

**Stakeholder's Information Report  
for the 14th session of the Working Group on the UPR – April 2012**

# **Prison and the Death Penalty in Japan**

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<sup>1</sup> Founded in 1922, FIDH is an international NGO defending all civil, political, economic, social and cultural rights, set out in the Universal Declaration of Human Rights. It acts in the legal and political field for the creation and reinforcement of international instruments for the protection of Human Rights and for their implementation. FIDH is a non-partisan, non-religious, apolitical and non-profit organisation. It currently has 164 member organisations.

<sup>2</sup> The Center for Prisoners' Rights (CPR) was established in March 1995 as the first Japanese NGO specializing in prison reform. CPR's goal is to reform Japanese prison conditions in accordance with international human rights standards and to abolish the death penalty. CPR is a member of the World Coalition Against the Death Penalty (WCADP), a correspondent member of the International Federation of Human Rights (FIDH) and the Anti-Death Penalty Asia Network (ADPAN).

# Part 1. Human Rights Violations in Prisons

## Introduction: Regressing Treatment of Sentenced Inmates

1. In May 2006, the Law Concerning Penal Institutions and the Treatment of Sentenced Inmates (hereinafter referred to as “the New Law”) was implemented, based on the fundamental principle of respecting human rights of sentenced inmates and providing support for their rehabilitation.
2. However, as time went by, practices reverted back to the treatment of inmates under the old Prison Law, trampling the principles of the New Law. This regressive trend is more clearly seen in the institutions detaining inmates whose inclination towards crime is deemed advanced, though it is also seen in other categories of institutions, suggesting that this is a nation-wide phenomenon.
3. In 2011, a review after 5 years of implementation was conducted, in accordance with the requirement prescribed in the New Law. However, not a single provision of the New Law was revised. Only minor amendments to the Ordinance for Enforcement of the New Law were made.
4. Described below are actual conditions under which the inmates are treated in Japanese penal institutions, in a way that goes against the spirit of the New Law, thus requiring drastic amendments to the New Law.

### A. The Board of Visitors for Inspection of Penal Institutions

5. By the New Law, the Board of Visitors for Inspection of Penal Institutions was established for all penal institutions including detention houses.  
The board is comprised of 4 to 10 'visitors' including attorneys recommended by the local bar association and doctors recommended by the local branch of the Japan Medical Association. The board is to advance its opinions and views with regard to the operation of the penal institution to its head at least once a year.
6. The members of the board are part-time national public officials and are provided with a per diem when attending meetings. However, the Ministry of Justice has budgeted only 6 days of per diem throughout the year (corresponding to 6 meetings a year). Some boards hold meetings almost every month and visit the institutions on a regular basis while others don't even hold the 6 meetings in a year and advance no opinions or no views to the head of the institution.
7. *The boards don't have their own secretariat*, so even for the most active boards, it is quite difficult to review the huge quantities of letters sent by the inmates and to conduct thorough investigations concerning the operational issues of the institution.
8. One Police Detention Facilities Visiting Committee was also established in each prefecture, in April 2007. However, in some of these committees, no attorneys are appointed, let alone the ones recommended by the local bar association. In 2011, the Fukushima Prefectural Public Safety Commission refused to appoint an attorney recommended by the Fukushima Bar Association.

**Recommendation:**

- **Japan should take necessary measures to ensure effective inspection by the Boards of Visitors.**

## **B. Health, Sanitation and Medical Treatment**

9. The areas of health, sanitation and medical treatment are some of the domains whose problems remain unsolved even with the New Law.

The root cause of the problem lies in the fact that *medical services rely on the security system in place in the penal institutions*. Security requirements are prioritized over anything else, making it extremely difficult to provide required medical services.

10. The lack of medical staff, of doctors in particular, is serious. As of April 2010, there were 12 institutions in Japan where there was no full-time doctor. Even 'full-time' doctors only work 3 days a week.<sup>i</sup>

As a result of the lack of doctors, assistant nurses are charged with the responsibility to judge the necessity and urgency of medical examination by a doctor. Since assistant nurses are themselves prison guards who acquired their qualification at the prison's medical facility, they have a natural tendency to prioritize security requirements.

Medical examination by a doctor is frequently deemed unnecessary, causing delay in medical attention, and resulting in symptoms that cannot be treated at the penal institution.<sup>ii</sup>

There are cases when even though medical facilities and treatment available at the institution are inadequate, the decision to transfer the inmate to an outside hospital is not made, leading to worsening symptoms, or even death. In February 2012, a male prisoner in his seventies detained at Toyama Prison died of disease because of the unreasonable delay in receiving medical treatment.

11. Since air conditioning in cells is available only in a few of the institutions, the danger of heat stroke in the summer and hypothermia in the winter is quite high, especially in solitary cells (including protection cells).<sup>iii</sup>

Fissured skin and chilblains are commonly seen among detainees, even in areas south of Tokyo, where the climate is milder during winter.

12. *The death by freezing of a male detainee at Kobe Detention House on 7 January 2006* epitomized the infringement of the detainees' rights to receive medical treatment. However, the numerous problems that were exposed by this incident remain unresolved, even after the enactment of the New Law.

The detainee (aged 29 at the time of the incident) had been complaining of cold and pain caused by ill health for more than 10 days prior to his death. On the day before his death, he was hardly able to move on his own and was taken to a solitary cell equipped with a security camera. Thereafter, he was brought to a doctor in a wheel chair. Even though he did not respond to the doctor's questions at all when he was examined, he was diagnosed as having no particular health problem and was placed back in the aforementioned solitary cell.

Many of the detention officials and assistant nurses, including those who monitored him via the camera, were observing his status. However, for the purpose of preventing condensation, a window of the cell facing outside was left partially open.

In the evening of that day, he vomited a lot but was left unattended. Only the soiled sheets were taken away. He eventually froze to death the following morning, when the temperature fell below zero degree Celsius.

13. In the same case, the bereaved family members filed a suit seeking redress from the State and on 8 September, 2011, the Kobe District Court made a ruling, ordering the State to pay a compensation of about 44 million yen. The ruling was finalized. Afterwards, the Ministry of Justice issued a notice regarding the prevention of hypothermia. However, the poor conditions of detention have not changed, nor has the medical treatment system been reviewed.

**Recommendations:**

- **Inmates should receive necessary medical treatment and live in a healthy and sanitary environment.**
- **Medical service should not be hindered as a result of security requirements.**

### C. Strict Discipline and Order

14. Along with the medical system, the issues concerning discipline and order were hardly reformed even with the New Law. In the past, solitary confinement was used with no clear criteria.<sup>iv</sup> The New Law clarified the criteria for “isolation.” As a result, the number of sentenced inmates who are given the treatment of complete isolation from other inmates for 24 hours a day has decreased dramatically.
15. However, many who do not meet the criteria for “isolation” are placed in solitary confinement, which is virtually the same as isolation, as they are designated, as part of a new classification system, as “type 4 of in the security categories” The only differences between this treatment and isolation are that on the one hand, there is a possibility for bathing and exercising with other inmates and on the other hand, that the concerned inmates can, in accordance with a special directive, come in contact with other inmates twice a month (which used to be once a month before the aforementioned review).

As of 10 October 2010, 2,755 are designated as type 4 in the security category, accounting for 4.4% of the total.

16. Strict rules continue to be imposed unchanged, even after the enactment of the New Law. At one time, the military style march by the inmates, when moving from the cells to the factory, was eased. However, in recent years, it has been reinforced. There is a restriction on the amount of water that can be used and the frequency of its use, which has a direct impact on hygiene.<sup>v</sup> The **Report of the Special Rapporteur on the human right to safe drinking water and sanitation, following a mission to Japan in 2010** (A/HRC/18/33/Add.3, page 15) mentions this issue. Furthermore, in 11 prisons located in the Western part of Japan, prisoners who work at factories inside prisons have to strip down and be completely naked as they are body-searched when they go to and from factories and cells. Such a practice, which is absolutely degrading and irrationally invades inmates’ right to privacy, should be abandoned immediately.

**Recommendation:**

- **Inhuman and abusively strict discipline and order, including the use of solitary confinement, should be lifted.**

## **D. Contact with the Outside World**

17. With the implementation of the New Law, the strict restrictions on contact with the outside world were temporarily eased, allowing the inmates to receive visits by and correspond with people other than their family members, relatives, and attorneys.<sup>vi</sup> However, thereafter, contact with the outside world has again been restricted. The restrictions are particularly severe in the institutions detaining people who were judged as having advanced inclination towards crime.
18. Gifu Prison, located in the Chubu province of central Japan, is one of the institutions where such restrictions are in place. Overthere, detainees are sentenced to 10 years or more of imprisonment, and are prohibited, in principle, any contact with the outside world other than with family members and relatives. Friends of inmates who were formerly allowed contact are now banned from having any exchange with the inmates. Several inmates are filing a lawsuit due to this.
19. A policy that permit visits only when there are circumstances under which communication by letters is insufficient is actually implemented nationwide. This applies to visits by attorneys as well. For instance, Chiba Prison asks attorneys representing inmates there to explain in writing the reason why visits are necessary in addition to communication by letters.
20. Even though the New Law prescribes that a staff member shall attend a visit only when it is deemed necessary, in reality, visits without attendance are limited to exceptional cases.  
Even *the visit by an attorney is attended by a guard* unless the inmate explains that the visit is for the purpose of consultation regarding the treatment he/she received in the institution where she/he is currently detained. Therefore, even if the visit is important for the inmate, if the case in question is about a private matter such as a divorce suit, staff member will always attend the visits.  
There are some cases where visits by members of the human rights protection committee of a bar association are attended by a guard, even though the visits are made for the purpose of investigating whether there are human rights violations by the institution.

**Recommendations:**

- **Japan should bear in mind that contact with the outside world is useful for the rehabilitation of prisoners. Unreasonable restrictions on communication should be lifted.**

## **E. Inadequacy of the Grievance Mechanism**

21. Under the New Law, a new grievance mechanism was established, namely, Application for Examination, Stating of Facts, and Filing of Complaints.

22. However, the former two systems require that the Application (or Stating of Facts) be made within 30 days and for any of the systems, application made by a representative is not permitted.  
Application for Examination can only be made for a limited range of measures. For instance, what can often be a serious problem, such as rejection of visits and rejection of delivery and purchase of articles, is not subject to such application.
23. The Application for Examination and Stating of Facts are to be made to the superintendent of the regional correction headquarters. When the headquarters determine that there are no illegal or unfair facts after conducting their investigation, then a request can be filed to the Minister of Justice within 30 days.  
If the Minister of Justice determines that such a filing is groundless and therefore should be dismissed, before the final decision is made, the Minister is to ask for advice to the Review and Investigation Panel on Complaints by Inmates in Penal Institutions, which comprises of 5 outside members. This final step is not stipulated in law.
24. However, the Panel does not have its own secretariat and therefore is unable to conduct its own investigation. Since the investigation is primarily based on what is provided in writing, it is extremely difficult for the Panel to reverse a decision made by the regional correction headquarters. Of the 217 cases examined in 2010, 2 cases were found by the Panel not to be dismissed (in other words, the request made by the inmate is found to be reasonable); 0 case out of 224 in 2011.
25. Even when the Panel determines that grievances are reasonable, its opinion is anyway not legally binding, which means that the Ministry of Justice may decide to dismiss the grievance as originally proposed. For instance, in 2010, of the 2 cases that the Panel issued the opinion that they should not be dismissed, only one was processed in accordance with the opinion of the Panel.

**Recommendation:**

- **The grievance mechanism should be reformed so that human rights violations can be effectively remedied.**

## **F. Unending Instances of Violence by Prison Officials**

26. In 2011, an official at the Tokyo Detention House was arrested for “violence or cruelty by special public officials.” He was indicted for causing violence to 3 sentenced persons, of which one was injured. In May 2011, he was convicted with a suspended sentence.  
The number of incidents for which he was indicted was limited. However, in the course of the trial, it was revealed that he repeatedly inflicted violence on many inmates for at least several years, hitting and kicking them almost daily. It also came to light that his colleagues knew about his violent behavior but none of them cautioned him or even reported his behavior to their hierarchy.
27. The incident was revealed because one victim spoke, with courage, to the detention house authorities immediately before parole. He was subjected to violence almost daily except for Saturdays and Sundays over a period of 10 months.  
The official managed to avoid being exposed for a long time by imposing silence on the victims.

He repeatedly made excuses for himself during his criminal trial by saying that he “went too far while trying to guide the inmates enthusiastically,” never reaching an understanding that his act was fundamentally wrong.

28. In 2009, an official of Fukushima Prison was arrested and convicted for forcing inmates in sexual intercourse.

In January, 2012, a ruling was finalized by the Supreme Court which determined that violence was used illegally resulting in injury caused to an inmate when he was brought under control by force in Gifu Prison in May, 2006.

**Recommendation:**

- **Japan should take necessary measures, including training of prison staff and disciplinary measures, to prevent violence against prisoners.**

## **G. Conclusion**

29. It has been 10 years since 2002, when it was revealed to the public that the lives of 2 inmates of Nagoya Prison were taken. It is unfortunate to say that even after such a sacrifice, the prison system today is operated in a way that seems to have abandoned the idea of penal reform.

30. One of the biggest factors is that the principle behind the treatment of inmates has not taken root among the officials working on the frontlines. The fundamental perspective is either completely lacking or weak to view the inmates as human beings whose rights are protected and who are, after leaving prison, to be reintegrated into society as its members.

31. The lack of this awareness is further driven by the fact that the number of correction staff members is few and they are overworked with the job of controlling the detainees. The ratio of detainees to prison official is above 4 to 1 in Japanese penal institutions, still at a high level. It is not an exaggeration to say that the prison officials on the front lines are single-mindedly working daily to prevent accidents such as prison escape, suicides, and violence among inmates, so that they can send the inmates out from one side of the walls to the other “uneventfully.”  
There is hardly any sense of pride or hope in their work as something that helps rehabilitate those that have committed crime.

**Recommendations:**

- **It is a fundamental premise for prison reform that the quality and quantity of prison officials be improved drastically. The training given to prison officials is substantially inadequate, and the whole system needs to be changed, starting with hiring practices.**
- **The current way of rigidly assigning inmates in large-scale centralized institutions, based only on the attributes of the inmates such as whether their inclination towards crime is advanced or whether their sentence is longer than 10 years, will have to be changed.**



## Part 2. The Death Penalty

### A. Facts and Figures

1. Since the last UPR session, Japan has executed 20 people (Table 1). On August 30 2009, the Democratic Party of Japan (DPJ) won the general election and seized political power for the first time. Among the 20 inmates, 15 were executed by the Liberal Democratic Party (LDP)-led government, and 5 by DPJ. Although during the year 2011, no execution was carried out, on March 29 2012, Justice Minister Toshio Ogawa ordered the execution of three death row inmates. As a response to the growing death row population (Table 2), voices among the conservative LDP and some media are calling for executions on regular basis.

**(Table 1) Changes in the number of executions**

Year	Date	Execution	Annual total	Justice Minister	Prime Minister
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	-	-	0		
2012 (As of March 31)	March 29	3	3	Toshio Ogawa (DPJ)	Yoshihiko Noda

**(Table 2) Death sentence and inmates on death row**

Year	Finalized death sentence	Death sentence imposed at the first instance	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. INDEX 2009 of Democratic Party of Japan (DPJ)**

2. Prior to the political change, the Democratic Party of Japan (DPJ) had announced its plan to review the death penalty system and consider a moratorium on executions, in a set of DPJ's policies called 'INDEX 2009'.
3. The following week, Mrs. Keiko Chiba was appointed as Justice Minister. She was a lawyer turned politician and had been known as a member of the Diet Members' for the Abolition of the Death Penalty, and also as the Secretary-General of the Amnesty Diet Members' League of Japan. However, she did not take any action to realize policies expressed in INDEX 2009 for the first 10 months.

## **C. Execution ordered by Minister Chiba and Study Panel**

4. On July 28, 2010, the first executions under the DPJ administration took place. At a press conference, Minister Chiba announced that she had ordered the executions of the two prisoners, both detained at Tokyo Detention Center and attended their executions, which was a first for a Justice Minister. On this occasion she said she would establish a Study Panel at the Justice Ministry to discuss the following items: a. approach to the issue of abolishing or retaining the system of the death penalty, b. issues related to the execution including the measure of noticing execution, c. providing information on executions; and allow news media to visit the execution chamber.
5. The Study Panel, established on August 6, 2010,, consisted of only members of the Ministry, i.e., Minister, Vice Minister, Parliamentary-Secretary for Justice and high-ranking officials of the Ministry.<sup>vii</sup> Coincidentally, the DPJ announced the establishment of a working group on the death penalty inside the party.
6. Since the establishment of the Panel, two meetings were held under Minister Chiba: one under her successor Minister Yoshito Sengoku and three under Minister Satsuki Eda. Every Minister said that he or she expected that this Panel would trigger national debate on the issue of the death penalty. However, the discussion at the panel never led to some sort of national debate.

## **D. Challenges faced by Hideo Hiraoka**

7. In September 2011, Hideo Hiraoka took office as Justice Minister. Soon after that, he said "some people say not signing off executions is sabotaging the duty of the Justice

Minister, but the minister also has the duty to consider how to handle the death sentence amid various international opinions on the subject.”<sup>viii</sup>

8. On October 17, 2011, at the 8th meeting of the MOJ’s Study Panel, which was the first one attended by Hiraoka, he showed a will to initiate a real ‘national debate’. For this purpose, he tried to refer the issue of the death penalty to the Legislative Panel of the Ministry, a body which considers issues which requires new legal system or amendment of related laws. However, the idea was denied by the officials at the Ministry.
9. Then Hiraoka planned to establish another panel on the death penalty, which is not an internal body of the ministry, but composed of various experts or stakeholders from outside the ministry. But just before its formal establishment, Hiraoka was replaced by Toshio Ogawa in early January 2012.

## **E. Pressure to push Minister Hiraoka out**

10. In fact, as the end of the year 2011 approached, Minister Hiraoka faced strong pressure not only from bureaucrats at the Ministry who adhered to retention of the death penalty, but also from the DPJ-led Cabinet.
11. On October 26 2011, at Diet session Chief Cabinet Secretary Osamu Fujimura said “the Cabinet has no plan to abolish the death penalty and it is the role of Justice Minister to sign off eventually after reflection. I’d like to say to Hiraoka that he should clearly express his own opinion (on the role of Minister)”. It is obvious that Fujimura, and of course Prime Minister Yoshihiko Noda as well, wanted to avoid any disputable issues in the Diet sessions and a de facto stay of executions was one of such issues targeted by the opposition party LDP.
12. Furthermore, on November 21, 2011, the death sentence of Seiichi Endo, a former leading member of Aum Shinrikyo Cult, who was found guilty of committing a series of serious crimes including the Tokyo Subway Gas Attack in 1995, became final at the Supreme Court. Thus a total of thirteen death sentences handed down to Aum Shinrikyo cultists including its guru, Shoko Asahara, were confirmed ultimately. The voices demanding an execution of Asahara were heard among the media and this brought another pressure on Hiraoka in the direction of approving executions.

## **F. Resumption of execution**

13. Since new Justice Minister Toshio Ogawa took office, he had clearly and repeatedly denied the possibility of continuing the stay of executions, by claiming that authorizing an execution is the Justice Minister’s responsibility, and expressed his intention to order executions. At the same time, Ogawa scrapped Hiraoka’s original idea to establish a special panel on the capital punishment. Two months after his inauguration, he announced the closure of the Study Panel. The Panel issued a report, which just summarized each hearing without any recommendation or conclusion.
14. Three weeks later, on March 29th 2012, he ordered the execution of three inmates who had been detained at Tokyo, Hiroshima and Fukuoka Detention Center. At the press conference, he said:

"I just 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."<sup>ix</sup>

15. It is notable that Prime Minister Noda also told a press conference that he has no plans to abolish the death penalty. He then said:  
"Taking into consideration a situation where the number of heinous crimes has not decreased, I find it difficult to do away with the death penalty immediately... I have no plans to abolish it." He also pointed out that 85.6 percent of citizens polled by the Cabinet Office were not in favor of the abolition of death penalty
16. After the executions, Ogawa announced that the three top officials at the Ministry, i.e., himself, vice Minister and Parliamentary Secretary, would have private deliberations on the execution method. It is reportedly said that the four key points to be discussed are whether the current execution method of death by hanging should be reviewed; whether to inform inmates of their executions the day before the scheduled time unlike on the morning of the same day as is currently the case; how to inform inmates' relatives of a completed execution; and finally, how to handle prisoners sentenced to death in case the death penalty is abolished.<sup>x</sup>
17. It is unclear whether they will really 'deliberate' on the issues because of secrecy. At the same time, as Minister Ogawa has repeatedly said that he would perform his 'duty as Justice Minister', executions will be approved during the deliberations. And regarding the period of deliberation, Minister Ogawa said that one year is too long, which suggests that in-depth research or discussion will not take place.

## **G. Public opinion**

18. As Minister Noda said, public opinion is always mentioned by government officials, but as a matter of fact, public opinion has never been properly measured by the government.
19. In February 2010, the Cabinet Office released the results of an opinion poll on the justice system including the issue of death penalty. Respondents were given three options from which to choose; 1st: the death penalty should be abolished unconditionally, 2nd: In some cases, the death penalty cannot be avoided. 3rd: I don't know/It depends. As a result, 85.6% people chose the 2nd option.  
Thus it cannot be said that over 85% people actively support the death penalty.
20. More importantly, Japanese citizens have never been provided with essential information on the system and the administration of death penalty in Japan. Even after Keiko Chiba allowed the media to visit an execution chamber at Tokyo Detention Center, almost all information other than the names and the detention places of the executed people has remained hidden to the public.<sup>xi</sup> Despite the recommendation made by the Human Rights Committee, the government has failed to disclose necessary information and has done nothing to "inform the public about the desirability of abolition."
21. Disclosure of information should be precondition and the first step to initiate the discussion. By stepping out from the total control of related information by the government, we would be able to gradually advance the level of discussion.

## **H. Lay judge trial and the death penalty**

22. Under the new system of the Lay Judge, which was introduced in May 2009, fourteen defendants have been sentenced to deaths.<sup>xii</sup> Among them, two death sentences have become final due to withdrawal of appeals by the defendants themselves, and the three sentences have been upheld at the High Courts.
23. Despite the repeated recommendations made by Committee against Torture or The Human Rights Committee, the government of Japan insists that mandatory appeal system is not needed because the most defendants exercise their rights of appeal. However, the fact that two out of the fourteen people tried at the lay judge courts did not exercise their rights is a compelling reason which requires the system of mandatory appeal.
24. 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. Until the abolition of the death penalty, unanimous verdict should be absolutely necessary for the sentence of death.

## **I. Human rights violations on death row**

25. Despite the repeated recommendations by UN bodies, rights of death row inmates are strictly limited.
26. 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.<sup>xiii</sup> However, actually the Ministry of Justice admits that such treatment has never been allowed.
27. Contacts with people outside prisons are also strictly restrained. 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.
28. 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.
29. The idea underlying such inhumanely restrictive treatment is 'to maintain a peace of mind' as stipulated in Article 32. The Ministry of Justice says 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.

## J. Conclusion

30. Recently Japan failed to step forward in the right direction, a de-facto moratorium on executions which could bring the country to the ultimate abolition, by hanging three inmates after 20-month-period without executions.
31. As far as the issue of the death penalty, the attitude of the government of Japan deserves the strongest denouncement. And UPR process is absolutely a precious opportunity which could convey the international voices to the Japanese society.
32. Now is the most crucial time for Japan to face the strong criticism from the international community. Voices from the world, which tend to be ignored by Japanese society, should be conveyed to the government so that they can change the government's attitude toward the death penalty.

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<sup>i</sup> Standard Minimum Rules for the Treatment of Prisoners (SMR) provides that at every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality (Rule 22(1)).

<sup>ii</sup> SMR provides that sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers (Rule 22(2)).

<sup>iii</sup> SMR provides that all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation (Rule 10).

<sup>iv</sup> Human Rights Committee says in its General Comment 20(44)(Art. 7, Torture or Degrading Treatment) 4/3/1992 that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.

<sup>v</sup> SMR provides that 'prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness' (Rule 15).

<sup>vi</sup> SMR also provides that prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits (Rule 37)

<sup>vii</sup> Other members are: Assistant Vice-Minister of Justice, Director-General of the Criminal Affairs Bureau, Director of the Legislative Division, Director of the General Affairs Division of the Bureau, Director-General of the Correction Bureau, Director of the General Affairs Division of the Bureau, Director of the Prison Service Division of the Bureau, Director-General of the Rehabilitation Bureau and Director of the General Affairs Division of the Bureau.

<sup>viii</sup> Minoru Matsutani 'Hiraoka urges "active" debate on executions', The Japan Times, 20 September, 2011

<sup>ix</sup> Minoru Matsutani 'Three hanged: executions are first since '10', The Japan Times, 30 March, 2012

<sup>x</sup> 'Ministry of Justice's top officials to hold non-disclosed death penalty Deliberations', *Mainichi Shimbun*, 10 April, 2012

<sup>xi</sup> Maiko Tagusari, 'Death Penalty in Japan' (2010), *East Asian Law Journal*

<sup>xii</sup> As of April 19, 2012

<sup>xiii</sup> Article 32: Upon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind.