

**Submission to the Committee against Torture
50th session (May 2013)**

**by Center for Prisoners' Rights and International Federation
for Human Rights**

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Japan: current state of the death penalty

The death penalty

A. Facts and Figures

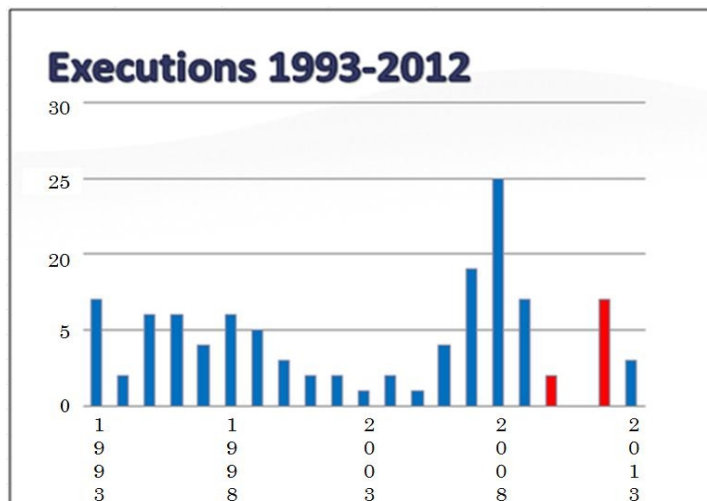
1. Since 2007 when the CAT reviewed Japan's report for the first time, Japan has executed 43 people, including one woman (Table 1). On August 30th, 2009, the Democratic Party of Japan (DPJ) won the general election and seized political power for the first time. Then, the Liberal Democratic Party (LDP) won the elections on December 16th, 2012 and became ruling party once again. Among the 43, 34 were executed by a LDP-led government, and 9 by the DPJ. Although no execution was carried out in 2011, on March 29th, 2012, Justice Minister Toshio Ogawa ordered the execution of three death row inmates. As a response to the growing death row population (Table 2), conservative voices within the LDP, as well as some media, have for the past months been calling for executions on regular basis. The current Justice Minister Sadakazu Tanigaki ordered executions of three inmates only two months after assuming office on December 26th, 2012. In 2012, Japan was part of the 21 countries which have carried out judicial executions in the world.

(Table 1) Changes in the number of executions

Year	Date	Execution	Annual total	Justice Minister	Prime Minister
2007	April 27	3	9	Jinen Nagase (LDP)	Shinzo Abe
	August 23	3		Jinen Nagase (LDP)	Shinzo Abe
	December	3		Kunio Hatoyama	Yasuo Fukuda

	7			(LDP)	
2008	February 1	3	15	Kunio Hatoyama (LDP)	Yasuo Fukuda
	April 10	4		Kunio Hatoyama (LDP)	Yasuo Fukuda
	June 17	3		Kunio Hatoyama (LDP)	Yasuo Fukuda
	September 11	3		Koji Yasuoka (LDP)	Yasuo Fukuda
	October 28	2		Eisuke Mori (LDP)	Taro Aso
2009	January 29	4	7	Eisuke Mori (LDP)	Taro Aso
	July 28	3		Eisuke Mori (LDP)	Taro Aso
2010	July 28	2	2	Keiko Chiba (DPJ)	Naoto Kan
2011	N/A	0	0	N/A	N/A
2012	March 29	3	7	Toshio Ogawa (DPJ)	Yoshihiko Noda
	August 3	2		Makoto Taki (DPJ)	Yoshihiko Noda
	September 27	2		Makoto Taki (DPJ)	Yoshihiko Noda
2013	February 21	3	3 (as of April 12)	Sadakazu Tanigaki (LDP)	Shinzo Abe

Red: Executions by DPJ
Blue: Executions by LDP



(Table 2) Death sentence and inmates on death row

Year	Finalized death sentences	Death sentence imposed at the first instances	Inmates with finalized death sentences at year end
1993	7	4	56
1994	3	8	57
1995	3	11	54
1996	3	1	51
1997	4	3	51
1998	7	7	52
1999	4	8	50
2000	6	14	53
2001	5	10	55
2002	3	18	57
2003	2	13	56
2004	14	14	66
2005	11	13	77
2006	21	13	94
2007	23	14	107
2008	10	5	100
2009	17	9	104
2010	9	4	111
2011	22	9	129

B. Resumption of executions

2. The Government of Japan did not execute anyone for 20 months from the execution carried out on 28 July 2010. However, the executions resumed on March 29th, 2012, following orders by new Justice Minister Toshio Ogawa. At a press conference, he said: "I simply performed my duty as a Justice Minister. The right to punish criminals rests on Japanese nationals, and a government poll shows the majority of Japanese support the death sentence," "Also, lay judge trials maintain the death sentence as a punishment, and lay judges are from the general public." As a result, in total 9 executions were carried out under the DPJ government.
3. After the change of government from the LDP to DPJ, the Minister of Justice Sadakazu Tanigaki took office. On February 2013 he carried out three executions less than two months after his nomination. He said at the press conference, "What is more important is not the international trend of abolition, but the fact that the death penalty is a domestic issue."
4. Two of the three inmates, Masahiro Kanagawa and Kaoru Kobayashi, did not exercise their rights of appeal and the other one, Keiki Kano, was originally sentenced to life imprisonment, which was repealed by the higher court.

C. Lay judge trial and the death penalty

5. In May 2009, the Act on Criminal Trials Examined under Lay Judge System was enacted and the new system of the Lay Judge, which was aimed at making more

people feel involved in the justice process and enhance trust of the public. So far, there has not been an increase in the number of death sentences, but it should be noted that the number of homicides has been decreasing since 2008. On the other hand, an apparent new tendency can be seen. Under the Lay Judge system, prosecutors have sought sentence of death for 24 defendants, and as of April 12, 17 defendants out of 24 have been sentenced to death. This means that in more than 70% of all the capital cases (70.83%), prosecutors achieved the death penalty. This is much higher than the corresponding rate of death sentences under the trials by professional judges only (from 1980 to 2009), which is 55.7%.

6. Furthermore, among 17 individuals sentenced to death, four defendants let their death sentences become final by withdrawal of appeals by themselves. Despite the repeated recommendations made by the Committee against Torture or the Human Rights Committee, the government of Japan has insisted that mandatory appeal system is not needed because most defendants exercise their rights of appealⁱ. However, not only the fact that four death sentences have already become final under the Lay Judge system, but also the fact that more than 30% of the prisoners
7. To reach the conclusion of the death sentence (and any other punishment), simple majority which includes at least each one from both professional judges and lay people is enough.

D. Human rights violations on death row

8. Despite the repeated recommendationsⁱⁱ by UN bodies, rights of death row inmates are strictly limited.
9. The new Prison Law which was enacted in 2007 provides that a death row prisoner shall be detained in a single cell and separated from the other prisoners day and night. Under the law, to make mutual contacts with other death row prisoners is possible, where deemed advantageous in light of the principle of treatment prescribed in paragraph (1) of Article 32, which provides that ‘upon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind’. However, actually the Ministry of Justice admits that such treatment has never been allowed.
10. Contacts with people outside prisons are also strictly restrained. Under the law, relatives of the inmate sentenced to death and people who have the special necessity to have contacts with death row prisonersⁱⁱⁱ have right to contact with them, but actually people other than family members are often not allowed to do so. As for others, the number of the outside people who are allowed to get in touch with a prisoner is limited to three to five, and even those who are allowed to exchange letters with a prisoner are not necessarily permitted to meet with a prisoner.
11. Meetings between prisoners and their legal representatives are usually observed by prison guards. On January 27th, 2012, Hiroshima High Court decided that having a meeting with his or her lawyers for a retrial case without attendance by a prison

guard is 'legitimate interest of the inmate sentenced to death' and unless there are special circumstances, a guard's attendance at such a meeting should not be allowed. Against this ruling, the government appealed to the Supreme Court and the case is still pending. Attendance at lawyers' meeting is still a common practice.

12. The idea underlying such inhumanely restrictive treatment is 'to maintain a peace of mind' as stipulated in Article 32. During the Diet session in which the new Prison Bill was discussed, the Ministry of Justice of the LDP-led government said that 'to maintain peace of mind' should not be interpreted as a tool for restriction of prisoners' rights, but should be used to give assistance to the prisoners. In practices, however, 'peace of mind' still works as a strong reason to restrict the prisoners' rights, especially rights to make contacts with outside. That is, the government explains that such contacts may disturb 'peace of mind' of prisoners who are facing death and therefore whose mental state is so unstable and vulnerable.
13. Pardon, commutation and reprieve for death row inmates have never been allowed even after the consideration of the government of Japan's previous CAT report in 2007.
14. In Japan, death row inmates are usually not informed of the date and time of execution until just an hour before it actually takes place. This practice gives great sufferings to inmates themselves as well as their families. Moreover, lack of prior announcement totally deprives inmates of the opportunities to challenge the legitimacy of executions.

E. The executions of persons with mental disability

15. The Code of Criminal Procedure prohibits the execution of an inmate in a state of insanity (Article 479 paragraph 1). However it is impossible to verify if it has been the case. Because even inmates themselves cannot get access to their own medical records, and the medical specialists outside of prison had not been admitted to visit them for medical examination.
16. But even after the examination by CAT in 2007, Japanese government has continued to execute those who suffered mental illness. Seiha Fujima, one of the three prisoners who were hanged on December 7th, 2007, was mentally ill and after the trial at the first instant court he was found legally incompetent by the Supreme Court. However, his death sentence became final and was carried out without any examination of his mental condition by the third party. On June 17th, 2008, Tsutomu Miyazaki was executed as well as two other inmates. Miyazaki was mentally ill and was receiving psychiatric treatment for schizophrenia in the detention center. Miyazaki's lawyer was preparing for filing a request of retrial and sent a letter which required the Justice Minister not to execute him. But two weeks after receiving the letter, the Minister executed Miyazaki without any examination on his mental condition. It seems that there are quite a number of death row prisoners who are suffering from serious mental illness but do not receive proper medical treatment, including Iwao Hakamada, who are widely believed to be actually innocent, Shoko

Asahara, a guru of Aum Shinrikyo cultist group and Matsuzo Ohama, who has been on death row since 1977, when he withdrew an appeal against the sentence of death and let his sentence become final. Government has failed to establish a review mechanism to identify death row inmates who may be suffering from mental illness, despite the Committee's serious concern expressed in the previous session in 2007. Danger of executing insane people is still remaining.

F. Recommendations to the Government of Japan:

The Government of Japan should:

- Introduce the moratorium officially and consider abolition of death penalty.
- Publicize information of the death penalty and ensure a prisoner on death row will be notified of date of his/her execution well before it actually takes place.
- Provide death row prisoners with more contact with the outside.
- Adopt a mandatory review and appeal system for capital cases.
- Review the current pardon system in order that the system can truly function for those facing death.
- Establish a review mechanism to identify death row inmates who may be suffering from mental illness.
- Impose unanimous verdict for any case of death sentence.

i Paragraph 1 of the reply to question 13 on page 18
REPLIES TO THE LIST OF ISSUES (CCPR/C/JPN/Q/5)
TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION
OF THE FIFTH PERIODIC REPORT OF THE GOVERNMENT OF JAPAN
(CCPR/C/JPN/5)
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/442/15/PDF/G0844215.pdf>

ii CCPR/C/JPN/CO/5[18 December 2008]
CAT/C/JPN/CO/1[3 August 2007]
CCPR/C/79/Add.102[19 November 1998]

iii
(Visitors)

Article 120 In cases where any of the persons listed in the following items requests to visit an inmate sentenced to death (except those having the status as an unsentenced person; hereinafter the same shall apply in this Division), the warden of the penal institution shall permit the inmate sentenced to death to receive the visit except the cases where it is prohibited pursuant to the provision of paragraph (3) under Article 148 or the provisions of the next Section:

- (i) A person who is a relative of the inmate sentenced to death;
- (ii) A person with the necessity to have a visit in order to carry out a business pertaining to personally, legally, or occupationally important concern of the inmate sentenced to death, such as reconciliation of marital relations, pursuance of a lawsuit, or maintenance of a business;
- (iii) A person whose visit is deemed instrumental to help the inmate sentenced to death maintain peace of mind.

(2) In cases where a person other than those listed in the items of the preceding paragraph requests to visit an inmate sentenced to death, if it is deemed that there is a circumstance where the visit is necessary for the maintenance of good relationship with the person or for any other reasons, and if it is deemed that there is no risk of causing disruption of discipline and order in the penal institution, then the warden of the penal institution may permit the inmate sentenced to death to receive the visit.

(Letters Permitted to Send or Receive)

Article 139 The warden of the penal institution shall permit an inmate sentenced to death (except those having the status as an unsentenced person; hereinafter the same shall apply in this Division) to send or receive the letters under the following items except where it is prohibited by the provisions of this Division, paragraph (3) of Article 148, and the next Section.

- (i) Letters the inmate sentenced to death sends to or receives from his/her relative;
- (ii) Letters which the inmate sentenced to death sends and receives in order to carry out a business pertaining to personally, legally, or occupationally important concern of the inmate sentenced to death, such as reconciliation of marital relations, pursuance of a lawsuit, or maintenance of a business;
- (iii) Letters deemed to be instrumental to help the inmate sentenced to death maintain peace of mind.

(2) The warden of the penal institution may permit an inmate sentenced to death to send or receive letters other than those listed in the preceding paragraph in cases where it is deemed that there is a circumstance where the sending or receiving is necessary for the maintenance of good relationship with the addressee, or for any other reasons, and if it is deemed that there is no risk of causing disruption of discipline and order in the penal institution.