

Report

International mission of investigation

The Death Penalty in Japan: A Practice Unworthy of a Democracy

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THE FIDH MISSION ON THE DEATH PENALTY IN JAPAN

In the framework of its involvement against the death penalty throughout the world, the FIDH is carrying out international missions of investigation in states where this inhumane penalty is still being applied.

Those missions pursue four aims: (1) to stigmatise this inhuman punishment which 76 countries have abolished in law, 16 have abolished the death penalty for all but exceptional crimes such as war crimes, and 20 countries can be considered abolitionist de facto: they retain the death penalty in law but have not carried out any executions for ten years or more; (2) to show that generally the prisoners who have been condemned or executed throughout the world did not benefit from the right to a fair trial, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. This makes their state-sanctioned execution all the more unacceptable. These missions of investigation also aim at (3) shedding light on and denouncing the treatment of death row inmates from their condemnation to their execution; the situation of these inmates often amounts to a "cruel, inhuman and degrading treatment", prohibited by international Human Rights law. (4) By carrying such missions of investigation, the FIDH seeks to formulate recommendations to the authorities of the country concerned as well as to other relevant actors in a spirit of dialogue in order to possibly support their efforts in favour of the abolition of the death penalty, or at least the adoption of a moratorium on its execution.

The FIDH carried out a first international mission of investigation on the death penalty in the United States in April 2001¹. The present report is the result of the second FIDH mission of investigation focused on death penalty, further to a fact-finding mission by three FIDH delegates - Sharon Hom, Lawyer at the Bar of New York, Professor of Law and Acting Executive Director of "Human Rights in China" ; Etienne Jaudel, currently chargé de mission for the FIDH International Board; and Richard Wild, Lecturer in Criminology at the University of Keele in Great Britain - carried out in Tokyo from 12 to 20 October 2002.

The FIDH would like to sincerely thank JCLU for its constant support for the preparation of the mission, as well as Forum 90 and the JFBA for their precious cooperation.

World opinion is blind to what is happening in Japan, as

people are condemned to death, furthermore under questionable conditions, they are being locked up for decades in prisons where terror and isolation reign and where some of them are hung, it is surreptitiously, as if chosen by chance. Those conditions are contrary to the human dignity and unworthy of a modern democracy.

Cooperation of the Japanese authorities with the FIDH mission was not fully satisfactory. The Ministers of Justice and for Foreign Affairs did not wish to meet with the FIDH delegates. The mission could only meet with senior civil servants from the Ministry of Justice. The Mission's visit to the Supreme Court raised serious concerns regarding official cooperation: the Chief Justice limited himself to introducing them to the Director of Criminal Affairs whose work is purely administrative, and who declared having no information whatsoever on the people condemned to death, even though he had been informed in advance of the mandate of the FIDH mission.

The police officials were not very welcoming either and only a rapid interview was obtained with the director of the National Police Agency, who did not view the death penalty issues as within his purview.

As regards to the FIDH representatives' visit to the Tokyo Detention ce, which had been planned much in advance, it was very short as well. The FIDH delegates were courteously received by the Prison Warden and two of his assistants, who refused them entry into the centre's even though they had officially asked the Ministry of Justice to visit the place where death row inmates are detained. They were denied the possibility to visit an empty cell as, according to the Warden, the prison was overfull by 105%.

This hardly came as a surprise given that recent requests from such dignitaries as Emma Bonino² and Gunnar Jansson³ were also refused, and indeed Japanese Diet members themselves are not permitted to visit death penalty prisoners. The warden explained that the detention house currently has "105% occupancy" and therefore there were no empty cells to visit.

This reticence is characteristic of the position of the Japanese authorities regarding the death penalty. This issue is concealed as much as possible: executions are just briefly

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mentioned in press releases and generally take place between sessions of the Diet in order to avoid publicity. As a consequence, the conditions of detention of death row inmates are largely unknown to the general public.

The FIDH mission nonetheless met with a total of over 50 individuals⁴, including members of the legal profession (including the Japan Federation of Bar Associations which groups together the 19,500 lawyers of the country as well as members of the Legal Aid Service of the Federation), the media, civil society groups including a pro-retention victims movement group (National Victim Support Association), abolitionist groups (Japan Civil Liberties Union, Forum 90 and Amnesty International Japan), and parliamentarians members of the Union for the Abolition of the Death Penalty. The mission also met with the mother of a prisoner on death row and a religious counsellor who works on death row.

The views of these individuals ranged from support for a complete abolition of the death penalty to an uncompromising demand for the retention and implementation of the death penalty. As one legal scholar explained, there was a period in which the climate was conducive to reform and abolition, but "the tide has changed," especially after the 1995 Aum sect subway poison gas attacks, and the extensive media coverage given now to the trial of the persons arrested in connection with that attack.

The FIDH experts deeply regret the fact that they did not meet with death penalty supporters in Japan - except victims movement groups - despite their repeated requests.

After an overview of the historical background and the state of the public opinion and authorities position regarding the death penalty (1), the report will focus on the legal framework from a Japanese and international perspective (2) and the trial process itself (3), before focusing on the conditions of detention of death row inmates (4).

1. *The Death Penalty in the United States*, Report n° 316, October 2001, FIDH.

2. Member of the European Parliament and former European Commissioner, on visit in Japan in Jan 2002.

3. The request by the Chairperson of the Committee on Legal Affairs and Human Rights of the Council of Europe to meet Mr Matsumoto was not granted in March 2001 even though the prisoner also wished to meet with Mr Jansson.

4. See the list of individuals interviewed by the delegation in Annex 3.

I - PERSPECTIVES REGARDING THE DEATH PENALTY IN JAPAN

A. Background and history of death penalty

Historically, Japan has a long record of use of the death penalty, including various forms of execution - garrotting, beheading and ritual forced suicide, "seppuku." However, for about 346 years during the Heian period, between 810 and 1156, not one execution was carried out. The absence of war throughout the period as well as the influence of Buddhism and its notion of compassion are the main reasons explaining that death penalty was not applied.

After the Meiji Restoration (1868) and the introduction of a Western European penal system, the death penalty was carried out by hanging. After World War II, occupation authorities initiated reform of the Constitution and Japan's legal system. Except for omitting offences relating to war, the imperial family, and adultery, the 1947 Penal Code remained almost identical to the 1907 Penal Code. Since that time, Japan has had the death penalty except for a de facto interim suspension between 1989 and 1993. Because executions require the signature of the Minister of Justice, the abstention from signing by anti-death penalty Ministers of Justice in office between November 1989 and March 1993, resulted in a de facto moratorium. There was also an active abolitionist campaign.

In total the detention houses together hold 110 inmates on capital charges (retrials), 54 of whom have had their sentences finalised. Since 1993, 43 death row inmates have been hanged.

The current Minister of Justice, Mayumi Moriyama, has ordered not one but two rounds of executions during her tenure. Under pressure from the international community and from within, the government of Japan, civil society groups and the media continue to debate the death penalty.

B. Current debates

According to surveys carried out by the government, the Japanese public opinion remains in favour of the death penalty: in 1999, the last survey indicated that 72.9 % favoured the death penalty. However, according to Professor Dando⁵ and even if the questionnaires were improved to address Forum 90 and abolitionists' critiques, the design of

the questions appeared to suggest answers favourable to the "retentionists". Forum 90 also mentions this in its 1998 alternative report to the periodic report of Japan before the UN Human Rights Committee.

In fact, the range of current positions on the death penalty or on abolition conveyed to the mission were complex and often reflected interrelated issues and factors, including:

- the role of the media in shaping public perception and opinion
- the role of stated cultural attitudes and beliefs regarding death, and taking responsibility for the consequences of one's actions
- the impact of the Auum deadly subway gas attacks in 1995 on public opinion
- domestic reactions to outside international pressure on domestic debates, such as the threat of the Council of Europe to revoke Japan's observer status due to its retention of the death penalty.

The mission also heard a recurring "cultural" perspective articulated by pro-death penalty supporters that asserted that "death for death," ending one's life as the only and most sincere form of atonement, is a deep Japanese cultural belief. This view was expressed by government officials, victims families, in media coverage of cases, and in the Japanese government's ICCPR State party reports to the UN Human Rights Committee.

At the same time, as the religious counsellor, NGOs, and the academics interviewed by the Mission pointed out, Japan also has a multi-religious tradition that includes the teachings of compassion, forgiveness, and respect for life, under Buddhism, and more recently, Christianity. The religious counsellor also suggested that in her view revenge was a universal impulse, not culturally specific to Japanese society.

Influence of the media

The media has a powerful influence in shaping public perceptions of individual cases, the general perception of crime and social stability, and consequently the climate as well as the focus of issues regarding the death penalty debates in Japan. Privately, a journalist and several academics expressed concern about media ethics issues and a need for clearer legal guidelines that balance press freedom

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with the rights of the accused to a fair trial.

In terms of print media, there are four main Japanese language newspapers: Asahi, Yomiuri, Mainichi, and Nikkei. During the first half of the 1990's, the mass media called for national debate on the death penalty. After a series of Aum attacks in 1995, anti-death penalty debates, including coverage of the June 2001 Council of Europe's resolution demanding abolition, was extremely limited.

It appears that both television coverage and print media tend to reflect sympathies for the victims' families, and often, jump to sensationist and "tabloid" coverage that assumes the guilt of a suspect. In addition, other factors that contribute to the biased reporting include the fear and shame of families of the accused and reluctance to speak with journalists, and the tendency of the press to interview the police and the powerful prosecutors. This kind of weighted media coverage of cases pending trial and final disposition is extremely influential in shaping public perception of the particular cases and the climate for the broader death penalty debates.

The position of the legal profession

The FIDH Mission met with members of the Japan Federal Bar Association (JFBA), the Tokyo Bar and other local bars, and lawyers at the Japan Legal Aid Association. The lawyers interviewed included several leading lawyers on representation of capital cases. The concerns they expressed included the limited access they had to their clients, the lack of protections for a fair trial or opportunity to mount a fair defence of the accused. There is a 99.8% conviction rate and many of the convictions are based on confessions elicited under isolation and investigative pressure and questioning. A number of the lawyers felt Japan government position was contrary to the international trend towards abolition, and asserted strongly that the death penalty and the whole system was cruel in light of the detention conditions, the secrecy, arbitrariness of selection for execution, and the timing of the recent executions when the Diet was not in session in order to avoid publicity.

However, according to the members of the Bar interviewed by the mission, there is not a current consensus among the bar associations and the almost 20,000 lawyers regarding abolition. In a 1993 poll of lawyers conducted by the JFBA, 37% favoured unconditional abolition and 64% favoured conditional abolition. The Nagoya bar also conducted a poll and the majority were in favour of abolition with conditions. In 1997, the JFBA did pass a resolution calling for a moratorium

on executions based upon unfair trials, a resolution it hopes to have reaffirmed in the near future. The Liaison Committee of JFBA was established to explore alternative positions, and its head indicated it was close to a proposal for a resolution which it viewed as useful to encourage national debate and improvements in criminal trial procedures. The other lawyers also indicated that they would continue to work towards developing a consensus on a moratorium and that there is a need for better information on the part of the bar associations, to publicize the information about the violations of due process and international human rights standards reflected in these trials.

The Authorities

The FIDH Mission met with Diet members of the Parliamentary Union for the Abolition of the Death Penalty ("Parliamentary Union"), government officials and staff from the Ministry of Justice ("MOJ"), the Supreme Court/ Criminal Affairs Bureau, the National Police Agency, and the Tokyo Detention house.

The Parliamentary Union has 122 members, including one member who personally provided financial support to an inmate on death row. The Komei (one of the key leading parties), the Social Democrat, and the Communist Parties favour abolition, but the Liberal Democratic Party and the Democratic Party are divided. According to the Diet members interviewed, there are three basic positions regarding abolition of the death penalty: total abolition, total abolition plus life sentence without parole, and a moratorium on executions plus life sentence without parole. However, although a moratorium plus life sentence without parole was viewed as having the most realistic chance of passage, there were different views expressed regarding the likelihood of any moratorium resolution or bill.

Although the President of the group, Shizuku KOMEI, acknowledged that the majority of the population may be in favour of the death penalty, he viewed it as an important leadership role of the group to change the current minority (against the death penalty) to the majority.

The Supreme Court's Criminal Affairs Bureau is responsible for the administrative management of the court system. It did not view the death penalty issues as within its scope of authority or concern, and stated that it is the courts, not the administrative bureau that makes these decisions. It refused to comment on penalties handed down by the lower courts, but did state that the constitutionality of the death penalty

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has been laid down in individual cases, beginning with an early case in 1948 (see below).

Similarly, the National Police Agency also claimed no direct role in death penalty debates, but it does oversee a legislative victim compensation scheme. However, an official did interestingly indicate that he thought the majority of the public responded on an emotional level to the death penalty issues, and perceived the death penalty as necessary to maintaining a peaceful and safe society. However, he also added that given more information (e.g. regarding the conditions in the detention house, the individuals on death row, the actual effect on deterrence, and the facilities and financial impact of life imprisonment), the public's views might change. Although he believed that it was totally cruel if a person were isolated with only thoughts of death, he did not personally believe that the death penalty debates are far enough along to support a moratorium.

Abolitionist Movement / NGOs

The FIDH Mission met with members of various NGOs, including the Japan Civil Liberties Union (JCLU), Amnesty International (AI), Forum 90, and the Centre for Prisoners Rights.

Forum 90, JCLU, and AI have been especially active in lobbying for abolition and have submitted NGO reports to the UN Human Rights Committee. Forum 90 has also been active in the past in organizing public education events, e.g. the Asia Forum Against Death Penalty in 2001. The Centre for Prisoners' Rights was established in 1995 with the goals of making prison conditions comply with international standards, connecting with prisoners' rights groups abroad, and providing consultants for prisoners.

Forum 90 has argued that Japanese law and practice concerning appeals, amnesty, judicial review and exclusion from death penalty for insane are in clear violation of the ICCPR, ECOSOC Resolution 1986/50 (mandatory appeals to a court of higher jurisdiction), and ECOSOC resolution 1989/64 (mandatory appeals, review, and permission for clemency or pardon in all cases of capital offence)⁶.

Amnesty International has called for a complete moratorium and commutation of existing death sentences, the ending of the secrecy surrounding executions, and procedural reforms including formal pardon procedures, and investigations into cases of ill-treatment and denial of access to counsel⁷.

In its report submitted to the UN Human Rights Committee, the JCLU also identified a list of procedural issues related to the lack of a fair trial and called for the deletion of the death penalty for certain crimes⁸.

During the meeting of the FIDH delegation with the NGOs, a number of them commented on the role of the media in encouraging a climate of revenge, and pointed out that journalists have limited access to inmates and really do not know what the conditions are like inside. Some also recognized the difficulty of passing a moratorium bill at present, but were firmly committed to ongoing advocacy and education work to make this possible. They also offered another response to the cultural argument advanced regarding the death penalty: first, it was crucial to end the secrecy surrounding the executions and get information out to the public, and second, they emphasized the need to humanize the conditions of detention of the inmates on death row. Once they are locked away, isolated from the outside world, it is much easier for the public to be complicit in their state sanctioned executions. They also noted that several religious groups have been debating among themselves to explore the possibility of a coalition of religious groups.

Victims Movement / families of victims

The FIDH mission also met with over 7 family members and other members of a victims/rights group, the National Association of crime Victims and Surviving Families (NAVS) formed in 2000. NAVS is a national umbrella for many small victim rights groups and has lobbied around compensation issues, and the rights of the victims to provide statements in the trials of the accused. In an extensive and engaged discussion with the Mission, the families of victims expressed a strong sense of continuing to be victimized by the system. They also complained that the prisoners on death row were treated too well, and criticized the current state victim compensation scheme as inadequate. The Mission noted that the desire for revenge and punishment was very strongly expressed, and all the family members also expressed the desire or willingness to personally "push the button" for the executions. NAVS appeared to be well resourced and very well organized.

Notwithstanding the comments of the UN Human Rights Committee regarding the awareness of the provisions of ICCPR in Japanese society⁹, the Mission notes that although this is accurate with respect to Japanese human rights NGOs, this awareness is lacking among the victims group that it met with. In fact, members of the victims groups asked extensive

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questions about international mechanisms, standards, and relationship to domestic national law. The Mission believes this is a hopeful sign and calls for more effective public education on the international human rights obligations of the government of Japan, and the limited efficacy of the death penalty in deterring crime.

5. Dando, S. (2000) Towards the Abolition of the Death Penalty. Yuhikaku: Tokyo, Japan.
6. Forum 90, Alternate Report on Article 6 of the ICCPR With regard to the Fourth periodic report of the Government of Japan, September 1998.
7. AI, Japan: The Death Penalty: Summary of Concerns, 1/03/97, ASA 22/001/1997.
8. JCLU, 1998 Report Concerning the Present Status of Human Rights in Japan, October 1998.
9. Concluding Observations of the Human Rights Committee: Japan 05/11/93.

II - JAPANESE CONSTITUTION, LEGISLATION AND CASE LAW

A. Japanese legislation

The constitution and its interpretation by the Supreme Court

Although Japan's Constitution does not directly refer to the death penalty there are relevant provisions that both pro and anti-death penalty advocates point to: "all of the people shall be respected as individuals. Their right to life (...) shall to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and other governmental affairs" (art. 13); "no person shall be deprived of life (...) except according to procedure established by law" (art. 31); and "cruel punishments are absolutely forbidden" (art. 36).

However, the Japanese Supreme Court (1948) has held that the death penalty is not a cruel and unusual punishment, and therefore does not violate the Japanese Constitution¹⁰. Article 13 of the Constitution stipulates that every person's right to life should be respected to the extent that it does not interfere with public welfare. The Supreme Court stated that the death penalty had the power to prevent social evil. Considering that the common good should be placed above the good of a single person, it judged that the death penalty benefited public welfare. Therefore, it concluded that the death penalty could in no way contravene Article 36. The main position of the Supreme Court regarding Article 36 has not changed since the above judgement.

In another murder case examined in 1961¹¹, the Supreme Court judged that the method of execution (hanging) was in accord with Article 31. This was in response to the defendant's claim that there was no substantive definition of the method of execution of the death penalty, and that therefore execution in those circumstances violated the above Article. The Court referred to 'Dajokan Fukoku 65 gou¹²' which stipulated such a method, and held that it was applied under the present constitution. Therefore an execution in accord with this ordinance could in no circumstance be contrary to Article 31.

In each case submitted to it, the Supreme Court has so far always given the same answer. According to Yoshihiro Yasuda, the position of the Supreme Court is that abolition of the death penalty is a legislative policy decision, and not for judicial action¹³.

17 crimes are punishable by death, 12 of them being stipulated in the penal code¹⁴:

5 other crimes punishable by death are defined in special laws¹⁵.

The Juveniles act stipulates that the death penalty shall not be applied to a person under 18 at the time of committing the crime. As for mental disability, the Penal Code stipulates that "an act if committed by an insane shall not be punished. Penalty may be reduced for an act of a quasi-insane person"(Art.39).

Roger Hood¹⁶ indicates that Japan is one of 21 countries that have extended capital punishment in the last thirty years and in particular "for causing an air crash and for killing a hostage". Moreover, in its comments on the Fourth periodic report (1998) of Japan, the Human Rights Committee included in its list of principal subjects of concern and recommendations the grave concern that "the number of crimes punishable by the death penalty has not been reduced, as was indicated by the delegation at the consideration of Japan's third periodic report" (see below).

However, in practice, the capital sentence is only applied for aggravated murders¹⁷.

The method of execution in Japan is hanging¹⁸ and it is up to the Minister of Justice to decide if there are to be executions, how many, and who is to be executed. Japan has made no claims as to the comparative advantages of this method as opposed to others in minimising suffering¹⁹. The execution is the completion of the sentence and must be carried out under order of the Minister of Justice according to certain protocol²⁰: such an order cannot be issued within two weeks but must be given within six months of the finalisation of the sentence and the execution should be carried out within five days of the issuing of the order²¹. This rarely seems to be the case as prisoners may wait as long as 30 years before execution.

Articles 71 and 72 of the Prison Law stipulates that: "The sentence of death shall be executed at the place of execution in the prison. 2. The sentence of death shall not be executed at national holiday (...). In the case of execution of the sentence of death, the countenance of the dead shall be

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inspected after hanging, and the halter shall not be unfastened until five minutes have passed."

Moreover, the conduct of trials and lack of adequate access to defence counsel raises serious due process concerns; and the conditions of detention and of execution of the death penalty present serious human rights concerns (see below sections III and IV).

B. International law

United Nations

Japan ratified the **International Covenant on Civil and Political Rights (ICCPR)** in June 1979.

Article 6 of the ICCPR recalls the inherent right to life of every human being. It provides that in countries which have not abolished the death penalty, its application should only be imposed for the most serious crimes. The General Comment on article 6²² of the ICCPR clearly indicates that States Party must tend to abolish the death penalty: "the article also refers generally to abolition in terms which strongly suggest that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life".

That General Comment also stresses that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". The UN Safeguards guaranteeing protection of the rights of those facing the death penalty specify that it should be understood that the scope of the expression "most serious crimes" "should not go beyond intentional crimes with lethal or other extremely grave consequences"²³.

As a state Party to the ICCPR, Japan has the obligation to report, to address concerns raised by the monitoring body, the Human Rights Committee, and to take remedial steps to conform domestic legislation with its international treaty obligations.

To date, Japan has submitted four periodic reports to the Human Rights Committee with the fifth due in October 2002. The Initial, Second, and Third Periodic reports described the institutional aspects of human rights protection in the Japanese legal System. Following Japan's Third periodic Report in 1993, the UN Human Rights Committee recommended that the government of Japan take measures towards abolition of the death penalty, to limit that penalty to

the most serious crimes, to improve the conditions and treatment of death row inmates, and to improve preventive measures of control against any kind of ill-treatment of inmates²⁴.

In its comments on the Fourth periodic report (1998) of Japan, the Human Rights Committee continued to express its concerns regarding Japan's practice of the death penalty. It stated that it "regrets that its recommendations issued after the third periodic report have largely not been implemented." It included in its list of principal subjects of concern and recommendations the grave concern that "the number of crimes punishable by the death penalty has not been reduced, as was indicated by the delegation at the consideration of Japan's third periodic report." The Committee continued to be deeply concerned about death row conditions and harsh punitive measures implemented against inmates, lack of procedural protections in pre-trial detention procedures, the large number of convictions based on confessions and limitations on remedy of habeas corpus²⁵.

In addition to the problem of lack of response by the Government of Japan to the concerns and recommendations identified by the Human Rights Committee, the Mission notes that Japan's clarification of its position regarding the relationship between domestic law and its ICCPR obligations in its Fourth Periodic Report, is also troubling. The government of Japan asserted that the Constitution is Japanese supreme law, and that the Constitution supersedes the ICCPR in domestic effect. However, it also asserted that since the "Constitution can be interpreted as covering the same range of human rights as that of the Covenant", there really cannot be a conflict. This elaboration does not adequately address Japan's international human rights obligations to amend domestic law, policy, or practice when in conflict with international norms, notably with regard to the interpretation of due process protections and conditions on death row.

The UN Safeguards guaranteeing protection of the rights of those facing the death penalty specify a number of safeguards regarding the procedural guarantees that should necessarily accompany the pronouncement of a death penalty sentence. It notably specifies that steps should be taken to ensure that the right to appeal to a court of higher jurisdiction shall become mandatory; or that the right of anyone suspected or charged with a crime for which capital punishment may be imposed has access to adequate legal assistance at all stages of the legal proceeding.

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Other UN instruments are relevant with regard to the conditions of detention of inmates, which apply notably to death row inmates²⁶.

Japan ratified the **UN Convention Against Torture** in 1999 ; however, its initial report under the Convention is overdue since July 2000. Article 1 of the Convention defines "torture" as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions".

Council of Europe²⁷

In 1996, Japan was granted Council of Europe Observer Status and in seeking and keeping this status, in accordance with Statutory Resolution (93) 26 on observer status, it must be willing to "accept the principles of democracy, the rule of law, and the enjoyment of all persons within its jurisdiction of human rights and fundamental freedoms." A few years later, in 2001, the Parliamentary Assembly "viewing the application of the death penalty as a violation of the most fundamental human rights, such as the right to life and the right to be protected against torture and inhuman or degrading treatment, the Assembly thus finds Japan and the United States in violation of its obligations under Statutory Resolution (93) 26 " (para 7). The Assembly consequently called upon Japan (and the United States) to "(i) institute without further delay a moratorium on executions, and take the necessary steps to abolish the death penalty; (ii) to improve conditions on death row immediately, with a view to alleviating "Death Row phenomenon" (this includes the ending of all secrecy surrounding executions, of all unnecessary limitations on rights and freedoms, and a broadening of access to post-conviction and post-appeal judicial review)"²⁸.

The situation in Japan was examined by a mission of Mr Gunnar Jansson, the Chairman of the Committee on Legal affairs and Human Rights of the Parliamentary Assembly, in February 2001, which fed a report on the Abolition of the death penalty in Council of Europe observer states of June

2001²⁹. That report resulted in the adoption of the above-mentioned resolution 1253(2001).

Following the adoption of that resolution, the Parliamentary Assembly decided to start a debate on this issue with Japanese parliamentarians: in this framework, a seminar on the abolition of the death penalty was organised at the Japanese Diet, regrouping High representatives of the Japanese authorities, including the Speakers of both chambers of the Diet and the country's Minister of Justice.

The Assembly also decided to question the continuing observer status of Japan and the United States of America with the Council should no significant progress be made by 1 January 2003. The issue has now been postponed to June 2003.

When asked about the possibility of withdrawal of Council of Europe Observer Status, many of the individuals interviewed by the FIDH did not believe there was a serious likelihood of this occurring for the U.S. or Japan. Other individuals expressed the view that it was very important for Japan as a modern democratic country to be perceived as such in the world and therefore the Observer Status was important to maintain.

The European Union

Community legislation is relevant for the issue of the present report, since the EU and Japan have been engaged since 1991 in a political dialogue concerning human rights in particular. As defined by the EU guidelines on the death penalty adopted by the EU in June 1998 and by the General Affairs Council of June 2001 on the relations between the EU and third party states, the issue of the death penalty should be raised systematically during dialogue sessions. The conclusions adopted during the last session, which took place during the 12th EU/Japan summit on May 1-2, 2003 seem to demonstrate that this was not the case, since no reference is made to the issue. Abolition of the death penalty being among the priorities set by the EU, one can wonder about the reasons and meaning of this omission or guilty silence, and demand explanations from the EU.

International Criminal Court (ICC)

A recent and seemingly meaningful fact is the entry into force, on July 1, 2002, of the Statute of the ICC. The Statute prohibits the use of the death penalty, following the recent evolution in international criminal law (statutes of the ad hoc

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international criminal tribunals in particular). On this occasion, the Japanese government showed an interest in the ICC, and stated that it was studying the articulation between Statute provisions and Japanese domestic legislation, issue that raises "difficult questions". The perspective of seeing the Japanese democracy joining the movement of states party to the ICC (89 states party at the beginning of May 2003) is

encouraging, and creates the hope of an evolution, by chain reaction, towards abolition, even if, when it comes to sentences applicable by a national jurisdiction, the ICC Statute does not affect the application by States of penalties prescribed by their national law (article 80). This is the result of a compromise reached during the Rome Conference.

10. 1948(Showa 23) March 12, Grand Bench, the full text of the judgement is available in Japanese on: <http://courtdomino3.courts.go.jp/schanrei.nsf/VM2/333BEBD2ECCECEC449256A850030AD87?OPENDOCUMENT>.
11. 1961(Showa 36) July 19, Grand Bench. The full text of this judgement in Japanese can be found on: <http://courtdomino3.courts.go.jp/schanrei.nsf/VM2/333BEBD2ECCECEC449256A850030AD87?OPENDOCUMENT>.
12. Ordinance issued by Grand Council of State was issued in Meiji 6 (1873)
13. Yoshihiro Yasuda, *Death Penalty in Japan*: 16 (unpublished)
14. -Art. 77, Insurrection: "A person who commits an insurrectionary or seditious act with the object of overthrowing the government organization of the nation, exercising powers by rejecting and revoking a sovereign right in its territory, or otherwise subverting the fundamental order of government as established by the Constitution, shall be considered guilty of insurrection and punished according to the following distinctions:
(1) a ringleader shall be punished with death or imprisonment for life (...)."
-Art. 81, Inducement of foreign aggression: "a person who conspires with any foreign state and thereby causes the state to use armed forces against Japan shall be condemned to death";
-Art. 82: Assistance to enemy: " When a foreign state uses armed forces against Japan, a person who enters into the military service of the state aiding therewith or benefits it militarily shall be condemned to death or punished with penal servitude for life or not less than two years."
-Art.108: Arson of inhabited structure: "a person who sets fire to and destroys by burning a building, train, electric car, vessel or mine being used as a dwelling house or actually containing persons shall be punished with death or penal servitude for life or no less than five years".
-Art. 117: Destruction by explosives. A person who causes an explosion of gunpowder, a steamboiler, or other thing liable to explode and thereby damages or destroys an object provided for in Article 108 (...) which belongs to another shall be punished as guilty of arson.
-Art. 119: Crime relating to Inundation and Water utilization. "A person who causes inundation and thereby damages buildings, trains, electric cars, or mines being used as dwelling places or actually containing persons shall be punished by death or penal servitude for life or not less than three years".
-Art 126: Overturning of trains, etc. and same resulting in death. "A person who upsets or destroys a train or electric car actually containing persons shall be punished with penal servitude for life or not less than three years. 2. The same shall apply to a person who capsizes or destroys vessel actually containing persons. 3. A person who commits any of the crimes mentioned in the preceding two paragraphs and thereby causes death to another shall be punished with death or penal servitude for life."
-Art. 127: Overturning of trains, etc. by endangering traffic. "A person who commits the crime mentioned in Article 125 [endangering traffic] and thereby upsets and destroys a train or electric car, or capsizes or destroys a vessel shall be dealt with in the same way as provided for in the preceding article."
-Art. 146: Addition of poisonous material into water main and same resulting in death: "A person who poisons pure water which is supplied to the public for drinking purposes by water-works or poisons the sources thereof, or pollutes such water or the source with the substances harmful to human health shall be punished with penal servitude for a limited period of not less than two years. When he thereby causes the death of another, he shall be punished with death or penal servitude for life or not less than five years."
-Art. 199: Homicide: "A person who kills another shall be punished with death or penal servitude for life or not less than three years".
-Art. 240: Robbery resulting in death or injury: "(...)If [a robber] causes death of another, he shall be punished with death or penal servitude for life."
-Art. 241: Rape on occasion of robbery and same resulting in death: "A robber who rapes a woman shall be punished with penal servitude for life or not less than seven years; if he thereby causes her death, he shall be punished with death or penal servitude for life."
15. use of explosives (death, life imprisonment or penal servitude or not less than seven years);
-death caused by a dual (death, life imprisonment or penal servitude or not less than three years);
-death caused by airplane crash (death, life imprisonment or penal servitude or not less than seven years);
-death caused by hijack of airplane (death or life imprisonment)
-homicide of hostage (death or life imprisonment)
16. Hood, R. (2002) *The Death Penalty: A Worldwide Perspective*. Oxford University Press: Oxford, UK:p.80.
17. See YASUDA, Yoshihiro "Most people who receive the death sentence have committed murder or murder during burglary". See also Abolition of the death penalty in Council of Europe observer states, Doc. 9115, 7 June 2001, Report, Committee on Legal Affairs and Human Rights. Rapporteur: Mrs Renate Wohlwend, Liechtenstein, Group of the European People's Party : "Japan's Penal Code provides for the death penalty for a range of offences (17 in number), but in practice it is only applied for aggravated murder"
18. Penal Code, Article 11.
19. Hood, *The Death Penalty: A Worldwide Perspective*: 97.
20. Dando, (2000) *Towards the Abolition of the Death Penalty*: 488.
21. Article 476. Code of Criminal Procedure.
22. Human Rights Committee, General Comment 6, Article 6 (sixteenth session, 1982), compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 6 (1994).
23. Adopted by Economic and Social Council resolution 1984/50 of 25 May 1984, principle 1.
24. Concluding Observations of the Human Rights Committee: Japan, 5 November 93.
25. Concluding Observations of the Human Rights Committee: Japan, 19 November 1998.
26. Article 7 of the ICCPR prohibiting torture, UN Basic Principles for the Treatment of Prisoners (UNGA resol. 45/111 of 14 December 1990), UN Body of principles for the protection of all persons under any form of detention or imprisonment (UNGA res. 43/173 of 9 December 1988), Standard minimum rules for the treatment of prisoners (Ecosoc res. 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).
27. For further information, see Annex 4, Council of Europe position on the death penalty.
28. Council of Europe, Resolution 1253 (2001): Abolition of the Death penalty in Council of Europe Observer States.
29. Resolution 1253(2001).

III - VIOLATIONS OF THE RIGHT TO A FAIR TRIAL

The Constitution of Japan sets forth the rules for 'fair trial' as defined by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights ratified by Japan in 1979. Article 37 provides that "in all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal". It further states that "at all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State".

Access to an independent and impartial court and the rights of defence guaranteed under all circumstances are essential characteristics of a 'fair trial'. However, those sentenced to death in Japan do not benefit from these guarantees. This is of particular concern in view of the gravity of the sentence. Although the jurisdictions do not merit criticism for their lack of impartiality, there is little or no respect for the rights of defence of persons facing death penalty, particularly during preliminary investigations.

A. Insufficient procedural safeguards

Investigations are carried out by the police under the supervision of the public prosecutors. There are no special procedural precautions in Japan for defendants facing the death penalty. They are subject to standard proceedings for offenders before ordinary courts.

First level of jurisdiction

The accused risking a death penalty appears before one of the fifty district courts composed of three judges; this constitutes the first level of common law jurisdiction. According to the JFBA, a jury should be present for such serious cases, and the JFBA has often requested so. However, to date this request has not been granted.

The procedure is accusatory: the burden of proof of the charge lies on the prosecution. The public prosecutors are not required to disclose all documentary evidence and material in favour of the defence. It is therefore the defendants' responsibility to bring forth evidence in favour of their defence or to mitigate their responsibility. This is not often possible for defendants with limited or no financial means.

Right of appeal

Those sentenced to death can **appeal to the High Court**. However, they must act on their own initiative or on the public prosecutors'. Some sentences was carried out based on the sole judgment of the court of first instance. This was reportedly as well the case with Masaharu Hamada, executed on September 18, 2002 after withdrawing the appeal made by his lawyers.

Many liberal organizations, with JCLU at the forefront, are demanding that a mandatory appeal procedure for death sentences be established, as called for by the UN Safeguards guaranteeing protection of the rights of those facing the death penalty³⁰. The Parliamentary assembly of the Council of Europe condemned as well the lack of a mandatory appeal system for death penalty cases³¹.

As a last resort, cases can be submitted to **the Supreme Court**. However, the Supreme Court determines questions of law and does not rule on the facts, except in the case of obvious error. The chances of a 'reversal' by the Supreme Court are therefore minimal, since the Supreme Court has stated several times (see above II.A.) that capital punishment is not unconstitutional. There have only been ten Supreme Court reversals out of all the judicial decisions recently made in Japan³².

Confirmed by the Supreme Court, the death sentence is considered 'final'. Those sentenced exchange their 'provisional detention' status for that of 'a death-row inmate' and are transferred to special quarters, most often without changing prison. This is the case in Tokyo where death row inmates are held in a detention house and not in an actual prison (see below, section IV.B).

Once the sentence is considered "final": two other types of recourse

Two other categories of recourse are available to the persons sentenced to death. They can submit an **appeal for a retrial before the Supreme Court** on the grounds that evidence of their innocence has been discovered or that their sentence was based on false evidence. The chances that these appeals, unlimited in number, will be admissible are minimal. Mr. MENDA had to submit six appeals for a retrial before being

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found innocent of the crime for which he had been sentenced to death 34 years before. Only three other death row inmates have been granted such retrials.

Death row inmates can also make a **request for pardon**. However, only three death row inmates have been pardoned since 1945 and none since 1975.

It is important to stress that the appeal for retrial and the request for pardon do not have a suspensive effect and that the death row inmates can be executed even if no decision has been rendered concerning either the appeal for retrial to the Supreme Court or the pardon. According to statements made to the FIDH by the government officials met at the Ministry of Justice, the Minister of justice, who gives the final order to execute, the appeal for retrial and/or request for pardon made by the inmate are only "taken into consideration" before the Minister decides to execute the death row inmate.

This is a serious violation of the UN Safeguard 8 that states "capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to a pardon or commutation of sentence". Furthermore, the time taken to consider appeals or pardons fail to respect the 'speedy trial' requirements set forth in the Constitution and in art. 14.3c of the ICCPR. General comment n° 13 of the UN Human Rights Committee specifies that the guarantee that the accused shall be tried "without undue delay" applies at all stages - both in first instance and on appeal (para.10).

This explains why those sentenced to death remain on death row for such long periods of time. This is supported by the examples of the following death row inmates

Seikichi KONDO

Sentenced to death by the Fukushima District Court on March 29, 1974.

Appeal rejected by the Sendai High Court on June 28, 1977.

Death sentence confirmed by the Supreme Court on April 25, 1980.

Four appeals for retrial.

Executed on March 26, 1993.

Nearly 20 years of proceedings.

Syujiro TACHIKAWA

Sentenced to death on February 18, 1976.

Appeal rejected.

Supreme Court confirmation in June 1981.

Hanged in March 1993: 17 years of proceedings.

B. Violations of the rights of the defence

The Japanese Constitution solemnly recognizes the importance of the rights of the defence, which are essential in a Rule of Law. Article 34 stipulates:

"No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel".

The respect of these principles takes on particular importance in judicial proceedings where the accused risks the death penalty. However, no additional guarantees are provided with regard to those who risk to be sentenced to the death penalty. Moreover, these principles only apply from the moment they are sent before the Courts; they do not apply from the time they are arrested and during the detention by the police.

Prisoners held in "Daiyo Kangoku"

According to the provisions of the Japanese Code of Criminal Procedure (Article 199 and those thereafter) any person arrested must be brought before a public prosecutor within the three days following his arrest (Art. 205 & 2). The public prosecutor who receives the accused requires a detention order from a judge, without which the person must be immediately released. The detention order is fixed for a ten-day duration, but it can be renewed for another ten days or even fifteen days in some cases.

This time period can be prolonged if there are fresh accusations during the investigation. Therefore, current Japanese legislative provisions allow suspects to be detained on reasonable grounds for up to a number of weeks without charge, on the basis of the need for information.

Suspects should normally be detained in prisons prior to having specific charges brought against them, but in reality they are detained in police stations. Since 1908, under the pretext of lack of space in prisons at the time, detention cells have been set up in most of the country's police stations where the accused are detained for a number of weeks preceding their charge. Article 64 of the Criminal Code which stipulates that the detention warrant granted by the judge determines the "place where the convicted person will be

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brought" would allow them to order this detention in police stations (daiyo kangoku). This is stipulated in Article 1-4 on Prison Law which states that "the police jail may be substituted for a prison". According to the Japanese government, approximately 90,000 people are detained in this way for a 20-day period on average every year.

During this extended period, suspects are aware of the charges brought against them but do not have access to the evidence upon which the charges are based.

Suspects are held in small slatted or transparent cells under 24-hour surveillance. They are not allowed to get up, walk around, or speak to other prisoners. They only leave their cells for questioning, for a once-weekly bath lasting fifteen minutes, and for daily 'exercise' also lasting fifteen minutes in police quarters no bigger than ten square meters. Any contact with the outside world is at the entire discretion of the public prosecutor and the police who know how to take advantage of this to obtain the confession required (see section IV A). This is in fact the objective of this system: suspects are at the mercy of the police who guard them day and night. This situation might violate art. 14.3g of the ICCPR since general comment 13 specifies that "the accused may not be compelled to testify against himself or to confess guilt...The law should require that evidence provided by means of such methods or any other form of compulsion is wholly unacceptable"³³. The Body of Principles for the Protection of All Persons under Any Form of detention or Imprisonment specifies: "It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person"³⁴.

Despite Article 38 of the Constitution which guarantees the right to remain silent and states that "confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence" and Article 319 of the Code of Criminal Procedure which is similar, during detention in police custody everything is done so that the suspects admit the crimes of which they are accused. Questioned without respite by investigators, they are subjected to violence, threats and at times beatings to extract a confession. This can last weeks without a minimum of external control to limit the length of detention or establish regular times for suspect interrogations.

In addition to that situation, the suspects do not have the right to competent legal counsel. Although the Constitution and the Code of Criminal Procedure provide for the presence of free

legal representation for those who do not have the financial means, the court is responsible for assigning legal counsel. This would require that the suspect be charged prior to being detained, which is not the case with suspects held in 'police custody'. As a consequence, those suspects do not benefit from any legal counsel for a lengthy period.

In order to improve the situation, the JFBA organized a system of free legal representation in 1990 for inmates in police custody; 3876 inmates were provided with legal assistance in 1999 (Japan Legal Aid Association). Only a system of on-call services staffed by rotating teams of lawyers had previously existed.

However, many inmates held in police stations are not aware that this assistance exists and therefore, do not have legal counsel prior to being charged. According to a 1992 JFBA study, on 56 death row inmates, 26 did not have legal counsel prior to being assigned a lawyer by the court and 25 explained that it was because they did not know that they had the right to one. Furthermore, 18 affirmed that had they benefited from legal counsel at that point in time the outcome of their cases would have been very different.

It is a very challenging task to provide legal assistance in this context. It can be extremely difficult for lawyers to visit their clients in police stations, as they are often in remote locations. Upon arrival, they often learn that their clients are undergoing interrogations without access to their clients' file and evidences. It would appear that lawyers, therefore, mainly provide moral support at this point. This seems contrary to art.14.3b of the ICCPR: under "adequate time and facilities for the preparation of his defence... the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel"³⁵.

Furthermore, article 39 paragraph 2 of the Code of Criminal Procedure authorizes investigators (judicial police officials and public prosecutors) to restrict the right to confer with counsel "when it is necessary for the purposes of investigation" which has led to permission for visits that rarely last longer than 15 minutes. In May 1991, the Supreme Court declared that the provision "when it is necessary for purposes of investigation" concerned both current and future interrogations, giving way to all types of arbitrary refusals.

It is however on the basis of these confessions that the majority of death sentences are handed down by the courts, in disregard of article 319 of the Code of Criminal Procedure

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that prohibits convicting the accused "based solely on his confession". It should be stressed that the Justice System Reform Council established by the Cabinet in July 1999 is demanding that interrogations be videotaped so as to prevent authorities from exerting inadmissible pressures on suspects in order to extract confessions.

The 'daiyo kangoku' system has spurred adamant protests by the JFBA. It was in response to this organization's request that the FIDH sent a fact-finding mission to Japan in November 1988. At the time, the FIDH already underpinned in its report that the system of detention for questioning in police custody contravened the fair trial requirements as defined by the International Covenant on Civil and Political Rights and the Constitution of Japan; did not respect the presumption of innocence; did not respect the right to remain silent; used forced confessions against defendants; blatantly violated the rights of defence; amounted to cruel, inhuman and degrading treatment. Those characteristics make this procedure unacceptable. The International Bar Association came to the same conclusion during its investigations in Japan in September 1994.

In its Concluding observations on the Japan periodic report in 1998, the Human Rights Committee expressed its concern "that the guarantees contained in articles 9, 10 and 14 are not fully complied with in pre-trial detention in that pre-trial detention may continue for as long as 23 days under police control and is not promptly and effectively brought under judicial control; the suspect is not entitled to bail during the 23-day period; there are no rules regulating the time and length of interrogation; there is no State-appointed counsel to advise and assist the suspect in custody; there are serious restrictions on access to defence counsel under article 39 (3) of the Code of Criminal Procedure; and the interrogation does not take place in the presence of the counsel engaged by the suspect."

However, the Japanese authorities continue to claim that the 'daiyo kangoku' system is in conformity with the law and that detention and its prolongation are subject to supervision by judges, failing to mention their decisions are never preceded by the hearing of the parties with counsel. However they fail to mention that such decisions are rarely preceded by meetings of accused with their counsel.

They also claim in the 4th periodic report submitted to the UN Human Rights Committee in 1998 that they have established a strict separation between officials in charge of the detention of suspects and those in charge of their interrogation in order to prevent investigators from intervening in the inmates' daily life. This type of administrative distinction does not appear to

be effective when detention and interrogation are carried out on the same premises.

The Japanese authorities underscore that if they did away with the 'daiyo kangoku' system, constructing new prisons would be too costly for the nation. They also stress that vast improvements had been made to cells (heating, air conditioning) and that this form of detention is preferable for suspects due to the fact that they are held in custody close to home. Japan repeatedly reminds that all forms of violence are prohibited by the Constitution of Japan and that the judicial police officials and prosecutors receive rigorous training on the respect of human rights, which makes it highly unlikely that an injustice would occur.

The FIDH considers that all forms of pressure that suspects are subjected to during their long periods of police custody might result in judicial errors. These errors are, of course, dramatic when it concerns those sentenced to death.

Those who are in favour of the abolition of this system have provided two examples:

- Sakae MENDA, brutally interrogated for four days without sleep in the Hitoyoshi Police Station, confessed several murders during a robbery in December 1948. Sentenced to death, he was the first death row inmate to be acquitted during his sixth appeal for a retrial. He was released 1983 after 12,599 days on death row.
- Shigeyoshi TANIGUCHI, sentenced to death in January 1957 based on confessions he made while in police custody for four months, was finally acquitted in March 1984 after 10,412 days of detention.

Public legal counsel from the first trial to appeals

As stated earlier, the rights of the defence is clearly set out in the Japanese Constitution: a public counsel is assigned at each stage of the legal proceedings. However, this entails that the person condemned is without a lawyer after an indictment or an appeal, until another public counsel is appointed, unless the accused appoints his or her own. Moreover, once the penalty has become 'final', there is no provision for a defense system, unless a request for retrial is lodged. In this case, assigned legal counsel are authorized to visit their clients but a guard must be present as long as the admissibility of the appeal has not been accepted. This violates art. 14 ICCPR (secrecy of the relationship between the client and his/her lawyer): general comment 13 of the HR

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Committee (13 April 1984) specifies that this provision "requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications" (para 9). This is also a violation of Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment³⁶, which states that: "the right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations (...) in order to maintain security and good order. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official". Indeed, guards do stay within the hearing while prisoners meet with their counsels, as proves the requirement for foreign detainees that conversations are continued in a language understood by the prison authorities³⁷.

C. Insufficient independence of the Judiciary

According to article 76 of the Constitution of Japan: "All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws".

Although the skills of Japanese judges may not be subject to serious criticism, the same cannot be said of their independence. A JFBA report³⁸, as well as JCLU statements³⁹, stresses the insufficient independence of the Japanese judicial system: it is organized in a strict hierarchy under the supervision of the Supreme Court whose judges are appointed by the Cabinet (Ministry of Justice). The 15 Supreme Court judges are designated by public authority i.e. the Minister of Justice, while the Chief Justice is appointed by the Emperor himself after being nominated by the Cabinet (article 79 of the Constitution). Supreme Court justices are subject to Japanese citizens' approval at the first general elections following their appointment, however, in practice, this original system of posterior review appears to be illusory.

The judges at courts and appellate courts are appointed by the Cabinet (Ministry of Justice) from a list of persons

nominated by the Supreme Court whose suggestions are always respected. The judges are appointed for a ten-year period and their re-appointment also depends on the Supreme Court. Therefore, the Supreme Court, who determines both the judges' duties and salaries, is in a position of power over judicial institutions, which are under the supervision of the Cabinet who appoints their members.

As stressed by the JFBA, the General Secretariat of the Supreme Court is in the position to submit to the Diet all of the files concerning the judges' personal situations, their duties and their salaries based on specific information that they have on all the courts in Japan. As a consequence, many think that the General Secretariat exercises a supervisory role with respect to the Council of the Supreme Court and has de facto control over judicial administration.

The prominent role of the representatives from the Ministry of Justice - the public prosecutors - can be added to the strict hierarchy guaranteeing judges conformity. The Director of Public Prosecutors, Head of Prosecutions and Chief Prosecutor are all under the senior authority of the Minister and together represent the public authorities. They have the exclusive privilege of deciding whether to prosecute; no complaint from individuals nor independent action for damages is provided for by law. The public prosecutors decide at their own discretion and with no external supervision whether to bring a person under arrest before a judge, to order a police investigation, to bring a suspect before a court and to petition against them.

There is no doubt that the prestige and authority that the public prosecutors obtain from their position explain the alarming number of death sentences handed down by Japanese courts. Nearly 99% of the accused brought before a court are found guilty, which leaves an insignificant hope of acquittal. In most cases, lawyers are limited to pleading extenuating circumstances. Being considered guilty by public prosecutors is tacitly equivalent to being sentenced. Furthermore this results in the difficulty in getting judges to reconsider their decisions. It is in this way that innocent people end up executed.

30. UN Safeguards adopted on 25 May 1984 : para. 6 : " 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** " (emphasis added).

31. Res. 1253(2001) on the abolition of death penalty in Council of Europe Observer states, para. 5.

32. *Justice et Magistrature au Japon*, Eric Seizelet, Presses Universitaires de France, Paris 2002, p. 71.

33. General comment 13, Human Rights Committee, 13 April 1984, para 14.

34. Body of Principles for the Protection of All Persons under Any Form of detention or Imprisonment, 9 December 1988, Principle 21.

35. General Comment 13, Human Rights Committee, 13 April 1984, para 9.

36. UNGA res. 43/173, 9 December 1988.

37. KAIIDO, Y. (2001) *Japan* in van Zyl Smit, D. and Dünkel, F.[Eds] (2001) *Imprisonment today and tomorrow : International perspectives on prisoners' rights and prison conditions*, p. 433.

38. The independence of the judges and protection of lawyers activities. Report to the United Nations Center for Human Rights. June 1991. JFBA.

39. See notably on their website in English: http://village.infoweb.ne.jp/~jclu/katsudou/universal_principle/articles/313teranishi.html

IV - DETENTION HOUSES AND DEATH ROW PRISONERS: CRUEL, INHUMAN AND DEGRADING TREATMENTS

The FIDH delegates visited the Tokyo Detention House and met with the Warden and his staff. They were presented with a booklet published in English entitled *Guide to Tokyo Detention House* which gives details on the history of the detention house, outlining the organisation and policy, and providing some statistics regarding inmates. The Tokyo Detention House, the first in Japan, was built in May 1937. A new building on the same site is due to be completed next year. The Tokyo Detention House is the largest of the 7 detention houses⁴⁰ in Japan that have special chambers for executions. In total these detention houses together hold 110 inmates on capital charges, 54 of whom have had their sentences finalised. Since 1993 there have been 43 executions⁴¹.

The FIDH delegation was refused any access whatsoever to inmates, death row cells, the execution chamber or any of the secure area of the detention house grounds. This hardly came as a surprise given that recent requests from such dignitaries as Emma Bonino⁴² and Gunnar Jansson⁴³ were also refused, and Japanese Diet members themselves are not permitted to visit death penalty prisoners. The warden explained that the detention house currently has "105% occupancy" and therefore there were no empty cells to visit.

According to the Tokyo Prison Warden, 31 death row inmates are currently awaiting execution and are thus every day expecting to be hanged. 30 other death row inmates are awaiting proceedings in the Court of Appeal, or the Supreme Court. Of the 31 condemned definitively⁴⁴, 12 had been there for less than five years, 14 between six and fifteen years and 5 others for over fifteen years. However, the Warden refused to state the exact length of time these particular inmates had spent in prison, living every day with the fear of their execution. Presumably the remaining fourteen have been at the detention house for between six and fifteen years. He was unable to provide similar figures for pre-finalised inmates on capital charges. It is worth reflecting what this means that at least five prisoners at the Tokyo Detention House have woken each morning for more than 5475 days and faced the prospect of death.

A. Treatment of defendants before confirmation of the death sentence

By many accounts life in Japanese prisons is extremely harsh and inhumane particularly for those facing the death penalty. Death row inmates are, without exception, held in detention

houses. In every detention house there are blocks set aside for strict solitary confinement. Many death row inmates are placed in solitary confinement as treatment for 24 hours a day.

The cells in a detention house where defendants facing the death penalty are held are approximately five metres square with a sink, toilet and desk. "Clothing and bedding are supplied by defendants themselves"⁴⁵. Indeed, pre-sentence detention house inmates must provide for themselves often relying on contributions from family, friends and supporters⁴⁶.

Inmates are not allowed to move freely inside their cell. They are prohibited from walking around and lying down freely. When sitting they must maintain a particular posture. If they break these rules they may be punished. "These conditions make the life of a detainee in a single cell worse than that of an animal in a zoo"⁴⁷. "In Horishima Detention House, a detainee was punished only because he was reading a newspaper with his elbow on a mattress in his cell"⁴⁸. This is especially the case for defendants facing the death sentence as their movements are further restricted to prevent suicide attempts. They may be monitored 24 hours a day by video camera.

The lighting in all cells is controlled by prison staff. A prisoner may not turn off their lights before 'lights-out' and may not turn them on after 'lights out'. Lighting may be dimmed at night but there is never complete darkness. Cell windows have bars and a panel perforated with holes. Inmates held in such a 'suicide prevention cell' have a window that is roughly "one-200th the size of a window in a regular cell and that lets in about one-fifth as much sunshine"⁴⁹. Most detention houses also lack heating and air conditioning in the area where inmates live and inmates may suffer as a direct result⁵⁰.

The only communication that inmates are permitted with the outside world is through letters and receiving visitors. The making or receiving of telephone calls is not permitted in any prison. Visits are limited to one a day with a maximum of three people per visit (except for 'judicially recognised' lawyers visiting their clients). Visits must take place between 9am and 5pm in a visiting room that is approximately five by eight metres with a screen separating the detainee and his/her visitor(s). Each visit can last up to half an hour but is often shortened, at the discretion of the prison guard, to as little as 5 minutes. Prison officers monitor the meeting and may record what is said. Conversation must be in a language

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understood by monitoring officials. Defendants may be visited by their lawyers without the presence of a monitoring guard but only if they have 'judicial status'⁵¹. This is not the case for prisoners who wish to consult with a lawyer about the possibility of appeal for retrial, clemency or amnesty⁵². Inmates are not allowed to meet with working journalists. Visits are on a 'first come first served basis' such that on occasion family would arrive at the detention house with a valid permit only to be turned away if by chance a religious visitor, a friend, or even an interested law student had already visited the detainee that day. Religious visitors that are on the permitted list are allowed but still they must apply in the normal manner and have on occasion been refused: the mission met with a religious visitor who was refused such visit after she had publicly expressed anti-death penalty views.

In principle pre-sentence inmates may write letters to anyone but they may only send one letter per day and the number of pages per letter is restricted to seven. Again inmates may receive letters from anyone, however, prison officials censor all incoming and outgoing mail. If they judge that any part of a letter is not appropriate for an inmate to read or write, they will either order the inmate to rewrite it or blacken out the offending sentences. The same policy applies to all reading material. "Defendants are allowed to read books, magazines, and newspaper unless the content are detrimental to the security, the discipline, and the administrative goals of the institution"⁵³. The use of writing materials is strictly controlled and inmates have no access to computers or photocopiers. Inmates may only retain a limited quantity of personal items. The risk is that these rules may be used to restrict legal documents relating to a prisoner's criminal or civil trial and as a result impede inmates' rights of defence at trial and appeal. The courts have the power to suspend visitation and correspondence with all persons including direct family members other than a prisoner's lawyer when they judge there is the possibility of escape or interference with evidence. This can have the effect of further isolating pre-finalised capital offence inmates. The official position is that "all incoming and outgoing mail is subject to censorship. Also, defendants may have visitor(s) in a visiting room with an officer present. However, in order to protect their rights, defendants meet with their defence counsels without the presence of an officer"⁵⁴.

Even before defendants have received confirmation of their death sentence they must adhere to a very strict time schedule at the detention house. This may interfere with an inmate's ability to prepare for trial. Any deviation from these rules may result in disciplinary procedures or punishment.

These rules are based on the Japanese Prison Law (promulgated in 1908), which have been modified by several administrative directives and Ministry of Justice's Standing orders. However, each prison designs its own rules and compiles them in a *Handbook for life in Prison*⁵⁵. These rules are secret and cannot be distributed to the outside world and as such they contravene United Nations instruments: *the United Nations Standard Minimum Rules for the Treatment of Prisoners* (Rule 29) states that "conduct constituting a disciplinary offence, the types and duration of punishment that may be inflicted, and the authority competent to impose such punishment, shall always be provided by law or regulation of the competent administrative authority" and that "a prisoner is not to be punished except in accordance with the terms of such laws or regulations" Rule 30 (1). *The United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (30:1) states that such "laws or lawful regulations are duly published".

An example given by Kaido⁵⁶ is of prisoners who 'answer back' (kouben) to a prison officer and are punished regardless of whether they were simply asking the officer for further clarification of an order.

Daily schedule for detention house inmates:

Wake up ⁵⁷	7:00
Roll Call	7:15
Breakfast	7:25
Lunch	11:50
Supper	16:20
Roll Call	16:40
Free Time	17:00
Lights Out	21:00

Inmates have three meals a day. By all accounts these vary in quantity and quality however regulations state that "staple food is made up of 70 percent of rice and 30 percent of barley. The calorific value of staple food for convicts is graded according to individual work assignments. Nutritionally balanced side dishes are served to inmates. The calorific value of side dishes is fixed as 1020 kcal regardless of individual work assignments. An additional 60 yen is appropriated for birthday dishes and for special dishes on national holiday. And an additional 250 yen is appropriated for special dishes on New Year's Day"⁵⁸. Vitamins may be insufficient due to the lack of fresh fruit and vegetables. "Defendants are allowed to purchase various kinds of food and daily necessities as long as hygiene and institutional order requirements are met"⁵⁹, however, this assumes that

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inmates have the money to do so which many do not. They may also be brought food from outside by families although the families met by the FIDH delegation denied this. A frequent criticism made suggests that it is 'harsh treatment' or simply 'unnatural' that inmates are required to eat three meals within the space of nine hours. Death row prisoners eat all their meals in their cell.

Pre-finalised capital offence inmates are required to work along with other inmates. Work includes "production, such as sewing, paper products and construction work ... [and] prison maintenance work such as cooking, cleaning and laundry"⁶⁰. They can earn up to 5,000 yen (about 40 euros) a month although this has been further restricted recently. "Every movement other than that required to do the designated work requires a hand to be raised to draw attention of a prison guard for prior permission to engage the desired movement. Even if a prisoner simply wants to pick something up only a meter away, permission must be requested from a guard. Consultations, necessary for the job must be initiated in the same manner. Prisoners must raise their hands for permission to go to the toilet. Even a moment looking away or a word of conversation can result in punishment"⁶¹. There are prohibitions on conversation and looking away, restrictions on the frequency of the use of toilet facilities, forced meditation, and restrictions on posture and movements even in their own cell. "From when he wakes to after-supper inspection prisoners are not allowed to walk in their cells but must be seated in a set position. It is absolutely forbidden to speak, sing or utter any sound"⁶².

Inmates bathe three times a week in the summer and twice a week the rest of the year for a maximum of fifteen minutes including time for dressing and undressing. According to authorities inmates may, in addition, bathe when they exercise, however, according to an inmate exercise is not allowed on the same day as showers. Exercise outside the cell is limited to thirty minutes twice weekly in summer and three times a week during the winter. The concrete exercise area measures about two metres by five metres. Prisoners are not permitted to wear shoes and must therefore go barefoot or wear thin slippers. When inmates exercise they are monitored by an officer. They may only use a skipping rope. "Defendants may do exercise outdoors as well as indoors"⁶³.

"Physical checkups are conducted on a regular basis so that the medical staff can find an inmate's physical and mental health problem, and decide appropriate care. A medical examination is given at an inmate's request"⁶⁴ although it seems prisoners have to pay themselves for these periodic medical examinations as well as for spectacles and false teeth and so

often forego this 'luxury'. This is contrary to Principle 24 of the UN Body of Principles for the Protection of All Persons under Any Form of detention or Imprisonment, which states that "medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge".

Despite this official position the various groups contacted by the FIDH delegation reported that "because of lack of exercise, vitamins, and medical care, inmates' health typically suffers, for example, lumbago, tooth decay, pyorrhoea alveolaris, weakened eyesight, and institutional psychosis"⁶⁵. Others spoke of the "many who suffer lower back pain"⁶⁶ from extended periods spent immobile. Apparently many prisoners are troubled with bad health and some may have died due to insufficient medical care and the extremely high temperature in the closed cell⁶⁷. It is very rare for prisoners to be transported to an outside hospital at their request although "in principle, the decision whether an inmate should be treated in a hospital outside the prison is at the discretion of the warden of the prison"⁶⁸. This is also contrary to the Basic Principles for the Treatment of Prisoners, which provides that "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (principle 9).

There has been a steady increase in the number of suicides which Kaido assumes are related to "harsh rules and deprivation of human contact with other inmates and guards"⁶⁹ along with the enforcement of trivial internal prison rules. This seems particularly true for those prisoners facing a death sentence. Also prisoners who complain are viewed as problematic and as not demonstrating proper remorse for their crimes. They may also be singled out as presenting a threat to the internal order and discipline of the detention house.

B. Treatment of inmates after confirmation of the death sentence

Prisoners whose death sentence has been confirmed are held within the detention house, as stated in the Prison Law, article 1 (4)⁷⁰. They are held in almost total isolation both within the detention house and from the outside world. Although the situation with regard to exercise, baths, and medical care is ostensibly the same as for the other inmates there are very significant caveats. As if it were possible, a death row inmates' day is even more closely controlled from the moment they are woken in the morning until they are permitted to sleep in the evening. Apart from receiving the occasional visit from direct close family or permitted counsel, exercising or bathing, they are strictly confined to their cells.

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Even in their cells their movements are monitored and severely regulated. For example, they are not allowed to lean against the walls and must sit in specified, fixed positions. Such strict restrictions on posture and movement may result in severe physical and psychological illness if they are maintained for any length of time. These conditions, and this treatment, clearly contravenes articles 7 and 10 of the ICCPR of which Japan is a signatory⁷¹.

Death penalty prisoners are held all day long in effective solitary confinement in the detention house where their execution will take place. It should be reminded that long periods of solitary confinement are a violation of Art. 7 and 10 of the ICCPR. The UN Basic Principles for the treatment of Prisoners specify that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged"⁷². The UN Human Rights Committee noted as well that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by art. 7 [of the ICCPR](...)When the death penalty is applied(...)it must (...) be carried out in such a way as to cause the least possible physical and mental suffering"⁷³.

Mrs Renate Wohlwend's report on the Abolition of the death penalty in Council of Europe observer states (see above II.B.) also stressed that "the isolation of prisoners [in Japan] is so complete as to qualify as inhuman treatment in and of itself" (paragraph 17).

Death penalty prisoners' cells are a modified form of the ordinary detention cell 5 metres square with a toilet, sink and desk. There is nowhere to store bedding, limited personal effects are allowed, and there is little room to move. No contact or communication is permitted between death row prisoners and even conversations with guards are prohibited exacerbating the feeling of solitude. The warden of the Tokyo Detention House stated that "there are no separate death row cells. They are modified normal cells and could be anywhere in the detention house". Furthermore "in order to maintain correct detention we sometimes introduce CCTV into cells on suicide watch. It is a general rule for all cells to be lit".

After the death sentence has been finalised, visits and correspondence to death row inmates are further restricted although the Prison Act⁷⁴ states that they should receive the same treatment as other inmates. According to the warden at the Tokyo Detention House, "In principle they are allowed to meet with families and counsel and confidential communication is permitted. Also some other communication

for example if the inmate has no family, close relative or support". Death-row prisoners are not allowed to meet anyone except close family members, judicially recognised counsel, and similarly recognised religious counsellors. Often they have been disowned by their families and may have no further contact with them. Some are legally adopted by supporters, however, they are not allowed to meet and correspond with members of these adoptive family after the death sentence is finalised⁷⁵. Inmates are not permitted to communicate with their friends or journalists, only with close family members. On occasion no communication is permitted "for prisoners to achieve some peace of mind". Indeed some prisoners have been executed without talking to anyone outside the prison up to and including the day of their execution.

In principle counsel can visit inmates anytime between 9am and 5pm and outside meal times. "If the death row prisoner has no more legal processes pending lawyers can still visit them but they would need to specify their purpose and permission would be based on this and whether or not a meeting is likely to upset death row prisoners' mental health"⁷⁶. If prisoners wish, they are allowed to meet with prison chaplains once a month. Meetings with counsel and chaplains are closely monitored by prison officials. This makes it difficult to keep anything secret regarding a prisoner's retrial or to report on conditions within the detention house (see above, III. B). There are cases in which a meeting has not been permitted between a lawyer and prisoner who wants to request being defended at a retrial⁷⁷.

Prisoners are only permitted to write to close family and to their lawyers concerning a retrial. All incoming and outgoing mail is examined and censored by prison officials in line with prison regulations. Importantly this includes all 'confidential' correspondence with lawyers. This is "for disciplinary purposes and to know the mental condition of the inmate"⁷⁸ and for incoming mail it is to "balance and keep the mental stability of the death row prisoners"⁷⁹. Prisoners may also read limited materials in their cells but these are also censored. "Death row inmates may have access to certain pre-selected and pre-recorded television and videos. They may have radios in their cells"⁸⁰. It has been suggested that whilst these severe restrictions are applied ostensibly to keep the inmates' mind at peace they are in fact designed to rob them of any hope of living and force them to accept the inevitability of their death⁸¹. These restrictions have been condemned by various national and international bodies, notably :

- the Concluding observations of the Human Rights Committee on the Reports submitted by Japan in 1998 states that "the undue restrictions on visits and correspondence and

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the failure of notification of executions to the family are incompatible with the Covenant".

- Paragraph 19 of Mrs. Renate Wohlwend's report on the Abolition of the death penalty in Council of Europe observer states (see above, II.B) states that " there is a specifically Japanese characteristics in the official position of the Japanese Ministry of Justice on the death penalty which is particularly cruel : the search for obtaining what the Ministry calls 'peace of mind' of death row inmates. In this way of thinking, a death row inmate is to find "peace of mind" before he is executed, that is to say he is to be "ready" for death, accepting, even welcoming of the execution. Inmates on death row are to stop believing - or even hoping - that they will live any longer; they are to resign themselves to death, to accept it as atonement for their crimes".

The daily schedule for death row prisoners is similar to other detention house inmates (see above, *Daily schedule for detention house inmates*) except that they are restricted to their cells for nearly 24 hours a day 365 days of the year, are not permitted to talk to anyone, and have their movements restricted both by regulation and on occasion physically with the use of leather bindings. All meals are eaten alone in the prisoner's cell. According to the Warden at the Tokyo Detention House death row inmates can work if they so wish but this is also carried out alone and in a sitting position in their own cells. Their work generally consists of making paper bags and similar products for which they receive a small income. Death row prisoners bathe and exercise alone. "Exercise is outside their cells in a courtyard where they can run or play with a ball"⁸².

Concern over a lack of medical care is similar to that for other inmates except that in the case of prisoners whose sentences have become final, they have difficulty communicating needs with the outside and it is quite possible that any medical condition will simply worsen. Examples include a prisoner who lost his sight because of failure to treat a retina disease, another prisoner that had difficulty walking because of the lack of treatment for a brain tumour, a third prisoner that lost the ability to speak because he hardly ever had the chance to talk. And another prisoner suffered from institutional neurosis and ended up developing a mental disorder⁸³. Even in these cases prisoners are rarely moved to a hospital outside the detention house. Furthermore, as already mentioned most detention houses lack any heating or air conditioning and therefore inmates often suffer from chilblains, cracked hands and feet, in the winter, and from the heat and humidity in the summer. Furthermore, there are strong indications that these harsh conditions, long periods of near total isolation, and

constant fear of death lead to the condition known as 'death row phenomenon' or 'death row syndrome' where prisoners develop severe mental disorders.

Not only are the "death row phenomenon" not necessarily treated but NGOs suggest prisoners in this condition have been executed in flagrant contravention of domestic (art. 39 Penal Code) and international law (UN Safeguard Nr 3 and the UN Commission on Human Rights resolutions adopted each year since 1997)⁸⁴. In this regard, the JFBA highlights the case of Tetsuo Kawanaka accused of various robberies, robbery related injuries and murders. He was sentenced to death in September 1980, the Supreme Court finalised the sentence in September 1984, and he was executed in March 1993. The Committee for Execution Cases (JFBA) had questioned both his mental competence at the time of his execution and whether counsel had been appointed for appeal. No replies were given by the Osaka Detention house and Mr Kawanaka was executed despite these suggestions that "the condition of his schizophrenia became serious which suspended all efforts on his case because of the impossibility of having an interview with him"⁸⁵.

Complaint procedures

There are **three administrative complaint procedures** available to prisoners, however, all are open to abuse by the prison authorities. The first is a request for an interview with the prison warden but often such a request is transmitted through the very guards that are the subject of the prisoner's complain. The second is a petition to the prison inspector who visits the prison once every two years. The petition may be submitted orally or in writing without the presence of prison staff. The third mechanism is a confidential written petition directly to the Minister of Justice. All prisoner requests are open to censorship and the mere fact that a prisoner seeks redress may often be considered as an attack on the integrity of prison and staff and an indication of a prisoner's disorderly, problematic behaviour or lack of remorse and open them to retaliation.

There are also **three judicial procedures** open to prisoners; administrative lawsuits, civil law suits against the state for compensation, and addressing complaints or accusations to the public prosecutors office. Each are surmounted with difficulties namely the lack of state legal aid leaving it up to prisoners to fund action themselves, the censorship and presence of prison officials at meetings with counsel. The illegality of these actions has been challenged in court but to no effect. Prisoners are generally prevented from appearing in court, are unable to examine witnesses, and often lose due to

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non-appearance. Furthermore, the courts recognize the broad discretion of the prison authorities over inmates. For these reasons it has proved very difficult for an inmate to achieve judicial remedy as recognised by the Japan Federal Bar Association⁸⁶ and the United Nations Human Rights Committee⁸⁷.

Executions

Executions are held once or twice a year often scheduled to coincide with when the Diet is not in session. It appeared clearly to the mission that such timing aims at avoiding publicity⁸⁸. Several executions take place on the same day. It is up to the Minister of Justice to decide if there are to be any executions, how many, and who is to be executed. The method of execution in Japan is hanging (see above, II.A)⁸⁹. No notice of execution is given to the condemned prisoners, their family, or their lawyer. Indeed they are only informed of their execution on the morning of the day that it is to happen. This may be an hour before execution allowing them no opportunity to make last minute legal pleas, or contact family. Prisoners have been executed while appealing for a retrial or amnesty and they may be informed of their execution at the same time they receive notice of rejection of their appeal. Prisoners are permitted to make a will although this may simply amount to an oral message left with a guard.

As noted by Mrs Renate Wohlwend's in her report on the Abolition of the death penalty in Council of Europe observer states (see above, II.B.), "The practice of keeping pending executions secret even from the prisoners himself further deprives him of the opportunity to say farewell to his family, and makes it impossible for lawyers to file last-minute appeals (e.g) on the basis of insanity). Since the choice of the Minister of Justice whom to execute seems quite arbitrary, following no discernible logic, the fear of the inmates on death row is even more acute" (para. 14).

"In the case of Shuji KIMURA, who was executed on 21 December 1995, when his mother and sister in law visited him on the morning of the day of execution, they were told by an officer 'could you come again at noon since we are very busy at the end of the year?' When they returned they were told that he had already been executed during the morning. The officer made no mention of the time of his execution. His family members said that although he had asked the detention house to inform them they had not done so. In addition, he had hurriedly written a short letter to his family during the few minutes just before his execution⁹⁰. Furthermore, in the case of Norio NAGAYAMA, who was

executed 1 August 1997, notification of execution was not given to any family members, so there was no one to claim his body and he was cremated in the detention house. If Mr KIMURA's counsel had not found out about the execution, and claimed his ashes, his remains would have been buried in the cemetery with no one to care for them⁹¹.

The warden is not aware of any prisoner having been told of his/her execution less than an hour before it is to happen as "time is required to prepare the execution chamber". He also informed the FIDH delegation that he attends executions and takes these issues very seriously.

The prisoners are handcuffed from behind, blindfolded, and brought to the execution chamber. They are tied up while on their knees to prevent wounding the body in case they struggle. A rope is placed around the prisoner's neck. At a signal several prison guards push buttons to open a trapdoor although elsewhere this is described as "the floor splits in two and prisoners fall into the opening"⁹². The length of the rope has been adjusted to take account of the height of prisoners, however, there is evidence to suggest that death is not instantaneous "they continue cramping until their death, suspended in the air some 15 centimetres above the underground floor"⁹³. A medical officer of the prison should certify death. It is said that 15 to 20 minutes are needed to die. This is a breach of the United Nations safeguard that states "where capital punishment occurs it shall be carried out so as to inflict the minimum possible suffering"⁹⁴.

We have a description of an execution recalled by witnesses in a book entitled *The Last Moment of Death-Row Convicts*⁹⁵. It is the execution of Misao KATAGIRI on 21 July 1972 at Tokyo Detention House. A prosecutor, a prosecution secretary, the detention house warden and prison officers wait in a small room adjacent to the execution room while the inmate is led up to the gallows and his knees are bound. A noose is placed around his neck. Prison officers then simultaneously pressed buttons releasing a trap door beneath his feet. "KATAGARI's eyes and tongue protruded, he twitched and soiled his pants". Fifteen minutes later a doctor pronounced him dead. Mrs OTSUKA also interviewed former prison officers who suffered severe anguish as a result of participating in executions. "Each prison officer I met spends his whole life accusing himself of killing convicts". As death row inmates are forbidden from communicating with other inmates the only people they speak to are prison officers. Perhaps it is for this reason that officers said "[t]hey feel like they've killed a friend. It's like a living hell". The detention house security chief assigns 5-7 prison officers to carry out the hanging. No one

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knows when his turn will come. "Even if it's your duty, no one wants to be an executioner. But as a government official, prison officers must either do it or lose their job". In fact the Prison Officers Handbook makes no mention among the duties of a prison officer of carrying out executions.

A prisoner's family will only be notified of their execution after it has taken place and they will have 24 hours within which to claim the body. Only two bodies have been claimed of 39

executions carried out since the brief moratorium ended in March 1993. Prisoners bodies have been destroyed despite requests from family or lawyers that they be returned⁹⁶. The prisoner's belongings are generally returned to the family with the exception of a "diary or documents as such". It has been suggested that it is only diaries and written documents that can identify personal effects as those of the deceased.

40. Fukuoka, Hiroshima, Miyagi, Nagoya, Osaka, Sapporo and Tokyo.
41. Forum 90 for the abolition of the death penalty: Hidden death penalty in Japan, Report http://www.jca.apc.org/stop-shikei/epamph/dpinjapan_e.html
42. Member of the European Parliament on visit in Japan, former EU Commissioner, January 2002.
43. See part II, B. The request by the Chairperson of the Committee on Legal Affairs and Human Rights of the Council of Europe on visit to Japan from 19-23 February 2001 to meet Mr Matsumoto was not granted even though the prisoner also wished to meet with Mr Jansson.
44. Inmates are considered as defendants (i.e. unconvicted) until their sentence is finalized.
45. See the official regulations in *Guide to Tokyo Detention House*.
46. One Diet member we spoke to contributed 5,000 yen to a death sentence prisoner
47. Kaido, Y. (2001) Japan in van Zyl Smit, D. and Dünkel, F.[Eds] (2001) Imprisonment today and tomorrow : International perspectives on prisoners' rights and prison conditions.
48. Centre for Prisoners' Rights, Japan, 1998: 28).
49. Forum 90: Hidden death penalty in Japan.
50. See *Medical Care*.
51. Acting for a client at trial.
52. See *The Right to Appeal*.
53. See the official regulations in *Guide to Tokyo Detention House*.
54. See the official regulations in *Guide to Tokyo Detention House*.
55. See KAIDO, Y. (2001) Japan: 433 and *Prison Conditions in Japan*, Human Rights Watch (1995).
56. See KAIDO, Y. (2001) Japan: 433.
57. Defendants and convicts wake up at 7:30 on public holidays.
58. See the official regulations in *Guide to Tokyo Detention House*.
59. See the official regulations in *Guide to Tokyo Detention House*.
60. KAIDO, Y. (2001) Japan: 431.
61. KAIDO, Y. (2001) Japan: 432.
62. YASUDA, Y. *Death Penalty in Japan* (unpublished).
63. See the official regulations in *Guide to Tokyo Detention House*.
64. See the official regulations in *Guide to Tokyo Detention House*.
65. Forum 90: Hidden death penalty in Japan: 7.
66. YASUDA, Yoshihiro. *Death Penalty in Japan*. (unpublished).
67. Kaido, Y. (2001) Japan: 430.
68. Centre for Prisoners' Rights, 1998: 20.
69. Kaido, Y. (2001) Japan: 427.
70. The prisons shall be of the following four kinds: (...) (4): House of detention to detain accused persons, persons detained under the permit of detention, permit of provisional detention or writ of detention or detained upon the warrant of arrest (inchi-jo) and convicted persons sentenced to death.
71. Article 7, ICCPR "no one shall be subject to torture or to cruel inhuman or degrading treatment or punishment" and article 10, paragraph 1, ICCPR "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".
72. UN Basic Principles for the treatment of Prisoners, UNGA 45/111, 14 December 1990, para 7.
73. General Comment 20, UN Human Rights Committee, 10 March 1992, para 6.
74. Article 9, Japan Prison Act.
75. For example the case of Mr Masunaga.
76. According to the warden at the Tokyo Detention House.
77. Forum 90: Hidden death penalty in Japan: 8.
78. Warden at Tokyo Detention House.
79. According to the warden at the Tokyo Detention House.
80. According to the warden at the Tokyo Detention House.
81. YASUDA, Y. *Death Penalty in Japan*: 3.4. (unpublished)
82. Warden at Tokyo Detention House.
83. Amnesty International Japan.
84. See notably UN CHR res. 2002/77 para 4(f) ; the execution of a mentally ill person has been considered a violation of human rights by the European Court of Human Rights in 1989, see above (Soering vs UK). See also Pratt and Morgan v. Attorney General for Jamaica.
85. Report of the Research carried out by the Committee for Execution Cases 19 November 1997, Committee on Protection of Human Rights, Japan Federation of Bar Associations.
86. JFBA Report of the Research carried out by the Committee for Execution Cases, 19 November 1997.
87. ICCPR 98 "lack of a credible system for investigating complaint by prisoners" 199:27(e)
88. See notably, YASUDA, Yoshihiro *The death penalty in Japan* (unpublished): "In recent years, in order to avoid debate in the Diet, executions have taken place when the Diet is not in session."

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89. Penal Code, Article 11.
90. Centre for Prisoners Rights, 1998: 6.
91. Kaido, Y. (2001) Japan: 437.
92. Forum 90: Hidden death penalty in Japan: 12.
93. Forum 90: Hidden death penalty in Japan: 12.
94. Safeguards guaranteeing protection of the rights of those facing the death penalty (E.S.C. Res. 1984/50 25), Safeguard No 9
95. OTSUKA, K. (1992) The Last Moment of Death-Row Convicts.
96. The case of Norio Nagayama August 1987.

V - CONCLUSIONS AND RECOMMENDATIONS

FIDH experts have concluded from their fact-finding mission that the chances of the death penalty being abolished in Japan in the near future unfortunately seem minimal. Despite efforts by abolitionists, public opinion appears to favour strongly maintaining capital punishment in the judicial arsenal. The authorities' secrecy regarding the conditions under which the death penalty is applied and the increasing amount of violence in a society that to date has been relatively peaceful make it highly unlikely that the Japanese authorities will adopt an unpopular measure. Pressures from international organizations, beginning with the Council of Europe, are systematically considered as " inadmissible intervention in the country's domestic affairs". At present, their arguments do not appear to carry weight in a decision that lies in the hands of a Diet with a conservative majority. The fact that the JFBA, comprising all lawyers in Japan, was unable to reach an agreement on the abolition bill reveals the extremely limited chances of abolition for the time being.

The only hope lies in the adoption of a moratorium on executions proposed by legislators. Legislators themselves have admitted that it is highly unlikely that the temporary suspension be adopted in the next Diet session that should discuss the issue.

Many experts believe that public opinion in Japan would be less favourable toward the principle of capital punishment if people were better informed of the conditions under which death row inmates are judged and executed, regardless if a recourse is pending or if they are mentally impaired,.

Documents and testimonies collected during FIDH investigations support the following conclusions:

1 - Criminals sentenced to death did not benefit from "fair trials" in conformity with the standards defined by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights ratified by Japan. More specifically, the length and the conditions of custody in police stations contravene the the right to silence, the rights of the defence and control by judicial authorities over all breaches of freedom.

With regard to these basic principles, it is not admissible for suspects to remain in police custody for weeks, without

benefiting from efficient legal counsel and under conditions that amount to "cruel, inhuman and degrading treatment". The real aim of that system seems to extract confessions whose reliability is questionable. This "detention in the police stations" or "daiyo kangoku" system results in miscarriages of justice and consequently in the execution of innocent people...

It is also inadmissible that a mandatory appeals procedure has not been established for such serious sentences and that executions can take place based solely on a decision rendered by a court of first instance, without considering the recourses that have not been exhausted by death row inmates (appeals for a retrial and requests for pardon). In addition, death row inmates are unaware of the moment of their execution, despite pending legal proceedings.

2 - Death row inmates' living conditions in Japanese prisons might amount to torture, and constitutes at least an inhuman and degrading treatment, which violates international law.

Women and men can be held in solitary confinement for decades at a time, living in constant fear of an execution that could occur at any moment, under constant surveillance denying them any privacy at all. This constitutes punishment that no crime, however serious, could justify.

The concern expressed by the authorities for the mental stability of death row inmates might demonstrate that it is often mentally impaired persons who are led to the gallows.

3 - Conditions under which executions are carried out: the secrecy surrounding death row inmates and their hanging under the erroneous pretext that it safeguards their dignity, contributes to turning executions into an even more inhuman or degrading treatment. These conditions also subject the death row inmates' families to inhuman treatment, as they fear that each visit that they make could be their last.

The FIDH is then deeply concerned by the fact that the administration of the death penalty in Japan severely contravenes to the very notion of democracy in Japan: such a democratic state shall not maintain such a cruel treatment, held in such arbitrary circumstances.

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Taking those conclusions from the fact-finding mission into consideration, the FIDH is making the following recommendations:

A. to the Japanese government and legislator

1 - To adopt a moratorium on executions of the capital punishment, with as final aim its abolition. And at the very least, to reduce the number of crimes punished by the death penalty in order to ensure that it is applied only for the most serious crimes. Such a legislative modification should be applied immediately to the persons who have been condemned on the base of that modified legislation (in conformity with Principle 2 of the UN Safeguards).

2 - To reform the system of policy custody in police stations by drastically reducing the period of time suspects are held; by putting the system under the effective control of the judicial authority; and by fully ensuring true exercise of rights of the defence. Confessions under police custody are the cause of many miscarriages of justice.

3 - To institute a mandatory appeal procedure for all death sentence rulings and to guarantee in the legislation that executions cannot be carried out while appeals for retrials and requests of pardon are pending.

4 - To put an end to the secrecy surrounding death row inmates' living conditions in Japanese detention houses and allow Diet members, journalists and representatives from international organizations to visit them, observe their living conditions and collect grievances so as to inform the public opinion in Japan and internationally. Properly informed, public opinion would probably be in favour of a moratorium on executions, which would be a first step towards the abolition of the death penalty.

5 - To ensure that persons who risk to be condemned to the death penalty from the moment of the arrest and at any stage of the procedure, even after the sentence have become definitive, have access to a legal counsel, in full respect of the confidentiality of the lawyer-client relationship.

6 - Organise campaigns of sensitisation for the public on international human rights standards and on the limited efficacy of the death penalty in deterring crime, rather than invoking questionable opinion "polls" as the basis for retention of the death penalty. This has been repeatedly called for by domestic human rights NGOs, and recommended by the United Nations Human Rights Committee.

7 - Increase and improve training for judges, prosecutors and law enforcement officers in international human rights law.

8 - Report to the UN Human Rights Committee on specific steps and measures taken to address its recommendations in past reviews of the government of Japan's State Parties reports; submit to the UN Committee Against Torture its initial report under the Convention, due since July 2000.

9 - Ratify the Second Optional Protocol to the ICCPR aiming at the universal abolition of the death penalty.

10 - Ratify the Statute of the International Criminal Court

B. to the Council of Europe and the European Union

1 - To the Council of Europe, considering that over the last 2 years, Japan has not reacted effectively to the calls of the Council of Europe, to take into consideration the suspension of the observer status for a renewable period of 1 year, and to propose the development, in Japan, of specific programs aiming at promoting abolition.

2. To systematically include the issue of death penalty in their dialogue with Japan, at all levels (meetings of the troika of the EU Council and the Commission with their counterparts, meeting with Members of the European Parliament or members of the Parliamentary Assembly of the Council of Europe and their Japanese counterparts, etc.)

3 - To support initiatives in Japan which aim at training and sensitizing legal practitioners and the public to international human rights standards, to international criminal law, to the lack of demonstrated efficiency of the death penalty in deterring crime, and to accession of Japan to the ICC

ANNEX 1: ACRONYMS

CAT: Committee Against Torture
ECHR: European Court of Human Rights
ICCPR: International Covenant on Civil and Political Rights
JCLU: Japan Civil Liberties Union
JFBA: Japanese Federation of Bar Associations

ANNEX 2: BIBLIOGRAPHY

Asahi Shimbun, 27 May 2002.
Centre for Prisoners' Rights (1998)
Dando, S. (2000) Towards the Abolition of the Death Penalty. Yuhikaku: Tokyo, Japan.
FIDH (October 2001) The Death Penalty in the United States. Report n° 316.
FIDH (Février 1989) Japon La Garde à vue (Daiyo Kangoku)
Forum 90: Hidden death penalty in Japan: http://www.jca.apc.org/stop-shikei/epamph/dpinjapan_e.html
Guide to Tokyo Detention House.
Hood, R. (2002) The Death Penalty: A Worldwide Perspective. Oxford University Press: Oxford, UK.
Human Rights Watch. (1995) Prisons Conditions in Japan
JFBA (1991) The independence of judges and protection of lawyer's activities. Report to the United Nations Center for Human Rights.
JFBA (1997) Report of the Research carried out by the Committee for the Execution Cases, Committee on Protection of Human Rights, 19 November 1997.
Kaido, Y. (2001) Japan in van Zyl Smit, D. and Dünkel, F.[Eds] (2001) Imprisonment today and tomorrow : International perspectives on prisoners' rights and prison conditions.
Otsuka, K. (1992) The Last Moment of Death-Row Convicts.
Seizelet, E. Justice et Magistrature au Japon, Presses Universitaires de France, Paris 2002
Yasuda, Y. Death Penalty in Japan (unpublished).

ANNEX 3: LIST OF PEOPLE MET BY THE FIDH DELEGATION

Member of the House of Representatives

- Mr Nobuto HOSAKA
- Mr Shizuka KAMEI
- Ms Reiko OSHIMA

Member of the House of Councilors

- Ms Toshiko HAMAYOTSU
- Ms Mizuho FUKUSHIMA

Ministry of Justice

- Mr Kangi Sano
- Mr Yukio Kai, Director of Research and Planning Office/Counsellor
- Mr Kitamura
- Mr Kazuo Kodama, Director
- Mr Matsumura

National Police Agency

- Mr Koichi Tachikawa Director

Criminal Affairs Bureau

- Mr Yukihiko Imasaki, Director/Judge

Tokyo Detention house

- Dr Tanaka, Warden/Head of Detention
- Mr Takahashi Head of General Affairs
- Mr Kameda, Research Officer

Civil Society members

Japan Civil Liberties Union (JCLU)

- Mr Yoshihiko Fuketa Representative Director/Lawyer
- Mr Yasushi Higashizawa Lawyer
- Ms Mie Fujimoto Lawyer
- Mr Satoshi Ueno International Liaison Officer

Center for Prisoners' rights

- Mr Akira Suehiro
- Ms Emi Akiyama

Forum 90

- Ms Akiko Takada, Administrative Solicitor

Amnesty International

- Mr Makoto Teranaka, Secretary General
- Ms Misaki Yagishita, Refugee Officer/Campaigner for Abolition of Death Penalty & Group Activism

Japan Legal Aid Association

- Mr Takashi Sagawa, Secretary General
- Mr Tetsuo Ohshi, Secretary
- Mr Keita Abe, Program Director

National Association of Crime Victims and Surviving Families (NAVS)

- Mr Isao Okamura, Chairman
- Mr Ogasawara Secretary
- Mr Hayashi Secretary
- Mr Seiya Miyazono, Director
- Mr Tsuchikawa Yasunobu, Lawyer

Lawyers

Japan Federation of Bar Associations

- Ms Futaba Igarashi, Lawyer
- Mr Osamu Kobayashi, Lawyer
- Mr Jiro Nakamura, Lawyer

Others

- Mr Yuji Ogawara Ginza Higashi Law Office
- Prof. Futoshi Iwata Sophia University, Associate Professor
- Prof Saku Machino, Sophia University, Professor of Law
- Prof Yozo Yokota, Special Advisor to the Rector, United Nations University

ANNEX 4: POSITION OF THE COUNCIL OF EUROPE ON THE DEATH PENALTY

The Parliamentary Assembly of the Council of Europe holds a clear opposition to capital punishment: its Recommendation 1246 (1994) on the abolition of capital punishment considers "that the death penalty has no legitimate place in the penal systems of modern civilised societies, and that its application may well be compared with torture and be seen as inhuman and degrading punishment within the meaning of Article 3 of the European Convention on Human Rights". Resolution 1044(1994) on the abolition of capital punishment call on all States to abolish the death penalty and considers that the willingness to ratify Protocol 6 should be made a prerequisite for membership of the Council of Europe.

In 1999, the Parliamentary Assembly reaffirmed its belief "that the application of the death penalty constitutes inhuman and degrading punishment and a violation of the (...) right to life" (resolution 1187 (1999)).

Moreover, the European Court of Human Rights has considered that circumstances relating to a death sentence can violate art. 3 of the ECHR⁹⁷ : "the manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under art. 3" (para 104).

Having regard to "the very long period of time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty and to the personal circumstances of the applicant, especially his age [18 years] and mental state at the time of the offence" (para 111), the Court considered that the "Death Row phenomenon" violated article 3 of the ECHR (which stipulates that no one shall be subjected to torture or to inhuman or degrading treatment or punishment).

97. 7 July 1989, Case of Soering vs the United Kingdom, A161.

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