectly, in the immediate preparation for and the carrying out of state authorized executions to be a violation of nursing's ethical code. ICN thus calls on national nurses' associations to work for the abolishment of the death penalty in all countries still practising this form of punishment.

²International Council of Nurses, Code for Nurses, Geneva, ICN, Adopted 1973, Reaffirmed 1989.

³United Nations, Universal Declaration of Human Rights, United Nations, Adopted 10 December 1948.

⁴International Council of Nurses, The Nurse's Role in Safeguarding Human Rights, Position Statement, Adopted 1983, Reviewed 1991.

⁵International Council of Nurses, The Nurse's Role in the Care of Detainees and Prisoners, Position Statement, Adopted 1975, Reviewed 1985 and 1991.

Declaration on the Participation of Health Personnel in the Death Penalty

(Amnesty International, 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.

--oOo--

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.

only

For action participants

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MEDICAL NETWORK ACTION

Death penalty JAPAN

Summary of concerns

Conditions of detention: prisoners are held in solitary confinement and in some prisons their conditions border on the cruel, inhuman or degrading.

Innocence: there have been five prisoners under sentence of death who, upon retrial have been acquitted. This includes one prisoner who had been under sentence of death for 34 years.

Length of detention: At least four prisoners have been under sentence of death for more than 20 years; two more have been under sentence of death for 19 years.

Execution of the aged: Japan has executed one 70 year old man in 1995 and holds three prisoners over 70 under sentence of death; a further 11 prisoners are aged between 60 and 70.

Mental illness: At least one mentally ill prisoner has been executed while in the process of organizing an appeal; other prisoners under sentence of death are said to suffer mental illness.

Secrecy: Prisoners, lawyers and families are not told when the execution will take place. Each day after confirmation of sentence potentially could be the day of execution.

Involvement of medical personnel: little information is available on the role of doctors in executions in Japan but it is believed that doctors examine prisoners before execution and witness it and it is implicit in the law that psychiatrists or other mental health professionals may be expected to attempt to render a mentally ill prisoner fit for execution.

Strategy

The action on the death penalty in Japan will involve death penalty groups and RAN groups. Medical groups will focus on the cruelty of the death penalty, both on the condemned prisoner and on their families, psychological aspects of the death penalty and on evolving standards with respect to the medical role in executions.

Recommended actions

Letters

Letters to the Prime Minister and the Minister of Justice should make the following points:

you are writing as a concerned health professional

you wish to express your deepest concern at the use of the death penalty in Japan

you should express alarm that at least five condemned prisoners were acquitted on appeal, one of these after 34 years under sentence of death, raising the possibility of past cases of executions of innocent people

you could suggest that to hold a person under sentence of death and to tell neither the prisoner nor his or her family of the date of execution subjects both to extreme suffering

you could point to the apparent arbitrariness of the carrying out of the sentence and suggest that this does not accord with fundamental principles of justice

finally you could condemn the severity of the punishment which is incompatible with penological principles and the values of an open society

Letters to the Minister for Foreign Affairs could make similar points to those above but stress the negative impact of the practice of the death penalty on Japan's image abroad.

Letters to Japanese Medical Association, Japan Society for Psychiatry and Neurology and Japan Nursing Association

Letters could outline JI's concerns about the death penalty in Japan and make the following specific points:

express deep concern at the use of the death penalty in Japan and at the conditions under which prisoners are held -- you could mention the fact that prisoners and their families are given no information about the date of the execution and the failure of the authorities to inform the family until after the execution

ask what role doctors/nurses/psychiatrists play with respect to the care of people held under sentence of death

ask what role doctors or other health professionals play during the execution

[to the **psychiatric** association] ask what advice the association would give to a psychiatrist asked to restore to health a condemned prisoner who cannot be executed because of mental illness

note that international standards of professional ethics prohibit medical, psychiatric and nursing involvement in the carrying out of the death penalty [see attached declarations]

note that the evolving ethical standards in the only other advanced economic power which still permits the death penalty -- the USA -- are strongly hostile to professional involvement

seek a response from the association

Letters to prison doctors in Japan

A very brief letter (to one or two addresses per group) could be sent to prison medical officers via the detention centres listed below. Letters could simply state your concern about the use of the death penalty in Japan, express concern about the position in which this places the prison doctor and seek information about the role of the doctor in the care of prisoners under sentence of death and during the execution. Do not make accusations against the prison medical staff -- we do not have information about the role they play.

Contacts with associations in your own country

Ask your associations to contact the JMA, JSPN and the JNA requesting information about their respective policies to executions in Japan. They could underline the apparent ad hoc procedures in selecting prisoners for execution and the impact this must have on the prisoner under sentence of death who never knows when his or her execution day will come. The Japanese associations should be asked for assurances that members are not participating in executions in breach of international ethics.

Publicity

The story of the death penalty in practice in Japan is an extraordinary one. Since Japan is one of the very few industrialised countries apart from the USA which still carries out executions, it makes an interesting

counterpoint to the well-known US practice. You could try to have published articles drawing on the attached paper as well as the main report *Japan: the death penalty: A cruel, inhuman and arbitrary punishment* (AIS/A 22/05/95).

Addresses

Government addresses

Prime Minister

Mr MURAYAMA Tomiichi
Office of the Prime Minister's Official Residence
1-1 Nagasaki
Chiyoda-ku
Tokyo 100
Japan
Fax: +81 3 3581 3883

Minister of Home Affairs

Mr NONAKA Hiromu
Minister of Home Affairs
Ministry of Home Affairs
2-1-2 Kasumigasaki
Chiyoda-ku
Tokyo 100
Japan

Minister for Foreign Affairs

Mr KONO Yohei
Minister of Foreign Affairs and
Deputy Prime Minister
Ministry of Foreign Affairs
2-2-1 Kasumigasaki
Chiyoda-ku
Tokyo 100
Japan
Fax: +81 3 3581 9442

Minister of Justice

Mr MATSUDA Isao
Minister of Justice
Ministry of Justice
1-1-1 Kasumigasaki
Chiyoda-ku
Tokyo 100
Japan

Addresses of professional associations and prison doctors

Japan Medical Association
2-28-16 Honkomagome
Bunkyo-ku
Tokyo 113
Japan
Tel: +81 3 3946 2121
Fax: +81 3 3946 6295

8-2, 5-chome
Jingumai, Shibuya-ku
Tokyo
Japan
Tel: +81 3 3400 8331
Fax: +81 3 3400 8336

Japan Society of Psychiatry and Neurology
Hongo Sky Building
3-38-11 Hongo
Bunkyo-ku
Tokyo 113
Japan
Tel: +81 3 3814 2991
Tel: +81 3 3814 2992

You could also write a limited number of letters to prison medical officers at the following detention centres:

Prison medical officer
c/- Tokyo Detention Centre
35-1-1 Kosuge 1-chome
Katsushika-ku
Tokyo
Japan

Japan Nursing Association

Prison medical officer
c/- Sendai Detention Centre
2-3-1 Kojo
Wakabagashi-ku
Sendai

982 Japan

c/- Osaka Detention Centre
2-5 Tomibuehi-cho, 1-chome
Toshima-ku
Osaka
Japan

c/- Hiroshima Detention Centre
2-6 Kami-Hachobori
Naka-ku, Hiroshima-shi
Hiroshima-ken
730 Japan

c/- Sapporo Detention Centre
484-1 Higashi-Inaho-cho
Higashi-ku
Sapporo
Japan

c/- Nagoya Detention Centre
1 Shirakabe, 1-chome
Higashi-ku
Nagoya
Japan

c/- Fukuoka Detention Centre
16-10 Hyakudo, 2-chome
Nishi-ku
Fukuoka, Japan

Copies: *Please send copies of your letters to :*

Amnesty International Japan
Sky Esta 2Fl
2-18-23 Nishi-Waseda
Shinjuku-ku
Tokyo 169
Japan

and the diplomatic representative of Japan nearest you.

<p>Please inform the IS (Medical Officer) of any responses you receive</p>
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