

JFBA No. 31
October 23, 2020

Tadashi Ara
President
Japan Federation of Bar Associations

To: Ms. Yoko Kamikawa
Minister of Justice
Tokyo, Japan

Re: Request to Abolish the Death Penalty

1. Main Points of Request

- (1) Enacting legislation to abolish the death penalty
- (2) Placing a moratorium on executions until the death penalty is abolished

2. Grounds for Request

(1) Activities undertaken by the Japan Federation of Bar Associations

On October 17, 2016, the Japan Federation of Bar Associations (the "JFBA") adopted the "Declaration Calling for Reform of the Penal System Including Abolition of the Death Penalty" (the "Fukui Declaration") during its 59th Convention on the Protection of Human Rights held in Fukui Prefecture. The gist of the Fukui Declaration is:

The death penalty, a punishment that takes life, constitutes a massive and serious violation of human rights perpetrated by a State. While the possibility of wrongful conviction or miscarriage of justice cannot be ruled out as long as the criminal justice system is governed by humans, the consequences of the death penalty are irreversible once it is carried out, which renders the death penalty essentially distinct from other penalties. Additionally, the death penalty is a punishment that completely eliminates the possibility of rehabilitation and reintegration into society. What we should pursue is a society which is tolerant enough to embrace, eventually, those who have committed a crime; a society where everyone can coexist with dignity.

The JFBA is engaged in its activities to abolish the death penalty on the basis of what the Fukui Declaration stands for as summarized above.

(2) International trend

In the international community, countries that retain the death penalty and carry out executions are exceptions. The unresponsiveness to the call for abolishing the death penalty—which is now amounting to a global “public opinion”—compromises the trust Japan has built internationally, causing serious concern for the level of human rights awareness in the nation. In this regard, the following highlights some prime facts.

- (i) Amnesty International reported that, as of the end of December 2019, 106 countries have abolished the death penalty by law for all crimes and 8 countries have abolished it by law for ordinary crimes, while there were 28 countries that have abolished the death penalty in practice (namely, countries that had carried out no execution over the past 10 years). This means that a total of 142 countries or more than two-thirds of the countries in the world have abolished the death penalty by law or in practice. Moreover, the number of countries that actually carried out executions in 2019 was as few as 20, including Japan.
- (ii) Among the 37 OECD member countries, Japan, the United States, and South Korea are the only nations that retain the death penalty. In these three countries, South Korea is an abolitionist in practice, having halted executions for more than 20 years. In the United States, 22 out of the 50 states have abolished the death penalty (New Hampshire in 2019 and Colorado in March this year), while 11 out of the 28 states retaining the death penalty have not carried out any execution for at least 10 years, and the Governors of 4 states have declared a moratorium on executions. Thus, Japan is the only country left in the OECD member states that has been carrying out executions, orderly as a nation.
- (iii) In December 2018 the United Nations General Assembly adopted a resolution on a moratorium on the use of the death penalty with the support of the vast majority of 121 nations. The resolution calls on the states retaining the death penalty to respect international safeguards guaranteeing the rights of those facing the death penalty, reduce the number of offences for which the death penalty may be imposed, and establish a moratorium on executions with a view to abolishing the death penalty.
- (iv) Japan has been continually receiving recommendations from the United Nations human rights monitoring bodies to place a moratorium on executions and favorably consider abolishing the death penalty (from the

Human Rights Committee in 1993, 1998, 2008, and 2014; from the Committee Against Torture in 2007 and 2013; and from the Human Rights Council Universal Periodic Review Working Group in 2008, 2012, and 2017). Meanwhile, in the Strategic Partnership Agreement, which was signed among Japan and the EU and its member states on July 17, 2018, the purpose and general principles were set out as "*contribute jointly to the promotion of shared values and principles, in particular democracy, the rule of law, human rights and fundamental freedoms.*" Given that the EU has been opposing the death penalty and urging to abolish it, the EU and its member states may become concerned about sharing the above-cited values and principles with Japan if it continues to perform executions. In fact, no sooner had the Japanese authorities carried out executions than the EU Delegation to Japan jointly with the ambassadors of EU member states to Japan, the German Federal Government Commissioner for Human Rights Policy, the French Ambassador to Japan, and the heads of mission of other European countries issued statements or messages calling for abolishing the death penalty.

(3) Extradition

Japan has extradition treaties with only two countries, South Korea and the United States. This has been associated with the consideration that Japan retains the death penalty. It is highly unlikely that the EU member states in particular, where the death penalty has been abolished, will enter into extradition treaties with Japan. Incidentally, just the other day, it was reported that the Japanese government's attempt through diplomatic channels to discuss extradition of certain suspects with the South African government—with which Japan has no extradition treaty—was rejected due to Japan's retaining the death penalty. Thus, abolishing the death penalty is also necessary to build an environment that helps Japan sign extradition treaties with foreign countries.

(4) Public opinion

In response to the international organizations' opinion against the death penalty, the Japanese government has rationalized it on the basis of the national opinion supporting it. Indeed, the results of the "Poll about the Basic Legal System," which includes the opinion poll about the death penalty, published on January 17, 2020 showed 80.8% favored it as "unavoidable." Yet, of these respondents, as high as 39.9% are in favor of "the death penalty may be

abolished in the future if circumstances change," which may suggest that the pros and cons to the death penalty can be viewed as comparable to each other. Additionally, in response to the question asking if they think it is better to abolish the death penalty "if life imprisonment without parole is introduced," 35.1% responded favorably and 52.0% negatively.

It has also been pointed out that the fact that access to information about the death penalty is woefully inadequate may be affecting public opinion.

However, the issue of abolishing the death penalty is not something that may be judged according only to public opinion. A large part of the abolitionist countries in the world have made the decision to end the death penalty under the leadership of the Government or public administrative bodies with the determination that taking a life, even a criminal's life, is unacceptable in light of respecting human rights.

(5) Conclusion

Taking into account the circumstances as described thus far, we urge the Government to place a moratorium on all executions until the death penalty is abolished, and to enact legislation to abolish the death penalty.