

Report on a moratorium on the use of the death penalty: the death penalty in Japan

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This is a joint submission by CrimeInfo, a Japanese NGO specialising in the provision of information concerning the death penalty and criminal justice issues in Japan, and Eleos Justice, Faculty of Law at Monash University, a new initiative on the death penalty in Asia.

Number of persons on death row: As of 21 December 2021, 107 individuals were on death row,¹ 8 of whom are women.²

Number of death sentences issued annually: In 2020, three people were sentenced to death at trial.³ This figure has remained relatively consistent in recent years, with the number of death sentences imposed annually fluctuating between two and five over the last decade (i.e., since 2012).⁴ 3 death sentences have been imposed in 2021 -

Number of executions carried out annually: No executions have been carried out in 2022 (as of 20 April 2022). In 2021, Japan executed three people.⁵ The following executions were carried out on 21 December 2021.

- Yasutaka Fujishiro was convicted of killing murdered his 80-year-old aunt, two cousins and four others after a court ruled that he could be held criminally responsible for the murders despite a personality disorder.⁶
- Mitsunori Onogawa and Tomoaki Takanezawa were convicted of two murders in 2003.
- Tomoaki Takanezawa's execution was carried out while his request for retrial remained pending before the court.⁷

In 2020, no executions were carried out.⁸

Number of death sentences reversed or commuted on appeal: In 2020, one death sentence was commuted to life imprisonment with parole.⁹

Number of amnesties, commutations, or pardons granted: There have been no amnesties, pardons, or commutations in 2021 and 2022 for individuals on death row. In fact, since Mr

¹ https://www.crimeinfo.jp/data/houmukaiken/furukawa_031221/

² <https://www.crimeinfo.jp/data/dplist/female/>

³ https://www.crimeinfo.jp/data/toukei/number_new_dp/

⁴ https://www.crimeinfo.jp/data/toukei/number_new_dp/

⁵ <https://www.crimeinfo.jp/data/toukei/execution/>

⁶ https://www.crimeinfo.jp/data/dplist/dplist_all/#%E8%97%A4%E5%9F%8E%E5%BA%B7%E5%AD%9D

⁷ <https://www.amnesty.org/en/latest/news/2021/12/japan-abhorrent-executions-crush-hopes-of-progress-under-new-prime-minister/>

⁸ <https://www.crimeinfo.jp/data/toukei/execution/>

⁹ <https://www.crimeinfo.jp/data/toukei/kousoshin/>

Kenjiro Ishii had his death sentence commuted to life imprisonment in 1975, no other inmate has received a commutation of a death sentence.¹⁰

Restrictions on the use of the death penalty, and safeguards protecting the rights of those facing the death penalty: Japan ratified the ICCPR in 1979.

‘Most serious crimes’: At present, Japanese law allows for the use of the death penalty upon conviction of 19 offences which fall short of the definition of most serious crimes understood as ‘intentional killing’. They include treason,¹¹ arson,¹² and illegal use of explosives,¹³ including in instances where such acts do not result in death. In practice, however, Japan only uses the death penalty for murder. There has been no change to the number of capital offences since 2009.

Right to appeal: Despite repeated recommendations by the Committee Against Torture and the Human Rights Committee, appeals against death sentence are not mandatory under Japanese law.

Right to pardon: Japanese law allows for amnesties, pardons, and commutations;¹⁴ however, there have been no amnesties, pardons, or commutations since 1975 suggests that in practice, avenues for mercy are inadequate. Indeed, the lack of an effective process for consideration mercy petitions is a failure to comply with the ICCPR and the Safeguards.¹⁵

Treatment on death row: Japan’s death row is notoriously severe, characterised by solitary confinement in small cells, inadequate time spent outside, solitary confinement, and limited contact with other persons outside prison.¹⁶ While exact rates are unknown, mental illness among prisoners appears to be high, with limited medical care available.¹⁷ In November 2021, two death row inmates sued the Japanese government over its treatment of death row prisoners, claiming that the practice of notifying prisoners of their executions mere hours in advance is unlawful as it denies prisoners the opportunity to file an objection.¹⁸ The Minister of Justice has defended this practice in December 2021 at a press conference by stating that it is intended to prevent prisoners from suffering before their execution:

¹⁰ https://www.crimeinfo.jp/data/toukei/statistics_06-2/; Maiko Tagusari, Mai Sato, David Johnson and Saul Lerhfreund, *The Death Penalty in Japan* (2013) 10. Available from <https://deathpenaltyproject.org/knowledge/the-death-penalty-in-japan/>

¹¹ Penal Code of Japan, arts. 77 (insurrection), 81 (inducing foreign aggression), 82 (participation in foreign military aggression against Japan).

¹² Penal Code of Japan, art. 108.

¹³ Penal Code of Japan, art. 117; Japan Explosives Control Act, art. 1.

¹⁴ Constitution of Japan, Article 73; Pardon Act.

¹⁵ Maiko Tagusari, Mai Sato, David Johnson and Saul Lerhfreund, *The Death Penalty in Japan* (2013) 10. Available from <https://deathpenaltyproject.org/knowledge/the-death-penalty-in-japan/> 10.

¹⁶ Maiko Tagusari, Mai Sato, David Johnson and Saul Lerhfreund, *The Death Penalty in Japan* (2013) 12. Available from <https://deathpenaltyproject.org/knowledge/the-death-penalty-in-japan/>

¹⁷ Maiko Tagusari, Mai Sato, David Johnson and Saul Lerhfreund, *The Death Penalty in Japan* (2013) 12. Available from <https://deathpenaltyproject.org/knowledge/the-death-penalty-in-japan/>.

¹⁸ <https://www.reuters.com/world/asia-pacific/japan-death-row-inmates-sue-over-inhumane-same-day-notification-media-2021-11-05/>

The notification of execution of the death penalty is given to the inmate in question on the day of the execution before the death penalty is executed. This is partly because it is considered that, if the notification were given before the date of execution, it would seriously affect the mind of the inmate sentenced to death and make it difficult to maintain peace of mind.¹⁹

Moratorium on executions: Although Japan carries out very few executions, and only in instances of murder, it has not evinced any intention to establish a moratorium on executions or abolish the death penalty. In 2020, the Japanese government submitted to the UN Human Rights Committee stating that:

Whether to retain or abolish the death penalty is basically an issue that should be determined by each country at its discretion with careful examination from various viewpoints, such as the realization of justice in society, taking public opinion into full account. The majority of citizens in Japan consider that the death penalty is unavoidable for extremely malicious and atrocious crimes. (Para. 67)

For further information, please contact CrimeInfo (info@crimeinfo.jp).

¹⁹ https://www.crimeinfo.jp/data/houmukaiken/furukawa_031221/