



Japan Innocence & Death Penalty  
Information Center



日本冤罪・死刑情報センター



## **Japan's Compliance with the International Covenant on Civil and Political Rights: The Death Penalty**

**Submitted by The Advocates for Human Rights**

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

**for the 136th Session of the Human Rights Committee  
10 October – 4 November 2022**

**Submitted 12 September 2022**

**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.

**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. Despite a brief respite from 2019 to 2021, Japan continues to carry out executions and sentence people to death. Japan's Penal Code does not limit the death penalty to the most serious crimes. People 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 people 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 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 be present during all interrogations; and (b) introduce a mandatory appeal system for capital cases. Finally, Japan should amend its law on detention facilities and treatment of people in detention to restrict the use of solitary confinement and to comply with the Nelson Mandela Rules.

### **Japan fails to uphold its obligations under the International Covenant on Civil and Political Rights**

#### **I. Right to life, prohibition of torture and other cruel, inhuman, or degrading treatment or punishment, fair trial and rights of the child (List of Issues, para. 11)**

5. In its 2017 List of Issues, the Committee requested further information on the measures Japan has taken to abolish the death penalty.<sup>1</sup> The Committee also requested information on steps taken to uphold the rights of people on death row, including refraining from imposing solitary confinement and ensuring confidentiality of correspondence with family members.<sup>2</sup> Further, the Committee asked Japan to clarify "whether a mandatory and effective system of review has been established in capital cases" and to respond to allegations of violations of the right of persons with serious psychosocial and intellectual disabilities due to a death sentence.<sup>3</sup>

---

<sup>1</sup> Human Rights Committee, *List of Issues prior to submission of the seventh periodic report of Japan*, (Dec.11, 2017), U.N. Doc. CCPR/C/JPN/QPR/7, ¶11(a).

<sup>2</sup> Human Rights Committee, *List of Issues prior to submission of the seventh periodic report of Japan*, (Dec.11, 2017), U.N. Doc. CCPR/C/JPN/QPR/7, ¶11(b).

<sup>3</sup> Human Rights Committee, *List of Issues prior to submission of the seventh periodic report of Japan*, (Dec.11, 2017), U.N. Doc. CCPR/C/JPN/QPR/7, ¶11(c)(d).

6. In its 2020 State Party Report, Japan stated that, due to high public support for the death penalty and an increase in serious crimes, the death penalty is “unavoidable.”<sup>4</sup> Japan also asserted that solitary confinement is necessary for individuals on death row to “maintain their peace of mind,” explaining that such individuals can combat isolation by talking to prison officials and watching television.<sup>5</sup> Japan also defended legislation restricting correspondence and visits for individuals on death row which provides that when a person on death row has a visitor, a prison official must be present.<sup>6</sup> Further, Japan emphasized that its government pays close attention to the mental state of a person before sentencing them to death, though “the execution of a judicial decision that has become final and binding must be strictly enforced.”<sup>7</sup>
7. Article 9 of the Japanese Penal Code authorizes the death penalty.<sup>8</sup> Executions are carried out by hanging.<sup>9</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>10</sup> In reality, however, authorities do not carry out the sentence until the Japanese Minister of Justice issues an order.<sup>11</sup> Authorities then have five days to carry out the execution.<sup>12</sup>
8. Currently, there are 19 crimes that may result in a death sentence.<sup>13</sup> Many of these crimes do not include the element of an intentional killing by the accused, such as: leading an insurrection;<sup>14</sup> conspiring with a foreign government to exercise force against Japan;<sup>15</sup> serving in the military of a foreign government exercising force against Japan;<sup>16</sup> arson of a building, train, tram, vessel or mine used as a dwelling or in which a person is actually present;<sup>17</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>18</sup> and flooding of a building train, tram, vessel, or mine used as a dwelling or in which a person is actually present.<sup>19</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.
9. The death penalty is mandatory for conspiring with a foreign government to exercise force against Japan.<sup>20</sup>

---

<sup>4</sup> Human Rights Committee, *Seventh periodic report submitted by Japan under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018*, (Apr. 28, 2020), U.N. Doc. CCPR/C/JPN/7, ¶67.

<sup>5</sup> Human Rights Committee, *Seventh periodic report submitted by Japan under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018*, (Apr. 28, 2020), U.N. Doc. CCPR/C/JPN/7, ¶70.

<sup>6</sup> Human Rights Committee, *Seventh periodic report submitted by Japan under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018*, (Apr. 28, 2020), U.N. Doc. CCPR/C/JPN/7, ¶73.

<sup>7</sup> Human Rights Committee, *Seventh periodic report submitted by Japan under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018*, (Apr. 28, 2020), U.N. Doc. CCPR/C/JPN/7, ¶80.

<sup>8</sup> Penal Code, Art. 9

<sup>9</sup> Penal Code, Art. 11 (1)

<sup>10</sup> Code of Criminal Procedure, Art. 475.

<sup>11</sup> Code of Criminal Procedure, Art. 475.

<sup>12</sup> Code of Criminal Procedure, Art. 475.

<sup>13</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>14</sup> Penal Code, Art. 77(1)(i).

<sup>15</sup> Penal Code, Art. 81.

<sup>16</sup> Penal Code, Art. 82.

<sup>17</sup> Penal Code, Art. 108.

<sup>18</sup> Penal Code, Art. 117.

<sup>19</sup> Penal Code, Art. 119.

<sup>20</sup> Penal Code, Art. 81.

10. Japanese law prohibits death sentences for acts committed by people under the age of 18 at the time of the commission of the crime.<sup>21</sup>
11. On December 21, 2021, after a 24-month hiatus,<sup>22</sup> Japan hanged three people on death row.<sup>23</sup> As of the date of those executions, Japan had 107 prisoners on death row.<sup>24</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>25</sup> Japan executed another person in July 2022.<sup>26</sup>
12. As of the time of this writing, the December 2021 and July 2022 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 26 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>27</sup>

### *Conditions of detention*

13. 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>28</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>29</sup>
14. Under the “peace of mind” policy, people on death row are typically not informed of their execution until the day of the execution.<sup>30</sup> This practice causes people on death row to constantly fear that “that day will be their last.”<sup>31</sup> In 2021, two people on death row sued the

---

<sup>21</sup> Juvenile Act, Act No. 48 of 1948, as amended by Act. No. 71 of 2008, Art. 51(1).

<sup>22</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>23</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>24</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>25</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>26</sup> Frances Mao, *Tomohiro Kato: Japan executes Akihabara mass murderer, say reports*, BBC News, 226 July 2022, <https://www.bbc.com/news/world-asia-62301427>.

<sup>27</sup> *Japan* (Cornell Center on the Death Penalty Worldwide), available at <https://deathpenaltyworldwide.org/database/#/results/country?id=36>.

<sup>28</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.

<sup>29</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>30</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>31</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>.

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>32</sup>

15. 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.
16. Correspondence with and by people on death row 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>33</sup>
17. A high ranking official of the Correction Bureau justified this 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>34</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.

#### *Administration of Justice and Fair Trial*

18. 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>35</sup> (2) “communicate with counsel of his own choosing;”<sup>36</sup> and (3) “[not] be compelled to testify against himself or to confess guilt.”<sup>37</sup> ECOSOC Resolution 1984/50 also provides the

---

<sup>32</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>33</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>34</sup> Hayashi, Kitamura, Natori, *Commentary on 2005 Prison Act*, 2017 [in Japanese]

<sup>35</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>36</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>37</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.

right for persons accused of capital crimes “to adequate legal assistance at all stages of the proceeding.”<sup>38</sup>

19. 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>39</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>40</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>41</sup> The ICCPR further guarantees to all persons sentenced to death “the right to seek pardon or commutation of the sentence.”<sup>42</sup>
20. 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>43</sup> The next tier is the High Court (court of second instance), and the final tier is the Supreme Court.<sup>44</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 either overturn a lesser sentence or impose the death penalty, depending on the procedural posture of the appeal.<sup>45</sup> The defendant can withdraw her or his right to appeal and allow the sentence to be finalized.<sup>46</sup>
21. 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>47</sup>
22. On October 7, 2016, the Japan Federation of Bar Associations (JFBA) issued a declaration calling for abolition of the death penalty by 2020, the year in which Japan was to host the UN Congress on Crime Prevention and Criminal Justice.<sup>48</sup> The JFBA pointed to defects in Japan’s criminal justice system that make “wrongful executions . . . unavoidable.”<sup>49</sup>

---

<sup>38</sup> ECOSOC Res. 1984/50, ¶ 5, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.

<sup>39</sup> ECOSOC Res. 1984/50, ¶ 4, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>

<sup>40</sup> ECOSOC Res. 1984/50, ¶ 6, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.

<sup>41</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>42</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.

<sup>43</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>44</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>45</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>46</sup> Code of Criminal Procedure, Arts. 359, 360, 360-2, 361.

<sup>47</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>48</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>49</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>.

23. 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>50</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>51</sup>
24. Japan’s pretrial detention and interrogation system increases the likelihood of false confessions.<sup>52</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>53</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>54</sup> Interrogations are recorded only in certain circumstances.<sup>55</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>56</sup>
25. 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 a defendant withdraws the appeal, the death sentence is finalized. In several publicized cases the defendant withdrew the appeal and the sentence became final.<sup>57</sup>
26. 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>58</sup> Similarly, Uematsu Satoshi withdrew his appeal, and even

---

<sup>50</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>51</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>52</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>53</sup> Code of Criminal Procedure, Arts. 205(2), 208(2).

<sup>54</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>55</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>56</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>57</sup> Osaka District Court Judgment, 23 August 2003; Nara District Court Judgment, 26 September 2006; Mito District Court Judgment, 18 December 2009.

<sup>58</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

though his defense counsel claimed the withdrawal was invalid, the court subsequently finalized his death sentence.<sup>59</sup>

### *Persons with disabilities*

27. The Japanese Penal Code mandates mitigation for acts of diminished capacity and authorizes discretionary mitigation in extenuating circumstances.<sup>60</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>61</sup>
28. The absence of an independent procedure for independently assessing whether a person qualifies as “insane”<sup>62</sup> is especially problematic due to the lay-judge system in capital cases.<sup>63</sup> Psychiatrists often struggle to provide testimony that these lay judges can understand.<sup>64</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 under Japanese law.<sup>65</sup>
29. 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, decisions to abandon appeals, and difficulties in expressing remorse during trial.<sup>66</sup> 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.<sup>67</sup>

---

<sup>59</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>60</sup> Penal Code, Art. 66.

<sup>61</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>62</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>63</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>64</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>65</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>.

<sup>66</sup> 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/>

<sup>67</sup> Human Rights Council, *Summary of Stakeholders’ Submissions on Japan* (Aug. 23, 2017), U.N. Doc. A/HRC/WG.6/28/JPN/3, ¶ 56.



30. There is no independent mechanism to examine “insanity” prior to execution, but at the sentencing stage Japanese courts have been developing procedures to decide mental capacity and criminal liability.
31. The Japanese government continues to execute persons with disabilities.<sup>68</sup> Under the MTSA, however, such individuals may only be referred to the MTSA procedure to determine further mental health treatment if the court concludes that the offender was “insane” or of diminished capacity.<sup>69</sup> Courts remove the opportunity for these individuals to receive mental health care and services under the MTSA.
32. For more information about specific cases of executions, including those of Mr. Seiha Fujima, Mr. Tetuo Kawanaka and Mr. Shoko Asahara, please see the attached Annex.

## **II. Suggested recommendations for the Government of Japan**

33. The authors of the report would like to suggest the following recommendations to 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 or resentencing on appeal 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.

---

<sup>68</sup> The Medical Treatment and Supervision of Persons with Mental Disorders Who Caused Serious Harm (2005); 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*, 2<sup>nd</sup> edition (Hoboken: John Wiley & Sons Ltd, 2020), 367.

<sup>69</sup> 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*, 2<sup>nd</sup> 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).

- 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.
- 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.