

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the independence of judges and lawyers

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the rights of persons with disabilities; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 33/30, 35/6, 35/15, 33/9 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the imminent execution of Mr. **Shoko Asahara**, a person with disabilities, currently detained in the Tokyo Detention Centre.

According to information received:

In May 1995, Mr. Asahara was arrested. He was subsequently sent to trial in 1996 and sentenced to death in February 2004, following a first instance and an appeal trial. At present, Mr. Asahara is on death row awaiting execution.

In October 1996, Mr. Asahara's mental health started to deteriorate. He began to show signs of mental confusion and could no longer speak properly. In total, His daughters have visited him about 40 times. They were never able to have a conversation with him, due to his inability to talk.

On 17 August 2004, the staff of the detention centre told one of the daughters of Mr. Asahara during her visit that her father was unable to talk to anyone and that they had to use a wheelchair to bring him to the meeting room as he could no longer move by himself. During the meeting, Mr. Asahara frequently had convulsions and had eczema and blisters on his skin.

Between 2005 and 2006, Mr. Asahara was interviewed by six psychiatrists. All of them concluded that, due to his medical situation, a mixed state of stupor and hysteria, Mr. Asahara was unable to stand for trial and to interact with his counsel.

In August 2005, the Tokyo High Court conducted a psychiatric examination of Mr. Asahara. They concluded that Mr. Asahara was unable to meaningfully communicate.

In 2007, the Human Rights Defense Committee of the Japan Federation of Bar Associations met with Mr. Asahara. They recommended to the Tokyo Detention Centre that he be adequately treated.

Thus far, however, Mr. Asahara received no medical treatment and it is likely that his mental health condition may be further deteriorating.

Overall, the counsel of Mr. Asahara met with him more than two hundred times. In no occasion he was able to properly communicate with him.

Due to the deterioration of his health condition, Mr. Asahara could not meaningfully take part in the trial proceedings conducted against him. Furthermore, the presiding judge of the Court of first instance publicly stated, before the trial started, that he would conclude the trial in five years, without knowing the prosecutor's arguments and the evidence that the parties would put forward for examination. The Court of Appeal also declared that they would conclude the trial in two years. In addition, the time for the defence counsel to prepare for the trial was reduced and defence's witness' interrogation was restricted. Lastly, the court did not consider the fact that Mr. Asahara also has a visual impairment and refused to make the evidence available in Braille.

We express grave concern that the death penalty may be carried out against Mr. Shoko Asahara, in violation of the international human rights treaties to which Japan is a party. While we do not wish to prejudge the accuracy of these allegations, the above information seems to indicate a prima facie violation of the right of every individual to life and security, the right not to be arbitrarily deprived of his life or liberty and the right to a fair trial as set forth in articles 6 (1), 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan on 21 June 1979; and articles 10, 12 and 13 of the Convention on the Rights of Persons with Disabilities (CRPD), ratified by Japan on 20 January 2014 and article 3, 9 and 10 of the Universal Declaration of Human Rights (UDHR).

We would like to bring to the attention of your Excellency's Government that articles 10, 12 and 13 of the CRPD expressly calls upon States parties to take all necessary measures to ensure the effective enjoyment of the right to life, equal recognition before the law and effective access to justice by persons with disabilities on an equal basis with others. As required by article 13 of the CRPD, States must take all appropriate measures to ensure that all persons with disabilities have access to procedural accommodations, including supported decision-making, in all legal proceedings before, during and after trial.

We would also like to highlight that persons with psychosocial disabilities face the risk of being sentenced to death and executed in breach of international standards, including the right to the highest attainable standard of physical and mental health (article 25 CRPD). States must do their utmost to address this risk, including by providing

accommodation during all phases of legal proceedings, and by granting adequate protection from any form of discrimination against them because of their disability. Furthermore, in its general comment No. 1 the Committee on the Rights of Persons with Disabilities has stated that the denial of reasonable accommodation in detention can be considered a form of discrimination, and in some instances also as a form of torture and ill treatment.

We would like to highlight that it is a violation of death penalty safeguards to impose capital punishment on individuals with psychosocial disabilities. Implementing a death sentence in these circumstances may amount to an arbitrary execution. Furthermore, international law considers the imposition and enforcement of the death penalty on persons with psychosocial disabilities a violation of the absolute prohibition of torture and other cruel, inhuman and degrading treatment or punishment. We also recall that the imposition of a death sentence following a trial in which due process and fair trial guarantees have not been respected constitutes a violation of the right to life.

Finally, article 12 of the International Covenant on Economic, Social and Cultural Rights acceded to by Japan in July 1979 provides for the right to physical and mental health and States' obligations in this respect. Inter alia, State's must refrain from denying or limiting equal access for prisoners or detainees to health services. (Committee on Economic, Social and Cultural Rights, General Comment 14, para.34). In addition, the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) indicate that prisoners should access healthcare services that pay particular attention to any special healthcare need or health issue that hamper their rehabilitation (rule 25) and that physicians shall report to prison authorities whenever they consider that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment (rule 33).

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, we call upon your Excellency's Government to immediately halt the execution of Mr. Shoko Asahara and urgently give serious consideration to commuting the sentence and provide him with access to reasonable accommodation and appropriate healthcare.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide the details of the proceedings against Mr. Shoko Asahara and the legal basis and evidence used in court to sentence him to death.

3. Please provide information about any procedural accommodations, including supported decision-making, provided to Mr. Shoko Ashara before, during and after his trial.
4. Please provide detailed information about any and all medical treatment provided to Mr. Asahara, notably since 2005 to date, following 2007 recommendations in this respect by the Human Rights Defense Committee of the Japan Federation of Bar and after both, the reviews by six psychiatrists between 2005 and 2006, and the psychiatric examination carried out in August 2005 under the lead of the Tokyo High Court.
5. Please indicate if medical reports by psychiatrists having examined Mr. Asahara included assessments about whether his continued imprisonment or any condition of his imprisonment had aggravated or would be injuriously affecting his physical and/or mental health. If so, please indicate which actions were taken by prison authorities as a result.
6. Please indicate whether medical examinations finally concluding that Mr. Asahara was unable to meaningfully communicate, included medical expertise other than psychiatry, including, inter alia, psychology. If so, kindly provide details regarding these reports.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We are considering to publicly express our concerns as, in our view, the information in our possession appears to be sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the human rights implications of these allegations. Any public comment on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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