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Japan Federation of Bar Associations**

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**Opinion for  
The Twelfth United Nations Congress On Crime  
Prevention and Criminal Justice**

**Japan Federation of Bar Associations  
(JFBA)**

## **JAPAN FEDERATION OF BAR ASSOCIATIONS**

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## ***Summary***

The deliberations and resolutions of the United Nations Congress on Crime Prevention and Criminal Justice are having a significant impact on the criminal justice system in each of the participant countries, including Japan. Our views in relation to how the Congress can contribute to the creation of improved criminal justice systems follow.

### **1. Importance of United Nations Standards and Norms**

- (a) Observance of United Nations standards and norms should be promoted in each country. At the Congress and the Commission, efforts need to be made toward establishing new standards and norms.
- (b) We look forward to development of positive measures in this Congress toward adopting the principles of the draft United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders.

### **2. Human Rights and International Organized Crime/Counter-Terrorism**

- (a) The inclusion of various elements of civil society, international NGOs etc. needs to be considered in the process of establishing international criminal justice systems.
- (b) Counter-terrorism measures must observe international human rights standards.
- (c) Lawyers should publicly oppose any proposed counter-terrorism measures that are in conflict with international human rights standards.
- (d) The UN should include in the final declaration of this Congress a strong warning against allowing any counter-terrorist measures to infringe international human rights standards.
- (e) Special investigative technologies should be adopted with caution, only after careful consideration of the privacy rights guaranteed by Article 17 of the International Covenant on Civil and Political Rights.

### **3. Penal System Reform**

- (a) All countries should promote observance of the Optional Protocol to the Convention against Torture (OPCAT) and give importance to the activities of inspection organizations in order to enable participation by civil society in prison reform and independent inspections of places of detention.
- (b) Problems of overcrowding in correctional institutions require that all countries pursue policies for non-custodial solutions, paying consideration to pre-indictment bail and social rehabilitation of prisoners.

### **4. Approaches to Human Trafficking**

- (a) Preventing human trafficking itself should be the primary strategy of each country, and measures necessary to achieve this should be implemented.
- (b) Effective implementation of anti-human trafficking measures requires that each country establish an organization with centralized responsibility for planning, establishing, implementing and verifying the required measures.
- (c) Victims of human trafficking must be able to effectively exercise their legal rights. Accordingly each country should establish legal systems that give legal aid including payment of lawyers' fees and court costs etc. by the state.

## **Introduction**

The Japan Federation of Bar Associations is a federation of which all qualified lawyers in Japan are members. It is the mission of the Federation to protect fundamental human rights and achieve social justice (Article 1, Practicing Attorney Act). Moreover, as defense counsel in criminal matters, the members of the Federation aim to use international human rights standards in the field of criminal justice and have spurred a variety of reforms to all stages of the criminal justice system in Japan.

In 1999, the Federation acquired the consultative status in the United Nations Economic and Social Council and sent delegations to express its opinions at considerations of Japanese government reports by United Nations human rights treaty organizations and by the UN Human Rights Council. Further, in addition to its active involvement in protecting human rights in Japan, the Federation operates as an international NGO providing legal expertise in diverse areas such as support in reviving legal systems in post-conflict countries.

The Federation sent delegations to the Commission on Crime Prevention and Criminal Justice of the UN every year, and sent delegations to the United Nations Crime Prevention and Criminal Justice Congress every time from the 7th Congress in 1985 to the 11th Congress in 2005. Why does the Federation, comprising lawyers in Japan, attend and present its members' views at these international conferences which does not involve consideration of the Japanese government reports? The answer is that the members of the Federation understand that matters discussed and decided at these conferences will before long have a significant influence on the criminal justice system in Japan as the governments of participating member states are required to observe the resolutions and the standards and norms adopted. We need to keep aware of the discussions taking place at these conferences because we are involved with the administration of criminal justice in Japan, and also need to ensure that the experience we obtain from Japanese practices is reflected at the conferences in order to achieve improved criminal justice systems. We hope that our efforts will benefit not only lawyers in Japan, but also those working for human rights in other countries.

We have high regard for the discussions and work of the Commission and Congress to date. We look forward to the success of this 12th Congress and hereby presents our opinions and proposals.

## **I. Importance of United Nations Standards and Norms**

### **1. Proposals**

(a) Each country should promote the use of standards and norms enacted by the United Nations. The Congress and the Commission should continue to work toward the establishment of new standards and norms in areas where they are deficient, to keep pace with changing times.

(b) We support the draft UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders being proposed chiefly by the Thai government and look forward to seeing positive measures at this Congress toward introduction of these norms.

## **2. Reasons**

### **(1) International human rights standards as a tool of dialogue**

The Federation looks forward to seeing the agendas, workshops and side events of this Congress to, as in the past, have active discussions for enactment of United Nations standards and norms and promotion of their use in each country.

The Congresses and the annual Commissions have enacted more than 50 standards and norms. Although these are seen legally as "soft law," they have clarified various basic principles that through international discussion have come to be accepted as desirable and now exert significant influence on international treaties and enactments of domestic law in each country.

The mechanisms for this are various, but we emphasize that the standards and norms operate as a mechanism fostering a common understanding between opposing interests. When enactment of a policy is discussed within a country, for example, there may appear to be significant differences in the views held by the justice ministry as an organ of government, on the one hand, and the bar association as independent legal professions, on the other. Here, however, the United Nations standards and norms are taken as commonly understood between the parties, providing a base for launching constructive dialogue. The operation of this mechanism has been seen in Japan where, for example, laws incorporating the standards and norms have led to a system including a Penal Institution Visiting Committee.

At this Congress, strategies should be discussed for active implementation, through such processes as these, of United Nations standards and norms in each country.

### **(2) Reviewing standards and norms as times change**

The issues that each country faces are many and varied, constantly changing with the times. Standards and norms established in the past may not cover all contemporary issues. The Congress and the Commission must continually seek to verify whether the existing system of standards and norms is sufficient for current conditions. If deficiencies are discovered, discussions must be commenced for the enactment of new, appropriate standards and norms.

### **(3) Support for United Nations draft principles for female prisoners and non-custodial measures**

The most well known United Nations standards concerning rights of prisoners is the Standard Minimum Rules for the Treatment of Prisoners, enacted by the Congress in 1955. The principles enshrined therein however, were devised to ensure that all prisoners were treated in the same way, with no consideration being paid to the specific needs held by different kinds of detainees. In many countries the number of female prisoners is increasing, and while special treatment is required due to the specific vulnerabilities of women, in reality it cannot be said that measures sufficient for the treatment and rehabilitation of female prisoners are in place.

Accordingly, we believe there is an urgent need for new international standards to be established to improve the status of female prisoners. The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders have been drafted, and efforts to introduce the Rules internationally are now being led by

Princess Bajrakitiyabha of the Kingdom of Thailand, who is also qualified as a crown counsel in that nation.

This Federation has high regard not only for the measures concerning female detainees, but also for the details and comprehensiveness in the non-custodial measures proposed, and we look forward to measures taken to introduce the Rules at this Congress.

## **II. Human Rights and International Organized Crime/Counter-Terrorism**

### **1. Proposals**

- (a) Consideration must be given to including various elements of civil society, international NGOs etc. in the process of establishing international criminal justice systems.
- (b) Counter-terrorism measures are essential but must respect international human rights standards.
- (c) Lawyers bear a heavy responsibility to ensure that human rights are robustly protected in counter-terrorism measures, and should publicly register their opposition to any proposed counter-terrorism policies or measures that are in conflict with international human rights standards.
- (d) The UN should include in the final declaration of this Congress a strong warning against allowing any of various counter-terrorism measures to infringe international human rights standards.
- (e) Special investigative technologies must be nondiscriminatory and non-arbitrary. Such technologies should be adopted with caution, only after careful consideration of privacy rights as they are protected under Article 17 of International Covenant on Civil and Political Rights.

### **2. Reasons**

- (1) Protection of human rights and various measures dealing with organized crime and counter-terrorism

It is compulsory for all lawyers qualified in Japan to be members of the Federation, which has worked toward ratification of international human rights treaties and the adoption of international human rights laws in Japan.

As lawyers, we recognize that measures to deal with organized crime and terrorism that transcend international borders require urgent consideration by the international community. Too many lives have been lost due to organized crime and terrorism. We cannot forget the tragedy that occurred in Iraq in August 2003, when the United Nations office suffered a terrorist attack.

The United Nations has grappled with these problems with various counter-terrorism treaties and has drafted the UN Treaty against Transnational Organized Crime and the United Nations Convention against Corruption. Many new measures to combat crime were incorporated in the draft amendments to the 40 recommendations of the FATF, and a variety of domestic measures to combat terrorism have been introduced in many countries. Nonetheless, we must express our concern about substantial problems that have now arisen with respect to protection of human rights.

In Japan there has been a strong movement towards establishing surveillance cameras in conjunction with strengthened policing, harsher penalties, and stricter monitoring and management of foreigners, all in the name of stronger measures against terrorism and crime. Most of these developments come against a background of the increasing role of information in our society and employ methods that involve collection, accumulation, and integration of personal information for monitoring purposes.

These various measures threaten to damage the framework of human rights protections. Moreover, as the state enters into the details of citizens' lives, acquiring and integrating personal information and applying this to the monitoring of an individual's life and thoughts, it creates an invasion of the right to privacy. The fear generated by monitoring and restrictions will result in the chilling-effect on the freedom of speech and expression that underpins democratic society. These developments could even lead to schisms in society by militating against diversity and tolerance in local communities.

From this perspective, we must strongly question the necessity and appropriateness of these various measures toward the monitoring of society, and work towards constructing a free and safe society that protects human rights and eliminates discrimination.

We believe that international protection of human rights in and of itself, is an important aim for international society, and the new measures to combat crime will not be effective if they do not conform perfectly to the principles of international human rights.

(2) Strengthened criminal law and monitoring in Japan, implemented within an international framework

1) In 2003 in Japan, a new bill on criminal conspiracy was submitted to the Diet in a move to incorporate the Convention against Transnational Organized Crime adopted by the UN in December 2000. The crime of conspiracy as proposed therein, however, could have resulted in criminal investigations that would have significantly impacted on the freedom of thought among the citizenry. Effectively, in the proposed bill, criminal sanctions could be imposed if two or more individuals agreed to commit a crime, even though no criminal act had been initiated. The Federation strongly opposed the enactment of such a system into law. We insisted that, under the Japanese criminal law that provides an elaborate measures to combat organized crime, the Convention could be ratified without introducing such a crime of conspiracy. The same argument was made in the manifesto of the Democratic Party at the time, which is now the ruling party in Japan.

2) The 40 recommendations of the FATF of 2000 were scheduled for implementation by a regular session of the Japanese Diet in 2007, but as proposed these measures would have imposed on lawyers a duty to report whenever there was suspicion of money laundering involved in a client's transactions. This system of informing on clients, imposing a duty on lawyers to report them to the police authorities, was removed from the Act on Prevention of Transfer of Criminal Proceeds as a result of the opposition by the Federation.

Instead, the Federation revised its regulation to impose on lawyers a duty to verify the identity of clients and keep regular records covering specific transactions. The Federation operates in cooperation with law societies around the world and we continue actively working to abolish such excessive systems of reporting on clients.

3) The Act on Wiretapping for Criminal Investigation was enacted under the influence of international developments, but led to infringements on individual privacy and weakening of principles governing the issuance of warrants in criminal investigations. Now, the number of cases to which the law is applied is expanding year by year. There is a risk that in the near future we will see further expansion in the range of systematic application of wiretapping provisions. We strongly oppose abuse of, and expansion of the range of application of the Act on Wiretapping for Criminal Investigation.

(3) Lack of participation from civil society in drafting process of international criminal law treaties

It must be noted that the process for drafting international criminal law treaties does not provide for a checking function to operate via civil society, such as international human rights organizations or legislative assemblies of each country.

The Federation became aware of such developments in international criminal law early on, and dispatched a representative delegation to the ad-hoc committee for drafting UN Treaty against Transnational Organized Crime to follow the drafting process. The majority of those participating in the process of drafting these kinds of international criminal laws are the members of the law-enforcement agency and diplomatic service of each government. There is no participation from international human rights NGOs or the representatives of the people of each nation, whose human rights will be restricted by these treaties. As a result, under the authority of such international organizations, there is a dramatic expansion in the power to influence the lawmaking process by the law-enforcement agency of a country in a format that cannot be changed by the legislative body of the country concerned. Human rights organizations acting within each country, as well as their respective lawmaking assemblies, are almost uninformed of accurate contents of the bill during its drafting process. Further, after a treaty is signed, it is difficult for a legislative assembly to change and make amendments to its contents. There is not much left for the people other than opting to refuse to ratify the treaty or to utilize the breadth of discretion that is left open in the treaty itself. The Federation was strongly aware of this problem when we opposed enactment of the law against conspiracy designed to give legal effect domestically to the UN Treaty against Transnational Organized Crime.

(4) Responsibility of lawyers to defend the framework of international human rights protections in measures to combat organized crime and terrorism

1) The Berlin Declaration was framed by the International Commission of Jurists (ICJ), a meeting of international lawyers, in August 2004. This declaration affirmed that, within the context of the fight against terror:

-each state has a duty to respect the various principles enshrined in their criminal laws and the independence of the judiciary;

-even in extreme situations a person still retains certain inviolable rights;

-peremptory norms prohibiting inhumane treatment and torture must be retained;

-secret detention and detention in isolation must be prohibited, and all detainees must be registered;

-all people must be guaranteed a fair trial;



- there must be respect for basic human rights, in particular the freedom of expression, freedom of religion and conscience, the right to peacefully pursue self-determination, and respect for the right to privacy: now cause for special concern in the fields of collecting and transmitting information;
- people whose human rights are infringed by the state, or by people supported by or with the acquiescence of the state, are entitled to compensation; and
- there shall be no forced deportation contrary to the principle of non-refoulement.

Further, the Declaration places a strong duty on lawyers to ensure robust human rights protection even in dangerous situations and urges lawyers and law societies to publicly express their own opinions when proposed counter-terrorism measures are found difficult for them to accept. Further, the Declaration states that on a domestic level and where possible an international level, lawyers and law societies should resolutely issue legal challenges when such measures are unacceptable in the light of international human rights standards. Looking back at this Declaration in the future, it will be seen to be issuing a very progressive warning.

## 2) Bold action through United Nations human rights treaty organizations

The Human Rights Committee and Committee against Torture have indicated that the governments of some countries, including the United Kingdom and the United States, have implemented a number of excessive law enforcement measures to combat terrorism that resulted in breaches of human rights treaties. These include, for example, acts of torture in places of detention, transfer of detainees to secretive detention institutions or making unregistered transfers, intercepting contact to detainees from outside and detaining prisoners for long periods without trial. The committees have requested rectification of these misdeeds. America's newly elected President Obama has stated that the United States will no longer commit torture.

The Human Rights Committee has already issued an epoch-making opinion acknowledging treaty breaches in the case of Belgian citizens who became victims when they were mistakenly included in a list of terrorists prepared based on the list made by the UN Security Council in October 2008.<sup>1</sup>

This case is an example of different UN organs working together to rectify basic problems in measures for combating terror and organized crime from a human rights protection standpoint. The wholesale approach to measures to combat terrorism and organized crime that rose to fever pitch immediately following 9/11 now appears to have been considerably turned back. For example, in 2009 the UNODC (United Nations Office on Drugs and Crime) issued its Handbook on Criminal Justice Responses to Terrorism. The Handbook contains detailed discussion on international human rights laws that must be referred to in counter-terrorism activities, restrictions applicable in investigations, the role of lawyers and judiciary and problems concerning the incarceration of terrorist suspects.

## (5) Conclusions

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<sup>1</sup> 13-31 October 2008, HRC Communication No. 1472/2006 Nabil Sayadi and Patricia Vinck vs Belgium

The Federation has repeatedly stressed that there have been excessive restrictions on the human rights of citizens occurring in the international trend towards strengthening of restrictions to combat international organized crime and terrorism (e.g. Declaration Seeking the Realization of a Free and Safe Society through the Guarantee of Human Rights, issued in November 2007, by the JFBA Convention on Protection of Human Rights).

The Federation, on behalf of all lawyers in Japan, give our wholehearted support to declarations such as that from the ICJ cited above, and are committed to remaining active in this regard in Japan and the Asian region.

To the United Nations, we strongly request consideration to include a variety of aspects from civil society, such as national NGOs and international NGOs, in the process of drafting international criminal laws. We believe this will enable the drafting of international criminal laws to strike a balance between law enforcement on the one hand and civil liberty on the other.

Measures to combat terrorism are important, but must nonetheless continue to respect international human rights standards. Lawyers bear a heavy responsibility to ensure that human rights are robustly protected in counter-terrorism measures and should publicly oppose any proposed counter-terrorism policies or measures that are in conflict with international human rights standards.

The UN should include in the final declaration of this Congress, a strong warning against allowing any of various counter-terrorism measures to infringe international human rights standards.

Further, special investigative technologies must be nondiscriminatory and non-arbitrary. Such technologies should be adopted with caution, only after careful consideration of privacy rights as they are protected under Article 17 of International Covenant on Civil and Political Rights.

### **III. Prison System Reform**

#### **1. Proposals**

- (a) All states should;
  - in dealing with the issues of prison reform, recognize the need for third-party monitoring systems and the significance of participation by civil society,
  - pay enough attention to the need for consultation and cooperation with civil society including bar associations, and the activities of monitoring organizations independent from the governmental authorities, and,
  - proceed with ratifying the Optional Protocol to the Convention against Torture (OPCAT).
- (b) In dealing with the problem of overcrowding in detention facilities, all states should pursue strategies of non-confinement such as introduction of the bail system for detainees awaiting indictment, and promotion of use of sanctions that keep people in the community, as well as releasing prisoners on parole, in the light of the need to socially rehabilitate prisoners by reviewing and alleviating custodial sentences

#### **2. Reasons**

- (1) Enclosure and secrecy engender human rights violations

Enclosure and secrecy are substantial elements contributing to human rights violations in prisons. As long as there is no change toward "prisons open to society," it is impossible to achieve radical prison reform. Accordingly, while it is necessary to construct systems to speedily receive, investigate and process complaints and claims of human rights abuses by prisoners, it is essential, in order to maintain fair and just relief against such claims, that investigations are conducted by an independent third party body not subject to undue influence from the correctional facility authorities.

Principle 29 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prescribes that:

- "1. In order to oversee the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places."

In order to ensure the transparency of prisons and have prisons that are genuinely open to society, it is absolutely essential to construct systems that emphasize a monitoring system through participation from the community at large.

## (2) Tragedy at Nagoya prison led to the establishment of the Penal Institution Visiting Committee

In Japan in 2002, it was discovered that at Nagoya Prison there had been a number of cases of abuse of inmates by prison officials leading to death. In response, a committee of inquiry, the Penal Reform Panel, was set up by the Ministry of Justice to work for prison reform. The Panel recommended humane treatment of inmates and guarantees of transparency in prison operations. Acting on these recommendations, 2005 saw the enactment of the Act on Penal Detention Facilities and Treatment of Inmates, amended in 2006 by the Act on Penal Detention Facilities and Treatment of Inmates and Detainees. From 2006 the Penal Institution Visiting Committee system commenced operating.

The members of the Visiting Committee inspect inside prisons and where necessary interview prisoners unattended by prison staff and may proffer their opinions on prison management to the chief of the detention facility. Further, provision has been made to allow inmates to secretly deliver memos to the Visiting Committee. The Visiting Committee is comprised of doctors, lawyers and local citizens, meaning that participation by the community at large has been achieved. Moreover, lawyers acting on the recommendations of the bar association are included in members of committees for all penal institutions. Such lawyers are playing a central role in the operation of the committees, which represents the bar association's strong effort to maintain its independence.

## (3) Broadening the visiting system

In Japan in 2007, the Detention Facilities Visiting Committee was established to cover detention centers operated by the police, and has commenced operations. Then, in

July 2009, an amendment to the Immigration Control and Refugee Recognition Act was passed, establishing the Immigration Detention Center Visiting Committee for the objective of ensuring transparency of treatment at immigration detention centers. That Committee will soon commence operations.

Bar associations seek to actively contribute to these committees as they are presently doing with the Penal Institution Visiting Committee, chiefly by dispatching lawyers to act as committee members. In the future, we look forward to continuing our efforts, aiming for the establishment of visiting committees at facilities such as youth detention centers etc. where there is no independent monitoring organization.

#### (4) Visiting systems and OPCAT/NPM

The Optional Protocol to the Convention against Torture, an international human rights treaty, includes a provision requiring each member state to establish a mechanism to prevent the use of torture (National Preventive Mechanism), and requires construction of a system of cooperation with the United Nations Subcommittee on Prevention of Torture for regular visits to facilities suspected of torture. The Federation supports ratification of the Protocol, and look forward to the establishment of a torture prevention mechanism in Japan operated by visiting committees with stronger independence, working with a soon to be established national human rights institution.

In dealing with the issues of prison reform, the governments of each country should recognize the need for third-party monitoring systems and the significance of participation from civil society. The Federation would like to see emphasized a relationship of cooperation and consultation with civil society, including bar associations, as well as the operation of visiting mechanisms that include a National Preventive Mechanism as prescribed in the Optional Protocols to the Convention against Torture. The recent Japanese experience could provide useful reference in this regard.

#### (5) Overcoming overcrowding by promoting pre-indictment bail and non-custodial sentences

One of the workshops of this Congress concerns the problem of overcrowding. In Japan also, trouble has occurred frequently both between prisoners and between prisoners and prison staff in detention facilities, both prisons and places of detention. We believe the problem of overcrowding must be urgently addressed.

For the present, solutions to the overcrowding issue may include expanding the size of detention facilities, but in long-term, it is necessary to introduce the bail system for detainees awaiting indictment, and pursuing strategies of non-confinement. This is important in light of the need to rehabilitate prisoners into the community by reviewing and alleviating custodial sentences through enhanced use of punitive measures that keep people in the community, as well as releasing prisoners on parole.

Utilization of pre-indictment bail as well as treatments that keep people in the community are strongly recommended by the principles of international human rights laws. Article 9.3 of the International Covenant on Civil and Political Rights protects the right "to trial within a reasonable time or to release" for a person who is arrested or detained, who must be brought promptly before a judge after arrest. Here, the principle of non-custodial measures is clearly stated by declaring that, "It shall not be the general rule

that persons awaiting trial shall be detained in custody." Further, the United Nations Standard Minimum Rules for Non-Custodial Measures prescribe that:

"5.1 Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate."

"6.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim." and

"6.2 Alternatives to pre-trial detention shall be employed at as early a stage as possible. Pre-trial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings."

From the gist and content of these prescriptions, it could readily be said that laws and regulations, or their operation, without pre-indictment bail and non-custodial solutions are questionable in the light of protecting the human rights of prisoners.

We urge the governments of all countries to handle the problem of overcrowding, paying sufficient consideration to the human rights aspects affecting prisoners as described above.

## **IV. Approach to Human Trafficking**

### **1. Proposals**

- (a) Preventing human trafficking itself should be the primary strategy of each country, and measures necessary to achieve this should be implemented.
- (b) Effective implementation of anti-human trafficking measures requires that each country establish an organization with uniform responsibility for planning, establishing, implementing and verifying the required measures.
- (c) In order to provide support for victims of human trafficking and prevent reoccurrence of the problem, it is essential that human trafficking victims are able to effectively exercise their legal rights. To that end, laws should be established by each country that requires the state to pay compensation to victims, covering lawyer's fees and court costs etc., when there is difficulty retrieving compensation from the offender.

### **2. Reasons**

- (1) Multi-pronged approach to preventing human trafficking

Human trafficking has been described as " the system of slavery in modern times," and represents an extremely serious breach of human rights. No matter what kinds of measures are introduced to alleviate its effects, it goes without saying that once the damage has been done it is difficult to get complete recovery.

In July 2009, Ms. Joy Ngozi Ezeilo, Special Rapporteur to the UN Human Rights Council on trafficking in persons (especially in women and children), noted during her

investigative visit to Japan that a comprehensive approach to dealing with human trafficking requires a strategic base of 5 P's and 3 R's: Protection, Prosecution, Punishment, Prevention and Promotion (of international cooperation), as well as Redress, Rehabilitation and Reintegration (to enable victims to play a constructive role in society). She noted that it is essential to deal with the root causes underlying trafficking in human and to recognize that respect for the human rights of victims is most important in countering human trafficking.

In following the recommendations of the Special Rapporteur, it is essential to counter the root causes of human trafficking and thereby prevent it before the damage is done; this is the best solution to the crime.

The causes of human trafficking are many and complex, but factors prevalent in countries from which the victims come include poverty, uneven economic development, insufficient access to suitable employment, deeply rooted discrimination against women, racial and ethnic discrimination, corruption, the existence of crime organizations, lack of political will, etc. We believe it is essential for all countries to analyze these factors and pursue a range of comprehensive and encompassing strategies that include rectifying economic inequalities, enhancing education, providing relevant legal frameworks, and re-examining labor policies and policies for receiving migrants. Moreover, it is essential that different countries and regions work in cooperation with each other. Meetings that include representatives from each government, NGOs and international organizations, to provide a venue for looking at examples of successful initiatives and exchange of views and information, will be beneficial for achieving these objectives. We look forward to cooperation between the governments of each country and discussion of multifaceted measures to prevent human trafficking.

(2) Importance of establishing an integrated expert organization within the government

When Ms. Ezeilo, Special Rapporteur to the UN visited Japan, she urged the Japanese government to set up a centralized body to provide integrated management to promote, organize and monitor policies and measures to deal with human trafficking. This body could deal with the worsening problem of human trafficking for labor exploitation, and work to protect the rights of migrant workers.

Acting on this advice, in December 2009 the Japanese government devised "a new action plan for countering human trafficking," clearly stating their response to human trafficking, focusing on labor exploitation. There are many foreigners currently in Japan for training or practical skills work, etc., who in fact are exploited to work long hours for low pay. A number of them are in reality, victims of human trafficking; therefore we welcome moves by the government toward implementing appropriate measures.

We also welcome the statement in this new plan that the Japanese government will "investigate the necessity of establishing a bureau for centralized management of the planning, drafting and coordination of policies to deal with human trafficking." Today, most countries have already set up a central body with responsibility for planning, drafting, implementing and verifying measures against human trafficking, which testifies to the necessity and effectiveness of such a body. We support moves by all countries, including Japan, to establish such a centralized, expert body working in close cooperation with NGOs.

### (3) Support for victims' human rights

Victims have a right to claim compensation for loss or for payment of unpaid wages from their exploiters. Realizing these legal rights contributes not only to helping victims recover, but also works as a warning to exploiters, thereby deterring further criminal activity. As it is important to realize these human rights, it follows that legal support is required for that purpose. At this point a number of problems must be confronted: fees for and access to lawyers, the search for assets of offenders and reprisals by offenders. All too often, the process of realizing legal rights proves difficult.

Special Rapporteur to the UN, Ms. Ezeilo, emphasized the importance of the clarified process for identification of victims so that mistaken identification be avoided. She also pointed out that there must be more than just the legal possibility of victims obtaining redress or compensation. There must be a legal system in place that enables this to happen. Additionally she stressed the need to establish specialist training for law enforcement personnel working in this area.

Therefore, measures to deal with the issue must focus on the right of victims to receive redress under law in practice, requiring the support such as state-funded legal aid covering payment of lawyers' fees and court costs, legal regulation to ensure victims receive compensation when obtaining payments for redress from offenders proves difficult, and the need to establish a special fund for these purposes.

## **Conclusion**

As a organization of legal professions, which is comprised of all qualified lawyers in Japan, the Japan Federation of Bar Associations makes these submissions in earnest, hoping that the United Nations Office on Drugs and Crime (UNODC), the representatives of the participating governments and all those attending this Congress give due consideration to our proposals.