

Request Concerning the “Ministry of Justice Study Group on the Death Penalty”

August 5, 2010

Japan Federation of Bar Associations

I. Summary

Regarding the “Ministry of Justice Study Group on the Death Penalty (hereinafter referred to as the “Study Group”),” the Japan Federation of Bar Associations (JFBA) requests as follows:

1. Composition of the Study Group

The Minister of Justice announced that the Study Group would be a forum to discuss fundamental issues surrounding the death penalty, including but not limited to whether the death penalty system should be retained or abolished. Therefore, if the Study Group only consists of officers from the concerned divisions in the Ministry of Justice, which currently maintains and operates the death penalty system, it will prove impossible to hold thorough discussions delving into the core of the system. Should the Study Group be established, its members should be recruited from various sources, including those who are advocating the suspension of executions and the abolition of the death penalty, and others from civil organizations which are addressing the various issues surrounding the death penalty. The JFBA requests the Ministry of Justice to allow JFBA members as recommended by the JFBA to become members of the Study Group.

2. Open to the Public

The Study Group should be opened to the public, in a similar manner to the Administrative Reform Council and the minutes of its meetings, including the names of speakers, should also be documented and disclosed.

3. Themes of the Study Group

At a minimum, the subjects listed below should be included in the themes to be considered by the Study Group.

- (1) The operational situation of the death penalty system
- (2) Actual sentences imposed in cases punishable by the death penalty
- (3) The ways in which the criminal justice system should be in order to prevent erroneous judgments in death penalty cases
- (4) The guarantee of rights for those facing the death penalty, and the treatment of inmates who have been sentenced to death in a final and binding decision, etc.
- (5) Trends of death penalty systems around the world
- (6) The deterrent effect of the death penalty and changes in crime rates and conditions during periods in which executions have been suspended

- (7) The maximum penalty to be imposed in place of the death penalty
 - (8) Evaluation of the scope of crimes whose statutory penalties include the death penalty
4. Outcomes of the Study Group
- In order to utilize the outcomes of the Study Group to facilitate further consideration and actual review of the death penalty system, including consideration of the retention or abolition of the system, concrete measures should be taken to establish research committees in both the Lower and Upper Houses and suspend executions until the research committees complete their missions.
5. Suspension of executions
- Executions should be suspended until issues surrounding the death penalty system, including whether it should be retained or abolished, are thoroughly discussed and reviewed based on the outcomes of the Study Group.

II. Reasons

1. Shortly after ordering two executions on July 28, 2010, Justice Minister Chiba stated at the following news conference that, “I decided to launch a Study Group to consider how the death penalty should appear in the future. The Study Group will be under my supervision and composed of officers from the divisions concerned within the Ministry of Justice. However, I also wish to listen to a diverse range of opinions from people outside the Ministry at an open forum and would like to invite them to participate in our discussions. No conclusion will be set before the commencement of discussions at the Study Group. It will consider the best way forward for the death penalty system, including whether the system should be retained or abolished. Since the implementation of the *Saiban-in* system, the citizens of Japan have now become more interested in the criminal justice system and have the responsibility to make decisions during trials. Given this present situation, we will open the outcomes of the Study Group to the public in order to trigger broad-based national debates.”
- On the same day, the JFBA released a presidential statement on the executions and mentioned its expectation that this Study Group would be a first step toward nation-wide debates at truly open forums. The JFBA also reiterated its strong request that the Japanese government introduce a moratorium on executions for a certain period of time until a thorough review of the death penalty system has taken place, including consideration of the retention or abolition of the system and until all necessary reforms have been put in place.
2. In the “Recommendations on the Capital Punishment System” released in November 2002 and the "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" adopted at the JFBA Convention on the Protection of Human Rights in October 2004, the JFBA urged the Japanese government to conduct a broad discussion focusing on whether the death penalty system should be retained or abolished by:

- establishing the Capital Punishment Suspension Act,
- making information concerning the death penalty including the standards, procedures, and methods of executions available to the public, and
- establishing research committees in both the Lower and Upper Houses as forums to consider rectification of the problems surrounding the death penalty system and hold national debates on the desirability of the retention or abolition of the system.

In addition, the JFBA released its "Bill Concerning the Establishment of Research Committees on the Death Penalty System and the Suspension of Execution of Death Sentences (JFBA Bill on Suspension of Executions)." Article 1 of the bill stipulates that the purpose of the Act is, in consideration of the institutional and operational problems surrounding the death penalty system in Japan, to suspend executions of inmates who have been sentenced to death in a final and binding decision for a set period of time and to specify the tasks, etc. for the Diet and Government to accomplish during the said period, for the objective of conducting a fundamental review of the death penalty system, including but not limited to its retention or abolishment, and thereby improving the criminal justice system and protecting fundamental human rights. Article 2 provides that the research committees shall conduct research on the issue of whether to retain or abolish the death penalty system and on the following issues concerning the death penalty system:

- (1) The operational situation of the death penalty system
- (2) Actual sentences imposed in cases punishable by the death penalty (hereinafter referred to as "death penalty cases")
- (3) The way in which the criminal justice system should be in order to prevent erroneous judgments in death penalty cases
- (4) The guarantee of rights for those facing the death penalty, and the treatment of inmates who have been sentenced to death in a final and binding decision, etc.
- (5) Trends of death penalty systems around the world
- (6) The deterrent effect of the death penalty and changes in crime rates and conditions during periods in which executions have been suspended
- (7) The maximum penalty to be imposed in place of the death penalty
- (8) Evaluation of the scope of crimes whose statutory penalties include the death

penalty

3. In line with the above mentioned points, the JFBA requests as follows:

(1) Composition of the Study Group

The Justice Minister stated that the Study Group would be composed of those from the divisions concerned within the Ministry of Justice. However, in order for the Study Group to trigger nation-wide discussions at open forums, it should not merely be composed of members of the concerned divisions from the Ministry of Justice, but also obtain a wide variety of opinions from other pundits and citizens. The JFBA requests that its members be selected as members of the Study Group.

(2) Open to the Public

As mentioned above, in order for the Study Group to trigger nation-wide discussions at open forums, we request that it be opened to the public and that the minutes of its meetings, including the names of speakers, be documented and disclosed.

(3) Themes of the Study Group

At a minimum, the subjects listed below should be included in the themes to be considered by the Study Group:

i) The operational situation of the death penalty system

Issues include whether there is any arbitrary nature in the selection of which death row inmate is to be executed, and whether or not the current method of execution is cruel and inhumane (and the possibility of adopting another method).

ii) The actual sentences imposed in cases punishable by the death penalty

The pertinent issues here include whether or not there is any arbitrariness when demanding or deciding on imposing a death sentence or a life imprisonment.

iii) The direction in which the criminal justice system needs to move in order to prevent erroneous judgments in death penalty cases

Analyzing past miscarriages of justice, including the Menda, Saitagawa, Matsuyama, Shimada, and Ashikaga cases, it should be considered whether and to what extent the causes behind the erroneous judgments have been isolated and possible redress of the miscarriages has been provided.

iv) The guarantee of rights for those facing the death penalty, and the treatment of inmates who have been sentenced to death in a final and binding decision, etc.

Issues include whether or not the procedures for death row inmates to apply for retrial or pardon are guaranteed, whether appropriate methods are applied to verify the mental states of death row inmates with mental disabilities prior to their executions, whether death row inmates are

appropriately given advance notice of the scheduling of their executions, and the possibility of non-solitary confinement of death row inmates

- v) Trends of death penalty systems around the world
The number of countries which have abolished or suspended execution of the death penalty as well as recommendations from international organizations, etc.
- vi) The deterrent effect of the death penalty and changes in crime rates and conditions during periods in which executions are suspended
Research and study of the experiences in other countries
- vii) The maximum penalty to be imposed in place of the death penalty
Issues include whether life imprisonment without parole could be introduced in order to replace the death penalty
- viii) Evaluation of the scope of crimes whose statutory penalties include the death penalty
Issues include whether the current scope should be narrowed.

(4) Outcomes of the Study Group

The JFBA has been requesting that research committees be established in both the Lower and Upper Houses and executions be suspended while the research committees are considering the various issues surrounding the death penalty. The Study Group should not complete its mission by merely studying the issues. Whatever final conclusions the Study Group reaches or even if it fails to reach any conclusion, the fact that there are various problems surrounding the death penalty system will not be changed. After completion of the Study Meeting, the discussions should be followed up and further developed by the said research committees to be established in both the Lower and Upper Houses and executions should be suspended while the death penalty issue is under consideration by the research committees.

(5) Suspension of executions

Executions should be suspended until the issues surrounding the death penalty system including whether it should be retained or abolished are thoroughly discussed and reviewed based on the outcomes of the Study Group.