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Moving beyond Retribution

Reviewing the Japanese Penal System before the 2020 Kyoto Congress

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knowledge in mind, we invite two former ministers of justice, Mr. Seiken Sugiura and Mr. Hideo Hiraoka, into a JFBA committee, specifically the “Headquarters for Abolition of the Death Penalty and Reform of Relating Penal System”. It means as much as to say that we can have substantial leverage with their help in order to make progress among the members of the Diet.

New Era of the Death Penalty

As a result of this advocacy work, progress has been made. In January, for example, influential Diet members made a press release announcing that a cross-party group would be established with the intention to discuss the death penalty. This group is not necessarily made up of solely those who favor abolition. They only aim to discuss various aspects of capital punishment. In other words, its purpose is primarily limited to study and research activities within the Diet members.

Therefore, I cannot predict whether this group will work sufficiently to successfully abolish the death penalty. It is clear, however, that this group represents a milestone in the history of criminal law in Japan. Although at one time a group of Diet members was advocating for Amnesty International, Japan has never witnessed an active and long-lasting political group focusing on the abolition of the death penalty.

Last year, the JFBA committee decided to take action with other countries and international NGO groups. On March 4, 2019, we held a symposium in Kyoto, and a Parliamentary member, Mr. Alistair Carmichael from the UK, made a speech in collaboration with the JFBA, and highlighted the importance of a political will to play a role in favor of the abolition of the death penalty. This success represents a milestone on the road to abolition.

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Les exécutions massives auxquelles a procédé le gouvernement japonais en juillet 2018 ont de nouveau suscité un débat national sur la peine de mort. Compte tenu du soutien écrasant de l'opinion publique, il sera politiquement difficile d'abolir la peine de mort sans instaurer l'emprisonnement à vie sans libération conditionnelle. Avant le Congrès des Nations Unies contre la prévention du crime prévu en 2020 à Kyoto, les sociétés civiles japonaises sont confrontées à un défi de taille: proposer une alternative adéquate à la peine de mort. Cette note passe brièvement en revue les débats en cours sur la peine de mort et la réclusion à perpétuité au Japon.

In July 2018, mass executions carried out by the Japanese government caused a great shock throughout the world. The executed prison inmates were members of the Aum Shinrikyo cult group, which had committed a deadly chemical attack in 1995. The Aum Shinrikyo cult group released sarin gas on the Tokyo underground on March 20, 1995, killing 13 people and injuring more than 6,000. On 6 July 2018, the government executed seven members who had been on death row, including the founder Shoko Asahara. The remaining six members were put to death 20 days later. This was the first time that so many prisoners had been executed in one day since the government began to make public the number of inmates executed in 1989. As the scale of the executions – 13 executions within three weeks – was the largest since the Second World War, the series of executions appeared in the headlines of much of the mass media. The mass executions aroused a national debate on the death penalty once again, and marked the end of the worst terror incident in the history of Japan.

The year 2020 will be an historically important year for Japanese penal policy. The Fourteenth UN Congress on Crime Prevention and Criminal Justice (UN Crime Congress) will be held in Kyoto, Japan

from April 20 to 27, 2020. The UN Crime Congress, which is held every five years, is one of the largest UN conferences in the field of crime prevention and criminal justice. Japan will host the Crime Congress for the first time since the Congress was held in Kyoto in 1970. Japanese civil societies have been committing themselves to prepare for the upcoming Crime Congress. Their efforts to describe various aspects of the Japanese penal system will inevitably bring international attention to the host country, particularly its death penalty system.

Why does the government continue with executions? Is there any way left to end the death penalty? Some experts propose the introduction of life imprisonment without parole (LWOP) as a way to abolish the death penalty, while others are concerned that LWOP might be an inhumane punishment. This note briefly overviews the current debates over the death penalty and life imprisonment in Japan.

Why Life Imprisonment Matters

How do we end the death penalty? Human rights activists and defence counsel in Japan have been facing this difficult issue for decades. In an opinion poll conducted by the government in 2014, more than 80% of respondents supported the death penalty, and only 9.7% said it should be abolished. With this overwhelming public support, the government has retained the system of the death penalty, and has continued with executions. The survey, however, shows another important trend. When people were asked whether they would still support the death penalty if LWOP were introduced, 37.7% said it should be abolished. This means that around 40% of people would support the abolition of the death penalty so long as LWOP was introduced. As a result of the opinion survey, some lawmakers and lawyers' groups have been considering the introduction of LWOP. The Japan Federation of Bar Associations (JFBA)

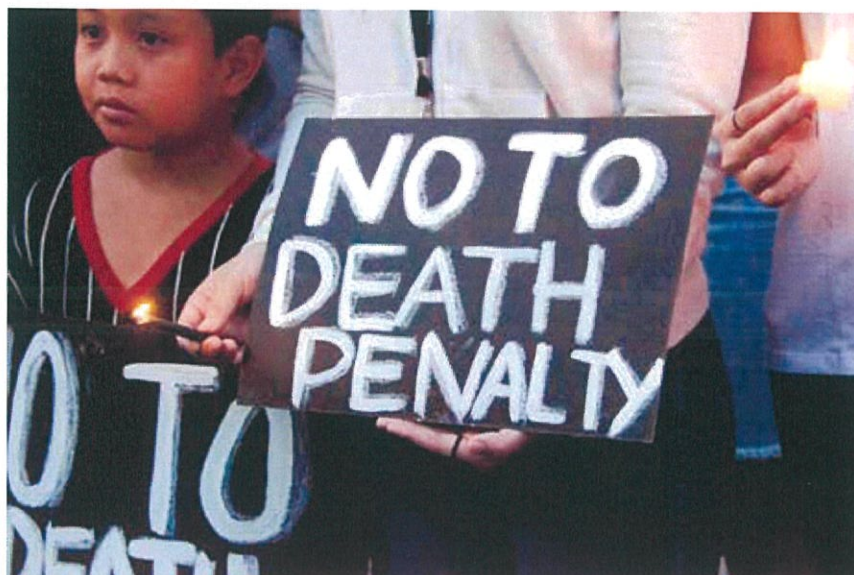
adopted a declaration in 2016 stating that it was aiming for the abolition of the death penalty by the year 2020. It additionally made mention of alternatives to the death penalty, stating that the JFBA would consider possible alternatives to the death penalty including life imprisonment without the possibility of parole. A non-partisan group of lawmakers, which was established on December, 2018, has been examining the current death penalty system as well as the possibility of introducing LWOP. They believe that LWOP will break the deadlock, making the abolition politically feasible.

Is LWOP a humane punishment in the context of the Japanese penal system? Will the right to hope be guaranteed for LWOP inmates?

Current Penal System; De Facto LWOP?

The Japanese penal code provides those sentenced to life imprisonment with the possibility of being released on parole. Nonetheless, life imprisonment in Japan is almost the same as a sentence without the possibility of parole.

The penal code stipulates that people with a life sentence may be released on parole by a parole board after they have served ten years and evince signs of substantial reformation. Although the parole board considers whether or not an inmate should be released on parole when the warden of the penal institution submits a proposal for parole, wardens hardly ever submit such proposals. The board can consider the possibility of parole without a proposal from a warden. However, this occurs only after a prisoner has served 30 years in prison. A notice issued by the Director-General of the Rehabilitation Bureau in 2009 states that a parole board may consider the possibility of parole after a prisoner has served 30 years in prison when the warden has not submitted a proposal for parole. Even if the inmate is not released on parole, the notice also states that the board may consider the possibility again after the prisoner has served another ten years. According to statistics published by the Ministry of Justice, in the past ten years the average term served by those sentenced to life imprisonment before being paroled is over 30 years, and fewer than ten of such prisoners have been paroled



each year. In 2017, only eight such prisoners were paroled, whereas 30 of them died in the same year. The average term served by the released inmates was 33 years and two months. This statistic shows that most of those sentenced to life imprisonment in Japan die in prison without realizing their hope to be free.

Step Forward from Retribution: Towards Realizing a Humane Penal System

A symbolic news story broke on May 31, 2019, which perfectly reflects the despair of those with a life sentence and their families. Mr Fumiaki Hoshino, who had a life sentence and had spent more than 30 years in Tokushima prison, died of cancer. He had been sentenced to life in 1987 for murdering a police officer, though he asserted his innocence to the last. After he had spent 30 years in prison, the parole board considered his parole for the first time in March 2019, and denied him parole without providing any reasons. His wife had devoted herself to supporting Mr Hoshino for more than 30 years, waiting for his release in the belief that he was innocent. Considering her dedicated support, her despair when she knew that he had been rejected for parole and that he would not be considered again until another ten years of imprisonment is easy to imagine. She and other supporters repeatedly requested the parole board to release Mr Hoshino

immediately, as they were aware of his serious physical condition. A few months after the board's rejection, he died from his liver cancer.

What would happen if life imprisonment without the possibility of parole were introduced? Those with a life sentence would suffer from more severe despair than Mr Hoshino and his wife did. Given the overwhelming public support, it will be politically difficult to abolish the death penalty without introducing LWOP. Nevertheless, we should not tolerate any punishment that deprives prisoners of their hope of being released. Before the UN Crime Congress in 2020, Japanese civil societies face a difficult challenge of proposing an adequate alternative to the death penalty. The alternative needs to gain public support, but, at the same time, there has to be a possibility of a sentence being reduced with due process. As is often said, no one is born to be a criminal. Even the most atrocious criminal offenders can be rehabilitated. The Japanese community is required to take a courageous decision to accept and accommodate ex-offenders once they are rehabilitated. In order to bring an end to the death penalty and create a humane penal system, we need to move beyond retribution, and confront the realities of the death penalty and life imprisonment.

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