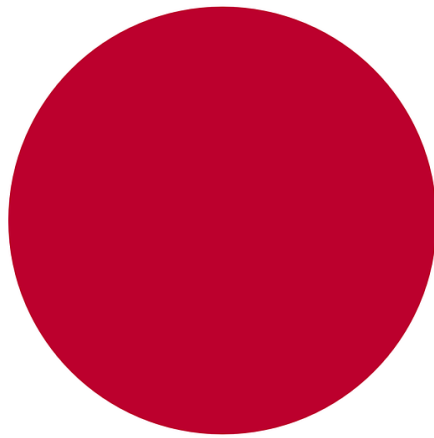


THE DEATH PENALTY IN JAPAN

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ABBREVIATIONS

CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
COE	Council of Europe
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
EU	European Union
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IHRS	International Human Rights Standards
JFBA	Japan Federation of Bar Associations
UDHR	Universal Declaration of Human Rights
UN	United Nations

INTRODUCTION

In an era marked by vigorous debates over human rights and judicial reforms, the use of the death penalty in Japan remains a polarising issue. As one of the few industrialised nations still upholding capital punishment, Japan's adherence to this practice invites scrutiny and criticism, particularly concerning its detention conditions and execution protocols.

This report aims to provide a comprehensive analysis of the death penalty in Japan, focusing on its historical evolution, legal frameworks, and the contentious conditions under which death row inmates are detained and executed. Central to our exploration is the environment within Japanese detention centres, where inmates are held in isolation up to the moment of their execution. Such executions are typically carried out by hanging, using the long-drop method intended for quick death, in facilities spread across major cities like Tokyo and Osaka.¹ The peculiarities of these practices—marked by their clinical efficiency and shrouded in secrecy—underscore a complex interplay between legal mandates and human rights considerations.

Moreover, the report will delve into the broader implications of these practices within the international legal context, evaluating Japan's compliance with International Human Rights Standards (IHRS). Through this lens, we will assess the impact of capital punishment on the inmates' psychological and physical well-being, spotlight notable legal cases, and discuss advocacy efforts aimed at reform or abolition.

In aligning our discussion with global human rights discourse, the report not only aims to inform, but also to foster a deeper understanding of the multifaceted issues surrounding the death penalty in Japan. By doing so, we seek to contribute to the ongoing dialogue on whether the death penalty should persist in modern justice systems, particularly in a society as globally connected and culturally rich as Japan.

¹ Amnesty International Denmark, 'Japan' <<https://amnesty.dk/vaer-med/aktivisme/amnesty-grupper/fagprofessionelle-grupper/the-danish-medical-group-against-the-death-penalty/knowledge-bank/japan/>> accessed 3 June 2024.

1. HISTORICAL CONTEXT

Japan has had a long-held practice of the death penalty. In ancient times, execution could be carried out in multiple ways: strangulation, decapitation, or seppuku, which is a Japanese tradition of forced suicide.² Nonetheless, it was not always the case: for almost 350 years, until the 12th century, there were no executions carried out in Japan. This was due to the absence of war and the compassionate influences of Buddhism. In 1868, the ruling family at the time, the Tokugawa family, was overthrown by a group of political activists who wanted to restore the imperial family to power.³ The new Emperor Mutsuhito decided to introduce a Western-style judicial system. This change is known as the Meiji Restoration. After this restoration, and through the influences of the Western powers, the executions were only done by hanging. After World War 2, the occupying powers carried out a constitutional reform, in which some crimes for which the death penalty could be awarded changed.

It is the duty of the Japanese Minister of Justice to personally authorise executions. The number of executions therefore varies depending on whether the Minister of Justice is in favour or against the death penalty. Between 1989 and 1993 there were no executions due to the Minister of Justice's opposition to the death penalty and a strong abolitionist movement at the time.⁴ The abolitionist movement died down after a toxic gas attack was carried out by the Aum Sect in 1995, for which the perpetrators were sentenced to death. Japan's last execution was in 2022, and in 2023 there were 115 people on death row.

Year	Number of Individuals Executed ⁵	Number of Death Row Inmates ⁶
2007	9	N/A
2008	15	N/A
2009	7	106

² Florence Bellivier et al., 'The Death Penalty in Japan: The Law of Silence' (2008) n 505a FIDH. ("FIDH")

³ 'Meiji Restoration' (*World History Encyclopedia*, 29 October 2022) <https://www.worldhistory.org/Meiji_Restoration/> accessed 7 June 2024.

⁴ FIDH (n 2)

⁵ Death Penalty Worldwide, 'Japan' (last updated 1 December 2021)

<https://deathpenaltyworldwide.org/database/#/results/country?id=36> accessed 24 May 2024. ("DPW: Japan")

⁶ 'Death Sentences and Executions in 2023' (*Amnesty International*, 29 May 2024) <<https://www.amnesty.org/en/documents/act50/7952/2024/en/>> accessed 7 June 2024.

2010	2	111
2011	0	130
2012	7	133
2013	8	130
2014	3	128
2015	3	143
2016	3	141
2017	4	134
2018	15	116
2019	3 (first execution of a foreign national, a Chinese national)	121
2020	0	120
2021	3	117
2022	1	116
2023	0	115

Table 1 - *Statistics on Death Row inmates and individuals Executed. Authors' own elaboration based on data from yearly Amnesty International reports on the death penalty worldwide (2008-2024).*

2. INTERNATIONAL LEGAL INSTRUMENTS AND OBLIGATIONS

In addressing Japan's stance on the death penalty, it is essential to consider its commitments under various international human rights instruments. The following table provides an overview of the relevant international legal instruments to which Japan is or is not a party, highlighting the specific articles and provisions that relate to the right to life and the regulation or abolition of the death penalty.

This table details Japan's ratification status, reservations, and the dates on which these commitments were made. It underscores Japan's adherence to international norms concerning

human rights and the right to life, while also indicating certain reservations and areas where Japan has opted out of more stringent international protocols, such as the abolition of the death penalty. This overview is crucial for understanding Japan's legal framework and obligations in the context of international human rights law.

Instrument	Relevant Articles	Status	Date
International Covenant on Civil and Political Rights (ICCPR)	Articles 6 and 14	Ratified	21 June 1979
ICCPR 2nd Optional Protocol	Articles 1 - 11	Not Party	-
ICCPR General Comment No. 6: Article 6 (Right to Life) of the United Nations Human Rights Committee	-	Obligations deriving from Ratification of ICCPR	30 April 1982
Convention on the Rights of the Child	Article 37	Ratified (Reservation regarding second sentence of 37(c))	22 April 1994
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Articles 1, 10, 11, and 16	Ratified (Reservation regarding Article 20)	29 June 1999
Universal Declaration of Human Rights	Articles 3 and 5	Obligations deriving from its position as a Member State of UN	18 December 1956
United Nations Commission on Human Rights Resolution 2005/59	-	Obligations deriving from its position as a Member State of UN	20 April 2005
United Nations Economic and Social Council Resolutions: : Safeguards Guaranteeing	-	Obligations deriving from its position as a Member State of UN	25 May 1984 ; 24 May 1989 ; 23 July 1996

Protection of the Rights of Those Facing the Death Penalty Resolution 1984/50, Resolution 1989/64 and Resolution 1996/15			
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Table 2 – Relevant International Legal Instruments. *Authors' own elaboration based on data gathered from listed relevant instruments.*

2.1. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights, hereinafter ICCPR, is a key international treaty adopted by the United Nations General Assembly in 1966 and came into force in 1976. It is one of the foundational instruments of international human rights law, designed to protect and promote civil and political rights of individuals. The ICCPR encompasses a wide range of rights, including the right to life, freedom from torture and inhumane treatment, the right to a fair trial, freedom of expression, and the right to privacy. These rights are essential in ensuring the dignity and freedom of all individuals. The covenant obligates its signatories to respect and ensure these rights to all individuals within their territories and to provide effective remedies for violations.

Japan's commitment and obligations as a ratifying party to the ICCPR under Article 6 primarily revolve around the protection and respect for the right to life. As a signatory State, Japan subscribes to the view that every human being inherently possesses the right to life, which must be safeguarded by law. This encompasses ensuring that no one is arbitrarily deprived of life and that the death penalty is applied in a very restricted manner.

Under Article 6, Japan is obligated to limit the imposition of the death penalty to only "the most serious crimes", as defined by laws in force at the time of the crime's commission and in line with the provisions of the ICCPR.⁷ This stipulation requires that such a sentence only follows a final judgement rendered by a competent court, reflecting a due process of

⁷ United Nations, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art 6. ("ICCPR ")

law. In practice, this means that Japan must ensure a robust legal process where capital punishment is concerned, including fair trials, right to appeals, and access to legal representation.

Furthermore, the article specifies that the death penalty should not be imposed on minors or pregnant women, aligning with broader human rights norms that Japan agrees to uphold. Additionally, individuals sentenced to death must have the opportunity to seek pardon or commutation of their sentence, allowing for mercy or legal adjustments based on new evidence or reconsideration of the case.

Lastly, while Article 6 does not mandate the abolition of the death penalty, it does not prevent Japan from moving towards abolition. This clause indicates that while maintaining the death penalty is not in violation of the ICCPR, states are encouraged to consider its abolition. Japan, therefore, carries the responsibility of continually assessing and reevaluating its stance on capital punishment in light of evolving IHRS.

2.2. UNITED NATIONS HUMAN RIGHTS COMMITTEE

Lastly, the United Nations Human Rights Committee, hereinafter UN HRC, calls for transparency in the administration of the death penalty. Japan is expected to provide detailed information on death sentences, the nature of the offences, grounds for sentences, and executions carried out, ensuring that the application of the death penalty is open to scrutiny and conforms to IHRS. Japan, as a signatory to the ICCPR, is subject to the observations and recommendations of the UN HRC, particularly regarding the use of the death penalty. The UN HRC has articulated that the abolition of the death penalty enhances human rights and has suggested that its abolition is desirable.⁸ Retentionist countries, like Japan, have been encouraged by the UN HRC to consider abolition as a significant step forward in the protection of the right to life.⁹

The Committee has also urged Japan and other States to consider acceding to the Second Optional Protocol of the ICCPR, which aims to abolish the death penalty. Japan

⁸ UN Human Rights Committee, 'CCPR General Comment No 6: Article 6 (Right to Life)' (30 April 1982) <<https://www.refworld.org/legal/general/hrc/1982/en/32185>> accessed 22 May 2024. ("UN HRC GC 6")

⁹ Concluding Observations on the Situation of Civil and Political Rights: Equatorial Guinea' (30 April 1982) UN Doc CCPR/CO/79/GNQ, para 4.

maintains that the decision to abolish capital punishment should be made independently, reflecting public opinion and the belief that the death penalty is necessary for the most heinous crimes.¹⁰

Furthermore, even though State parties, including Japan, are not obliged to abolish the death penalty following Art 6 of the ICCPR, the UN HRC obliges States to limit its use and emphasises the term "most serious crimes", which justifies the death penalty, should be narrowly interpreted to mean that capital punishment should only be used in exceptionally severe cases.¹¹ This excludes crimes such as economic and political offences, and other non-lethal crimes. Additionally, the UN HRC has raised concerns about the conditions of death row inmates, including issues related to cell size, environmental conditions, restrictions on visits and correspondence, access to exercise, and time spent outside cells which should meet the standards of human dignity as outlined in the ICCPR in Articles 7 (prohibition of torture and cruel, inhuman or degrading treatment) and 10(1) (respect for the human dignity of persons deprived of their liberty).¹²

The Committee has also highlighted that imposing an automatic and mandatory death penalty for a crime violates Article 6(1) of the ICCPR, wherein it does not take into consideration the defendant's circumstances or that of the offence, and thus constitutes an arbitrary deprivation of life. As such, Japan is urged to reconsider the application of mandatory death penalties under its legislative framework, so that it upholds its obligations under the Covenant and IHRS.

The Committee further highlights the incompatibility of failing to notify families and lawyers of death row inmates about their execution dates with the covenant's standards.¹³ Japan is required to ensure that such notifications are made promptly and transparently.

¹⁰ The Government of Japan, 'Mid-term Report on the Progress Made in the Implementation of the Recommendations Issued at the Second Cycle of the Universal Periodic Review' (January 2017) <<https://www.mofa.go.jp/mofaj/files/000225031.pdf>> accessed 22 May 2024.

¹¹ UN HRC GC 6 (n 8) para. 7.

¹² Amnesty International, 'International Standards on the Death Penalty' (January 2006) <<https://www.amnesty.org/en/wp-content/uploads/2021/07/act500012006en.pdf>> accessed 22 May 2024.

¹³ UN Human Rights Committee, 'Concluding Observations: Japan' (18 November 1998) UN Doc CCPR/C/79/Add.102, para 21 <<https://www.refworld.org/policy/polrec/hrc/1998/en/17031>> accessed 22 May 2024.

Lastly, the United Nations Human Rights Committee, hereinafter UN HRC, calls for transparency in the administration of the death penalty. Japan is expected to provide detailed information on death sentences, the nature of the offences, grounds for sentences, and executions carried out, ensuring that the application of the death penalty is open to scrutiny and conforms to IHRS. Japan, as a signatory to the ICCPR, is subject to the observations and recommendations of the UN HRC, particularly regarding the use of the death penalty. The UN HRC has articulated that the abolition of the death penalty enhances human rights and has suggested that its abolition is desirable.¹⁴ Retentionist countries, like Japan, have been encouraged by the UN HRC to consider abolition as a significant step forward in the protection of the right to life.¹⁵

The Committee has also urged Japan and other States to consider acceding to the Second Optional Protocol of the ICCPR, which aims to abolish the death penalty. Japan maintains that the decision to abolish capital punishment should be made independently, reflecting public opinion and the belief that the death penalty is necessary for the most heinous crimes.¹⁶

Furthermore, even though State parties, including Japan, are not obliged to abolish the death penalty following Art 6 of the ICCPR, the UN HRC obliges States to limit its use and emphasises the term "most serious crimes", which justifies the death penalty, should be narrowly interpreted to mean that capital punishment should only be used in exceptionally severe cases.¹⁷ This excludes crimes such as economic and political offences, and other non-lethal crimes. Additionally, the UN HRC has raised concerns about the conditions of death row inmates, including issues related to cell size, environmental conditions, restrictions on visits and correspondence, access to exercise, and time spent outside cells which should meet the standards of human dignity as outlined in the ICCPR in Articles 7 (prohibition of torture and cruel, inhuman or degrading treatment) and 10(1) (respect for the human dignity of persons deprived of their liberty).¹⁸

¹⁴ UN HRC GC 6 (n 8).

¹⁵ Concluding Observations on the Situation of Civil and Political Rights: Equatorial Guinea' (30 April 1982) UN Doc CCPR/CO/79/GNQ, para 4

¹⁶ The Government of Japan, 'Mid-term Report on the Progress Made in the Implementation of the Recommendations Issued at the Second Cycle of the Universal Periodic Review' (January 2017) <<https://www.mofa.go.jp/mofaj/files/000225031.pdf>> accessed 22 May 2024.

¹⁷ UN HRC GC 6 (n 8), para. 7.

¹⁸ Amnesty International, 'International Standards on the Death Penalty' (January 2006) <<https://www.amnesty.org/en/wp-content/uploads/2021/07/act500012006en.pdf>> accessed 22 May 2024.

The Committee has also highlighted that imposing an automatic and mandatory death penalty for a crime violates Article 6 (1) of the ICCPR, wherein it does not take into consideration the defendant's circumstances or that of the offence, and thus constitutes an arbitrary deprivation of life. As such, Japan is urged to reconsider the application of mandatory death penalties under its legislative framework, so that it upholds its obligations under the Covenant and IHRS.

The Committee further highlights the incompatibility of failing to notify families and lawyers of death row inmates about their execution dates with the covenant's standards.¹⁹ Japan is required to ensure that such notifications are made promptly and transparently.

2.3. ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS

Japan, as a member of the UN, adheres to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty as established by the United Nations Economic and Social Council, hereinafter UN ECOSOC, in its resolutions from 1984, 1989, and 1996. These resolutions aim to ensure that the death penalty, where it has not been abolished, is applied judiciously and in accordance with IHRS.²⁰

Under these resolutions, Japan is obligated to limit the imposition of the death penalty strictly to "the most serious crimes." This includes crimes that involve intentional acts with lethal or other extremely grave consequences. In practice, this means that capital punishment in Japan is predominantly reserved for cases such as multiple murders or other particularly

¹⁹ UN Human Rights Committee, 'Concluding Observations: Japan' (18 November 1998) UN Doc CCPR/C/79/Add.102, para 21 <<https://www.refworld.org/policy/polrec/hrc/1998/en/17031>> accessed 22 May 2024.

²⁰ Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, UN Economic and Social Council Resolution 1984/50 (25 May 1984), endorsed by the UN General Assembly Resolution 39/118 (14 December 1984) <https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1984/ECOSOC_Resolution_1984-50.pdf> accessed 22 May 2024 ("ECOSOC 1984/50"); UN Economic and Social Council Resolution 1989/64 (24 May 1989) <<https://digitallibrary.un.org/record/75549?ln=en&v=pdf>> accessed 22 May 2024; UN Economic and Social Council Resolution 1996/15 (23 July 1996) <<https://ecosoc.un.org/sites/default/files/documents/2023/resolution-1996-15.pdf>> accessed 22 May 2024.

heinous offences, reflecting a stringent interpretation of what constitutes a "most serious crime."

The resolutions also emphasise the necessity of a fair trial and the provision of adequate legal safeguards. This includes ensuring that all persons facing the death penalty in Japan receive the legal protections guaranteed under Article 14 of the ICCPR. These protections encompass the right to adequate legal assistance and a trial that observes the highest standard of justice and fairness.

Furthermore, Japan must ensure that certain vulnerable groups, including minors, pregnant women, new mothers, and those with mental disabilities, are exempt from the death penalty. This aligns with broader human rights principles that protect the most vulnerable members of society from the ultimate punishment.

Another critical aspect of Japan's obligations includes the rights of individuals sentenced to death to appeal their sentence, seek pardon, or have their sentence commuted. These options must be genuine and accessible, allowing those convicted a fair chance to have their sentences reviewed and potentially reduced. Moreover, executions must not be carried out while any appeals, pardon applications, or other legal recourses are still pending.

The resolutions also call for transparency in the application of the death penalty. Japan is urged to publish data annually about its use of the death penalty, including the number of people sentenced, executed, or having their sentences commuted or overturned on appeal. This transparency is vital for monitoring and ensuring that Japan's practices align with international standards.

Lastly, the guidelines stipulate that any execution carried out must minimise suffering, adhering closely to the UN Standard Minimum Rules for the Treatment of Prisoners. This includes ensuring humane conditions and treatment throughout the process, reflecting a global shift towards more humane methods of enforcement, even in jurisdictions that retain the death penalty.

2.4. CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AND UN COMMITTEE AGAINST TORTURE

Japan ratified the United Nations Convention Against Torture, hereinafter CAT, in 1999, committing itself to prevent and prohibit torture and other forms of cruel inhuman, or degrading treatment or punishment. Under Article 1 of the CAT, "torture" is defined as any act causing severe physical or mental pain or suffering, intentionally inflicted for purposes such as obtaining information or confession punishing for a suspected act, intimidating or coercing, especially when inflicted by or with the consent of a public official.²¹

Japan, as a retentionist country, is encouraged to abolish the death penalty, investigate allegations, prosecute perpetrators, and provide redress and compensation to victims.²² Japan must ensure that its legal framework and practices align with CAT's principles, taking proactive measures to prevent torture in any form, including within its interrogation and prison system as outlined in Article 11. Additionally, Article 10 mandates that Japan ensure proper training for corrections and law enforcement to prevent torture.

Furthermore, Japan is required to cooperate with the Committee, which monitors the implementation of the Convention. This involves submitting reports on compliance, providing accurate information, responding to inquiries, and implementing the Committee's recommendations.

It has been highlighted that the uncertainty faced by individuals under the sentence of death can amount to cruel and inhuman treatment, breaching the Convention.²³

²¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85. ("CAT")

²² Conclusions and recommendations of the Committee against Torture: Estonia, UN document CAT/C/CR/29/5, 23 December 2002, para. 15

²³ The United Nations Voluntary Fund for Victims of Torture, 'Interpretation of Torture in the Light of the Practice and Jurisprudence of International Bodies' (2009) <https://www.ohchr.org/sites/default/files/Documents/Issues/Interpretation_torture_2011_EN.pdf> accessed 22 May 2024. ; CAT (n 21) Article 16.

2.5. CONVENTION ON THE RIGHTS OF THE CHILD

As a ratifying party to the Convention on the Rights of the Child, hereinafter CRC, Japan has committed to upholding the specific stipulations outlined in Article 37, which focuses primarily on the humane treatment of children within the justice system. Article 37(a) specifically mandates that no child under Japanese jurisdiction should be subjected to torture, cruel, or degrading treatment or punishment. This article also explicitly prohibits the imposition of capital punishment or life imprisonment, without the possibility of release for offences committed by persons below eighteen years of age. To ensure compliance with these obligations, Japan is required to implement relevant laws and modify its penal and juvenile justice systems accordingly. This includes training law enforcement and judiciary personnel to adhere to these protections and establishing a robust mechanism for monitoring and reporting on the treatment of juveniles. The commitment also extends to broader cultural and policy adjustments that might be necessary to fully integrate the CRC's principles into the fabric of Japanese society. This includes not only protecting children from severe punishments but also providing necessary support and rehabilitation to aid their reintegration, underscoring Japan's holistic approach to upholding the rights of children as mandated by the CRC.

2.6. UNITED NATIONS COMMISSION ON HUMAN RIGHTS RESOLUTION

Japan, as a member of the UN and adherent to various IHRS, has specific commitments under this Resolution. While this resolution is non-binding, it articulates strong normative guidelines focused on the restriction and eventual abolition of the death penalty, emphasising the enhancement of human dignity and the progressive development of human rights.²⁴

The resolution outlines several key areas where member states maintaining the death penalty, including Japan, are urged to implement significant safeguards. Firstly, it restricts the imposition of the death penalty to the most serious crimes, explicitly excluding non-violent acts such as financial crimes, religious practices, expressions of conscience, and sexual

²⁴ UN Commission on Human Rights, Human Rights Resolution 2005/59: The Question of the Death Penalty, E/CN.4/RES/2005/59 (20 April 2005) <<https://www.refworld.org/legal/resolution/unchr/2005/en/38882>> accessed 22 May 2024.

relations between consenting adults. Furthermore, the resolution stresses the protection of vulnerable groups from capital punishment. It specifically calls for the exclusion of pregnant women, mothers with dependent infants, and individuals with mental or intellectual disabilities from the death penalty. Japan's legal system must ensure these protections are robustly enforced, providing safeguards that align with these international standards.

In terms of legal procedures, the resolution emphasises the importance of a fair trial and adherence to procedural guarantees as outlined in Article 14 of the ICCPR. It insists that capital punishment only follows a final judgement rendered by an independent and impartial court, accompanied by all possible legal safeguards, including adequate legal representation and the right to appeal. The resolution also mandates compliance with international obligations regarding consular rights under Article 36 of the Vienna Convention on Consular Relations. This includes informing foreign nationals facing the death penalty about their right to consular assistance, reflecting principles confirmed by the International Court of Justice.

Additionally, the resolution advocates for the rights of those sentenced to death to seek pardon or commutation of their sentence. This requires Japan to maintain a transparent and accessible system that allows for such requests to be considered fairly and effectively. It further highlights that the death penalty should not be imposed as a mandatory sentence.

Transparency is further called for in the administration of the death penalty, with the resolution urging states to make information regarding the imposition of the death penalty and any scheduled executions available to the public. This transparency is essential for ensuring that the processes surrounding capital punishment are open to scrutiny and align with human rights standards.

Finally, the resolution addresses the methods of execution, urging the cessation of particularly cruel or inhuman means and stipulating that executions not be carried out in public or in any degrading manner. Japan, which uses hanging as its method of execution, must continually review and evaluate its practices to ensure they minimise suffering and respect the dignity of those executed.

2.7. UNITED NATIONS SPECIAL RAPPORTEUR

Japan, as a member state of the UN, is subject to various observations and recommendations made by the UN Special Rapporteur, especially concerning the death penalty. These observations, while not legally binding, carry significant moral and ethical weight, guiding member states towards compliance with IHRS. In terms of judicial processes, the Special Rapporteur stresses that proceedings involving the death penalty must adhere to the highest standards of independence, competence, and impartiality, with all defendants having access to competent defence throughout the process.²⁵ These observations necessitate that Japan maintains a rigorous judicial system that upholds these standards to prevent miscarriages of justice.

The Special Rapporteur also highlights the importance of regular, independent reviews of death penalty cases to prevent wrongful executions and ensure compliance with international standards.²⁶ This suggests that Japan should implement mechanisms to regularly review and reassess its death penalty procedures and cases. Transparency in the administration of the death penalty is also a key point raised. The Special Rapporteur insists on public reporting of all executions with, at least, an annual consolidated report.²⁷ This requires Japan to adopt policies that enhance transparency and public understanding of how and when the death penalty is applied.

3. DOMESTIC LEGAL FRAMEWORK AND CHALLENGES

Offence	Description	Legal Basis in Japanese Legislation
Leading of insurrection	Severe actions against the state, specifically targeting those who lead or orchestrate riots with the intention of overthrowing the government,	Penal Code, art. 77(1)(i)

²⁵ Economic and Social Council, 'Extrajudicial, Summary or Arbitrary Executions' (25 January 1996) UN Doc E/CN.4/1996/4, para. 541(b) and 547.

²⁶ Economic and Social Council, 'Extrajudicial, Summary or Arbitrary Executions' (22 December 2004) UN Doc E/CN.4/2005/7, para. 88.

²⁷ *ibid.* para. 87.

	usurping state territory, or subverting the constitutional order. The law classifies such acts as insurrection, and the individuals identified as ringleaders of these movements are subject to the harshest penalties under this provision, which may include the death penalty or life imprisonment without the possibility of parole.	
Instigation of foreign aggression	Individuals who engage in conspiracies with foreign governments, resulting in armed aggression against Japan. Anyone found guilty of facilitating or orchestrating such an act, which directly leads to a foreign state exercising military force against Japan, faces explicitly the death penalty.	Penal Code, art. 81
Assistance to the enemy	Where a foreign state is engaged in military action against Japan. Individuals who actively support the enemy state by providing military services or any other form of assistance that grants a military advantage are considered a betrayal against the nation, with potential sentences ranging from the death penalty to life imprisonment, or a minimum fixed-term imprisonment of not less than two years.	Penal Code, art. 82
Arson to inhabited buildings etc.	Crime of arson involving structures or vehicles that are occupied or in use at the time of the offence. Specifically, it pertains to the intentional setting of fires in buildings, trains, trams, vessels, or mines that are either being used as dwellings or in which people are currently present. Those found guilty can be sentenced to the death penalty, life imprisonment, or a minimum	Penal Code, art. 108

	term of imprisonment of not less than five years	
Destruction by explosives	Deliberate damage of property through the use of explosives, including gunpowder or steam boilers. It specifically targets objects defined under Article 108 (inhabited buildings, trains, trams, vessels, or mines) and Article 109 (uninhabited buildings, vessels, or mines). The law equates the use of explosives to damage these properties with arson, subjecting offenders to the same penalties as those applicable for setting fire to such properties. This includes potential sentences of the death penalty or life imprisonment. The provision extends to property owned by the perpetrator under Article 109 and damage to any object described in Article 110.	Penal Code, art. 117(1)
Damage to inhabited buildings by flood	Deliberate act of causing a flood that results in damage to structures such as buildings, trains, trams, or mines that are occupied or in use at the time. Can lead to sentencing that includes the death penalty, life imprisonment, or a minimum fixed-term imprisonment of not less than three years.	Penal Code, art. 119
Overturn of trains causing death	Deliberate actions that lead to the overturning or destruction of occupied trains, trams, or vessels causing death are met with either life imprisonment or the death penalty.	Penal Code, art. 126(3)
Traffic hazards and endangering traffic by overturning a train resulting in death	Creating traffic hazards that endanger public transportation, such as damaging railway tracks or navigational aids. If these actions lead to the overturning or destruction of trains, trams, or vessels, and result in fatalities, the law prescribes the death penalty or	Penal Code, art. 127, art. 125

	life imprisonment.	
Pollution of water supplies with poisonous materials and causing death	Polluting public drinking water supplies with poisonous or harmful substances resulting in the death of any person the offender is subject to the death penalty, life imprisonment, or a minimum of five years' imprisonment.	Penal Code, art. 146
Homicide	Anyone who kills another person is subject to the death penalty, life imprisonment, or fixed-term imprisonment of no less than five years.	Penal Code, art. 199
Robbery causing death (including murder on the occasion of the robbery)	Robbery leading to the death of a person is punishable by either the death penalty or life imprisonment	Penal Code, art. 240
Robbery; Forcible Sexual Intercourse; Causing Death Thereby	Individual commits both robbery and forcible sexual intercourse or attempts either of these crimes, and these actions result in the death of another person, the offender is subject to the death penalty or life imprisonment	Penal Code, art. 241(3)
Illegal use of explosives	Use of explosives with the intent to harm public security or physical property leads to the death penalty, life imprisonment, or a minimum imprisonment term of seven years.	Explosives Control Act, art. 1
Duel and homicide	The act of killing a person during a duel (a formalised combat between two individuals fought with weapons like swords or pistols, to settle disputes or personal grievances) leading to the death of another subjects the offender to the death penalty, life imprisonment, or a fixed-term imprisonment of no less than five years.	Law Concerning Duel Crime, art. 3; Penal Code, art. 199
Causing aircraft crash resulting in death	Intentionally crashing, overturning, or destroying an aircraft while it is in	Law Concerning the Punishment for Acts to Cause Aviation Danger, art. 2(3)

	navigation, resulting in the death of any person, the offender is subject to the death penalty, life imprisonment, or a minimum imprisonment term of seven years.	
Seizure of aircraft resulting in death	Forcibly taking control of an aircraft through assault, intimidation, or by rendering the crew or passengers unable to resist. If such actions, aimed at hijacking or taking control of an aircraft in navigation, result in the death of any person, the offender faces the death penalty or life imprisonment.	Law for Punishing the Seizure of Aircraft and Other Related Crimes, art. 2
Homicide of hostage	If an individual who has taken a person hostage, involving forcible detention and extortion under threat of violence, subsequently kills the hostage, they are subject to the death penalty or life imprisonment.	Law Concerning the Punishment of Compulsion and Other Related Acts Committed by Those Having Taken Hostages, art. 4(1)
Homicide committed as organised crime	If an act of murder is carried out as part of an organisation's activities (where the actions are based on the decisions of the organisation and the benefits or effects of these actions are attributed to the organisation), the individual responsible for the murder is subject to the death penalty, life imprisonment, or fixed-term imprisonment of at least six years.	Law Concerning Punishment of Organized Crime, Control of Crime Proceeds and Other Matters, art. 3(1)(7)(2); Penal Code, art. 199
Piracy resulting in death	If a person, during the commission of piracy (acts of robbery, violence, or criminal activity conducted at sea, often involving the hijacking of ships, theft of cargo, or harm to individuals on board), causes the death of an individual, the law prescribes the death penalty or life imprisonment.	Law on Punishment of and Measures against Acts of Piracy, art. 4

Table 3 – Offences Punishable by Death. *Authors' own elaboration based on data from listed Japanese legislation.*

Japan's approach to capital punishment is encapsulated within a complex legal framework that navigates between public sentiment, judicial discretion, and stringent procedural norms. The continuation of the death penalty in Japan is seen as "unavoidable" due to high public support and a perceived increase in serious crimes.²⁸

The legal framework for capital punishment is rigorously defined, limiting the application of the death penalty to a list of 19 offences. This breadth in capital offence classification, specifically in Articles 81, 82, 108, 117, and 119 extends beyond the typical international standard, which restricts capital punishment to the "most serious crimes" generally understood as those involving intentional killing. Additionally, the death penalty is stated as the explicit sentence for the crime of conspiring with a foreign government against Japan under Article 81 and thus can be deduced to be mandatory. Nevertheless, the utilisation of the death penalty predominantly occurs in cases of murder.²⁹

In Japan, prosecutors in Japan do not disclose in advance whether they will seek the death penalty, revealing this intention only on the second-to-last day of the trial. This late disclosure hinders defence teams from providing adequate institutional support, as they remain unaware of the potential death penalty throughout most of the trial. As a result, true "capital trials" do not exist because only the prosecutors know the defendant's life is at risk until the trial concludes.³⁰

The judicial system allows for a degree of discretion in capital cases, providing judges with the option to impose life imprisonment or a fixed-term sentence instead of the death penalty. A significant Supreme Court judgement from 1983 outlines the criteria for such decisions, otherwise known as the Nagayama standard (further developed in section 6.2), emphasising the need for a careful balance between the severity of the crime and the penalty, considering factors including

²⁸ Human Rights Committee, 'Seventh Periodic Report Submitted by Japan under Article 40 of the Covenant Pursuant to the Optional Reporting Procedure, Due in 2018' (28 April 2020) UN Doc CCPR/C/JPN/7, para 67.

²⁹ Crime Info, 'Imposition of the Death Penalty and its Impact' (29 April 2022) <https://www.crimeinfo.jp/wp-content/uploads/2022/07/Imposition-of-the-death-penalty-and-its-impact_Japan-29-April-2022.pdf> accessed 24 May 2024.

³⁰ David T. Johnson, 'Capital Punishment without Capital Trials in Japan's Lay Judge System' (2009) 7 The Asia-Pacific Journal/Japan Focus 1 <<https://apjjf.org/-David-T.-Johnson/3461/article.html>> accessed 24 May 2024. ("Johnson: Lay Judge System")

"[...] the nature of the crime, the motive, its features and in particular, the tenacity and cruelty employed in carrying out the murder; the gravity of its consequences as reflected especially in the number of victims killed, the feelings of the bereaved family, its impact on society, the age of the perpetrator, their criminal record, and grounds for leniency after the crime has been committed".³¹

Nonetheless, this standard has been criticised for providing insufficient guidance for such a grave decision.³² Numerous lay judges have observed this issue during post-trial press conferences, and a significant number of legal experts view the nine Nagayama factors as merely a checklist for courts.³³

Japan employs a three-tier court system. The first level is the district or summary court, which consists of three professional judges and six Saiban-ins (lay judges) for trials that could result in the death penalty.³⁴ The second level is the High Court, serving as the appellate court. The final level is the Supreme Court, which acts as the highest judicial authority.³⁵ The 2009 introduction of the lay judge system has prioritised efficiency over thoroughness, or *seimitsusa*, in capital trials, shortening them from months or years to a more rapid process, potentially compromising justice.³⁶ Additionally, the selection process for lay judges in murder trials lacks specific procedures. Both defence and prosecution have the right to challenge potential lay judges, but this process is hindered by the limited information available about the citizen candidates chosen and restrictions on posing questions about them during the selection process.³⁷ Lay judges involved in trials may lack the necessary expertise to navigate complex cases involving psychiatric evaluations, potentially impacting the fairness of trials.³⁸ Legal instructions and interpretations of the law are given to lay judges by the presiding judge, or *setsuj*, and are provided in private rather than in open court. This practice could violate the defendant's right to a public trial, as it prevents the prosecution, defence, and trial observers from scrutinising what a biased judge may relay to the lay

³¹ 1981 (A) 1505, Judgment of the Second Petty Bench, quashed and remanded, 8 July 1983, Keishu Vol 37 No 6, 609 (Tokyo High Court) ; DPW Japan (n 5).

³² David T. Johnson, 'Is Death Different? Two Ways Law Can Fail' in *The Culture of Capital Punishment in Japan*, Palgrave Advances in Criminology and Criminal Justice in Asia (Palgrave Pivot 2020) https://doi.org/10.1007/978-3-030-32086-7_2 accessed 27 May 2024. ("Johnson: Is Death Different?")

³³ Ibid.

³⁴ Act on Criminal Trials with the Participation of Saiban-in, Act No. 63 of 2004, as amended by Act No. 44 of 2009, Art. 2. ("Act of 2004")

³⁵ Courts of Japan, 'Judicial System' <https://www.courts.go.jp/english/judicial_sys/index.html> accessed 27 May 2024.

³⁶ Johnson: Lay Judge System (n 30).

³⁷ Johnson: Is Death Different? (n 32).

³⁸ Kashiwagi H and Hirabayashi N, 'Death Penalty and Psychiatric Evaluation in Japan' (2018) 9 Front Psychiatry 550 <https://doi.org/10.3389/fpsyt.2018.00550> accessed 28 May 2024.

judges.³⁹ Finally, lay judges are prohibited from discussing their trial experiences, preventing public scrutiny and transparency.

Furthermore, the system does not require unanimous judges and lay judges verdicts for capital cases, nor does it necessitate a super-majority. Rather a "mixed majority" including at least one from a professional judge is sufficient to impose the death penalty. Additionally, appeals are not mandatory, contrary to Resolution 1984/50 which provides that "[...] steps should be taken to ensure that [such] appeals shall become mandatory" raising significant concerns regarding the finality and fairness of death sentences.⁴⁰ About one-third of all death sentences are finalised without review by the Supreme Court, often due to abandoned appeals.⁴¹ This absence of mandatory review heightens the risk of wrongful executions, further compounded by the lack of executive clemency for death row inmates which was last granted to inmate Ishii Kenjiro in 1975 reducing capital punishment to life imprisonment.⁴² On the other hand, prosecutors can appeal non-death sentences, giving them another opportunity to secure a death penalty. This practice can result in faster and less thorough appellate trials compromising the fairness of capital cases.

Furthermore, Japan's legal framework does not facilitate direct requests for pardon by death row inmates; such appeals must be initiated by the prison warden to Japan's National Offenders Rehabilitation Commission, which can limit the accessibility of clemency options and thus may contradict Article 6 of the ICCPR guaranteeing "the right to seek pardon or commutation of the sentence".⁴³

Legally, the Japanese Penal Code authorises the death penalty, by virtue of Article 9, and executions are carried out by hanging, as per Article 11(1) chosen for its quickness in causing death by neck fracture. Article 475 of the Japanese Code of Criminal Procedure stipulates that execution orders should be completed within six months from when the judgement becomes final, although, in practice, the execution does not proceed until the Minister of Justice issues and signs the official order. The execution must then occur within

³⁹ Johnson: Is Death Different? (n 32)

⁴⁰ ECOSOC Res. 1984/50 (n 20) para 6.

⁴¹ The Death Penalty Project, 'The Death Penalty in Japan'

<<https://deathpenaltyproject.org/knowledge/the-death-penalty-in-japan/>> accessed 28 May 2024, page 27.

⁴² Japan Innocence & Death Penalty Information Center, 'Fukuoka Case'

<https://www.jiadep.org/Fukuoka_Case.html> accessed 29 May 2024.

⁴³ Ordinance for Enforcement of the Pardon Act, Ministry of Justice Ordinance No. 78 of 1947, as amended by Ministry of Justice Ordinance No. 59 of 2006, Art. 1 ; ICPPR (n 7) Art. 6 para. 4.

five days, avoiding weekends, national holidays, and the year-end holiday period to mitigate additional societal distress.

Concerning legal protections for the accused, the system exhibits several gaps, particularly in the handling of cases involving mental health issues. There is no independent procedure to assess "insanity" prior to execution, although courts at the sentencing stage are developing methods to evaluate mental capacity and criminal liability.⁴⁴ This lack of a formal assessment mechanism is problematic, especially given the involvement of lay judges who may not fully comprehend psychiatric evaluations, thus raising concerns over the fairness and adequacy of trials involving mentally challenged or disabled individuals.

Japan's pretrial detention and interrogation system significantly raises the risk of false confessions. Public prosecutors can detain suspects for up to 72 hours, with possible extensions of up to 20 days, during which suspects are denied access to defence counsel until a hearing and lawyers are not allowed during interrogations.⁴⁵ This coercive environment often leads suspects to make false confessions to escape stress and isolation.⁴⁶ Detention frequently occurs in police stations under constant surveillance, with isolation imposed to then extract confessions. These practices violate Article 14 of the ICCPR, making such confessions unacceptable as evidence. The JFBA has highlighted cases like Hakamada Iwao (further detailed in section 6.1), who spent 48 years on death row before being released pending retrial, underscoring the urgent need for reform. The lack of timely legal representation and the discretionary power of prosecutors and police undermine the fairness of the justice system, particularly in capital punishment cases, necessitating substantial changes to protect suspects' rights and prevent miscarriages of justice.⁴⁷

The Supreme Court of Japan nevertheless upholds the constitutionality of the death penalty, reinforcing the legal stance that it does not constitute "infliction of torture" or "cruel punishment," thus aligning with Article 36 of the Japanese Constitution.⁴⁸

⁴⁴ The Advocates for Human Rights, 'Japan's Compliance with the International Covenant on Civil and Political Rights: The Death Penalty' (12 September 2022)

<https://www.theadvocatesforhumanrights.org/Res/Japan_ICCPR_Death%20Penalty.pdf> accessed 22 May 2024, para 27 ("AFHR"); Act of 2004 (n 34) Art. 2.

⁴⁵ Code of Criminal Procedure, Act No. 131 of 10 July 1948 (Japan), Arts. 203(3), 205(2), and 208(2).

⁴⁶ Japan Federation of Bar Associations, 'Statement Calling for a Thorough Review by the Council on Renovation of the Legal and Prosecutorial Administration to Ensure that Japanese Criminal Procedure will Comply with the Constitution of Japan and International Human Rights Instruments' (05 October 2020)

<<https://www.nichibenren.or.jp/en/document/statements/201005.html>> accessed 29 May 2024.

⁴⁷ Japan Federation of Bar Associations, 'Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty' (7 October 2016) <<https://www.nichibenren.or.jp/en/document/statements/161007.html>> accessed 29 May 2024 ("JFBA 2016");

⁴⁸ ISDP (n 101).

4. CONDITIONS OF DETENTION AND EXECUTION

4.1. ANALYSIS OF DEATH ROW PHENOMENON

The average wait time for the executions to take place is around nine years and three months.⁴⁹ It is not uncommon for prisoners to die of natural causes before their execution.

In 1989, the *Soering* case in front of the ECtHR established that the expected wait between sentencing to the execution amounted to torture or inhuman or degrading treatment as laid down in Article 3 of the ECHR.⁵⁰ The “death row phenomenon” is described as the years spent in isolation, filled with uncertainty about the execution date. Subsequently, the psychological effects that result from that isolation and uncertainty are known as “death row syndrome”.⁵¹

One of the more controversial aspects of Japan's capital punishment system is the policy regarding the notification of execution dates. Families and even the inmates themselves are not informed of the execution date until the morning of the event. This policy is intended to minimise the emotional distress that anticipation of an execution date might cause, but it has also been criticised for adding to the psychological burden of those on death row and their families due to its lack of transparency.⁵²

The procedure following the execution of a death sentence is handled with a high degree of secrecy in Japan. Legal provisions stipulate that the prisoner's family be notified post-execution and allowed to claim the body or ashes. Advance notice of the execution date is deliberately withheld to spare families the prolonged distress that such foreknowledge might cause. This policy also aims to protect the mental stability of the condemned individuals, preventing additional distress in their final days.

⁴⁹ ‘Japan: Detention Conditions of People Sentenced to Death’ *Prison Insider* (18 January 2022) <<https://www.prison-insider.com/en/articles/japon-conditions-de-detention-des-condamnes-a-mort>> accessed 7 June 2024. (“Prison Insider”)

⁵⁰ ‘*Soering V UK*’ (*Law Teacher*, 6 November 2023) <<https://www.lawteacher.net/cases/soering-v-united-kingdom.php>> accessed 7 June 2024.

⁵¹ ‘Time on Death Row’ *Death Penalty Information Center* (8 April 2024) <<https://deathpenaltyinfo.org/death-row/death-row-time-on-death-row>> accessed 7 June 2024.

⁵² Japan death row inmates sue over ‘inhumane’ same-day notification, REUTERS (05 November 2021), <<https://www.nbcnews.com/news/world/japan-death-row-inmates-sue-over-inhumane-same-day-notification-n1283304>>

Two inmates filed a lawsuit against this practice in 2021, seeking its abolition and compensation for their mental suffering (further elaborated in section 6.4).⁵³

4.2. LIVING CONDITIONS ON DEATH ROW

Death row and its living conditions tend to accelerate the aforementioned “death row phenomenon”. Prisoners are placed in small single cells, separated from other inmates, with limited contact with the outside world.⁵⁴ The cells in which they are imprisoned cover four tatami mats and contain a toilet and a washstand in addition to the space occupied to sleep.⁵⁵ Some prisoners have complained about the lighting staying on throughout the day, thus having to resort to sleeping pills brought to them by their families. Eye masks are not allowed as they cover the prisoner’s face.⁵⁶ The cells do not have an adequate ventilation system or any heating.⁵⁷

In their day to day, inmates sentenced to death spend most of their days inside their cells. They must remain seated and can’t move unless the guards allow it. They are not allowed to speak, make any sort of noise or look around their cell.⁵⁸ The prisoners are allowed two exercise sessions outside of their cells per week, in a designated 10 m² area made out of concrete. In the summer, inmates are allowed 3 showers per week, the rest of the year it is limited to 2 showers a week. They can own a maximum of three books, which must be approved by the administration, and can listen to the radio, however, they can’t choose the station.⁵⁹ They are not allowed to watch TV, do any activities, or use computers or printers, which makes the building of their defence more complicated.⁶⁰ The inmates must conform to a certain form of doing everything, including eating, sleeping and walking, and any deviation from it face sanctions.⁶¹ Inmates are allowed to either work in the production of objects or in the maintenance of the prison, in which they can earn up to 5000 Yen a month (46\$ approximately).⁶²

⁵³ ‘Court Rejects Inmates’ Suit on Same-Day Notice for Death Penalty, *The Asahi Shimbun* (15 April 2024) <<https://www.asahi.com/ajw/articles/15230158>> accessed 7 June 2024. ("Asahi Shimbun: Rejects Inmates' Suit")

⁵⁴ Prison Insider (n 49).

⁵⁵ ‘Death Penalty in Japan: Details of Executions, Death Row and Executed Prisoners’ (*Facts and Details*) <<https://factsanddetails.com/japan/cat22/sub147/item806.html>> accessed 7 June 2024. ("Facts and Details")

⁵⁶ Ibid.

⁵⁷ Prison Insider (n 49).

⁵⁸ Ibid.

⁵⁹ Facts and Details (n 55)

⁶⁰ Prison Insider (n 49).

⁶¹ Ibid.

⁶² Ibid.

The conditions and rights of death row inmates in Japan are also strictly regulated, under Article 139 of the 2005 Prison Act. Japanese law specifies how these inmates can communicate with the outside world, allowing them to maintain contact with relatives and legal representatives unless such interactions are deemed a security risk. The country maintains that solitary confinement for death row inmates is crucial for their mental well-being, allowing minimal interaction with prison officials and access to television to mitigate isolation effects.⁶³ Additionally, regulations require a prison official's presence during any visitation to a death row inmate, ensuring strict control over their external communications.⁶⁴ While the Japanese Prison Law of 2007 allows contact between prisoners if it is deemed favourable to preserve their peace of mind, the Ministry of Justice admits that it has never been allowed.⁶⁵

Furthermore, it seems that the rates of mental illnesses are on the rise, with very little resources available to fight it.⁶⁶ Amnesty International reported in 2009 that Japan is breaching a provision of its own Criminal Procedure Act and Safeguard 3 of the 1984/50 Resolution as they fail to prevent the execution of mentally ill prisoners and they also fail to provide decent medical care to persons on death row with mental health problems. The medical care is provided by doctors, nurses and “quasi-nurses”, which are members of the staff having received basic nursing training.⁶⁷ The conditions in which they live cause the inmates a series of problems: the food causes them caries and periodontal diseases, and the long periods of immobility result in back problems. Inmates must bear the cost of the medical check-ups as well as other types of care, including glasses and dentures.⁶⁸ They can rarely afford it. Any transfer to a medical facility must be approved by the warden of the prison, which happens rarely and has resulted in the death of several inmates.⁶⁹

⁶³ Human Rights Committee, Seventh periodic report submitted by Japan under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2018, (Apr. 28, 2020), U.N. Doc. CCPR/C/JPN/7, para 70. ("Seventh Periodic Report Japan")

⁶⁴ AFHR (n 44) ; Committee Against Torture, Concluding observations on the second periodic report of Japan, paragraph 15, U.N. Doc. CAT/C/JPN/CO/2 (28 June 2013).

⁶⁵ The Death Penalty Project, 'The Death Penalty in Japan' <<https://deathpenaltyproject.org/knowledge/the-death-penalty-in-japan/>> accessed 5 June 2024, page 12.

⁶⁶ CrimeInfo, 'Report on a moratorium on the use of the death penalty: the death penalty in Japan' <www.crimeinfo.jp/wp-content/uploads/2022/07/Report-on-a-moratorium-on-the-use-of-the-death-penalty_the-death-penalty-in-Japan> accessed 5 June 2024.

⁶⁷ Prison Insider (n 49).

⁶⁸ *ibid.*

⁶⁹ *ibid.*

5. NOTABLE CASES

5.1. HAKAMADA IWAO

Hakamada Iwao's case serves as an example of the contentious issues surrounding the death penalty in Japan. Born in 1936, Hakamada had a brief stint as a featherweight boxer before transitioning to work at a miso factory. His life was dramatically altered in 1966 when he was arrested following the murder of a factory manager and his family—a case in which he was convicted based largely on confessions he later claimed were coerced through torture and intense police interrogation.⁷⁰

During his trial, significant doubts were raised regarding the authenticity of the evidence against him. Out of 45 alleged confession documents, only one was deemed to be signed voluntarily. Despite the dubious nature of the evidence, Hakamada was sentenced to death in 1968, a decision upheld by the Supreme Court in 1980. He has since spent decades on death row, enduring severe mental health issues due to the isolating conditions and the looming threat of execution that is often announced only moments before it is carried out.⁷¹

The trajectory of Hakamada's case changed in 2014 when the Shizuoka District Court ordered a retrial based on new DNA evidence, temporarily releasing him. This decision was challenged by the prosecution but, in March 2023, a higher court ruled that the retrial should proceed.⁷²

The international outcry over Hakamada's prolonged detention and the conditions of his confinement has highlighted significant defects in Japan's justice system. These include the extended detention and interrogation of suspects without adequate legal representation and insufficient evidence disclosure by prosecutors. These systemic issues underscore the grave risks associated with capital punishment decisions, which are irreversible and fraught with the potential for judicial error.⁷³

⁷⁰ Anti Death Penalty Asia Network, 'Japan Case Study: Hakamada Iwao' <<https://adpan.org/japan-case-study-hakamada-iwao/>> accessed 31 May 2024. ("ADPAN")

⁷¹ Amnesty International, 'Hakamada Iwao: Death Penalty Row in Japan' (12 April 2023)

<<https://www.amnesty.org.uk/hakamada-iwao-death-penalty-row-japan>> accessed 31 May 2024.

⁷² Ibid.

⁷³ JFBA 2016 (n 47)

Kumamoto Norimichi, one of the judges at Hakamada's original trial, has repeatedly expressed his belief in Hakamada's innocence and the insufficiency of evidence for conviction. His public declarations and resignation from the judiciary highlight the profound ethical challenges such cases pose, reinforcing calls for critical examination and reform of capital punishment practices, especially in cases tainted by procedural and evidential flaws.⁷⁴

As Hakamada's retrial approaches, his case remains a focal point in the debate over human rights and justice reform in Japan, symbolising the urgent need for a fair and just legal process in capital cases, where the consequences are fatally irreversible. A website was created 'Asahi Hakamada Letters'⁷⁵ detailing his experience over the decades he spent on death row and includes a collection of personal letters written by Hakamada that serve as testimonials during his time incarcerated as he is currently deemed mentally unfit to give credible testimony at his retrial.

5.2. NORIO NAGAYAMA

In 1968, a young 19-year-old man, Norio Nagayama, fatally shot four people in a span of a few weeks between October and November. Under Japanese law, Nagayama was considered a minor, however, he was sentenced to death by the Tokyo District Court in 1979.⁷⁶ The Tokyo High Court commuted his death sentence to life behind bars in 1981, arguing that the government had failed him in his difficult upbringing. Indeed, Nagayama had been abandoned by his mother at the age of five, abused by his brother, and endured the death of his gambling-addicted father.⁷⁷ The Tokyo High Court deemed that the government had failed to protect him from unfortunate surroundings and that it would not be justified to ignore this fact.⁷⁸ The Supreme Court, however, ordered a retrial, which saw the earlier sentence of death reinstated in 1990.⁷⁹

⁷⁴ ADPAN (n 70)

⁷⁵ Asahi Hakamada Letters <<https://www.asahi.com/special/hakamadaletters/en/>> accessed 7 June 2024.

⁷⁶ Hirano K, 'Hanged Spree Killer Still Provoking Human Rights Debate' *Kyodo News+* (13 August 2019) <<https://english.kyodonews.net/news/2019/08/bdeed9c16192-feature-hanged-spree-killer-still-provoking-human-rights-debate.html>> accessed 31 May 2024. ("Hanged Spree Killer Still Provoking Human Rights Debate")

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ 'Hundreds commemorate life of late death row inmate Nagayama' *Japan Innocence & Death Penalty Information Center* (1 August 2009) <https://www.jiadep.org/Nagayama_Norio.html> accessed 7 June 2024. ("Hundreds commemorate life of late death row inmate Nagayama")

While awaiting his execution, Nagayama became a novelist. His autobiography, ‘Tears of Ignorance’, became a best-seller and Nagayama decided to redirect the profits to the families of his victims.⁸⁰ Nagayama also decided to donate the royalties of some of his other books to children in poverty, specifically in Peru, in the hopes of avoiding their fate resembling his.⁸¹ He was executed on August 1st, 1997, leaving behind a legacy in the discussion of the death penalty and its precariousness and the rights of children.⁸²

5.3. YUKI ENDO

On October 12th, 2021, Endo, then 19 years old, committed a brutal crime in Kofu, Yamanashi Prefecture, Japan. Endo Driven by anger and rejection after a female acquaintance refused his request for a date, fatally stabbed her 55-year-old father and 50-year-old mother at their residence. He also assaulted the acquaintance's younger sister and set fire to their house, though the acquaintance herself managed to escape unharmed.⁸³

Endo was indicted under Japan's revised Juvenile Law, which took effect on April 1st, 2022. This law allows for the public disclosure of names of "specified juveniles"- offenders aged 18 or 19 at the time of their crimes. Endo's name and identity were publicly disclosed making him the first "specified juvenile" to be named under the new law.⁸⁴

His trial took place at the Kofu District where Presiding Judge Jun Mikami ruled that Endo has a "low chance of rehabilitating" and approved the capital punishment as requested by public prosecutors.⁸⁵ The court found that the murder was "premeditated", as Endo had prepared a fruit knife in advance to kill the victims. Despite the defence's argument that Endo has a mental disorder, a psychiatric evaluation conducted during the criminal probes found

⁸⁰ ‘Norio Nagayama’ *Murderpedia, the encyclopedia of murderers* <<https://murderpedia.org/male/N/n/nagayama-norio.htm>> accessed 7 June 2024.

⁸¹ “Hundreds commemorate life of late death row inmate Nagayama”(n 78).

⁸² Hanged Spree Killer Still Provoking Human Rights Debate (n 75)

⁸³ Japan Times, 'Man's Death Sentence Finalized for Crime Committed as a Minor' (2 February 2024)

<<https://www.japantimes.co.jp/news/2024/02/02/japan/crime-legal/man-death-sentence-finalized-minor/>> accessed 31 May 2024 ("Japan Times") ; Dimsumdaily Hong Kong, '21-Year-Old Convicted of Murder and Arson as a Minor Receives Death Sentence in Landmark Case' (2 February 2024)

<<https://www.dimsumdaily.hk/21-year-old-convicted-of-murder-and-arson-as-a-minor-receives-death-sentence-in-landmark-case/>> accessed 31 May 2024.

⁸⁴ Kyodo News, '21-yr-old man given death penalty for 2021 murder, arson in Japan' (18 January 2024)

<<https://english.kyodonews.net/news/2024/01/5057f9f97d82-21-yr-old-man-given-death-penalty-for-2021-murder-arson-in-japan.html>> accessed 31 May 2024. ("Kyodo News")

⁸⁵ *ibid.* ; Asahi Shimbun, 'Japan Set to Execute Man in Retrial over 1966 Iwao Hakamada Murder Case' (9 April 2022) <<https://www.asahi.com/ajw/articles/14594615>> accessed 31 May 2024.

that his judgement and behaviour were unaffected leading the court to conclude that Endo was fully responsible for his actions.⁸⁶

The case invoked the Nagayama standard, which considers factors such as the number of victims, the brutality of the crime, and its social impact when sentencing offenders who committed crimes as minors. Endo became the eighth person to receive the death penalty under this standard.⁸⁷

Endo's case is historically significant as it marked the first time capital punishment was imposed on a "specified juvenile" under Japan's revised Juvenile Law. The court ruled that Endo's age of 19 at the time of the crime did not justify avoiding the death penalty citing the brutal persistent nature of his action and lack of remorse.⁸⁸

The ruling sparked controversy and debate. Supporters of the ruling argued that the severity of Endo's crime warranted the harshest punishment, regardless of his age at the time. Critics, however, raised concerns about the potential for abuse and the need for a more nuanced approach when dealing with juvenile offenders, even those classified as "specified juveniles".

Endo's defence team initially filed an appeal, but Endo withdrew it later the same day, finalising his death sentence. The case serves as a critical point of reference for future legal consideration and societal discussion on the treatment of young offenders.

5.4. LAWSUITS

In April of 2024, the Osaka District Court dismissed a lawsuit filed in 2021 by two death row inmates that sought the abolition of the death penalty and 22 million Yen in compensation for the mental suffering endured during the wait for their execution.⁸⁹ The two inmates alleged that the practice of same-day notification of execution is an infringement of

⁸⁶ Xinhua, 'Man's Death Sentence Finalized for Crime Committed as a Minor' (2 February 2024) <<https://english.news.cn/20240202/7c54ac3638c44ddab7aa4444961db682/c.html>> accessed 31 May 2024.

⁸⁷ Japan Times (n 82).

⁸⁸ Kyodo News (n 83).

⁸⁹ 'Japan Death Penalty: Court Dismisses Lawsuit against Short Execution Notice' (*Time*, 15 April 2024) <<https://time.com/6966857/japan-death-penalty-inmates-lawsuit-dismissed-executions-notice/>> accessed 7 June 2024.

due process as per Article 31 of the Japanese Constitution because it does not give the inmates enough time to file a complaint and/or object.

The Presiding Judge, Noiko Yokota, said that the social standing of the death row inmates impeded them from avoiding execution after the notice and that the compensation sought would nullify their sentences.⁹⁰ They specifically argued that the unknown of their execution date leaves them "living in hell" every day, wondering if it will be their last.⁹¹ They provided a tape from 1955 as evidence that inmates were notified in advance of their execution at the time, allowing them to say goodbye to their family and friends.⁹² In addition, they cited a UN human rights organisation's statement that argued that not giving prior notice equalled mistreatment of the prisoners.⁹³

Yoko Shiota, an official at the Center for Prisoners' Rights, explained that in the past inmates were indeed notified two or three days in advance, however, this practice ended when an inmate took their own life after receiving the notice.⁹⁴ Shiota argued that giving the execution notice a few days prior would allow the inmates to file an appeal on human rights grounds. It is also a problem for individuals who seek a retrial because of wrongful conviction, for example, the case of Iawo Hakamata who after 48 years on death row might be exonerated.⁹⁵

The government argued that there was an absence of laws or regulations that governed the notices given to death row inmates and that the Constitution does not guarantee the right to seek prior notice.⁹⁶ The government used the case of the inmate's suicide after their notice of execution to defend the current practice of the same-day notice.

⁹⁰ 'Death-Row Inmates' Lawsuit Targeting Same-Day Notifications of Executions Dismissed' (*The Japan Times*, 16 April 2024) <<https://www.japantimes.co.jp/news/2024/04/15/japan/crime-legal/ruling-death-row-execution/>> accessed 7 June 2024.

⁹¹ *ibid.*

⁹² Asahi Shimbun: Rejects Inmates' Suit (n 53).

⁹³ *Ibid.*

⁹⁴ 'Death-Row Inmates' Lawsuit Targeting Same-Day Notifications of Executions Dismissed' (*The Japan Times*, 16 April 2024) <<https://www.japantimes.co.jp/news/2024/04/15/japan/crime-legal/ruling-death-row-execution/>> accessed 7 June 2024.

⁹⁵ *ibid.*

⁹⁶ Asahi Shimbun: Rejects Inmates' Suit (n 53)

Two more lawsuits are still pending at the Osaka District Court, one arguing the cruelty of hanging and the other one arguing the suitability of executing inmates seeking retrials.⁹⁷

6. PUBLIC OPINION AND THE JAPANESE GOVERNMENT

The Japanese government has consistently justified the retention of the death penalty by citing public opinion surveys, which purportedly show a significant majority of the population supporting capital punishment. However, this reliance on public opinion as a primary justification has been challenged for potential biases and methodological flaws. A closer examination revealed that only 34% of respondents were committed retentionists that did not consider future abolition or replacement with life imprisonment without parole. Over time, the survey's methodology and phrasing of questions have shifted from exploring public attitudes towards abolition to focusing on retention, potentially skewing results towards a pro-death penalty stance.⁹⁸

Moreover, the government's surveys have been criticised for not addressing public misconceptions about the deterrent effect of the death penalty and for not fully disclosing methodological details, such as the micro-data necessary for an independent analysis. This lack of transparency undermines the credibility of the government's claims about strong public support. Additional research indicates that public opinion is more malleable than suggested. For instance, a parallel survey and deliberative poll conducted by independent researchers found that many respondents would accept abolition if the government led the initiative. This suggests that public support for the death penalty is not as entrenched as the government portrays.⁹⁹

The Japanese government's surveys often present the death penalty as a binary choice without exploring nuanced views or alternative options. For example, when respondents are offered the option of LWOP as an alternative to the death penalty, a significant proportion supports abolition. This indicates a potential openness to change that is not captured by the

⁹⁷ Ibid.

⁹⁸ Mai Sato and Paul Bacon, 'The Public Opinion Myth: Why Japan Retains the Death Penalty' (5 August 2015, Death Penalty Project).

⁹⁹ Ibid.

government's simplified survey questions. Overall, while the Japanese government uses public opinion surveys to justify the retention of the death penalty, these surveys may not accurately reflect the complexity of public attitudes. Instead, they seem to support a predetermined policy stance, highlighting a potential bias in how public opinion on this issue is measured and interpreted.¹⁰⁰

For many years, the Ministry of Justice has justified the retention of the death penalty based on opinion polls showing majority public support. However, the appropriateness of these polls is questionable given the lack of comprehensive information provided to the public about the death penalty. Opinion polls from 2014 and 2019 indicated that depending on the alternative punishment protocol, the abolition of the death penalty could be accepted by the public.¹⁰¹ The 2019 survey found that only 9.0 percent of participants advocated for the removal of the death penalty, while 80.8 percent believed the system was necessary. 50.7 percent of those opposed to the death penalty explained that it should be abolished because it is not possible to undo a wrong conviction, while others argued that criminals should live to atone for their crimes, that violent crime does not increase with abolition, that the death penalty is barbaric, and that it is possible for criminals to be rehabilitated. On the other hand, 56.6 percent of supporters cited the feelings of victims and their families, the belief that life should be compensated for with life, concerns that criminals would re-offend, and fears that violent crime would increase without the death penalty.¹⁰²

Moreover, the UN HRC and other human rights bodies have repeatedly advised the Japanese government to consider abolishing the death penalty regardless of public opinion polls to uphold the right to life and human dignity which should take precedence over shifting public opinion.¹⁰³

In 2020, the Japanese government submitted a report to the UN HRC stating that whether to retain or abolish the death penalty should be determined by each country at its

¹⁰⁰ Johnson D, Tagasuri M and Sato M, 'The Death Penalty in Japan: A Report on Japan's Legal Obligations under the International Covenant on Civil and Political Rights and an Assessment of Public Attitudes to Capital Punishment' (2013, Death Penalty Project).

¹⁰¹ Japan Federation of Bar Associations, 'Statement Strongly Protesting Today's Execution and Calling for an Immediate Moratorium on All Executions and to Enact Legislation Immediately to Abolish the Death Penalty' (26 July 2022) <<https://www.nichibenren.or.jp/en/document/statements/220726.html>> accessed 28 May 2024.

¹⁰² Daisuke Akimoto, 'Japan's Death Penalty System: Suspending or Abolishing the System?' (Issue & Policy Briefs, Institute for Security & Development Policy, March 2020)

<<https://www.isdp.eu/publication/japans-death-penalty-system-suspending-or-abolishing-the-system/>> accessed 30 May 2024. ("ISDP")

¹⁰³ AFHR (n 44).

discretion, with careful examination from various viewpoints, such as the realisation of justice in society, taking public opinion fully into account.¹⁰⁴

The reliance on public opinion surveys to justify the retention of the death penalty in Japan is problematic. Public opinion can be influenced by how questions are framed and the information provided to respondents. Given that the surveys often lack depth and fail to explore alternative perspectives, they do not capture the full complexity of public attitudes.

7. ADVOCACY AND RECOMMENDATIONS

In 2023, the JFBA wrote a letter to the Japanese Minister of Justice, Mr. Ken Saito, requesting the abolition of the death penalty. The main points of the request were the creation of legislation to abolish the death penalty and to place a moratorium on executions until the death penalty is abolished.¹⁰⁵ Their main arguments revolve around the rehabilitation aspect of the criminal system. The death penalty is not a system looking to rehabilitate offenders, but rather a system looking only for retribution. Thus, they deem it inconsistent with the philosophy of imprisonment.¹⁰⁶ Furthermore, the JFBA argues that not abolishing the death penalty solely because of the opinion polls is no longer warranted, as there is very little information available to the public on the matter. However, polls conducted in 2014 and 2019 indicated that the public would be in favour of the abolition of the death penalty depending on the alternative punishments. Moreover, the JFBA reminds the Minister that the UN has repeatedly requested Japan to consider the abolition of the death penalty regardless of opinion polls.¹⁰⁷

Amnesty International has requested the Japanese government to establish a moratorium on executions as a first step towards the abolition of the death penalty. They also requested Japan to ratify Optional Protocol 2 of the ICCPR, which aims at the abolition of the death penalty, without any reservations. Another request was the review of all cases to identify which involve people, whether they are accused or convicted, who might suffer from psychological or intellectual disabilities, and divert those cases from the criminal justice

¹⁰⁴ Seventh Periodic Report Japan (n 63).

¹⁰⁵ Japan Federation of Bar Associations, 'Letter of Request regarding the Death Penalty System, including its Abolition' (11 January 2023) <<https://www.nichibenren.or.jp/en/document/opinionpapers/230111.html>> accessed 7 June 2024.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

system towards the health management system.¹⁰⁸ In addition, they requested the Japanese government to ensure the respect of all safeguards guaranteeing the rights of inmates facing the death penalty. Those rights include quick access to an attorney, regular family visits, no torture or cruel, inhumane or degrading treatment, no obligation to testify against themselves, and the statements extracted under torture or other cruel or inhumane treatment should be excluded from the evidence.¹⁰⁹ Lastly, Amnesty International requested that all executions wait until all legal or review procedures are concluded to be carried out.

CONCLUSION

The death penalty in Japan, as explored in this report, presents a complex framework of historical persistence, legal challenges, and human rights concerns. Throughout its analysis, the report has illuminated the realities of Japan's capital punishment system, from the conditions of detention centres to the secretive nature of execution protocols. Despite Japan's adherence to international human rights treaties, the practice of the death penalty raises significant ethical and legal questions, particularly regarding due process, the transparency of the process, and the mental and physical well-being of those on death row.

The persistence of the death penalty in Japan is influenced heavily by public opinion and governmental policy, which often cites the need for retributive justice. However, the evolving global standards and the increasing international advocacy against capital punishment call for a critical reassessment of these justifications. The cases reviewed in this report not only highlight the potential for judicial errors and the irreversible nature of capital punishment but also underline the profound mental anguish inflicted on inmates, often amounting to cruel and inhuman treatment.

Moving forward, Japan faces a critical choice. It can continue to uphold the death penalty, aligning with a shrinking number of countries that retain this practice, or it can take

¹⁰⁸ 'Japan: Submission to the UN Human Rights Committee - 130th Session, 12 October - 6 November 2020' (*Amnesty International*, 1 June 2021) <<https://www.amnesty.org/en/documents/asa22/3065/2020/en/>> accessed 7 June 2024.

¹⁰⁹ *Ibid.*

bold steps towards abolition, joining the global move towards more humane penal practices. The path to abolition, however, requires more than legislative change; it necessitates a shift in societal attitudes towards crime and punishment, informed by comprehensive and transparent discussions on the effectiveness and morality of the death penalty.

In conclusion, this report advocates for a moratorium on executions as a precursor to abolition. It calls for an inclusive dialogue involving legal experts, policymakers, human rights organisations, and the public to reconsider the role of the death penalty in a modern and just society. Japan's journey towards abolishing the death penalty may be fraught with challenges, but it is a necessary step towards aligning with IHRS and truly respecting the sanctity of life.

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