



**FIDH – International Federation for Human Rights
Center for Prisoners' Rights (CPR)**

**United Nations Human Rights Committee (CCPR) - 121st session
Joint submission for the adoption of the List of Issues**

JAPAN

Part 1: Prison conditions (ICCPR Articles 7, 8, and 10)

1. Increasing number of prisoners held in prolonged solitary confinement

A review of statistics obtained from the Ministry of Justice reveals that the total number of prisoners in solitary confinement decreased over the last four years in accordance with the following:

1. The number of prisoners who fell within 'Category 4', dropped from 2,190 (2.98% of all prisoners serving a jail sentence) in 2012 to 1,171 (1.6%) in 2016.¹
2. The number of prisoners under 'Isolation', stipulated by Article 76 of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, hereinafter referred to as 'Prison Law', decreased from 16 to seven.

However, the number of prisoners placed in solitary confinement under both Category 4 and Isolation for more than 10 years increased from 21 in 2012 to 32 in 2016. In this group, 12 of the 32 are incarcerated in prisons for mentally disabled persons. This data strongly suggest that extended periods of solitary confinement resulted in an exacerbation of their existing mental illnesses.

Questions

- Do prisoners placed in solitary confinement (both Category 4 and Isolation) receive periodic medical exams? If yes, how often are such exams performed?
- What are the rules or regulations that govern the placement of a prisoner in solitary confinement?
- Is there a process for a prisoner to contest/appeal his/her placement in solitary

¹ The Ministry of Justice Order creates four categories to classify the inmates based on the evaluation of their threats to discipline and order of prison. Inmates classified as 'Category 4' must be placed in single cells and separated from other inmates.

confinement? If yes, what is it?

- If appeal procedures exist, how many appeals have been filed?
- How many appeals against solitary confinement have been successful?

2. Life imprisonment: A slim chance of release on parole

The number of prisoners serving a sentence of life imprisonment slightly decreased from 1,843 in 2013 to 1,835 in 2015,² while the total population of inmates serving a prison sentence decreased from 55,316 in 2013 to 51,175 in 2015.³ However, only a small number of prisoners (17 persons) serving a life sentence were released on parole over the same period of time. The number of prisoners serving life sentences who died in prison (36 persons) from 2013 to 2015 was more than double the number of those who were released on parole.⁴

Questions

- What are the criteria for a prisoner to be released on parole?
- What is the frequency of parole hearings?

3. Inadequate healthcare

Healthcare in prisons remains inadequate. One inmate who had been detained in Gifu Detention Center went blind due to lack of medical treatment and won a lawsuit against the government in 2015.⁵ He suffered from diabetes and complained about eye problems after being detained. However, he could not undergo a medical examination and lost his eyesight.⁶ In addition, officers at five prisons and juvenile detention facilities in Shikoku District have been disciplined for administering the wrong medicine to inmates in 40 cases.⁷

The number of medical staff in prisons remains insufficient. The number of medical officers steadily decreased from 2010 to 2014. To address the shortage of medical staff in prisons, the Act on Special Provisions for the Subsidiary Work and Working Hours of Correctional Medical Officers was enacted in 2015. The Act provides that the government should take measures, such as improving working conditions, to secure a sufficient number of medical officers to work at penal facilities (Article 3[2]). However, even after enactment of this law, one in five (65 out of 328) of the allocated staffing level remain unfilled.

Pre-trial prisoners often face difficulties in receiving proper medical treatment as a

² Data released by Rehabilitation Bureau, Ministry of Justice; Japanese texts available at: <http://www.moj.go.jp/content/001208315.pdf>

³ Ministry of Justice, *White Papers on Crime 2014 and 2016*; available at: http://hokusyo1.moj.go.jp/en/nendo_nfm.html

⁴ Data released by Rehabilitation Bureau, Ministry of Justice

⁵ Available at: http://mw.nikkei.com/sp/#!/article/DGXLASDG16H84_X10C15A9CC0000/ [in Japanese]

⁶ Available at http://mw.nikkei.com/sp/#!/article/DGXLASDG16H84_X10C15A9CC0000/ [in Japanese]

⁷ Kyodo News, *Staff at five Shikoku prison facilities punished for wrongly dispensing medicine*, 29 November 2016

result of the *daiyo kangoku* (substitute prison) system, which allows the use of police cells as a substitute for detention facilities under the Ministry of Justice. When prisoners are transferred from police stations to detention centers, they are required to throw away all the medicine prescribed for them during their stay at police facilities. This prevents prisoners from taking necessary medicine for several days following their transfer. The seriousness of the problem is illustrated by reports of several cases of neuroleptic malignant syndrome (NMS) among prisoners.⁸

In August 2015, one prisoner was found unconscious and another prisoner was found dead at a prison in Wakayama due to heatstroke. Similar cases were reported during the past several years in Japan. Immediately after these incidents, the Ministry of Justice issued a circular paper that called for heightened attention to heatstroke. The correctional facilities' policy to save water by imposing a strict restriction on prisoners' use of water may have contributed to the emergence of cases of heatstroke.

Questions

- How many prisoners died in prisons from 2013 to 2016?
- Of those prisoners, in how many cases was the cause of death identified as something other than natural death?
- What was the cause of each death?
- What measures have been taken to increase the number of medical staff in prisons?

4. Communication with the outside world restricted

Article 152 of the Prison Law gives wardens the authority to prohibit inmates serving a prison sentence from general contact with persons outside the prison. In accordance with this provision, the prison authorities scarcely permit inmates who are placed in solitary confinement as disciplinary punishment to meet or correspond with family members, which is inconsistent with Rule 43 of Nelson Mandela Rules.

Some prisons have tightened internal rules regulating communication between sentenced prisoners and visitors, including lawyers. Meetings with lawyers, who represent prisoners in cases such as civil lawsuits filed against the state for violation of prisoners' rights, are often monitored by prison staff. Correspondence from lawyers is routinely censored.

It has been reported that prison guards are sometimes present during interviews that lawyers with human rights protection committees of the Japan Federation of Bar Associations (JFBA) or local bar associations conducted with convicted inmates who made a petition about human rights violations in prisons.

⁸ NMS is a rare, but life-threatening, idiosyncratic reaction to neuroleptic medications that is characterized by fever, muscular rigidity, altered mental status, and autonomic dysfunction. NMS often occurs shortly after the initiation of neuroleptic treatment, or after dose increases.

Article 112 of the Prison Law provides that guarding officers are not to be present when a convicted inmate receives a visit from those listed in the provision, unless there are special circumstances in which it is deemed likely that such a visit could cause disruption to discipline and order in the penal institution. Since lawyers of the human rights protection committees do not fall under the categories listed in Article 112, the prison authorities sometimes have their staff attend the interview and take notes of the conversation. The attendance of prison staff is inconsistent with international human rights standards, including Rule 61 of the Nelson Mandela Rules and Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Questions

- In how many cases did prison staff attend interviews conducted by lawyers from the human rights protection committees of the JFBA and local bar associations?
- What measures has the government taken to protect confidentiality of these interviews?

5. No steps taken to abolish forced labor

Article 12 of Japan's Penal Code provides that prisoners who were sentenced to imprisonment with work must be engaged in assigned work. Articles 74 and 150 of the Prison Act provide that failure to meet the obligation of work can be punished. In June 2013, following its review of the third periodic report of Japan, the UN Committee on Economic, Social, and Cultural Rights (CESCR) found that this obligation of assigned work was in breach of the International Covenant on Economic, Social, and Cultural Rights' (ICESCR's) prohibition of forced labor.⁹ The CESCR recommended Japan abolish forced labor "either as a corrective measure or as a penal sentence" and amend or repeal the relevant legislation to bring it in line with Article 6 of the ICESCR.¹⁰ However, the government has not taken any measures to address and implement the CESCR recommendations.

Question

- What measures have been taken to abolish forced labor in prisons?

⁹ CESCR, *Concluding Observations on the third periodic report of Japan*, 10 June 2013; UN Doc. E/C.12/JPN/CO/3 Para 14

¹⁰ CESCR, *Concluding Observations on the third periodic report of Japan*, 10 June 2013; UN Doc. E/C.12/JPN/CO/3 Para 14

Part 2: Death penalty (Articles 6, 7, 10, and 14 of the ICCPR)

1. No efforts to reduce capital offenses and introduce a mandatory review system

Despite past recommendations made to Japan by the UN Human Rights Committee (CCPR), the number of crimes that are punishable by death has not decreased.¹¹ Japanese law still prescribes the death penalty for 19 offenses, which include crimes that do not involve the death of the victim.

In October 1993, the Japanese government attributed its failure to introduce a bill for the full revision of the Penal Code to the Parliament to the opposition of the JFBA “and others.”¹² However, JFBA opposed the draft bill to revise the Penal Code for reasons other than that it would reduce the number of crimes punishable by death. Moreover, in 2016, the JFBA adopted a Declaration Calling for Reform of the Penal System Including the Abolition of the Death Penalty, and made it clear that the organization opposes the retention of the death penalty.¹³

Under the Lay Judge System introduced in Japan in 2009, six lay citizens and three career judges decide on matters of guilt or innocence as well as sentencing. Under the Lay Judge System, trials involving capital offenses have resulted in a higher rate of convictions and death sentences than under the previous system. As of February 2017, the lay courts imposed the death penalty in 71% of trials in which prosecutors demanded death sentences. This figure is higher than the average percentage before the introduction of the lay judge system, which was about 56% from 1980 to 2009. To underscore the problem with lay court death sentences, as of February 2017, three death sentences delivered by lay judge trials were vacated and the sentence reduced to life imprisonment by appeal courts. The life imprisonment sentences were affirmed by the Supreme Court.

About one-third of those sentenced to death between 1993 and 2016 did not exercise their right of appeal. The CCPR has repeatedly recommended the Japanese government introduce a mandatory review system.¹⁴ As of February 2017, 14 inmates have been sentenced to death as a result of lay judge trials since 2010. Four of them withdrew their appeal and three have already been executed. Of those four cases, there was a case in which one victim was killed and the defendant did not have any criminal record, which could have been reversed by an appeal court considering past

¹¹ CCPR, *Concluding observations on the sixth periodic report of Japan*, 20 August 2014; UN Doc. CCPR/C/JPN/CO/6 Para. 13; CCPR, *Concluding observations of the Human Rights Committee – Japan*, 18 December 2008, UN Doc. CCPR/C/JPN/CO/5 Para 17; CCPR, *Concluding observation of the Human Rights Committee – Japan*, 19 November 1998, UN Doc. CCPR/C/79/Add.102 Para. 20; CCPR, *Comments of the Human Rights Committee – Japan*, 5 November 1993, UN Doc. CCPR/C/79/Add.28 Para 12.

¹² JFBA, *Record of the Human Rights Committee Meetings on the Third Periodic Report of Japan*, March 1995

¹³ JFBA, *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty*, 7 October 2016

¹⁴ CCPR, *Concluding observations of the Human Rights Committee – Japan*, 18 December 2008, UN Doc. CCPR/C/JPN/CO/5 Para 17; CCPR, *Concluding observations on the sixth periodic report of Japan*, 20 August 2014; UN Doc. CCPR/C/JPN/CO/6 Para. 13

decisions by the appeal court on sentencing.

Questions

- What measures have been taken to reduce the number of capital offenses?
- What measures have been taken to introduce a mandatory system of review in capital punishment cases?

2. *Communication between death row inmates and lawyers is still monitored*

Prison conditions experienced by those under death sentence are harsh. Prisoners on death row are prohibited from having any contact with other prisoners – a restriction enforced by strict isolation. Contact with the outside world is limited to infrequent and supervised visits from family, lawyers, or other approved visitors. Even if the meetings are for retrial, the prison authorities have had prison guards present, insisting that inmates' death row status requires a secure custodial setting and careful monitoring of the inmates' emotional state. The CCPR has expressed its deep concern about such practice, and Japan's Supreme Court ruled on this issue on 10 December 2013.¹⁵ The Court held that having a meeting between a death row inmate and his lawyers for a retrial case is in "legitimate interest of both of the inmates and his lawyer." The Court went on to state that such meetings should not be monitored unless there are special circumstances. In accordance with the Supreme Court decision, the practice has been improved so that meeting concerning retrial cases for death row inmates are not monitored. Nevertheless, the prison authorities still have their staff attend meetings concerning retrial, in case where the death row inmates are linked to a Japanese doomsday cult, *Aum Shinrikyo*. In addition, meetings between death row inmates and their lawyers regarding other legal matters are often monitored, even if they concern complaints against prison authorities.

Questions

- What measures have been taken to ensure confidential communications between lawyers and death row inmates?
- What standards are observed and what factors are considered by prison authorities when they monitor the meetings concerning retrial?

3. *Inhumane treatment of mentally ill prisoners*

Several prisoners known to have been suffering from mental illness have been executed, and others remain on death row. For example, Hakamada Iwao was sentenced to death in 1968. Like all other death row inmates, he was held in solitary confinement.¹⁶ Within months of the Supreme Court's 1980 judgment upholding his

¹⁵ CCPR, Concluding observations of the Human Rights Committee – Japan, 18 December 2008, UN Doc. CCPR/C/JPN/CO/5 Para 17; CCPR, *Concluding observations on the sixth periodic report of Japan*, 20 August 2014; UN Doc. CCPR/C/JPN/CO/6 Para. 13

¹⁶ Japan's long-standing practice of placing death row inmates in solitary confinement was codified by Article 35 of the 2007 Prison Law.

death sentence, he began to show signs of seriously disrupted thinking and behavior. His communication with his lawyers became ineffective and his letters and verbal communication with his elder sister incoherent. Hakamada Iwao was temporarily released pending retrial in March 2014 based on a district court's order which decided to reopen his case. He continues to suffer from mental illness and could go back to prison if an appeal by the prosecution against the order to reopen the case is successful.

In December 2008, the CCPR urged the Japanese government 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.¹⁷ In August 2014, the CCPR also issued recommendations to establish a mechanism to review the mental health of death row inmates.¹⁸ The ongoing practice of placing in solitary confinement death row inmates with serious mental disabilities without independent review of their mental health is incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty approved by Economic and Social Council resolutions 1984/50 and 1989/64.

Questions

- How many death row inmates suffer from mental illness?
- How many death row inmates suffer from intellectual disabilities?
- What types of health care, if any, are provided for inmates who suffer from mental illness?

4. ***No reasonable advance notice of execution***

The CCPR has repeatedly recommended the Japanese government provide inmates and their family members with reasonable advance notice of the scheduled date and time of the execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare them for the event.¹⁹ However, authorities consistently fail to provide advance notice of executions and no improvement has been reported in this regard.

Question

- What measures have been taken to provide advance notice of executions?

¹⁷ CCPR, Concluding observations of the Human Rights Committee – Japan, 18 December 2008, UN Doc. CCPR/C/JPN/CO/5 Para 16

¹⁸ CCPR, *Concluding observations on the sixth periodic report of Japan*, 20 August 2014; UN Doc. CCPR/C/JPN/CO/6 Para. 13

¹⁹ CCPR, *Concluding observations on the sixth periodic report of Japan*, 20 August 2014; UN Doc. CCPR/C/JPN/CO/6 Para. 13; CCPR, Concluding observations of the Human Rights Committee – Japan, 18 December 2008, UN Doc. CCPR/C/JPN/CO/5 Para 16

5. Inhumanity of hanging

In 1955, Japan's Supreme Court held that death by hanging was not particularly cruel compared with other ways of execution, namely death by a sword, shooting, electrocution, and gas chambers. However, the debate on the inhumane nature of hanging has not changed since the Supreme Court decision because the government has not disclosed detailed information about this method of execution. Even the few reports made public upon disclosure requests had important passages blacked out. Execution reports produced by a prosecutor's assistant have been found to be one of the most essential resources to grasp the reality of the death by hanging. The newly found execution reports show that hanging could cause acute physical and mental suffering. These resources, which cover 102 executions conducted from 3 July 1947 to 20 March 1951, show the time required to execute prisoners by hanging in 79 of 102 cases ranged from 10 minutes and 45 seconds to 22 minutes. Since the Prison Law at the time provides that the guard shall not loosen the rope until five minutes after the executions, these figures mean that the inmates were hanged for more than 19 minutes on average.

The dispersion of required time indicates that it would be almost impossible to execute inmates by hanging in a humane manner. These figures reveal the possibility that the hanging might end up in a botched execution depending on physical constitution, resistance, and arrangements of executions. On 31 October 2011, the Osaka District Court held that the government does not have an obligation to reduce mental and physical suffering of inmates to a minimum. However, the Japanese government has an obligation to conform to international standards. The government should immediately establish a moratorium on all executions and take the necessary steps to publicly review the current method of execution.

Questions

- What has been the average time required for executions carried out since April 1951?
- What has been the longest and the shortest time required for executions carried out since April 1951?
- What steps have been taken to prevent botched executions and to ensure the death penalty is carried out in such a way that it causes the least possible physical and mental suffering?