

TK/UN/269

The Permanent Mission of Japan to the International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and, with reference to the Note Verbal ref: UA JPN 4/2018, dated 8 June 2018, has the honour to transmit herewith the reply of the Government of Japan to the Joint Communication sent by Ms. Elina STEINERTE, Vice-Chair of the Working Group on Arbitrary Detention, Ms. Catalina DEVANDAS-AGUILAR, Special Rapporteur on the rights of persons with Disabilities, Ms. Agnes CALLAMARD, Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Dainius PŪRAS, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Mr. Diego GARCÍA-SAYÁN, Special Rapporteur on the independence of judges and lawyers.

The Permanent Mission of Japan to the International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 6 July 2018

Enclosure mentioned



Reply of the Government of Japan to the Request for Information Provision from the Secretariat of the Working Group on Arbitrary Detention

The Government of Japan provides its response with regards to the letter dated June 8, 2018 sent to the Permanent Mission of Japan to the International Organizations in Geneva.

At the outset, Tokyo District Court sentenced Chizuo Matsumoto, ringleader of the Aum Shinrikyo cult, to death in 2004. Detailed information on past court cases related to Aum Shinrikyo cult can be found on the Japanese court website. (“Aum” is its searching word.) For your reference, we attached a court case document on Aum Shinrikyo cult.

Under Japanese national laws, the rights and treatments of inmates, including the suspect, the accused and those sentenced to death, are stipulated as below, and these have been applied to the case.

1 Medical care at penal institution

In penal institutions, efforts are made to monitor the physical and mental conditions of inmates including those sentenced to death, with a view to provide adequate treatment depending on the conditions. In order to maintain physical and mental health of inmates sentenced to death, in accordance with Article 61 and 62 of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, wardens of penal institutions conduct necessary health examinations, offer medical treatment through doctors, and take other necessary medical measures in cases where the inmates are suspected of or actually suffering injury or sickness

2 Procedural consideration for the suspect / the accused

The Code of Criminal Procedure in Japan grants the suspect / the accused the right to appoint defense counsel (Article 30). In addition, if the conditions are met, the court may appoint nationally-appointed counsel for the suspect and the accused (Article 37- 2, 36, 37, etc.). Furthermore, the trial may not be convened without the attendance of counsel (Article 289). The counsel plays a role of guardian for the suspect / the accused. The counsel allows the suspect / the accused to fully enjoy their procedural rights and benefits before and during trial as a legal expert who can deal with the court and the prosecutors on an equal standing. Therefore, for example, it is possible for the defense counsel to sufficiently claim and prove the criminal responsibility of the suspect/ the

accused.

3 The capital punishment system

(1) If this communication is based upon a question regarding the capital punishment system in Japan, whether to retain or abolish the death penalty is an important issue that affects the foundation of the criminal justice system in Japan. It should be considered carefully from various viewpoints, such as the realization of justice in society, with sufficient attention given to the public opinion. From that point of view, Japan is in the position that it is unavoidable to impose the death penalty on persons who have committed extremely brutal crimes and bear heavy criminal responsibility, and therefore abolishing the death penalty is not appropriate.

(2) In Japan, crimes that may result in capital punishment are limited only to extremely serious offenses such as homicide. In the practice of Japanese trials, the judicial warrants are required for all compulsory investigations, the penal procedure adapts strict rules for evidence, and a three-tier-trial court system is guaranteed. In line with these, whether a person is convicted or not is confirmed by prudent procedures at both investigative and trial stages. Even after the final judgement, legal remedy systems such as procedures for retrial and procedures for extraordinary appeal to the court are in place, and they effectively prevent misjudgment.

In addition, in Japan, based on prudent procedures, the death penalty is pronounced to only truly serious and unavoidable cases, and it is properly executed according to the law after careful consideration by the Minister of Justice.

(3) In Japan, the Code of Criminal Procedure stipulates that when inmates sentenced to death penalty are in the state of insanity, the execution of the sentence is to be suspended. The Ministry of Justice examines mental state of death row inmates carefully, while paying close attention to and, if necessary, offering them medical treatment through doctors from their expert viewpoint. Taking such expert views and judgements into consideration, decisions are made in an appreciate manner on whether there is a reason or not for the suspension of the execution of death penalty, such as the state of insanity of inmates.

[Reference Articles]

• Code of Criminal Procedure

Article 30

(1) The accused or the suspect may appoint counsel at any time.

(2) (omitted)

Article 36

When the accused is unable to appoint counsel because of indigency or other reasons, the court shall appoint counsel for the accused upon his/her request; provided, however, that this shall not apply when counsel has been appointed by a person other than the accused.

Article 37

The court may appoint counsel ex-officio if there is no counsel for the accused when:

- (i) The accused is a minor;
- (ii) The accused is over seventy years of age;
- (iii) The accused is unable to hear or speak;
- (iv) There is the possibility that the accused is insane or has diminished capacity;
- (v) It is deemed necessary for other reasons.

Article 37-2

(1) In cases where a detention warrant is issued against the suspect with regard to a case punishable with the death penalty, life imprisonment, or imprisonment with or without work for more than three years, if the suspect is unable to appoint counsel due to indigence or any other grounds, the judge shall appoint counsel for the suspect upon a request; provided, however, that this shall not apply when counsel has been appointed by a person other than the suspect or the suspect has been released.

(2) (omitted)

Article 289

(1) When the case is punishable with the death penalty, life imprisonment, or imprisonment with or without work for more than three years, the trial may not be convened without the attendance of counsel.

(2) (omitted)

(3) (omitted)

Article 479

(1) 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.

(2) (omitted)

(3) In cases where execution of the death penalty has been suspended pursuant to the provisions of the preceding two paragraphs, the death penalty shall not be executed without an order from the Minister of Justice after the person has returned to a state of sanity or after such woman has given birth.

(4) (omitted)

• Act on Penal Detention Facilities and the Treatment of Inmates and Detainees

Article 61

(1) Wardens of penal institutions must conduct health examinations for inmates promptly after committing the inmate to the penal institution and thereafter once a year or more. This also applies in penal institutions if it is considered necessary from a hygienic perspective.

(2) (omitted)

Article 62

(1) When an inmate falls under any of the following items, wardens of penal institutions are to promptly have a staff doctor (i.e. a medical doctor or a dentist; the same applies hereinafter) give them medical treatment (including providing nutrition; the same applies hereinafter) and carry out other necessary medical measures; provided, however, in cases falling under item (i), if there is no risk of either endangering the inmate's life or infecting others with their disease this is limited to the cases where the treatment is not given against the inmate's will:

(i) cases where the inmate is injured or suffering from a disease, or is suspected to have sustained an injury or to have a disease;

(ii) cases where the inmate refuses to ingest food and drink, and may endanger their own life.

(2) In the case prescribed in the preceding paragraph, wardens of penal institutions may, if deemed necessary in accordance with the type and degree of the injury or disease, have a doctor who is not the staff of the penal institution give medical treatment.

(3) When wardens of penal institutions provide the opportunity for medical treatment pursuant to the provisions of the preceding two paragraphs, they may have the inmate visit a hospital or a clinic outside the penal institution as required, or may commit the inmate to a hospital or a clinic outside the penal institution if this is unavoidable.