JFBA Opinion concerning the Japanese Government's Comments on the Draft General Comment No.36
on Article 6 of the International Covenant on Civil and Political Rights

February 14, 2018
Japan Federation of Bar Associations

Part I Main Points of the JFBA's Opinion

As an organization that adopted the Declaration Calling for a Reform of the Penal System Including Abolition of the Death Penalty as attached as Exhibit 1 at its 59th Convention on the Protection of Human Rights held on October 7, 2016, to appeal to Japanese society, the Japan Federation of Bar Associations (the "JFBA") welcomes and supports the General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life (the "General Comment") issued by the Human Rights Committee (the "Committee"). In response to the submission by the Japanese government (the "Government") of its comments on the Committee's General Comment (the "Government's Comments"), the JFBA has different opinions from those of the Government in the section of the death penalty mentioned in Paragraph 4 (the imposition of the death penalty) and Paragraph 5 (the relationship of article 6 with other articles of the International Covenant on Civil and Political Rights (the "Covenant") and other legal regimes). The JFBA's opinions are provided as below.

1. The Government's Comment on the interpretation of "the most serious crimes" mentioned in the second sentence of Paragraph 39 of the General Comment concerning the restrictive application of the death penalty proposes the removal of "armed robbery, piracy and sexual offences" from the second sentence and the insertion of "In principle" at the beginning of the second sentence. Not only does Japan have many types of currently eligible crimes for capital punishment, but the Government also intends to loosely construe the restriction by this comment. It is contrary to the purpose of article 6, paragraph 2 of the Covenant, and should not be thus adopted.
2. The Government's Comments as in (1) to (3) below on the international society's efforts to abolish the death penalty mentioned in the first sentence of Paragraph 44, and Paragraphs 54 and 55 of the General Comment are contrary to Paragraph 13(a) (the consideration to the abolition of death penalty and the reduction of the number of eligible crimes for capital punishment) and Paragraph 13(f) (the consideration of acceding to the Second Optional Protocol to the Covenant) of the concluding observations on the sixth periodic report of the Government adopted by the Committee in 2014 (the "Concluding Observations"). These comments express the Government's insistent attitude toward the preservation of the death penalty merely with Japan

in mind. They are not thus appropriate.

(1) The Government states with regard to the interpretation of article 7 of the Covenant mentioned in the first sentence of Paragraph 44 that:

> …the expression "States parties that have not yet abolished the death penalty" is inappropriate and that it should be replaced by another appropriate expression such as "States parties that have the death penalty".

(2) The Government proposes deleting Paragraph 54 entirely.

(3) The Government proposes deleting Paragraph 55 entirely.

3. The Government's Comments as in (1) and (2) below on the failure to provide information on the execution of the death penalty prior and subsequent to the execution mentioned in the fifth sentence of Paragraph 44 and the second sentence of Paragraph 60 of the General Comment are contrary to sentiments of individuals on death row and their families, and also deprive those on death row of the opportunity to exercise their rights. These comments should not be thus adopted.

(1) The Government states with regard to the fifth sentence of Paragraph 44 that the fact that an individual sentenced to death is not notified of the exact date of execution in advance does not constitute a form of ill-treatment and that there are reasonable grounds such as reduction of psychological agony of an individual sentenced to death.

(2) The Government states with regard to the second sentence of Paragraph 60 that the execution of inmates to their relatives is not notified in advance to give consideration to psychological suffering to the relatives, and calls for the deletion of "of the date in which the carrying out of the death penalty is anticipated, and" in the second sentence.

4. The Government's Comments as in (1) and (2) below on the attendance of a defense attorney and due process in the criminal proceedings which impose capital punishment mentioned in the second sentences of Paragraphs 45 and 58, respectively, of the General Comment indicate its lack of the understanding of due process in the criminal proceedings, and, inter alia, underestimate the risk of misjudgment on the death penalty. These comments should not be thus adopted.

(1) The Government states with regard to the second sentence of Paragraph 45 that due process in the interrogation or preliminary hearings can be implemented without the attendance of a defense attorney, and proposes deleting "during criminal interrogation, preliminary hearings".

(2) The Government states with regard to the second sentence of Paragraph 58 that although it opposes any ill-treatments, a death penalty based on the information procured by any ill-treatment is not immediately regarded as a violation of article 6 of the Covenant, so requests the replacement of "would" by "could".

5. The Government's Comments as in (1) and (2) below on the judicial and administrative reexamination of death sentences mentioned in Paragraph 50 and the first sentence of Paragraph

51 of the General Comment indicate its lack of consideration of capital punishment which causes deprivation of life in an irreversible manner for the sake of justifying the current implementation of the death penalty in Japan. These comments should not be thus adopted.

(1) The Government suggests deleting Paragraph 50 entirely.

(2) The Government proposes deleting the word "conclusively" in the first sentence of Paragraph 51, because there are cases where convicted persons make repeated application for pardons on the same grounds to avoid the death penalty.

6. The Government's Comments as in (1) and (2) below on the narrowing down of eligibility for the death penalty mentioned in Paragraph 53 of the General Comment are a formalistic opinion, failing to consider the mental status of those who face the execution of the death penalty, and also differ from the past implementation of the execution by the Government. These comments should not be thus adopted.

(1) The Government suggests modifying the expression of the first sentence of Paragraph 53 to avoid the misunderstanding that capital punishment may not be carried out against offenders with minor mental disabilities as long as a sentence of capital punishment is finalized after a careful hearing in a criminal trial.

(2) The Government suggests deleting the second sentence of Paragraph 53, stating that because the factors enumerated after "and persons whose execution would be exceptionally cruel" are factors to be considered during a trial, they cannot be a sufficient ground to avoid the execution.

7. The Government's Comment for deleting the fifth and sixth sentences of Paragraph 43 of the General Comment on the retroactive application of the abolition of the death penalty cannot be accepted as the interpretation of the third sentence of article 15, paragraph 1 of the Covenant.

8. The Government proposes adding "unless credible and effective assurances against the imposition of the death penalty in violation of article 6 of the Covenant have been obtained" at the end of the third sentence of Paragraph 34 of the General Comment on the extradition of criminals. This comment is logically meaningless. It could be just a confirmation or stress for the condition.

Part II Reasons for Opinion

Reasons for the above opinion are stated in order of each item.

1. Restrictions of eligible crimes for the death penalty

(1) The Government's Comment on the second sentence of Paragraph 39 is that:

> …a perpetrator may commit an armed robbery, piracy or sexual offences, recognizing that it would result in the death of the victim. In such cases, it is irrational to prohibit the application of the death penalty. Thus, the Government of Japan proposes removing these three offences from this sentence. Moreover, other offenses may also result in death of

the victim and the perpetrator may have been aware of it. Therefore, “In principle” should be inserted at the beginning of this sentence.

(2) However, it is clear that “the most serious crimes” in article 6, paragraph 2 of the Covenant should be read restrictively within the framework of the whole article. Also, the Government received the recommendation as stated in Paragraph 13(a) of the Concluding Observations to “[g]ive due consideration to the abolition of death penalty or, in the alternative, reduce the number of eligible crimes for capital punishment to the most serious crimes that result in the loss of life”.

(3) Japan currently has 19 types of eligible crimes for the death penalty, but the fact is the cases where the death penalty was finalized in Japan since 1945 involved intentional killing in principle. The death penalty has not been applied to such cases where “other offenses may result in death of victim and the perpetrator may have been aware of it” as pointed out in the Government’s Comment.

(4) The JFBA believes that by the Government’s Comment on the interpretation of “the most serious crimes” in the second sentence of Paragraph 39 of the General Comment, the Government intends to loosely interpret the restriction in addition to having many types of currently eligible crimes for capital punishment. It is contrary to the purpose of article 6, paragraph 2 of the Covenant, and should not be thus adopted.

Incidentally, the Rome Statute of the International Criminal Court (promulgated on July 20, 2007, and 2007 Treaty No.6 and Ministry of Foreign Affairs Notification No.418), to which Japan accedes, provides with regard to the punishment of a person convicted of genocide that the maximum penalty which is applicable to genocide is a term of life imprisonment (Article 77, paragraph 1(b)). This treatment differs from that of Japan which has not abolished the death penalty.

2. International society’s efforts to abolish the death penalty

(1) The Government’s Comment on the first sentence of Paragraph 44 is that:

> …the expression “States parties that have not yet abolished the death penalty” is inappropriate because it appears to be based on the assumption that the abolition of the death penalty is obligated to all States parties. It should be replaced by another appropriate expression such as “States parties that have the death penalty”.

(2) However, the expression “countries which have not abolished the death penalty” is used in article 6, paragraph 2 of the Covenant. In addition, paragraph 6 of the same article provides that nothing in this article shall be invoked to delay the abolition of capital punishment by any State Party to the present Covenant. It is not thus necessary to change the expression “States parties that have not yet abolished the death penalty” in the General Comment.

(3) The Government’s Comment on Paragraph 54 is that:

> The Government of Japan proposes deleting this paragraph entirely. The Covenant

respects the inherent right to life and at the same time allows the death penalty. Furthermore, the Government of Japan does not believe that article 6, paragraph 6 takes the position that "States parties that are not yet totally abolitionist should be on an irrevocable path towards complete abolition of the death penalty".

Additionally, it states with regard to Paragraph 55 that:

> The Government of Japan proposes deleting this paragraph entirely. The Government of Japan does not regard the death penalty as "a cruel, inhuman or degrading punishment per se". Nor do we believe that such a consensus has been formed in the international society.

It proposes deleting these two paragraphs entirely.

(4) It is reasonable to literally construe article 6 of the Covenant to mean that although it is contrary to the respect for the right to life, the death penalty has to be unavoidably(exceptionally) admitted under a State Party's circumstances on a path toward complete abolition of the death penalty de facto and de jure.

(5) Even if the Government does not regard the death penalty as "a cruel, inhuman or degrading punishment per se", Paragraph 55 shows a clear indication of the progress for the respect for the right to life based on objective facts, stating that:

> …the increasing number of ratifications of the Second Optional Protocol, as well as that of other international instruments prohibiting the imposition or carrying out of the death penalty, and the growing number of non-abolitionist States that have nonetheless introduced a de facto moratorium on the exercise of the death penalty, suggest that considerable progress has been made towards establishing an agreement among the States parties to consider the death penalty as a cruel, inhuman or degrading form of punishment. Such a legal development is consistent with the pro-abolitionist spirit of the Covenant, which manifests itself, inter alia, in the texts of article 6, paragraph 6 and the Second Optional Protocol.

It is thus not necessary to delete Paragraph 55.

(6) The Government's Comments on the first sentence of Paragraph 44 and Paragraphs 54 and 55 of the General Comment concerning the death penalty and the international society's efforts to abolish death sentences are all contrary to Paragraph 13(a) (the consideration to the abolition of death penalty and the reduction of the number of eligible crimes for capital punishment) and Paragraph 13(f) (the consideration of acceding to the Second Optional Protocol to the Covenant) of the Concluding Observations. These comments express its insistent attitude toward the preservation of the death penalty merely with Japan in mind. They are not thus appropriate.

3. Failure to provide information prior and subsequent to the execution

(1) The Government's Comment on the fifth sentence of Paragraph 44 of the General Comment is

that:

> …an individual sentenced to death has been aware of the fact that the death penalty will be executed on him/her ever since the judgement was rendered. Therefore, the fact that an individual sentenced to death is not notified of the exact date of execution in advance does not necessarily constitute "a form of ill-treatment". If an individual sentenced to death was notified of the exact date of execution in advance, he/she would rather lose his/her mental stability and suffer tremendous agony. Moreover, an individual sentenced to death could obstruct the execution based on such notification. Thus, it should not be regarded as "a form of ill-treatment" even if an individual sentenced to death is not notified of the exact date of the execution in advance. In this respect, the Government of Japan proposes deleting this sentence entirely.

The Government's Comment on the second sentence of Paragraph 60 of the General Comment is that:

> …notifying the execution of inmates to their relatives in advance would cause unnecessary psychological suffering to the relatives. Also, if the inmates come to know the schedule of the execution through their relatives, inmates' peace of mind may be negatively affected. Considering these concerns, the Government of Japan proposes deleting "of the date in which the carrying out of the death penalty is anticipated, and" in the second sentence.

(2) However, not knowing when to be executed for a long period of time gives individuals on death row psychological anxiety to a considerable degree. A past survey of those sentenced to death conducted by Diet members shows that 60% of the respondents wished prior notification about the date of their execution. Sudden execution without giving a last chance to see individuals on death row also causes mental damage to their families. (One thing to be added here is that during the 1950s in Japan, those sentenced to death were notified about their execution two to three days in advance, and were allowed to see their families. In fact, Sakuro Tamai, who was a prison officer, tape-recorded 53 hours from the notification of the execution to an individual sentenced to death to the execution.)

Sudden execution without prior notification may unilaterally deprive those sentenced to death who are preparing to request a retrial, pardon and other procedures of the chance to seek remedy. As a matter of fact, a death row inmate was executed in August 2014 when the request for a retrial was still prepared. In 2017, another individual sentenced to death who was seeking for a retrial was executed without notice, and nothing could be done to respond to such sudden execution.

(3) The Government's Comments on the fifth sentence of Paragraph 44 and the second sentence of Paragraph 60 of the General Comment concerning the failure to provide information prior and subsequent to the execution are contrary to sentiments of individuals on death row and their

families, and also deprive those on death row of the opportunity to exercise their rights. These comments should not be thus adopted.

4. Attendance of a defense attorney and due process in criminal proceedings which impose death penalty

(1) The Government's Comment on the second sentence of Paragraph 45 is that:

> …the Government of Japan proposes deleting "during criminal interrogation, preliminary hearings". Due process in the interrogation or preliminary hearings can be sufficiently implemented without the attendance of a defense attorney. Thus, it is unreasonable to regard interrogations and preliminary hearings as violations of article 14 just because a defense attorney is not present without examining the appropriateness of those procedures.

(2) However, the Government received the recommendation stated in Paragraph 18 of the Concluding Observations that "[t]he State party should take all measures to abolish the substitute detention system or ensure that it is fully compliant with all guarantees in articles 9 and 14 of the Covenant, inter alia, by guaranteeing (matters below)", and is called on to ensure "[t]hat all suspects are guaranteed the right to counsel from the moment of apprehension and that defense counsel is present during interrogations".

This comment further denies the recommendation issued to the Government for the interpretation of articles 9 and 14 of the Covenant. It is not thus a reasonable interpretation.

(3) The Government's Comment on the second sentence of Paragraph 58 is that:

> The Government of Japan opposes any ill-treatments. However, the Government of Japan must say that there is a huge leap in logic if a death penalty based on the information procured by any ill-treatment is immediately regarded as a violation of article 6. This is because "ill-treatment" is a broad concept and the level of illness among the treatments within this concept varies widely. Therefore, the Government of Japan requests the modification of the second sentence, such as replacing "would" by "could".

(4) Despite the inclusion of "torture or ill-treatment" in Paragraph 58 of the General Comment, the Government intentionally fails to mention "torture" (article 1, paragraph 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person) while solely criticizing "ill-treatment". It wrongly interprets this paragraph, requesting the modification for "torture" as well as "ill-treatment".

Furthermore, this comment conflicts with Paragraph 13(c) of the Concluding Observations which calls on the Government to "[i]mmediately strengthen the legal safeguards against wrongful sentencing to death, inter alia, by...ensuring that confessions obtained by torture or ill-treatment are not invoked as evidence".

(5) Four individuals sentenced to the death penalty (Menda, Saitagawa, Matsuyama, and Shimada cases) were acquitted by a retrial in the 1980s in Japan. In all of these cases, their confessions obtained by torture or ill-treatment led to the final judgement of the death penalty without presence of a defense attorney during interrogations under the substitute detention system. The decision to commence a retrial for Hakamada's case reminds the nation of concrete and realistic risks of misjudgment and wrongful conviction. Iwao Hakamada, who had been sentenced to death, was released from the Tokyo Detention House in March 2014 with the JFBA's assistance after having spent about 48 years in prison. As mentioned above, the risk of misjudgment rendered to those sentenced to death starts from the lack of the attendance of a defense attorney and due process in criminal proceedings.

(6) The Government's Comments on the second sentences of Paragraphs 45 and 58, respectively, of the General Comment concerning the attendance of a defense attorney and due process in the criminal proceedings which impose capital punishment indicate the lack of its understanding of due process in the criminal proceedings, and, inter alia, underestimate the risk of wrongful judgement on the death penalty. These comments should not be thus adopted.

5. Judicial and administrative re-examination of death sentences

(1) The Government's Comment on Paragraph 50 is that:

> The Government of Japan suggests deleting the entire paragraph....In a constitutional State respecting the rule of law, when a sentence of the death penalty is finalized after careful hearing in a criminal trial (and appeal process), it is a matter of course that such sentence be carried out. While States Parties may incorporate some form of legal remedy, the structure and operation of such remedies shall be in accordance with the legal system of respective States Parties.

The Government's Comment on the first sentence of Paragraph 51 is that:

> …there are cases where convicted persons make repeated application for pardons and other remedies on the same grounds to avoid the death penalty. If the execution of the death penalty is barred in such cases, the death penalty may never be carried out, thus making it impossible to fulfil the purpose of criminal trials. For this reason, the Government of Japan considers the first sentence to be inappropriate. Therefore, the Government of Japan proposes deleting the word "conclusively".

(2) This comment neglects a fact of the cases which were acquitted by a retrial in Japan. In addition to the above four cases which turned out to be innocent by the retrial in the 1980s, the immediate appeal for the case of Hakamada, a death row inmate, is currently underway.

Other cases, which were not sentenced to death, though, were found innocent by a retrial. These cases show some cases can be still wrongly judged even after "careful hearing in a criminal trial" which is mentioned by the Government. It is therefore vital to further improve the judicial

reexamination as well as the administrative review.

No pardon has been granted to those on death row in Japan since the last time the death sentence was commuted by pardon in 1975. In fact, commutation of the death penalty by pardon has been still suspended. It is no exaggeration to say that placing too much weight on hearings and trials hinders administrative reexamination of those sentenced to death.

(3) As shown above, the Government's Comments on Paragraph 50 and the first sentence of Paragraph 51 of the General Comment indicate its lack of consideration of capital punishment which causes deprivation of life in an irreversible manner for the sake of justifying the current implementation of the death penalty in Japan. These comments should not be thus adopted.

6. Limiting applicable condition for the death penalty

(1) The Government's Comment on the first sentence of Paragraph 53 is that:

> …the question of what type of penalty shall be imposed is one for the court to decide, taking into consideration the nature of the crime, any disabilities the offender may have as well as the seriousness of such disabilities. In a constitutional State respecting the rule of law, when a sentence of capital punishment is finalized after a careful hearing in a criminal trial (and appeal process), it is a matter of course that such sentence be carried out. The current draft comment risks inducing the misunderstanding that offenders with minor mental disabilities cannot be sentenced to capital punishment or that capital punishment may not be carried out against such offenders. Therefore, the Government of Japan suggests modifying the expression of the draft comment to avoid such misunderstanding.

The Government's Comment on the second sentence of the same paragraph is that:

> …the factors enumerated after "and persons whose execution would be exceptionally cruel" are factors to be considered during a trial, and when a sentence of capital punishment is made after taking such factors into consideration, there is no reason that capital punishment shall not be carried out. In addition, even if such factors arise after imposing a sentence of capital punishment, they cannot be a sufficient ground to avoid the execution of a sentence made after careful hearing in a criminal trial (and appeal process) and therefore shall be deleted.

(2) However, the United Nations already adopted the resolutions to limit the application and execution of the death penalty for minors, pregnant women, persons suffering from mental disorder and others (the United Nations Economic and Social Council resolution 1984/50 of "Safeguards guaranteeing protection of the rights of those facing the death penalty", the United Nations Economic and Social Council resolution 1989/64 of "Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty", the United Nations Commission on Human Rights resolution 2005/59 and other resolutions). The comment by The

Government infringe on those resolutions.

Unlike other punishments (whose executions are under the jurisdiction of public prosecutors), the execution of the death sentence is under the jurisdiction of Minister of Justice. As far as the JFBA can confirm, since 1998, the total of eight justice ministers did not authorized the execution of death penalty when they were in office.

(3) The Government's Comments on the narrowing down of eligibility for the death penalty mentioned in the first and second sentences of Paragraph 53 of the General Comment are a formalistic opinion, failing to consider the mental status of those who face the execution of the death penalty, and also differ from the past implementation of the execution by the Government. These comments should not be thus adopted.

7. Retroactive application after the abolition of the death penalty

(1) The Government's Comment on the fifth and sixth sentences of Paragraph 43 is that:

> The Government of Japan proposes deleting the fifth and the sixth sentences.... From the viewpoint of fairness between those who have already been executed and those who have not, it may still be possible to execute the death penalty on individuals for whom the sentence has already been finalized before the abolition of the death penalty even after its removal from the Penal Code. Thus the retroactive application of the abolition of the death penalty should be decided by respective States Parties based on various factors including popular sentiment.

(2) However, this comment is contrary to the literal interpretation of the third sentence of article 15, paragraph 1 of the Covenant, to which Japan is a State Party, that "If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby".

(3) Therefore, the Government's Comment on the fifth and sixth sentences of Paragraph 43 of the General Comment is not approved because of the interpretation of the third sentence of article 15, paragraph 1 of the Covenant.

8. Extradition of criminals

(1) The Government's Comment on the third sentence of Paragraph 34 is that:

> …the current sentence can be construed to mean that every extradition to a country which has the death penalty violates article 6. Therefore, the Government of Japan proposes adding "unless credible and effective assurances against the imposition of the death penalty in violation of article 6 of the Covenant have been obtained" at the end of this sentence.

(2) However, the third sentence of Paragraph 34 already refer the Paragraph 38 by the words of "as explained in paragraph 38 below" and the sixth sentence of Paragraph 38 declares the condition of "unless credible and effective assurances against the imposition of the death penalty have been

obtained".

(3) Therefore, the Government's Comment on the third sentences of Paragraph 34 of the General Comment is logically meaningless. It could be just a confirmation or stress for the condition.

9. Conclusion

The Government's Comments on the section of the death penalty in the General Comment can be inevitably perceived as the intention to have the preservation of the death penalty internationally recognized, and lacks reasonableness to interpret articles 6, 7 and others of the Covenant. As mentioned in the Main Points of the JFBA's Opinion, none of the Government's Comments which the JFBA points out above should not be adopted in the General Comment, and so there is no need to modify the General Comment based on the Comment.

Exhibit 1

Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty(Summary)

Japanese

When a crime is committed, how should we deal with it? How can an offender come to feel and express genuine remorse for his or her crime, and avoid reoffending?

Policy for supporting victims of serious crimes and their families should be designed to provide the continuous support necessary for them, from the moment the crime is committed, and society as a whole should be responsible for providing such support. Serious crimes which result in the loss of life should never be tolerated, and the victims of such crimes can never be brought back. It is quite natural for bereaved families to seek severe punishment for offenders.

On the other hand, no one is born to be a criminal. Many offenders commit crimes against a backdrop of familial, financial or educational problems, and are often socialized in environments where they lack moral guidance and experience social discrimination. Our experience as defence counsel helps us to realize that sometimes people lose their sense of humanity and commit egregious crimes, but that they may come to regret what they have done and change their character if they are provided with proper assistance which encourages awareness of their problems.

Given this perspective, the penal system should not function merely for retributive purposes. It should also contribute to the recovery of humanity, and the rehabilitation and social inclusion of offenders, based on the principle that the inherent dignity and value of convicted persons as human beings should be respected. This idea, which was suggested by the Penal Reform Committee established by the Minister of Justice in 2003, and which was later affirmed by the government's Crime Countermeasures Ministerial Meeting, aids in preventing reoffending and achieving a safer society.

We, the Japan Federation of Bar Associations (the "JFBA"), hereby issue this Declaration in consideration of the earlier Declaration Calling for Establishment of Measures for Rehabilitation of Convicted Persons and Cross-Society Discussion on Abolition of the Death Penalty (also known as the "Takamatsu Declaration"). The Takamatsu Declaration, issued on October 7, 2011 on the occasion of the 54th Convention on the Protection of Human Rights, reflected the belief that our objective should be a society free from the death penalty. Since then, the JFBA has worked to implement the Takamatsu Declaration. We also take into account the fact that there have been some significant developments in both the national and international situations with regard to the death penalty and criminal justice since the Takamatsu declaration was issued.

The revised UN Standard Minimum Rules for the Treatment of Prisoners (also known as the "Nelson Mandela Rules") were adopted by the United Nations (the "UN") General Assembly in 2015, and represent the minimum standards required for respecting the inherent dignity and value of prisoners as human beings, and accomplishing their rehabilitation. Japan should take responsibility for drastic reform of its criminal detention system in accordance with these Nelson Mandela Rules. For example, in 2013, the Committee on Economic, Social and Cultural Rights (the "CESCR") recommended that the Japanese government abolish imprisonment with forced labour, in line with Article 6 of the International Covenant on Economic, Social and Cultural Rights (the "ICESCR").

In particular, when considering reform of the penal system as a whole, we need to take account of the fact that the death penalty denies the right to life guaranteed in Article 6 of the International Covenant on Civil and Political Rights (the "ICCPR"), which lies at the core of the idea of fundamental human rights, and that the UN Human Rights Committee and UN Human Rights Council have both urged the Japanese government to give due consideration to the abolition of the death penalty.

Many countries around the world have abolished the death penalty in the last few decades, and at its 69th session on December 18, 2014, the UN General Assembly adopted a resolution calling for a moratorium on the use of the death penalty. On this occasion 117 states supported the resolution, 38 states (including Japan) opposed it, and 34 abstained. This was the fourth time that a resolution calling for such a moratorium had been passed at the General Assembly, and marked the highest level of support achieved to date. The international trend toward abolition of the death penalty reflects a growing recognition that miscarriages of justice may take place in capital cases, that the death penalty has little deterrent effect for serious crimes, and that, accordingly, there is no clear basis for retention. Against this backdrop of declining support, the UN Congress on Crime Prevention and Criminal Justice, which will discuss reform of criminal justice systems worldwide, is set to be held in Japan in 2020.

Moreover, Japan has had four retrial cases in which a death row prisoner was finally found to be not guilty. Recently, in March 2014, the Shizuoka District Court decided to reopen the "Hakamada Case", and Mr. Hakamada was subsequently released from death row after almost 48 years of imprisonment. If we retain the death penalty system, wrongful executions are simply unavoidable, because decisions of life or death are made by human beings. Furthermore, under Japan's criminal justice system, which has many important defects, such as the detention and interrogation of suspects over a prolonged period of time and insufficient disclosure of evidence held by prosecutors, there is a serious risk of miscarriages of justice, and obviously, once a person has erroneously been sentenced to death and executed, the mistake is irrevocable.

Accordingly, the JFBA urges the government to reform the existing penal system into one oriented to the actual rehabilitation and reintegration of offenders, and declares itself to be committed to the realization of such reform. In particular, efforts to reform the system should address the following issues:

1. Reform of the penal system

(1) Amend the Penal Code in order to abandon the current two-track system, which stipulates both imprisonment with forced labour, and imprisonment without forced labour, by abolishing the former and introducing a wage system for prison work. Stipulate that the recovery of offenders' humanity and their reintegration into society are among the purposes of imprisonment.

(2) Clarify that imprisonment is an exceptional measure which should be used only when an offender cannot be treated in the community, and expand the usage of non-custodial measures by introducing community service orders and/or drug treatment orders for addicted offenders, as alternatives to imprisonment.

(3) Relax the strict conditions with regard to suspended sentences for second convictions, which prevent judges from applying the most suitable sanctions to offenders in accordance with the actual circumstances of their crimes. In other words, amend Article 25 Section 2 of the Penal Code, in order to allow for suspended sentences to be an option even for second offenders who have committed another crime during their probationary period. Further, amend Articles 57 and 59 of the Penal Code, which provide for aggravated punishments for second or further repeated convictions, so as to enable appropriate sanctions to be chosen in accordance with the specific circumstances of the offences.

2. Death penalty system and its alternatives

(1) Aim for the abolition of the death penalty by the year 2020, when the UN Congress on Crime Prevention and Criminal Justice will be held in Japan.

(2) Upon abolition of the death penalty, consider possible alternatives to the penalty, applicable to those most serious crimes for which the death penalty had formerly been applied. Consider life imprisonment without the possibility of parole, or another severe category of life imprisonment, where prisoners need to serve at least 20 or 25 years, instead of the existing 10 years for life imprisonment, before they become eligible for release on parole. However, even when choosing to introduce life imprisonment without the possibility of parole, consider establishing a mechanism which enables decision makers such as courts to commute the sentence to ordinary life imprisonment, or otherwise alter the original sentence, in cases where they find that a prisoner has been rehabilitated by serving time.

3. System for rehabilitation and prevention of reoffending

(1) Codify the conditions for parole and review the role of the Regional Parole Board, by enhancing its independence and revising the composition of the Board. Amend Article 28 of the Penal Code so that concrete criteria for parole are provided by the Code, not the ordinance. Take the measures necessary to facilitate the release on parole of prisoners sentenced to life by, for example, ensuring that parole hearings will be held on a regular basis.

(2) Promote greater cooperation between the corrective/probation services and the social welfare services of the government. Strengthen social measures which are useful for the re-employment, resettlement and life security of offenders. The JFBA is determined to become actively involved in providing assistance for offender rehabilitation by liaising between offenders and welfare services, both at the pre-trial stage, which can prevent offenders from being sent to prison, and the prisoner release stage, which supports the smooth re-entry of prisoners into society.

(3) Fully revise the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, in accordance with the newly amended Nelson Mandela Rules. In this regard, it is necessary to include the following revisions:

A) Remove the gaps between life in prison and life in society at large, so that imprisonment does not hamper the rehabilitation of prisoners. In particular, revamp the rules designed to maintain discipline and order within prisons;

B) Establish prison medical services which are independent from prison authorities;

C) Avoid usage of solitary confinement as far as possible, and;

D) Allow prisoners to maintain their relationships with members of the community, including their families, from the commencement of their detention to the time of their release.

(4) Examine Article 34-2 of the Penal Code on “Extinction of Punishment”, as well as other legal provisions which impose restrictions on the qualification requirements for various professions and hamper the rehabilitation of those convicted and released after serving their sentences, and consequently abolish any unnecessary restrictions.

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Japan Federation of Bar Associations

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