



JAPAN: The Death Penalty
Joint Stakeholder Report for the United Nations Universal Periodic Review

Submitted by The Advocates for Human Rights
a non-governmental organization in special consultative status with ECOSOC since 1996
The Center for Prisoners' Rights
and
The World Coalition Against the Death Penalty

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

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

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

I. EXECUTIVE SUMMARY

1. Since Japan's 2012 Universal Periodic Review, the number of persons sentenced to death and executed in Japan has continued to accelerate. Further, because Japan generally refuses to implement any recommendations related to the death penalty, these troubling increases occur in the context of a criminal justice system that does not afford treatment to death row inmates that complies with international norms.
2. Japan's Penal Code does not limit the death penalty to the most serious crimes. It allows individuals to be sentenced to death for non-lethal crimes and in cases where the defendant did not intend to kill.
3. Several defects in Japan's legal system allow for the possibility of wrongful convictions and thereby wrongful executions. Japan's pretrial detention and interrogation system may result in false confessions. Japan's lay judge system requires only a majority of a nine-judge panel, and not a unanimous decision, to determine guilt and impose a death sentence, as long as at least one of the three professional judges agrees. Finally, Japan does not have a mandatory appeal system for death sentences.
4. Japan's treatment of prisoners sentenced to death likewise violates international norms. Japan maintains death row inmates in prolonged, indefinite solitary confinement, restricting access to outside information and human contact; despite longstanding international norms, including the recently revised UN Standard Minimum Rules for the Treatment of Prisoners, the Government of Japan insists that such treatment is not torture. Similarly, despite a recent supreme court decision, prison wardens in Japan routinely restrict access to private meetings between prisoners and their lawyers to discuss legal proceedings to challenge their death sentences.
5. This report offers several suggested recommendations. First, Japan should abolish the death penalty and replace it with a sentence that is fair, proportionate, and respects international human rights standards. Second, in light of the practices described above, Japan should immediately institute a moratorium on the death penalty so that Japan can enact measures, including reforms to its penal detention laws, to bring its treatment of death row inmates within established international norms. Third, Japan should limit the death penalty to crimes that result in death and in which the defendant intended to kill. Fourth, Japan should require unanimous verdicts in favor of death sentences and introduce a mandatory appeal system in capital cases. Fifth, Japan should amend its law on detention facilities and treatment of inmates to comply with the revised Standard Minimum Rules for the Treatment of Prisoners.

II. LEGAL FRAMEWORK

A. *Legal Basis for the death penalty in Japan*

6. Article 9 of the Penal Code authorizes the death penalty.¹ Sentences are carried out by hanging.² Japan's law provides that execution should take place within 6 months of a death sentence becoming final; in practice, however, the sentence cannot be carried out until the Minister of Justice so orders.³
7. **Crimes that can result in the death penalty:** A total of 19 crimes may result in a death sentence in Japan.⁴ Several offences may result in the death penalty even though no death results, including:

- leading an insurrection;⁵
 - conspiring with a foreign government to exercise force against Japan;⁶
 - serving in the military of a foreign government exercising force against Japan;⁷
 - arson of a building, train, tram, vessel or mine used as a dwelling or in which a person is actually present;⁸
 - destruction with explosives of a building, train, tram, vessel or mine used as a dwelling or in which a person is actually present;⁹ and
 - flooding of a building, train, tram, vessel or mine used as a dwelling or in which a person is actually present.¹⁰
8. The death penalty is mandatory for conspiring with a foreign government to exercise force against Japan.¹¹ The death penalty is not mandatory for other crimes.¹² The Penal Code also provides for mandatory mitigation for acts of diminished capacity (acts of insanity are not punishable),¹³ as well as discretionary mitigation in extenuating circumstances.¹⁴ Culpability does require the intent to commit a crime.¹⁵ The law prohibits carrying out the death penalty against pregnant women and persons in a state of insanity;¹⁶ however, Japan lacks standards for independently determining insanity.¹⁷ Japan's law prohibits death sentences for acts committed by offenders under the age of 18 at the commission of the crime.¹⁸
9. Japan currently uses a three-tiered court system with a court of first instance (district or summary court) comprised of three professional judges and six Saiban-ins (lay judges) as the first tier trial court for cases where the death penalty may be imposed.¹⁹ The second tier is the High Court, which is the court of second instance, and the Supreme Court is the final court and third tier.²⁰ After the court of first instance convicts and sentences a defendant, both the prosecution and the defendant can choose to appeal, meaning that the appellate court may overturn a lesser sentence and impose the death penalty.²¹ The defendant can withdraw his or her right to appeal and allow the sentence to be finalized.²² An inmate in Japan cannot directly request a pardon; instead, the inmate's prison warden must petition Japan's National Offenders Rehabilitation Commission on the inmate's behalf.²³
10. Japan's Act on Penal Detention Facilities and Treatment of Inmates and Detainees ostensibly requires that the treatment of death row inmates should maintain their "peace of mind."²⁴ In practice, these "peace of mind" requirements result in several practices that violate of international detention norms, including prolonged solitary confinement (the extent of which is left to the discretion of the prison warden),²⁵ restrictions on access to information (the extent of which is also left to the discretion of the prison warden),²⁶ monitoring of visits and communications when deemed necessary by the authorities,²⁷ and limited or no notice of their upcoming execution.²⁸

B. Death penalty practice in Japan

11. Since Shinzo Abe's return as Prime Minister of Japan in December 2012, Japan has executed 17 people.²⁹ Japanese courts sentenced 18 people to death in Japan during the same period.³⁰ Most recently, Kenichi Tajiri was executed on 10 November 2016 for the murder of two persons during separate robberies.³¹ As of the end of 2016, 128 people were imprisoned on death row in Japan, and one person released pending retrial.³²

12. On 7 October 2016, the Japan Federation of Bar Associations issued a declaration calling for abolition of the death penalty by 2020.³³ The Federation based its resolution on the international trend toward abolition and defects in Japan's criminal justice system that make "wrongful executions . . . unavoidable."³⁴ The Federation also highlighted the case of Iwao Hakamada, who was sentenced to death and spent 48 years on death row before being released pending retrial.³⁵ However, in media statements, Japan's current Justice Minister, Katsutoshi Kaneda, has continued to support the death penalty, alleging widespread support among the people of Japan.³⁶
13. Japan acceded to the International Covenant on Civil and Political Rights ("ICCPR") (but not the ICCPR Second Optional Protocol)³⁷ and did not oppose UN Economic and Social Council (ECOSOC) Resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty when it was adopted by the UN General Assembly in 1984.³⁸ On 18 December 2014, the UN General Assembly adopted a resolution calling for a moratorium on the death penalty; Japan did not support the resolution.³⁹ On 17 December 2015, the UN General Assembly unanimously adopted the revised UN Standard Minimum Rules for the Treatment of Prisoners (the "Minimum Rules").⁴⁰ As more fully discussed below, Japan's death penalty laws conflict with several of the Minimum Rules, particularly with respect to solitary confinement of death row inmates. On 19 December 2016, the UN General Assembly again adopted a resolution calling for a moratorium on the death penalty, and again Japan voted against it.⁴¹

C. 2012 Universal Periodic Review of Japan and responses to recommendations

14. **Abolition or moratorium on the death penalty.** Numerous recommendations asked that Japan abolish or place a moratorium on the death penalty or that Japan ratify the Second Optional Protocol and/or broadly ratify all international human rights treaties and conventions.⁴² Japan did not accept recommendations to abolish or place a moratorium on the death penalty, nor would it agree to ratify the Second Optional Protocol.⁴³
15. **National dialogue to consider abolishing the death penalty.** Several recommendations also suggested that Japan allow for national dialogue on abolishing the death penalty.⁴⁴ Japan did not accept these recommendations due to the government's perception of widespread popular support for the death penalty.⁴⁵
16. **Implement international standards for death penalty detainees.** Three recommendations asked Japan either to implement international standards or otherwise improve conditions for death row inmates,⁴⁶ and one recommendation specifically addressed notifying detainees in advance of their executions.⁴⁷ Finally, two additional recommendations sought improvements in general prison conditions.⁴⁸ Japan noted these recommendations and responded that it already complies with its human rights obligations in all treaties to which it is a party; further, Japan's position is that prolonged solitary confinement is not a human rights violation.⁴⁹ Japan did not accept the recommendation to allow advance notice of executions.⁵⁰
17. **Introduce mandatory appeal system.** Two recommendations asked Japan to implement a mandatory appeal system.⁵¹ Japan noted the recommendations and responded that, in essence, its appeal system is sufficient.⁵²
18. **Abolish the death penalty for minors and mentally ill or impaired.** Norway recommended that Japan abolish the death penalty for minors at the time of the crime and persons who are

mentally ill or impaired.⁵³ Japan noted the recommendations and responded that its legal system already provides these protections;⁵⁴ however, because Japan lacks standards for independently determining insanity, the legal system does not necessarily protect prisoners who develop mental illness or impairment during their imprisonment.

19. **Preserve the confidentiality of communications with legal counsel.** Finally, one recommendation asked that Japan improve access to legal counsel for all detainees.⁵⁵ In response, Japan noted the recommendations and stated that “the right to confidential communication is guaranteed.”⁵⁶ However, while the recommendation appeared to apply to all detainees (both pre-trial and post-conviction), Japan’s comment related only to pretrial detainees and did not address communications between post-conviction prisoners and their legal counsel.

III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

A. The Penal Code does not limit the death penalty to the most serious crimes.

20. UN Economic and Social Council (ECOSOC) Resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty provides that “capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.”⁵⁷ As discussed in paragraph **Error! Reference source not found.** above, the Penal Code authorizes imposition of the death penalty for crimes that do not result in death and in cases when the defendant did not intend to kill.

B. The pretrial detention and interrogation system may result in false confessions.

21. The ICCPR guarantees the following rights to persons accused of crimes: (1) the right “[to] be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”⁵⁸; (2) the right “to communicate with counsel of his own choosing”⁵⁹; and (3) the right “[not] to be compelled to testify against himself or to confess guilt.”⁶⁰ Similarly, ECOSOC Resolution 1984/50 states that persons accused of capital crimes must have “the right . . . to adequate legal assistance at all stages of the proceedings.”⁶¹
22. Several observers have noted that Japan’s pretrial detention and interrogation system generates unnecessary pressure on accused persons to confess, with the result that false confessions occur in capital cases.⁶² The Code of Criminal Procedure allows for a 72-hour detention period during which the police or the prosecutor may interrogate a suspect;⁶³ during this time, while the police must inform the suspect of his right to defense counsel, the suspect does not have the right to court-appointed defense counsel until a hearing on the suspect’s further detention.⁶⁴ After the hearing, a judge may extend detention for up to 20 additional days⁶⁵ (longer where the alleged crime relates to insurrection or foreign assistance, which are capital crimes - see paragraph 7 above⁶⁶). Furthermore, under Japan’s substitute detention system, the government may detain defendants at police stations during this investigatory period instead of in penal institutions.⁶⁷ In practice, nearly all defendants are remanded to this substitute detention system.⁶⁸ Because defendants may be interrogated at any time, often without counsel present, the substitute detention system has resulted in false confessions.⁶⁹

C. The lack of a unanimous verdict requirement and a mandatory appeal process prevents meaningful review of death penalty sentences.

23. ECOSOC Resolution 1984/50 provides that death sentences should be imposed only “based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”⁷⁰ Resolution 1984/50 further provides, “Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.”⁷¹ Likewise, the ICCPR provides, “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”⁷² The ICCPR further guarantees the right of all persons sentenced to death “the right to seek pardon or commutation of the sentence.”⁷³
24. The Human Rights Committee has expressed its concern in 2008 that an increasing number of defendants in Japan are convicted and sentenced to death without exercising their right of appeal,⁷⁴ and reiterated that concern in 2014.⁷⁵ Lack of mandatory review by higher courts increases the risk of execution of the innocent, and data from 1993 to 2014 show that many prisoners continue to be executed despite not having exhausted their right to appeal.⁷⁶
25. Moreover, non-unanimous verdicts in lay judge trials allow a person to be sentenced to death when there is an alternative explanation for the facts. In May 2009, the Act on Criminal Trials with Participation of Saiban-in went into effect, along with the new system of the lay judge trials. Under the lay judge system, in order to determine the punishment (including a sentence of death), only a simple majority vote (including at least one professional judge) is required, as opposed to consensus sentences required by other jury-style systems.⁷⁷ Also, there are no specific sentencing guidelines to be followed by either professional judges or lay judges, only the broad guidance from Japan’s Supreme Court,⁷⁸ allowing for considerable variations in sentencing.
26. The need for reform of both the lay judge system and the appeal process in Japan is paramount. Because a person may be sentenced to death even if the judges are not unanimous in supporting that sentence, there may be a plausible “alternative explanation of the facts” in the case and therefore imposing the death penalty is not consistent with international human rights standards. Further, because of the possible defects in the Lay Judge System and in Japan’s interrogation system, as well as in the conditions for death row inmates discussed below a mandatory appeal system is necessary to ensure that the justice system gives inmates adequate opportunity to demonstrate innocence or mitigation factors to reduce their sentences.

D. Prison conditions for inmates sentenced to death violate international norms and constitute cruel and unusual treatment.

27. The “peace of mind” objective enshrined in Japan’s legal code actually results in violations of the human rights of inmates sentenced to death. In particular, the laws and practices governing Japan’s prison system result in indefinite and prolonged solitary confinement of death row inmates and in some cases bar confidential communications between inmates and their legal counsel.
28. **Japan continues to place death row inmates in prolonged solitary confinement.** As noted above, several 2012 UPR recommendations challenged Japan to improve conditions for death row inmates;⁷⁹ Japan responded that it did not believe that indefinite and prolonged solitary confinement of inmates violates their human rights.⁸⁰ In December 2015, however, the UN General Assembly unanimously adopted the Minimum Rules in Resolution 70/175.⁸¹ Rules 43 through 45 specifically address solitary confinement, and Rule 43 specifically states that indefinite and prolonged solitary confinement “shall be prohibited.”⁸² Rule 44 defines solitary

confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact.”⁸³ Under Rule 44, solitary confinement is prolonged when it exceeds 15 consecutive days.⁸⁴ Finally, Rule 45 provides that solitary confinement “shall not be imposed by virtue of a prisoner’s sentence.”⁸⁵

29. Japan’s laws do not comply with each of these Rules with respect to inmates sentenced to death. Solitary confinement is imposed in Japan automatically after imposition of a sentence of death.⁸⁶ The treatment of death row inmates in Japan fits Rule 44’s definition of solitary confinement because by default, such inmates are not allowed contact with other inmates. Solitary confinement for death row inmates in Japan is prolonged in violation of Rules 43 and 44 because it lasts for the entirety of the time the inmate is imprisoned and because the extent of outside contact is left to the discretion of the prison warden.⁸⁷ Moreover, solitary confinement is indefinite because Japan’s Minister of Justice decides when executions take place,⁸⁸ and the inmate is not made aware of his/her execution date until the date of execution.⁸⁹ Further, Japanese law limits visits to death row inmates from relatives or other outside persons to once per day;⁹⁰ in practice, however, visits are infrequent and allowed only at the discretion of the prison warden.⁹¹
30. **Japan still denies some death row inmates the right to consult legal counsel in private.** Rule 61 of the Minimum Rules requires all consultations with counsel to be outside the hearing of prison staff.⁹² In response to 2012 UPR Recommendation 147.44, which urged Japan to adopt better protections for communications with defense counsel,⁹³ Japan stated that “the right to confidential communication is guaranteed[.]”⁹⁴ However, this right was not guaranteed under law for prisoners sentenced to death until the Supreme Court’s 2013 judgment that death row inmates were entitled to unattended visits with counsel to discuss retrial.⁹⁵
31. In practice, however, Japan’s prison system does not guarantee death row inmates the protections the Supreme Court and the Minimum Rules have outlined. Pro bono advisers from the Center for Prisoners’ Rights have personally observed situations where prison staff refused to allow inmates - particularly Aum Shinrikyo cultists - to meet with their lawyers in private. These practices violate domestic laws as well as international norms governing the right to legal counsel and hinder the effective review of death sentences for error.

IV. RECOMMENDATIONS

32. The authors of this joint stakeholder report suggest the following recommendations for the Government of Japan:
- Replace the death penalty with a sentence that is fair, proportionate, and respects international human rights standards.
 - Impose an official moratorium on the death penalty immediately, both going forward and for persons currently on death row.
 - Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights and enact domestic legislation to conform with the Protocol.
 - Until full abolition can be achieved, amend the Penal Code to limit the death penalty to crimes resulting in death in which the defendant had the intent to kill.
 - Amend the Act on Criminal Trials with the Participation of Saiban-in to require unanimous decisions for verdicts of guilt and death sentences.

- Amend the Code of Criminal Procedure to give suspects the right to have defense counsel attend all interrogations and to require authorities to inform suspects of this right before interrogations begin.
- Amend the Act on Penal Detention Facilities and Treatment of Inmates and Detainees to eliminate the substitute detention system.
- Introduce a mandatory appeal system in capital cases.
- Amend the Act on Penal Detention Facilities and Treatment of Inmates and Detainees to conform with the revised Standard Minimum Rules for the Treatment of Prisoners.
- Amend the Act on Penal Detention Facilities and Treatment of Inmates and Detainees to remove requirements for indefinite and prolonged solitary confinement of death row inmates, and require prison staff to comply with the amended law.
- Amend the Act on Penal Detention Facilities and Treatment of Inmates and Detainees to exempt meetings between inmates and defense counsel from monitoring by prison staff, regardless of an inmate’s sentencing status, and require prison staff to comply with the amended law.
- Release appropriate information on the death penalty in Japan, including (1) the substitute detention system and the possibility of false confessions, (2) appeal procedures, and (3) international norms on penal detention, to allow for a meaningful national debate.

¹ Penal Code, Art. 9.

² Penal Code, Art. 11(1).

³ Code of Criminal Procedure, Art. 475.

⁴ Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Japan*, ¶ 13, U.N. Doc. CCPR/C/JPN/CO/6 (Aug. 20, 2014).

⁵ Penal Code, Art. 77(1)(i).

⁶ Penal Code, Art. 81.

⁷ Penal Code, Art. 82.

⁸ Penal Code, Art. 108.

⁹ Penal Code, Art. 117.

¹⁰ Penal Code, Art. 119.

¹¹ Penal Code, Art. 81.

¹² Penal Code, Arts. 77(1)(i), 82, 108, 119, 126, 146, 199, 240, 241.

¹³ Penal Code, Art. 39. For purposes of this report, the authors use the term “insanity” to reflect the language of the legislation of Japan but intend it to refer to severe psychosocial disabilities.

¹⁴ Penal Code, Art. 66.

¹⁵ Penal Code, Art. 38.

¹⁶ Code of Criminal Procedure, Art. 479.

¹⁷ Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Japan*, ¶ 13, U.N. Doc. CCPR/C/JPN/CO/6 (Aug. 20, 2014).

¹⁸ Juvenile Act, Act No. 48 of 1948, as amended by Act. No. 71 of 2008, Art. 51(1).

¹⁹ 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.

²⁰ Supreme Court of Japan, *Court System in Japan*, available at http://www.courts.go.jp/english/judicial_sys/Court_System_of_Japan/index.html#03 (last accessed Mar. 9, 2017).

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- ²¹ Code of Criminal Procedure, Art 351; *The Death Penalty in Japan* (The Death Penalty Project, London, UK), at 27, available at <http://www.deathpenaltyproject.org/wp-content/uploads/2013/03/DPP-Japan-report.pdf>.
- ²² Code of Criminal Procedure, Arts. 359, 360, 360-2, 361.
- ²³ 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.
- ²⁴ Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Art. 32.
- ²⁵ Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Art. 36; Committee Against Torture, *Concluding observations on the second periodic report of Japan*, ¶ 13, U.N. Doc. CAT/C/JPN/CO/2 (Jun. 28, 2013).
- ²⁶ Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Art. 70; Committee Against Torture, *Concluding observations on the second periodic report of Japan*, ¶ 13, U.N. Doc. CAT/C/JPN/CO/2 (Jun. 28, 2013).
- ²⁷ Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Arts. 121, 140.
- ²⁸ Committee Against Torture, *Concluding observations on the second periodic report of Japan*, ¶ 15, U.N. Doc. CAT/C/JPN/CO/2 (Jun. 28, 2013); *Japan: Man hanged as secretive executions continue* (Amnesty International, New York, NY), Nov. 11, 2016, available at <https://www.amnesty.org/en/latest/news/2016/11/japan-man-hanged-as-secretive-executions-continue/>
- ²⁹ *Japan: Man hanged as secretive executions continue* (Amnesty International, New York, NY), Nov. 11, 2016, available at <https://www.amnesty.org/en/latest/news/2016/11/japan-man-hanged-as-secretive-executions-continue/>
- ³⁰ *Japan's death row population numbers 129 as 2016 ends*, Japan Times, Dec. 30, 2016 (Seven people in 2016), available at <http://www.japantimes.co.jp/news/2016/12/30/national/crime-legal/japans-death-row-population-numbers-129-2016-ends/#.WLW0LFUrLIU>; *Death Sentences and Executions: 2015* (Amnesty International, London, UK) April 2016, at 7 (Four people in 2015), available at https://www.amnestyusa.org/sites/default/files/act_5034872016_en_2103_web.pdf; *Death Sentences and Executions: 2014* (Amnesty International, London, UK) March 31, 2015, at 6 (Two people in 2014), available at https://www.amnestyusa.org/pdfs/DeathSentencesAndExecutions2014_EN.pdf; *Death Sentences and Executions: 2013* (Amnesty International, London, UK) March 26, 2014, at 8 (Five people in 2013), available at <https://www.amnestyusa.org/sites/default/files/act500012014en.pdf>.
- ³¹ *Burglar in Kyushu slayings hanged*, Japan Times, Nov. 11, 2016, available at <http://www.japantimes.co.jp/news/2016/11/11/national/crime-legal/burgler-kyushu-slayings-hanged/#.WLWtGFXyvIV>
- ³² *Japan's death row population numbers 129 as 2016 ends*, Japan Times, Dec. 30, 2016, available at <http://www.japantimes.co.jp/news/2016/12/30/national/crime-legal/japans-death-row-population-numbers-129-2016-ends/#.WLW0LFUrLIU>
- ³³ *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty* (Japan Federation of Bar Associations, Tokyo, Japan), Oct. 7, 2016, available at <http://www.nichibenren.or.jp/en/document/statements/year/2016/161007.html>
- ³⁴ *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty* (Japan Federation of Bar Associations, Tokyo, Japan), Oct. 7, 2016, available at <http://www.nichibenren.or.jp/en/document/statements/year/2016/161007.html>
- ³⁵ *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty* (Japan Federation of Bar Associations, Tokyo, Japan), Oct. 7, 2016, available at <http://www.nichibenren.or.jp/en/document/statements/year/2016/161007.html>
- ³⁶ *Burglar in Kyushu slayings hanged*, Japan Times, Nov. 11, 2016, available at <http://www.japantimes.co.jp/news/2016/11/11/national/crime-legal/burgler-kyushu-slayings-hanged/#.WLWtGFXyvIV>
- ³⁷ International Convention on Civil and Political Rights, Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.
- ³⁸ G.A. Res. 39/118, U.N. Doc. A/RES/39/118 (Dec. 14, 1984).
- ³⁹ G.A. Res. 69/186, U.N. Doc. A/RES/69/186 (Dec. 18, 2014).
- ⁴⁰ G.A. Res. 70/175, U.N. Doc. A/RES/70/175 (Dec. 17, 2015).
- ⁴¹ G.A. Res. 71/187, U.N. Doc. A/RES/71/187 (Dec. 19, 2016).
- ⁴² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.1-147.8, 147.94, 147.95, 147.97, 147.98, 147.100-147.113, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).

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- ⁴³ Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.1-147.8, 147.94, 147.95, 147.97, 147.98, 147.100-147.113, U.N. Doc. A/HRC/22/14/Add.1 (Mar. 8, 2013).
- ⁴⁴ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.93, 147.99, 147.101-147.103, 147.111, 147.113, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁴⁵ Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.93, U.N. Doc. A/HRC/22/14/Add.1 (Mar. 8, 2013).
- ⁴⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.123-147.125, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁴⁷ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.144, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁴⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.121-147.122, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁴⁹ Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.121-147.125, U.N. Doc. A/HRC/22/14/Add.1 (Mar. 8, 2013); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 32, 69, 100 and 101, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁵⁰ Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.144, U.N. Doc. A/HRC/22/14/Add.1 (Mar. 8, 2013)
- ⁵¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.143-147.144, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁵² Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.143-147.144, U.N. Doc. A/HRC/22/14/Add.1 (Mar. 8, 2013); Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 99, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁵³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.196, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁵⁴ Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.96, U.N. Doc. A/HRC/22/14/Add.1 (Mar. 8, 2013).
- ⁵⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.44, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁵⁶ Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.44(b), U.N. Doc. A/HRC/22/14/Add.1 (Mar. 8, 2013).
- ⁵⁷ ECOSOC Res. 1984/50, ¶ 1, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>; see also International Convention on Civil and Political Rights, Art. 6, ¶ 2, Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.
- ⁵⁸ International Convention on Civil and Political Rights, Art. 14, ¶ 3(a), Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.
- ⁵⁹ International Convention on Civil and Political Rights, Art. 14, ¶ 3(b), Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.
- ⁶⁰ International Convention on Civil and Political Rights, Art. 14, ¶ 3(g), Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.
- ⁶¹ ECOSOC Res. 1984/50, ¶ 5, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.
- ⁶² See Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Japan*, ¶ 13, U.N. Doc. CCPR/C/JPN/CO/6 (Aug. 20, 2014); *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty* (Japan Federation of Bar Associations, Tokyo, Japan), Oct. 7, 2016, available at <http://www.nichibenren.or.jp/en/document/statements/year/2016/161007.html>; *The Death Penalty in Japan* (The Death Penalty Project, London, UK), Feb. 2013, at 13-18, available at <http://www.deathpenaltyproject.org/wp-content/uploads/2013/03/DPP-Japan-report.pdf>.
- ⁶³ Code of Criminal Procedure, Arts. 203-205.
- ⁶⁴ Code of Criminal Procedure, Art. 203(3).
- ⁶⁵ Code of Criminal Procedure, Art. 208.
- ⁶⁶ Code of Criminal Procedure, Art. 208-2.
- ⁶⁷ Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Arts. 14 & 15.
- ⁶⁸ *The Death Penalty in Japan* (The Death Penalty Project, London, UK), Feb. 2013, at 18, available at <http://www.deathpenaltyproject.org/wp-content/uploads/2013/03/DPP-Japan-report.pdf>.
- ⁶⁹ *The Death Penalty in Japan* (The Death Penalty Project, London, UK), Feb. 2013, at 18, available at <http://www.deathpenaltyproject.org/wp-content/uploads/2013/03/DPP-Japan-report.pdf>.

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- ⁷⁰ ECOSOC Res. 1984/50, ¶ 4, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.
- ⁷¹ ECOSOC Res. 1984/50, ¶ 6, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>.
- ⁷² International Convention on Civil and Political Rights, Art. 14, ¶ 5, Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.
- ⁷³ International Convention on Civil and Political Rights, Art. 6, ¶ 4, Mar. 23, 1976, U.N. Doc. A/6316 (Dec. 16, 1966), 999 U.N.T.S. 171.
- ⁷⁴ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Japan*, ¶ 16, U.N. Doc. CCPR/C/JPN/CO/5 (Dec. 18, 2008).
- ⁷⁵ Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Japan*, ¶ 13(d), U.N. Doc. CCPR/C/JPN/CO/6 (Aug. 20, 2014).
- ⁷⁶ See, e.g. *The Death Penalty in Japan* (The Death Penalty Project, London, UK), Feb. 2013, at 26-27, available at <http://www.deathpenaltyproject.org/wp-content/uploads/2013/03/DPP-Japan-report.pdf>; *The Death Penalty in Japan: A denial of fundamental human rights* (The Center for Prisoners' Rights, et al., Tokyo, Japan), Oct. 10, 2014, at 8.
- ⁷⁷ Act on Criminal Trials with the Participation of Saiban-in, Act No. 63 of 2004, as amended by Act No. 44 of 2009, Art. 67(1).
- ⁷⁸ Judgment on Standards for Selection of the Death Penalty, Saiko Saibansho [Sup. Ct.], Jul. 8, 1983, 1981(A) 1505, 37 Keishu 6, p. 609.
- ⁷⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.123-147.125, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁸⁰ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 69, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁸¹ G.A. Res. 70/175, U.N. Doc. A/RES/170/75 (Dec. 17, 2015).
- ⁸² G.A. Res. 70/175 Annex, Rule 43 ¶¶ 1(a)-(b), U.N. Doc. A/RES/170/75 (Dec. 17, 2015).
- ⁸³ G.A. Res. 70/175 Annex, Rule 44, U.N. Doc. A/RES/170/75 (Dec. 17, 2015).
- ⁸⁴ G.A. Res. 70/175 Annex, Rule 44, U.N. Doc. A/RES/170/75 (Dec. 17, 2015).
- ⁸⁵ G.A. Res. 70/175 Annex, Rule 45, ¶ 1, U.N. Doc. A/RES/170/75 (Dec. 17, 2015).
- ⁸⁶ See Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Art. 36.
- ⁸⁷ See Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Art. 36; Committee Against Torture, *Concluding observations on the second periodic report of Japan*, ¶ 13, U.N. Doc. CAT/C/JPN/CO/2 (Jun. 28, 2013).
- ⁸⁸ Code of Criminal Procedure, Art. 475 (1)-(2).
- ⁸⁹ Committee Against Torture, *Concluding observations on the second periodic report of Japan*, ¶ 15, U.N. Doc. CAT/C/JPN/CO/2 (Jun. 28, 2013); *Japan: Man hanged as secretive executions continue* (Amnesty International, New York, NY), Nov. 11, 2016, available at <https://www.amnesty.org/en/latest/news/2016/11/japan-man-hanged-as-secretive-executions-continue/>
- ⁹⁰ See Act on Penal Detention Facilities and Treatment of Inmates and Detainees, Act No. 50 of 2005, as amended by Act No. 69 of 2014, Arts. 36(3) & 122.
- ⁹¹ Committee Against Torture, *Concluding observations on the second periodic report of Japan*, ¶ 13, U.N. Doc. CAT/C/JPN/CO/2 (Jun. 28, 2013).
- ⁹² G.A. Res. 70/175 Annex, Rule 61, U.N. Doc. A/RES/170/75 (Dec. 17, 2015).
- ⁹³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Japan*, ¶ 147.44, U.N. Doc. A/HRC/22/14 (Dec. 14, 2012).
- ⁹⁴ Human Rights Council, *Addendum to Report of the Working Group on the Universal Periodic Review: Japan*, ¶¶ 147.144, U.N. Doc. A/HRC/22/14/Add.1 (Mar. 8, 2013).
- ⁹⁵ See Judgment concerning whether or not it is unlawful in the context of application of Article 1, paragraph (1) of the State Redress Act for the warden of a penal institution to decide not to allow an inmate sentenced to death and the defense counsel appointed to file a request for a retrial on behalf of the inmate, despite their request, to have or make a visit without the attendance of a staff member of the penal institution in order to have discussions regarding the filing of the request for a retrial, Saiko Saibansho [Sup. Ct.], Dec. 10, 2013, 2012 (Ju) 1311, 67 Minshu 9, available at http://www.courts.go.jp/app/hanrei_en/detail?id=1211.