Iwao Hakamada has been languishing on death row in Japan for 40 years. And just recently a court ruled he's going to stay there—even though the only evidence against him was a confession obtained under duress.

The trial system is being reformed—juries are about to be introduced and victims given a greater say...but defence lawyers aren't sure this is going to create a more transparent process.

Anita Barraud reports, a recent unsuccessful attempt to secure a retrial for a convicted murderer is providing the reformers with some powerful ammunition.

Anita Barraud: It's the stuff of a movie drama, the cast a former champion boxer, Iwao Hakamada, imprisoned for over 40 years, and a retired judge, wrestling with his conscience all this time. And there's a bloodstained pair of trousers, a vat of miso, intense police interrogations, and all the while a legal revolution whirling in the background.

Many think of Iwao Hakamada as the Japanese version of Reuben 'Hurricane' Carter. Reuben himself campaigns for Hakamada's release.

Late last month, the Japanese Supreme Court refused a plea for a re-trial of the former Bantamweight boxer, Iwao Hakamada. He was convicted of the murder of a prominent miso factory executive and his family back in 1966. The plea was organised by a dissenting judge, who presided over Hakamada's original trial. At the time that judge wasn't convinced Hakamada was the murderer, but he was over-ruled.

Both the now former judge and the boxer, who's on death row, are in their 70s.

Makoto Teranaka: We do have more than 100 prisoners on death row at the moment, but he's one of the oldest.

Anita Barraud: Makoto Teranaka is Secretary-General of Amnesty International in Japan. He says like most capital punishment cases, Mr Hakamada's conviction rested on a confession, gained after days of intense police interrogations, a system he believes raises serious human rights issues.

Makoto Teranaka: This interrogation system is a problem within the criminal justice system in Japan, and the police interrogations held within the police by detaining such people within the police station. This means that they are detained and they're interrogated for 24 hours. And 23 days is the maximum for one case to be detained. So this means they'll be kept in the police detention centre for up to 23 days for one case.

Anita Barraud: What's your understanding of the kinds of coercion that's used by the police to gain a confession?

Makoto Teranaka: Well it is sometimes tantamount to torture, or otherwise the heat treatment. And there's no safeguard which can protect suspects to be forced for the confessions.

Anita Barraud: The police in the case had other evidence: the bloodstained clothes they claim were worn by Mr Hakamada were found in a vat of miso. But were apparently the wrong trousers, they were too small. The weapon allegedly used to kill the family didn't match the wounds on the bodies. The Supreme Court said although there was evidence previously not presented, as well as serious questions about Hakamada's confession, there were still no new grounds for acquittal and the established decision stands.

Amnesty International's Makoto Teranaka believes Mr Hakamada's case highlights a serious flaw in Japan's criminal justice system. As well as a 99% conviction rate, the Japanese also have a 90% confession rate, and even if a confession is forced, it's accepted as admissible evidence.

Makoto Teranaka: Right. However in the trial in the Japanese court system, it is sometimes used, even the evidence that's coming out from the torture or the heat treatment, the court will say that it could be used as evidence. Therefore any sort of forced confession could be used by the court because it is a confession anyhow.

Anita Barraud: But see what does that say about the rules of evidence though in a court system, in a democratic society?

Makoto Teranaka: Yes, the rule of evidence does exist, but the court is defining and interpreting such evidence in such a manner.

Anita Barraud: The number of executions is increasing in Japan. Last year there were 10, and 23 death sentences were handed down. The last poll has 80% to 90% of the general public supporting the death penalty. But Iwao Hakamada's case and others like it, have ignited some serious soul-searching. In the past few years, four murder convictions have been overturned.

The voices of those claiming the Japanese criminal justice system is slow, primitive and unjust, are getting louder. Reforms are being introduced, including stronger victims' rights, more lawyers, and better court infrastructure. Police interviews are to be monitored now, although proposals to videotape interrogations have been rejected. But come next year, January 2009, the biggest reform of all will be introduced: a jury-style system, and the public's needing some persuasion.
[Translation]: That's why I don't want to be a juror.
How could someone hit that kid? Now he's dead...
That's exactly why I want you to be a juror, to take part in that process.
What? Why?
Because you have the characteristics to get to the truth.
Oh, knock if off.

Anita Barraud: Well the Japanese love a good soapie, but this excerpt from a juicy drama was produced for an unlikely client, the
Ministry of Justice, a government body more associated with crusty judges and heavily-bound law books. Using popular culture is
just one strategy in a massive public information campaign to explain and promote the biggest revolution in the justice system in
Japan's post-war history.
For a society used to bowing to authority, it's a hard sell, so they're getting plenty of time to adjust to the idea.

Kent Anderson: The public is very reluctant and a bit sceptical about the process. They're rather happy with just having the courts
go on in making decisions and they don't see much problem with that, and so about a 70% rate of people who don't want to be
called as jurors. In 2004 the law goes, the parliament is wise enough to realise it's going to face this problem so it gives five years
for the roll-out. So how do you go about it? And what they did is they formed a group which really is about a PR campaign. It's about
encouraging soaps about it, it's about encouraging longer; go on to the internet and you can see interactive video, and they've got
all these sites set up for kids and for worried elderly people and all these different things. You open up the glossy women's
magazines and there are two-page ads of women there saying how wonderful this is going to be.

Anita Barraud: Lawyer Kent Anderson, who's director of the Faculty of Asian Studies and head of the Japan Centre at ANU.
Kent says the quasi-jury system, called saibin-in seido, will be very different from juries here in Australia. It'll have elements of both
the Anglo Saxon and European models, with a uniquely Japanese flavour thrown in.

Kent Anderson: It is a combination of three professional judges and six lay people deliberating together from the traditional
Common Law side the jurors, or the saibin-in in this case, are picked for one time for one case by lotteries, like the way we pick our
jurors.
They'll sit up on a large bench that will have the three professional judges in the centre and three of the lay judges on both sides. So there'll be nine up there in front of the proceedings.

Anita Barraud: And unlike here in Australia, they will be able to ask questions of the accused and the witnesses?
Kent Anderson: That's absolutely right. Not only will they be able to ask questions of the accused and the witnesses, they lay
people will also be able to deliberate and cast votes on sentencing.

Anita Barraud: And will there be a sort of a lead judge and a lead juror – a kind of a foreman like we have here?
Kent Anderson: So there will be a lead judge. There won't be a lead juror. In many ways that's one of the things that responds to
criticisms we see in the Australian system, is that one of the jobs of the lead judge will be to make sure people understand the law,
and understand the law during deliberations. In the Australian system or the Common Law system, once we shut the door, we're not
really sure if people understand the law and apply it in the way it was meant to be applied.

Anita Barraud: Are there concerns with the juror system, the saibin-in system, that jurors may defer to the judge?
Kent Anderson: Yes, there are, absolutely. The Japanese Supreme Court, which administers this, is acutely aware of that risk and
that tension, and they're going to the best efforts they can to educate their staff, their judges, of that risk and try to give them as
much training as possible so that they don't dominate discussions and dominate deliberations, but actually facilitate and encourage
people who might otherwise be reluctant to participate. Whether that's successful on the ground, we won't find out until 2009.

Anita Barraud: Well what has been the reaction from the legal profession to these changes? Have there been any negative
rumblings?
Kent Anderson: So the Ministry of Justice, the Prosecutors and the Supreme Court originally were not very in favour of it. You can
understand from the Supreme Court's position, right now it's got a monopoly on making decisions like this and you would have to
share that. From the prosecutors, they've got a 99.9% confession rate, and this might underpin that. So there were rumblings from
them. From the bar itself, from the practising lawyers, they were one of the major pushers of this change to come about.

Commercial: We've all to take responsibility. The saibin-in is the system for us ordinary people to participate in the criminal justice
system. The regular people and the judges will combine to make a decision in a short and easy process. Your voice has weight.

Together we can contribute. We ask for your understanding and cooperation.

Anita Barraud: Lawyers have pushed for the saibin-in system, believing it will deliver a fairer hearing for their clients, a way to
make a dent in that 99% conviction rate.

But the lawyers have reservations about some other aspects of the reform package. Victims of crime are now allowed to participate
in some criminal trials. In cases of aggravated rape, manslaughter or murder, victims, their families or their lawyers will be allowed to
cross-examine witnesses and the accused.

Ayako Ikeda is the Deputy Secretary-General of the Japan Federation of Bar Associations.

Ayako Ikeda: The victim of the crime, they can sit down in a court as a sort of party, one party, probably very near to the
Prosecutor. They can question some kind of witness.
Anita Barraud: Or the defendant?
Ayako Ikeda: And defendant. They can have the possibility to make different assertions, the victim wants to emphasise some other points than the Prosecutor's and the defendant has to defend against it.

Anita Barraud: So in a sense the defendant has to sort of double defend, because they have to defend against the Prosecutor but also against the victim and possibly even a victim's lawyer. I understand victims' lawyers are allowed, as well.

Ayako Ikeda: Yes.

Anita Barraud: So how does that work?

Ayako Ikeda: Although they have some limitations as to the activities of those victims or the victim's lawyer, but still we have some concern about that.

Anita Barraud: What are the limitations?

Ayako Ikeda: Basically, the victim cannot submit different evidence.

Anita Barraud: So the victim cannot actually bring new evidence or other evidence into the court that hasn't already been presented to the court?

Ayako Ikeda: Right.

Anita Barraud: Victims' participation as a vocal part of a criminal trial began last year. But at this stage, Professor Kent Anderson says it will be some time before its effect can be seen. And it's unclear how juries might respond to active participation from victims, or their families.

Kent Anderson: That's right, and the victims' rights is a new aspect and we just really don't know how that's going to spin. On the one hand, there are some studies that say jurors are more likely to identify with the victim and therefore will come out with more punitive decisions. On the other hand, you have other studies that say the lay people will have a negative reaction, or therefore there'll be less sympathetic...

Anita Barraud: So they'll think that the victims are ganging up on the defence?

Kent Anderson: And at this stage, because the jury system hasn't gone in and the victim's rights are so new, we just don't know how it's going to play out.

Anita Barraud: And the judge also I think can allow the victim to have some say in the sentencing as well.

Ayako Ikeda: Right.

Anita Barraud: Is that an issue for the Federation of Bar Associations?

Ayako Ikeda: That is also a very confusing issue, you know, because the Prosecutor has a certain idea and the victim may state a different idea. We have several concerns: firstly, fundamentally, I'd say that it may be I guess the rule of presumed innocence, because when the victim comes into the court, they are almost sure that the defendant is not innocent, you know.

Anita Barraud: Is guilty, yes.

Ayako Ikeda: For example, if the victim has died and the victim's family questions the defendant, the defendant feels silly about that, even if the defendant has some reason to do something.

Anita Barraud: So, extenuating circumstances? Such as, for example, a battered wife who perhaps kills her husband. In that situation I suppose if you had the husband's family as the victim's representative, that might be a very difficult situation for the defendant.

Ayako Ikeda: Right. Such situations very often happen, and the defendant cannot be protected under this new system.

Anita Barraud: Could you see this becoming a situation where victims could get very angry, could start heckling the defendant, could start really becoming quite unruly in the court room?

Ayako Ikeda: Yes, that's another concern of ours, and again it's a very serious problem, and if there's a jury they cannot have a fair trial.

Anita Barraud: Now the Japanese justice system has not had a good record in addressing victims' rights. I think it was only in 2004 I believe, that a Bill was passed to enable support and compensation claims for victims. But this could be seen as sort of tipping the balance the other way.

Ayako Ikeda: Well that's why we are concerned about this new system, so our organisation published a statement and there are a lot of problems. So far the system is the defendant is just...defend against the prosecutor, but under this new system the defendants also have to defend against the victim. Yes, and also we should wait until the jury system works well, then we can think about the victim's direct compensation. But currently we don't have experience in jury system and at this stage it would be too early to introduce a double new system.

Anita Barraud: Ayako Ikeda, from the Japan Federation of Bar Associations.

For Amnesty International and a growing anti-capital punishment political lobby, the hope is that if the Japanese public become involved in the justice system, they might think more deeply about the rights of the accused. It's believed that former boxer, Iwao Hakamada will never be released from Death Row. Now ailing with severe mental health problems, he's unlikely to face the firing squad. But Makoto Teranaka says the jury-style system may offer hope for others who confess under duress and find themselves on death row.

Makoto Teranaka: Currently no public debate as such is held but there is just a kind of abstract notion, they are not, decidedly,
talking about the execution as such, and they are just demanding the death of the wrong people, which they are seeing as a public enemy.

Anita Barraud: So you think that a public involvement in the system may actually raise the issue and raise the debate, when people actually have to make life and death decisions in a jury system?

Makoto Teranaka: Yes, that's one of the beliefs, which is expected to be introduced by the jury system. But we are not certain about it.

Damien Carrick: Makoto Teranaka, Secretary-General of Amnesty International in Japan. That report from Anita Barraud. And interestingly, one of the big discussions about this new jury-style system is how to make sure that these new jurors will have all the proper facilities, things like childcare and special rooms for smokers.

That's The Law Report for this week. A big thank you to producer and reporter, Anita Barraud and also to technical producer, Kyla Brettle.

Guests

Kent Anderson,
Lawyer, Director Faculty of Asian Studies, Head Japan Centre, ANU

Ayako Ikeda,
Deputy Secretary General of the Japan Federation of Bar Associations

Makoto Teranaka,
Secretary General, Amnesty International, Japan

Credits

Presenter Damien Carrick
Producer Anita Barraud
Reporter Anita Barraud