

**MISSION PERMANENTE DU JAPON**  
AUPRÈS DES ORGANISATIONS INTERNATIONALES  
GENÈVE-SUISSE

YS/UN/417

The Permanent Mission of Japan to the International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights in Geneva and, with reference to the latter's Note Verbale UA JPN 2/2024, dated 24 September 2024, has the honour to transmit herewith the response of the Government of Japan to the Joint Urgent Appeal from Special Procedures.

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 in Geneva the assurances of its highest consideration.

Geneva, 22 November 2024

Enclosure mentioned



**RESPONSE OF THE GOVERNMENT OF JAPAN TO THE JOINT  
COMMUNICATION FROM THE SPECIAL PROCEDURES**

Government of Japan would like to respond to questions 1 to 5, to which a reply from the Government was requested in the joint communication UA JPN 2/2024, dated 24 September 2024.

<b>1. Please provide any additional information and any comment you may have on the above-mentioned allegations.</b>
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**Advance notification**

1. The execution of the death penalty is notified in advance to the inmate sentenced to death on the day of execution. The reasons for this include concerns that if the notification were made to the inmate before the day of execution, it might negatively impact the inmate's peace of mind, and it might also cause him/her excessive suffering.
2. In addition, if the relevant persons, including family members, are given advance notice of the execution of the death penalty, it would cause them unnecessary mental anguish. If the family members who received the notification were to meet with the inmate and the inmate were to then find out about the scheduled execution, it might result in the same adverse effects. The current timing of notification could therefore be justifiable.
3. After the execution, the person designated in advance by the inmate sentenced to death (family members, lawyers and others may also be designated) is notified promptly in accordance with the relevant laws and regulations.

**Treatment of inmates sentenced to death**

4. In penal institutions, it is necessary to detain inmates sentenced to death properly and, at the same time, to enable them to maintain peace of mind. Article 36 of the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees (hereinafter "the Penal and Detention Facilities Act") provides that an inmate sentenced to death shall be kept in a single-person room throughout the day and that, in principle, he/she shall not be permitted to make contact with other inmates outside of his/her room.
5. However, paragraph 3 of the above Article also provides that inmates sentenced to death may be permitted to have contact with other inmates sentenced to death if it is deemed instrumental to help maintain their peace of mind. Thus, we do not consider such handling to be a violation of human rights.
6. In addition, taking into consideration the condition of an inmate sentenced to death, we may, if necessary, accommodate him/her in a room equipped with a monitoring camera. We do not consider that such practice violates his/her human rights.

**The number of inmates sentenced to death who have not been executed**

7. As of the end of December 2023, there are 107 inmates sentenced to death who have not yet been

executed.

#### **The number of inmates sentenced to death who were executed during their request for retrial**

8. The government refrains from disclosing the requested information because such information is not made public in Japan. Please note that this does not imply acknowledgment of the accuracy of the figures mentioned in the joint urgent appeal.

#### **The number of cases of acquittal upon retrial**

9. There have been five cases in which an inmate sentenced to death was later acquitted in a retrial.

#### **Method of execution of the death penalty**

10. Paragraph 1 of Article 11 of the Penal Code stipulates that the death penalty “is executed by hanging.”.
11. The Supreme Court has held that there is no reason to assume that the method of hanging currently adopted in Japan is particularly inhumanly cruel in comparison with other methods, and the Government of Japan is of the same opinion.

#### **Suspension of execution by a request for retrial**

12. In criminal proceedings, defense counsel must be appointed for all capital cases (Article 289 of the Code of Criminal Procedure), and the determination of fact and the decision to select the death penalty are made after careful proceedings under strict rules of evidence. In addition, a defendant has a right to appeal against the court’s decision and a review by the higher courts of a guilty finding or of the severity of punishment is ensured under the three-tiered judicial system. Therefore, a death sentence that has been finalized after these strict and careful proceedings is, in principle, strictly executed.
13. On the other hand, if all executions were to be suspended during requests for retrial, the death penalty would never be carried out as long as the inmate sentenced to death repeatedly files requests for a retrial, making it impossible to conclude criminal trials.
14. The Minister of Justice issues an order to execute the death penalty only when it is found that there are no grounds for suspension of the execution after fully scrutinizing relevant records of the individual case and carefully examining the possibility of suspension of the execution and looking into the presence or absence of reasons for retrial.
15. Therefore, the Government of Japan considers it neither necessary nor appropriate to establish a system where the execution of the death penalty is always suspended when a request for a retrial is filed.

#### **Deterrent effect of the death penalty system**

16. Although it is difficult to prove the deterrent effect of the death penalty, it is generally recognized that punishment is a form of crime deterrence, and the same applies to the death penalty.
17. Opinion polls regarding the death penalty system that the Government of Japan has conducted show that the majority of people respond that they believe atrocious crimes would increase in number if the death penalty were abolished when asked the following question: “Some believe

that atrocious crimes would increase in number if the death penalty were abolished and others do not; what is your opinion?" It can be assumed that the wide acceptance of the deterrent effect of the death penalty like this indicates that the death penalty indeed has the effect of deterring crime.

18. In addition, it is difficult to deny that the existence of the death penalty system contributes in the long run to the maintenance of normative consciousness among people, and the Government of Japan considers that the death penalty system has the effect of deterring atrocious crimes to a certain extent.

**2. Please explain which steps are envisaged to ensure that the death row regime does not amount to cruel, inhuman or degrading treatment or punishment, in line with international standards.**

**3. Please explain which steps are being taken to ensure that the right to health, including mental health, privacy and dignity of inmates is protected in all detention centers in Japan [redacted].**

19. Although inmates sentenced to death are kept in single-person rooms throughout the day as stated in paragraph 4 above, they are allowed to seek contact with prison staff or voluntary prison visitors, or counseling from prison chaplains in order to ensure that they do not suffer from isolation and to help them maintain peace of mind. In addition, if deemed necessary for the purpose, they are given opportunities to watch videos and television.
20. Taking into consideration the condition of an inmate sentenced to death, we may, if necessary, accommodate him/her in a room equipped with a monitoring camera. We do not consider that such practice violates his/her human rights.

**4. Please explain which safeguards are in place, if any, to prevent the execution of any individuals who are awaiting retrial. If none are in place, please explain how this is in accordance with Japan's obligations under international standards.**

21. Paragraph 1 of Article 475 of the Code of Criminal Procedure, which stipulates that execution of the death penalty shall be ordered by the Minister of Justice, makes an exception to the provision of Article 472 of the Code, which stipulates that a judicial decision may be executed only under a public prosecutor's direction.
22. The Government of Japan understands that the spirit of the rule is as follows: as the death penalty is an ultimate punishment depriving a person of life and is irreparable once executed, it is appropriate to make the execution procedure one that is especially deliberative, and under which the Minister of Justice, who is the chief executive of legal affairs, once again examines carefully whether there are any grounds for exceptional relief measures regarding the death sentence, such as retrial or extraordinary appeal.
23. In fact, the Minister of Justice is supposed to issue an order to execute the death penalty only when it is found that there are no grounds for suspension of the execution after, inter alia, fully scrutinizing relevant records of the individual case, carefully examining the possibility of suspension of the execution, and looking into the presence or absence of reasons for retrial.
24. In addition, Paragraph 2 of Article 475 of the Code of Criminal Procedure provides that the Minister's order of execution shall be rendered within six months from the date when the judgment becomes final and binding, but that the time taken to process the request for retrial

from the time of its filing shall not be included in this period.

**5. Please explain if the government has considered implementing a moratorium on the death penalty.**

25. While taking into account discussions at international organizations and trends in other countries, whether to retain or abolish the death penalty system is basically an issue that should be determined by each country, with consideration for public opinion in the country, its general crime situation, and domestic administration of criminal justice.
26. In light of the circumstances in Japan, including the fact that the majority of Japanese citizens consider that the death penalty is unavoidable for extremely malicious and atrocious crimes, it does not appear appropriate to temporarily suspend the execution of the death penalty. Moreover, if the execution proceedings resume after they had been suspended, inmates sentenced to death who were left with the hope that they would not be executed would then have their hopes dashed, which would in the end be a rather inhuman result.
27. Therefore, the Government of Japan is of the view that it is not appropriate to adopt a moratorium on the execution of the death penalty.

**Reference Articles**

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

Article 36

- (1) The treating of inmates sentenced to death is to take place in the inmate's room both day and night, except for when it is deemed appropriate to do so outside of the inmate's room.
- (2) Inmates sentenced to death are to be held in single-person rooms.
- (3) No inmates sentenced to death are permitted to mutually interact with others even outside of the inmate's room, except for when it is deemed advantageous in light of the principle of treatment prescribed in Article 32, paragraph (1).

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.

### **Penal Code**

#### Article 11

(1) The death penalty is executed by hanging at a penal institution.

(2) A person who has been sentenced to the death penalty is detained in a jail until their execution.

### **Code of Criminal Procedure**

#### Article 289

(1) When a case is punishable by the death penalty, life imprisonment, life imprisonment without work, or imprisonment or imprisonment without work whose maximum term is more than three years, the trial may not be convened without the attendance of defense counsel.

(2) If the court may not be convened without defense counsel, and the defense counsel has not appeared at court or is no longer present in court, or defense counsel has not been appointed, the presiding judge must appoint defense counsel ex officio.

(3) If the court may not be convened without defense counsel, and there is the risk that the defense counsel will not appear at court, the court may appoint defense counsel ex officio.

#### Article 472

(1) The execution of a decision is to be directed by a public prosecutor of the public prosecutor's office corresponding to the court that rendered said decision; provided, however, that this shall not apply in the cases set forth in the proviso to paragraph (1) of Article 70, the proviso to paragraph (1) of Article 108, or any other case in which the court or judge should direct the execution of its decision.

#### Article 475

(1) Execution of the death penalty shall be ordered by the Minister of Justice.

(2) The order set forth in the preceding paragraph shall be rendered within six months from the date when the judgment becomes final and binding; provided, however, that, where a request to restore the right to appeal or a request for a retrial, an extraordinary appeal, or an application or request for a pardon is made, the period before these proceedings have finished shall not be included in this period. Neither shall the period before the judgment becomes final nor binding for persons who are co-defendants be included in this period.