

July 28, 2009

His Excellency Mr. Eisuke Mori,
Minister of Justice

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Appeal for Suspension of Executions

I Summary of the Appeal

The Japan Federation of Bar Associations (JFBA) appeals as following for the purpose of avoiding wrongful executions of death row inmates whose sentences have been finalized:

1. to immediately reconsider the system on at least the four points listed below.
 - (1) to establish the right to a reappraisal of the evidence utilizing more reliable scientific methods
 - (2) to guarantee confidential communication between death row inmates and their attorneys, etc.
 - (3) to provide court-appointed attorneys for retrial appeals
 - (4) to establish the suspensive effect of requests for retrial
2. to suspend executions for an indefinite period of time until problems surrounding the death penalty system including those above are thoroughly reviewed.

II Reasons for the Appeal

1. In this country, acquittals were finally and bindingly handed down in the retrials of four cases (the cases of *Menda*, *Saitagawa*, *Matsuyama*, and *Shimada*), in which death penalties had previously been finalized. On June 23, 2009, the court ruled in favor of a commencement of retrial for the so called *Ashikaga* case, in which inaccurate DNA test results had been used in the original trial and a sentence of life imprisonment with hard labor had previously been finalized. Additionally, in the *Iizuka* case, in which the defendant was sentenced to death and was executed last year, the court finally and bindingly decided the death sentence based on inaccurate DNA test results same as the *Ashikaga* case. These cases are now drawing public attention.

While it is clear as seen above that the court has committed misjudgments in some

death penalty cases, the problems surrounding the system and practices which have led to such misjudgments have not been solved, and the danger of wrongful executions still remains.

In these circumstances, the *Saiban-in* (lay judge) system was introduced on May 21 of this year. Now, ordinary citizens will be possibly involved in rendering death penalty judgments in the *Saiban-in* system so that the concerns over the death penalty system are larger than ever before.

Nevertheless, three prisoners, two in the Osaka detention center and one in the Tokyo detention center, were executed today. The JFBA believes that the executions, taking place in the situation described as below, will inevitably be criticized and strongly protests against them.

2. In the international community, the death penalty has been abolished in 139 countries, including the vast majority of European countries which have completely abolished it, while it remains in 58 countries (as of June 2009). Accordingly, it appears obvious that abolition of the death penalty is the world trend.

On the other hand, death row inmates in this country are in conditions which infringe the International Covenant on Civil and Political Rights and relevant UN resolutions. Especially severe restrictions on interviews and communications have prevented inmates from exercising their rights, including the right to appeal retrials and the right to seek pardons. These problems have been repeatedly indicated and improvement has been strongly requested in the “Conclusions and Recommendations of the UN Committee against Torture (May 2007)” and “Consideration of the Fifth Periodic Report Submitted by Japan-Concluding Observations of the UN Human Rights Committee (October 2008).”

3. Considering this gap between the international community and the domestic situation, Japan should immediately and broadly discuss these issues, including whether or not the death penalty should be abolished. From this viewpoint, the JFBA is proposing that a statute should be enacted, in force for a limited period of time, providing that execution of death sentences shall be suspended for such a period of time, so that the issue of whether to retain or abolish the death penalty might be discussed thoroughly and extensively by the public and so that necessary improvements or reforms may be made.

Despite repeated appeals by the JFBA, however, numerous prisoners have been executed. Recently, there has been a remarkable increase in death sentences, death sentences finalized, and executions. In the last year, we faced an unusual situation in which as many as 15 death row inmates were executed. The Government of Japan

cannot avoid the criticism that they are hastily executing prisoners without sufficient consideration of the problems surrounding the death penalty system.

4. The JFBA has been requesting reforms of the criminal justice system such as the introduction of electronic recording of interrogations (video recording of the entire process of interrogations) and the abolition of the substitute prison system. Especially since damages from wrongful executions can never be recovered, problems surrounding the death penalty system are extremely serious and should be resolved immediately.

5. From these viewpoints, the JFBA requests immediate review of the death penalty system as to at least the following four points:

(1) the establishment of the right to seek a further expert opinion and using scientifically reliable methods for re-appraising evidence especially in death penalty cases since it is essential in criminal cases to guarantee the chance to have evidence scientifically re-examined utilizing reliable methods.

The ruling for the commencement of a retrial in the *Ashikaga* case shows that the conclusions of past DNA tests may be overturned by viewing the re-testing results after a more scientifically accurate examination is conducted. Especially in death penalty cases, damages from wrongful executions can never be recovered so such re-testing is essential. However, reappraisal itself is impossible if the test materials have been completely exhausted in the past tests. Thus it is imperative that the right to have a more scientifically accurate reappraisal be established. In the USA, the law recognizes the right to DNA tests for death row inmates and other sentenced inmates who plead innocence (Innocence Protection Act) and numerous acquittals have been rendered in retrials under this system.

(2) the guarantee of confidential communication between death row inmates and defense counsels etc.

A staff officer attends interviews between death row inmates and defense counsels in principle even after the enactment of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees and confidential communication is not guaranteed. In the Concluding Observations of the UN Human Rights Committee issued in October 2008 after its consideration of the human rights situation in Japan, the committee recommended that the government should guarantee the secrecy of all interviews between death row inmates and defense counsels etc. for retrials.

(3) the launching of a court-appointed attorney system for retrial appeals

There is no court-appointed attorney system for retrials so it can hardly be said that the right of defense is guaranteed in practice. In the Conclusions and Recommendations of the UN Committee Against Torture issued May 2007 after consideration of the first

report submitted by the Government of Japan, the Committee Against Torture expressed a concern about the lack of access to court-appointed attorneys after finalization of the death penalty.

(4) the establishment of the suspensive effect of requests for retrial

Article 442 of the Code of Criminal Procedure provides only that the prosecutor has the right but not the obligation to suspend the execution when a retrial is appealed, which means they do not necessarily have to do so. Both of the concluding recommendations mentioned above also recommend our government establish the suspensive effect of requests for retrial.

6. The Government of Japan should suspend executions until problems surrounding the death penalty system including the four aforementioned are fundamentally resolved.

Accordingly, the JFBA protests against today's executions of three prisoners and requests the suspension of executions of death row inmates (103 inmates after the executions today) for an indefinite period until the system is fundamentally improved.