



**Submission to the Human Rights Committee
the Task Forces for the Sixth Periodic
Report by the Japanese Government
109th session (14 October – 1 November 2013)
by Center for Prisoners' Rights Japan**

**Japan: current state of the death penalty
and prison condition**

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The death penalty

Facts and Figures

1. Since 2008 when the CCPR reviewed Japan's fifth periodic report, Japan has executed 36 people, including one woman (Table 1). On August 30th, 2009, the Democratic Party of Japan (DPJ) won the general election and seized political power for the first time. Then, the Liberal Democratic Party (LDP) won the elections on December 16th, 2012 and became ruling party once again. Among the 36, 27 were executed by a LDP-led government, and 9 by the DPJ. Although no execution was carried out in 2011, on March 29th, 2012, Justice Minister Toshio Ogawa ordered the execution of three death row inmates. As a response to the growing death row population (Table 2), conservative voices within the LDP, as well as some media, have for the past months been calling for executions on regular basis. The current Justice Minister Sadakazu Tanigaki ordered executions of three inmates only two months after assuming office on December 26th, 2012. In 2012, Japan was part of the 21 countries which have carried out judicial executions in the world.

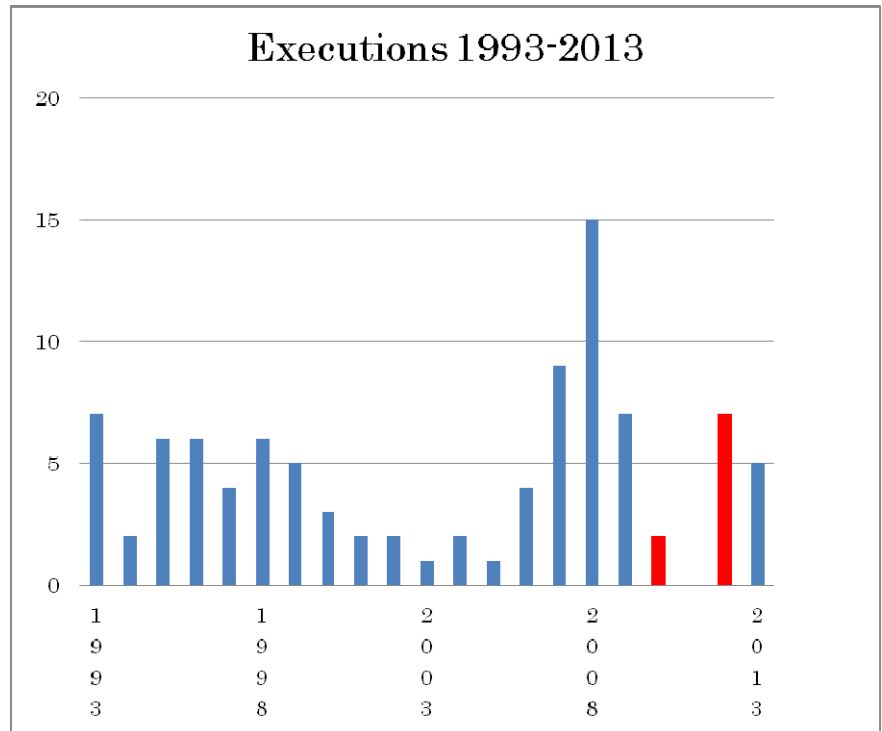
(Table 1) Changes in the number of executions

Year	Date	Execution	Annual total	Justice Minister	Prime Minister
2008	February 1	3	15	Kunio Hatoyama (LDP)	Yasuo Fukuda
	April 10	4		Kunio Hatoyama (LDP)	Yasuo Fukuda
	June 17	3		Kunio Hatoyama (LDP)	Yasuo Fukuda
	September 11	3		Koji Yasuoka (LDP)	Yasuo Fukuda
	October 28	2		Eisuke Mori (LDP)	Taro Aso
2009	January 29	4	7	Eisuke Mori (LDP)	Taro Aso
	July 28	3		Eisuke Mori (LDP)	Taro Aso
2010	July 28	2	2	Keiko Chiba (DPJ)	Naoto Kan
2011	N/A	0	0	N/A	N/A
2012	March 29	3	7	Toshio Ogawa (DPJ)	Yoshihiko Noda
	August 3	2		Makoto Taki (DPJ)	Yoshihiko Noda

	September 27	2		Makoto Taki (DPJ)	Yoshihiko Noda
2013	February 21	3	5 (as of August 5)	Sadakazu Tanigaki (LDP)	Shinzo Abe
	April 26	2		Sadakazu Tanigaki (LDP)	Shinzo Abe

Red: Executions by DPJ

Blue: Executions by LDP



(Table 2) Death sentence and inmates on death row

Year	Finalized death sentences	Death sentence imposed at the first instances	Inmates with finalized death sentences at year end
1993	7	4	56
1994	3	8	57
1995	3	11	54
1996	3	1	51
1997	4	3	51
1998	7	7	52
1999	4	8	50
2000	6	14	53
2001	5	10	55

2002	3	18	57
2003	2	13	56
2004	14	14	66
2005	11	13	77
2006	21	13	94
2007	23	14	107
2008	10	5	100
2009	17	9	104
2010	9	4	111
2011	22	9	129

Resumption of executions

2. The Government of Japan did not execute anyone for 20 months from the execution carried out on 28 July 2010. However, the executions resumed on March 29th, 2012, following orders by new Justice Minister Toshio Ogawa. At a press conference, he said: "I simply performed my duty as a Justice Minister. The right to punish criminals rests on Japanese nationals, and a government poll shows the majority of Japanese support the death sentence," "Also, lay judge trials maintain the death sentence as a punishment, and lay judges are from the general public." As a result, in total 9 executions were carried out under the DPJ government.
3. After the change of government from the LDP to DPJ, the Minister of Justice Sadakazu Tanigaki took office. On February 2013 he carried out three executions less than two months after his nomination. He said at the press conference, "What is more important is not the international trend of abolition, but the fact that the death penalty is a domestic issue."
4. Two of the three inmates, Masahiro Kanagawa and Kaoru Kobayashi, did not exercise their rights of appeal and the other one, Keiki Kano, was originally sentenced to life imprisonment, which was repealed by the higher court.
5. On Friday April 26th 2013, the Minister of Justice Sadakazu Tanigaki ordered execution of two inmates, Katsuji Hamasaki and Yoshihide Miyagi, both detained at Tokyo Detention Center.

6. This was the second execution under the government led by Liberal Democratic Party which came back to the power in last December, and it was only two months after the last execution had taken place in February.
7. Moreover, execution of Hamasaki was carried out only sixteen months after his sentence had become finalized in December 2011. In Japan, death row prisoners are severely restricted their contacts with outside world, and even reaching out to a counsel for retrial procedure is difficult for them. Along with the basic problem that no prior notice of execution is given to inmates, the execution clearly deprived the inmate of his right to challenge the legitimacy of execution.

Lay judge trial and the death penalty

8. In May 2009, the Act on Criminal Trials Examined under Lay Judge System was enacted and the new system of the Lay Judge, which was aimed at making more people feel involved in the justice process and enhance trust of the public. So far, there has not been an increase in the number of death sentences, but it should be noted that the number of homicides has been decreasing since 2008. On the other hand, an apparent new tendency can be seen. Under the Lay Judge system, prosecutors have sought sentence of death for 24 defendants, and as of April 12, 17 defendants out of 24 have been sentenced to death. This means that in more than 70% of all the capital cases (70.83%), prosecutors achieved the death penalty. This is much higher than the corresponding rate of death sentences under the trials by professional judges only (from 1980 to 2009), which is 55.7%.
9. Furthermore, among 17 individuals sentenced to death, four defendants let their death sentences become final by withdrawal of appeals by themselves. Despite the repeated recommendations made by the Committee against Torture or the Human Rights Committee, the government of Japan has insisted that mandatory appeal system is not needed because most defendants exercise their rights of appealⁱ.
10. To reach the conclusion of the death sentence (and any other punishment), simple majority which includes at least each one from both professional judges and lay people is enough.

Human rights violations on death row

11. Despite the repeated recommendationsⁱⁱ by UN bodies, rights of death row inmates are strictly limited.

12. The new Prison Law which was enacted in 2007 provides that a death row prisoner shall be detained in a single cell and separated from the other prisoners day and night. Under the law, to make mutual contacts with other death row prisoners is possible, where deemed advantageous in light of the principle of treatment prescribed in paragraph (1) of Article 32, which provides that ‘upon treatment of an inmate sentenced to death, attention shall be paid to help him/her maintain peace of mind’. However, actually the Ministry of Justice admits that such treatment has never been allowed.
13. Contacts with people outside prisons are also strictly restrained. Under the law, relatives of the inmate sentenced to death and people who have the special necessity to have contacts with death row prisonersⁱⁱⁱ have right to contact with them, but actually people other than family members are often not allowed to do so. As for others, 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.
14. Meetings between prisoners and their legal representatives are usually observed by prison guards. On January 27th, 2012, Hiroshima High Court decided that having a meeting with his or her lawyers for a retrial case without attendance by a prison guard is ‘legitimate interest of the inmate sentenced to death’ and unless there are special circumstances, a guard’s attendance at such a meeting should not be allowed. Against this ruling, the government appealed to the Supreme Court and the case is still pending. Attendance at lawyers’ meeting is still a common practice.
15. The idea underlying such inhumanely restrictive treatment is ‘to maintain a peace of mind’ as stipulated in Article 32. During the Diet session in which the new Prison Bill was discussed, the Ministry of Justice of the LDP-led government 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 practices, however, ‘peace of mind’ still works as a strong reason to restrict the prisoners’ rights, especially rights to make contacts with outside. That is, the government explains that such contacts may disturb ‘peace of mind’ of prisoners who are facing death and therefore whose mental state is so unstable and vulnerable.
16. Pardon, commutation and reprieve for death row inmates have never been allowed even after the consideration of the government of Japan’s previous ICCPR report in 2008.
17. In Japan, death row inmates are usually 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 their families. Moreover, lack of prior announcement totally deprives inmates of the opportunities to challenge the legitimacy of executions.

The executions of persons with mental disability

18. The Code of Criminal Procedure prohibits the execution of an inmate in a state of insanity (Article 479 paragraph 1). However it is impossible to verify if it has been the case. Because even inmates themselves cannot get access to their own medical records, and the medical specialists outside of prison had not been admitted to visit them for medical examination.
19. Japanese government has continued to execute those who suffered mental illness. Seiha Fujima, one of the three prisoners who were hanged on December 7th, 2007, was mentally ill and after the trial at the first instant court he was found legally incompetent by the Supreme Court. However, his death sentence became final and was carried out without any examination of his mental condition by the third party.
20. On June 17th, 2008, Tsutomu Miyazaki was executed as well as two other inmates. Miyazaki was mentally ill and was receiving psychiatric treatment for schizophrenia in the detention center. Miyazaki's lawyer was preparing for filing a request of retrial and sent a letter which required the Justice Minister not to execute him. But two weeks after receiving the letter, the Minister executed Miyazaki without any examination on his mental condition. It seems that there are quite a number of death row prisoners who are suffering from serious mental illness but do not receive proper medical treatment, including Iwao Hakamada, who are widely believed to be actually innocent, Shoko Asahara, a guru of Aum Shinrikyo cultist group and Matsuzo Ohama, who has been on death row since 1977, when he withdrew an appeal against the sentence of death and let his sentence become final. Government has failed to establish a review mechanism to identify death row inmates who may be suffering from mental illness, despite the Committee's serious concern expressed in the previous session in 2008. Danger of executing insane people is still remaining.

Lack of Safeguards against Execution

21. As there is no system of mandatory appeal, a sentence of death which was rendered at the first instance court could be a final decision, if a defendant does not exercise his/her right to appeal. And actually more cases have become final without review by the higher courts, especially under the Lay Judge System.

22. After a death sentence became final, prisoners can file a request for retrial. However, after the finalization of the sentence of death, private communication between prisoners and lawyers are not guaranteed. In most cases, Prisoners' meetings with lawyers are attended and monitored by guards. Even in exceptional cases where a guard does not attend such meeting, sometime (once every three meetings or so) a guard attends and keep a record of conversation. Furthermore, severe restrictions on communication with outside people in general make it extremely difficult for a prisoner to find out a lawyer for legal representation. State-appointed lawyer is not available after the finalization of the sentence.
23. There are no rules for decision-making about who will be executed next, at least there is no written rule which is publicized.
24. Filing a request for re-trial or pardon cannot legally avoid execution. However, previous examples show that if procedure for retrial or pardon is actually pending and ongoing, the Ministry usually skips the execution of such inmates. Therefore, even if the Ministry knows that an inmate is preparing for a retrial, his/her execution will not be stayed. Moreover, the Ministry argues that if a prisoner has filed a retrial request based on the same reason as he/she raised in his/her previous request, execution of such person is possible even if the procedure is pending.
25. Thus prisoners on death row have to live their daily lives with fear of execution.

Questions to the Government of Japan:

- Provide statistical information on outside contacts for inmates sentenced to death, which includes the number of people who are able to make contact with inmates sentenced to death as (i) relatives, (ii) persons with the necessity to have a visit in order to carry out a business pertaining to an important concern of the inmate sentenced to death, (iii) persons whose visit is deemed instrumental to help the inmate sentenced to death maintain peace of mind, and (iv) other individuals who are permitted at the discretion of the warden of the penal institution when the visit or other contact is reasonably deemed to be necessary for the maintenance of a good relationship with this individual or for any other reasons and when it is deemed that there is no risk of causing disruption of discipline and order in the penal institution.
- Provide information on the process to decide whether or not the inmate sentenced to death is in a state of insanity at the time of his/her execution.
- Provide more detailed information on the opinion survey on the death penalty conducted from November to December 2009, which includes all sub-questions and its answers.

Prison Condition in Japanese Prison

Health, Sanitation and Medical Treatment in Prison

Issue

26. The areas of health, sanitation and medical treatment are some of the domains whose problems remain unsolved even with the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereinafter called “the New Law”). The root cause of the problem lies in the fact that medical services rely on the security system in place in the penal institutions. Security requirements are prioritized over anything else, making it extremely difficult to provide adequate medical services.
27. The lack of medical staff, of doctors in particular, is serious. As of April 2012, in Japan, the quota of doctors in full time employment in penal institutions is 226, however only 187 doctors are assigned. There are twelve institutions who has no full time doctor, and sixteen institutions that are falling below the quota. (Yomiuri Shimbun 27 Dec. 2012)
28. As a result of the lack of doctors, assistant nurses are charged with the responsibility to judge the necessity and urgency of medical examination by a doctor. Since assistant nurses are themselves prison guards who acquired their qualification at the prison's medical facility, they have a natural tendency to prioritize security requirements.
29. Medical examination by a doctor is frequently deemed unnecessary, causing delay in medical attention, and resulting in symptoms that cannot be treated at the penal institution.
30. There are cases when even though medical facilities and treatment available at the institution are inadequate, the decision to transfer the inmate to an outside hospital is not made, leading to worsening symptoms, or even death. In February 2012, a male prisoner in his seventies detained at Toyama Prison died of disease because of the unreasonable delay in receiving medical treatment.
31. In February 2008, a group of 22 inmates including relatives of a deceased inmate and ex-prisoners in Tokushima Prison filed a criminal complaint against the medical chief doctor, the former prison governor, and a guard in its medical section, saying that they had suffered abuse by a prison doctor while practicing from May 2004 to November 2007.

32. Some inmates said that the doctor injured them by placing his finger into their anus when there was no apparent need for a rectal examination and without their consent. In one case, an inmate who suffered dizziness was pinched on his inner thighs, had his ankle stepped on and was given a rectal check, causing an infection that required surgery at a private hospital. Moreover, another inmate who was wasting away because of high fever requested intravenous feeding but was refused by the prison governor at that time and after that. This inmate later killed by himself.

Points for discussion

33. In July 2011, Japanese government answered to a question of committee against torture which is concerned with the second Japanese government report.
34. “The transfer of the medical department of penal institutions to the Ministry of Health, Labour and Welfare has not been implemented due to a number of problems, including the problem of securing doctors, the necessity of maintaining a framework that ensures the provision of medical treatment within institutions from the perspective of securing the custody of inmates and protecting privacy and the necessity of maintaining a framework that ensures the prompt handling of emergency cases by securing doctors who can attend to penal institutions in times of emergency. However, efforts have been made to secure medical staff, including doctors, and to improve medical facilities so as to ensure that adequate medical treatment is provided to inmates. Moreover, measures have been taken to have inmates attended to or admitted at an outside medical institution if necessary.”
35. However, fundamental institutional reformation to increase the number of full-time doctors has not achieved. The number of full-time doctors has actually been decreasing.

Life imprisonment and the system of Parole

36. The Number of Prisoners serving the Life Imprisonment is growing, and periods of such lifers actually serving in prisons are becoming longer.
37. The number of new prisoners sentenced to life conclusively in 2011 was 43, while the number of prisoners released on parole in the same year was only six. The number of life sentences is increasing, and moreover, the average period of imprisonment of lifers is becoming longer. The number of lifers released on parole, however, has been markedly decreasing these years.

38. Since April 2009, prisoners serving more than 30 years in prison are due to be examined for parole automatically.
39. A decade from 2002 to 2011, lifers who are released on parole were 56 in total (excluding prisoners granted more than twice because of revoking former parole). In 2002, the average period in prison was 23 years and 5 months, but in 2011 it became 35 years and 2 months. Those lifers died in prison in this decade were 147, far more than those who were released on parole. (See “Statistical Data” below).
40. As for the treatment, at the end of December 2011, there were eight lifers who have been imprisoned for more than 50 years (See “Statistical Data” below). Long imprisonment will deteriorate prisoners’ health physically and mentally.
41. What is worse is that the Public Prosecutor’s Office issued an administrative ordinance in 1998 which actually limit the opportunity for parole to prisoners sentenced to life (in cases of very serious offences or widely reported cases). This ordinance has virtually created a new type of punishment, a life imprisonment without a possibility of parole, without introducing a new law.
42. There is no clear and substantive criterion for parole disclosed to prisoners and the parole granting procedure is carried out only by officers. After long years, prisoners often lack expectation to return to their own community, and non-governmental organizations regularly receive letters from prisons expressing their distress.
43. If there is truly no possibility, no programs, no proper procedure to follow and no fair criterion for lifers to get parole, we must say life sentence is arbitrary and inhuman, and therefore a violation of international human rights standard.

Statistical Data

(Table 3) Number of prisoners sentenced to life imprisonment

Year	1994	1995	1996	1997	1998	1999	2000	2001	2002
Number	894	909	923	938	968	1,002	1,047	1,097	1,152
Year	2003	2004	2005	2006	2007	2008	2009	2010	2011
Number	1,242	1,352	1,467	1,596	1,670	1,711	1,772	1,796	1,812

Source: Annual Report on Corrections

(Table 4) The situation of life sentenced prisoners (2002~2011)

Year	The number of life sentenced prisoner in Jail	The number of new prisoners who had been sentenced to life	The Number of prisoners who had been sentenced to life imprisonment and released on parole	The number of life sentenced prisoners died in jail
2002	1,152	75	5	18
2003	1,242	114	13	11
2004	1,352	119	8	15
2005	1,467	134	3	12
2006	1,596	136	4	15
2007	1,670	89	0	13
2008	1,711	53	4	7
2009	1,772	81	6	14
2010	1,796	50	7	21
2011	1,812	43	6	21
Total	-	894	56	147

Source: White Paper on Crime in Japan by the Ministry of Justice and The Ministry of Justice Situation of be sentenced to life and life sentenced prisoners are released on parole

(Table5) life sentence prisoner - period of imprisonment (The end of 2011)

The period of imprisonment (year)	The number of prisoner	Proportion	The average age (year)
Less than 10 years	948	52.3%	48.8
From 10 years to 20 years	402	22.2%	56.1
From 20 years to 30 years	347	19.2%	62.7
From 30 years to 40 years	87	4.8%	64.8
From 40 years to 50 years	20	1.1%	69.6
More than 50 years	8	0.4%	78.1
Total	1,812	100.0%	54.2

Source: The Ministry of Justice Situation of be sentenced to life and life sentenced prisoners are released on parole

(Table 6) Number of prisoners who had been sentenced to life imprisonment and released on parole by the period of imprisonment

Year (the period of imprisonment by the release)	Total	Within 12 years	Within 14 years	Within 16 years	Within 18 years	Within 20 years	Beyond 20 years
Average number during 1976-80	51.0	0.8	7.6	24.2	11.0	4.2	3.2
Average number during 1981-85	46.4	1.2	9.6	18.4	10.8	3.8	2.6
1986	28	–	3	15	6	2	2
1987	25	2	2	12	7	2	–
1988	11	–	1	5	2	1	2
1989	13	–	–	5	1	3	4
1990	17	–	–	5	3	4	5
1991	33	–	1	12	8	6	6
1992	21	–	–	6	1	6	8
1993	16	1	–	4	5	4	2
1994	15	–	–	–	8	3	4

1995	15	-	-	1	5	4	5
1996	9	-	1	-	-	5	3
1997	13	-	1	-	-	4	8
1998	14	-	-	-	-	5	9
1999	9	-	-	-	-	3	6
2000	6	-	-	-	-	-	6
2001	14	-	1	-	1	-	13
2002	5	1	-	-	1	-	3
2003	13	-	-	-	-	-	13
2004	8	-	-	-	-	-	8
2005	3	-	-	-	-	-	3
2006	4	-	-	-	-	-	4
2007	0	-	-	-	-	-	-
2008	4	-	-	-	-	-	4
2009	6	-	-	-	-	-	6
2010	7	-	-	-	-	-	7
2011	6	-	-	-	-	-	6

Source: White Paper on Crime in Japan by the Ministry of Justice

Question to the Government of Japan;

- Provide the information on average period of imprisonment by the release.

Solitary confinement

Issue

44. In the past, solitary confinement was used without clear criteria. The new law clarified the criteria for “isolation.” As a result, the number of sentenced inmates who are given the treatment of complete isolation from other inmates for 24 hours a day has decreased dramatically. The number of prisoners who are given the treatment of “isolation” decreased from 148 people in October 2006 to 16 people in April 2012.
45. However, many prisoners who do not meet the criteria for “isolation” are placed in solitary confinement, which is virtually the same as isolation, by being designated as a particular type in the new classification system of inmates called “security categories.” The only differences between this treatment and isolation are merely that there is a possibility for bathing and exercising with other inmates and that the inmates can, in accordance with a directive, come in contact with others twice a month (which used to be once a month before the review of the New Law in 2011). As of 10 April 2012, 2,190 prisoners are designated as type 4 in the security categories, accounting for 4.01% of the total.
46. Even though the number of prisoners designated as type 4 decreased, there still remains tendency to use the type 4 in the security categories to keep prisoners isolated. There are several prisons which actively use the type 4 in the security categories. (About this detail, see Table7.)

Points relating to the Covenant

- **No legally-established criteria for solitary confinement of type 4 in the security categories.**
47. The most of solitary confinement has no legally-established criteria. Although the new law has clear criterion for isolation, the criterion cannot be applied on the type 4 in the security categories.
- **Solitary confinement is often used as retaliation.**
48. The civil society has received reports on many cases which the prisoners were detained in solitary confinement when they brought a lawsuit against the prison authorities.
- **No legally-binding complaint procedure.**
49. In 2008, the Human Rights Committee recommended that "The state party should discontinue (omission) the practice of segregating certain inmates in "accommodating blocks" without clearly defined criteria or possibilities of appeal." Japanese government answered that "treatment in a single room throughout day and night is covered by a complaints mechanism."

50. “Claim for Review”, one type of grievance mechanism can be applied to “isolation”. However, it cannot be applied to the type 4 in security categories. Although “Filing of Complaints”, another type of grievance mechanism can be applied to the type 4 in security categories, “Filing of Complaints” is absolutely ineffective in practice.

- **Two Types of Solitary Confinement**

Type1: ‘Isolation’ under the Law

- Article 76 of the Prison Law provides “isolation of sentenced inmates ”
- An inmate can be isolated if:
 - there is a risk of disrupting discipline and order in the penal institution by making contact with other inmates, or
 - there is a risk of being exposed to harm by other inmates and no other solutions are available to avoid it
- Period of ‘isolation’ shall not exceed 3 months, but no limit on the renewal times.
- 16 persons are under ‘isolation’ (as of 10th April 2012)
- Inmates under ‘isolation’ can file a ‘Claim for Review’, one of the grievance mechanisms stipulated by the Law

Type2: ‘Category 4’ under the Regulations

- The Regulations for the Enforcement of the Prison Law, which is an ordinance of Ministry of Justice, has created four categories in order to classify the inmates, based on the evaluation of their threats to discipline and order of prison.
- Inmates classified as ‘Category 4’ must be placed in single cells and segregated from other inmates.
- No upper limit to the period of time
- 2,190 persons are classified as ‘Category 4’
- Classification into ‘Category 4’ cannot be subject to a review by higher authorities, i.e. inmates are not allowed to file a Claim for Review against this disposition.

- Only differences between ‘isolation’ and ‘category 4’ are:
 - 1) Category 4 inmates have a possibility for bathing and exercising with other inmates and,
 - 2) Category 4 inmates can come in contact with others twice a month

Key Factors:

- Category 4 is very much similar to ‘isolation’, which is strictly restricted by the Law
- Nevertheless, inmates are placed under Category 4 for indefinite time without any explicit criteria.

(Table 7). The list of prisons in which the number of prisoners who are designated as Type 4 in the security categories is more than twice the national average

Name of Prison	Total number of prisoners	Number of prisoners designated as Type 4 in the security category	Percentage of total number
Kitakyusyu Medical Prison	263	64	25.50%
Gifu Prison	846	139	16.75%
Asahikawa Prison	298	44	16.18%
Tokushima Prison	741	74	10.32%
Saijo Branch Prison	39	4	10.26%
Miyagi Prison	993	92	10.20%
Okazaki Medical Prison	214	21	10.10%
Hachioji Medical Prison	229	21	9.33%
Kakogawa Prison	983	86	9.06%
Kumamoto Prison	607	52	9.03%
Fuchu Prison	2,667	218	8.61%
Himeji Juvenile Prison	300	25	8.42%
Akita Prison	497	38	8.05%

51. Especially we are concerned that there are about 20 prisoners each year, who have been detained in solitary confinement for more than 10 years as a sum total. Several prisoners have been detained for over 30 years and the longest one has been for 49 years.

(Table 8). The number of prisoners who are detained in solitary confinement for more than 10 years and their period

(The data resulted from 6 times research by one of the Diet members from 2000 to 2012)

	Research on November 10 th , 2000	Research on July 10 th , 2001	Research on October 1 st , 2002	Research on November 1 st , 2005	Research on April 10 th , 2008	Research on April 10 th , 2012
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
11	20Y 05M	19Y 10M	21Y 00M	23Y 11M	20Y 01M	20Y 01M
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
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		
Total number of persons	28	26	30	30	22	21

“Y” refers to year and “M” refers to month.

Question to the Government of Japan;

- Provide information on the number of inmates who have been released from solitary confinement as Category 4 of security categories by using the grievance mechanism.

Disciplinary measures / Punishments (in prison)

Issue

52. The most concerning issue now on this is that the procedure for punishments are not fair and meeting the due process. Reports received by the Center for Prisoners' Rights Japan indicates that a lot of inmates are not satisfied with the procedure. Complaint procedure, even it exists, is not functioning as it is very hard to file a complaint when getting a punishment.
53. The Law has a lack of clarity about the conducts constituting a "disciplinary offence" because what kind of conducts should be subject to disciplinary measures and whether a prisoner should be imposed or not are mostly supposed to depend on each warden/prison governor's discretion. (cf. Rule 29 of the Standard Minimum Rules for the Treatment of Prisoners)
54. Furthermore, concerning the procedure for imposing disciplinary measures, it does not fully guaranteed due process. The prisoners cannot examine the details of their own cases and are not guaranteed the right to call witnesses or appoint a counsel (or other independent representative) for their defense. The Panel to examine the cases and make a judgment also consists of prison officers. An assistant person from the prison officers is supposed to assist or represent the prisoner. According to a result of investigation by one of the Diet members in 2002, there was no record which shows that this "assistant officer" insisted to not impose the punishment for the prisoner. Eventually, prison officers are supposed to play roles of prosecutor, judge, and defense attorney.
55. In addition, this process has a lack of transparency. Under the old Prison Law, most judicial decisions said that the procedure for disciplinary measures is different from that for criminal punishment as the case *infra*, but some decisions also said that it should guarantee due process as much as possible. Moreover, the Human Rights Committee raised concerns that "lack of fair and open procedures for deciding on disciplinary measures" in the Concluding Observation of 1998 (para.27(c) of the Observation).
56. The most serious disciplinary measure is almost the same as solitary confinement. The prisoner shall be limited in taking a bath and exercise. Additionally, the prisoners might be have more restrictions imposed on them depending on the governor's discretion such as work and contact with outside. The Human Rights Committee raised concerns that "use of harsh punitive measures, including frequent resort to solitary confinement" in the Concluding Observation of 1998, but after that, disciplinary measure by solitary confinement has been mostly used. This harsh type of measure should be avoided as much as

possible.

57. Practically, those who are likely to get punishment repeatedly are said to be long term inmates, foreign inmates, inmates with mental disability. These category of inmates are having difficulties in making communication, therefore it is concerned that whether efforts were invested to obtain their understanding.

The Grievance Mechanism

Issues and points relating to the Covenant

58. Under the present law we have 3 type grievance mechanism stipulated by prison law. Claim for Review and Stating of Facts which is in the case grievance was accepted then to relief impose an obligation on the institution. These have a limit to what can be grievance. Filing of Complaints dose not have a limit to grievance but we could ask only to improve and not obligation.
59. The former two systems require that the Application (or Stating of Facts) be made within 30 days and for any of the systems, application made by a representative is not permitted.
60. Claim for Review can only be made for a limited range of measures. For instance, what can often be a serious problem, such as rejection of visits and rejection of delivery and purchase of articles, is not subject to such application.
61. The Claim for Review and Stating of Facts are to be made to the superintendent of the regional correction headquarters. When the headquarters determine that there are no illegal or unfair facts after conducting their investigation, then a request can be filed to the Minister of Justice within 30 days.
62. If the Minister of Justice determines that such a filing is groundless and therefore should be dismissed, before the final decision is made, the Minister is to ask for advice to the Review and Investigation Panel on Complaints by Inmates in Penal Institutions (the Study Group on Review of Appeals Filed by Inmates of Penal Facilities), which comprises of 5 outside members.
63. However, this final step is not stipulated in law. Moreover, the Panel does not have its own secretariat and therefore is unable to conduct its own investigation. Since the investigation is primarily based on what is provided in writing, it is extremely difficult for the Panel to reverse a decision made by the regional correction headquarters.

64. Even when the Panel determines that grievances are reasonable, its opinion is anyway not legally binding, which means that the Ministry of Justice may decide to dismiss the grievance as originally proposed.
65. Of the 217 cases examined in 2010, 2 cases were found by the Panel not to be dismissed (in other words, the request made by the inmate is found to be reasonable); 0 case out of 224 in 2011.
66. The Grievance Mechanism still basically should be done by inmate itself (they can ask the help to staff but not to ask people and lawyer on the outside) then they got only outcome or even nothing. The Center for Prisoners' Rights Japan got many letters from inmates such as "I did the Grievance Mechanism but nothing. Is there any way to relieve?", "The Grievance Mechanism is not effective against human rights violation".

Question to the Government of Japan;

- How many cases has the Panel found not to be dismissed during the period between 2006 and 2012?

ⁱ Paragraph 1 of the reply to question 13 on page 18

REPLIES TO THE LIST OF ISSUES (CCPR/C/JPN/Q/5)

TO BETAKEN UP IN CONNECTION WITH THE CONSIDERATION

OF THE FIFTH PERIODIC REPORT OF THE GOVERNMENT OF JAPAN

(CCPR/C/JPN/5)

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/442/15/PDF/G0844215.pdf>

ⁱⁱ CAT/ C/JPN/CO/2[28 June 2013]

CCPR/C/JPN/CO/5[18 December 2008]

CAT/C/JPN/CO/1[3 August 2007]

CCPR/C/79/Add.102[19 November 1998]

ⁱⁱⁱ (Visitors)

Article 120 In cases where any of the persons listed in the following items requests to visit an inmate sentenced to death (except those having the status as an unsentenced person; hereinafter the same shall apply in this Division), the warden of the penal institution shall permit the inmate sentenced to death to receive the visit except the cases where it is prohibited pursuant to the provision of paragraph (3) under Article 148 or the provisions of the next Section:

- (i) A person who is a relative of 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 lawsuit, or maintenance of a business;

(iii) A person whose visit is deemed instrumental to help the inmate sentenced to death maintain peace of mind.

(2) In cases where a person other than those listed in the items of the preceding paragraph requests to visit an inmate sentenced to death, if it is deemed that there is a circumstance where the visit is necessary for the maintenance of good relationship with the person or for any other reasons, and if it is deemed that there is no risk of causing disruption of discipline and order in the penal institution, then the warden of the penal institution may permit the inmate sentenced to death to receive the visit.

(Letters Permitted to Send or Receive)

Article 139 The warden of the penal institution shall permit an inmate sentenced to death (except those having the status as an unsentenced person; hereinafter the same shall apply in this Division) to send or receive the letters under the following items except where it is prohibited by the provisions of this Division, paragraph (3) of Article 148, and the next Section.

(i) Letters the inmate sentenced to death sends to or receives from his/her relative;

(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;

(iii) Letters deemed to be instrumental to help the inmate sentenced to death maintain peace of mind.

(2) The warden of the penal institution may permit an inmate sentenced to death to send or receive letters other than those listed in the preceding paragraph in cases where it is deemed that there is a circumstance where the sending or receiving is necessary for the maintenance of good relationship with the addressee, or for any other reasons, and if it is deemed that there is no risk of causing disruption of discipline and order in the penal institution.