

THE DEATH PENALTY IN JAPAN: Denial of the Right to Life and other human rights violations

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**Excerpt of a report submitted for the July 2014 session of the
UN Human Rights Committee by :
The Center for Prisoners' Rights
The International Federation for Human Rights (FIDH)
The Advocates for Human Rights
The World Coalition Against the Death Penalty**

INTRODUCTION

The International Federation for Human Rights (FIDH), the World Coalition against the Death Penalty (WCADP), the Advocates for Human Rights, and the Center for Prisoners' Rights Japan (CPR) jointly prepared and submitted a report to the United Nations (UN) Human Rights Committee for its 111th session in July 2014, when it reviewed the human rights situation in Japan. In particular, the report examined the imposition of the death penalty and the lack of due process that often accompanies death sentences in Japan.

Since 26 December 2012, Justice Minister Sadakazu Tanigaki has ordered the executions of eight inmates, and more executions are expected to take place in the near future, a clear violation of the basic human right to life, and a disturbing trend that runs counter to the global movement towards the abolition of the death penalty. Equally concerning is that many death sentences in Japan are implemented with disregard to international law, including denying the right of prisoners to seek appeal in death penalty cases. Death sentences are often imposed by lay judges, a system which violates international standards for a fair trial.

Japan has also failed to prevent the execution of persons with mental illness or disability. Such executions are in clear violation of the UN safeguards guaranteeing protection of the rights of those facing the death penalty. Inmates on death row are very often subjected to degrading and inhuman treatment also prohibited under international law, including prolonged solitary confinement.

In light of these ongoing human rights violations, on 23 July 2014 the UN Human Rights Committee issued several recommendations to the Japanese government regarding the death penalty, which echoed the concerns raised by FIDH, WCADP, the Advocates, and CPR in our joint report. In particular, the UN Human Rights Committee calls on the government of Japan to:

- give due consideration to the abolition of death penalty;
- ensure that the death row regime does not amount to cruel, inhuman or degrading treatment or punishment, by giving reasonable advance notice of the scheduled date and time of execution to death row inmates and their families, and refraining from imposing solitary confinement on death row prisoners;
- ensure that confessions obtained by torture or ill-treatment are not invoked as evidence;
- take concrete actions to guarantee the strict confidentiality of all meetings between death row inmates and their lawyers, and to guarantee the full access to all prosecution materials; and
- establish an independent review mechanism of the mental health of the death row inmates.

THE DEATH PENALTY

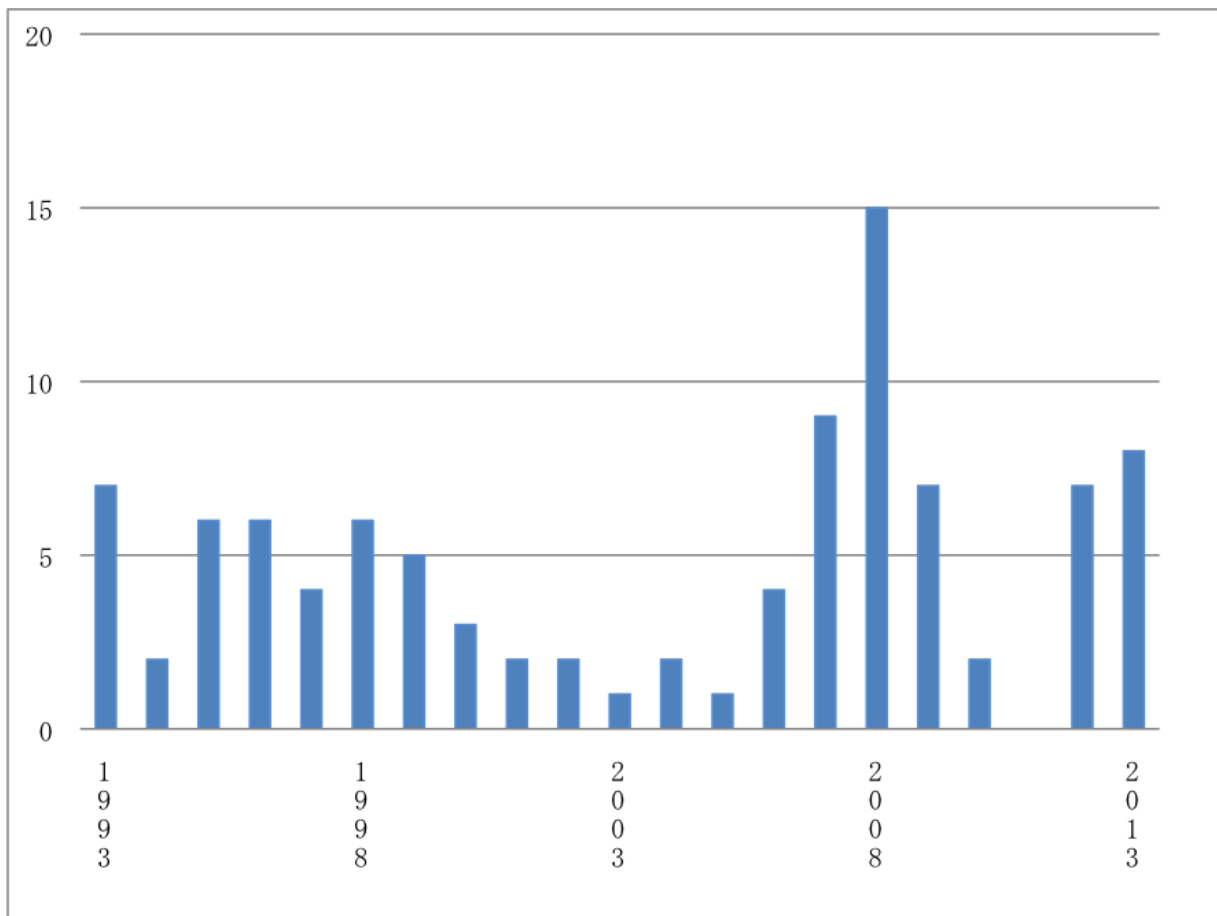
A. General Facts and Figures

Since 2008, when the UN Human Rights Committee last reviewed Japan compliance with the International Covenant on Civil and Political Rights (ICCPR), Japan has executed 39 individuals (Table 1).

Although there was a de-facto moratorium on executions in Japan in 2011, this promising trend took a negative turn on 29 March 2012, when then Justice Minister Toshio Ogawa ordered the execution of three inmates. Since then, executions have been carried out on regular basis. (Graph 1) The current Justice Minister, Sadakazu Tanigaki, a lawyer and politician, assumed office on 26 December 2012. Since then, he has ordered executions of eight inmates.

Despite the regular executions, death row populations have grown since 2008. At the end of 2013, the number of death row prisoners who had exhausted or waived their rights to appeal was at 130 (a slight drop from 133 in 2012). This is the highest number of death row inmates since 1945.

(Graph 1) Annual Executions in Japan 1993 – 2013



(Table 1) Executions in Japan 2007–2013

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

¹ On 30 August 2009, the Democratic Party of Japan (DPJ) won the general election and seized political power for the first time. Three years later, the Liberal Democratic Party (LDP) won the election in December 2012. Among the 39 prisoners executed during this time, 30 were executed by a LDP-led government, and 9 by the DPJ.

(Table 2) Death Sentences and Inmates on Death Row by year 2004 - 2013

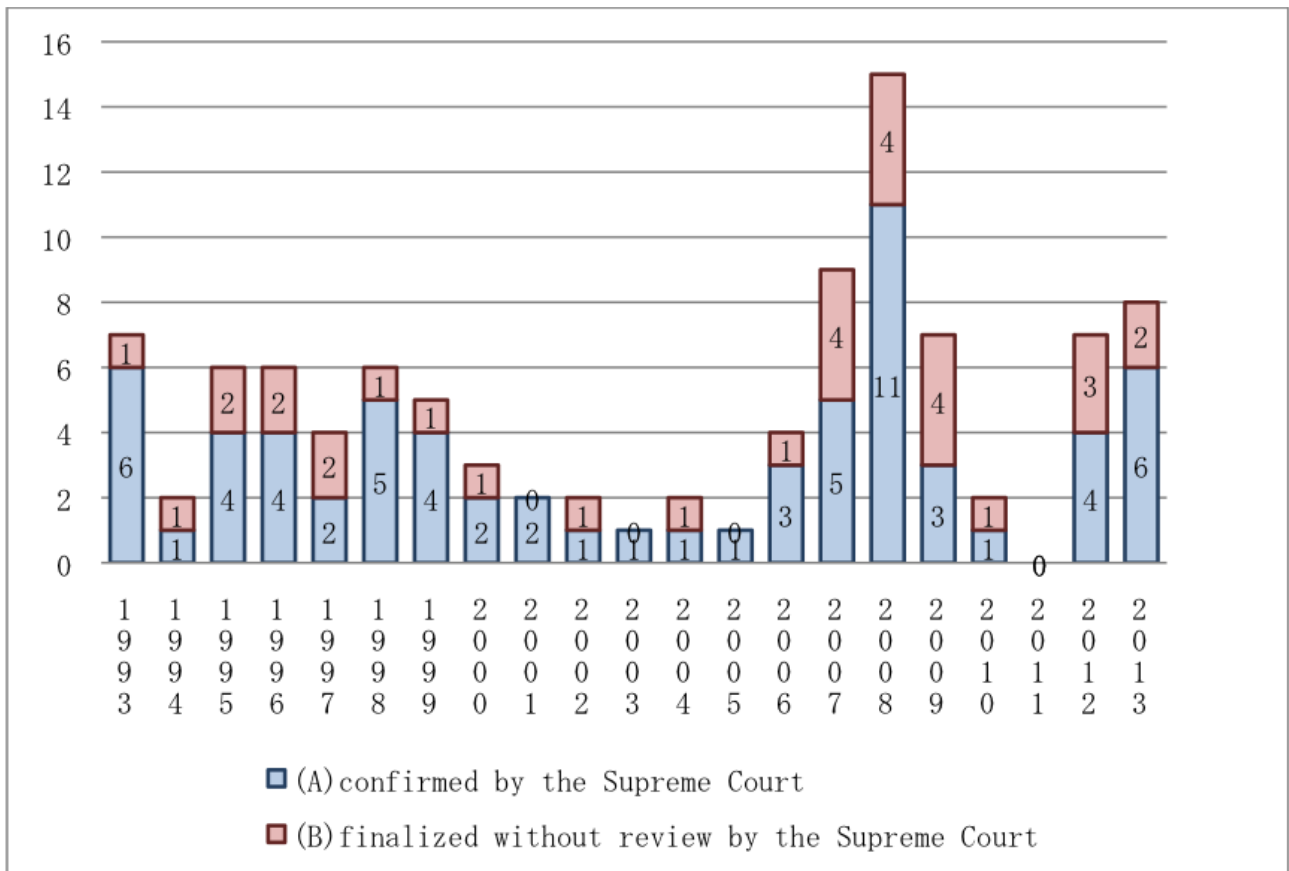
Year	Death sentences finalized (i.e. with no more chance for appeal)	Death sentence imposed by court of first instance	Inmates with finalized death sentences at year end
2004	14	14	66
2005	11	13	77
2006	21	13	94
2007	23	14	107
2008	10	5	100
2009	17	9	104
2010	9	4	111
2011	22	10	128
2012	10	3	133
2013	8	5	130

B. Lack of a System of Mandatory Appeal

Data from 1993 to 2014 show that many defendants continue to be sentenced to death and executed without being allowed to exercise their right of appeal. (Graph 2) This lack of review by higher courts not only increases the risk of execution of the innocent, but is also in direct violation of international law.

In February 2013, Justice Minister Sadakazu Tanigaki ordered the executions of three prisoners. Two of the three — Masahiro Kanagawa and Kaoru Kobayashi — had withdrawn their appeals at the High Courts. The other prisoner, Keiki Kanoh, had originally been sentenced to life imprisonment, but the High Court overturned that sentence after an appeal by public prosecutors. Since these executions, Minister Tanigaki has not ordered the execution of any prisoner who has not fully exhausted all their rights to appeal under Japanese law. Although this may appear to be a positive change in the Justice Ministry's practice, in reality the Japanese legal system has simply restricted the right to appeal for many defendants. Several death sentences have been handed down under the Lay Judge System, and are thus considered final and not eligible for review by the upper courts.

(Graph 2) Executions imposed with and without defendants seeking appeal 1993 - 2013



C. Lay Judge Trials and the Death Penalty

In May 2009, the Act on Criminal Trials examined under the Lay Judge System was enacted, along with the new system of the Lay Judge trials. So far, there has not been an increase in the number of death sentences handed down under the new system, but it should be also noted that the number of homicides in Japan has been decreasing since 2008. (Graph 3)

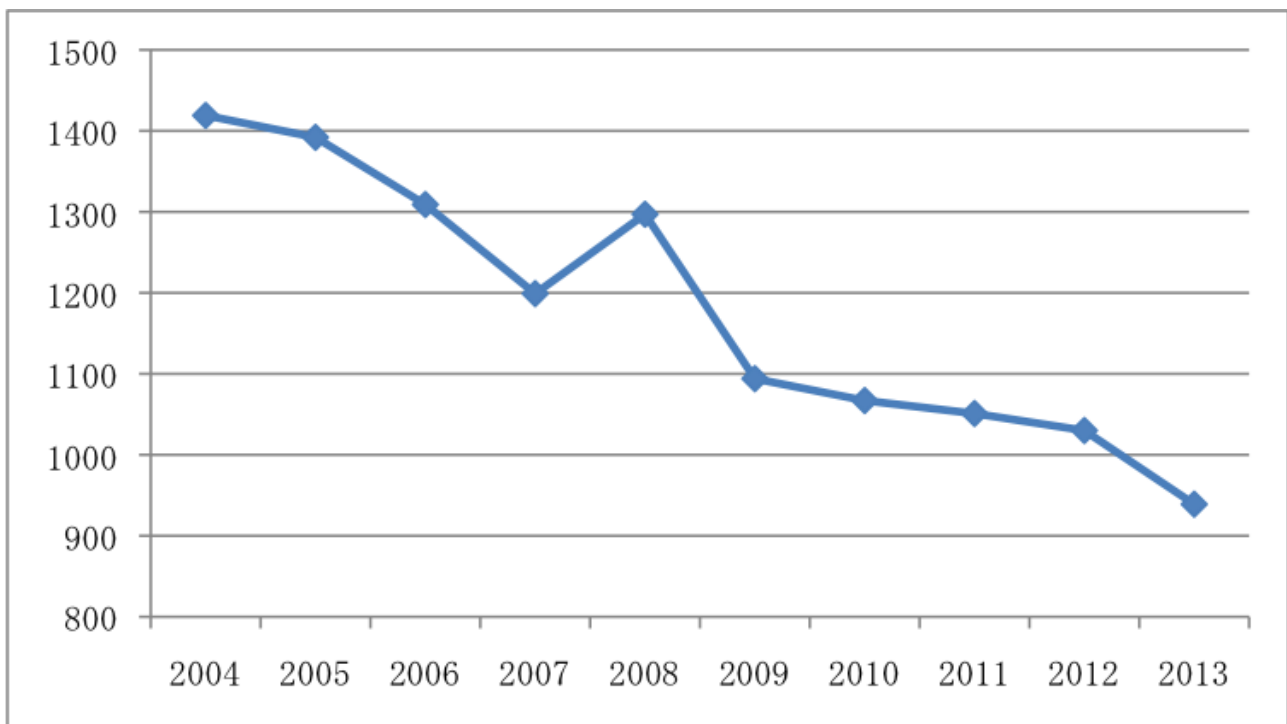
Nevertheless, the new system has resulted in a worrying trend of a higher percentage of capital cases actually resulting in the death penalty. Under the Lay Judge System, prosecutors have sought death sentences for 28 defendants. As of 10 May 2014, 21 of those defendants have been sentenced to death. This means that 75% of all capital cases under the Lay Judge system have resulted in death sentences. This is much higher than the corresponding rate of death sentences handed down in trials with only professional judges between 1980 and 2009, which was 55.7%.

Furthermore, out of the 21 individuals sentenced to death under the Lay Judge System, 4 defendants (19.04%) did not follow through with appeals to Higher Courts. Under the new Lay

Judge System, in order to determine the punishment (including a sentence of death), only a simple majority vote (including at least one professional judge) is required, as opposed to consensus sentences required by other jury-style systems. Furthermore, as there are no sentencing guidelines to be followed by either professional judges or lay judges, considerable fluctuations in sentencing can be seen. Among these four defendants whose death sentences are now considered final, there was a man who did not have any prior criminal record, and many observers have questioned his harsh sentence.

The Tokyo High Court has overruled three death sentences rendered in lay judge trials and re-sentenced the defendants to life imprisonment. However, in all three cases, public prosecutors have appealed to the Supreme Court and currently the cases are under review. These reversals at the High Court suggest an overly punitive tendency in lay judge trials. Although the High Court has attempted to rectify these sentences, the fact that prosecutors are entitled to appeal means that defendants still may face the death penalty.

(Graph 3) Annual Total of Reported Murder Cases 2004 - 2013



D. Prisoners with Mental Disorders

The UN has repeatedly called on Japan to adopt a more humane approach with regard to the treatment of death row inmates and the execution of persons at an advanced age or with mental disabilities. However, no systematic reform has been made in this regard.

Japan's Code of Criminal Procedure prohibits the execution of an inmate in a state of insanity (Article 479 paragraph 1), but even the government admits that there is no case where this provision of the Code has been applied. This is largely due to the fact that the status of "insanity" of inmates has been impossible to verify because even inmates themselves cannot access to their own medical records, and medical specialists from outside of prison have not been allowed to visit inmates in order to conduct an independent medical examination.

In 2013, the UN Committee Against Torture recommended that the government of Japan should ensure an independent review of all cases when there is credible evidence that a death row inmate is mentally ill, and ensure that any detainee with mental illness is not executed (in accordance with article 479(1) of the Code of Criminal Procedures). However, the government has not shown any intention to establish such a review mechanism.

Currently there are several death row prisoners in Japan who are suffering from serious mental illness and who do not receive proper medical treatment. The case of Iwao Hakamada serves not only as strong evidence of the risk of wrongful conviction, but also as an important example of individuals with mental disorders on death row. Hakamada, who was arrested in August 1966, was placed on death row following the confirmation of his death sentence in 1989. Shortly thereafter, he started to show signs of mental disorder, and several outside psychiatrists diagnosed him with a mental illness. However, the Tokyo Detention Center insisted that there was no need for psychiatric treatment. On 27 March 2014 — 48 years after he was first arrested — Hakamada was granted a retrial by the Shizuoka District Court and released, based on allegations of falsified evidence during his first trial. His mental illness remained untreated throughout his imprisonment.

It is believed that Hakamada's case is just one example of many other death row prisoners with serious mental disorders, including Shoko Asahara, a guru of the Aum Shinrikyo cultist group, and Matsuzo Ohama, who has been on death row since 1977 when he withdrew his appeal and allowed his sentence to become final.

E. Violations of Prisoners Rights

Under the New Prison Law, relatives of an inmate sentenced to death and people who have a special need to contact death row prisoners have the legal right to contact them, but in reality people other than family members are often not allowed to do so. The number of non-relatives who are allowed to contact a prisoner is limited to three to five people total, and even those who are allowed to exchange letters with a prisoner are not necessarily permitted to meet with them. Moreover, if a prisoner wants to add a new person to their list of visitors because a previously

approved visitor can no longer visit, such changes are never approved. This results in a constantly decreasing number of people authorized to visit death row prisoners, as those visitors who die or are no longer physically unable to come to the prison are not replaced on the lists by others who can visit.

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

The New Prison Law also provides that each death row prisoner shall be detained in a single cell and separated from the other prisoners day and night. Under the law, contact between death row prisoners is legally possible, where deemed advantageous in light of the principle of treatment prescribed in paragraph 1 of Article 32 regarding the maintenance of “peace of mind” for prisoners. However, the Ministry of Justice admits that such contact between inmates has never been allowed.

The practice of attendance by prison guards at meetings between prisoners and their legal representatives has slightly changed in recent years. On 10 December 2013, the Supreme Court decided that having a meeting between an inmate sentenced to death and his lawyers for a retrial case without attendance by a prison guard is in the ‘legitimate interest of both of the inmate and his lawyers’ and unless there are special circumstances, a guard’s attendance at such a meeting should not be allowed. After the ruling, the Ministry of Justice officially amended its ordinance and started to allow unobserved meetings between death row prisoners and their lawyers. Nevertheless, in practice meetings are often still monitored by officials and some prisoners are still not allowed to see their lawyers in private.

In Japan, death row inmates are not informed of the date and time of their execution until just an hour before it actually takes place. This practice results in great suffering and distress for inmates themselves as well as their families, as they live in constant fear of a sudden execution notice.

Moreover, this lack of prior announcement deprives inmates of the opportunity to challenge the legitimacy of executions and appeal the decision.

On 11 March 2014 the Quaker United Nations Office in New York held a meeting and issued a report concerning the “children of parents sentenced to the death penalty or executed.” The panel recognized that children of people sentenced to death and children of executed inmates have long been invisible and neglected and that they have benefited from little or no assistance or care from any institutions. The panel recommended that the government of Japan work to respect the rights of children of inmates to information; to improve visits or other communication, particularly in cases of imminent execution; and to respect the right of families to have the body of their relative returned to them without payment. In addition, the report of the panel recommended an assessment of the best interests of a child when sentencing a parent. Moreover, Akari Maeda, professor at the Tokyo Zokei University, recounted the difficulties Japanese children face when visiting their parents on death row, owing to the general geographical remoteness of the prisons and a lack of facilities for such visits.

OVERALL RECOMMENDATIONS TO THE JAPANESE GOVERNMENT:

- (a) Introduce a moratorium on executions and consider abolition of the death penalty.**
- (b) Establish an independent body to investigate wrongful convictions with a view to prevent such cases in the future.**
- (c) Require unanimous verdicts for the handing down of death sentences.**
- (d) Adopt a mandatory review and appeal system for capital cases.**
- (e) Reform the current pardon system to allow for genuine opportunities for pardon for those facing the death penalty who may be eligible for such clemency.**
- (f) Establish a reliable and independent review mechanism to identify death row inmates who may be suffering from mental illness.**
- (g) Facilitate independent mental health examinations of prisoners, including to determine the effects of “peace of mind” provisions.**
- (h) Ensure that death row prisoners have more opportunities for contact with outside parties.**
- (i) Guarantee the confidentiality of meetings between prisoners and their lawyers.**
- (j) Require a prisoner on death row to be notified of the date of his/her execution well before the scheduled date.**

(k) Ensure the rights of children to information about their imprisoned parents/guardians, including sufficient prior notice of the date and time of execution.

(l) Consider the best interests of minor children of defendants during sentencing, for decisions to allow family visits to prisoners on death row, and when carrying out the death penalty.

(m) Allow children and other family members reasonable access to prisoners before execution, and facilitate the transfer of the body of the executed inmate to their families if they request it.

CONTRIBUTING ORGANISATIONS

THE INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH)

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level. FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights. It takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice. Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

THE CENTER FOR PRISONERS' RIGHTS (CPR)

CPR was established in March 1995 as the first Japanese NGO specializing in prison reform. CPR's goal is to reform Japanese prison conditions in accordance with international human rights standards and to abolish the death penalty. CPR is a member of the World Coalition Against the Death Penalty (WCADP), a correspondent member of the International Federation of Human Rights (FIDH) and the Anti-Death Penalty Asia Network (ADPAN).

THE ADVOCATES FOR HUMAN RIGHTS

Founded in 1983, The Advocates for Human Rights is a volunteer-based NGO committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a Death Penalty Project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition Against the Death Penalty.

THE WORLD COALITION AGAINST DEATH PENALTY (WCADP)

The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.