



## 111th Session of the Human Rights Committee

7–25 July 2014

Report submitted by

**The Center for Prisoners' Rights; the International Federation for Human Rights (FIDH) and The Advocates for Human Rights (both NGOs with special consultative status); and the World Coalition Against the Death Penalty**

This report is submitted by the Center for Prisoners' Rights Japan, the International Federation for Human Rights (FIDH), The Advocates for Human Rights, and the World Coalition Against the Death Penalty, in conjunction with the Human Rights Committee's 6th Periodic Review of Japan. Japan will be subject to review during the Committee's 111th session (7–25 July 2014). This report examines prison conditions and the imposition of the death penalty in Japan in light of international human rights standards.

**FIDH** represents 178 human rights organisations on 5 continents. It takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### *A broad mandate*

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### *A universal movement*

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### *An independent organisation*

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

The **Center for Prisoners' Rights (CPR)** was established in March 1995 as the first Japanese NGO specializing in prison reform. CPR's goal is to reform Japanese prison conditions in accordance with international human rights standards and to abolish the death penalty.

CPR is a member of the World Coalition Against the Death Penalty (WCADP), a correspondent member of the International Federation of Human Rights (FIDH) and the Anti-Death Penalty Asia Network (ADPAN).

Center for Prisoners' Rights Japan (CPR)

Founded in 1983, The **Advocates for Human Rights** is a volunteer-based NGO 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 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**, 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.

## Part 1: Prison Conditions

### A. Life Imprisonment and Parole

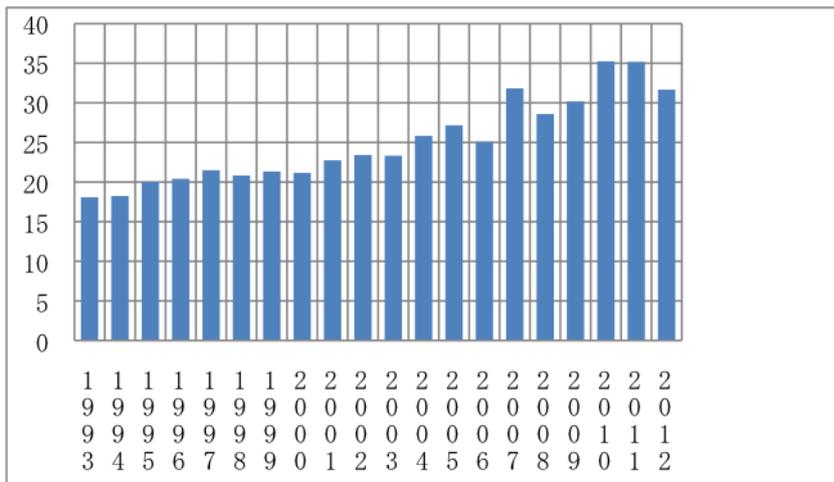
1. During 2012, 38 new prisoners were sentenced to life, having exhausted or waived their rights to appeal, while the number of prisoners released on parole in the same year was only 6. The average period of time actually served by released “lifers” is becoming longer, while the number of lifers released on parole remains low. Since April 2009, prisoners serving more than 30 years in prison are scheduled to be examined for parole automatically. However, this practice has made little impact on the number of prisoners released on parole. Accordingly, the total number of imprisoned lifers is steadily growing, and even prisoners released on parole usually serve more than 30 years in prison before being released. (See Table 1, Graphs 1 and 2).
2. Consequently, for an increasing number of prisoners, a life sentence in Japan means actual imprisonment for life. During the decade from 2003 to 2012, 54 lifers were released on parole (excluding prisoners who were granted parole more than once, owing to revocation of previous parole). On the other hand, the number of lifers who died in prison during the same period was 143. At the end of 2012, there were 8 lifers who had been imprisoned for more than 50 years, and 21 other prisoners who served more than 40 years in prison. Long imprisonment deteriorates prisoners’ health physically and mentally.
3. There are no clear and substantive criteria for parole disclosed to prisoners. Also, the evaluation of parole candidates is carried out only by Ministry officials behind closed doors, and prisoners are not allowed to be represented by attorneys. Because of such practice, many prisoners become hopeless and give up rehabilitation into the society.

(Table 1) Terms Served for Prisoners with Life Sentences (2003–2012)<sup>1</sup>

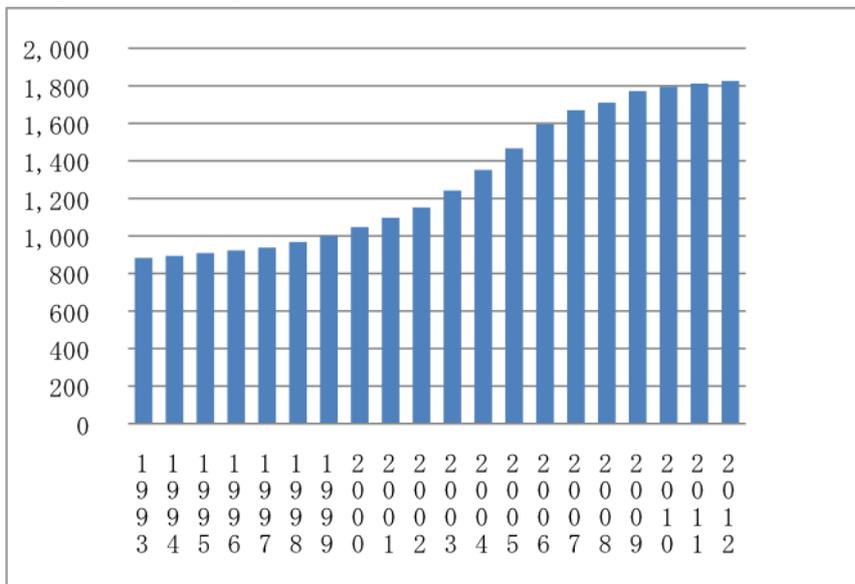
| Year  | lifers at year end | new lifers | lifers released on parole | lifers who died in prison |
|-------|--------------------|------------|---------------------------|---------------------------|
| 2003  | 1,242              | 114        | 13                        | 11                        |
| 2004  | 1,352              | 119        | 1                         | 15                        |
| 2005  | 1,467              | 134        | 10                        | 12                        |
| 2006  | 1,596              | 136        | 3                         | 15                        |
| 2007  | 1,670              | 89         | 1                         | 13                        |
| 2008  | 1,711              | 53         | 4                         | 7                         |
| 2009  | 1,772              | 81         | 6                         | 14                        |
| 2010  | 1,796              | 50         | 7                         | 21                        |
| 2011  | 1,812              | 43         | 3                         | 21                        |
| 2012  | 1,826              | 38         | 6                         | 14                        |
| Total | -                  | 853        | 54                        | 143                       |

<sup>1</sup> Rehabilitation Bureau, Ministry of Justice (<http://www.moj.go.jp/content/000114951.pdf>).

(Graph 1) Average Period of Imprisonment Served by Released Lifers



(Graph 2) Lifers Imprisoned at Year end



**Recommendations to the Japanese Government**

- (a) Establish specific and objective criteria for permission of parole.
- (b) Conduct regular and systematic parole evaluations for all prisoners serving more than 10 years in prison.
- (c) Establish parole evaluation procedures which allow prisoners to be actively involved in the process with assistance from legal representatives, as well as an opportunity to request a review of any decisions by the parole board denying a prisoner’s release.

**B. Solitary Confinement**

- 4. During Japan’s ICCPR review in 2008, the UN Human Rights Committee recommended that “the state party should discontinue... the practice of segregating certain inmates in ‘accommodating blocks’ without clearly defined criteria or possibilities of appeal.” Although the number of prisoners who are completely isolated from other inmates has decreased from 148 in October 2006 to 16 in

April 2012, the government has not taken any effective measures to respond the Committee's recommendation.

5. Even today, many prisoners who do not meet the criteria for 'isolation' are placed in quite a similar situation by being classified into *Security Category 4*, which is one of the four categories created by an ordinance of the Ministry of Justice, not by law. The only differences between treatment under Category 4 and isolation are: 1) there are possibilities of exercising with other inmates and bathing, and 2) the inmates can, in accordance with a directive, come in contact with others twice a month (which was just once a month until 2011).
6. There are, however, no articulated criteria for this category. Many prisoners complain that they were classified into *Category 4* as a result of filing lawsuits against the prison authorities. As of 10 April 2012, 2190 prisoners were classified into *Category 4*, accounting for 4.01% of the total population of sentenced inmates in Japan. However, some prisons use *Category 4* punishment very aggressively, and have between 8 and 25% of their inmate population subjected to the *Category 4* punishment. (See Table2.)
7. Unlike inmates in "isolation," *Category 4* inmates cannot file "*Claims for Review*" to request a review of why they were classified as *Category 4*. Although *Filing of Complaints*, another type of grievance mechanism, is available, this mechanism is ineffective in practice, for the authorities' decision on such complaints is never reviewed by higher authorities or the third parties.

(Table 2) Prisons holding more than twice the national average of *Category 4* Prisoners

| Name of Prison     | Prison Population | Category 4 Prisoners | Percentage |
|--------------------|-------------------|----------------------|------------|
| Kitakyusyu Medical | 263               | 64                   | 25.50%     |
| Gifu               | 846               | 139                  | 16.75%     |
| Asahikawa          | 298               | 44                   | 16.18%     |
| Tokushima          | 741               | 74                   | 10.32%     |
| Saijo Branch       | 39                | 4                    | 10.26%     |
| Miyagi             | 993               | 92                   | 10.20%     |
| Okazaki Medical    | 214               | 21                   | 10.10%     |
| Hachioji Medical   | 229               | 21                   | 9.33%      |
| Kakogawa           | 983               | 86                   | 9.06%      |
| Kumamoto           | 607               | 52                   | 9.03%      |
| Fuchu              | 2,667             | 218                  | 8.61%      |
| Himeji Juvenile    | 300               | 25                   | 8.42%      |
| Akita              | 497               | 38                   | 8.05%      |

8. We are especially concerned that there has been an average of 26 prisoners each year who have been detained in solitary confinement for more than 10 years. Several prisoners have been detained for over 30 years and the longest one has been for 49 years (Table 3).

(Table 3) Prisoners in Solitary Confinement for more than 10 years<sup>2</sup>

| Date of Research    | November 10, 2000 | July 10, 2001 | October 1, 2002 | November 1, 2005 | April 10, 2008 | April 10, 2012 |         |
|---------------------|-------------------|---------------|-----------------|------------------|----------------|----------------|---------|
| Period of Isolation | 1                 | 37y 00m       | 37y 08m         | 38y 11m          | 42y 00m        | 52y 03m        | 49y 08m |
|                     | 2                 | 36y 07m       | 37y 03m         | 38y 05m          | 41y 06m        | 43y 00m        | 47y 00m |
|                     | 3                 | 35y 06m       | 35y 07m         | 36y 07m          | 39y 08m        | 39y 01m        | 30y 06m |
|                     | 4                 | 34y 11m       | 35y 05m         | 29y 01m          | 38y 07m        | 35y 10m        | 30y 04m |
|                     | 5                 | 34y 09m       | 27y 10m         | 24y 00m          | 27y 01m        | 26y 06m        | 27y 10m |
|                     | 6                 | 27y 10m       | 22y 10m         | 23y 07m          | 26y 08m        | 26y 05m        | 27y 04m |
|                     | 7                 | 22y 06m       | 22y 04m         | 22y 10m          | 26y 00m        | 25y 06m        | 23y 10m |
|                     | 8                 | 22y 02m       | 21y 07m         | 22y 04m          | 25y 05m        | 23y 11m        | 22y 05m |
|                     | 9                 | 21y 05m       | 21y 01m         | 22y 02m          | 25y 00m        | 23y 05m        | 21y 11m |
|                     | 10                | 20y 11m       | 21y 00m         | 21y 01m          | 24y 10m        | 20y 05m        | 20y 05m |
| ≥30y                | 11                | 20y 05m       | 19y 10m         | 21y 00m          | 23y 11m        | 20y 01m        | 20y 01m |
| 20y–29y<br>11m      | 12                | 20y 04m       | 19y 09m         | 21y 00m          | 23y 11m        | 16y 05m        | 19y 11m |
|                     | 13                | 19y 04m       | 19y 09m         | 20y 10m          | 23y 06m        | 16y 02m        | 16y 07m |
| 10y–19y<br>11m      | 14                | 19y 03m       | 19y 07m         | 20y 09m          | 21y 07m        | 16y 00m        | 15y 09m |
|                     | 15                | 19y 01m       | 19y 06m         | 18y 10m          | 20y 03m        | 15y 11m        | 15y 02m |
|                     | 16                | 18y 11m       | 17y 07m         | 18y 06m          | 19 y 08m       | 15y 09m        | 13y 03m |
|                     | 17                | 18y 10m       | 17y 03m         | 16y 01m          | 18 y 05m       | 13y 01m        | 12y 07m |
|                     | 18                | 17y 00m       | 15y 10m         | 15y 09m          | 17 y 01m       | 12y 08m        | 11y 07m |
|                     | 19                | 16y 07m       | 14y 10m         | 13y 10m          | 16 y 01m       | 12y 06m        | 11y 02m |
|                     | 20                | 15y 02m       | 14y 07m         | 13y 10m          | 15 y 09m       | 11y 11m        | 10y 05m |
|                     | 21                | 14y 05m       | 12y 10m         | 12y 12m          | 15 y 03m       | 11y 09m        | 10y 03m |
|                     | 22                | 14y 02m       | 12y 07m         | 12y 02m          | 15 y 02m       | 11y 03m        |         |
|                     | 23                | 13y 11m       | 11y 09m         | 12y 01m          | 14 y 01m       |                |         |
|                     | 24                | 12y 02m       | 11y 00m         | 11y 06m          | 13 y 07m       |                |         |
|                     | 25                | 11y 11m       | 10y 10m         | 11y 00m          | 13 y 05m       |                |         |
|                     | 26                | 11y 01m       | 10y 05m         | 10y 06m          | 13 y 04m       |                |         |
|                     | 27                | 10y 04m       |                 | 10y 04m          | 13 y 04m       |                |         |
|                     | 28                | 10y 02m       |                 | 10y 04m          | 13 y 01m       |                |         |
|                     | 29                |               |                 | 10y 03m          | 10 y 06m       |                |         |
|                     | 30                |               |                 | 10y 00m          | 10 y 00m       |                |         |
| No. of Prisoners    | 28                | 26            | 30              | 30               | 22             | 21             |         |

### Recommendation to the Japanese Government

- (a) Reduce or abolish the use of the inhumanely strict discipline of solitary confinement.

### C. Disciplinary Measures / Punishment

9. Japanese law does not clarify which conduct should be subject to disciplinary measures in prison. Whether a prisoner should be punished and which punishment should be imposed are solely dependent on the prison governor's discretion.
10. The procedure to impose disciplinary measures is unfair. Prisoners do not have access to the evidence of their own cases and are not allowed to call witnesses or have counsel (or other representatives) for their defense. Grievances are decided by a panel consisting of only prison officers. A prison officer is

<sup>2</sup> These data are based on surveys conducted by a Diet member on six different occasions between 2000 and 2012.

assigned to assist the defense, but the defense is limited to a plea for leniency. In fact, according to a survey conducted by a legislator in 2002, there was no case where an officer assigned for defense argued that punishment should not be imposed on the prisoner, and this practice continues to this day. Just as the Human Rights Committee raised concerns about “lack of fair and open procedures for deciding on disciplinary measures” in its Concluding Observation of 1998 (para.27(c)), current procedures still lack fairness and transparency.

11. The most severe disciplinary measure is almost the same as ‘isolation,’ but with limited opportunities for bathing and exercise. Quite often, more restrictions such as prohibition of work and external contacts, are also imposed. During Japan’s ICCPR review in 2008, the Human Rights Committee expressed concerns about “use of harsh punitive measures, including frequent resort to solitary confinement,” but solitary confinement as a disciplinary measure continues.
12. Practically, it is understood that many of those who are punished repeatedly are long term prisoners, foreigners and prisoners with mental disorders, all of whom have difficulties with communication. It is thus doubtful whether these prisoners are given adequate treatment.

#### **Recommendations to the Japanese Government**

- (a) Establish specific and clear criteria for punishment.
- (b) Establish transparency in application of punishments.
- (a) Provide prisoners facing punishment assistance from lawyers and other supporting organizations independent of prison authorities.

#### **D. Health, Sanitation, and Medical Treatment in Prisons**

13. During Japan’s ICCPR review in 2008, the Human Rights Committee recommended that “the State party should ensure that adequate, independent and prompt medical assistance be provided to all inmates at all times. The State party should consider placing medical facilities and staff under the jurisdiction of the Ministry of Health.”
14. Despite the entry into force in 2007 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereinafter referred to as “the New Prison Law”), problems with health, sanitation and medical treatment in prisons remain. Medical service is subordinate to the security system of each penal institution. Security requirements are prioritized over anything else, making it extremely difficult to provide adequate medical services.
15. There is also a serious lack of medical staff in prisons, particularly doctors. As of December 2013, penal institutions were expected to have 332 doctors in full time employment, however only 260 of those positions were filled. There are 31 institutions which have no full time doctor (Asahi Shimbun, 19 Dec. 2013).
16. As a result of the lack of doctors, assistant nurses are charged with the responsibility of determining necessity and urgency of medical examinations by doctors. Since assistant nurses are themselves prison guards who acquired their qualifications at the prison's medical facility, they have a natural tendency to favor security requirements over health concerns.
17. Medical examination by a doctor is frequently deemed unnecessary, causing delay in medical attention, and resulting in symptoms that cannot then be treated at the penal institution.

18. When medical facilities and treatment are available at an institution but are inadequate, the decision to transfer the inmate to an outside hospital is often not made, leading to worsening symptoms, or even death. In February 2012, a male prisoner in his seventies detained at Toyama Prison died of disease because of the unreasonable delay in sending him to an outside facility where he could receive adequate medical treatment.
19. In order to secure an adequate number of prison doctors, the Ministry of Justice is trying to reform working conditions, especially by increasing wages. But the fundamental problem remains: medical service is not independent from the security requirements.

**Recommendations to the Japanese Government:**

- (a) Inmates should receive adequate medical treatment without any undue hindrance by reason of security issues.
- (b) The State party should consider placing medical facilities and staff under the Ministry of Health.

**E. Grievance Mechanisms**

20. Prison Law provides the following 3 types of grievance mechanisms for prisoners: (a) Claim for Review, (b) Report of Cases, and (c) Filing of a Complaint:
  - a. **Claim for Review** can be filed against **only 16 types of dispositions** made by the authorities, which are set out by Art.157.
  - b. **Report of Cases** can be filed against (i) illegal use of physical force; (ii) illegal or unjust use of arresting ropes, handcuffs, or restraint suits; and (iii) illegal or unjust confinement in a protection cell.
  - c. **Filing of Complaints** is available with regard to treatment in general. However, Filing of Complaints is not subject to review by **the Study Group on Review of Appeals Filed by Inmates of Penal Facilities** (see below).
21. Claim for Review and Report of Cases:
  - must be filed **within 30 days** from disposition or illegal use of force;
  - must be filed by prisoners themselves and **representation by third party is not allowed**;
  - are examined by Regional Correction Headquarters.
22. If prisoners are dissatisfied with the results of examination by Headquarters, they may request review by the Minister of Justice **within 30 days** from the notification of the results.
23. When the Minister finds a request **unlawful** (e.g., a request was filed after a statutory period of 30 days or filed against an act which is not listed by law), he/she can simply reject the request.
24. When the Minister finds that a request **lacks its grounds** and should be dismissed, he/she refers the case to *the Study Group on Review of Appeals Filed by Inmates of Penal Facilities* (hereinafter referred to as “the Study Group”).
25. The Study Group
  - is a provisional and de-facto mechanism until National Human Rights Institution is established;
  - consists of five members from outside the Ministry, including one lawyer, one medical doctor and two academics; and
  - is expected to review each case and submit its opinions to the Minister but the opinions are not

legally binding.

26. The following tables show that the current grievance mechanisms do not work efficiently (Tables 4 & 5).

(Table 4) Results of **Claim for Review** filed during 2011

|   |                            |                         |                                      |                            |                       |
|---|----------------------------|-------------------------|--------------------------------------|----------------------------|-----------------------|
| Decision made by Regional Correction Headquarters | Prisoner's Claim Upheld    | 7<br><b>(0.176%)</b>    | Decision made by Minister of Justice | Prisoner's Claim Upheld    | 2<br><b>(0.17%)</b>   |
|   | Dismissed                  | 1,014<br><b>(25.6%)</b> |                                      | Dismissed                  | 154<br><b>(13.1%)</b> |
|   | Claim deemed unlawful      | 2,789<br><b>(70.4%)</b> |                                      | Claim deemed unlawful      | 888<br><b>(75.7%)</b> |
|   | Others (withdrawn/pending) | 148                     |                                      | Others (withdrawn/pending) | 129                   |
|   | Total                      | 3,958                   |                                      | Total                      | 1,173                 |

(Table 5) Results of **Report of Cases** filed during 2011

|   |                         |                       |                                      |                         |                        |
|---|-------------------------|-----------------------|--------------------------------------|-------------------------|------------------------|
| Decision made by Regional Correction Headquarters | Prisoner's Claim Upheld | 0<br><b>(0%)</b>      | Decision made by Minister of Justice | Prisoner's Claim Upheld | 0<br><b>(0%)</b>       |
|   | Claim Dismissed         | 455<br><b>(45.7%)</b> |                                      | Dismissed               | 102<br><b>(36.8%)</b>  |
|   | Claim deemed unlawful   | 467<br><b>(48.8%)</b> |                                      | Claim deemed unlawful   | 139<br><b>(50.18%)</b> |
|   | Others                  | 35                    |                                      | Others                  | 36                     |
|   | Total                   | 957                   |                                      | Total                   | 277                    |

### **Recommendation to the Japanese Government**

- (a) The State party should reform the grievance mechanisms so that prisoners' complaints will be duly addressed by responsible authorities.

## **Part 2: The Death Penalty**

### **A. Facts and Figures**

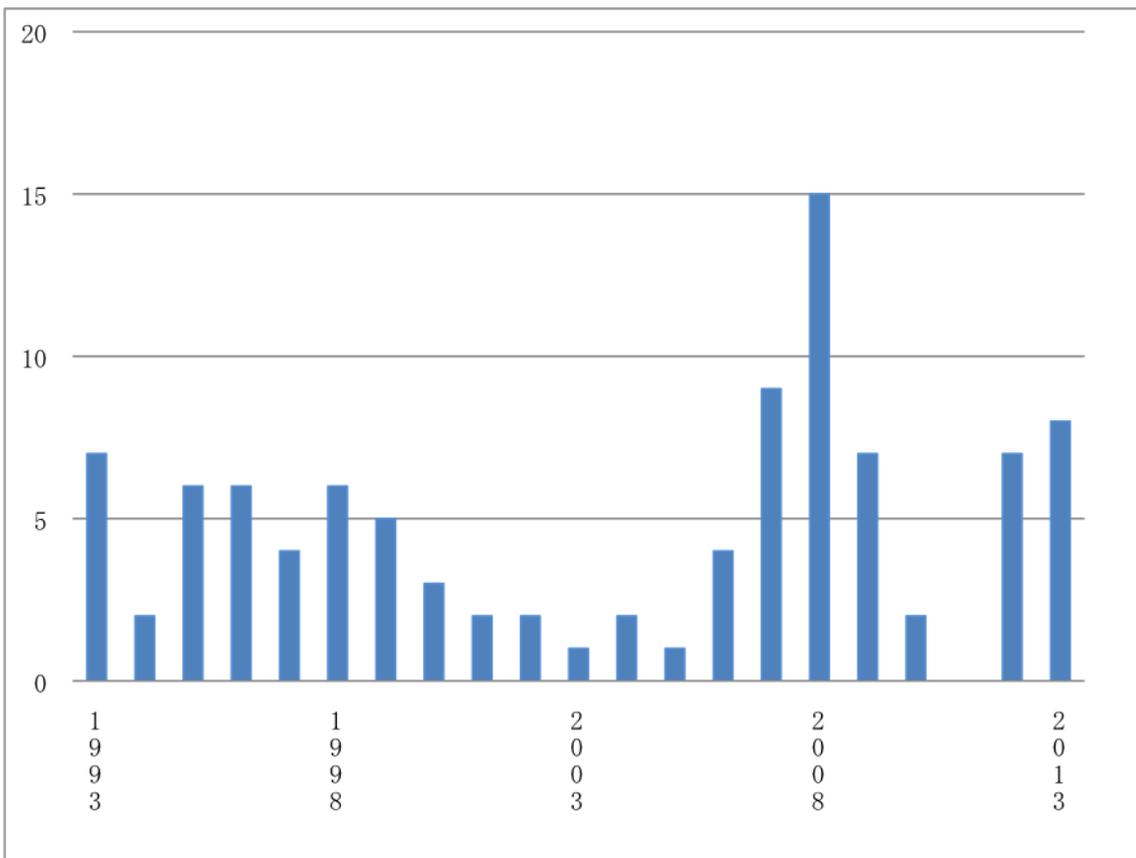
27. Since 2008 when the Human Rights Committee last reviewed Japan's ICCPR report, Japan has executed 39 people, including one female (Table 6). On 30 August 2009, the Democratic Party of Japan (DPJ) won the general election and seized political power for the first time. But three years later, the Liberal Democratic Party (LDP) won the election in December 2012. Among the 39 prisoners executed during this time, 30 were executed by a LDP-led government, and 9 by the DPJ.
28. Although no execution was carried out in 2011 (Graph 1), on 29 March 2012, Justice Minister Toshio Ogawa ordered the execution of three inmates. Since then, executions have been carried out on regular basis.

29. The current Justice Minister, Sadakazu Tanigaki, a lawyer and politician, assumed office on 26 December 2012. Since then, he has ordered executions of eight inmates.

(Table 6) Changes in the Number of Executions 2007–2013

| Year | Date         | Execution | Annual total | Justice Minister       | Prime Minister    |
|------|--------------|-----------|--------------|------------------------|-------------------|
| 2007 | April 27     | 3         | 9            | Jinen Nagase(LDP)      | <b>Shinzo Abe</b> |
|      | August 23    | 3         |              |                        |                   |
|      | December 7   | 3         |              |                        |                   |
| 2008 | February 1   | 3         | 15           | Kunio Hatoyama(LDP)    | Yasuo Fukuda      |
|      | April 10     | 4         |              |                        |                   |
|      | June 17      | 3         |              |                        |                   |
|      | September 11 | 3         |              | Koji Yasuoka(LDP)      |                   |
|      | October 28   | 2         |              |                        |                   |
| 2009 | January 29   | 4         | 7            | Eisuke Mori(LDP)       | Taro Aso          |
|      | July 28      | 3         |              |                        |                   |
| 2010 | July 28      | 2         | 2            | Keiko Chiba(DPJ)       | Naoto Kan         |
| 2011 | N/A          | 0         | 0            | N/A                    | N/A               |
| 2012 | March 29     | 3         | 7            | Toshio Ogawa(DPJ)      | Yoshihiko Noda    |
|      | August 3     | 2         |              | Makoto Taki(DPJ)       |                   |
|      | September 27 | 2         |              |                        |                   |
| 2013 | February 21  | 3         | 8            | Sadakazu Tanigaki(LDP) | <b>Shinzo Abe</b> |
|      | April 26     | 2         |              |                        |                   |
|      | September 12 | 1         |              |                        |                   |
|      | December 12  | 2         |              |                        |                   |

(Graph 3) Annual Executions 1993 – 2013



30. Despite the regular executions, death row populations grew compared to the level of 2008. At the end of 2013, the number of death row prisoners who had exhausted or waived their rights to appeal slightly dropped to 130, from 133 of 2012. Even so, the number still remains at the highest level since 1945, and thus it is anticipated other executions might take place in the near future.

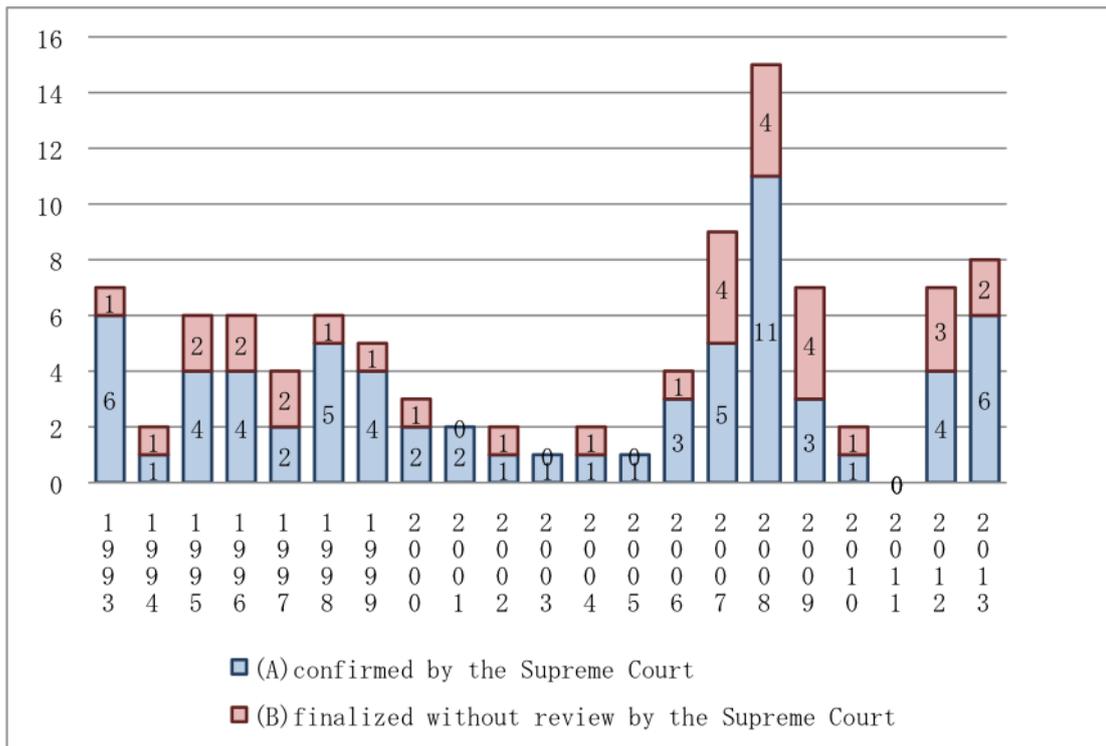
(Table 7) Death Sentence and Inmates on Death Row

| Year | Finalized death sentences | Death sentence imposed by the court of first instance | Inmates with finalized death sentences at year end |
|------|---------------------------|---|--|
| 2004 | 14                        | 14  | 66   |
| 2005 | 11                        | 13  | 77   |
| 2006 | 21                        | 13  | 94   |
| 2007 | 23                        | 14  | 107  |
| 2008 | 10                        | 5   | 100  |
| 2009 | 17                        | 9   | 104  |
| 2010 | 9                         | 4   | 111  |
| 2011 | 22                        | 10  | 128  |
| 2012 | 10                        | 3   | 133  |
| 2013 | 8                         | 5   | 130  |

**B. Lack of a System of Mandatory Appeal**

- 31. During Japan’s ICCPR review in 2008, the Human Rights Committee expressed its concern that an increasing number of defendants are convicted and sentenced to death without exercising their right of appeal. Lack of mandatory review by higher courts increases the risk of execution of the innocent, and data from 1993 to 2014 show that many prisoners continue to be executed despite not having exhausted their right to appeal (see Graph 4).
- 32. In February 2013, Justice Minister Sadakazu Tanigaki ordered the executions of three prisoners: two of the three—Masahiro Kanagawa and Kaoru Kobayashi—had withdrawn their appeals at the High Courts and allowed their sentences to become final. The other prisoner, Keiki Kanoh, had originally been sentenced to life imprisonment, but the High Court overturned that sentence after an appeal by public prosecutors. Since these executions, Minister Tanigaki has not ordered the execution of any prisoner who had not fully exhausted all appeal rights. This change in the Justice Ministry’s practice may be closely related to the fact that several death sentences given under the *Lay Judge System* have become final without review by the upper courts, which has received considerable criticism (see below). This recent positive trend has, however, brought with it another negative tendency in executions: more prisoners’ sentences have become final recently and their executions are now able to be carried out.

(Graph 4) Executions and Right of Appeal

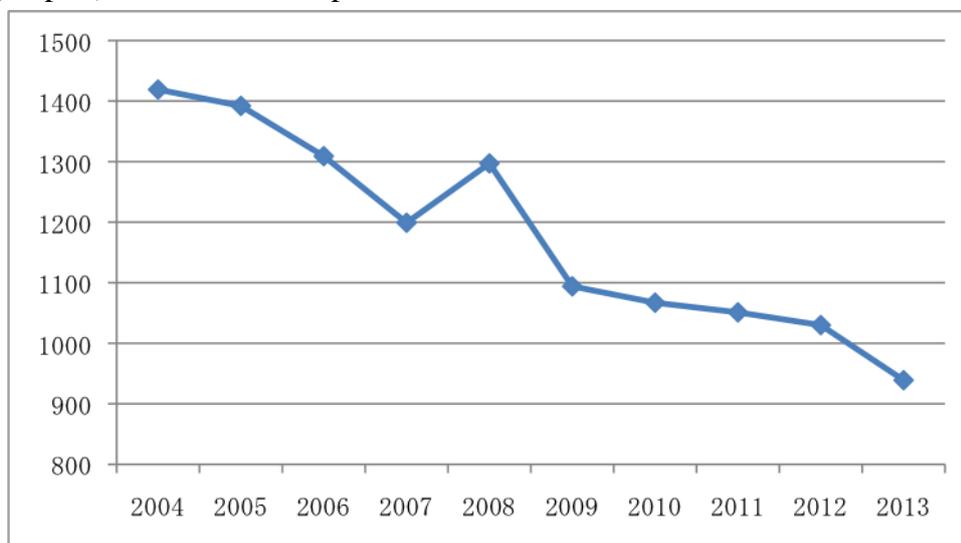


**C. Lay Judge Trial and the Death Penalty**

- 33. In May 2009, the *Act on Criminal Trials examined under the Lay Judge System* was enacted, along with the new system of the Lay Judge trial.
- 34. So far, there has not been an increase in the number of death sentences under the new system, but it should be also noted that the number of homicides has been decreasing since 2008 (graph 5).

35. On the other hand, an apparent new trend can be seen. Under the *Lay Judge System*, prosecutors have sought death sentences for 28 defendants, and as of May 10, 2014, 21 defendants out of 28 have been sentenced to death. This means that in 75% of all the capital cases, prosecutors achieved the death penalty. This is much higher than the corresponding rate of death sentences handed down in the trials by only professional judges between 1980 and 2009, which is 55.7%.
36. Furthermore, out of 21 individuals sentenced to death under the *Lay Judge System*, 4 defendants (19.04%) let their death sentences become final by withdrawal of appeals. The lack of a mandatory appeals system is becoming more and more problematic under the new system.
37. Under the new *Lay Judge System*, in order to determine the punishment (including a sentence of death), a simple majority vote (including at least one professional judge) is enough. Furthermore, as there are no sentencing guidelines to be followed by either professional judges or lay judges, considerable fluctuations in sentencing can be seen. Among these four people whose sentences have already become final, there was a man who did not have any prior criminal record. Many observers questioned his harsh sentence.
38. The Tokyo High Court has overruled three death sentences rendered in lay judge trials and resentenced the defendants to life imprisonment. However, in all three cases, public prosecutors have appealed to the Supreme Court and currently the cases are under review. These reversals at the High Court suggest an overly punitive tendency in lay judge trials. Although the High Court has attempted to rectify these sentences, the fact that prosecutors are entitled to appeal means that defendants still may face the death penalty.

(Graph 5) Annual Total of Reported Murder Cases



#### D. Prisoners with Mental Disorders

39. During Japan's ICCPR review in 2008, the Human Rights Committee recommended that Japan consider adopting a more humane approach with regard to the treatment of death row inmates and the execution of persons at an advanced age or with mental disabilities. However, no systematic reform has been made in this regard.
40. Japan's Code of Criminal Procedure prohibits the execution of an inmate in a state of insanity (Article 479 paragraph 1). However, inmates' status of "insanity" has been impossible to verify

because even inmates themselves cannot get access to their own medical records, and medical specialists from outside of prison have not been admitted to visit them for medical examination. The government admits that there is no case where this provision of the Code has been applied.

41. In 2013, the Committee Against Torture recommended that the government of Japan should ensure an independent review of all cases when there is credible evidence that a death row inmate is mentally ill and ensure that a detainee with mental illness is not executed (in accordance with article 479(1) of the Code of Criminal Procedures). However, the government has not shown any intention to establish such a review mechanism.
42. There are several death row prisoners who are suffering from serious mental illness and who do not receive proper medical treatment. The case of Iwao Hakamada serves not only as strong evidence of wrongful conviction but also as an eminent example of mental disorders on death row. Hakamada, who was arrested in August 1966, was placed on death row following the confirmation of his death sentence in 1989. Shortly thereafter, he started to show signs of mental disorder, and several outside psychiatrists diagnosed him with a mental illness. However, Tokyo Detention Center insisted that there was no need for psychiatric treatment. On 27 March 2014—48 years after he was first arrested—he was granted a retrial by the Shizuoka District Court and released, based on allegations of falsified evidence during his first trial. His mental illness remained untreated throughout his imprisonment.
43. It is believed that Hakamada's case is just the tip of the iceberg and there are many other death row prisoners with serious mental disorders; these prisoners include Shoko Asahara, a guru of the Aum Shinrikyo cultist group, and Matsuzo Ohama, who has been on death row since 1977, when he withdrew his appeal and allowed his sentence to become final.

#### **E. “Peace of Mind” Principle**

44. As stipulated in Article 32 of the New Prison Law, the idea underlying inhumanely restrictive treatment of death row prisoners is “to maintain a peace of mind.” Section 1 of the Article states: “upon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind.”
45. During the Diet session in which the New Prison Bill was discussed, the Ministry of Justice said that “to maintain peace of mind” should not be interpreted as a tool for restriction of prisoners' rights, but should be used to give assistance to the prisoners. In practice, however, “peace of mind” is used as an excuse to restrict the prisoners' rights, especially rights to have contact with the outside world. The government has claimed that such contacts may disturb the “peace of mind” of prisoners who are facing death and therefore whose mental states are so unstable and vulnerable and that such contacts with outside people must be strictly restricted.

#### **F. Restricted Communication with the Outside World**

46. Under the New Prison Law, relatives of an inmate sentenced to death and people who have a special need to contact death row prisoners have legal rights to contact them<sup>3</sup>, but in reality people other than

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<sup>3</sup> According to Article 120 (1), if persons outside the prison meet the following requirements, they can meet the inmate sentenced to death: (ii) A person with the necessity to have a visit in order to carry out a business pertaining to personally, legally, or occupationally important concern of the inmate sentenced to death, such as reconciliation of marital relations, pursuance of a

family members are often not allowed to do so. As for non-relatives (e.g. friends), the number of the outside people who are allowed to get in touch with a prisoner is limited to three to five and even those who are allowed to exchange letters with a prisoner are not necessarily permitted to meet with a prisoner.

47. If a prisoner wants to add a new person to a list of visitors, because a previously approved visitor can no longer visit him anymore, such changes to a visitors' list are never approved. This means that the number of visitors would never increase, but only decrease.
48. The practice of attendance by prison guards at meetings between prisoners and their legal representatives has slightly changed. On December 10th, 2013, the Supreme Court decided that having a meeting between an inmate sentenced to death and his lawyers for a retrial case without attendance by a prison guard is in the 'legitimate interest of both of the inmate and his lawyers' and unless there are special circumstances, a guard's attendance at such a meeting should not be allowed. After the ruling, the Ministry of Justice amended its ordinance and started to allow unobserved meetings between death row prisoners and their lawyers, but still in considerable number of cases, meetings are monitored by officials and prisoners are never allowed to see their lawyers in private.

#### **G. Other Issues**

49. The New Prison Law provides that each death row prisoner shall be detained in a single cell and separated from the other prisoners day and night. Under the law, contact between death row prisoners is legally possible, where deemed advantageous in light of the principle of treatment prescribed in paragraph (1) of Article 32, which provides that "(u)pon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind." However, the Ministry of Justice admits that such treatment has never been allowed. Such circumstances contribute to deterioration of prisoners' mental conditions.
50. Pardon, commutation, and reprieve for death row inmates have never been allowed, even after Japan's 2008 review by the Human Rights Committee.
51. As of May 10 2014, there are 18 death row prisoners age 70 and older, excluding Mr. Iwao Hakamada.
52. In Japan, death row inmates are not informed of the date and time of execution until just an hour before it actually takes place. This practice gives great sufferings to inmates themselves as well as to their families. Moreover, a lack of prior announcement totally deprives inmates of the opportunities to challenge the legitimacy of executions.
53. On March 11, 2014 the Quaker United Nations Office held a meeting and issued a report concerning the "children of parents sentenced to the death penalty or executed." The panel recognized that children of people sentenced to death and children of executed inmates have long been invisible and neglected and that they have benefited from little or no assistance or care from any institutions. The panel recommended an improvement in the rights of children to information, and an improvement in

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lawsuit, or maintenance of a business.

If letters meet the following article, their sending and receiving are permitted.

Article 139 (1) (ii) Letters which the inmate sentenced to death sends and receives in order to carry out a business pertaining to personally, legally, or occupationally important concern of the inmate sentenced to death, such as reconciliation of marital relations, pursuance of a lawsuit, or maintenance of a business.

opportunities for last visits or other communications, as well as increased rights to a return of the body without payment. In addition, the report recommended an assessment of the best interests of a child when sentencing a parent.

54. Akari Maeda, professor at the Tokyo Zokei University, recounted the current difficulties in Japanese children visiting inmate sentenced to death owing to the general geographical remoteness of the prisons and a lack of facilities for such visits. In addition, Professor Maeda reported the widespread lack of notice of execution given either to the inmate or his family and the effects of this practice on children.

#### **Recommendations to the Japanese Government**

- (a) Introduce a moratorium on executions and consider abolition of the death penalty.
- (b) Establish an independent body which probes into causes of wrongful convictions.
- (c) Introduce a requirement of a unanimous verdict for death sentences.
- (d) Adopt a mandatory review and appeal system for capital cases.
- (e) Reform the current pardon system in order that the system can truly function for those facing the death penalty.
- (f) Establish a reliable and independent review mechanism to identify death row inmates who may be suffering from mental illness.
- (g) Facilitate independent mental health examinations of prisoners to determine the effects of “peace of mind” provisions.
- (h) Ensure that death row prisoners will have more opportunities for contact with outside parties.
- (i) Guarantee the confidentiality of meetings between prisoners and their lawyers.
- (j) Require a prisoner on death row to be notified of the date of his/her execution well before the scheduled date.
- (k) Ensure the rights of children to information about the prisoner, including sufficient prior notice of the date and time of execution.
- (l) Consider the best interests of the minor children of prisoners sentenced to death in sentencing, in decisions to allow family visits to prisoners on death row, and in carrying out the death penalty.
- (m) Allow children and other family members reasonable access to the prisoner before execution, and provide sufficient time for the family’s to receive the body of the executed family member if it wishes to do so.