

Opinion on Matters to Be Included in the Kyoto Declaration at the 14th
United Nations Congress on Crime Prevention and Criminal Justice

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Japan Federation of Bar Associations

The Japanese Federation of Bar Associations (the "JFBA") urges representatives of the participating countries of the 14th United Nations Congress on Crime Prevention and Criminal Justice (hereinafter referred to as the "Kyoto Congress") held in 2020 to include the following in the Kyoto Declaration to be adopted in Congress:

1 It shall be reaffirmed that the roles of lawyers, key players in criminal justice, are essential to the promotion of human rights, the rule of law and culture of lawfulness, and the maintenance and development of criminal justice in harmony with sustainable development, and the following objectives shall be addressed:

(1) Make it known once again that all States, including the judiciary, should comply with the Basic Principles on the Role of Lawyers adopted at the 8th Congress (hereinafter referred to as the "Basic Principles") as the minimum standards of criminal justice in all States.

(2) Consider international mechanisms to ensure that basic principles are observed in each State, in consultation with international professional associations of lawyers and national bar associations.

2 The Basic Principles shall be expanded to include that one of the roles of bar associations and other professional associations of lawyers in fulfilling the roles of the lawyers set forth in the preceding paragraph is to protect and defend its members against inappropriate restrictions or violations to lawyers, and that the roles of such bar associations and other professional associations of lawyers should be protected by national law.

3 In order to realize the 2030 Agenda for Sustainable Development (hereinafter referred to as the "2030 Agenda") in the field of criminal justice, the following objectives shall be addressed:

(1) It shall be the duty of the State to realize a society in which a person who commits a crime can reintegrate themselves into society.

(2) In all penal institutions, treatment of detainees will be realized in compliance with the "United Nations Standard Minimum Rules for the Treatment of Prisoners" (hereinafter referred to as "the Nelson Mandela Rules").

- (3) Forced labour in prisons should be abolished.
- 4 The death penalty system should be abolished as soon as possible in the international community. In addition, the implementation of the death penalty should be suspended until the death penalty system has been abolished.
- 5 Effective civil participation shall be promoted in education and in all sectors of society to create a society resilient to crimes, and the following shall be addressed:
 - (1) To develop awareness-raising programmes for thinking about specific challenges and issues through dialogue and discussion in light of legal values such as human rights and the rule of law, and to promote the culture of lawfulness.
 - (2) Promote educational practices for coordinating and resolving social conflicts through mechanisms of dialogue and community participation.

Reason for the opinion

1 Reason for point 1 of the opinion

(1) Background for the Adoption of the Basic Principles and Its Necessity

The Basic Principles were adopted at the 8th Congress in 1990 to recognize the lawyers' vital roles in ensuring rights in a Criminal Procedure approved for all persons (Principles 1 and 4), and to support the efforts of UN Member States to promote and ensure the proper role of lawyers (preamble of the Basic Principles). Thereafter, the Basic Principles have become international standards for protecting the activities of the lawyers and have been applied as norms by the UN Human Rights Council's Special Rapporteur on the independence of judges and lawyers, as well as in human rights treaty bodies and regional human rights treaty bodies. In the Doha Declaration adopted at the 13th Congress in 2015, the objective is "to ensure that our criminal justice system is effective, fair, humane and accountable, and to provide access to justice to all" (the first sentence of the preamble), and the establishment of the roles of the judicial actors, including lawyers, continues to be one of the key objectives of the Congress.

(2) Present state of operation of the Basic Principles (reason for opinion 1(1) and (2))

Despite the adoption of the Basic Principles, there still exist situations in which, as a result of discharging lawyers' functions, governments interfere with lawyers improperly with intimidation, hindrance, and harassment and further impose sanctions such as arrest, prosecution or deprivation of qualification, or situations in which governments fail to safeguard lawyers adequately where their security is threatened as a result of discharging their functions.

In order to eliminate such situations, it is necessary to disseminate the Basic Principles to internal agencies of all States, and consideration should be given to establishing a monitoring mechanism for implementation not only in the human rights organs, but also in the criminal justice organs of the United Nations.

2 Reason for point 2 of the opinion

To protect lawyers from undue interference by governments and societies, bar associations and other professional associations of lawyers can play effective roles. In this regard, a resolution was adopted at the 7th Congress in 1985 prior to the adoption of the Basic Principles, which included "aware[ness] that bar associations and other professional associations of lawyers have a vital role and responsibility to strive to protect and defend their members against improper restrictions or infringements, as well as to uphold their professional ethics."¹

However, the basic principles adopted did not include such roles that bar associations as such should play.

Thirty years after the adoption of the Basic Principles, the roles of the lawyers and bar associations for the protection of human rights of all people and expectations to them are increasing. In particular, in order to promote the culture of lawfulness approved in the Doha Declaration, and to realize the rule of law and equal access for all to justice, which is one of the goals of the 2030 Agenda (16.3), the Basic Principles need to develop further, incorporating these goals.

At present, the Council of Europe is drafting conventions to more effectively protect duties of lawyers in Europe, and international professional associations of lawyers with which the JFBA is affiliated with, such as the Council of Bars and Law Societies of Europe (CCBE), the Union Internationale Des Avocats (UIA), and the International Bar Association (IBA), are also involved in the drafting of these conventions²

Therefore, this proposal is in line with the movement of those international professional associations of lawyers.

3 Reason for point 3 of the opinion

(1) Reintegration into society of a person who committed a crime (reason for opinion 3(1))

¹ Seventh Congress Resolution '18. Role of Lawyers'(A/CONF.121/22/Rev.1, Fourth paragraph of the preamble (pp. 87-8)

² 'CCBE contribution on the proposed European Convention on the Profession of Lawyer 15/09/2017'
<https://rm.coe.int/ccbe-contribution-european-convention-profession-lawyer-20170915-eng/168078f2f6>
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In the introductory part, the 2030 Agenda declares: "As we embark on this great collective journey, we pledge that no one will be left behind. Recognizing that the dignity of the human person is fundamental, we wish to see the goals and targets met for all nations and peoples and for all segments of society. And we will endeavour to reach the furthest behind first" (paragraph 4). The Nelson Mandela Rules also state that "Those purposes [to protect society against crime and to reduce recidivism] can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life" (Rule 4). Therefore, the social reintegration of a person who has committed a crime is an important duty of States.

(2) Necessity of compliance with the Nelson Mandela Rules (reason for opinion 3(2))

On May 22, 2015, the Commission on Crime Prevention and Criminal Justice adopted the Nelson Mandela Rules. However, treatment in penal institutions has not been consistent with the Nelson Mandela Rules, and compliance with the rules has not been realized in many countries. Among the 17 goals of the 2030 Agenda, measures should be taken at penal institutions, which could be said to be the most cruel environments, for 1 (No Poverty), 2 (Zero Hunger), 3 (Good Health and Well-Being), 4 (Quality Education), 5 (Gender Equality), 6 (Clean Water and Sanitation), 8 (Decent Work and Economic Growth), 10 (Reduced Inequalities), and 16 (Peace, Justice and Strong Institutions).

(3) Abolition of Forced Labor in Prisons (Reason for Opinion 3(3))

Article 6 of the International Covenant on Economic, Social and Cultural Rights stipulates that "States Parties to the present Covenant recognize the right to work, and take appropriate measures to safeguard this right, including the right of everyone to the opportunity to earn a living by work which he freely chooses or accepts." The 2030 Agenda also sets out the term "to eradicate forced labour" as Target 8.7. In addition, the above-mentioned Nelson Mandela Rules warn against aggravating the suffering inherent in such a situation (Rule 3), and the Doha Declaration also looked forward to action based on Mandela Rules (Paragraph 6). The JFBA has already adopted the "Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty" at its Conventions on the Protection of Human Rights held on October 7, 2016, and has called for the abolition of forced labour. Therefore, it should be declared

with the goal of eliminating forced or compulsory labour.³

4 Reason for point 4 of the opinion

The penal system should be "treated with the respect due to their inherent dignity and value as human beings" (Rule 1 of the Nelson Mandela Rules), even if it is taken into account from the viewpoint of responding to crimes and general prevention and special prevention, and should be conducive to the social inclusion and reintegration of offenders into a free society as well as to the restoration of their humanity.

However, the system of the death penalty completely excludes those who committed the crime from society, and it is against the object of the appropriate punishment as mentioned above.

In the international community as well, the number of countries abolishing the death penalty system has been increasing, and 142 countries (71% of the world total) have abolished the death penalty, including de facto abolishing countries that have not implemented the death penalty for more than 10 years.

While in the past Congress has adopted a number of instruments on the treatment of prisoners since its first meeting, many statements in support of the abolition of the death penalty and moratorium were made in the previous 13th Congress, in particular by the European Union.

The points above-mentioned, therefore, should be included in the Declaration of the Kyoto Congress in order to make it clear that the death penalty system is contrary to object and essence of the appropriate punishment, and that the abolition of the death penalty system needs to be a "standard or norm of the international community."

5 Reason for point 5 of the opinion

The Kyoto Congress's overall theme is "Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda," and it lists, as one item of its agenda, "Considering Social, Educational, and Other Related Measures in Accordance with the Doha Declaration" to promote the rule of law. In order to create a society resilient to crimes, it is necessary to eliminate fragmentation by encouraging effective civil participation and social inclusion in all sectors, and as a concrete measure, an approach based on education is important.

The Doha Declaration states that it "support[s] the development and implementation of consultative and participatory processes in crime prevention and criminal justice in order

³ JFBA's Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty (October 7, 2016)

to engage all members of society" (the main text of paragraph 10) and calls for the development of "awareness-raising programmes to convey key values based on the rule of law" and "to promote the management and resolution of social conflict through dialogue and mechanisms of community participation" (paragraphs (b) and (d)). "Legal-related education" encourages people to consider of specific challenges and issues through dialogue and discussion from the perspective of human rights and the rule of law, contributes to the elimination of social divides through social inclusion, and contributes to the realization and evolution of the Doha Declaration. Therefore, the Kyoto Declaration should incorporate the necessity of educational practices through the development of awareness-raising programs, dialogue, and community participation mechanisms.