

Japan's Death Penalty and its Unintended Consequences



Demonstrators outside the White House on January 11, 2022, commemorating the 20th anniversary of the Guantanamo Bay Detention Center. By: Maria Oswald, via Unsplash, 2022.

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Introduction

In 2020, Amnesty International recorded 483 cases of capital punishment worldwide; the true extent of execution is believed to be drastically higher. While China remains the country with the highest number of executions in 2020, the number of executions is considered a state secret, making the numbers unreliable. Amnesty International expects the true number to be higher by thousands (Amnesty International, 2021). Globally, a trend towards the abolishment of the death penalty can be witnessed; 75 percent of UN member states have abolished the practise. Japan is one of the few countries standing by it (Ogura, 2022). This article will explore the current developments in the country, national support and criticism for the practice, its unintended consequences, as well as its legality under national and international law.

Current Developments

Among the member states of the Organisation for Economic Cooperation and Development (OECD) countries, Japan and the USA are the only countries actively carrying out executions (Ogura, 2022). According to the Japanese Justice Ministry, currently 107

prisoners are on death row. While all death row inmates foresee capital punishment, death row inmates shoulder an additional burden in Japan (Kyodo, 2021). Japanese death row inmates are known to be held in inhumane conditions and get notified only hours in advance before their execution. The short notice leaves the inmates no time to file an appeal or prepare mentally (McCurry, 2021).

As a result of this, two inmates sued the Japanese government for this practice in November 2021. Besides demanding the end of the same day notification policy, the inmates sought 22 million Yen (\$193,594) in compensation (Reuters, 2021). Families of those executed often only get notified of the death after the execution has taken place. This forces inmates to write goodbye letters to their families and relatives before being executed (Ogura, 2022; Amnesty International, 2021b). The last execution in Japan took place in December 2021. Three people were hanged on Tuesday, the 21st of December 2021 after two years without the use of capital punishment (McCurry, 2021b).

National Support and Criticism

Government surveys find that an overwhelming majority of Japanese citizens stand behind the death penalty (AFP-Jiji, 2021). According to the Japanese Cabinet Office, over 80% of the public support capital punishment. The most recent survey results, announced in January 2020, suggest that the death penalty is considered “inevitable” by most (Mainichi, 2020). However, among others, the death penalty project criticises the validity of the survey. The government’s survey has serious methodological problems, leading to the “superficial representation of the public opinion”. This is, among other things, due to sample bias and low response rates (The Death Penalty Project, 2013). Furthermore, three independent surveys have provided counterevidence. They found that only 44% of Japanese public are determined to keep the death penalty (The Death Penalty Project, 2013).

Criticism also surfaced after the release of death row inmate Iwao Hakamada. Hakamada served 45 years on death row for murder before his acquittal in 2014. The former boxer got released after his retrial found him to be convicted on fabricated evidence. In Japan, Hakamada was only the sixth inmate on death row to have a retrial (McCurry, 2014).

Unintended Consequences

Like many death row inmates in Japan, Hakamada developed serious mental health conditions (McCurry, 2014). In 2009, Amnesty International published a report condemning the treatment of death row prisoners in Japan as “cruel, inhumane, and degrading” (McCurry, 2009). The case of Iwao Hakamada was considered a prime example of the degrading arbitrariness of Japan’s death row practices (Amnesty International, 2009).

Japanese detention on death row in practice means many years of solitary confinement. Isolation and the ongoing threat of execution are two major factors that lead to the serious deterioration of a prisoner’s mental health (Amnesty International, 2009). The data on the effects of solitary confinement are well documented and date back to the 19th century. In 1954, the harmful condition “prison psychosis” was observed in Germany. The findings stress the “injurious effect on the body and mind” that solitary confinement has on one and that this can “predispose to hallucinations” (Shalev, 2008). Japan has received harsh criticism for applying capital punishment and imposing solitary confinement on the mentally ill (McCurry, 2021).

National Laws

Two crucial parts of the capital punishment procedure in Japan will be examined in the following section. Firstly, the national laws addressing the sentencing and exclusions from death sentence will be examined. Secondly, the unintended consequences of life on death row will be analysed in accordance with national laws.

Article 31 of the Japanese Constitution states that no one shall be deprived of their freedoms “except according to procedure established by law” (Japanese Constitution Art. 31, 1947). These procedures are recorded in the Code of Criminal Procedure. The Japanese justice system considers three levels of responsibility crucial to the understanding of the sentencing and exclusions of the death penalty. The first level is the criminal responsibility of the defendant. This refers to the extent to which the accused can be held responsible for their actions (Amnesty International, 2009).

The second level is the procedural competence of the defendant. Hereby the competence of the accused to take part in legal proceedings (Amnesty International, 2009). Article 314(1) of the Code of Criminal Procedure states that all legal proceedings must be suspended “when the accused is in a state of insanity” (Code of criminal Procedure Art. 314(1), 1949). This means that if the defendant is in no mental capacity to fully understand the legal proceeding, such as the accusation, the proceedings must be suspended until further notice.

The third level refers to being fit for punishment and execution. Article 479 (1) ensures that “where the person who has been sentenced to death is in a state of insanity, the execution shall be suspended by order of the Minister of Justice” (Code of Criminal Procedure Art. 479(1), 1949). This also includes mental illnesses deriving from the prior procedures or detention (Amnesty International, 2009). Therefore, the unintended consequences from Japanese death row practices must lead to a suspension of capital punishment in the respective cases until the prisoner “returns to a state of sanity” (Code of Criminal Procedure Art. 479(3), 1949). Moreover, capital punishment must be suspended if the prisoner is pregnant until after the birth has taken place (Code of Criminal Procedure Art. 479(2), 1949). According to Amnesty International, there has never been a suspension of execution due to mental illness, even though multiple cases of limited mental capacity have been reported. Criminal procedures have only been suspended as a result of identified procedural incompetence (Amnesty International, 2009).

International Standards

The International Covenant of Civil and Political Rights (ICCPR) highlights the legal obligations of a country in regard to the death penalty. Article 6 states that “every human being has the inherent right to life” (ICCPR Art. 6(1), 1966). The article goes on and prescribes the requirements under which a country that has not abolished the death penalty yet is allowed to perform such punishment. Article 6(4) legally requires a country to allow “anyone sentenced to death [...] the right to seek pardon or commutation of the sentence” (ICCPR Art. 6(4), 1966). The Japanese authorities have taken inadequate measures to ensure the effective and mandatory right to appeal by death row prisoners (The Death Penalty Project, 2013). Furthermore, Article 6(6) clearly states that countries are still obliged to aim

for the abolishment of the death penalty (ICCPR Art. 6(6), 1966). Japan has failed to fulfil its legal obligation under the ICCPR by not working towards the abolishment of such punishment (The Death Penalty Project, 2013).

Moreover, the Safeguards adapted by the Economic and Social Council in 1984 outline the rights for those facing the death penalty. The “Implementation of the safeguards guaranteeing protection of the rights of those facing death penalty”, Resolution 1989/64 highlights necessary steps to protect those on death row. This includes “eliminating the death penalty for persons suffering from mental retardation or extremely limited competence, whether at the stage of sentence or execution” (ECOSOC, Resolution 1989/64 1(d), 1989). Additionally, member states are recommended to establish a maximum age of execution (ECOSOC, Resolution 1989/64 1(c), 1989). Japan has made no efforts to protect the rights of prisoners on death row as set out by international law (Amnesty International, 2009).

Conclusion

The world is moving toward the abolishment of the death penalty; where over the last ten years, eleven countries have abolished the death penalty for all crimes, while some countries restricted the practice to only the most serious crimes (Death Penalty Information Center, 2021). Yet, Japan makes little effort to fulfil its legal obligation under international law to work towards the abolishment of the death penalty. More needs to be done to protect the rights of the inmates on death row. The adaptation of independent research to discover the true extent of public support for the death penalty is crucial to better pressure the Japanese government to work towards the abolishment of the death penalty (The Death Penalty Project, 2013).

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