

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the right to privacy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on discrimination against women and girls

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(Please use this reference in your reply)

24 September 2024

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the right to privacy; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 53/4, 51/8, 51/21, 55/3, 52/7 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the manner in which the procedure related to death penalty is carried out in Japan including the lack of advanced notification of executions, executions of individuals pending re-trial, lack of gender-specific measures for women detainees, execution by hanging and conditions on death row, which may subject individuals to cruel, inhuman or degrading treatment that could amount to torture, and the negative impact on the mental health of detainees awaiting in the death row/awaiting a death sentence and their relatives and loved ones.

According to the information received:

Notification

Currently in Japan, due to administrative practices, the execution of a person sentenced to death is notified on the morning of the day of execution, approximately two hours before the execution. There is no prior notification to family members, loved ones or defense lawyers. It is reported that the Government of Japan reasons that providing notice of the death penalty in advance of the day of execution has a significant impact on the mental health of the person sentenced to death and makes it difficult to maintain peaceful feelings. However, before the 1970s in Japan, executions were notified at least one day before the day of the execution, but the administrative practice of the Ministry of Justice was changed to immediate notification. This is not stipulated in law. The revision of the operation of the system is believed to have been triggered by the case of a death-row inmate who committed suicide after being notified of his execution. The lack of advanced notification means that individuals are unable to receive a final visit from their families prior to execution. One individual on death row reported being continuously frightened by the sound of the guards' footsteps, each time wondering if the guards were coming to notify the individual that they would be executed that day.

Conditions on death row

The Tokyo Detention House in Katsushika, Tokyo, and the Osaka Detention House in Miyakojima-ku, Osaka, are both correctional facilities operated by the Ministry of Justice. These prisons are among the seven detention centers in Japan that carry out executions and are used to detain individuals awaiting trial, convicted felons, and those sentenced to death. As of the end of 2023, there were 106 inmates on death row in Japan including 99 men and 7 women. All death row prisoners are held in solitary confinement.

In Tokyo Detention House

Mr. Reo Ito, Mr. Masato Kobayashi, Mr. Tatsuya Kawasaki, Ms. Kanae Kijima, and Ms. Hiroko Kazama are death row prisoners detained in Tokyo Detention House. All of them have been held in solitary confinement in 5.4 square-meter cells that are monitored 24 hours a day by closed circuit TV (CCTV) cameras placed on the ceiling from the onset of incarceration.

Mr. Masato Kobayashi and Mr. Tatsuya Kawasaki have been held in such cells for over 12 years and 5 years respectively. Ms. Kanae Kijima and Ms. Hiroko Kazama have also been kept in solitary confinement in cells with CCTV cameras, manned by both male and female officers. They have been held in such cells for 10 years and 23 years respectively. Mr. Reo Ito was moved after more than 14 years to a cell without a surveillance camera, pursuant to transfer order dated 1 March 2022. He remains in solitary confinement.

There are no obstacles in front of the cameras, so everything, including prisoners removing their clothes and using the restroom, is recorded.

In Osaka Detention House

There are currently 19 death row inmates at the Osaka Detention House - 12 of them have filed a request for a retrial. Even though these 12 inmates are in the process of requesting a retrial, there is the possibility that they will be executed before the court reaches a decision.

Mr. Koji Mizogami and Ms. Masumi Hayashi are death row prisoners detained in Osaka Detention House.

Both of them have been held in solitary confinement in 5.4 square-meter cells that are monitored 24 hours a day by CCTV cameras placed on the ceiling for extended periods. Ms. Masumi Hayashi has been detained in these conditions for more than 21 years. Mr. Koji Mizogami was transferred, after 8 years, to a cell without CCTV surveillance on 26 July 2024. He remains in solitary confinement.

Both male and female prison staff can monitor footage of female prisoners, and there are no obstacles in front of the cameras, so everything, including prisoners removing their clothes and using the restroom, is recorded.

Video surveillance is not provided for by law. Rather it is set out in each institution's "Detailed Regulations on Treatment of Inmates Requiring Special

Attention”.

Reportedly, in some instances communications between individuals on death row and their lawyers have been monitored by detention staff and communication between individuals on death row and their lawyers and families have been very limited.

Execution when re-trial pending

In Japan, executions are ordered by the Minister of Justice, in some cases such executions are ordered even if the convicted person has applied to the court for a retrial and the court has not reached a decision. 19 out of the 23 death sentences carried out since 2017 were pending request for retrial.

In Japan, there have been four cases in which death penalty convicts have been acquitted at retrial. If the death penalty had been carried out while they were awaiting retrial, it would have been irreversible.

Method of execution

The Government of Japan has executed 98 death sentences since 2000.

The method of execution in Japan is by hanging.¹ Other than the provision that “when executing the death penalty, the hangman’s noose shall be released five minutes after confirming the death of the hanged person”², there are no specific laws governing the method of execution by hanging. The State does not clarify the location of the execution site in the detention center, the procedure of execution, the length of the noose and other specific methods of execution, nor the circumstances leading to such execution.

While we do not wish to prejudge the accuracy of these allegations, we respectfully express our concerns regarding the way in which the death penalty is carried out in Japan including the lack of advanced notification of executions, executions of individuals pending re-trial, execution by hanging and conditions on death row, which may subject individuals to cruel, inhuman or degrading treatment that could amount to torture.

If the above allegations prove to be true, they may constitute a violation of article 6 on the right to life; article 7 on the right to not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; article 10 on the right of all persons deprived of their liberty to be treated with humanity and with respect to their dignity; and article 17 on the right to not be subjected to arbitrary or unlawful interference with his privacy, honour and reputation, of the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan on 21 June 1979, of various articles of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Japan on 29 June 1999, article 12 of the International Covenant on Economic, Social and Cultural Rights, ratified by Japan on 21 June 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Japan on 25 June 1985, the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), the

¹ Penal Code, article 11

² Penal Institutions Act, article 179

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok rules) and of the United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty.

We would like to remind your Excellency's Government that when the death penalty is applied, "it must be carried out in such a way as to cause the least possible physical and mental suffering" (Human Rights Committee general comment 20, para. 6 and the Economic and Social Council's Safeguards Guaranteeing Protection of the Rights of those facing the death penalty safeguard 9).

With regards to the **failure to provide advanced notification** of executions the Human Rights Committee has observed that this constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the ICCPR (CCPR/C/GC/36, para. 40).

It has further stated that Japan should ensure that the death row regime does not amount to cruel, inhuman or degrading treatment or punishment by giving reasonable advance notice of the scheduled date and time of execution to death row inmates and their families with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for this event, by refraining from imposing prolonged solitary confinement on death row prisoners and by using 24-hour video surveillance of death row prisoners only when strictly necessary and for as short a period possible (CPR/C/JPN/CO/7, para. 21b).

With regards to the **use of solitary confinement**, we highlight that rule 43 of the Nelson Mandela Rules states that under no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment, and particularly prohibits indefinite solitary confinement and prolonged solitary confinement. Rule 45 indicates that solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.

This is further affirmed by gender-specific considerations in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok rules). Rule 22 of the Bangkok rules copies rule 43 of the Mandela rules and adds that certain categories of women prisoners (pregnant women and mothers) should not be placed in solitary confinement in order to avoid causing possible health complications or penalizing their children in prison by separating them from their mothers.

We further note that the Committee Against Torture has indicated solitary confinement should be prohibited for prisoners sentenced to death (CAT/C/51/4, para. 33) and the Human Rights Committee has observed that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 (general comment No. 20: article 7, 1992; para. 6).

We additionally remind that deprivation of liberty and confinement create an environment that is detrimental to the enjoyment of the right to physical and mental health. In particular, solitary confinement negatively influences mental health and well-being. Moreover, we wish to refer to the report of the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of

physical and mental health, in which he makes reference to the fact that “[i]n contexts of confinement and deprivation of liberty, violations of the right to health interfere with fair trial guarantees, the prohibition of arbitrary detention and of torture and other forms of cruel, inhuman or degrading treatment, and the enjoyment of the right to life” and that [v]iolations of the right to health emerge as both causes and consequences of confinement and deprivation of liberty”.

With regards to **re-trials**, we recall that Human Rights Committee General Comment 36 indicates that “any penalty of death can be carried out only pursuant to a final judgment, after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person, and after petitions to all other available non-judicial avenues have been resolved, including supervisory review by prosecutors or courts, and consideration of requests for official or private pardon”(CCPR/C/GC/36, para. 46). Furthermore, the Human Rights Committee has repeatedly recommended that retrial requests should have the effect of suspending executions in Japan (CCPR/C/JPN/CO/5, para. 17; CCPR/C/JPN/CO/6, para. 13; CCPR/C/JPN/CO/7, para. 21(c)).

We further note that the CEDAW Committee emphasizes that States parties have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies, which may be particularly relevant for women seeking appeals. Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men. The Working Group on discrimination against women and girls has recommended that States take steps to address women’s deprivation of liberty and all of its root causes including by making available effective gender-specific interventions that aim primarily to divert women away from the criminal justice system, by integrating into the national system the standards provided in the Bangkok Rules, and by addressing the underlying factors leading to women coming into contact with the criminal justice system (A/HRC/41/33).

With regards to the **continuous use of CCTV cameras**, the Human Rights Committee has observed that the “respect for the dignity of [persons deprived of their liberty] must be guaranteed under the same conditions as for that of free persons” (general comment No. 21: article 10, 1992, para. 3). We also note that the Human Rights Committee has indicated that no interference in the right to privacy of an individual can take place except in cases envisaged by the law, including a legal framework containing specific policies and guidance governing the use of the technology. Furthermore, interference is arbitrary when it is not necessary and proportional to achieve defined goals, which appears to be the case in this context (general comment No. 16: article 17, 1988; para. 3-4). Technologies often have an impact on human rights disproportionate to their intended purpose.

We note that continuous surveillance and the use of solitary confinement can have a negative impact on the right to health. In this regard we wish to bring to your Excellency’s Government attention general comment No. 14 adopted by the Committee on Economic, Social and Cultural Rights (CESCR), which interprets the right to health as “an inclusive with extending not only to timely and appropriate health care but also to the underlying determinants of health and which stresses that

States are under the obligation to *respect* the right to health, including for prisoners or detainees (CESCR, general comment No. 14, paras. 11 and 34).

With regards to the **monitoring of female prisoners by male guards**, the Nelson Mandela Rules require specific procedures for the monitoring and guarding of female prisoners including women prisoners be attended and supervised only by women staff members (rule 88). Failure to provide special measures for female detainees may violate article 1 of CEDAW (CEDAW/C/49/D/23/2009).

In its general recommendation 33 on women's access to justice, the CEDAW Committee urges States to ensure that mechanisms are in place to monitor places of detention, pay special attention to the situation of women prisoners and apply international guidance and standards on the treatment of women in detention. At the same time, the Committee observes that stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights, including rights across the justice chain, from pre-trial, trial, sentencing, appeal, and in relation to conditions of detention.

With regards to the **use of hanging** for executions, we recall that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has taken the view that most methods of execution amount to ill-treatment, if not torture, and that States applying the death penalty cannot guarantee that the prohibition of torture or ill-treatment is scrupulously observed (A/67/279, paras. 75-77) and that there is an evolving international standard to consider the death penalty in itself as a violation of the prohibition of torture and ill-treatment (A/67/279, para. 72). Specifically in relation to the method of hanging, the United Nations High Commissioner for Human Rights has suggested that hanging, as a matter of law, is contrary to article 7 of the Covenant (A/67/279, para. 33).

We would additionally like to highlight that in the High-level panel discussion of 2018 on the question of the death penalty report of the Office of the High Commissioner for Human Rights, the panel indicated that there was no evidence to support the proposition that the death penalty had a deterrent effect that reduced the crime rate (A/HRC/39/19). Similarly, we also note, based on the long experience of the mandate on extrajudicial summary or arbitrary executions, and a careful review of studies and evidence, that the death penalty has never been proved to be an effective deterrent.

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

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 review the way in which the death penalty is carried out in Japan to ensure it does not amount to cruel, inhuman or degrading treatment or punishment and, considering the ongoing development of an emerging customary law, to consider establishing a moratorium on the death penalty. We would also appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 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, including for Mr. Reo Ito, Mr. Masato Kobayashi, Mr. Tatsuya Kawasaki, Ms. Kanae Kijima, Ms. Hiroko Kazama, Mr. Koji Mizogami and Ms. Masumi Hayashi.
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.
5. Please explain if the government has considered implementing a moratorium on the death penalty.

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 may publicly express our concerns in the near future as, in our view, the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that, after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

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Special Rapporteur on extrajudicial, summary or arbitrary executions

Ganna Yudkivska
Vice-Chair of the Working Group on Arbitrary Detention

Tlaleng Mofokeng
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