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Japan Federation of Bar Associations

(JFBA)

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Introduction

As an organization representing all lawyers in Japan whose mission is to protect basic human rights and bring about social justice in Japan, we have undertaken to guarantee basic human rights in criminal justice. We have also sent delegations to the seventh (Milan), eighth (Cuba), ninth (Cairo), and tenth (Vienna) UN Congress on Crime Prevention and Criminal Justice, and have observed deliberations on the Convention against Transnational Organized Crime. In 1999, the Japan Federation of Bar Associations (“JFBA”) gained NGO consultative status with the United Nations Economic and Social Council. It is our wish that this Eleventh Congress will be a success, and to that end we offer some opinions and recommendations in line with the Congress agenda.

I. The Issue of Human Rights in Special Criminal-Justice Measures to Combat Transnational Organized Crime and Terrorism

Recommendations

- 1 The UN Commission on Crime Prevention and Criminal Justice must see that the process of international criminal legislation includes UN NGOs and other diverse elements of all countries’ civil societies.
- 2 Lawyers bear the heavy responsibility of guaranteeing human rights in times of crisis. When counter-terrorism measures that are unacceptable in terms of guaranteeing human rights have been proposed, lawyers and bar associations should express themselves publicly. Domestically — and internationally when possible — they should also resolutely mount legal challenges to such measures in light of international human rights standards.
- 3 In the Bangkok final declaration the UN should include provisions which strongly advise that anti-terrorism measures adopted by all states should not undermine international human rights standards.
- 4 Special investigative techniques must not be used indiscriminately or arbitrarily; they should be used while observing the rights to privacy guaranteed in Article 17 of the International Covenant on Civil and Political Rights.
- 5 Group control regulations on organized crime should respect the right of self-determination of peoples in accordance with each country’s domestic legal system and the principles of international law, and should be implemented with attention to the freedoms of expression and association guaranteed in Articles 19, 21, 22, and others of the International Covenant on Civil and Political Rights.
- 6 Regulations on money laundering should not apply to the acceptance of compensation by a private defense counsel in a criminal trial, so as not to violate the right to counsel.

Reasons

1. Concerns about the growth of international criminal legislation

(1) Introduction

The Japan Federation of Bar Associations is a compulsory-membership organization for Japanese lawyers. It has made efforts for ratification of the international human rights treaties and introduction of the international human rights laws.

As lawyers, we recognize that measures to address transnational organized crime and terrorism are urgent challenges for international society. Many lives have been lost to organized crime and terrorism. Last August the UN itself was a terrorism target. Under these circumstances, it is important and urgent that the investigative and judicial authorities of all nations cooperate in the context of international conventions to prevent crime. There are much more gangster (YAKUZA) organizations in Japan than the Mafia of the US and Italy, and JFBA has been involved in helping victims of civil intervention by these crime syndicates.

However, the UN Convention against Transnational Organized Crime and UN Convention against Corruption, and revisions of the 40 recommendations by the Financial Action Task Force (FATF) include many new institutional measures to fight organized crime. The anti-terror measures recently adopted by various countries also have serious problems. Some of these measures make changes to modern criminal law principles and the principles for the international guarantee of human rights. We believe that the international guarantee of human rights is a vital goal of international society, and that unless new anti-crime measures also conform completely to principles for the international guarantee of human rights, they cannot be effective.

(2) The increasing globalization of law enforcement based on international conventions

Japanese citizens have been bombarded by a wave of criminal legislation that strengthens law enforcement against the backdrop of international conventions and agreements, and the trend has intensified in response to 9/11.

Three laws concerned with countering organized crime, including the August 1999 Wiretapping Law, are comprehensive laws aimed at curbing organized crime such as money laundering.

The Bank Customer Identification Law and the Terrorism Funding Control Law, which were passed in the 2002 Diet session, were also proposed as domestic counterparts of the UN International Convention for the Suppression of the Financing of Terrorism and FATF recommendations. Currently up for Diet hearings are bills for a domestic counterpart of the UN Convention against Transnational Organized Crime, and a counterpart of the Council of Europe Convention on Cybercrime. The wave of globalized law enforcement based on international conventions has reached Japan's shores as well.

(3) Checks by parliaments and international human rights organizations are not functioning.

Such legislation is a new trend in international criminal legislation created in the UN and other fora by bureaucrats in the police, prosecutor, and other law enforcement agencies of the industrialized countries, and by bureaucrats in foreign ministries. This trend grows continually stronger because of 9/11 and other events such as the corruption scandals of the multinational corporation Enron, WorldCom.

Against the backdrop of economic globalization, this trend finds its roots in the fundamental desire of governments' law enforcement agencies to get a handle on the flows of money, people, and information that undergird globalization.

JFBA quickly focused on this trend in international criminal legislation, sending a delegation to the ad hoc committee for drafting the UN Convention against Transnational Organized Crime, and tracking its formulation process. However, nearly all the participants in the process of enacting international criminal legislation are the members of law enforcement agencies and diplomats sent by governments. There is hardly any participation by the representatives (including NGOs) of the citizens whose rights will be restricted by these conventions. Further, under the authority of these international agencies, there is legislation in progress that will exponentially increase the authority of law enforcement agencies in a way that does not allow states' legislative bodies to make any changes. And once a convention has been signed, it is difficult for parliaments to make any changes. The only options open to governments are to either not ratify a convention, or to make the best choices allowed within the discretion allowed by that convention.

As with the FATF recommendations, not actually implementing a convention would in some cases raise the possibility of economic sanctions, and when the very option of non-implementation is hard to elect, the result is the undermining of parliamentary legislative power itself.

2. Unless measures to control terrorism and organized crime are carried out in strict observance of international human rights and humanitarian law, the measures cannot be effective.

(1) Is it possible to clearly differentiate terrorism from resistance based on the right of self-determination of peoples in accordance with the principles of international law, especially the principles of international humanitarian law such as the Geneva Conventions?

It is a shared perception of international society that terrorism directly and devastatingly affects the human rights of all people, especially the right to life and to personal security. We share this perception.

But discussion of how to combat terrorism also requires an awareness of the difficulty of clearly distinguishing terrorism from resistance based on the right of self-determination of peoples in accordance with the principles of international humanitarian law, especially the principles of international humanitarian law such as the Geneva Conventions.

Especially in countries where political, ethnic, and religious minorities and opposition groups carry out resistance movements against governments and businesses under colonial or iron-fisted political regimes, there are not a few cases in which government policy makes such organizations subject to group control regulations, and therefore to measures aimed at terrorism or organized crime. Some resistance movements are violent, while others are peaceful, but often the borderline between them is actually not clear.

If under such circumstances one decides that a resistance movement itself is a terrorist group

or an organized crime group, this might not only bring about violations of these minorities' human rights, but also deny their right of self-determination. We must not forget that South Africa's ANC and East Timor's FLETILIN were called terrorists by their governments until shortly before independence was won. The difficulty of accurately defining terrorism suggests the need for careful thought when devising anti-terrorism measures.

(2) A worrisome trend

We must also note that parts of conventions and FATF recommendations that combat terror and organized crime are diametrically opposed to some the principles of the democratic legal institutions and values that have been internationally established. We are deeply concerned that, in the country which originated the modern constitution, the authorities have countenanced a system for the long-term detention of foreigners claimed to have links to terrorism, without charges based on suspicion of a crime.

(3) The 2004 Seoul Declaration

The September 2004 Seoul Declaration, which was adopted after discussion by national human rights institutions from around the world, states, "Terrorism has a devastating impact on the full range of human rights, most directly the right to life and personal security. Respect for human rights and the rule of law are essential tools to combat terrorism. National security and the protection of the rights of the individual must be seen as interdependent and interrelated. Counter-terrorism measures adopted by States should therefore be in accordance with international human rights law, refugee law, and humanitarian law." After stating these general principles the Declaration emphasizes the importance of guaranteeing economic and social rights while combatting terrorism. The Declaration also makes a specific proposal on civil and political rights: "During conflict and in countering terrorism, any measures that may have an impact on the enjoyment of civil and political rights must be both necessary and proportionate. It is important for NHRIs to monitor the limited and justifiable application of such measures. NHRIs should demand of the State that counter-terrorism legislation is neither enacted in haste nor without prior public scrutiny. Furthermore, NHRIs should take the necessary measures to prevent violations of derogable and especially non-derogable rights, such as the fundamental requirements of due process and fair trial, respect for human dignity, freedom from torture and ill-treatment, and arbitrary detention."

(4) The 2004 Berlin Declaration

In August 2004 the International Commission of Jurists (ICJ), an international gathering of lawyers, adopted the ICJ Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (Berlin Declaration). It is emphasized in this Declaration that in the implementation of counter-terrorism measures, states have an obligation to guarantee the independence of the judiciary and the principles of criminal law; that states must not suspend rights which are non-derogable during an emergency; that states must observe at all times and in all circumstances the prohibition against torture and cruel, inhuman or degrading treatment or punishment and other peremptory norms; that states may never detain any person secretly or incommunicado and must maintain a register of all detainees; that states must ensure fair trial guarantees; that states must respect and safeguard fundamental rights and freedoms,

including freedom of expression, religion, conscience or belief, the peaceful pursuit of the right to self-determination and the right to privacy, which is of particular concern in the sphere of intelligence gathering and dissemination; that states must ensure that any person adversely affected by counter-terrorism measures of a state, or of a non-state actor whose conduct is supported or condoned by the state, has an effective remedy and reparation; and that states may not expel, return, transfer or extradite a person against non-refoulement.

This Declaration also holds that members of the legal profession have a serious responsibility to unfailingly guarantee human rights in times of crisis. It states that lawyers and bar associations should express themselves publicly when unacceptable anti-terrorism measures have been proposed, that they should domestically — and internationally when possible — resolutely mount legal challenges to such measures in light of international human rights standards.

(5) Recommendation

On behalf of Japan's lawyers, we sincerely support this ICJ Declaration and pledge to engage in our activities in Japan and throughout Asia.

We also emphatically ask the UN to have the final Bangkok Declaration include provisions strongly recommending that anti-terrorism measures promoted by states to not undermine international human rights standards.

3. UN Convention against Transnational Organized Crime adopted in 2000

(1) Harmonizing special investigative techniques with human rights safeguards

The special investigative techniques employing new technologies that Article 20 of the Convention seeks to introduce can make a certain contribution to combating transnational organized crime if used correctly. However, abuse of such new investigative means by investigative authorities could very well violate the right to privacy set forth in Article 17 of the International Covenant on Civil and Political Rights. The accumulation of extensive personal information by investigative authorities and its use in crime investigations is very beneficial to efficient investigations, but that in itself is a serious threat to personal privacy. Different countries' constitutional systems do not necessarily take the same approach to protecting privacy, but when legislating these new investigative tools, governments must provide sufficient controls for human rights safeguards which accord with their constitutional systems. Hence, special investigative techniques must not be indiscriminate or arbitrary, and should be employed with attention to human rights safeguards, especially the privacy rights guaranteed by Article 17 of the International Covenant on Civil and Political Rights.

(2) Group control on crime organizations, and the right of self-determination of peoples and freedom of expression

Establishment of new group control laws to battle organized crime, which Article 5 of the Convention seeks to introduce, could be effective if they are targeted only at transnational organized crime groups. Note that the Convention limits its application to the "financial or other material benefit" of groups (Article 1 (a)). However, such new restrictions could

conflict with the freedom of expression and freedom of association guaranteed by national constitutions. Such measures must at the least conform to the guarantee of the freedoms of association and expression guaranteed in Articles 19, 21, and 22 of the International Covenant on Civil and Political Rights.

Therefore we think that group controls on crime organizations should be promoted in accordance with the basic principles of each country's legal system, should respect the right of self-determination of peoples set forth in the UN Charter, and with attention to the freedoms of expression and association guaranteed in Articles 19, 21, and 22 of the International Covenant on Civil and Political Rights.

(3) Money laundering controls and guaranteeing the right to retain a private defense counsel

Article 6 of the Convention against Transnational Organized Crime, which makes money laundering a crime, does not exempt the compensation received by lawyers. Of course lawyers must not be complicit in money laundering intended by clients. Should this occur, it should be subject to criminal prosecution for complicity in the crime of money laundering.

However, private criminal defense counsels take on criminal defense at the request of defendants who are suspected of having committed crimes. Unnecessarily stiff money-laundering regulations on lawyer compensation would make it impossible for lawyers to accept money from defendants, and in the case of money laundering predicate crimes it would actually make it hard to retain a private defense counsel.

There is one case of this kind (*United States v. Monsanto* 491 U.S.). On June 22, 1989 the US Supreme Court handed down a decision by a small 5-4 margin that if the right to a state-appointed defense counsel is guaranteed even though the right to retain a private defense counsel is denied, the pre-decision freezing of assets that could be confiscated does not violate the Amendment 6 provision guaranteeing the right to counsel and the Amendment 5 provision for due process. Nevertheless, it is notable that four of the justices (Blackmun, Brennan, Marshall and Stevens) held that it was unconstitutional. The minority opinion observed that under the state-appointed defense counsel system it is difficult to build a defendant-counsel relationship of mutual trust, and that the private defense counsel system helps build the attorney-client trust needed to have a truly effective defense. They held that this law undermines the fundamental fairness of the criminal justice system.

Although it is important to control money laundering, attorney compensation should be exempted from such controls so as not to violate the right of criminal defendants to have a private counsel.

II. The Gatekeeper Issue

Recommendations

- 1 While it is important to fight for the eradication of money laundering, there must be a full awareness that lawyers play an important role in upholding the rule of law and bringing about a democratic society.

- 2 We must be aware that using so-called gatekeeper legislation to impose lawyers the obligation to report “suspicious transactions” for the purpose of controlling money laundering will severely impair the role of lawyers in upholding the rule of law and bringing about a democratic society.
- 3 We should not allow new legislation that requires lawyers to report “suspicious transactions,” and existing legislation should be either repealed or suspended.

Reasons

1. Money laundering regulations and the gatekeeper issue

The purpose of international crime syndicates is to obtain criminal proceeds, which is what links the involved parties to one another. As such, controlling money laundering is one way of combatting international organized crime.

One traditional way of controlling money laundering is requiring financial institutions to report suspicious transactions, but in recent years there are efforts to extend this obligation to lawyers, accountants, and other professionals, and some countries are now proceeding with such legislation. Such efforts at regulation are known as the gatekeeper issue.

But lawyers in particular, working independently of their governments, are supposed to protect the legitimate interests of their private individual clients, and they play a vital role in maintaining the rule of law and realizing a democratic society. Additionally, the duty of confidentiality is essential for lawyers to perform duties and maintain the attorney-client relationship of trust.

Legislation that imposes upon lawyers the obligation to report suspicious transactions is very dangerous because it endangers lawyers’ independence from government influence, damages attorney-client trust, and keeps lawyers from discharging their duties and responsibilities as set forth in the Basic Principles on the Role of Lawyers (adopted by the Eighth UN Crime Prevention Congress), and leads to undermining the foundation of democratic society.

2. Gatekeeper legislation around the world

Britain already requires lawyers to report “suspicious transactions,” and in July 2000 Canada passed legislation imposing on lawyers the obligation to report transactions suspected of money laundering. In December 2001 the EU adopted a directive requiring lawyers and other professionals to report such transactions. This EU directive was adopted despite strong opposition from the Council of the Bars and Law Societies of Europe (CCBE), which comprises bar associations of EU member states.

3. Revision of FATF 40 recommendations

Despite strong objections from the CCBE, and from bar associations in the US, Canada, and Japan, the FATF revised its 40 recommendations in October 2003, recommending that lawyers and other professionals be required to report “suspicious transactions.”

4. Challenges to gatekeeper legislation

It is clear that requiring especially lawyers to report “suspicious transactions” is very dangerous and unacceptable. As such, bar associations around the world continue their opposition.

Especially in Canada, bar associations have made a motion for a provisional disposition seeking to have lawyers exempted from the requirement to report suspicious transactions, and in November 2001 the Supreme Court of British Columbia decided to allow this motion. Similar decisions were later made by supreme courts in Ontario and other provinces, and ultimately the Canadian government released lawyers from this obligation.

In August 2004 the Belgian Bar Association filed suit in Belgium’s Constitutional Court to dispute the validity of a Belgian law created in response to the 2001 EU directive. The association demands that a decision on the issue of whether the EU directive’s provisions violate the EU laws and the European Convention on Human Rights should be referred to the European Court of Justice.

5. Requests to governments

Gatekeeper legislation, especially requiring lawyers to report “suspicious transactions,” presents many problems. In the first place, there are serious doubts about the extent to which money laundering can be controlled by requiring lawyers to report such transactions. If lawyers cooperate in money laundering, they themselves can be punished as accomplices in the crime, which is necessary and sufficient.

Requiring lawyers to report suspicious transactions seems to be founded on the idea that the eradication of money laundering is a dominant value in our society. It is of course important to eradicate it, but it is not admissible to emphasize the value of doing so, while ignoring the other important values of democratic society. Keeping lawyers free from government influence and allowing clients to confer with lawyers without concern are essential to upholding the rule of law and creating a democratic society.

From this perspective, people must be aware of the great danger in requiring lawyers to report “suspicious transactions.” The passage of new legislation that imposes such obligations on lawyers is unacceptable, and any legislation already passed should be repealed or its validity suspended.

III. Guaranteeing Human Rights in Combatting Computer-Related Crime

Recommendation

When taking actions to prevent and control computer-related crime, governments should ensure the guarantee of human rights such as those provided by Articles 12 and 19 of the Universal Declaration of Human Rights, and the secrecy of communications and freedom of expression provided by Articles 17 and 19 of the International Covenant on Civil and Political Rights, and to endeavor to find a

rational balance with crime prevention and control while taking into consideration the need for careful attention to protecting individual freedoms and personal information as stated in UNGA Resolution 55/63.

Reasons

1. Vienna Declaration and USGA Resolution 55/63

Paragraph 18 of the Vienna Declaration on Crime and Justice states: “We decide to develop action-oriented policy recommendations on the prevention and control of computer-related crime, and we invite the Commission on Crime Prevention and Criminal Justice to undertake work in this regard, taking into account the ongoing work in other forums.”

Similarly, USGA Resolution 55/63 on cybercrime, adopted in 2000, contained 10 measures on: (1) Enhanced systems to address the criminal use of information technologies, (2) strengthened international cooperation by law enforcement agencies, (3) encouraging the international sharing of information, (4) better training of law enforcement agency personnel, (5) making a crime of computer system abuse, (6) better information security through legal systems, (7) better systems for international cooperation to quickly investigate cybercrime and gather evidence, (8) raising awareness among the general public, (9) preventing crime that exploits information technologies, and (10) the need for attending to protection of individual freedoms and personal information.

2. G8 and Council of Europe initiatives

Some of the initiatives by the bodies other than UN include those by G8. The 1997 Meeting of the Justice and Interior Ministers of The Eight in Washington approved the “Principles and Action Plan to Combat High-Tech Crime.” At the 1998 Birmingham Summit and the 2000 Okinawa Summit, it was confirmed at the head-of-state level that governments would take measures emphasized by the G8 as a whole.

There are also Council of Europe initiatives. The European Committee on Crime Problems established the Committee of Experts on Crime in Cyber-Space in November 1996 to explore this problem. For the following approximately five years the committee studied and discussed how to deal with computer crime, resulting in the November 23, 2001 signing of the Convention on Cybercrime by the Council of Europe (hereinafter, referred as "Cybercrime Convention."). In addition to Council member countries, signers included members of the drafting committee which signed as observers: Canada, Japan, South Africa, and the US (currently there are 38 signatories). The convention became effective on July 1, 2004, and as of January 31, 2005 eight countries have ratified it.

3. G8 initiatives after the Cybercrime Convention signing

Since the signing of the Cybercrime Convention, G8 countries have beefed up initiatives for broad international use, with the convention’s framework as a standard.

A communique issued by the Meeting of the Justice and Interior Ministers of The Eight held

in Mont Tremblant in 2002 stated, “We are gratified by the successful negotiations of the Council of Europe Convention on Cybercrime and the large number of signatories. We look forward to further signatures and future ratifications so as to increase harmonization and international cooperation in the fight against cybercrime,” while the communique issued by the 2003 Meeting of the Justice and Interior Ministers of The Eight in Washington said, “To truly build global capacities to combat terrorist and criminal uses of the Internet, all countries must continue to improve laws that criminalize misuses of computer networks and that allow for faster cooperation on Internet-related investigations. With the Council of Europe’s Convention on Cybercrime coming into force on July 1, 2004, we should take steps to encourage the adoption of the legal standards it contains on a broad basis.” These statements show the intention of G8 to promote international cooperation to combat computer-related crime by encouraging many countries to sign and ratify the Cybercrime Convention.

4. APEC initiatives

At an APEC leaders’ meeting in Los Cabos, Mexico in October 2002, APEC adopted the “APEC Leaders’ Statement on Fighting Terrorism and Promoting Growth,” which, as a way of “Promoting Cyber Security” said, “Endeavor to enact a comprehensive set of laws relating to cybersecurity and cybercrime that are consistent with the provisions of international legal instruments, including United Nations General Assembly Resolution 55/63 (2000) and Convention on Cybercrime (2001), by October 2003.”

5. Problems with the Cybercrime Convention from the perspective of guaranteeing human rights

We have seen that the Cybercrime Convention will be used as a standard for preventing and controlling computer crime, but it also has problems such as:

(1) It is said that from 1997 until 2000, when the convention draft was released, representatives of law enforcement agencies from France, Germany, Britain, the US, and Canada prepared the convention’s text while hardly making any of it public, and that after release of the draft, even if citizens’ organizations working to protect civil liberties submitted opinions for revisions, the text was finalized with hardly any of these opinions being incorporated. It is observed that the Cybercrime Convention therefore speaks for the law enforcement agencies of these countries, while giving short shrift to privacy and other civil liberties and including no consideration for the internet and computer industries.

(2) Cybercrime Convention provisions pertaining to criminal procedures include: (a) Expedited preservation of computer data (Article 16), data submission orders (Article 18.1a), and search and seizure (Article 19), (b) orders to service providers to submit subscriber information (Article 18.1b), (c) expedited preservation of traffic data and its partial disclosure (Article 17), and real-time collection of traffic data (Article 20), and (d) intercept of content data (Article 21).

These provisions give law enforcement agencies the authority to preserve the data stored in computer systems, the traffic data and content data maintained and possessed by service providers, and to obtain the subscriber information possessed by providers, and to broadly monitor traffic data and content data in real time for the purpose of investigations. These

provisions give law enforcement agencies broader and stronger authority for computer crime investigations than for the usual criminal investigations.

It is concerned that law enforcement agencies would interfere in communication conducted through networks and violate its privacy, and also violate the freedom to send and receive information and ideas.

Although it is recognized that computer-related crime threatens international society, and that its prevention and control are necessary, it is unacceptable to grant law enforcement agencies such powerful authority for that purpose, thereby creating a situation in which civil liberties are broadly violated.

(3) We therefore have serious doubts about using the Cybercrime Convention as it stands, as the standard for controlling computer crime. Governments should note the great significance of the fact that since its signing in 2001 until the present day, the Cybercrime Convention has yet to be ratified by a single major developed country.

Hence, in the prevention and control of computer-related crime, governments should ensure the guarantee of human rights such as those provided by Articles 12 and 19 of the Universal Declaration of Human Rights, and the secrecy of communications and freedom of expression provided by Articles 17 and 19 of the International Covenant on Civil and Political Rights, and to endeavor to find a rational balance with crime prevention and control while taking into consideration the need for careful attention to protecting individual freedoms and personal information as stated in UNGA Resolution 55/63.

IV. Human Rights of Prisoners

Recommendations

- 1 Human rights violations can readily arise in the absence of independent inspection agencies. To prevent such violations, it is critically important to grant complete inspection powers to inspection agencies that are in essence independent from law enforcement agencies.
- 2 We strongly support the Charter of Fundamental Rights of Prisoners proposed by Penal Reform International, and hope that the Congress will adopt it.

Reasons

1. The issue of the rights of persons subject to detention or imprisonment has been around as long as this Congress. The UN “Standard Minimum Rules for the Treatment of Prisoners” (1955) is the most well-known, and were created by this Congress. But since the 1992 reorganization of the Committee on Crime Prevention and Control into the Commission on Crime Prevention and Criminal Justice, the Congress has become a forum that discusses organized responses to new kinds of organized crime, corruption, and even terrorism.

2. Developments in Japan

Here we report on Japan's recent experiences regarding the human rights of prisoners as they may benefit prison systems in other countries. In October 2002 an incident came to light in which guards at the Nagoya Prison had abused a prisoner and caused his death, leading to the criminal indictment of many guards. This incident brought to light the inadequate arrangements to redress human rights violations in prisons, and the many suspicious deaths occurring in prisons due to inaccurate determination of causes of death when prisoners die there. In response, in April 2003 the Minister of Justice created a Conference on Reform of Prison Administration comprising experts and other non-government knowledgeable persons. After a short period of study and discussion, the council drew up some recommendations that December.

Some of the recommendations were: Create an inspection committee in each prison to provide for transparent prison operation; expand prisoner contact with the outside world; enhance prison medical care; and give prisoners more help to aid their return to society. Although these recommendations do not cover all the proposed reforms long sought by JFBA to conform to international human rights standards, they do achieve some of the reforms. While these changes were triggered by the unhappy discovery of prisoner abuse, a Bill regarding the Treatment of Prisoners to amend the 1908 Prison Law was introduced in the Diet session that began in January 2005.

3. Human rights violations readily occur in the absence of an independent inspection agency

We learn from Japan's experience that human rights violations readily occur in the absence of independent inspection agencies. To prevent such violations, it is important to establish appropriate standards to protect prisoners' human rights, create and implement progressive programs for treatment, and guarantee a mechanism for redressing human rights violations. In particular, a vital mechanism for guaranteeing human rights is inspections by inspection agencies independent of prisons.

4. Endorse PRI's Charter of the Fundamental Rights of Prisoners

Penal Reform International (PRI) is a UN NGO which has actively worked to protect the human rights of prisoners around the world. To this Congress it is proposing a Charter of the Fundamental Rights of Prisoners, in which we understand that the core components of already established international standards and norms on the treatment of prisoners, such as the UN Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners, are reorganized as the rights of prisoners instead of as job standards for detention facility personnel.

If this Charter is adopted and actually applied in detention facilities throughout the world, it will likely have a considerable influence on improving practice. It can be highly regarded for a text that is well-polished and includes everything necessary, while at the same time having a practical conciseness.

Former PRI Chairperson Ahmed Othmani, who unflinchingly promoted the adoption of this Charter, contributed greatly to the activities of human rights organizations around the world, including JFBA. His unexpected death late last year is truly regrettable, and we wish to express our condolences. We sincerely hope that the Charter will be unanimously adopted

because it would also honor his achievements through his consistent efforts for the human rights protection and humanitarian treatment of prisoners worldwide.

5. In conclusion

We hope the Congress will carry on the tradition of efforts to protect the human rights of prisoners, and that it will continue to be a forum for discussing the human rights protection and humanitarian treatment of criminal prisoners.

V. Human Trafficking

Recommendations

- 1 All governments must ratify the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,” pass the needed domestic legislation, and build a system for international collaboration and cooperation.
- 2 When enacting measures to prevent and eradicate human trafficking, and to protect and assist victims, all governments must uphold the principles and guidelines set forth in the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1), which are guidelines of the UN high commissioner for human rights (UNHCHR).

Reasons

1. The trafficking of women and girls for exploitation in the sex industry, forced labor, and other slavery-like or exploitative conditions is one of the critical problems to be tackled by international society.

Human trafficking yields immense proceeds, and the clever concealment by crime syndicates and its transnational nature make it hard to control and almost impossible to punish. For these reasons, it is one of the main sources of money for criminal organizations along with drugs and arms. Underlying human trafficking is the economic differential between countries/regions of origin and those of destination and economic, sexual, and social discrimination in both countries/regions of origin and destination. Traffickers target the poor and jobless, whom they deceive with promises of employment and income in affluent places, and then exploit them thoroughly by making them working as slaves in forced prostitution, forced labor, and other occupations. Though it is hard to accurately determine the extent of human trafficking, governments and international agencies estimate that at least 800,000 to 900,000 are traded across national borders annually. Victimization of women and children is especially pronounced.

Human trafficking is a serious challenge to human dignity, and a grave crime which takes advantage of poverty, underdevelopment, inequality, and other distortions in the social fabric. Because no country can be unconnected to human trafficking, the cooperation of international society is a must for its eradication.

2. Ratification of the Protocol on Trafficking in Persons and efforts for domestic legislation
The creation of international conventions to eliminate human trafficking goes back to the early 20th century, but human trafficking is not clearly defined, and there are limited means to ensure implementation of convention provisions. For these and other reasons conventions are not effective enough, and trafficking has continued through the use of different means and forms.

In recent years human trafficking has been debated as a part of international organized crime, and especially the need has been observed for a clearer definition of human trafficking and for comprehensive measures. This resulted in the 2000 adoption by the UNGA of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter referred as "Protocol"), which represents the present level attained by the international discussion on human trafficking. It became effective in December 2003, and as of February 10, 2005 it has been signed by 117 countries and ratified by 79. Japan's government signed it in December 2002, and domestic legislation for ratification is now under consideration.

JFBA supports and hopes for ratification of the protocol and passage of the needed domestic legislation by all governments.

3. Upholding the principles and guidelines set forth in the UNHCHR Guidelines

(1) Protection of and assistance for victims

(a) In July 2002 the UNHCHR submitted the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1, hereinafter referred as "Guidelines") to the UN Economic and Social Council. These guidelines have the following paragraphs under "the primacy of human rights" at the beginning of the "principles."

- "1. The human rights of trafficked persons shall be at the center of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons."

The Guidelines also has the following paragraph for the protection and assistance of victims.

- "8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings."

JFBA supports these Guidelines. In particular we are strongly concerned about the fact that not a few countries provide victims with different levels of protection and assistance depending on whether they can cooperate in the prosecution of offenders. The cooperation of

victims in prosecuting offenders requires establishing the trustworthiness of law enforcement agencies and providing for the security of victims. Further, the will of victims must be respected. But even if these conditions are met, considering the seriousness of the harm itself and giving top priority to assuring victims' human rights, that cooperation in prosecuting offenders should not be used a condition for victim protection and assistance.

The Protocol's articles on victim protection and assistance should be interpreted in accordance with the UNHCHR Guidelines. The Protocol demands that State parties take legislative and other measures for victim protection and assistance "in appropriate cases and to the extent possible under its domestic law" (Articles 6 through 8). This reservation shows consideration for State parties which would find it hard to pay the cost of victim protection and assistance due to financial constraints; it does not let the affluent developed countries (which are also the destinations for human trafficking victims) off the hook for neglecting victim protection and assistance.

(b) Trafficked persons suffer grave physical and economic harm. Especially the victims of trafficking meant for sexual exploitation suffer considerable psychological damage and harm from social prejudice and alienation. Further, because they are victims of organized crime, victims' lives and physical well-being are in serious jeopardy from threats and reprisals by perpetrators even after escaping the human trafficking trap. As long as poverty, underdevelopment, the lack of equal opportunity, and the other underlying causes of trafficking remain, there is a huge risk of repeated victimization. It is therefore not enough to protect and assist human trafficking victims and witnesses by applying general legal provisions, which must be supplemented with special protection and assistance in all countries where victims are present including countries of origin, transit, and destination.

(c) Passage and implementation of domestic legislation prescribing victim protection and assistance must at the least realize the substance of the UNHCHR Guidelines. We must examine the UNHCHR Guidelines and the existing legal systems of international agencies and countries, establish international standards for domestic legislation, and provide cooperation aimed at formulating legislation guides and assisting legislation based on those standards. At the least, those international standards should include: the enactment of broad and comprehensive laws to combat trafficking; creating specialized agencies; roles of law enforcement agencies and training therefor; eradication of corruption; securing victims' safety; victim protection and assistance; stabilizing victims' status of residence; the safe and voluntary return of victims to their home countries and assistance for that; assuring the safety of victims after their return, defense from discrimination, and securing means of livelihood; eradication of poverty; providing equal opportunities for education and training; study, analysis, and assessment of remedial measures, and improvements.

(2) Assuring victims' safety

For securing victims' safety, Paragraph 6 of Guideline 6 of the UNHCHR Guidelines recommends States to consider:

"Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficked victims and their privacy should be respected and

protected to the extent possible, while taking into account the right of any accused person to a fair trial".

JFBA supports this guideline. It is necessary to secure the safety of not only victims, but also their families and affected persons, and that necessity is not limited to prosecution of offenders. This cannot be accomplished by destination countries alone; close collaboration and cooperation between the law enforcement agencies of the origin and destination countries is indispensable, and governments must set up the needed technical and practical measures.

Also essential is ensuring the legitimate rights of trafficking suspects/defendants and their defense counsels, and the transparency of legal proceedings. Suspects/defendants must always be presumed innocent; the unjust restriction of their legitimate right of defense is unacceptable, as are restrictions on their defense counsels to mount a legitimate defense.

Balance is needed between protection of victims/witnesses and the legitimate rights of suspects/defendants and their counsels. To that end, it is necessary to establish specific and well-thought-out standards.

(3) Preventing human trafficking

The UNHCHR Guidelines set forth the following principles (Paragraphs 4 and 5) on preventing human trafficking.

4. Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.
5. States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.

Article 9 of the Protocol asks State parties to take measures to suppress the demand that fosters and maintains forms of exploitation leading to human trafficking, and measures that eliminate the root causes.

JFBA supports these principles. These are critical but also difficult challenges, necessitating a well-considered strategy, patient implementation, and considerable time and cost. Sometimes powerful legal and policy measures are also needed. We need to marshal the experience and wisdom of governments, international organizations, and other entities for these vital but difficult measures.

(4) International cooperation and coordination

To effectively implement prevention and eradication of human trafficking and victim protection and assistance, it is useful not only to have multilateral international conventions including Protocols, but also to establish multilateral, bilateral and regional agreements and arrangements for collaboration and cooperation, which further materializes to these standards, and to enter into memoranda of understanding between states and intergovernmental organizations, and between governments and NGOs. Partnerships with NGOs are especially important for victim protection and assistance. JFBA supports such cooperation and

coordination.

VI. Utilizing the Concluding Observations of the Committee on the Rights of the Child on Preventing Juvenile Delinquency

Recommendation

Application of the United Nations standards and norms to prevent juvenile delinquency (crime) should be based on the full implementation of children's rights sought by the Convention on the Rights of the Child and the Riyadh Guidelines. To this end, it is important to put into practice the recommendations in the concluding observations issued by the Committee on the Rights of the Child in its country reviews.

Reasons

1. Application of the UN standards and norms as the basis

(1) Application of the UN standards and norms, especially the Convention on the Rights of the Child and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, UNGA resolution 45/112 of December 14, 1990), is critically important for the prevention of juvenile delinquency (crime).

On the basis of preventing juvenile delinquency (crime), the Riyadh Guidelines present the following fundamental principles among others: "The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood" (Paragraph 2), "A child-centered orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control" (Paragraph 3), "In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme" (Paragraph 4), and "The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others" (Paragraph 5). And the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) state as one of the fundamental perspectives of the general principles: "Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law" (Paragraph 1.3).

(2) With advancing urbanization and the influx of young people into urban areas, cities are beset by the rapid rise in urban crime and crimes by the young. This calls for creating and strengthening legal regulations, and some people argue that the problem should be addressed by harsh punishment. Over the last few years Japan has faced youth-caused "serious

incidents” that have made headlines. More and more people insist that even if there is conflict with human rights norms for children, having youths face strict punishment is more necessary and appropriate than not. As such, the basics of preventing juvenile delinquency (crime) as given by UN standards and norms are neglected, which now tends to threaten the rights of children. But the more serious the problem of rapidly rising urban crime and youth crime becomes, the greater the need to apply and disseminate UN standards and norms such as the Convention on the Rights of the Child and the Riyadh Guidelines, as disregard for application of UN standards and norms invites further aggravation of the situation.

2. Importance of the concluding observations of the Committee on the Rights of the Child

(1) Some of the standards and norms established by the UN on juvenile criminal justice were taken into consideration when drafting the Convention on the Rights of the Child. The Committee on the Rights of the Child, which was established pursuant to Article 43 of the convention, carries out its mandate on the basis of standards and norms pertaining to juvenile criminal justice.

(2) As with a number of human rights conventions (such as the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Elimination of All Forms of Racial Discrimination), the Committee on the Rights of the Child periodically (in the case of the Convention on the Rights of the Child, a state party’s initial report is within two years after the convention takes effect for it, and thereafter every five years) receives and examines reports by the countries which have ratified the convention on the status of its implementation by having dialogs with those governments, and then issues concluding observations which include recommendations to those governments. While these concluding observations concern how well the Convention on the Rights of the Child is being implemented, they should be used as the best indicator for discussions on juvenile criminal justice in Congress and Commission meetings and for domestic implementation of juvenile criminal justice because: (a) as stated above, the preparation of the Convention on the Rights of the Child itself incorporated the UN standards and norms on juvenile criminal justice, (b) the Committee on the Rights of the Child in its 1995 general discussions on the administration of juvenile criminal justice sought the implementation of UN standards on juvenile justice including the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), and also in reviewing reports of State parties has frequently sought the implementation of these UN standards, and (c) application of the Riyadh Guidelines, which seek the realization of child rights beginning in early childhood, is none other than the very challenge of implementing the Convention of the Rights of the Child, which is reviewed by the Committee on the Rights of the Child.

3. JFBA symposium and resolution

(1) In November 2001 JFBA held a symposium called “Exploring Educational Reform and the Context and Causes of Juvenile Crime,” which resulted in a “Resolution on Assisting Child Development.” While noting that much emphasis is put on “the increasingly heinous

nature of juvenile crime and the decline of children's normative consciousness" and thus "the threat of punishment, and obligation," in law revisions with regard to preventing juvenile crime. The resolution pointed out the importance of "quickly and forthrightly giving attention to the suffering of children with troubles and stress, assuring the dignity of each child, and eliciting his or her potentials," and for that purpose "from the perspective that is effective in assuring the dignity of each child... making advantageous use of the Convention on the Rights of the Child and the recommendations of the Committee on the Rights of the Child in judicial judgments, legislation, and administration,"

(2) Prior to the resolution, the symposium featured analyses of serious cases involving youth and handled by lawyers; questionnaire studies of youth who committed crimes and of their guardians and lawyers; and analyses of the policy measures of the national and local governments, and their problems, after which the symposium observed the importance of preventing juvenile delinquency (crime) through full implementation of the Riyadh Guidelines with primary emphasis on "materializing the concluding observations of the Committee on the Rights of the Child to Japanese government."

Overcoming the deficient communication within families and the lack of good youth/family environments is a matter of providing conditions and environments that enable children to meaningfully live the whole of their everyday lives, extending across their entire growing period and all spheres of their lives. This presents the challenges of applying the Riyadh Guidelines and of implementing the Convention on the Rights of the Child. In response to the Japanese government's first and second reports on this convention, the 1998 and 2004 concluding observations (Subjects of Concern and Committee Recommendations) by the Committee on the Rights of the Child coincided with the challenges of applying the Riyadh Guidelines in Japan. One could say that the Concluding Observations show what Japan needs to do to prevent delinquency (crime). In fact, every government should consider the committee's concluding recommendations (Subjects of Concern and Committee Recommendations) to their periodic reports on the implementation of the convention as challenges or at least the clues for preventing delinquency (crime) in that country. In the notes we have included the observations made at the JFBA symposium on what must be done for full implementation of the Convention of the Rights of the Child and Riyadh Guidelines in Japan for reference.

VII. Assistance to Victims

Recommendation

To help victims by realizing the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power," states should create justice systems which provide sufficient assistance to make possible proper and early recovery from mental, economic, and physical harm, including the prevention of secondary harm. For this purpose states should use the UN-prepared "Handbook on Justice for Victims" and the "Guide for Policy Makers."

Reasons

The UN's 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of

Power asks that institutions be created to provide victims with sufficient information and appropriate assistance, and to protect the safety and privacy of victims' families. Beginning in 1995 the UN spent two and one-half years preparing the Handbook on Justice for Victims and the Guide for Policy Makers.

Securing the rights of crime victims and providing comprehensive assistance had been long delayed in Japan.

In October 2003 JFBA adopted the "Resolution for Securing Rights and Providing Comprehensive Assistance for Crime Victims." Observing that the state of assistance in Japan for crime victims is far below the international standard, JFBA has called for government policy measures on passing a basic law on crime victims, setting up an economic assistance system for crime victims, help for the activities of private assistance organizations, establishing a lawyer assistance program for crime victims, intensive education and training for investigative authorities, and other efforts.

Finally in December 2004 Japan enacted the Basic Law on Crime Victims, which provides that "all crime victims have the right to respect for their personal dignity, and for the guarantee of treatment appropriate for that respect." In addition to clearly setting forth the rights of crime victims, the law has specific measures including: consultations; providing information; assistance for demanding compensation; enhancement to systems for compensation payments paid to crime victims; provision of health care and welfare services; assurance of safety; and stable residency and employment.

Justice systems should be created to provide sufficient assistance to make possible proper and early recovery from mental, economic, and physical harm, including the prevention of secondary harm.

VIII. Human Rights Education in Criminal Justice

Recommendations

- 1 Control of organized crime, terrorism, money laundering, cybercrime, corruption, and other crimes should be reviewed in light of the standards and norms on crime prevention and criminal justice created during these 50 years by the Congress, and in light of human rights treaties.
- 2 When implementing UN standards and norms and human rights treaties, we must recognize the importance of human rights education for law enforcement officials and lawyers, and especially for judges.

Reasons

1. At the first meeting of the Congress in 1955, it adopted the UN Standard Minimum Rules for the Treatment of Prisoners, and from then until now it has created more than 50 standards and norms on the treatment of offenders and criminal justice, including resolutions, standards, plans of action, guidelines and manuals. These are concerned not only with offender treatment, but also cover a broad and diverse range including the independence of the

judiciary, the role of prosecutors, the role of lawyers, a code of conduct for law enforcement officials, principles of medical ethics, juvenile justice, protection of crime victims, and retroactive justice. These standards and norms are now a valuable asset shared by all countries.

The UN has made these standards and norms a standing item of the agenda and established the first reporting period (ending with the 11th Commission in 2002) on their use and application because of its fundamental approach that offender treatment and criminal justice should always be reviewed in light of the standards and norms. We wish to point out that discussion on organized crime, terrorism, money laundering, cybercrime, corruption, and other issues should all be reviewed in light of the standards and norms.

2. The Vienna Declaration on Crime and Justice : Meeting the Challenges of the Twenty-first Century (Vienna Declaration), which was adopted by the 10th Congress and by the UNGA at the beginning of the 21st century, provides as follows in Paragraph 22.

“We recognize that the United Nations standards and norms in crime prevention and criminal justice contribute to efforts to deal with crime effectively. We also recognize the importance of prison reform, the independence of the judiciary and the prosecution authorities, and the International Code of Conduct for Public Officials. We shall endeavour, as appropriate, to use and apply the United Nations standards and norms in crime prevention and criminal justice in national law and practice. We undertake to review relevant legislation and administration procedures, as appropriate, with a view to providing the necessary education and training to the officials concerned and ensuring the necessary strengthening of institutions entrusted with the administration of criminal justice.”

We must reaffirm the crucial importance of Paragraph 22 of the Vienna Declaration because it makes effective the standards and norms created during five decades by the UN. Especially we wish to observe that Paragraph 22 mentions not only the domestic institutionalization and use of standards and norms by states, but also education and training for the officials who use them. For standards and norms to truly function, it is essential that there be a human rights awareness among law enforcement officials, and also among lawyers and especially judges because they ultimately guarantee the standards and norms.

3. In addition to the standards and norms created by agencies concerned with criminal justice, primarily the Congress, the UN has adopted many human rights treaties including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child. The Riyadh Guidelines and other documents adopted by the Congress have been taken into consideration when preparing the Convention on the Rights of the Child. In that sense, such human rights treaties should be kept in mind when considering how to control organized crime, terrorism, money laundering, cybercrime, corruption and other crimes.

4. Yet, the standards and norms and the human rights treaties created by the UN over the last five decades are still not sufficiently upheld, a situation that is readily comprehended from the state of anti-terrorism measures. While everyone shares the awareness that terrorism itself is a serious human rights infringement, many people have expressed concern that the very control of terrorism causes human rights infringements. For example, at the September 2004 Seventh International Conference of National Institutions for the Promotion and Protection of Human Rights held in Seoul (a conference held biennially by domestic human rights agencies established pursuant to a UN resolution called the Paris Principles and under consultation with the chairman of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, and the auspices of and consultations with the United Nations Office of High Commissioner of Human Rights), a four-day conference held with the theme of “Upholding Human Rights during Conflict and while Countering Terrorism” adopted the Seoul Declaration, which points out the importance of respecting human rights while combatting terrorism. Additionally, the August 2004 meeting of the International Commission of Jurists in Berlin adopted the ICJ Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism.

5. Under such circumstances, we must recognize the importance of human rights education for law enforcement officials, lawyers, and especially judges. Human rights education for lawyers is conducted extensively in some countries (Expert Group Meeting report, p. 185 ff.), while in others its sufficiency is dubious. In its consideration of the Fourth Periodic Report of Japan on the International Covenant on Civil and Political Rights, the Human Rights Committee made the following recommendation, which has already been partially implemented.

“Judicial colloquiums and seminars should be held to familiarize judges with the provisions of the Covenant. The Committee’s general comments and the Views expressed by the Committee on communications under the Optional Protocol should be supplied to the judges.”

It is important that human rights education for lawyers and especially judges should make use of not only the resources created by the Congress and the Commission, but also resources such as the following.

Over the decade from 1995 to 2004 the UN ran a project called The United Nations Decade for Human Rights Education, whose Plan of Action said that those who should receive such education include “personnel who are in a particular position to effect the realization of human rights,” giving examples such as police, prison officials, lawyers, and judges. Achievements of the UN Decade for Human Rights Education should be utilized fully to realize Paragraph 22 of the Vienna Declaration.

Additionally, the United Nations Office of High Commissioner of Human Rights has prepared and published a variety of “Professional Training Series,” which include “PROFESSIONAL TRAINING SERIES No.9 HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: A Manual on Human Rights for Judges, Prosecutors and Lawyers” and “PROFESSIONAL TRAINING SERIES No.5 Human Rights and Law Enforcement: A Manual on Human Rights for the Police,” which are best suited to realizing

Paragraph 22 of the Vienna Declaration.

Apparently in Canada education for judges is conducted by an agency separate from the courts. We think that one way of providing judges with international standards and norms is to have training institutes that are independent of the courts.

Notes

Participants in the November 8, 2001 JFBA symposium, “Exploring Educational Reform and the Context and Causes of Juvenile Crime,” pointed out a number of challenges.

(1) Observations made at the symposium included: (a) Many children who have committed delinquency suffer deep emotional scars, cannot establish self-affirmation, and have strong feelings of despair due to trouble forming human relationships. For these reasons they cannot be expected to refrain from crime even with the threat of criminal punishment or strict punishment; (b) even juveniles who have committed crimes have a sense of justice for personal introspection; (c) if adults around them quickly provide aid and assistance, it is possible that juveniles will abandon their intentions and not commit a crime; and (d) even after committing a crime, juveniles can by nature rebound and participate in society with educational and welfare assistance from adults. The symposium also pointed out specific actions that should be taken by State parties including families, schools/teachers, local communities, municipalities, the government, and lawyers/bar associations.

(2) Families

- (a) Families should squarely recognize problem behavior by children as an SOS from them, and talk with their children about the causes.
- (b) Place importance on parent-child communication. What parents think of as “discipline” may be perceived as abuse by children, or it may create a situation making it hard for children to state their views, thereby hampering their growth.
- (c) Families should stop corporal punishment, abuse, and other practices claimed to be “discipline,” and instead provide peace of mind by accepting their children in totality with their troubles, dissatisfaction, and insecurity.
- (d) When worrying about childraising and not knowing what to do, or suffering anxiety, families should seek outside help and address problems in partnership with acquaintances and neighbors, or by conferring with specialist agencies and experts on child welfare, education, health, healthcare, human rights, and other areas.
- (e) Abusive parents are driven to abuse by spiritual burdens, painful feelings, and sadness. In many cases those parents themselves were abused by their own parents during childhood. In such cases the parents themselves need professional care.

(3) Schools and teachers

- (a) Make schools into places where children can enjoy learning. For example, ensure that children understand classes so that each child gains basic understanding, knowledge, and skills.
- (b) Respect children’s characters and stop corporal punishment. When corporal punishment has occurred, require that a report with opinions obtained from victims is submitted to the agency which established and manages the school (board of education, board of trustees, etc.), and require the school to receive that agency’s guidance.
- (c) Enhance teacher training on child rights, emphasize the importance of human rights education for students, and institute a culture in which harassment is not tolerated.
- (d) Teachers should interact personally with each child. Individual teachers should not shoulder problems alone; instead, teachers should quickly gather to confer on causes

- and factors and take a welfare- and education-oriented approach.
- (e) Enhance understanding of abuse issues, juvenile incidents, and other problems, and address problems in partnership with specialist agencies and experts on child welfare, education, health, healthcare, human rights, and other areas.
 - (f) Uphold the rights of children to state their views and participate, and facilitate open school operation and development that is coordinated with parents and local communities.

(4) Communities

- (a) Do not overlook abuse and other infringements of child rights, and strengthen partnerships with child welfare agencies and other agencies concerned.
- (b) From the perspective that play is essential to child development, provide play areas that respect children's inventiveness and autonomy, and encourage the provision of places for youth.
- (c) Engage in activities that enhance leadership participation and diverse personal contact by children, such as everyday cultural activities planned by children's groups.

(5) Government

- (a) To assure the latitude which allows parent-child dialog in the home, implement measures such as legislation to provide employment stability and to limit quick-fix dismissals and overtime work.
- (b) To improve administrative agencies responsible for child welfare, substantially raise the standards for personnel placement and considerably increase the number of personnel.
- (c) Substantially increase the number of child welfare facilities and raise personnel placement standards to provide personnel with the latitude to interact with children. Prohibit corporal punishment in facilities by law. When corporal punishment has occurred, require that a report with opinions obtained from victims is prepared and submitted to the agency which established and manages the school, and require the school to receive that agency's guidance.
- (d) Amend laws to provide better responses for helping abused children, and expand assistance to parents by psychiatrists and counselors.
- (e) Amend laws to prohibit corporal punishment by parents, and review provisions on parental authority.
- (f) Increase the numbers of pediatricians and children's hospitals, and reinforce training to enable appropriate responses to abuse. Establish psychiatry for children and youth as an independent area of specialization, provide for the training of specialists, and make it easy to be treated by a specialist anywhere.
- (g) For efforts such as preventing child abuse, the government should reinforce collaboration among welfare agencies, healthcare institutions, courts, and other agencies concerned.
- (h) Education administrators should revise their stance on coercive guidance in schools, and should enable school operation based on the inventiveness and autonomy of schools, teachers, children, and their parents.
- (i) Take measures to reduce class size and otherwise relieve teachers of excessive burdens, thereby giving them the latitude to interact with each child.
- (j) To actualize the ideas espoused by juvenile justice and child welfare-related laws,

- give courts and associated agencies more personnel. Immediately institute a juvenile-case lawyer assistance system using public funds from the investigation through the trial.
- (k) Give shape to and implement the recommendations of the UN Committee on the Rights of the Child.

(6) Municipalities

- (a) Increase the number of specialized welfare and education counseling offices where parents with childraising worries can confer. Assist childraising circle activities and actively hold educational training classes where parents can learn childraising skills.
- (b) Increase nursery schools and otherwise implement measures to assist childraising by working parents.
- (c) Assure the expertise of child welfare workers, increase their number, and improve facilities.
- (d) Promote initiatives for smaller school classes.
- (e) Provide places and budgets to provide community play areas that respect children's inventiveness and autonomy, and train municipal employees to be "play leaders."
- (f) Establish vocational schools (training schools) primarily for junior high school graduates and high school dropouts, and help these youth find jobs.
- (g) Enact ordinances on children's rights to smoothly promote municipality-wide measures for guaranteeing uniform children's rights based on the unique circumstances and demands of each locality. When doing so, create systems such as child ombudspersons to enable specialist agencies to quickly coordinate efforts.
- (h) Give shape to the recommendations of the UN Committee on the Rights of the Child.

(7) Lawyers and bar associations

- (a) Further expand counseling offices for child rights established in various localities by lawyers and bar associations. Also, reinforce juvenile-case defense activities and in other ways recognize the troubles of children, parents, teachers, and others, and undertake individual and specific activities to protect human rights.
- (b) As lawyers, actively promote activities that link up with child-associated agencies. Expand programs to send lecturers to schools and other institutions to speak on human rights education and judicial education.
- (c) Strengthen initiatives to use the Convention on the Rights of the Child and related UN standards in judicial judgments, legislation, and administration.
- (d) For that purpose, broaden awareness of recommendations by the UN Committee on the Rights of the Child, and continue campaigns with NGOs for convention implementation and monitoring.
- (e) Support and facilitate initiatives that municipalities and NGOs are jointly starting in order to enact ordinances on children's rights.