

Japan's Compliance with The Convention on the Rights of Persons with Disabilities: The Death Penalty

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996,

The World Coalition Against the Death Penalty,

and

The Center for Prison Rights Japan

for the 27th Session of the Committee on the Rights of Persons with Disabilities

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The Advocates for Human Rights (The Advocates) is a volunteer-based nongovernmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The Center for Prisoners' Rights Japan (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 organization of the World Coalition Against the Death Penalty.

EXECUTIVE SUMMARY

1. This report addresses Japan's compliance with its human rights obligations under the Convention on the Rights of Persons with Disabilities and with regards to the death penalty. It considers issues individuals with psycho-social disabilities face in the Japanese criminal justice system, particularly as it concerns the Japanese government's continued sentencing and use of the death penalty. The Japanese government fails to provide accommodation to both defendants and individuals with disabilities already detained, leading to violations of their right to equal recognition before the law and to life; impairing their access to justice; and placing them at risk for torture, cruel or degrading punishment. Issues discussed in this report include the inadequate qualification and framework of what is considered to be "insanity" as a mitigating factor, the use of lay-judges that may not fully grasp the complexities of psychiatric evaluations, and the inadequate services and support given to persons with disabilities who are currently detained.

Japan fails to uphold its obligations under the Convention on the Rights of Persons with Disabilities

- I. The Japanese criminal justice system fails to support defendants who have psycho-social or intellectual disabilities, violating the right to equal recognition before the law (art. 12; List of Issues Paragraph 11), right to life (art. 10; List of Issues Paragraph 9), and impairing their access to justice (art. 13; List of Issues Paragraph 12)**
2. In Paragraph 11(b) of the 2019 List of Issues, the Committee requested information regarding the measures the Japanese government has taken to support the exercise of legal capacity by persons with disabilities.¹ In Paragraph 12(c) of the List of Issues, the Committee requested that the Japanese government provide information on measures being taken to ensure persons who are suspected of committing crimes and who have intellectual or psycho-social disabilities are able to gain access to justice without discrimination.²
3. The Japanese Government identified the 2018 revision of the Comprehensive Legal Support Act as a measure that provides legal consultations for persons with cognitive disabilities.³ It noted that the Guidelines Promoting the Elimination of Discrimination on the Basis of Disability in the Courts call on judges to consider individuals' disabilities throughout court proceedings, and use at their discretion to provide various accommodations.⁴
4. Research has shown that persons with psycho-social disabilities are at an increased and particular risk of being put to death, exacerbated by issues of engaging with legal counsel,

¹ Committee on the Rights of Persons with Disabilities, *List of issues in relation to the initial report of Japan* (Oct. 29, 2019), U.N. Doc. CRPD/C/JPN/Q/1, ¶ 11.

² Committee on the Rights of Persons with Disabilities, *List of issues in relation to the initial report of Japan* (Oct. 29, 2019), U.N. Doc. CRPD/C/JPN/Q/1, ¶ 12.

³ Committee on the Rights of Persons with Disabilities, *Replies of Japan to the list of issues in relation to its initial report* (June 8, 2022), U.N. Doc. CRPD/C/JPN/RQ/1, ¶ 50.

⁴ Committee on the Rights of Persons with Disabilities, *Replies of Japan to the list of issues in relation to its initial report* (June 8, 2022), U.N. Doc. CRPD/C/JPN/RQ/1, ¶ 55.

decisions to abandon appeals, and difficulties in expressing remorse during trial.⁵ It has been suggested that there is a lack of effective safeguards in Japan for individuals with severe psycho-social disabilities, which does not eliminate the heightened risk of being sentenced to death.⁶

5. The Japanese Penal Code mandates mitigation for acts of diminished capacity and authorizes discretionary mitigation in extenuating circumstances.⁷ Japanese law also prohibits carrying out the death penalty against people who are in a state of “insanity,” which is not consistent with the CRPD.⁸
6. There is no independent mechanism to examine “insanity” at the executing stage, but at the sentencing stage the Japanese courts have been developing the practice to decide mental capacity and criminal liability.
7. Japanese government’s continued execution of persons with disabilities ⁹¹⁰Under the MTSA, however, such individuals may only be referred to the MTSA procedure to determine further mental health treatment if the court concluded that the offender was “insane” or of diminished capacity, which is inconsistent with the CRPD.¹¹ courts remove the opportunity for these individuals to receive mental health care and services under the MTSA.
8. For more information about specific cases of executions, including those of Mr. Seiha Fujima, Mr. Tetuo Kawanaka and Mr. Shoko Asahara, please see attached Annex.

9. Suggested recommendations

- Abolish the death penalty and replace it with a sentence that is fair, proportionate, and respects international human rights standards.
- In the interim, establish an official moratorium on executions effective immediately, and direct all judges to cease sentencing people to death, including persons with disabilities.
- To the extent that Japanese law and practice take into account a defendant’s psycho-social or intellectual disability during criminal proceedings and at the time of

⁵ Amnesty International, “Japan: Stop the execution of mentally ill prisoners,” accessed Jul. 15, 2022, <https://www.amnesty.org/en/latest/press-release/2009/09/japan-stop-execution-mentally-ill-prisoners-20090910/>; Hiroko Kashiwagi and Naotsugu Hirabayashi, *Death Penalty and Psychiatric Evaluation in Japan*, 9 Front Psychiatry 550, 4 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6224490/>

⁶ Human Rights Council, *Summary of Stakeholders’ Submissions on Japan* (Aug. 23, 2017), U.N. Doc. A/HRC/WG.6/28/JPN/3, ¶ 56.

⁷ Penal Code Art. 66.

⁸ Act on Criminal Trials with the Participation of Saiban-in, Act No. 63 of 2004, as amended by Act No. 44 of 2009, Art. 2; Takayuki Okada, “The Forensic Mental Health System and Psychopaths in Japan” ed. Alan R. Felthous and Henning Saß, in *The Wiley International Handbook on Psychopathic Disorders and the Law*, 2nd edition (Hoboken: John Wiley & Sons Ltd, 2020), 363.

⁹ The Medical Treatment and Supervision of Persons with Mental Disorders Who Caused Serious Harm (2005)

¹⁰ Takayuki Okada, “The Forensic Mental Health System and Psychopaths in Japan” ed. Alan R. Felthous and Henning Saß, in *The Wiley International Handbook on Psychopathic Disorders and the Law*, 2nd edition (Hoboken: John Wiley & Sons Ltd, 2020), 367.

¹¹ Takayuki Okada, “The Forensic Mental Health System and Psychopaths in Japan” ed. Alan R. Felthous and Henning Saß, in *The Wiley International Handbook on Psychopathic Disorders and the Law*, 2nd edition (Hoboken: John Wiley & Sons Ltd, 2020), 367; Chiyo Fujii, Yusuke Fukuda, Kumiko Ando, Akiko Kikuchi, and Takayuki Okada, *Development of forensic mental health services in Japan: working towards the reintegration of offenders with mental disorders*, International Journal of Mental Health Systems 8:21, 2-4 (2014).

punishment, ensure that the judicial system provides such accommodations consistently and regardless of the crime with which the defendant is charged.

II. The Japanese Government does not accommodate persons with disabilities currently in detention, placing them at risk of torture and cruel, inhuman, and degrading treatment (art. 15; List of Issues Paragraphs 14 and 15)

10. In its 2019 List of Issues, the Committee requested Japan provide information as to measures taken to regularly provide awareness-raising campaigns on the rights of persons with disabilities, including training programs for law enforcement officers such as police and prison guards.¹²
11. The Japanese Government responded that training for prison guards is provided from a human rights perspective with regard to persons being deprived of liberty in correctional facilities. This is done through lectures and self-training courses that use role-play to simulate situations concerning the treatment of inmates.¹³
12. Japanese prisons remain ill-equipped and understaffed to meet the support needs of persons with psycho-social disabilities who are in detention,¹⁴ and continue to provide inadequate medical and mental health care.¹⁵ This leads to a blanket application of broad policies that fail to consider the unique circumstances and individual needs of persons with disabilities in detention.¹⁶ Prison officials are reportedly more likely to punish persons in detention with disabilities for disciplinary infractions due to their behavior.¹⁷
13. Persons on death row with disabilities are also at risk for mental health crises due to prisons' widespread practice of not informing individuals of their execution until the day of their execution; individuals in solitary confinement with disabilities also are at risk of mental health crises.¹⁸ This has been shown to violate the right to mental health and have involved symptoms such as hallucinations and delusions.¹⁹

14. Suggested recommendations:

¹² Committee on the Rights of Persons with Disabilities, *List of issues in relation to the initial report of Japan*, (October 29, 2019), U.N. Doc. CRPD/C/JPN/Q/1, ¶ 11

¹³ Committee on the Rights of Persons with Disabilities, *Replies of Japan to the list of issues in relation to its initial report Annex 1* (May 31, 2022), U.N. Doc. CRPD/C/JPN/RQ/1

¹⁴ Nippon Communications Foundation, "Behind Bars in Japan: Fighting to Improve Prison Conditions and Inmate Treatment," accessed Jul. 3, 2022, <https://www.nippon.com/en/japan-topics/c05404/behind-bars-in-japan-fighting-to-improve-prison-conditions-and-inmate-treatment.html>

¹⁵ U.S. Department of State Bureau of Democracy, Human Rights and Labour, *Japan 2021 Human Rights Report*, accessed Jul. 12, 2022, 2, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/japan/>

¹⁶ Nippon Communications Foundation, "Behind Bars in Japan: Fighting to Improve Prison Conditions and Inmate Treatment," accessed Jul. 3, 2022, <https://www.nippon.com/en/japan-topics/c05404/behind-bars-in-japan-fighting-to-improve-prison-conditions-and-inmate-treatment.html>

¹⁷ Amnesty International, *Amnesty International, Japan: Hanging by a thread: Mental health and the death penalty in Japan*, ASA 22/005/2009, Sep. 10, 2009, 37, <https://www.amnesty.org/en/documents/asa22/005/2009/en/>

¹⁸ Asia Pacific Human Rights Information Center, "精神・知的障がい者と死刑—死刑執行停止の必要性と課題—," accessed July 3, 2022, <https://www.hurights.or.jp/archives/newsletter/section3/2015/01/post-269.html>

¹⁹ Asia Pacific Human Rights Information Center, "精神・知的障がい者と死刑—死刑執行停止の必要性と課題—," accessed July 3, 2022, <https://www.hurights.or.jp/archives/newsletter/section3/2015/01/post-269.html>

- Train correction facility staff on how to support persons with psycho-social disabilities during times of disciplinary infractions.
- Enact policies regarding how staff should care for persons with disabilities and ensure they are separate and distinct from existing policies that fail to consider the support needs of persons with disabilities.
- Take concrete measures to improve conditions in prisons for persons with disabilities, including people on death row, in accordance with the Nelson Mandela rules.
- Ensure that adequate mental health services are provided to all persons on death row and that persons with disabilities currently on death row are supported according to their level of support needs.

ANNEX

Death Penalty in Japan: Lack of Transparency

This report is submitted by the World Coalition against the Death Penalty and the Center for Prisoners' Rights Japan for the report of the Secretary-General on the question of the death penalty pursuant to resolution 42/24 adopted by the Human Rights Council on 27 September 2019, paying specific attention to the consequences of the lack of transparency in the application and imposition of the death penalty on the enjoyment of human rights. This report examines the lack of transparency in Japan's death penalty.

The World Coalition Against the Death Penalty (WCADP), an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

The Center for Prisoners' Rights Japan (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 organization of WCADP.

1. Japan has continued executions almost every year, while it did not do so during the year 2020 – the year of COVID-19 pandemic - for the first time in the past nine years. Despite the global trend toward abolition, [a recent survey](#) shows that more than 80% supports death penalty in Japan. Backed with this overwhelming public support, the government has refused to change its policy on death penalty. Nevertheless, it should be noted that the public does not have access to the necessary information on executions – especially mental state of people on death row - as a result of rampant secrecy.

2. Continuing executions against people with psychological or intellectual disabilities

It has been reported that some people sentenced to death in Japan are executed in spite of their mental illness. The execution of those who are unaware that their lives will be lost as a result of judicial process is not only meaningless as a punishment, but also against justice. The UN Human Rights Committee (HRC) states in its General Comment No. 36 that state parties should refrain from executing persons who have a diminished ability to understand the reasons for their sentence. Article 479 of the Japanese Code of Criminal Procedure (CCP) therefore stipulates that "If a person sentenced to death is in a state of insanity, the execution shall be suspended by order of the Minister of Justice." Nevertheless, some people on death row like Tetsuo Kawanaka and Seiha Fujima have been said to be executed despite the strong suspicion of their mental health condition.

*Seha Fujima*²⁰ was accused of killing a total of five people from 6 October 1981 to 5 June 1982. The Yokohama District Court sentenced him to death on 10 March 1988. On appeal court, he withdrew his appeal and the High Court declared the trial closed, but his defence counsel brought a special appeal to the Supreme Court. In June 1995, the Supreme Court ruled that the withdrawal of the appeal was invalid, perceiving that the withdrawal was attributed to his deteriorating mental health condition. Then, the trial resumed at the Tokyo High Court. The High Court found that his abnormal behaviour after the indictment was due to his deteriorated mental health caused by a prolonged detention, but upheld the death sentence of the District Court. The subsequent Supreme Court also upheld the death sentence. At the appellate court, the defence counsel argued that the prolonged detention had caused a mental health condition and that he did not even understand the meaning of the punishment.

*Tetsuo Kawanaka*²¹ was indicted for robbery and murder. Although he was with intellectual disability in the first trial, he was sentenced to death, and the death sentence was finalized in 1984. He showed signs of hallucinatory delusions throughout his trial, but was executed in 1993. After the execution, his lawyer released a statement protesting that he had a mental health condition and was preparing to request a retrial. According to his lawyer, he had also been diagnosed as suffering from schizophrenia by the detention house.

Apart from the above two people, the Japan Federation of Bar Associations (JFBA) released a recommendation calling on the government to halt executions of eight people sentenced to death for suspected psychosis on 18 June 2018. Among those was Syoko Asahara, a founder of the Aum Shinrikyo cult group which had committed a deadly chemical attack in 1995. Yet, the government committed mass executions against members of Aum Shinrikyo including the founder in July 2018.

At a press conference after the executions, the Justice Minister declined to answer a question about the founder's mental health condition, stating that the question concerned an individual execution

²⁰ CrimeInfo (crimeinfo.jp) . https://www.crimeinfo.jp/data/dplist/dplist_all/ [Available in Japanese]

²¹ Ibid.; Tetsuro Kawamoto, "Seishin Syogai to Shikei [Mental Disability and Death Penalty]", 40 Sandai Hougaku 3-4, 392 (2007). [Available in Japanese]

decision. The government has not provided any information to show that his mental health condition had been taken into due consideration.

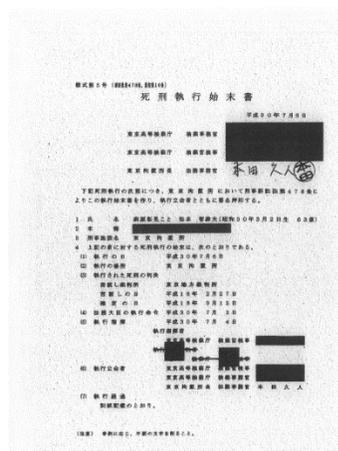


Shoko Asahara

Shoko Asahara,²² whose real name is Chizuo

Matsumoto, was a founder of Aum Shinrikyo cult group which committed a sarin gas attack against Tokyo subway trains, killing 13 people and injuring more than 6,000 in 1995. He was sentenced to death after repeatedly making vague remarks during the trial and never opening his mouth for the questioning at the court. In the appeal, the court ruled that the defendant was mentally competent, but all six doctors on the defence team submitted their opinion criticising the court’s decision. The High Court finally dismissed the appeal on the ground that the statement of appeal was not submitted within the due date, while the defence team claimed that they could not prepare the statement as they could not communicate with their client. The defence team appealed to the decision, but was dismissed, finalizing the death sentence. Dr. Otohiko Kaga, who interviewed him in 2006, stated that he was not in a state to carry out the death penalty due to neurosis caused by the confinement. In 2007, the JFBA released a recommendation against the Tokyo Detention House to take into consideration Matsumoto’s deteriorating mental condition that prevented him from using nappies for himself and made it impossible to live a minimum level of independent life as a human being.

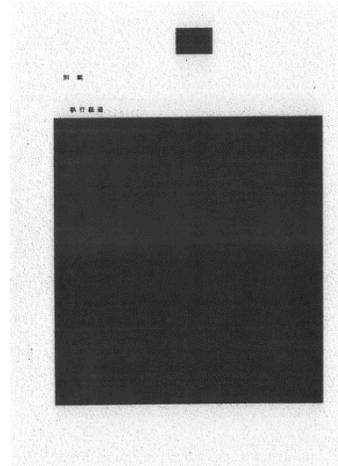
3. Lack of transparency promotes illegal executions against people with psychological or intellectual disabilities



While the CCP stipulates suspension of executions, it does not provide the right of a death row inmate to make a request to suspend an execution, but rather for the Minister of Justice to do so ex officio. Additionally, people have been hanged without providing

²² CrimeInfo (crimeinfo.jp) . https://www.crimeinfo.jp/data/dplist/dplist_all/ [Available in Japanese]

them and their families with reasonable advanced notices of scheduled dates and time of executions, which makes it difficult for their lawyers and families to take legal actions to stop executions in advance based on their mental state, once the Minister has ordered the executions. Therefore, the execution can be carried out without paying due regard to their mental state, which would constitute an extremely grave violation of the human rights.



**Execution Report of Shoko Asahara.
Most of the parts was deleted.**

Not only for that, but there is no way to review alleged illegal executions against people with psychological or intellectual disabilities. Despite repeated recommendations from the [HRC](#) and [UN Committee against Torture](#), the government has not established an independent mechanism to review the mental health of people on death row.

One of the important clues to find out details of executions is an execution report. The official who witnesses executions is required to produce an execution report. Detail of executions such as demeanour of the inmate immediately before the execution – essential information to assess their mental state - are to be included there. A lawmaker demanded that the government disclose execution reports for the past ten years including the execution against Shoko Asahara. Yet, it gave the copies of the reports in July 2020, with most of the important parts deleted. The government has refused to disclose the detail of individual executions including execution reports despite its importance to review executions.

The lack of transparency in Japan's death penalty has made it almost impossible to review inhumanity of each execution, leaving illegal executions against people with intellectual or psychosocial disability unchecked.

Recommendation

- i. Introduce an independent mechanism to review the mental health of people on death row.**
- ii. Disclose the necessary details concerning executions, including the beginning and ending times of executions, and demeanour of the people sentenced to death immediately before the execution.**