

# The Death Penalty in Japan

Why has it not been abolished?

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## INTRODUCTION

(1) Japan is, along with the US, the only OECD member country that continues to carry out executions.<sup>1</sup> Amnesty International has actively campaigned to end executions in Japan and to promote the abolition of the death penalty. During the 28th session of the Universal Periodic Review 2017, it recommended Japan to “[i]ntroduce an official moratorium on executions as a first step toward the abolition of the death penalty, and commute all death sentences to terms of imprisonment”<sup>2</sup>. Indeed, “[t]he government continues to refer to the majority public support for death sentences in cases of violent crimes as the reason for retaining the punishment and has stated that it has no plans to establish a forum to discuss the death penalty system”<sup>3</sup>. Though internal and external pressure has been put on the Japanese government to join the abolitionist camp, Japan has openly continued to carry out executions.<sup>4</sup>

This paper seeks to analyze why Japan has never abolished the death penalty. In other words, we want to explain why there has been stability – or has there been incremental change? – in the death penalty policy. The period this paper focuses on starts from 1955, the year of the foundation of the (conservative) Liberal Democratic Party, until now. The following

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<sup>1</sup> P. BACON, M. REITERER and D. VANOVERBEKE, “Recent Developments on the Death Penalty in Japan: Public Opinion and the Lay Judge System” in W. BENEDEK, M.C. KETTEMANN, R. KLAUSHOFER, K. LUKAS and M. NOWAK (eds.), *European Yearbook on Human Rights* 2017, Graz, NWV, 2017, (103) 103 (hereafter: ‘P. BACON, M. REITERER and D. VANOVERBEKE, o.c.’).

<sup>2</sup> AMNESTY INTERNATIONAL, *Suggested recommendations to States considered during the 28th session of the Universal Periodic Review*, 6-17 November 2017, <http://bit.ly/2j8cPIw>, 9.

<sup>3</sup> AMNESTY INTERNATIONAL, *Japan: Inadequate protection against discrimination. Amnesty International submission for the UN Universal Periodic Review, 28th Session of the UPR Working Group*, November 2017, <http://bit.ly/2Bzb6XD>, 5-6.

<sup>4</sup> M. SATO and P. BACON, *The Public Opinion Myth. Why Japan retains the death penalty*, London, The Death Penalty Project, 2015, 14 (hereafter: ‘M. SATO and P. BACON, o.c.’).

methodology will pave the way towards our conclusion: first, we will look at the relevant key actors in the field. The paper focuses on the domestic actors and leaves international pressure aside. In the second part of the paper, we will look at how the death penalty is perceived in Japan by the media and the public and analyze why it has received little macro-political attention.<sup>5</sup>

The death penalty in Japan is based on several legal grounds:

“(1) Article 31 of the Constitution of Japan, which allows a legal punishment to deprive a person of life or liberty exceptionally;  
 (2) Article 11 of the Penal Code, which specifies the execution method as hanging;  
 (3) the Penal Code and the Nagayama Criteria, which specify crimes that are considered suitable for capital punishment according to nine main criteria; and  
 (4) Articles 475 and 476 of the Code of Criminal Procedure, which stipulate the responsibility of Ministers of Justice regarding the timing of authorising and conducting executions”<sup>6</sup>.

In principle, eighteen crimes are eligible for the death penalty. However, in practice, its use is restricted to three categories of crimes: “murder, robbery resulting in death, or rape on occasion of robbery resulting in death”<sup>7, 8</sup>.

## 1. MAIN ACTORS

(2) The decision-making model in Japan is often represented by the Iron Triangle, which is composed of three actors: (1) bureaucrats, (2) politicians of the ruling party (mainly the Liberal Democratic Party, LDP) and (3) the business community represented by the Keidanren.<sup>9</sup> First, we will discuss the LDP, then the importance of the bureaucracy. Note that their relationship is interdependent.<sup>10</sup> As the influence of the Keidanren in the death penalty policy seems not (as) important, we will not discuss it. Secondly, we will analyze two other actors that are traditionally situated outside the Iron Triangle: the Japan Federation of Bar Association and NGO’s.

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<sup>5</sup> D.T. JOHNSON, “Why does Japan retain the Death Penalty? Nine Hypothesis” in L. SCHERDIN (ed.), *Capital Punishment. A Hazard to a Sustainable Criminal Justice System?*, Farnham, Ashgate, 2015, (139) 142 and 153 (hereafter: ‘D.T. JOHNSON, “Why does Japan retain the Death Penalty?”, o.c.’).

<sup>6</sup> M. OBARA, *Japanese Moratorium on the Death Penalty*, New York, Palgrave Macmillan, 2016, 90 (hereafter: ‘M. OBARA, o.c.’).

<sup>7</sup> M. SATO, *The Death Penalty in Japan. Will the Public Tolerate Abolition?*, New York, Springer, 2011, 21.

<sup>8</sup> *Ibid.*

<sup>9</sup> M. OBARA, o.c., 11, 12 and 15; cf. *supra*, nr. (2).

<sup>10</sup> See *infra*, nr. (3) *in fine*.

## 1.1. LIBERAL DEMOCRATIC PARTY

(3) A recurrent pattern that can be observed in several countries (*e.g.* Great Britain, France, South Korea, Taiwan) is that when a progressive party wins the elections and takes control of the government, it leads to the abolishment of the death penalty. By contrast, Japan has retained the death penalty, and this may partly be due to the very successful conservative and the largely pro-death-penalty LDP that has continuously ruled over Japan from its foundation in 1955 to 2009 (1993 excepted) and from 2012 until today.<sup>11</sup> Because of this perpetual dominance, “*the relationship between bureaucrats and LDP politicians became highly interdependent over these years*”<sup>12</sup>.

(4) Between 2009 and late 2012, the Democratic Party of Japan (DPJ) gained power. But even then, after one year of no executions, Minister of Justice CHIBA KEIKO, who is an ‘outspoken anti-death-penalty advocate’ (see *infra*, nr. (14)), “*gave in to sustained bureaucratic pressure and authorized the first two DPJ executions [on 28] July 2010*”<sup>13</sup>. Afterwards, a moratorium of 20 months followed, which is a substantial achievement. But in 2012, seven executions were carried out by the DPJ because it “*eventually came under strong pressure [...] in the buildup to the [December] general election*”<sup>14,15</sup> It must be noted that, since public support favours the death penalty (see *infra*, nr. (25) *et seq.*), “*it [is] politically costly to consider abolition, and offers an easy excuse to continue with executions*”<sup>16</sup>. P. BACON *et al.* write that “[*t*]he situation in Japan has fluctuated somewhat in recent years, but there seems to be little chance of an official moratorium or abolition of the death penalty in the near future”<sup>17</sup>.

(5) The example of the DPJ shows that “*whilst a strong link between the perpetual dominance of the LDP and retention of capital punishment can be observed*”<sup>18</sup>, a shift in the ruling party does not necessarily mean a change in the death penalty policy in Japan. As will be discussed below (see *infra*, nr. (7) *et seq.*), this can partly be explained by the power of the employed-for-life bureaucrats.<sup>19</sup>

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<sup>11</sup> D.T. JOHNSON, “Why does Japan retain the Death Penalty?”, *o.c.*, 142.

<sup>12</sup> M. OBARA, *o.c.*, 108 (emphasis added).

<sup>13</sup> P. BACON, M. REITERER and D. VANOVERBEKE, *o.c.*, 106; FIDH, *Prison and the Death Penalty in Japan*, Stakeholder’s Information Report for the 14<sup>th</sup> session of the Working Group on the UPR, April 2012, <http://bit.ly/2BVbEY7>, 9.

<sup>14</sup> *Ibid.*, 107.

<sup>15</sup> *Ibid.*, 106-107.

<sup>16</sup> P. BACON, “EU-Japan Relations: Civilian Power and the Domestication/Localization of Human Rights” in P. BACON, H. MAYER and H. NAKAMURA (eds.), *The European Union and Japan. A New Chapter in Civilian Power Cooperation?*, Farnham, Ashgate, 2015, (185) 192.

<sup>17</sup> P. BACON, M. REITERER and D. VANOVERBEKE, *o.c.*, 105.

<sup>18</sup> M. OBARA, *o.c.*, 109.

<sup>19</sup> *Ibid.*

## 1.2. DEATH PENALTY: A HIGHLY BUREAUCRATIC-LED POLICY

(6) In her book ‘Japanese Moratorium on the Death Penalty’ (2016), M. OBARA applies the Iron Triangle to the death penalty policy in Japan. She subdivides the first actor – the bureaucrats – into bureaucrats of the Ministry of Justice and the Public Prosecutor’s Office; the second actor – ‘politicians of the ruling party’ – consists of the Ministers of Justice and politicians of the LDP between 1955 and 2009 and the Democratic Party of Japan (DPJ) for the period 2009-2012.<sup>20</sup>

(7) The conservative ruling party LDP, is pro-death-penalty in nature. We might thus assume that LDP politicians possess a significant power in the death penalty policy. “*However, important decisions regarding this policy are made by bureaucrats often irrespective of the views of party politicians. [...] [A]pproximately 80 per cent of all legislation passed is drafted by bureaucrats, and Diet members merely rubber-stamp the documents*”<sup>21,22</sup> Death penalty is a highly bureaucratic-led policy.<sup>23</sup>

(8) One must not forget that bureaucrats are usually employed for life, while LDP cabinet ministers often annually rotate their jobs, so that they do not have enough time to have a real impact on a particular ministry. However, this is not the only reason for the importance of the bureaucracy, as other factors can be listed too. M. OBARA gives four other reasons: Firstly, “*the fluidity of bureaucrats within the triad [and] their power relations with the business community*”<sup>24</sup>. Through the system of *Amakudari*<sup>25</sup>, bureaucrats often hold important posts in the business community and the ruling party (LDP). Also, about 25 per cent of LDP Diet members were bureaucrats in the past. Thus, they try to represent the interests of their former ministry to maintain good relations with their former colleagues.<sup>26</sup> Secondly, “*the standardized educational background of bureaucrats, [thirdly] the Japanese decision-making process, which prefers group consensus, [and finally] the continuous domination of the LDP*”<sup>27</sup> (cf. *supra*, nr. (6)). We will not analyze these four reasons further.

In what follows, we examine directly the role of bureaucracy through the Public Prosecutor’s Office and the Ministry of Justice in the death penalty policy. It will become clear that, of the two, the former plays a much more significant role.

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<sup>20</sup> *Ibid.*, 11, 12 and 15.

<sup>21</sup> M. OBARA, *o.c.*, 49.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, 12.

<sup>24</sup> *Ibid.*, 16.

<sup>25</sup> “*Amakudari —meaning descent from heaven—is an institutional practice where senior Japanese bureaucrats are plucked from the civil service and installed in cushy executive positions within the public or private sector. [...] [A]makudari comes into play when the bureaucrats approach retirement age and must be compensated for all their ‘hard’ work*” (THE DIPLOMAT, *The Problem with Amakudari*, 23 March 2011, <http://bit.ly/2CKxzi1>).

<sup>26</sup> M. OBARA, *o.c.*, 16.

<sup>27</sup> *Ibid.*, 16-17.

## 1.3. THE PUBLIC PROSECUTOR'S OFFICE

(9) The Public Prosecutor's Office (hereafter: 'PPO') is a subordinate institution within the Ministry of Justice. However, in practice, they have a huge amount of power.<sup>28</sup> Art. 38 of the Japan's Constitution specifies:

*"No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.*

*No person shall be convicted or punished in cases where the only proof against him is his own confession"*<sup>29</sup>.

(10) Despite this provision, Japan is a paradise for prosecutors, because "prosecutors have virtually unlimited discretion in deciding whether or not to prosecute. [...] [W]hatever they decide, they are free to go by their own rules [...] regardless of evidence in hand or their personal belief regarding the suspect's guilt"<sup>30</sup>.<sup>31</sup> Once a prosecutor brings a charge, he will do everything within his power to obtain a conviction and a death sentence in every case he seeks it. This includes trying to gain forced confessions to solve their case efficiently, which results in miscarriages of justice.<sup>32</sup> D.T. JOHNSON writes that prosecutors have "a desire to save face, and a tendency toward tunnel vision which leads them to dismiss evidence that is inconsistent with their preferred outcome ('guilty!') as irrelevant, incredible, or unreliable"<sup>33</sup>. "Doubt is a skill they still need to learn, and error is a reality they must learn to acknowledge..."<sup>34</sup>. No wonder Japan is characterized by an extremely high conviction rate (about 97.3 percent; and even above 99 per cent before the introduction of the Lay Judge System in 2009).<sup>35</sup>

Another important element is that, according to art. 472 of the Code of Criminal Procedure, "[t]he 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 [...]"<sup>36</sup>. In other words, they are "responsible for the preparation of documents that notify the Minister of Justice who is to be executed next and when"<sup>37</sup>. Moreover, prosecutors have almost a monopoly on important posts in the Ministry of

<sup>28</sup> *Ibid.*, 26.

<sup>29</sup> Art. 38 Japan's Constitution of 1946.

<sup>30</sup> M. OBARA, *o.c.*, 26.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*, 28 and 32.

<sup>33</sup> D.T. JOHNSON, "Wrongful Convictions and the Culture of Denial in Japanese Criminal Justice", *The Asia-Pacific Journal* 2015, Vol. 13, Issue 6, Number 3, (1) 7; M. CARNEY and D.T. JOHNSON, "Will Wrongful Convictions Be a Catalyst for Change in Japanese Criminal Justice?", *The Asia-Pacific Journal* 2015, Vol. 13, Issue 6, Number 1, (1) 3 (hereafter: 'M. CARNEY and D.T. JOHNSON, *l.c.*').

<sup>34</sup> M. CARNEY and D.T. JOHNSON, *l.c.*, 3.

<sup>35</sup> L. AMBLER, "The People Decide: The Effect of the Introduction of the Quasi-Jury System (Saiban-In Seido) on the Death Penalty in Japan", *Northwestern Journal of International Human Rights* 2008, Vol. 6, Issue 1, (1) 19-20; D. VANOVERBEKE, *Juries in the Japanese Legal System. The continuing struggle for citizen participation and democracy*, New York, Routledge, 2015, 157 (hereafter: 'D. VANOVERBEKE, *Juries in the Japanese Legal System*').

<sup>36</sup> Art. 472 Code of Criminal Procedure, accessed via <http://bit.ly/2yLvFKS>.

<sup>37</sup> M. OBARA, *o.c.*, 32 (emphasis added).

Justice, such as the positions of Director-General of Criminal Affairs Bureau and the Correction Bureau in the Ministry of Justice. Those are often occupied by former prosecutors.<sup>38</sup>

#### 1.4. THE MINISTRY OF JUSTICE

**(11)** The Ministers of Justice have, contrary to what one might think, a more limited role compared to bureaucrats in the Ministry of Justice and the PPO.<sup>39</sup> At first glance, however, Ministers of Justice seem to influence death penalty policy. Scholars tend to classify Ministers of Justice in three categories: ‘doves’, ‘hawks’ and the ‘in-betweens’. The doves are abolitionists who refuse to authorize executions due to personal (religious) convictions. The hawks are retentionists and authorize executions. The in-betweens are opposed to the death penalty, but nevertheless authorize executions.<sup>40</sup>

**(12)** Typical examples of doves are EDA SATSUKI (14 Januari 2011 – 2 September 2011) and HIRAOKA HIDEO (2 September 2011 – 13 Januari 2012). They interpret art. 475<sup>41</sup> of the Code of Criminal Procedure as an advisory provision and thus not binding, so that to them there is no legal problem in not signing execution orders. They both signed no execution orders.<sup>42</sup> Begin 1990’s, MEGUMU SATO, a former Buddhist priest, also refused to sign execution orders, citing his faith.<sup>43</sup>

**(13)** Prime examples of hawks include among others HATOYAMA KUNIO and OGAWA TOSHIO. As Minister of Justice (27 August 2007 – 26 September 2008), HATOYAMA authorized a record number of 13 executions in less than a year, deserving him the nickname *Shinigami* (God of Death).<sup>44</sup> He suggested that “*the executions process should be like a ‘conveyor belt’ [...] and that the Minister [of Justice] should not be allowed to turn the switch off*”<sup>45</sup>. At the same time however, at a session of the House of Representatives Judicial Affairs Committee in 2007, he said: “*Honestly speaking, I have a feeling that a more humane reposeful way of execution than hanging may be desirable*”<sup>46,47</sup>. OGAWA TOSHIO (13 January 2012 – 4 June 2012) authorized three executions in about 5 months’ time, and felt it

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<sup>38</sup> *Ibid.*, 33.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, 33 and 36.

<sup>41</sup> Article 475 (1) Code of Criminal Procedure provides: “*Execution of the death penalty shall be ordered by the Minister of Justice*” (accessed via <http://bit.ly/2yLvFKS>).

<sup>42</sup> *Ibid.*, 36, 37 and 38.

<sup>43</sup> S. BAE, “International Norms, Domestic Politics, and the Death Penalty: Comparing Japan, South Korea, and Taiwan”, *Comparative Politics* 2011, Vol. 44, Number 1, (44) 46.

<sup>44</sup> FIDH, *EU-Japan Summit: The death penalty in Japan should be at the top of the agenda*, 2009, <http://bit.ly/2yLBFTU>, 2; M. OBARA, *o.c.*, 38.

<sup>45</sup> D.T. JOHNSON, “Covering Capital Punishment: Murder Trials and the Media in Japan”, *The Asia-Pacific Journal* 2012, Vol. 10, Issue 22, Number 1, (1) 1.

<sup>46</sup> D. MCNEILL and YOMIURI SHIMBUN, “Unmasking Capital Punishment: A Wave of Executions, The Yomiuri and Japan’s Death Penalty”, *The Asia-Pacific Journal* 2008, Vol. 6, Issue 11, (1) 9.

<sup>47</sup> *Ibid.*

was part of his legal responsibility as Minister of Justice to authorize executions. He stated: “*It’s a very hard duty, but I want to take responsibility (for authorizing execution). [...] It isn’t in line with the spirit of the law for the number of death row inmates to continue increasing without executions*”<sup>48,49</sup>

**(14)** Finally, CHIBA KEIKO (16 September 2009 – 17 September 2010) can be described as an ‘in-between’. CHIBA was known as an outspoken anti-death-penalty advocate. She was a member of the Parliamentary League for the Abolition of the death penalty, but resigned when she got appointed in 2009. She avoided signing executions for nearly a year.<sup>50</sup> On 28 July 2010 however, two persons were hanged. CHIBA personally attended the executions because she wanted to witness firsthand the executions she had authorized. This was the first time for a Minister of Justice.<sup>51</sup> CHIBA subsequently created a death penalty study group to discern what should be maintained or changed. However, eventually nothing changed.<sup>52</sup>

**(15)** From the analysis of these three categories of Ministers of Justice, it seems that personal convictions play a role. The reality is that in fact they cannot influence death penalty policy in the long run. “[*I*]t is bureaucrats in the Ministry of Justice, most of whom are former prosecutors with a substantial personal network within the Ministry, who exert decisive influence”<sup>53</sup>. The reason for this is that Ministers of Justice typically do not stay long enough in office – one year on average – to stamp their ideas within the Ministry. The actions of CHIBA illustrate this: she created a study group, allowed access to the press to the gallows in Tokyo; disclosed information to the public officially. But she has not been able to set long term goals such as implementing a moratorium period, the introduction of alternative penalties, or abolition of the death penalty. Indeed, later, Minister OGAWA (see *supra*, nr. (13)) “*sought to reframe CHIBA’s actions, claiming that the original purpose of the internal study group within the Ministry of Justice must have been to simply discuss the abolition and retention of capital punishment or to recognise the current situation, and not necessarily to create an alternative system*”<sup>54</sup>. The same can be said about EDA (see *supra*, nr. (12)), who failed in promoting abolitionism within the Ministry of Justice, because of his short term.<sup>55</sup> M. OBARA writes: “*As a result, most of the Ministers naturally tend to focus on following precedents during their terms. In other words, they tend to proclaim the retention of capital punishment on legal, domestic and cultural grounds, and complete their official ‘duty’*”

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<sup>48</sup> JAPAN TIMES, “New Minister won’t shirk from hangings”, *Japan Times* 15 January 2012, <http://bit.ly/2ziqhCE>.

<sup>49</sup> M. OBARA, *o.c.*, 39.

<sup>50</sup> M. OBARA, *o.c.*, 40; M. TAGUSARI, “Death Penalty in Japan”, *East Asian Law Journal* 2010, Vol. 1, Number 2, (93) 103; see *supra*, nr. (4).

<sup>51</sup> D.T. JOHNSON, “Retention and Reform in Japanese Capital Punishment”, *University of Michigan Journal of Law Reform* 2016, Vol. 49, Issue 4, (853) 866 (hereafter: ‘D.T. JOHNSON, *l.c.*’); M. OBARA, *o.c.*, 40.

<sup>52</sup> D.T. JOHNSON, *l.c.*, 866.

<sup>53</sup> M. OBARA, *o.c.*, 41.

<sup>54</sup> *Ibid.*

<sup>55</sup> D.T. JOHNSON, *l.c.*, 866; M. OBARA, *o.c.*, 40-41.

or authorise executions in a business-like manner before the end of the calendar year. Consequently, even if the personal characteristics of Ministers of Justice may appear to determine the future course of capital punishment policy, it is important to acknowledge that they can only play a limited role, being constrained within the institutional framework where the bureaucrats operate with a substantial network over a long period”<sup>56</sup>. This is confirmed by J. HERRMANN: “Often the Ministers do not seem to take the initiative in issuing a death warrant. Instead, they wait for their subordinates in the ministry to present the case. Therefore, it may not always be the Minister but a subordinate working somewhere in the hierarchy of the ministry who plays the most important role in the decision on life and death”<sup>57</sup>.

Of course, this is only one side of the story. As will be discussed in the second part of the paper, other factors play a role too.

### 1.5. JAPAN FEDERATION OF BAR ASSOCIATIONS

**(16)** The Japan Federation of Bar Associations (hereafter: ‘JFBA’) represents 52 local bar associations, 1095 legal profession corporations and counts 38.820 members (1 December 2017).<sup>58</sup> For many years now, the JFBA “has repeatedly requested the Ministry of Justice to suspend executions until the national debate over retention or abolition of the death penalty is exhausted”<sup>59</sup>. For example, on 22 November 2002, the JFBA issued the ‘Recommendations on the Capital Punishment System’. In October 2004, it adopted a ‘Resolution Requesting Establishment of the Capital Punishment Suspension Act, Disclosure of Information on the Capital Punishment System and Establishment of a Research Committee on Capital Punishment Issues’, “so that the issue of whether to retain or abolish capital punishment might be discussed thoroughly and extensively by the public and so that necessary improvement or reforms might be made”<sup>60</sup>. On 13 March 2008, it adopted the ‘JFBA Bill Suspending Capital Punishment’.<sup>61</sup>

More recently, on 7 October 2011, it adopted a Declaration (also known as the *Takamatsu Declaration*) in which it wrote to the government that “cross-society discussion on the abolition [of the death penalty] should immediately be commenced and executions should be suspended while the issue is being discussed”<sup>62</sup>.<sup>63</sup> Exactly five years later, on 7 October 2016, the JFBA adopted a new formal Declaration at the 59th JFBA Convention on the Protection of Human Rights. This Declaration was welcomed internationally. In an article, the *Japan Times* described it as a

<sup>56</sup> M. OBARA, *o.c.*, 41 (emphasis added).

<sup>57</sup> J. HERRMANN, “The Death Penalty in Japan: An Absurd Punishment”, *Brooklyn Law Review* 2002, (827) 846.

<sup>58</sup> JFBA, *What is the JFBA*, <http://bit.ly/2D4vEoG>.

<sup>59</sup> JFBA, *Statement on Executions of Death Penalty*, 10 April 2008, <http://bit.ly/2yYHpK8>.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> JFBA, *Declaration Calling for Establishment of Measures for Rehabilitation of Convicted Persons and Cross-Society Discussion on Abolition of the Death Penalty*, 7 October 2011, <http://bit.ly/1rnQX94>.

<sup>63</sup> JFBA, *Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty*, 7 October 2016, <http://bit.ly/2AHxACe> (hereafter: ‘JFBA, Declaration of 7 October 2016’)



'historical move'.<sup>64</sup> The JFBA sent a strong message by calling for "*the abolition of the death penalty by year 2020, when the UN and Congress on Crime Prevention and Criminal Justice will be held in Japan*"<sup>65</sup>. It urged to consider life imprisonment without parole as an alternative for the death penalty. In its Declaration, the JFBA especially referred to the international trend toward abolition, the serious risks of miscarriages of justice and the irrevocable character of the death penalty. For the first time, it expressly "*declare[d] itself committed to the realization of such reform*"<sup>66,67</sup>. As can be seen, JFBA has persistently made efforts to tackle the death penalty issues. It remains to be seen whether its commitment to the abolition of the death penalty will lead to punctuation.

#### 1.6. NGO'S AND THE ASSOCIATION OF FORMER LAY JUDGES

(17) NGO's and pressure groups appear to have a limited role on the issue of the death penalty.<sup>68</sup> There are several reasons for this. Firstly, in general, impartiality seems to be an issue, since the Japanese government tends to influence the goals of NGO's through the practice of *Amakudari* (see *supra*, fn. 25) or by financial support. Secondly, "*human rights NGO's in general and anti-death NGO's do not enjoy similar prestige when it comes to participating in Japanese human rights policy, and the Japanese government tends to resist their pressures*"<sup>69</sup>. Thirdly, they are not granted official consultation status. And even though Amnesty International works closely with national anti-death-penalty NGO's like *Forum 90* by issuing statements or recommendations in both names for example, the Japanese government does not make any formal comments on them, except for direct communication at seminars led by NGO's.<sup>70</sup> As M. OBARA says, "*[d]omestic anti-death-penalty NGOs, in particular, are often seen by the Japanese government as representing a tiny fraction of public opinion, since governmental opinion poll results indicate a wide public support for the capital punishment system*"<sup>71</sup>. As a matter of fact, most NGO's workers recognize that they do not have any impact. Thus, "*whilst international anti-death-penalty bodies tend to try to urge the Japanese government to abolish capital punishment by applying pressure with reference to global trends, domestic anti-death-penalty NGOs tend to focus on influencing public opinion through grassroots activities*"<sup>72</sup>. A final reason is the lack of cooperation between anti-death-penalty NGO's and the business community. It is indeed doubtful whether "*proclaiming abolitionism in companies' corporate principles would help [the interests of the business community]. [...] Provision of funding to*

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<sup>64</sup> A. WANKLYN, "In historic move, Japan's legal community takes stand against death penalty", *Japan Times* 7 October 2016, <http://bit.ly/2Bz4y92>.

<sup>65</sup> JFBA, *Declaration of 7 October 2016*.

<sup>66</sup> *Ibid.*

<sup>67</sup> P. BACON, M. REITERER and D. VANOVERBEKE, *o.c.*, 104; JFBA, *Declaration of 7 October 2016*.

<sup>68</sup> M. OBARA, *o.c.*, 42.

<sup>69</sup> *Ibid.*, 45.

<sup>70</sup> *Ibid.*, 46.

<sup>71</sup> *Ibid.* (emphasis added).

<sup>72</sup> *Ibid.*, 47.

*anti-death-penalty NGOs, which are not in favour of governmental policy, would undermine companies' relations with the government*"<sup>73, 74</sup>

(18) Following the creation of the Lay Judge System (2009) in Japan, the 'Association of Former Lay Judges' was created. In mid-February 2014, twenty former lay judges submitted a petition to Minister of Justice TANIGAKI SADAKAZU, calling for a moratorium on the executions of the death penalty, greater disclosure of information and a wider discussion on the death penalty. Former lay judge TAGUCHI MASAYOSHI, one of the founders of the group, said that some of the lay judges who handed down death sentences are "feeling guilty that they will sooner or later become 'indirect murderers' of human beings"<sup>75</sup>. A heavy psychological and moral burden is indeed placed on them.<sup>76</sup> Former lay judge Mr. YONEZAWA for example, remembers: "[When I] told my friend that I rendered a death penalty, his reaction was 'you killed someone?'... I did not think that way but since I was told this, I started to think that I indeed killed someone indirectly... I started to doubt whether this was right... Now I am opposed to the death penalty"<sup>77</sup>. In an article of 21 March 2014, the *Japan Times* wrote: "The petition seems reasonable and [Minister of Justice] Tanigaki should respond with sincerity"<sup>78</sup> and "[t]he Justice Ministry, the Supreme Court and other parties concerned should give serious consideration to these capital punishment issues"<sup>79</sup>. It is worth noting in that regard that OTANI NAOTO (65), 'the architect of Japan's Lay Judge System', is to become Supreme Court Chief Justice, as TERADA ITSURO (69) will retire as Chief Justice in January 2018.<sup>80</sup> In any case, involving citizens in the criminal procedure stimulates the media and forces many citizens to think more deeply about the death penalty. Discussion on the death penalty is definitely a positive development.<sup>81</sup> As D. VANOVERBEKE and T. SUAMI write, "[t]he judicial reforms in Japan are [...] an ongoing process that only gradually will lead to tangible results"<sup>82</sup>.

<sup>73</sup> *Ibid.*, 48.

<sup>74</sup> *Ibid.*

<sup>75</sup> JAPAN TIMES, "Lay judge's moral dilemma", *Japan Times* 21 March 2014, <http://bit.ly/2CF8ggt>.

<sup>76</sup> JAPAN TIMES, "Lay judge's moral dilemma", *Japan Times* 21 March 2014, <http://bit.ly/2CF8ggt>; JAPAN TIMES, "Lay judges torn by death penalty", *Japan Times* 30 May 2014, <http://bit.ly/2CFALuu>; D. VANOVERBEKE, *Juries in the Japanese Legal System*, 1, 179 and 190.

<sup>77</sup> D. VANOVERBEKE, *Juries in the Japanese Legal System*, 178.

<sup>78</sup> JAPAN TIMES, "Lay judge's moral dilemma", *Japan Times* 21 March 2014, <http://bit.ly/2CF8ggt>.

<sup>79</sup> JAPAN TIMES, "Improving the lay judge system", *Japan Times* 5 May 2014, <http://bit.ly/2z6r7it>.

<sup>80</sup> JAPAN TIMES, "Architect of Japan's lay judge system to become chief justice at Supreme Court", *Japan Times* 7 December 2017, <http://bit.ly/2D8gwXA>.

<sup>81</sup> D.T. JOHNSON, "Ending the secret life of the death penalty", *Japan Times* 26 September 2010, <http://bit.ly/2BbsNZY>; D. VANOVERBEKE and T. SUAMI, "Reforms of the judiciary in Japan at the start of the twenty-first century: initial assessment of an ongoing process" in D. VANOVERBEKE, J. MAESSCHALCK, D. NELKEN and S. PARMENTIER (eds.), *The Changing Role of Law in Japan. Empirical Studies in Culture, Society and Policy Making*, Cheltenham, Edward Elgar, 2014, (66) 77 (hereafter: 'D. VANOVERBEKE and T. SUAMI, o.c.').

<sup>82</sup> D. VANOVERBEKE and T. SUAMI, o.c., (66) 77.

## 2. WEAK MACRO-POLITICAL ATTENTION

A reason for the retention of the death penalty in Japan is the weak macro-political attention for it. This can be explained by several reasons.<sup>83</sup>

### 2.1. IMPORTANCE OF DISCOURSE AND PERCEPTION

**(19)** In 1999, INO SHIORI was killed in an atrocious way by a stalker.<sup>84</sup> Other incidents like this took place in the second half of the 1990's.<sup>85</sup> The National Police Agency was criticized by the media for this. The combination of the incidents, the reaction of the media and the public led to the adoption by the political parties of a legislation against stalking, to force the police to act more proactively against stalking.<sup>86</sup> The proactive approach of the police in turn led to more registrations of crimes in the beginning of the 21<sup>st</sup> century. The number of unresolved cases increased, because more attention was given to crimes that are more difficult to solve, like stalking, corruption, domestic violence, sexual harassment... Because of the change in crime policy by the National Policy Agency, the media that systematically read the statistics mistakenly, gave the impression that there was an increase in crime. Additionally, they more and more used the term 'heinous crimes' (*kyôaku hanzaï*) – instead of 'crimes' (*hanzaï*) as they used to do until the mid-1990s. The increasing consultations of citizens with the police and the open-door actions where interpreted by the police as evidence of increase in crime in Japan. HAMAI KOICHI described this as the 'myth of increasing crime'.<sup>87</sup> This myth was mainly caused by the media and the "concern of the police with the perception of the public and of a changed discourse on the need for proactive repression of crime [...]"<sup>88</sup>. In 2003, crime even became a major topic in the general election campaign.<sup>89</sup>

**(20)** On the contrary, the death penalty has never received such macro-political attention.<sup>90</sup> The media are partly responsible for this (*infra*, nr. (21)). Indeed, "[t]he media play an important role in paving the way for an environment that makes this political discussion [on the death penalty] possible"<sup>91</sup>. The lack of interest in

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<sup>83</sup> M. REITERER and D. VANOVERBEKE, "Japan and the Death Penalty from a European Perspective: At a Crossroad to a Changing Discourse on Human Rights?" in W. BENEDEK, F. BENOIT-ROHMER, W. KARL, and M. NOWAK (eds.), *European Yearbook on Human Rights* 2011, Antwerp, Intersentia, 2011, (267) 277 (hereafter: 'M. REITERER and D. VANOVERBEKE, *o.c.*').

<sup>84</sup> D. VANOVERBEKE, *Recht en instellingen in Japan: Actuele thema's in een historische context*, Leuven, Acco, 2010, 290 (hereafter: 'D. VANOVERBEKE, *Recht en instellingen in Japan*').

<sup>85</sup> M. REITERER and D. VANOVERBEKE, *o.c.*, 277

<sup>86</sup> D. VANOVERBEKE, *o.c.*, 290-291.

<sup>87</sup> M. REITERER and D. VANOVERBEKE, *o.c.*, 277; D. VANOVERBEKE, *Recht en instellingen in Japan*, 291; D. VANOVERBEKE, *Juries in the Japanese Legal System*, 160.

<sup>88</sup> D. VANOVERBEKE, *Juries in the Japanese Legal System*, 160 (emphasis added).

<sup>89</sup> M. REITERER and D. VANOVERBEKE, *o.c.*, 277-278.

<sup>90</sup> *Ibid.*, 277.

<sup>91</sup> M. REITERER and D. VANOVERBEKE, *o.c.*, 278.

the death penalty policy is also reflected in the relatively scarce scientific publications on the topic. Moreover, also citizens don't find it a policy priority. It is our view that, by bringing the death penalty issue to the table, the media – the *fourth power* – can have a real impact on citizens and society (by extension), and therefore on politicians. As Japanese lawyer OGAWARA YUJI says: “*Politicians listen to voters’ views*”<sup>92,93</sup>

## 2.2. AVOIDANCE OF THE PRESS

(21) According to M. YAMAGUSHI, “*one of the reasons why Japan is far behind the rest of the world in abolishing the death penalty is because of the way the media spins the news*”<sup>94</sup>. M. KITA and D.T. JOHNSON conducted a content analysis study of two major newspapers, *Asahi* and *Nikkei*, on the topic of death penalty. Their research, that lasted from 1 January 2007 to 30 June 2012, seeks to examine “*how two of Japan’s largest newspapers frame death penalty issues*”<sup>95</sup>. Their premise is “*that how people and institutions communicate about capital punishment is an important subject of study*”<sup>96</sup> and that “[*Japan’s*] *huge national newspapers do much of the agenda setting for political and policy issues*”<sup>97,98</sup>

(22) One of the main findings of KITA and JOHNSON is that the Japanese newspapers avoid some death penalty issues. For example, the method of execution (*i.e.* hanging) is rarely seriously examined in the two newspapers.<sup>99</sup> This can be partly explained by the prohibition for the press and family members to attend executions. But “*even when a defense lawyer in Osaka directly challenged the constitutionality of hanging in Japan for the first time in 50 years, the media showed little interest in the case*”<sup>100</sup>. Similarly, in comparison to the introduction of the Law Judge System in 2009 which has received a lot of attention in the press, “*there were relatively few substantial comments about capital punishment from lay judges published by Asahi and Nikkei in the first 3 years after the new trial system started*”<sup>101</sup>. The same can be said about human rights and miscarriages of justice, which prosecutors and judges rarely mention, contrary to the international trend. According to the authors, “*the most striking form of avoidance concerns the number of Asahi and Nikkei ‘editorials’ (shasetsu) about capital punishment*

<sup>92</sup> S. JIANG, R. PILOT and T. SAITO, “Why Japanese support the Death Penalty?”, *International Criminal Justice Review* 2010, Vol. 20, Issue 3, (302) 305.

<sup>93</sup> *Ibid.*

<sup>94</sup> M. YAMAGUSHI, “Death Penalty and the Media”, *The Asia-Pacific Journal* 2004, Vol. 2, Issue 2, (1) 3.

<sup>95</sup> M. KITA and D.T. JOHNSON, “Framing Capital Punishment in Japan: Avoidance, Ambivalence, and Atonement”, *Asian Criminology* 2014, Vol. 9, (221) 222 (hereafter: ‘M. KITA *et al.*, *l.c.*’).

<sup>96</sup> M. KITA *et al.*, *l.c.*, 222.

<sup>97</sup> *Ibid.*, 223 (emphasis added).

<sup>98</sup> *Ibid.*, 221-222.

<sup>99</sup> *Ibid.*, 229-230; *cf.* the survey conducted by M. SATO and P. BACON (see *infra*, nr. (26) *et seq.*): only 51% of the respondents knew that executions are carried out by hanging in Japan (see M. SATO and P. BACON, *o.c.*, 35-36).

<sup>100</sup> M. KITA *et al.*, *l.c.*, 230.

<sup>101</sup> *Ibid.*, 230.

that were published [...] in the period covered by the study”<sup>102</sup>. They analyzed about 4000 editorials over the period from January 2007 to June 2012, yet no single editorial focused on the death penalty. They contacted the editor of *Asahi* by email about this.<sup>103</sup> The editor’s reply reads as follows:

“When one reports on capital punishment, one understands just what an inhumane and meaningless criminal sanction it is and just how far behind world trends Japan is...But inside this newspaper there are still many people who cannot say ‘Japan should abolish the death penalty.’ At the same time, the mood (*kuki*) in *Asahi* means that we have to give due consideration to the fact that surveys show ‘more than 80 percent’ of the Japanese public support capital punishment. In principle, newspaper companies in Japan should lead the campaign for abolition of the death penalty, as some of their counterparts have done in the United States. But the present situation in Japan does not enable us to take those steps...The matter of *Asahi*’s editorials is as you describe. Although the death penalty problem ought to be a very important theme in Japan, we are not raising the issue in our editorials. It seems the causes [of this avoidance] are uncertainty about how to appeal to readers and difficulty reaching consensus among the editors of the newspaper”<sup>104</sup>.

(23) We can conclude from these words that there seems to be a vicious circle: newspapers think (rightfully or not) that there is majority support for the retention of the death penalty. Because of this, they are very careful and do not (openly) campaign for abolition. This only contributes to the secrecy around the death penalty and can explain the lack of discussion and knowledge (see e.g. fn. nr. 99) among readers of the newspapers (i.e. citizens) about the death penalty in Japan. And because of the lack of discussion and knowledge, the public opinion remains in favour of the death penalty...<sup>105</sup> As M. SATO and P. BACON point out, “the death penalty is a distant topic [for the majority of the public] that has little to do with their everyday life, and is not something they spend time contemplating”<sup>106</sup>. We can thus only regret “the unwillingness of newspapers to critique state killing in Japan”<sup>107</sup>: ‘Du choc des idées jaillit la lumière’ (NICOLAS BOILEAU).<sup>108</sup> According to KITA and JOHNSON, it has not so much to do with the inability to appeal to readers and reach consensus, as the *Asahi* editor says, but “with the perceived need to ‘sanitize’ coverage of this complex issue so as

<sup>102</sup> *Ibid.*, 230.

<sup>103</sup> *Ibid.*, 229-230.

<sup>104</sup> M. KITA *et al.*, *l.c.*, 230-231. The newspaper *Yomiuri* also considers the public opinion to be an important guideline. In an interview, TANAKA FUMIO of the *Yomiuri Shinbun*, said: “The *Yomiuri* proclaims itself to be independent from all forms of economic pressure and claims that it is public opinion that guides its editorial policy. To the extent that public opinion is favourable to the death penalty, the journal follows suit, without being overly zealous, and seeks neutrality” (See FIDH, *The Death Penalty in Japan: The Law of Silence*, 2008, <http://bit.ly/2kRz3Po>, 16 (emphasis added)).

<sup>105</sup> Cf. M. SATO, “Press Release June 16, 2009. A Japan-UK Deliberative Public Consultation Project has found that when Japanese citizens are provided with information and time to deliberate, they are likely to change their attitudes on the death penalty system”, *The Japan – UK Deliberative Public Consultation Project 2009*, 1: “[W]hen Japanese citizens are provided with information and time to deliberate, they are likely to change their attitudes on the death penalty system”.

<sup>106</sup> M. SATO and P. BACON, *o.c.*, 40.

<sup>107</sup> M. KITA *et al.*, *l.c.*, 231.

<sup>108</sup> <https://www.kuleuven.be/thomas/page/citaten/label/1846/>.

*not to alienate elites in government [...] – especially prosecutors in the Ministry of Justice, who largely ‘own’ this issue in Japan*<sup>109</sup>.

(24) Lastly, an important element to us seems to be that victim’s families are much more represented than the voices of offenders. Victims and family members account for 14% of the ‘speakers’ in newspapers, which is about twice the voices of offenders. Taking into account that 77% of victim’s frames favour death penalty, we think this may influence readers to favour it too.<sup>110</sup> Moreover, it can be argued that the press “*contributes to this feeling of retributive punishment that the general public shares with the victim’s families*”<sup>111</sup>.

### 2.3. PUBLIC OPINION MYTH<sup>112</sup>

(25) The Japanese government cites public support as a main argument to retain the death penalty. This position is for example mentioned clearly in paragraph 104 of Japan’s Sixth Period Report to the UN Human Rights Committee.<sup>113</sup> P. BACON *et al.* noted that this 2012 report is different from previous reports, in that it “*makes explicit reference to the Cabinet Office survey, citing statistics and quoting from the survey questions. We can therefore see that the Japanese government places a significant and increased emphasis on the Cabinet Office surveys, in defence of its position on the death penalty*”<sup>114, 115</sup>

(26) The surveys by the government have been carried out since 1956, approximately every five years. The last one was carried out in 2014. In 2015, M. SATO and P. BACON challenged the validity of the government’s survey(s) by conducting their own ‘parallel survey’. The 2014 government’s survey (N=1,826) asked the following question: “*Which of the following opinions concerning the death do you agree with?*”<sup>116</sup>, with as possible options and answers of the public: “*‘The death penalty should be abolished’ [10%]; ‘The death penalty is unavoidable’ [80%]; and ‘Don’t know/difficult to say’ [10%]*”<sup>117</sup>. The parallel survey (N=1,545) of SATO and BACON mirrored this question and obtained comparable results: 4% in favour of abolition, 83% thinking death penalty is unavoidable and 14% ‘Don’t know/difficult to say’.<sup>118</sup>

<sup>109</sup> M. KITA *et al.*, *l.c.*, 231.

<sup>110</sup> *Ibid.*, 227, 232 and 234.

<sup>111</sup> M. YAMAGUSHI, “Death Penalty and the Media”, *The Asia-Pacific Journal* 2004, Vol. 2, Issue 2, (1) 1.

<sup>112</sup> Cf. the article of M. SATO and P. BACON, cited in fn. nr. 4 of this paper; their study appeared in the *Japan Times*: K. HIRANO, “Public support for death penalty not overwhelming, researchers say”, *Japan Times* 16 September 2015, <http://bit.ly/2CNomVo>.

<sup>113</sup> P. BACON, M. REITERER and D. VANOVERBEKE, *o.c.*, 108; M. SATO, *The Death Penalty in Japan. Will the Public Tolerate Abolition?*, New York, Springer, 2011, 23.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> M. SATO and P. BACON, *o.c.*, 24.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*, 14, 17 and 24.

(27) As a second step, the parallel survey asked more nuanced questions with more nuanced answers to them possible: “*People have various opinions about the death penalty. Do you think that it should be kept as a form of criminal penalty or do you think it should be abolished?*”<sup>119</sup>. The options and answers of the public were: “‘*Should definitely be kept*’ (27%); ‘*Should probably be kept*’ (46%); ‘*Cannot say*’ (20%); ‘*Should probably be abolished*’ (6%); and ‘*Should definitely be abolished*’ (2%)”<sup>120</sup>. The authors write: “*What makes this finding significant is that these are the same respondents who answered the government survey question – the same 83 per cent majority who considered the death penalty to be unavoidable. This is evidence that the current government-survey question does not adequately capture the degree of support for the death penalty. Behind the supposed majority support lies a minority of respondents who are really committed to keeping the death penalty. This calls into question what the government is actually measuring, and on what basis the execution of prisoners is being justified*”<sup>121,122</sup>. We are not going to discuss the whole parallel survey in this work, but we think it is nevertheless important to shortly highlight the main findings, which are:

- “*behind the majority public support, the same majority would be happy to accept abolition if the government decided to abolish the death penalty*”<sup>123</sup>;
- “*retention is a default position to fall back on, living in a retentionist state with a low crime rate*”<sup>124</sup>;
- “*the Japanese public possesses the capacity and flexibility to embrace abolition*”<sup>125</sup>;
- “*Japan has the death penalty not because the general public is clamouring for its retention, but rather because the government has not yet taken steps to understand fully the nature of public opinion on the subject. Were the government to change its stance on the death penalty, there is reliable evidence that its citizens would follow suit*”<sup>126</sup>.

In July 2018, thirteen Aum Shinrikyo cult members were executed. They were hanged for committing (among others) the sarin gas attack in the Tokyo subway system in 1995.<sup>127</sup> Asahi Shimbun, a major Japanese newspaper, conducted a survey in August 2018 to measure the Japanese citizens’ support for the death penalty one month after those executions. The survey was conducted online and lasted for two weeks.

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<sup>119</sup> *Ibid.*, 25.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*, 24-25 (emphasis added).

<sup>123</sup> *Ibid.*, 40.

<sup>124</sup> *Ibid.*

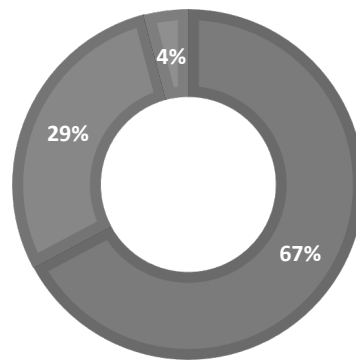
<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> S. MURAKAMI, “Japan sends last six Aum death row inmates to the gallows”, *Japan Times* 26 July 2018, <https://bit.ly/2A2AWBW>.

## GENDER OF RESPONDENTS

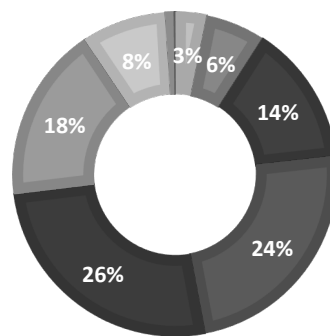
■ Men ■ Women ■ Other/Undecided



Source: <https://www.asahi.com/opinion/forum/076/>

## AGE OF RESPONDENTS

■ < 10 ■ 10's ■ 20's ■ 30's ■ 40's ■ 50's ■ 60's ■ 70's ■ 80's ■ < 90



Source: <https://www.asahi.com/opinion/forum/076/>

In total, 2051 respondents took part. Of the respondents, men were most represented (67.7%), followed by women (28.7%) and others/undecided (4.1%).<sup>128</sup> To the question “Do you think Japan needs the death penalty as a

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<sup>128</sup> ASAHI SHIMBUN, *How do you think about the death penalty?* [死刑、どう考える?], <https://www.asahi.com/opinion/forum/076/>.



criminal penalty?" [あなたは、日本に死刑という刑罰が必要だと思いますか?], the answers were as follows:

Absolutely yes [絶対にあったほうがよい]	977 votes	47.6 %
If I had to choose, I'd say rather yes [どちらかといえば、あったほうがよい]	237 votes	11.6%
Neither [どちらともいえない]	61 votes	3.0%
If I had to choose, I'd say rather no [どちらかといえば、廃止すべきだ]	200 votes	9.8%
Absolutely no [絶対に廃止すべきだ]	576 votes	28.1%

Source: <https://www.asahi.com/opinion/forum/076/>

The results of the Asahi Shimbun survey are interesting in two ways. First, they are recent – in comparison to the governmental survey and the parallel survey, which were conducted respectively 4 and 3 years ago. Secondly, the new results differ from both the governmental survey as well as the alternative survey. However, still an important majority of the Japanese seems to support or somewhat support the death penalty. The possible answers respondents could choose from in the Asahi Shimbun survey are more nuanced than in the governmental survey, yet it is impossible to say how representative the new numbers are for the entire population. Also, it is difficult to say whether the thirteen executions have had any (significant) impact on the Japanese people. The results certainly provide us with food for thought, but we should be careful not to give them more importance than they carry.

## CONCLUSION

The decision-making in the field of the death penalty policy has not changed for many decades. The death penalty policy is characterized by bureaucratic-led decision-making, with a lot of power for the Public Prosecutor's Office.<sup>129</sup> There has been no sufficient room for other actors in the policy venue to bring the death penalty on the macro-political agenda.

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<sup>129</sup> M. OBARA, *o.c.*, 49.

Furthermore, no actor has been able to shift the policy image. By conducting its own surveys, the government referred to major public support for the death penalty in order to keep the *status quo* going. The secretive approach of the government has protected the system from criticism.<sup>130</sup> This, combined with the lack of pressure from the media and the public, has contributed to the stability of the policy monopoly and the fact that the death penalty was never considered a high policy priority. While some fluctuations can be observed, especially with the JFBA and former lay judges becoming more proactive, it seems that there is no real potential for significant change to happen soon.<sup>131</sup>

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<sup>130</sup> D.T. JOHNSON, *l.c.*, 879; THE ECONOMIST, “Just plead guilty and die”, *The Economist* 13 March 2008, <http://econ.st/2zfTyOq>.

<sup>131</sup> *Cf. supra*, nr. (4) *in fine*.