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Letter of Request Seeking the Abolition of the Death Penalty System

I. Main Points of Request

1. Enacting legislation to abolish the death penalty system
2. Placing a moratorium on executions until the death penalty system is abolished

II. Grounds for Request

1. The Current Climate Surrounding the Death Penalty System

The Japan Federation of Bar Associations (the "JFBA") has reiterated the issues embedded in the death penalty system over the years. The situation nowadays as described below signals the growing needs for a moratorium on executions and the abolition of the death penalty system.

- (1) The global tide towards the abolition of the death penalty and a moratorium on federal executions issued in the U.S.

As of the end of 2020, 55 countries provide for the death penalty, whereas as many as 144 countries have abolished it by law or in practice. Just this year, Kazakhstan, the host country of the next UN Congress on Crime Prevention and Criminal Justice, ratified the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*, which is the United Nations' instrument renouncing the use of the death penalty. This year has also seen Sierra Leone repealing the death penalty. Thus, the worldwide trend is moving towards the abolition of capital punishment.

In the United States, some states continue to maintain the death penalty system. However, they account for only approximately half of all states in the U.S. and

even fewer of them use the death penalty in practice. In the South, which is known as a region still carrying out capital punishment, the state of Virginia has abolished the death penalty in March of this year. Although the former administration of Donald Trump resumed federal executions for the first time in nearly 20 years immediately before the end of his presidency, the Biden administration's Attorney General Merrick Garland issued a memorandum in July of this year that imposed a moratorium on scheduling federal executions.

A moratorium on executions often constitutes a precursor to the abolition of the death penalty. Given that President Biden won the 2020 election promising the abolition of capital punishment, the U.S. Attorney General's publishing of the memorandum may be leading to the abolition of the federal death penalty in the future. Following the issuance of the memorandum, four prosecutors in Utah announced that they would not demand the death penalty from that point onwards—a move towards the abolition of the death penalty made also on a state level.

If capital punishment is abolished in the U.S., Japan will be left as the sole country carrying out executions among the OECD's 38 members.

Japan hosted the 14th UN Congress on Crime Prevention and Criminal Justice in March of this year in Kyoto, where the way the Japanese criminal justice stands generated the world's attention, and ever will.

- (2) A potential drawback to concluding the Japan-Australia Reciprocal Access Agreement and other diplomatic issues

Although Japan and Australia reportedly reached broad agreement on the Japan-Australia Reciprocal Access Agreement around November 2020, the eventual agreement has not been reached to this day because, as commonly reported, Japan retains the death penalty system.

Australia has been advancing—as part of its political agenda—its advocacy aiming at the abolition of capital punishment in every country in the world.

The EU also stands firm against the death penalty. Unless Japan abolishes the system, concluding an extradition treaty with the EU member states is likely to be difficult. The downside has gone beyond the EU—the death penalty has

been blocking the way to signing a similar agreement with other countries. Thus, retaining capital punishment prevents Japan from even bringing fugitives abroad to justice.

The Ministry of Justice holds the following position as to whether the death penalty system should be retained or abolished: *Basically, it is an issue that should be decided uniquely by individual nations.* However, as outlined above, maintaining the death penalty system has actually turned out to be a diplomatic issue. If Japan intends to share the same value of the respect of human rights with the EU and the OECD members, the Ministry of Justice should propose to the Japanese public a shift to an alternative punishment system according with the values. Continuing to take the same attitude not aligning with the global trends is also contrary to the principles of "Justice Diplomacy," a diplomatic agenda of the Japanese government to promote common values such as the rule of law both nationally and internationally through programs related to the administration of law.

(3) Consistency with the amendment to the Penal Code being enacted in 2022

In 2020, the Legislative Council of the Ministry of Justice issued an advisory report proposing to amend the criminal punishment system including integrating the imprisonment with work and imprisonment without work into a new custodial sentence. What is implied by the amendment is a shift from a punishment system focusing on imposing a penalty to one aiming at rehabilitation and education.

To the contrary, the death penalty is a penalizing system that is not intended to rehabilitate offenders, so that the projected reform of the punishment system will inevitably ignite the debate over its consistency with the retention of the death penalty system.

(4) Status of the Hakamada Case

In the Hakamada case, although the final and binding sentence of death was pronounced and the appeal for retrial was dismissed by the Tokyo High Court, the Supreme Court nullified the dismissal in December 2020 and remanded the case to the Tokyo High Court. It is likely that the Tokyo High Court is going to adjudicate the case before long, when the issue of wrongful conviction and miscarriage of justice in the death penalty system will generate national

attention yet again.

2. Trend of public opinion

Over the years, the Ministry of Justice's constant reasoning behind the death penalty has been as follows: *The majority of the public perceive that the death penalty is unavoidable if it is imposed on extremely evil and vicious offenses. Therefore, it is not appropriate to abolish it.*

However, the UN Human Rights Committee and other UN human rights bodies have repeatedly advised Japan to abolish the death penalty "regardless of opinion polls."

Additionally, the results of the opinion polls have indicated a likelihood that a certain part of the public may accept the abolition of the death penalty on the condition that an appropriate alternative punishment replacing the death penalty is introduced.

Each abolitionist country, however, has put an end to capital punishment under the leadership of the political and administrative leaders despite a large part of the population being in favor of the death penalty. Retaining the death penalty system cannot be justified on the ground of opinion poll results.

3. Conclusion

Japan has not carried out any execution for approximately two years since December 26, 2019. Given the situation described above, retaining the death penalty system—or carrying out executions, in particular—would pose an even greater challenge than ever before.

Therefore, the JFBA calls for a moratorium on all executions until capital punishment is abolished, as well as enacting legislation to abolish the death penalty system.