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President

Japan Federation of Bar Associations

JFBA No.73

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Ms. Yoko Kamikawa

Minister of Justice

Tokyo, Japan

Re: Request to Suspend Executions

1. Summary of the Request

The Japan Federation of Bar Associations (JFBA) urges the Japanese government to suspend executions of all death row inmates (whose death sentences are finalized), especially those who have filed a petition for a retrial and those who may be mentally incompetent to be executed.

2. Reasons for the Request

(1) The JFBA has been urging the Japanese government to abolish the death penalty by 2020 when the UN Congress on Crime Prevention and Criminal Justice is due to be held in Japan, and to examine possible alternative sentences for heinous crimes which are currently punishable by the death penalty (“Declaration Calling for Reform of the Penal System including Abolition of the Death Penalty” (59th JFBA Convention on the Protection of Human Rights; October 7, 2016) and “Request to Achieve the Abolition of the Death Penalty System Before the Next UN Congress on Crime Prevention and Criminal Justice Due to Be Held in Japan in 2020” (November 29, 2017)).

(2) As of December 2016¹, a total of 141 countries had abolished the death penalty in law or practice: 111 countries had abolished the death penalty in law, and 30 had abolished it in practice (by not carrying out executions for more than 10 years). Only 57 countries had retained the death penalty.

(3) Among the 34 member countries of the Organization for Economic Co-operation and Development (OECD), only three countries retain the death penalty, namely, Japan, the Republic of Korea and the United States (US). The Republic of Korea is an “abolitionist in practice²”. 19 US States have abolished the death penalty, and 4 States have declared a *de facto* moratorium (suspension) on executions (as of October 2017). Therefore, Japan remains the only OECD member country that retains the death penalty in law and practice as state policy.

(4) Despite numerous recommendations made by the UN Human Rights Committee (1993, 1998, 2008 and 2014), the UN Committee against Torture (2007 and 2013) and the UN Human Rights Council (2008 and 2012) to suspend executions and to seriously consider abolition *de jure*, the Japanese government has continued to carry out executions.

(5) While the Economic Partnership Agreement (EPA) and the Strategic Partnership Agreement (SPA) between Japan and European Union (EU) are currently in the final stages of negotiation, the EU holds a principled position against the death penalty, and believes in death penalty abolition and suspension of executions. Therefore, the Japanese government’s retention of the death penalty could hinder the conclusion of these agreements.

Moreover, the continued use of the death penalty in law and practice prevents Japan from signing extradition treaties with countries other than the US and the Republic of Korea.

¹ Information accurate as of December 31, 2016 (Amnesty International)

² ‘Abolitionist in practice’: Countries which retain the death penalty for ordinary crimes but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions.

(6) In Japan, there were four exoneration cases in the 1980s where the defendants' finalized death sentences were overturned and after a retrial ("Menda", "Saitagawa", "Matsuyama" and "Shimada" cases). The 'Hakamada' case, for which a decision was made to initiate a retrial in 2014, serves as an important reminder that the risks of wrongful conviction and miscarriages of justice are possible and real³. If the Tokyo High Court dismisses the prosecutor's appeal, it is expected that there will be an increased debate in Japan on the need to review laws concerning retrial and the death penalty system.

(7) With regard to death row inmates, the JFBA made a recommendation to the Tokyo Center House Warden on November 6, 2007, in relation to a petition regarding human rights redress for a detainee held at the Tokyo Detention Center, stating that "the detainee seems to be suffering from a serious mental disorder due to long-term detention, and requires medical assessment by an independent psychiatrist" and urged that "appropriate and prompt medical care should be given." As stated in the recommendation, there is no independent mechanism in place to assess the mental state of death row inmates, separate from the legal authorities. Therefore, the JFBA suspects that there are some death row inmates who are mentally incompetent to be executed.

(8) In 2020, Japan will host the Olympic Games, the Paralympic Games and the UN Congress on Crime Prevention and Criminal Justice. The international community will be keeping a close eye on Japan, and the Japanese government should take into consideration the detrimental impact of carrying out executions on Japan's international reputation.

The JFBA urges the Japanese government to favorably consider our request.

³ It should be noted, however, that the prosecution appealed the decision, and the appeal is currently being considered by the Tokyo High Court.