

December 9, 2009

## Appeal for Suspension of Executions

### I Summary of the Appeal

The Japan Federation of Bar Associations (JFBA) urges that the following measures concerning the current death penalty system be taken immediately:

- (1) In order to prevent miscarriages of justice from occurring, the Government of Japan should immediately take the measures listed below.
  - i) Establish the right to a reappraisal of the evidence utilizing more reliable scientific methods
  - ii) Guarantee confidential communication between death row inmates and their attorneys, etc.
  - iii) Establish a court-appointed attorney system for retrial appeals
  - iv) Establish the suspensive effect of requests for retrial
- (2) The Government of Japan should suspend executions until measures to improve the death penalty system, including the four aforementioned, are taken.

### II Reasons for the Appeal

1. This country had the uncommon experience of having four death penalty sentences (the cases of *Menda*, *Saitagawa*, *Matsuyama*, and *Shimada*) reversed one after another to innocent verdicts during retrial. On June 23, 2009, the court ruled in favor of a commencement of retrial for Mr. Toshikazu Sugaya for the so called *Ashikaga* case, in which inaccurate DNA test results were used in the original trial and a sentence of life imprisonment with hard labor had previously been finalized. Mr. Sugaya had also been forced to make false confessions concerning two other murder cases of small girls during interrogations, and could have possibly been sentenced to death. Additionally, the *Iizuka* case is now drawing public attention, in which the court finally and bindingly decided the death sentence based on inaccurate DNA test results as in the *Ashikaga* case and the defendant was already executed last year. While it is clear, as seen above, that courts have made erroneous judgments 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 possibly be 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.

2. Death row inmates in this country are in conditions which infringe the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other international human rights norms. 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 the “Consideration of the Fifth Periodic Report Submitted by Japan-Concluding Observations of the UN Human Rights Committee (October 2008).”

The international society does not stop at criticizing Japan for failing to guarantee the rights of death row inmates. Particularly, the UN Human Rights Committee’s recommendation to proactively consider the abolition of the death penalty without using public opinion as a pretext to avoid discussions is still fresh in our minds.

These recommendations reiterated by UN bodies were made based on the recognition that the death penalty is the ultimate punishment which denies the most fundamental human right: the right to life. Thus the death penalty system is a vital issue concerning human rights.

3. Human rights issues should not be decided by public opinion or votes. Japanese society is now more concerned about the death penalty system and its operation. What is required now is not the continuation of irresponsible executions without reviewing the death penalty system, but a thorough examination of problems within the death penalty system and a determination of the right direction for reforming the system. From this viewpoint, the JFBA is proposing that a statute should be enacted, in force for a limited period of time, providing that enforcement 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.

The Democratic Party of Japan (DPJ) stated in its policy index 2009 that the DPJ would continue broad discussions in and out of the Diet not only on whether or not the death penalty should be abolished but also, for the meantime, on suspension, notification, and method of execution, while paying attention to international movements. This policy is

based on the recognition of the same problems noted by the JFBA.

Despite repeated appeals by the JFBA, however, numerous inmates have been executed under past administrations. In the last year, we faced an unusual situation in which as many as 15 death row inmates were executed and seven have been already executed this year. 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 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 solved immediately.

As a more fundamental issue, the death penalty, which ultimately deprives people of their lives, should be thoroughly reviewed from the standpoint of guaranteeing fundamental human rights, including the possibility of abolishing the death penalty. Now is the time to openly discuss this matter.

From these viewpoints, the JFBA urges that the following measures concerning the current death penalty system be taken immediately:

(1) In order to prevent miscarriages of justice from occurring, the Government of Japan should immediately take the measures listed below.

i) Establish the right to seek further expert opinion utilizing 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-test 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.

ii) Guarantee confidential communication between death row inmates and defense

counsel, etc.

A staff officer attends interviews between death row inmates and defense counsel 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 of Japan should guarantee the secrecy of all interviews between death row inmates and defense counsel, etc. for retrials.

iii) Establish 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.

iv) Establish 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 that our government establish the suspensive effect of requests for retrial.

(2) The Government of Japan should suspend executions until measures to improve the death penalty system, including the four aforementioned, are taken.