First World Congress Against the Death Penalty

Koichi KIKUTA
(Professor of Meiji University and leader of Japan dispatch group)

I Preface

First World Congress the Death Penalty by the civic group was opened in Strasbourg in France on June 21. Strasbourg has the history occupied near the border of Germany by Hitler’s Germany, and the entire town is World Heritage. Because it was said the capital of human rights, there was a headquarters of European Union (EU), and this rally had been held by a strong establishing council this in the back, this headquarters became a main venue (1).

A Short History of World Congress

Mr. Michel TAUBE (World Congress execution chairman and president “Meeting to oppose the capital punishment all together”) publishes “Open Letter to the American People for the Abolition of the Death Penalty” to becoming the beginning of the first World Congress. Prefaced by Leclerc, the book deals with the practice of capital punishment across the Atlantic and calls on to Americans to recognize the ineffectiveness of a cruel and degrading punishment beyond remedy which is now outlawed by international law treaties.

Today 108 countries in the world have abolished the death penalty by law or in practice. There are still 87 countries using it and among them, the largest nation in the world: The United States. The road to the universal
abolition or to a worldwide moratorium on prisoners’ executions is therefore impeded by the United States which is the last democracy to use capital punishment massively, with cruelty and unacceptable discrimination. This book is in the process of being translated in English.

Faced with the first success of the book, Michel Taube decided to go further and to launch a citizen rally campaign on this subject. Together with Jean Francois Daniel, manager of L’Ecart publishing firm, he then created the organization “Together against the death penalty” which is supported by active partners.

This campaign has been under the patronage of political figures such as Raymond Forni, President of the National Assembly or Nicole Fontaine President of the European Parliament. Robert Badinter, former Minister of Justice and Senator, give the organization its precious participation in the debate.

Finally, the prestigious organizations for Human Right’s defence such as the International Federation of Human Rights, Amnesty International, France Liberte' and La Ligue des Droits de l’ Homme have joined forces with the actions carried out and have been informing their numerous activists.

The organization was created in the core of the American presidential campaign. The initial purpose was therefore to mobilize French opinion and to collect half a million petitions in a record time and to deliver them during the investiture of the new president of the united States.

A cyber-petition was launched jointly by the organization on L’Ecart website. The media mobilized: the petition and the campaign were strongly relayed by monthly reminders in Marie Claire magazine from October 2000 to January 2001 and by an exceptional feature which made the cover of Télérama on October 12, 2000. Other media followes: l’Humanité France Soire, Phosphore, Libération le Nouvel Observateur, the magazine De l’ air.

The October 20, 2000 forum in Paris against the death penalty in The
United States was organized by the organization under the patronage of Raymond Forni, President of the National Assembly, with the support of Nicole Fontaine, President of the European Parliament.

The campaign has been success, there has been a flow of signatures every day more than 500000 signatures have been collected among that 130000 online. More than 150 figures have brought they support to the petition.

On January 23, 2001, Catherine Deneuve agreed to take part to the action and deliver the first 500000 signatures against the death penalty to the American Embassy.

The presence of Catherine Deneuve, a few days only after she declared in the magazine ELLE her wish to see capital punishment abolished in the United States, has helped to draw lot of attention on the delivery of the signatures and so doing has proved to those who had signed it the effective transmission of their plea.

If French citizens have reacted so strongly and so quickly against the death penalty in the United States, it is because they have fully understood what was at stake with the election of the new American president as far as the evolution of capital punishment in he world is concerned.

The organization set up in October 2000, aims at promoting the abolition of capital punishment all over the world. There are two objectives to reach this goal: major public awareness campaigns should be launched as well as the support to death row inmates and to the activists who defend them.

**Visit to Japan of Chairman of the Legal Affairs and Human Rights Committee**

"Why is it abolition of death penalty now?" is described later though all countries of the EU signatory have already abolished the death penalty. Because only the United States and Japan were death penalty retention in observer country (2) of Europe council in World Congress, this two countries
were made a target and the death penalty problem was instituted. To investigate the death penalty situation of the two countries, "Legal affairs and on Human Rights Committee" of Europe council dispatched the investigation committee to the United States and Japan.

Gunnar Janson (Finland congressman) who was the chairman of this committee came to Japan on February 19, 2001, and the chat of former and innocent death row inmate's Menda Skae and final death row inmate's families, lawyer in charge of the capital punishment, the person in charge of each party policy council, the death penalty abolition assembly member league, and Minister of Justice Koumura and the Tokyo Detention House were visited in one week when was the book when on the day. The report was distributed with the report of the United States by all people present in this World Congress, and the council declaration described later based on this report was made. Janson is writing the realities of the death penalty in the report of Japan over 14 items. It is reported that solitary cell is accommodated by especially bunch of living alone and there is not 24 hour turning off but it is surveillance camera addition, and there are non-humane treatments in the interview and sending the letter, etc.

In addition, the offences deterrent of the death penalty is not effective for execution to be little the number of executions, and to be secretly performed. The public opinion concerning the capital punishment of Japan has changed it is reported that opposite increases in conditional in the private study though many support the capital punishment in the investigation of the government.

In conclusion, the death penalty was violated and the Convention for the Protection of Human Rights and Fundamental Freedoms rule illegal, and pointed out that the qualification as the observer country was lacked for the United States and Japan in the penalty system in the modern citizens society.
(1) Europe council (Council of Europe) starts in 1949. It is limits to the field like human rights, the environment, and the culture, etc. in an organization different from European Union (European Union). However, 15 EU nations are all members of council this.

(2) 43 countries are members now, and as for Europe council, as the penalty system in the modern citizens society, the capital punishment is illegal, and violates the Convention for the Protection of Human Rights and Fundamental Freedoms. It was pointed out that the qualification as the observer country was lacked. Additionally, the observer country includes five countries (Canada, the Vatican, Japan, the United States, and Mexico). Japan became an observer country with the United States in 1996.

II Situation of First Congress

Council of Europe (CE) was held following First World Congress of three days until Wednesday, 21st through Friday, 23rd in June on Monday, June 25, and the declaration was put out based on the discussion of World Congress at the remark of the representative of the council joining country and the end.

First of all, the main program of World Congress is enumerated.

June 21(Wednesday)

International symposium “Abolition of capital punishment - Aim at the utopia which is within a few yards of this place” beginning at 9:00AM. Walter Schwimmer, Secretary General of the Council of Europe, and Michelle Taube, President of Ensemble contre la reine de mort, ECPN(Together Against the Death Penalty).

9:20 a.m. The European Union and the death penalty
Declaration of the Swedish presidency of the European Union and of European Commission by Mr. Wilkens, Swedish ambassador to the European institution and mr. Angel Vinsa, Director for Multilateral Relations and Human Rights at the European Commission for Multilateral Relations and Human Rights at the European Commission.

9.40 a.m. The death penalty Worldwide

Sidiki Kaba, President of the International Federation of Human Rights (FIDH) and Mahmoud Ben Rombane, member of Amnesty International’s Executive Committee (AI)

10:15 a.m. The death penalty and worldwide opinion

Mario Marazziti, spokesperson of the Sant’Egidio Community.

10:30 a.m. Geographical survey (three simultaneous workshops)

General rapporteur: Ahmed Othmani, President of Penal Reform International (PRI).

Workshop 1: European countries and countries with observer status at the Council Europe (PACCE)

Chairpersons: Gunnar Janson, Chairman of the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe and Steven Hawkins, President of the National Coalition to Abolish the Death Penalty, (NCADP). Rapporteur: Bernadette Forban, Action des che’tiens pour l’abolition de la torture (ACAT).

Speaker 1: USA: Ajamu Baraka, AI.

**Speaker 2 Japan: Dr. Koichi Kikuta, Forum, 90. Appendix (a)**

Speaker 3 Turkey: Eebas Dagan, Lawyer.

Speaker 4 Russia: Tamara Morshchakova, academic.

Workshop 2 and Workshop 3 (omission)

1:45 p.m. Solemn declarations in the PACCE.

2:30 p.m. Strategy workshops

Workshop 4, Workshop 5 and Workshop 6 (omission)
4:45p.m. Announcement of the celebration of the twentieth anniversary of France’s abolition of death penalty.

4:45 p.m. Justice and the death penalty.

5:15-7p.m. Testimonies from people once sentenced to death and victims’ relatives.

5:15-7: Testimony of former death row inmate and victim

**Friday June 22**

**Worldwide day of action against the death penalty**

9 a.m. Mobilizing the legal profession against the death penalty

*Organized by the Paris Bar Association, with Francis Teitgen, Teitgen, Presidnt of the Paris Bar Association, Maiko Tagusari, lawyer 90, V.S.T. Shankardass, member of the New Dehli Bar, William Kerfoot, member of the Cape Town Bar, Pieree de Preux, President of the Geneva Bar Association and representative of the International Bar Conference, and Gérard Christol, Vice-President of the French National Council of Bar Association-*

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10:15 a.m. Plea “The death Penalty, a legal violation of human rights”

10:30 a.m. A democratic county and the death penalty: the case of the United States of America

Chair; Robert Badinter

Speakers: Rick Halperin, A.I; Bruce Shapiro; Renate Wohlwend, Special rapporteur for the abolition of death penalty at the Council of Europe; Angela Davis, Writer and lecturer at Oacklannd University; Sam Jordan; Steven Hawkins and Daniel Jacoby, FIDH Honourary Presi-*

dent.

12 a.m. Closing session of the international symposium

Summary of regional workshops by the three general rapporteurs:

Abmed Othmani: regional workshops.
Michel Tubiana: strategy workshops.

**Dr.Koichi Kikuta: the death penalty and Asia.** Appendix(b)

**Final declaration of the Congress** Appendix(c)

Presented by Michel Taube, Sidiki Kaba and Mahmoud Rondhane.

**Appendix (a)**

**Why is the death penalty not abolished in Japan?**

By Dr.Koichi KIKUTA

I have been lecturing on and studying criminal studies at the Legal Department of Meiji University in Japan for some 30 years. One of my special areas is that consisting of juvenile law, the criminal law system and the treatment and rehabilitation of criminals. A fundamental issue which is common to all these topics and which I have always struggled with is the question of how to consider the human rights of all criminals including juvenile delinquents. The death penalty system is an extreme response to that question. I think that if one does not abolish the death penalty one cannot talk about the human rights of the convicted. I have published numerous books in favor of the abolition of the death penalty and taken an active part in the citizen's movement against the death penalty in Japan for many years.

So, why is the death penalty not abolished in Japan? I think that, in addition to the primary factors, which Japan shares with other countries that retain the death penalty, there are some factors, which are particular to Japan.
(1) The common factors can be divided into two groups. One of these relates to national opinion. A great number of Japanese people desire the maintenance of the death penalty now as ever, and the government considers that the abolition of the death penalty in Japan would therefore be premature. The other is the argument that the abolition of the death penalty cannot be permitted out of sympathy for the victims of crime. Both of these are mentioned in the [Fourth Government Declaration of the Statute on Human Rights (1988)] that was first ratified in 1979. However, both of them rest of shaky foundations, both in theory and in practice.

First of all, it is the essence of the Human Rights Statue that public opinion must be the foundation for the continuance of the death penalty. The Human Rights Commission has pointed out that the Japanese government does not understand the idea behind this treaty. At the same time, as is reported in detail in the other materials that we have widely distributed, the results of recent opinion polls carried out in Japan indicate that if the death penalty system was substituted by some alternative measure such as life imprisonment, the number of people who would support a “conditional abolition of the death penalty” (and who do not insist on the death penalty itself) make up more than half of those polled. Looking at this fact alone, it is evident that the government’s reasoning for the retention of the death penalty as founded on people’s opinion is out of touch with modern Japan.

Second, there is the argument which holds that the abolition of the death penalty cannot be allowed out of sympathy for the victims of crime, and I think this is the one and only justification for the death penalty in today’s Japan. As I think you may know, in March 1995 the Ohm Pure Truth Sect engineered the Tokyo Underground Salin incident that lead to many casualties including 11 fatalities. In the aftermath of this incident, public sympathy for victims of crime worked against the movement for the abolition of the death penalty. One certainly cannot deny that this incident
represented a major drawback for the movement. But it is acknowledged internationally, and not only by criminal studies specialists that it is the obligation of modern society to find out how victim and assailant can live together. One cannot only think of the existence of the death penalty and our strategy towards victims as being in direct opposition to one another. At the very least, the experiences of the victims themselves are testament to the fact that use of the death penalty is not necessary to show sympathy for victims, and the existence of the death penalty does not heal the victims' feelings. An emphatic opposition to the death penalty on the part of the families of victims of crime is beginning to emerge. Mr. Harada who is a member of our group visiting Europe at this time takes part energetically in the anti-death penalty movement and is traveling with us, although he is the surviving relative of a murder victim. As can be judged from this situation, the primary factors that support the continued existence of the death penalty are collapsing.

(2) So what about the special reasons for which the death penalty is not abolished in Japan today? In order to answer this, one must explain the particular background that exists in Japan. As you know, Japan is an imperial monarchy and the Criminal Code provides that even if such acts do not lead to which are designed to overturn the national structure such as insurrection or the bringing about of international conflict can be punished by the death penalty. This provision has not been used once since the war, but if the death penalty was abolished this provision would also have to be eliminated. However, this issue is one that goes to the heart of the national structure and I think this may be one of the obstacles to a discussion of the abolition of the death penalty. This point has never actually been raised in the death penalty discussions held by the Law Review Committee of the Ministry of Justice, a government consultative body. But in light of
the resolution of this committee in favor of the preservation of the death penalty, I think it is an important factor.

In Japan, important national laws such as the Criminal Code are discussed as above, but the Criminal Code still exists in the form in which it was enacted in 1907. At the special sectional meeting of the Law Review Committee that recommended the revision of this law in 1970, it was resolved to retain the death penalty, and as a result of this the Ministry is still negative about abolishing the death penalty today. Recently there has appeared a tendency for important bills to be revised by the Legal Codes of the Diet rather than under the leadership of the governments administrative office. But nevertheless I expect that as long as an Agreement on the Abolition of the Death Penalty is not ratified, or the death penalty provision is not removed from the Criminal Code, progress on this mailer in practical terms will be extremely difficult. I think that it is important to at least discontinue the use of the death penalty in practice, even if the relevant provision is not removed from the Criminal Code, and I am certain that this will be possible in the near future.

(3) It goes without saying that I am an advocate for the immediate abolition of the death penalty. I am aware that what other advocates of this abolition are proposing as a substitute is theoretically inconsistent and I know that many of the people in favor of this abolition are very passive. But at the moment in Japan twice-yearly executions are becoming a routine. Also, as I have already said, in addition to Japan’s special circumstances, to insist on the immediate abolition of the death penalty is reasonable in theory but not in practice, and there is the danger of inviting a backlash. I think it is therefore necessary to urge for steps to be taken such as the commutation of all death sentences to sentences of life imprisonment, the reduction of the number of death sentences and a general stay of execution-
s, at the same time as insisting on a complete abolition. This is something that the numerous developed nations that have abolished the death penalty have already experienced. At a review of the UN Committee for the Free Rights Covenant one member actually advocated the introduction of life sentencing as a the abolition of the death penalty in Japan.

In 2000 when this suggestion was received, the party in power at the time began deliberately investigating the introduction of the life sentence. One prisoner who is currently on death row has said, In substituting the life sentence for the death penalty, it is more important to aim for the actual abolition of the death penalty in the near future, than its legal abolition in 100 years’ time. Under a life sentence, even if one cannot go outside the prison walls for the rest of one’s life, that is still a life. There is a Japanese proverb which says “make haste slowly”. While praying for the abolition of the death penalty, I intend to work diligently towards the introduction of the life sentence in my country.

Thank you very much for listening.

Appendix (b)

Death Penalty in Asia, by Prof. Koichi KIKUTA

1 An increasing number of countries are moving forward to abolish the death penalty. More than half of the countries in the world have abolished the death penalty in law or practice. However, a number of nations in Asia are an exception to this trend. In Asia region, namely Cambodia, East Timor, and Nepal have abolished the death penalty for all crimes. Hong Kong, which was returned to Chinese rule as a special administrative region of China, still remains abolitionist. Sri Lanka has been abolitionist
in practice for the last 24 years. However, all the other countries including Japan retain the death penalty and carry out executions.

Why?
Some people may see the obstacle in the cultural or religious aspects of the societies in Asia. But we know from the past experiences that the matter of the death penalty is a political matter. The discourse of seeking obstacle in our cultural and religious roots itself is indeed political.

As you are aware, in the Philippines, President Aquino abolished the death penalty in 1987 after the Marcus regime and President Ramos resumed it and President Estrada announced a moratorium on executions in 2000. In China the death penalty continues to be used extensively and arbitrary and political interference is common. Often mass executions are carried out before major events or public holidays as a warning to others. These highlight the political nature of the death penalty.

And in Japan, during Heian-period of 300 years, which was ago, the death penalty had been abolished. So let us not escape into the excuse that the death penalty is only a cultural matter.

2 So, what should we do?
On the 10th of July 1993 we organized “Asian Forum against the Death Penalty” inviting participants from Hong Kong, Philippines, South Korea and Taiwan. After three days conference, we adopted Asian Declaration against the Death Penalty, which called upon all the nations in Asia to abolish the death penalty immediately and unconditionally. This created a space where abolitionists in the region can exchange information and ideas. I was invited several times by the Korean Association to Abolish the Death Penalty. I also had a chance to visit Taiwan for research.

In South Korea, the Association takes active role on seeking an alter-
native to the death penalty. The supporting 90 members of the Korean Parliament reportedly submitted a bill to abolish the death penalty. In Taiwan the Minister of Justice announced to suspend all, the executions until 2004 on the 1st of June.

Yes, Asia is also moving drastically toward abolitionment. However, I am afraid that Japan is an exception.

3 In my previous presentation Why aren’t we successful in abolishing the Death penalty? I have discussed about “a pragmatic abolitionism”. Here, once again, I would like to return to that point.

We live in a society where overwhelming majority demands the death for murders. We live in a society where bi-annual executions are becoming a routine. Theoretically and morally we would like to insist on the immediate abolition of the death penalty. However in practice, we are facing a risk of societal backlash. Therefore, I believe that we seriously need to consider some steps to be taken such as the commutation of all death sentences to sentences of life imprisonment, the reduction of the number of death sentences and a general stay of executions, at the same time as insisting on a complete abolition.

On life sentence as an alternative, I am aware that this is theoretically inconsistent with the ideal of abolitionists. However, considered to be strategic and more persuasive toward abolition, I propose to my country to take a serious look on the issue. I believe that the life sentence is as tough as the death penalty. Also we can achieve the reduction of death sentences if we could introduce the life sentence, which you can see from the experiences in the USA. I believe we need a new approach of more realistic, pragmatic and persuasive abolitionism in Japan and the rest of Asian retentionist countries. Masashi Daidoji, who is currently on death row, has said, “In substituting the life sentence for the death penalty, it
is more important for the actual abolition of the death penalty in the near future, than its legal abolition in 100 year’s time.

I would like to close my speech with the Haiku, which is a Japanese poem, written by this some prisoner on death row.

'Darkness in May, is filled up with the hatred and vengeance caused by the execution, and repeats itself.”

We should cut the vicious circle of hatred. This is our common goal over the national boundaries. If we can create a trend toward abolition in Asia, it could extend to the worldwide level. I invite and urge all of you to join our struggle to work together with us to abolish the death penalty in Asia.

We hope to be in a position to host the second world congress against the death penalty in Japan.

Thanks you very mach.

Appendix (c)

FIRST WORLD CONGRESS AGAINST THE DEATH PENALTY

Strasbourg 21, 22 and 23 June

FINAL DECLARATION

We, citizens and abolitionist campaigners gathered in Strasbourg from 21 to 23 June 2001 for the First World Congress against the Death Penalty, organised by Ensemble contre la peine de mort, declare:

The death penalty means the triumph of vengeance over justice and violates the first right of any human being, the right to life. Capital punishment
has never prevented crime. It is an act of torture and the ultimate cruel, inhuman and degrading treatment. A society that imposes the death penalty symbolically encourages violence. Every single society that respects the dignity of its people has to strive to abolish capital punishment.

We are pleased to note that many Speakers of Parliament have decided to launch on 22 June a “Solemn appeal for a world-wide moratorium on executions of those sentenced to death as a step towards universal abolition” at the European Parliament.

We demand the universal abolition of the death penalty. In this respect, we call on Citizens, States and international organizations to act so that

* states ratify all abolitionist treaties and conventions on an international and regional level.
* countries which have stopped executing people sentenced to death, remove the death penalty from their statute books.
* states which sentence to death persons who were juveniles at the time of the crime, end this blatant violation of the international law mentally disabled people cannot be sentenced to death
* no states having abolished or suspended executions extradite anyone to third countries still applying the death penalty, irrespective of guarantees that it would not be imposed.
* states regularly and openly publish information on death sentences, detention conditions and executions.

We support the investigation of the Council of Europe on the compatibility of the observer status of the United States and Japan with their adherence of the death penalty.

We call on the Council of Europe and the European Union to insist that Turkey, Russia and Armenia permanently abolish the death penalty for ALL crimes and commute all death sentences.
We call on the European Union to continue its efforts to achieve the abolition of the death penalty and thus, in the ordinary course of its international relations.

In addition to these general recommendations, we will issue specific recommendations, on a country-by-country basis, to support abolitionist campaigns.

We commit ourselves to creating a world-wide co-ordination of associations and abolitionist campaigners, whose first goal will be to launch a world-wide day for the universal abolition of the death penalty.

We call on the judicial and medical professions to confirm the utter incompatibility of their values with the death penalty and to intensify, country-by-country, their activities against the death penalty.

We associate ourselves with the petitions collected by Amnesty International, the Community of Sant'Egidio, Ensemble contre la peine de mort, the Federation of Human Rights League, Hands off Cain and any other organizations and call on all abolitionist campaigners to sign the following international petition:

“We, citizens of the world, call for an immediate halt of all executions of those sentenced to death and the universal abolition of the death penalty. Lastly, we call upon every state to take all possible steps towards the adoption by the United Nations of a world-wide moratorium on executions, pending universal abolition.

Strasbourg, 22 June 2001
Appendix  (d)

Hidden death penalty in Japan

- We have a death penalty system in Japan.
- There are 7 detention centers with special chambers for executions. Since 1993, 39 prisoners have been executed.
- As of December 31, 2000, there were 53 prisoners whose death sentences had been finalized.
- They cannot communicate with their friends or journalists, only with their family members. Sometimes they are even prohibited from meeting with or writing to their family members.
- Most prisoners are isolated in solitary cells monitored by TV cameras 24 hours a day.
- Prisoners are not informed of their execution until the very day the execution is to be carried out. After the execution, only the family is told it has already been carried out.
- As described above, the Japanese death row prisoners live, and the death penalty is carried out, in isolation from society.
- Regarding matters we introduce below, not many people in Japan might know about them, even those who are interested in the death penalty.

1. The process of confirmation of the death sentence

1.1 From arrest to trial

The investigation decides within 23 days of the arrest whether the suspect should be charged as a criminal defendant or not. Under the Japanese system, no official defense counsel is available before charges are filed.
Therefore, until the suspects are charged, they can be given legal advice only when they can manage to pay for a lawyer.

Nowadays, all regional bar associations in Japan have adopted a voluntary scheme of public solicitor. At the request of suspects, their family members, their friends or other prescribed persons, solicitors go to the police station within 24 hours of arrest to interview suspects and give them free legal advice. However, the free legal advice only occurs once, upon being charged; thereafter, if suspects want to legal advice, they must pay for a lawyer. Moreover, many suspects are charged without knowing the existence of this service.

At the trial stage, the judges take very seriously a suspect’s "confession," which is considered more valuable than objective evidence.

Once suspects give confessions and sigh their written statements, even if they later complain that the confession is not genuine, at the trial, it is rare that such a complaint is accepted. This is why the investigation is so energetically devoted to getting a suspect's "confession" within 23 days. Suspects are isolated, using techniques such as interfering with their interviews with a counsel of permitting the interviews to last only about 15 minutes. And all of the letters between a suspect and a counsel are censored.

The Prison Act in Japan rules that suspects should be detained in detention centers. However, since the Act also has a provision that investigators may use cells in a police station as an alternative, they usually detain and interrogate suspects in these cells. The "Daiyo-Kangoku," substitute prisons located within police stations, makes it possible to carry out more than 10 hours of interrogation every day. It is a strong weapon of the investigation that is used to exhaust suspects and extract confessions from them.

We can point out that there are also problems on the side of mass media in Japan. Mass media do not care about "the rule of presumption of inno-
censure” when they report incidents. Once the police arrest a suspect, they let that news be widely known, leading people to conclude that a suspect is guilty before trial.

During an interrogation, an investigator uses news articles that show malice toward a suspect in order to disturb his state of mind. An arrested person must confront the investigator alone during often lengthy interrogations, without much legal assistance. Even though the accused is informed of “the right to silence,” the person who keeps silent will be strictly condemned by police and prosecutor and also must endure various disadvantages, for example, denial of bail. “The right to silence” in Japan has become nominal. Many suspects agree to make statements whose contents are just what the police believe they should be, because they think such admissions are the only way to end their suffering. As a result, even though a suspect did not intend to kill (that is, injury occurred that resulted in death), he may just by accident appear on police statements as a person who killed with intent (that is, a murderer), by planning the murder in advance. This is how the police create confessions that are used against suspects.

Such a device accounts for Japan’s high guilty rate, which is 99.8% once a suspect is charged.

1.2 Trial

In criminal trials, the statements taken at the investigation stage seem to be more important than evidence submitted in court. Therefore, frequently, the defense does not dare dispute the factual issues in a case, but instead seeks extenuation of his case. It takes about one year to reach the death sentence in many cases.

Without a “Mandatory Appeals System” against the death sentence, some defendants would not appeal and the death sentence would be confirmed at the first trial.
In cases where the defendants lack enough money or for other reasons cannot hire legal counsel, the court issues orders to choose official defense counsels. However, defendants don’t have any right to choose or release these official counsels. The rule is that official defense counsels will be chosen each time at the first, second, and third trial. Therefore, defendants must prepare for the next trial without any counsel between the end of the last trial date and the day when the counsel at the next trial will be chosen. After sentencing, the official defense counsels can prepare appeals, but there are cases in which defendants, during the time between trials when they have no defense counsel, withdraw their appeals. The death sentences are consequently confirmed.

On the other hand, the prosecutors can make an appeal of the death sentence when the court rejects the death penalty they had requested. From 1997 to 1998, there were five cases in which the prosecution appealed to the Supreme Court to impose the death sentences after the Appeal Courts had sentenced defendants to life imprisonments.

The Japanese government considers the judicial process fair by maintaining, “Japan has a three-stage trial system and a prudent process of trials leading to death sentences.” However, the Supreme Court in Japan is a court to hear and judge legal matters, not factual matters, making the Japanese system in reality a two-stage trial system. At the court of appeal, the defense usually insists, “the death penalty violates article 36 of the Japanese Constitution, which forbids cruel criminal penalties.” The Supreme Court, however, has never accepted that line of reasoning, and has consistently rejected this view.
2. Treatment of defendants at the trial stage

2.1 The place they are detained

Defendants are detained in a detention center (Koci-syo). There is a system of release on bail at the court’s discretion, but in cases involving a serious crime that may lead to a death sentence, there is no possibility of bail being granted.

A detainee may have a very small space; the size of a solitary cell in which defendants are detained is about 5 meters square. Inside of it are a sink and a toilet stool, as well as bedding (futon), a desk, and other things. The detainee is not allowed to move freely inside of the cell in accordance with the regulations of a detention-center.

Most detention centers lack heating in the area where detainees live. Many detainees therefore suffer from frostbite.

Detention centers also lack air conditioning equipment. Detainees may have prickly heat throughout the summer.

Especially in the case of defendants who are being considered for the death sentence, their movement is strictly controlled to prevent suicide attempts. They are monitored 24 hours a day by a video-camera, which requires that their cells be kept lighted even during sleep time. Cell windows are screened with iron bars and a panel that contains some holes. Therefore, the detainee in this “suicide prevention cell” has a window that is about one-200th the size of a window in a regular cell and that lets in about one-fifth as much sunshine.

2.2 Communication with the outside

Detainees can meet anyone until their sentences have confirmed. However, in almost cases, they can meet only once a day and maximally 3 persons
together at same time. The duration of this meeting is about 10 to 30 minutes. There is a panel for screening between detainees and visitors in the meeting room. Prison officers attend at the meeting and record what the prisoners and visitors talk about. Detainees have no possibility to use telephone.

Detainees are not allowed to meet with journalists who have the purpose of collecting information or news materials.

Detainees may send letters to anyone, but in principle, they may send them only once a day. The number of pages per letter is restricted to 7. Detainees may receive letters from anyone. However, the officers censor all letters from/to detainees. If they judge that some sentences in a letter are not proper for detainees to write or read, they will either order detainees to rewrite them or they will blacken out the sentence with ink (Kuronuri). The same practice is used in the case of books and magazines.

Furthermore, the court may prohibit a detainee from meeting persons other than his/her attorney, when they judge there is the possibility of escape and destruction of evidence about the detainee. Under this order the detainee cannot meet with his/her friends and family members for a long time, and therefore must defend him/herself alone.

The quantities of the detainee's belongings are also restricted. Although this rule may be used to restrict prisoner's personal items, it can also be used to restrict legal documents relating to a prisoner's criminal or civil trial. As a result, detainees who are on trial for a long time will have difficulty fully defending themselves.
2.3 Living conditions

Even when defendants have not received confirmation of their sentence, they must adhere to a very strict time schedule at the detention center. Therefore, they do not have enough time to prepare for their trial.

Typical daily time schedule:

- Getting up 7:00
- Checking 7:30
- Breakfast 7:40
- Lunch 11:50
- Supper 16:20
- Checking 16:50
- Sleeping 21:00

2.4 Meals

The detainees have meals 3 times a day. Regarding the taste and quantity of meals, each person will have a different evaluation. But as to nutrition, vitamins are insufficient due to lack of fresh vegetables. The detainees may buy fruit with their own money, but some detainees do not have the money to do so. Furthermore, it is harsh treatment to have 3 meals separated by only 9 hours.

2.5 Exercise and medical treatment

Detainees may have outdoor exercise twice a week in summer and three times a week in winter for 30 minutes each time. The detainee who is confined in a single cell, as in the case of a person whose death sentence has been confirmed, must exercise alone. The exercise area is about 2 meters wide and 5 meters long, made of concrete and located at the porch or on the roof. When the detainees exercise, they are monitored by an officer. They may only use a jump rope.

Regarding taking a bath, detainees may do so every exercise day as well
as 3 times a week in summer and twice a week in winter. They are allowed about 15 minutes to bathe, including time for putting on and taking off clothes. Detainees who are confined in a single cell bathe alone, too.

They spend their time sitting in their own cell as well as meeting, exercise, and bathing.

Detainees who request to do are allowed to work while sitting. They may earn from 4 to a maximum of 5 thousand yen per month, but their income is restricted these days.

Because of lack of exercise, vitamins, and medical care, detainees typically suffer from disease or injuries, for example, lumbago, tooth decay, pyorrhea alveolaris, weakened eyesight, and institutional psychosis.

3. Treatment after confirmation of death sentence

Prisoners whose death sentences are confirmed are confined in single cells of detention centers that have special chambers for the execution. The situation in such detention cells with regard to exercises, baths, and medical treatment is the same as for the defendants described above.

3.1 Communication with the outside

Communication with the outside after confirmation of death sentences is more restricted. Under article 9 of the Prison Act, prisoners whose death sentences are finalized receive the same treatment as other detainees and defendants. However, this regulation does not apply to prisoners.

In principle, they may only meet with and write to their family members. Many prisoners don’t have anyone to meet, because they have divorced their husbands or wives, or have heard nothing from their parents, brothers, sisters, and children for a long time after they committed crimes. Some prisoners are adopted into the family of supporters whom they met in the
course of their trial, but they are hardly ever allowed to meet with and write to their lawful family after their sentences have been finalized.

The authorities deprive prisoners of any hope for life. They do not permit prisoners to communicate with the outside, giving as the reason “for prisoners to achieve some peace of mind.” In fact, the purpose is to make prisoners come to terms with their crimes.

Some national and international NGO’s members and Japanese Diet members have requested to meet prisoners, but all of these requests have been rejected.

In March 2001, Mr. Jansson, who is a chairperson of the Human Rights Committee of the Council of Europe, visited Japan in order to study the death penalty system. He requested to the authorities that he be allowed to meet with a prisoner at his family member’s request, but this request was also rejected.

Some prisoners have been executed without talking with any outside persons until the day of the execution.

If prisoners wish, they are allowed to meet with chaplains once a month with being attended by prison officers. The chaplains attend at the execution. They must keep secret about the inside of the detention center and the situation of prisoners.

Even after the sentences are finalized, prisoners are allowed to meet with and write to attorneys concerning a retrial.

However, since officers attend the meetings with attorneys, it is difficult to keep anything secret regarding a prisoner’s retrial. There are cases in which a meeting has not been permitted between a lawyer and prisoner who wants to request being defended at a retrial.

Only attorneys concerned with a retrial and family members can send anything to prisoners after a sentence has been confirmed.
3.2 Life after sentence has become final

At a prisoner’s request, s/he may do easy work in the cell and receive a small income.

Lack of medical care is the same as in the case of defendants. In the case of prisoners whose sentences become final, since they have great difficulty communicating with the outside, it is quite possible that their condition will worsen. Thus, one prisoner lost his/her sight because of failure to treat a retina disease. Another prisoner had difficulty walking because of lack of treatment for a brain tumor. A third prisoner lost his/her ability to speak because they hardly ever had the chance to talk. And another prisoner suffered from institutional neurosis and ended up having a mental disorder. Even in these situations, prisoners are hardly ever moved to a hospital.

4. The rights of defense of death row prisoners

4.1 Appeal to retrial

It is difficult in Japan to gain a court’s permission for a retrial. Such cases are rare: four death row prisoners were found innocent through retrials in the 1980s. These four prisoners had been tortured during interrogations in order to produce confessions. It took 28 to 34 years before they were found innocent. Mr. Sakae MENDA, who was the first to be found innocent, says that he has seen 70 prisoners who were executed, and that about 5 of them claimed to be innocent.

There were 53 death row prisoners in Japan at the end of December 2000. Among them, 25 people claimed that they were totally innocent or innocent of a part of charges and were making appeals for retrial. Another eight prisoners claimed to be innocent at their trial.

However, since the retrials at which the four prisoners to found to be
innocent, no additional retrials of death row prisoners have been permitted. Even in cases in which many journalists decided that there was a miscarriage of justice, the door to retrial will not open. In the case of one particular prisoner, 40 years has passed since his arrest and 30 years since confirmation of his death sentence.

In December 1999, two prisoners were executed. One was executed during his eighth appeal for retrial and while proclaiming his innocence, and the other was executed while appealing for habeas corpus. They were executed while considering various kinds of defenses. The government explains that appealing for retrial or habeas corpus are not grounds for suspending conditions of execution, since prisoners may use appeals for retrial to escape execution. But it is possible that executions are used to uphold the justice of the law. It is natural that prisoners who proclaim their innocence insist they did not kill anyone. The four who avoided execution 20 years ago claimed the same thing.

4.2 The request for amnesty

Prisoners or their lawyers can make requests for amnesty.

However, since 1975, there is not been any death penalty case in which a prisoner had his punishment reduced by amnesty.

Prisoners are informed orally of the result of their request for amnesty. The amnesty decision is not given to the prisoner’s lawyer. It is impossible to raise an objection to the decision.

In December 1995, a prisoner who had been informed orally of rejection of his request for amnesty was given no time to take any measures against it. He was brought to the execution chamber and executed immediately.
5. Carrying out the execution

In Japan, no executions were carried out between November 1989 and March 1993.

In December 1989, “The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)” was ratified by the United Nations. We hoped the death penalty would be abolished if this situation continued. But in March 1993, executions began again.

5.1 The legal process

The Criminal Procedure Act in Japan states that the executors of judgment are prosecutors, but that the death penalty shall be carried out by order of the Minister of Justice (The Criminal Procedure Act, article 475). One of the main reasons there were no executions for three years or more as mentioned above was that the Minister of Justice during that time refused to issue an order. However, the Ministers of Justice since then have issued orders to carry out executions in the belief that the minister’s role is to carry out penalties confirmed by trials.

The act only states, however, that the execution of the death penalty shall occur within 5 days of the date an order was issued (Criminal Procedure Act, article 476). There are no written provisions concerning how, where and by whom the executions shall be carried out. This is to say, there is no legal basis for the execution of the death penalty.

Moreover, prisoners who are to be executed are chosen arbitrarily. The aged, the mentally disturbed, and the person who was a juvenile at the time of committing a crime have all been executed.

In the past 6 or 7 years, executions have been carried out while the Diet was not sitting. In 1994, the “Diet Representatives Association for the
Abolition of Death Penalty” was established. But because executions have been carried out while the Diet is not sitting, Diet members have been unable to demand explanations by the Ministry of Justice during parliamentary debate. The Japanese Minister of Justice has been changed about every 7 or 8 months. The Ministry of Justice has tried to create a system that will avoid the possibility that a minister will not order executions. This means that the executions are repeated arbitrarily once or twice a year without any relationship to the conditions of the prisoners.

5.2 Process leading to the execution

5.2.1 Before the execution

The prisoners, their family members, or their counsels will never be informed in advance of an execution. On the morning of the execution, prisoners will called suddenly and informed that “the sentence of execution will now be carried out,” and will be brought to the execution chamber. Prisoners will not permitted to say goodbye to their family members.

They will not be able to call their counsels and will not be given opportunities to have legal assistance.

The fact that executions are not known in advance makes the prisoners’ condition of mind unstable. These days, executions are carried out 6 or 7 years after confirmation of the death penalty sentences. This situation forces prisoner who have spent 6 or 7 years after confirmation of their sentences to live each and every day in dread of the day the execution will be carried out. Some people are executed even though they are appealing for a retrial. Even if prisoners are appealing for amnesty, they may be informed of their executions at the same time they receive notice of rejection of their appeal.

If prison officers stop in front of a cell in the morning, it means the last moments of the prisoner’s life have arrived. Even if prison officers do
not stop this morning, who knows about tomorrow? In that case, we may say that each new day merely gives prisoners a 24-hour postponement of execution. Such a life continues until the day of execution.

5.2.2 Execution of the death penalty

At the execution chamber, the authorities perform certain ceremonies. A few minutes are given to the prisoners for writing their will and for saying goodbye to their chaplains.

Then they are handcuffed from behind, blindfolded, and brought onto the hanging place, whose floor is split in two. They are tied up while on their knees to prevent wounding the body in case they struggle. At the same time the hanging rope is placed around the prisoner’s neck.

At a signal, the floor splits into two, and prisoners fall into opening. Since the length of the rope has been adjusted in advance to take account of the height of prisoners, they continue cramping until their death, suspended in the air some 15 centimeters above the underground floor.

In the underground room, a doctor is standing by to take the prisoner’s pulse and listen for a heartbeat. It is said that 15 to 20 minutes are needed to die.

After the execution, the prisoner’s family will be informed about it. If within 24 hours the family asks to have the body, it is possible to comply. There have been 39 executions since March 1993 when the execution of death penalty was restarted, but on only two occasions were the bodies taken back. Mr. Norio NAGAYAMA was executed in August 1997. His lawyer wanted to take the body, but the authorities had it cremated and only allowed his bones to be taken. It is presumed that there were traces of NAGAYAMA’s final struggling.

Belongings of the prisoner are returned to his family, except for “diary or documents as such” after confirmation of his death sentence. There is no way to identify belongings, however, other than a “diary.”
6. The general situation of the Japanese death penalty system

6.1 The number of executions

The number of executions over the last 20 years is as follows:

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In the 8 years (from 1982 to 1989) before executions stopped, 13 persons were executed; but the number of executions in the 8 years since they were restarted (from 1993 to 2000) is 39 persons, three times as many as before.

6.2 Public opinion

The government says that public opinion supports the death penalty system, but this is not entirely true. A public opinion poll conducted by the government in 1999 showed that 79.3% of the respondents said, “I think the death penalty system is necessary through unavoidable circumstances.” However, the question itself is problematic, as the following makes clear:

One question asked: “Regarding the death penalty system, with which of the following opinions do you agree?”

The optional answers are:

“I think the death penalty system should be abolished in any case.”

“I think the death penalty system is necessary through unavoidable circumstances.”

“I cannot decide with which answer I agree.”

Given those choices, it is natural that most respondents would select the second answer. People have little access to information about the death penalty system, because prisoners are living in solitary circumstances, hidden from the community and executed secretly.
On other hand, the sub-question for those polled who selected the option of “necessary” asked what the death penalty system should be like in the future. For this question, the optional answers and the percentage of people who selected them were as follows:

“Should keep the current system in the future” : 56.5%
“Should abolish if circumstances allow” : 37.8%
“I can't decide” : 5.7%

These results indicate that nearly half of the persons who think the death penalty today is “necessary” are convinced it should be retained in the future.

The Japanese government should make much of this result, follow the recommendation of the Committee of the International Covenant on Civil and Political Rights, and promote abolition of the death penalty.

7. Conclusions

Japan maintains a cruel death penalty system and executes two or more prisoners every year.

In 1993 and 1998, the Committee of the International Covenant on Civil and Political rights recommended to the Japanese government that it abolish the death penalty, but the government continues to disregard it and continues to execute people. Furthermore, the government also cooperates with other countries that retain the death penalty to protest opinions on abolition. The Japanese government has also objected to 5 resolutions on abolition since 1993 at the UN Human Rights Committee. It is thus moving in a direction opposite of international opinion in favor of abolition.

- Please give your support to our efforts to abolish the death penalty in Japan.
- Please appeal to the Japanese government to abolish the death
penalty and protest the execution of the death penalty.