



Japan Innocence & Death Penalty  
Information Center



日本冤罪・死刑情報センター



## Japan Stakeholder Report on the Death Penalty for the United Nations Universal Periodic Review

**Submitted by The Advocates for Human Rights,**  
a non-governmental organization in special consultative status  
**The World Coalition Against the Death Penalty**  
**The Center for Prisoners' Rights (Japan)**  
and  
**Japan Innocence and Death Penalty Information Center**

for the 42<sup>nd</sup> Session of the Working Group on the Universal Periodic Review  
January-February 2023

Submitted 14 July 2022

Founded in 1983, **The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. 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 publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. 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 (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 the World Coalition Against the Death Penalty.

**Japan Innocence and Death Penalty Information Center's (JIADEP)** mission is to reform the criminal justice system, particularly to rectify and end wrongful convictions, and work toward the abolition of the death penalty. JIADEP helps defense teams both in Japan and the USA, and seeks to educate and inform the public through publishing and lecturing.

## EXECUTIVE SUMMARY

1. Since Japan's 2017 Universal Periodic Review, despite a brief respite from 2019 to 2021, Japan has continued to carry out executions and sentence people to death. Japan's Penal Code does not limit the death penalty to the most serious crimes. Defendants can be sentenced to death for nonlethal crimes and crimes in which they did not intend to kill.
2. Moreover, people sentenced to death are not afforded procedural protections in line with international standards. Several defects in Japan's legal system increase the possibility of wrongful convictions and thus wrongful executions. Japan's pretrial detention and interrogation system results in the increased potential for false confessions, and Japan does not have either a unanimous verdict requirement or a mandatory appeal system.
3. Japan's treatment of prisoners sentenced to death also violates international norms. People on death row face severe restrictions on their access to the outside world and they live in solitary confinement indefinitely. Their contact with supporters and even family members is highly restricted. Prison officials also regulate their correspondence with counsel and even redact letters between people sentenced to death and their attorneys.
4. This report provides several suggested recommendations to address death penalty issues in Japan. First, Japan should abolish the death penalty and replace it with a fair and proportionate sentence in line with international human rights standards. Second, until complete abolition, Japan should limit the death penalty to lethal crimes in which the defendant had the intent to kill. Third, Japan should amend the Penal Code to: (a) allow defense counsel to participate in interrogations; and (b) introduce a mandatory appeal system for capital cases. Finally, Japan should amend its law on detention facilities and treatment of inmates to restrict the use of solitary confinement and to comply with the Nelson Mandela Rules.

### I. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

#### A12 Acceptance of international norms

##### **Status of Implementation: Not Accepted, Not Implemented**

5. In its Third Cycle review, Japan received several recommendations pertaining to the death penalty, all of which it noted.<sup>1</sup> These included several recommendations to ratify the Second Optional Protocol.<sup>2</sup>
6. Several countries also recommended that Japan hold a national forum or start a national dialogue on abolishing the death penalty.<sup>3</sup> During the interactive dialogue, Japan asserted that “[d]omestic public opinion, the existence of extremely vicious crimes and other factors” made it “inappropriate” to abolish the death penalty.<sup>4</sup> Japan later rejected these recommendations, asserting that the majority of the Japanese public considers the use of the death penalty to be “unavoidable.”<sup>5</sup>
7. Japan acceded to the International Covenant on Civil and Political Rights (ICCPR), but not the Second Optional Protocol.<sup>6</sup> Japan has repeatedly voted against UN General Assembly resolutions calling for a moratorium on the death penalty, most recently in 2020.<sup>7</sup>

8. Japan's current Justice Minister, Furukawa Yoshihisa, has defended Japan's continued use of the death penalty, asserting an "overwhelming majority" of public support.<sup>8</sup> In the context of Japan's Third Cycle review, the Government stated that "each sovereign country should be allowed to make decisions on the issue of the death penalty independently."<sup>9</sup>

### **D23 Death penalty**

#### **Status of Implementation: Not Accepted, Not Implemented**

9. Japan also received recommendations to abolish the death penalty, establish a moratorium on executions, or make progress toward those goals.<sup>10</sup> The Government of Japan noted these recommendations.
10. Article 9 of the Japanese Penal Code authorizes the death penalty.<sup>11</sup> Executions are carried out by hanging.<sup>12</sup> The Code of Criminal Procedure provides that the order of execution should be rendered within six months from the date the judgment becomes final.<sup>13</sup> In reality, however, authorities do not carry out the sentence until the Japanese Minister of Justice issues an order.<sup>14</sup> Authorities then have five days to carry out the execution.<sup>15</sup>
11. Currently, there are 19 crimes that may result in a death sentence.<sup>16</sup> Many of these crimes do not include the element of an intentional killing by the accused, such as: leading an insurrection;<sup>17</sup> conspiring with a foreign government to exercise force against Japan;<sup>18</sup> serving in the military of a foreign government exercising force against Japan;<sup>19</sup> arson of a building, train, tram, vessel or mine used as a dwelling or in which a person is actually present;<sup>20</sup> destruction with explosives of a building, train, tram, vessel, or mine used as a dwelling or in which a person is actually present;<sup>21</sup> and flooding of a building train, tram, vessel, or mine used as a dwelling or in which a person is actually present.<sup>22</sup> Many of these crimes do not rise to the level of "most serious crimes," the established criteria for use of the death penalty under Article 6(2) of the ICCPR.
12. The death penalty is mandatory for conspiring with a foreign government to exercise force against Japan.<sup>23</sup>
13. Japanese law prohibits death sentences for acts committed by people under the age of 18 at the commission of the crime.<sup>24</sup>
14. On December 21, 2021, after a 24-month hiatus,<sup>25</sup> Japan hanged three people on death row.<sup>26</sup> As of the date of those executions, Japan had 107 prisoners on death row.<sup>27</sup> Advocates for abolition of the death penalty saw the October 2021 election of a new Prime Minister, Kishida Fumio, as a chance for Japan to move away from the death penalty. The December 2021 executions, however, quashed that hope.<sup>28</sup>
15. As of the time of this writing, the December 2021 executions remain the only executions in Japan since the end of 2019. Despite the low number of executions since the start of the COVID-19 pandemic, Japan has carried out 25 executions since the start of 2017, including 15 in 2018—tied for the highest number of executions in any year since at least 2007.<sup>29</sup>

## **D26 Conditions of detention**

### **Status of Implementation: Not Accepted, Not Implemented**

16. Two countries recommended that Japan adhere to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) to improve detention conditions.<sup>30</sup> Japan did not support these recommendations. The Government of Japan noted the progress that it had made on improving prison conditions, including medical care and heating and cooling.<sup>31</sup> Japan asserted that people on death row experience appropriate detention conditions.<sup>32</sup>
17. Japan's Act on Penal Detention Facilities and Treatment of Inmates and Detainees requires that prison authorities allow people on death row to maintain their "peace of mind."<sup>33</sup> In practice, however, these requirements result in the prison warden subjecting people on death row to prolonged solitary confinement, restrictions on access to information, and close monitoring of visits and communications.<sup>34</sup>
18. Under the "peace of mind" policy, people on death row are typically not informed of their execution until the day of the execution.<sup>35</sup> This practice causes people on death row to constantly fear that "that day will be their last."<sup>36</sup> In 2021, two people on death row sued the Japanese government over this practice, arguing that it not only causes persistent fear but also deprives them of the opportunity to file an objection to their execution.<sup>37</sup>
19. People on death row face two prohibitions limiting their right to correspond with the outside world: (1) they must not correspond with other people on death row; and (2) they must not send or receive correspondence that is likely to disrupt discipline and order in the correctional institution or hinder appropriate correctional treatment.
20. Correspondence with and by people on death row inmates is tightly restricted. They may correspond with their relatives, but the prison warden has discretion to restrict any correspondence with other individuals outside of the prison, and such correspondence may happen only when it meets certain requirements listed in the 2005 Prison Act.<sup>38</sup>
21. A high ranking official of the Correction Bureau justified the discriminatory treatment of people on death row as follows: (1) restrictions are part of the sanction that accompanies the death sentence; (2) public opinion would not find it acceptable that people on death row could freely correspond; and (3) people on death row could suffer from severe emotional distress if they had access to the outside world.<sup>39</sup> Correspondence with supporters is strictly restricted, and even letters from relatives and lawyers can be redacted. The annex contains examples of such redactions and restrictions.

## **D51 Administration of justice and fair trial**

### **Status of Implementation: Not Accepted, Not Implemented**

22. Switzerland recommended that Japan introduce a mandatory appeal system in capital cases.<sup>40</sup> Japan rejected this recommendation on the grounds that the Japanese judicial system already provides sufficient opportunity for appeals.<sup>41</sup> Japan claimed that it did not want to burden defendants with a mandatory appeal.<sup>42</sup>

23. France also recommended that Japan suspend executions in any cases where an appeal is ongoing.<sup>43</sup> Japan noted this recommendation, asserting that it does not carry out executions until the sentence is final and binding.<sup>44</sup> Japan added that such a mandatory suspension of an execution would encourage people on death row to file continuous appeals and thereby delay their executions indefinitely.<sup>45</sup>
24. The ICCPR guarantees persons accused of crimes the right to (1) “be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;”<sup>46</sup> (2) “communicate with counsel of his own choosing;”<sup>47</sup> and (3) “[not] be compelled to testify against himself or to confess guilt.”<sup>48</sup> The Economic and Social Council (ECOSOC) Resolution 1984/50 also provides the right for persons accused of capital crimes “to adequate legal assistance at all stages of the proceeding.”<sup>49</sup>
25. ECOSOC Resolution 1984/50 provides that death sentences should be imposed only “based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”<sup>50</sup> Resolution 1984/50 further provides, “Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.”<sup>51</sup> Likewise, the ICCPR provides, “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”<sup>52</sup> The ICCPR further guarantees to all persons sentenced to death “the right to seek pardon or commutation of the sentence.”<sup>53</sup>
26. Japan currently uses a three-tiered court system with a court of first instance (district or summary court) comprised of three professional judges and six Saiban-ins (lay judges) as the first tier trial court for cases where the death penalty may be imposed.<sup>54</sup> The next tier is the High Court (court of second instance), and the final tier is the Supreme Court.<sup>55</sup> After the first-instance court convicts and sentences a defendant, both the prosecution and the defense can choose to appeal, meaning the appellate court can both overturn a lesser sentence and impose the death penalty, depending on the appeal.<sup>56</sup> The defendant can withdraw their right to appeal and allow the sentence to be finalized.<sup>57</sup>
27. A person under sentence of death in Japan cannot directly request a pardon; instead, the prison warden must petition Japan’s National Offenders Rehabilitation Commission on the person’s behalf.<sup>58</sup>
28. On October 7, 2016, the Japan Federation of Bar Associations (JFBA) issued a declaration calling for abolition of the death penalty by 2020, a year in which Japan was to host the UN Congress on Crime Prevention and Criminal Justice.<sup>59</sup> The JFBA pointed to defects in Japan’s criminal justice system that make “wrongful executions . . . unavoidable.”<sup>60</sup>
29. The JFBA also highlighted the case of Hakamada Iwao, who had been sentenced to death and spent 48 years on death row before being released pending retrial.<sup>61</sup> In the years since its initial call for abolition, the JFBA has reaffirmed its strong stance in favor of abolition on multiple occasions—most recently after the December 2019 executions.<sup>62</sup>
30. Japan’s pretrial detention and interrogation system increases the likelihood of false confessions.<sup>63</sup> Public prosecutors may detain a suspect for up to 72 hours, and they can request a judge to extend the detention period for up to 20 days under certain circumstances.<sup>64</sup> The suspect does not have the right to defense counsel until a hearing on the detention period extension, and attorneys are not permitted to be present at interrogations.<sup>65</sup> Interrogations are

recorded only in certain circumstances.<sup>66</sup> The length of pretrial detention and the lack of timely access to defense counsel may prompt suspects to seek any means to escape the pressure of the situation, including by making a false confession.<sup>67</sup>

31. The Human Rights Committee expressed concern in 2008 that an increasing number of defendants in Japan are convicted and sentenced to death without exercising their right of appeal,<sup>68</sup> and it reiterated that concern in 2014.<sup>69</sup>
32. Japan does not have a mandatory appeal system for capital cases. People who are sentenced to death cannot waive their right to appeal, but they may withdraw their appeal after it is submitted. After withdrawing an appeal, the death sentence is finalized. There are a number of publicized cases in which people withdrew their appeals and their sentences became final.<sup>70</sup>
33. Recently, Yamada Koji withdrew his appeal after a quarrel with a prison guard. His defense counsel claimed that the withdrawal was invalid. Yet Yamada again withdrew his appeal while the court was assessing the validity of the first withdrawal. On August 21, 2021, the court rejected the invalidity argument.<sup>71</sup> Similarly, Uematsu Satoshi withdrew his appeal, and even though his defense counsel claimed the withdrawal was invalid, the court subsequently finalized his death sentence.<sup>72</sup>

#### **F4 Persons with disabilities**

34. The Japanese Penal Code mandates mitigation for acts of diminished capacity and authorizes discretionary mitigation in extenuating circumstances.<sup>73</sup> Japanese law also prohibits carrying out the death penalty against people who are in a state of “insanity,” but the law does not have standards for independently determining whether a person qualifies as “insane.”<sup>74</sup>
35. The absence of an independent procedure for independently assessing whether a person qualifies as “insane”<sup>75</sup> is especially problematic due to the lay-judge system in capital cases.<sup>76</sup> Psychiatrists often struggle to provide testimony that these inexperienced lay judges can understand.<sup>77</sup> As a result, Japan has ordered several executions in the past decade in which the offenders had psycho-social disabilities that at least created questions as to their culpability as a matter of Japanese law.<sup>78</sup>

## **II. RECOMMENDATIONS**

36. The authors of this joint stakeholder report suggest the following recommendations for the Government of Japan:
  - Abolish the death penalty and replace it with a fair and proportionate sentence in accordance with international human rights standards.
  - In the meantime, impose an official moratorium on executions.
  - In the meantime, amend the Penal Code to limit the death penalty to crimes in which the defendant had the intent to kill and did in fact kill.
  - In collaboration with civil society, initiate a public dialogue about the use of the death penalty in Japan and the efficacy of alternatives to the death penalty.

- Amend the Code of Criminal Procedure to give suspects the right to have defense counsel attend all interrogations and to require authorities to inform suspects of this right before each interrogation.
- Prohibit the retrial of individuals previously found not guilty.
- Establish new criminal procedure laws that permit retrials to correct miscarriages of justice and for individuals who have been wrongfully convicted; prohibit prosecutorial objections when retrials are granted.
- Require investigators and law enforcement to record all interrogations.
- Revise relevant laws to refrain from subjecting people under sentence of death to solitary confinement, except in the most exceptional circumstances and for strictly limited periods, consistent with Rules 45-47 of the Nelson Mandela Rules.
- Guarantee the right to access to the outside world for people on death row, consistent with Rules 58 and 63 of the Nelson Mandela Rules, and consistent with the rules applicable to other persons in detention.
- Prohibit any censorship or interruption of correspondence between people on death row and their lawyers, consistent with Rules 53, 56, and 61 of the Nelson Mandela Rules.
- Collaborate with civil society and psychiatric experts to create and implement guidelines for independent determination of “insanity.”
- Authorize people on death row to seek pardons directly.

### III. ANNEX

- Cases highlighting the unnecessary restrictions of correspondence with people on death row

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<sup>1</sup> Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 161.1, 161.3-161.9; 161.95-161.106, 161.110.

<sup>2</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 161.1 Consider lifting existing reservations to the international human rights treaties (Ukraine); ¶ 161.3 Accede to the Second Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Slovenia); ¶ 161.4 Consider the abolition of the death penalty in its legislation, and proceed to the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (Argentina); ¶ 161.5 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro) (Spain) (Sweden) (Togo); ¶ 161.6 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and in the meantime, establish a moratorium on execution (Croatia); establish an immediate formal moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Germany); ¶ 161.7 Establish a moratorium on the application of the death penalty and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Mongolia); ¶ 161.8 Consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol aiming at the abolition of the death penalty, and in the meantime, declare an official moratorium on executions with a view to abolish the death penalty, commuting the death sentences to prison terms (Uruguay); ¶ 161.9 Ratify the Optional Protocols to the

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International Covenant on Civil and Political Rights, to the Convention on the Elimination of All Forms of Discrimination against Women, to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the Convention on the Rights of Persons with Disabilities (Guatemala).

<sup>3</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶161.99 Establish a moratorium on the use of the death penalty, as a first step towards the complete abolition of this practice, and initiate a broad public debate on the death penalty with a view to its final abolition (New Zealand); set up an official moratorium for the definitive abolition of the death penalty and facilitate the holding of debate on this issue (France); conduct a national debate on the establishment of a moratorium on the use of the death penalty, with a view to its abolition (Mexico); ¶161.101 Introduce a moratorium and instigate a public debate on the abolition of the death penalty, while also addressing how best to support victims and their families (United Kingdom of Great Britain and Northern Ireland); ¶161.109 Designate an official body for a comprehensive review and recommendations in view to promote an informed debate on the reform of the death penalty (Austria); ¶161.110 Review its death penalty policy and strongly consider a moratorium on the use of capital punishment, and to engage in public debate about the future use of the death penalty (Canada).

<sup>4</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.

<sup>5</sup> Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 161.99, 161.101, 161.109-161.110.

<sup>6</sup> International Convention on Civil and Political Rights, Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.

<sup>7</sup> G.A. Res. 69/186, U.N. Doc. A/RES/69/186 (Dec. 18, 2014); G.A. Res. 71/187, U.N. Doc. A/RES/71/187 (Dec. 19, 2016); G.A. Res. 75/183, U.N. Doc. A/RES/75/183 (Dec. 16, 2020).

<sup>8</sup> Mari Yamaguchi, *Japan hangs 3 in first use of capital punishment in 2 years* (Yahoo! News), December 21, 2021, available at <https://news.yahoo.com/japan-hangs-3-first-capital-094923574.html>.

<sup>9</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.

<sup>10</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶161.4 Consider the abolition of the death penalty in its legislation, and proceed to the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights (Argentina); ¶161.5 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Montenegro) (Spain) (Sweden) (Togo); ¶161.6 Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and in the meantime, establish a moratorium on execution (Croatia); establish an immediate formal moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Germany); ¶161.7 Establish a moratorium on the application of the death penalty and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (Mongolia); ¶161.8 Consider ratifying the Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol aiming at the abolition of the death penalty, and in the meantime, declare an official moratorium on executions with a view to abolish the death penalty, commuting the death sentences to prison terms (Uruguay); ¶161.95 Consider applying a moratorium on executions, with a view to ultimately abolishing the death penalty (Cyprus); consider introducing a moratorium on capital executions with a view to fully abolishing the death penalty (Italy); ¶161.96 Consider introducing a moratorium on executions as a first step towards the abolition of the death penalty, and commute all death sentences to terms of imprisonment (Republic of Moldova); ¶161.97 Take immediate measures to introduce a formal moratorium on executions and take concrete steps towards the total abolition of the death penalty (Norway); take measures to introduce a de jure moratorium on executions and take concrete steps towards the abolition of the death penalty (Rwanda); ¶161.98 Adopt the necessary measures to abolish the death penalty and establish a moratorium on executions (Bolivarian Republic of Venezuela); ¶161.99 Establish a moratorium on the use of the death penalty, as a first step towards the complete abolition of this practice, and initiate a broad public debate on the death penalty with a view to its final abolition (New Zealand); set up an official moratorium for the definitive abolition of the death penalty and facilitate the holding of debate on this issue (France); conduct a national debate on the establishment of a moratorium on the use of the death penalty, with a view to its abolition (Mexico); ¶161.100 Establish an official moratorium on executions and abolish the death penalty for all crimes (Iceland); introduce a formal moratorium on executions (Belgium); immediately introduce a moratorium on executions with a view to abolishing the death penalty (Sweden); establish a moratorium on executions, followed by eventual abolition of the death penalty (Finland); apply a new moratorium on the death penalty with the aim of proceeding towards the final abolition of capital punishment



(Spain); establish a moratorium on the application of the death penalty, with a view to abolishing capital punishment before the next universal periodic review session (Brazil); introduce a formal and immediate moratorium on executions as a first step towards the abolition of the death penalty and to commute all death sentences to terms of imprisonment, in line with international human rights standards (Netherlands); put in force an immediate moratorium on the death penalty (Denmark); establish a moratorium on the use of the death penalty, as a first step towards complete abolition of this practice and as a way of reassuring the Japanese public that adequate law enforcement does not require the state to carry out executions (Australia); ¶161.101 Introduce a moratorium and instigate a public debate on the abolition of the death penalty, while also addressing how best to support victims and their families (United Kingdom of Great Britain and Northern Ireland); ¶161.102 Consider abolition of the death penalty (Timor-Leste); ¶161.103 Consider abolition of the death penalty and implementation of an immediate moratorium on executions (Liechtenstein); ¶161.104 Make progress on the abolition of the death penalty (Colombia); ¶161.105 Abolish the death penalty (Paraguay) (Portugal); ¶161.106 Abolish the death penalty and modify the penitentiary regulations to strictly limit solitary confinement (Panama); ¶161.110 Review its death penalty policy and strongly consider a moratorium on the use of capital punishment, and to engage in public debate about the future use of the death penalty (Canada).

<sup>11</sup> Penal Code, Art. 9

<sup>12</sup> Penal Code, Art. 11 (1)

<sup>13</sup> Code of Criminal Procedure, Art. 475.

<sup>14</sup> Code of Criminal Procedure, Art. 475.

<sup>15</sup> Code of Criminal Procedure, Art. 475.

<sup>16</sup> Human Rights Committee, Concluding Observations on the Sixth Periodic Report of Japan, ¶ 13, U.N. Doc. CCPR/C/JPN/CO/6 (Aug. 20, 2014).

<sup>17</sup> Penal Code, Art. 77(1)(i).

<sup>18</sup> Penal Code, Art. 81.

<sup>19</sup> Penal Code, Art. 82.

<sup>20</sup> Penal Code, Art. 108.

<sup>21</sup> Penal Code, Art. 117.

<sup>22</sup> Penal Code, Art. 119.

<sup>23</sup> Penal Code, Art. 81.

<sup>24</sup> Juvenile Act, Act No. 48 of 1948, as amended by Act. No. 71 of 2008, Art. 51(1).

<sup>25</sup> *Death Penalty 2021: Facts and Figures* (Amnesty International, New York, NY), May 24, 2022, available at <https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/>.

<sup>26</sup> Mari Yamaguchi, *Japan hangs 3 in first use of capital punishment in 2 years* (Yahoo! News), December 21, 2021, available at <https://news.yahoo.com/japan-hangs-3-first-capital-094923574.html>.

<sup>27</sup> Mari Yamaguchi, *Japan hangs 3 in first use of capital punishment in 2 years* (Yahoo! News), December 21, 2021, available at <https://news.yahoo.com/japan-hangs-3-first-capital-094923574.html>.

<sup>28</sup> Junko Ogura et al., *Japan hangs 3 death row inmates in first executions since 2019* (CNN), December 21, 2021, available at <https://www.cnn.com/2021/12/21/asia/japan-executions-death-row-intl-hnk/index.html>.

<sup>29</sup> *Japan* (Cornell Center on the Death Penalty Worldwide), available at <https://deathpenaltyworldwide.org/database/#/results/country?id=36>.

<sup>30</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶161.114 Follow the appropriate United Nations Standard Minimum Rules for the Treatment of Prisoners in order to improve detention conditions by providing: better and timelier medical and dental treatment; appropriate provisions to withstand the cold winter temperatures in prisons; and larger servings of food to inmates (Canada) and ¶161.115 Bring the prison and detention conditions in line with international human rights norms and standards, including the Nelson Mandela Rules (Denmark).

<sup>31</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 148; Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 161.114-161.115.

<sup>32</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 148.

<sup>33</sup> Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Art. 32.

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<sup>34</sup> 8 Committee Against Torture, Concluding observations on the second periodic report of Japan, ¶ 15, U.N. Doc. CAT/C/JPN/CO/2 (Jun. 28, 2013); Japan: Man hanged as secretive executions continue (Amnesty International, New York, NY), Nov. 11, 2016, available at <https://www.amnesty.org/en/latest/news/2016/11/japan-man-hanged-as-secretive-executions-continue/>

<sup>35</sup> *Japan death row inmates sue over 'inhumane' same-day notification*, REUTERS (Nov. 5, 2021), available at <https://www.nbcnews.com/news/world/japan-death-row-inmates-sue-over-inhumane-same-day-notification-n1283304>.

<sup>36</sup> *Japan death row inmates sue over 'inhumane' same-day notification*, REUTERS (Nov. 5, 2021), available at <https://www.nbcnews.com/news/world/japan-death-row-inmates-sue-over-inhumane-same-day-notification-n1283304>.

<sup>37</sup> *Japan death row inmates sue over 'inhumane' same-day notification*, REUTERS (Nov. 5, 2021), available at <https://www.nbcnews.com/news/world/japan-death-row-inmates-sue-over-inhumane-same-day-notification-n1283304>.

<sup>38</sup> Article 139(1) of the Prison Act states: “Wardens of penal institutions are to permit an inmate sentenced to death (except those classified as a detainee awaiting a judicial decision; hereinafter the same applies in this Division) to send or receive letters under the following items except for when it is prohibited by the provisions of this Division, Article 148, paragraph (3), and the next Section:

(i) letters the inmate sentenced to death sends to or receives from their relative;

(ii) letters which the inmate sentenced to death sends and receives in order to carry out business of personal, legal, or occupationally-important concern, such as reconciliation of marital relations, pursuance of a lawsuit, or maintaining a business;

(iii) letters deemed to be instrumental in helping the inmate sentenced to death maintain peace of mind.

(2) Wardens of penal institutions may permit an inmate sentenced to death to send or receive letters other than those set forth in the preceding paragraph when it is deemed that there are circumstances where the sending or receiving is necessary for maintaining a good relationship with the addressee, or for any other reasons, and if it is deemed that there is no risk of disrupting discipline and order in the penal institution.”

<sup>39</sup> Hayashi, Kitamura, Natori, *Commentary on 2005 Prison Act*, 2017 [in Japanese]

<sup>40</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 161.107 Introduce a system of mandatory appeal in cases where the death penalty has been handed down.

<sup>41</sup> Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 161.107.

<sup>42</sup> Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 161.107.

<sup>43</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶161.108 Ensure the protection of the rights of those sentenced to death, by guaranteeing among other things the suspensive effect of any appeal request or claim to review the trial.

<sup>44</sup> Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 161.108.

<sup>45</sup> Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 161.108.

<sup>46</sup> International Convention on Civil and Political Rights, Art. 14, ¶ 3(a), Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.

<sup>47</sup> International Convention on Civil and Political Rights, Art. 14, ¶ 3(b), Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.

<sup>48</sup> International Convention on Civil and Political Rights, Art. 14, ¶ 3(g), Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.

<sup>49</sup> ECOSOC Res. 1984/50, ¶ 5, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.

<sup>50</sup> ECOSOC Res. 1984/50, ¶ 4, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>

<sup>51</sup> ECOSOC Res. 1984/50, ¶ 6, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.

<sup>52</sup> International Convention on Civil and Political Rights, Art. 14, ¶ 5, Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.

<sup>53</sup> International Convention on Civil and Political Rights, Art. 6, ¶ 4, Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.

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- <sup>54</sup> 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.
- <sup>55</sup> Supreme Court of Japan, Court System in Japan, available at [http://www.courts.go.jp/english/judicial\\_sys/Court\\_System\\_of\\_Japan/index.html#03](http://www.courts.go.jp/english/judicial_sys/Court_System_of_Japan/index.html#03) (last accessed June 22, 2022).
- <sup>56</sup> Code of Criminal Procedure, Art 351; The Death Penalty in Japan (The Death Penalty Project, London, UK), at 27, available at <http://www.deathpenaltyproject.org/wp-content/uploads/2013/03/DPP-Japan-report.pdf>.
- <sup>57</sup> Code of Criminal Procedure, Arts. 359, 360, 360-2, 361.
- <sup>58</sup> Ordinance for Enforcement of the Pardon Act, Ministry of Justice Ordinance No. 78 of 1947, as amended by Ministry of Justice Ordinance No. 59 of 2006, Art. 1
- <sup>59</sup> *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty* (Japan Federation of Bar Associations), October 7, 2016, available at <https://www.nichibenren.or.jp/en/document/statements/161007.html>.
- <sup>60</sup> *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty* (Japan Federation of Bar Associations), October 7, 2016, available at <https://www.nichibenren.or.jp/en/document/statements/161007.html>.
- <sup>61</sup> *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty* (Japan Federation of Bar Associations), October 7, 2016, available at <https://www.nichibenren.or.jp/en/document/statements/161007.html>.
- <sup>62</sup> *Statement Strongly Protesting Today's Execution and Calling for an Immediate Moratorium and the Abolition of the Death Penalty* (Japan Federation of Bar Associations), December 26, 2019, available at <https://www.nichibenren.or.jp/en/document/statements/191226.html>.
- <sup>63</sup> *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty* (Japan Federation of Bar Associations, Tokyo, Japan), Oct. 7, 2016, available at <http://www.nichibenren.or.jp/en/document/statements/year/2016/161007.html>
- <sup>64</sup> Code of Criminal Procedure, Arts. 205(2), 208(2).
- <sup>65</sup> Code of Criminal Procedure, Art. 203(3); *Statement Calling for a Thorough Review by the Council on Renovation of the Legal and Prosecutorial Administration to Ensure that Japanese Criminal Procedure Will Comply with the Constitution of Japan and International Human Rights Instruments* (Japan Federation of Bar Associations, Tokyo, Japan), Oct. 5, 202, available at <https://www.nichibenren.or.jp/en/document/statements/201005.html>
- <sup>66</sup> *Statement Calling for a Thorough Review by the Council on Renovation of the Legal and Prosecutorial Administration to Ensure that Japanese Criminal Procedure Will Comply with the Constitution of Japan and International Human Rights Instruments* (Japan Federation of Bar Associations, Tokyo, Japan), Oct. 5, 202, available at <https://www.nichibenren.or.jp/en/document/statements/201005.html>
- <sup>67</sup> *Statement Calling for a Thorough Review by the Council on Renovation of the Legal and Prosecutorial Administration to Ensure that Japanese Criminal Procedure Will Comply with the Constitution of Japan and International Human Rights Instruments* (Japan Federation of Bar Associations, Tokyo, Japan), Oct. 5, 202, available at <https://www.nichibenren.or.jp/en/document/statements/201005.html>
- <sup>68</sup> Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Japan*, ¶ 16, U.N. Doc. CCPR/C/JPN/CO/5 (Dec. 18, 2008).
- <sup>69</sup> Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Japan*, ¶ 13(d), U.N. Doc. CCPR/C/JPN/CO/6 (Aug. 20, 2014).
- <sup>70</sup> Osaka District Court Judgment, 23 August 2003; Nara District Court Judgment, 26 September 2006; Mito District Court Judgment, 18 December 2009.
- <sup>71</sup> The Sankei News, 大阪・寝屋川の中1男女殺害、被告の死刑確定 [Death Sentence being finalized: Murder in Neyagawa, Osaka], 27 August 2021. Available in Japanese
- <sup>72</sup> The Sankei News, 控訴取り下げた植松死刑囚本人が再審請求 相模原殺傷事件 [Uematsu, a death row prisoner who withdrew the appeal is now seeking retrial: Murder case in Sagami-hara], 15 June 2022. Available in Japanese.
- <sup>73</sup> Penal Code, Art. 66.
- <sup>74</sup> 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.
- <sup>75</sup> Hiroko Kashiwagi and Naotsugu Hirabayashi, *Death Penalty and Psychiatric Evaluation in Japan*, 9 FRONT PSYCHIATRY 550 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6224490/#:~:text=Almost%2010%20years%20later%2C%20Japan%20ordered%20a%20series,more%20severe%20punishment%20has%20been%20indicated%20in%20Japan.>

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<sup>76</sup> See Hiroko Kashiwagi and Naotsugu Hirabayashi, *Death Penalty and Psychiatric Evaluation in Japan*, 9 FRONT PSYCHIATRY 550 (2018), available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6224490/#:~:text=Almost%2010%20years%20later%2C%20Japan%20ordered%20a%20series,more%20severe%20punishment%20has%20been%20indicated%20in%20Japan.>

<sup>77</sup> Hiroko Kashiwagi and Naotsugu Hirabayashi, *Death Penalty and Psychiatric Evaluation in Japan*, 9 FRONT PSYCHIATRY 550 (2018), available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6224490/#:~:text=Almost%2010%20years%20later%2C%20Japan%20ordered%20a%20series,more%20severe%20punishment%20has%20been%20indicated%20in%20Japan.>

<sup>78</sup> See generally Hiroko Kashiwagi and Naotsugu Hirabayashi, *Death Penalty and Psychiatric Evaluation in Japan*, 9 Front Psychiatry 550 (2018), available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6224490/#:~:text=Almost%2010%20years%20later%2C%20Japan%20ordered%20a%20series,more%20severe%20punishment%20has%20been%20indicated%20in%20Japan.>