Report of JFBA Regarding Second Periodic Report by the Government of Japan under Articles 16 and 17 of the International Covenant on Economic, Social, and Cultural Rights

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Japan Federation of Bar Associations

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Japan ratified the 'International Covenant on Economic, Social and Cultural Rights' (hereinafter the 'Covenant', effective March 1976) in June of 1979. By this ratification, Japan assumed a duty under Articles 16 and 17 of the Covenant to provide periodic reports to the U.N. Committee on Economic, Social and Cultural Rights (CESCR) regarding the status of its implementation of the provisions of the Covenant within Japan. Beginning in 1988, it was determined that Japan would submit a single comprehensive report every five years regarding the status of its implementation of the Covenant as a whole. The contents of the periodic reports of the signatory states to the Covenant are subject to the review of the U.N. Committee on Economic, Social and Cultural Rights.

On 28 August, 1998, the Japanese government submitted its Second Periodic Report under Articles 16 and 17 of the International Covenant on Economic, Social, and Cultural Rights. (The First Periodic Report was submitted in three installments under the pre-1987 system, from September of 1981 through March of 1986.)

The Japan Federation of Bar Associations (JFBA) is Japan's only compulsory, nationwide federation of attorneys, comprising all lawyers and regional bar associations in Japan, pursuant to the provisions of the Japan Attorneys Law (effective June 1949). The JFBA, taking into account the mission of the bar as provided in said Law, in order to safeguard basic human rights, has carried out investigations and research and has set forth its opinions regarding pertinent Japanese laws, including treaties ratified by the government. Specifically, the JFBA has established an Experts' Working Group within the JFBA to address the government's Second Periodic Report, and has been reviewing said Report since August of 1999. Based on the recommendations of this Experts' Working Group, the JFBA prepared a document entitled 'Questions Regarding Second Japanese Government Report Pursuant to Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights', and on 21 April, 2000, the JFBA submitted these Questions to the Committee on Economic, Social and Cultural Rights and to the Foreign Ministry of Japan. On 15 May, 2000, the Committee convened its own Working Group to review the government's Second Periodic Report before

the main session, and on 18 May it issued a list of 46 issues to be addressed by the Japanese government.

The 'JFBA Report' below is intended to provide information in connection with the Committee's review of the Second Periodic Report, and sets forth the official positions of the JFBA in connection with the problems identified in the Second Periodic Report, based on a draft prepared by the JFBA's Experts' Working Group.

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General Points

1 National legislative and administrative measures based on the Covenant

A Opinion of JFBA

> The Japanese government's view of the legal character of the International Covenant on Economic, Social and Cultural Rights, and particularly the language regarding 'progressive realization' of the rights set forth in Article 2 thereof, is that the duties assumed by states under the Covenant are not legal obligations but political obligations, and accordingly are not recognized as having normative effect, or alternatively, that signatory States have essentially unfettered discretion in regard to the means by which the duties are discharged, and that consequently, as a practical matter, there are no real legal obligations. Therefore, the government has failed to take any legal or administrative steps as required under the Covenant, which is a breach of Article 2 of the Covenant.

B The Government Report

The Government Report does not mention this issue.

C Rationale

According to General Comment 3 of the Committee on Economic, Social and Cultural Rights, the duties undertaken by states bound by the Covenant are 'legal obligations', and not merely political obligations. Among the obligations imposed by the Covenant, obligations that should be discharged immediately include the obligations set forth in (i) Article 2, paragraph 2, (ii) the non-discrimination provisions of Article 3, (iii) the provisions of Article 7(a)(i) requiring equal working conditions for men and women, (iv) the provisions of Article 8 regarding basic labor rights, (v) the provisions of Article 10, paragraph 3 regarding the protection of children, (vi) the provisions of Article 13, paragraph 2(a) regarding free and compulsory primary education, (vii) the provisions of Article 13, paragraphs 3 and 4 regarding the liberty of parents to choose private schools for their children, and (viii) the provisions of Article 15, paragraph 3 regarding respect for the freedom indispensable for scientific research

and creative activity. Furthermore, General Comment 3 provides that "while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned," and signatory States are not given complete discretion regarding the implementation of policies to achieve such rights. However, the Japanese government failed utterly to adopt specific legislative and administrative measures as contemplated in the Covenant. The Japanese government must thus fundamentally re-evaluate its understanding of the legal obligations imposed by the Covenant on signatory States.

2 Effect of Covenant on judiciary

A Opinion of JFBA

The judicial applicability of the various provisions of the Covenant is invariably denied by the Japanese government and by most courts, which comprises a violation of Article 2 of the Covenant. The Japanese government should adopt measures to educate judicial personnel, particularly judges, as well as administrative officials and law enforcement officers, regarding the contents of the Covenant and the General Comments issued by the Committee.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

As described above, it is the Committee's belief that among the obligations of governments of signatory states to the Covenant, a number of such obligations properly apply to the judicial apparatus of the state.

Where the Japanese government is a party to litigation, it invariably repeats its position that the rights granted under the Covenant are not self-executing, despite General Comment 9's admonition that under the Covenant, governments "should promote interpretations of domestic laws which give effect to their Covenant obligations,".

There have furthermore been a series of court decisions that have

interpreted the obligations of governments under the Covenant, such as the obligations set forth in the provisions of Article 9, to be mere political responsibilities. For example, in a decision of the First Panel of the Supreme Court (the so-called Shiomi Nenkin Case Supreme Court Decision on March 2, 1989), the Court ruled in connection with the government's denial of national pension benefits to a Korean national that "[Article 9 of the Covenant] confirms that for signatory states the right to social security is a right protected through a state party's social policy, and declares that the state party have a political responsibility to actively promote social security policies to realize these rights. It does not, however, confer immediate and specific rights on individuals." Similarly, other cases holding that Covenant ratification constitutes no more than the assumption of a political responsibility include a March 24, 1994 decision of the Osaka District Court and a decision on September 22,1982 of the Tokyo District Court (see reference materials provided below).

Therefore, it is clear that problems exist in regard to Japan's application of the Covenant in its judicial process as well as in regard to the basic opinions of the courts regarding the Covenant. Education must be provided to administrators, judges, and other persons involved in the legal system concerning the observations of the Committee in cases where a government is involved in legal proceedings.

3 Grounds for limitations on rights established in Article 4 of the Covenant and the 'public welfare'

A Opinion of JFBA

The view of the Japanese government that the 'public welfare' constitutes a valid ground for limiting basic human rights, as provided in Articles 12, 13, 22, etc. of the Constitution, and court decisions implementing such a policy, even where such rights are established in the Covenant, constitute a violation of Article 4 of the Covenant.

B The Government Report

The Government Report discusses the concept of 'public welfare' in paragraph 6 of the section entitled 'General Comments.'

C Rationale

Article 4 of the Covenant provides in regard to restrictions on the rights set forth therein that "the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society." In regard to the concept of 'public welfare' as espoused in the Constitution, the Government Report states that such concept "is strictly interpreted as the principle of immanent restriction, which coordinates mutual fundamental human rights to enable the human rights of each individual to be equally respected. Therefore, public welfare is not an irrational restriction of human rights." However, in fact, the notion of 'public welfare' is used and functions as a principle under which basic human rights may be circumscribed in order to advance or protect the various interests of the state.

For example, in an April 25, 1973 decision of the Grand Bench of the Supreme Court, the Court held that the prohibition on civil servants going on strike contained in Article 98, paragraph 2 of the National Public Employee Law was "an unavoidable restriction from the standpoint of the common good of the people as a whole (the Court holds that the 'public welfare' as set forth in Article 13 of the Constitution refers to this), and does not violate Article 28 of the Constitution (Guarantee of Basic Labor Rights)."

Furthermore, the Human Rights Committee stated in its 'Principal subjects of concern and recommendations' contained in the Concluding Observations of its report regarding Japan's Fourth Periodic Report on its implementation of the International Covenant on Civil and Political Rights (CCPR/C/79/Add.102) as follows:

The Committee reiterates its concern about the restrictions which can be placed on the rights guaranteed in the Covenant on the grounds of 'public welfare', a concept which is vague and open-ended and which may permit restrictions exceeding those permissible under the Covenant. Following upon its previous observations, the Committee once again strongly recommends to the State party to bring its internal law into conformity with the Covenant.

The same concerns apply to Japan's restriction of rights under the International Covenant on Economic, Social and Cultural Rights.

4 Interpretation of principle of equality

A Opinion of JFBA

> In regard to the Covenant's guarantee of equality and in connection with the application of Article 14 of the Japanese Constitution, the opinion of the Japanese government and court decisions upholding the restriction of this guarantee based on the concepts of 'reasonable discrimination' and 'legislative discretion', which are judicial theories finding that a distinction established by law does not violate Article 14 of the Constitution so long as it has a rational basis, violate Article 2, paragraph 2 of the Covenant.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

(1) Standard for determination of discrimination

The Japanese government and courts employ the concepts of 'reasonable discrimination' and 'legislative discretion' as standards for determining the legality of a distinction that affects the enjoyment of rights guaranteed under the Covenant.

For example, in a case pertaining to the citizenship requirements established in the now-superseded Pension Law, involving a dispute as to whether denial of a disability pension to a person who was naturalized after November 2, 1959 constituted impermissible discrimination under Article 14 of the Constitution, the Supreme Court found that "[e]xclusion of resident foreigners from the recipient population falls within the scope of discretion of the legislative branch," and that "Article 14, paragraph 1 of the Constitution establishes the principle of equality under the law, but this provision prohibits discrimination lacking a rational basis, and the establishment of differences in legal treatment based on economic, social or other factually-based differences between persons does not violate that

provision if the distinction has a rational basis," and ruled that the distinction in that case was valid (First Panel of the Supreme Court, March 2, 1989). In subsequent lower court decisions in cases in which resident Koreans who were civilian employees of the Japanese army were denied disability pensions under the Family of the War Wounded and War Dead Support Law on the ground that they did not have Japanese nationality, the courts held that the legislation was sufficiently rational and did not violate Article 14, paragraph 1 of the Constitution (Tokyo District Court, July 15, 1994), and therefore did not constitute impermissible discrimination. Regarding the restriction of the application of the Daily Life Security Law to Japanese citizens, the Tokyo High Court ruled that the exclusion of foreign residents from the class of eligible recipients fell within the discretion of the legislative branch, that the reasonableness of the distinction could not be denied, and that the restriction did not amount to discrimination lacking a rational basis (April 24, 1997). The Japanese government has adopted the positions taken in these cases.

As described above, by legalizing discrimination by means of the vague and ill-defined concepts of 'reasonable discrimination' and 'legislative discretion', the Japanese government and courts endanger the equal enjoyment of rights guaranteed under the Covenant.

Furthermore, in its 'Principal subjects of concern and recommendations' contained in the Concluding Observations of its report regarding the Japanese government's Fourth Periodic Report pursuant to the International Covenant on Civil and Political Rights (CCPR/C/79/Add.102), the Human Rights Committee noted that "[t]he Committee is concerned about the vagueness of the concept of 'reasonable discrimination', which, in the absence of objective criteria, is incompatible with article 26 of the Covenant." The same concerns apply equally under Article 2, paragraph 1 of the International Covenant on Economic, Social, and Cultural Rights.

b) Achieving equality between private individuals

The Japanese government has not adopted legislative and other measures to ensure that the rights guaranteed under the Covenant are protected from violation by private conduct as well. In this regard, one Japanese court has held, in a case addressing the problem of

discrimination against resident foreigners seeking to lease an apartment unit, that "the provisions of the International Covenant on Economic, Social and Cultural Rights function as a basis for enforceable court decisions in Japan only to the extent they require that the national and local governments adopt legislative measures along the intention of these provisions, and they do not directly affect conduct between private individuals," (Osaka District Court, June 18, 1993), and has completely rejected the application of the principle of equality set forth in the Covenant to private conduct.

5 Effective implementation and national human rights institutions

A Opinion of JFBA

> In order to carry out its implementation obligations imposed on signatory States pursuant to Article 2, paragraph 1 of the Covenant, the Japanese government should establish an independent national human rights institution, in accordance with the Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles) adopted by the United Nations General Assembly in 1993, that has at minimum the three functions of providing human rights relief, legislative and policy recommendations, and human rights education.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

(1) Need for national human rights institution in Japan

General Comment 10 of the Committee, which concerns the role of national human rights institutions in the protection of economic, social and cultural rights, notes in regard to the obligations of signatory states under Article 2, paragraph 1 of the Covenant that "one such means, through which important steps can be taken, is the work of national institutions for the promotion and protection of human rights." The Committee further noted that the features of such an institution often include the fact that it "is established by the Government, enjoys an

important degree of autonomy from the executive and the legislature, takes full account of international human rights standards which are applicable to the country concerned, and is mandated to perform various activities designed to promote and protect human rights." The establishment of such an institution is also sought in the 'Principles relating to the Status and Functioning of National Institutions (National Institutions for the Promotion and Protection of Human Rights)' (the Paris Principles) adopted by the United Nations in G.A. Resolution 48/134 in 1993. These Paris Principles urge that independent human rights institutions should have at minimum the three functions of (1) investigating and remedying human rights violations, (2) issuing legislative and policy recommendations, and (3) providing human rights education.

However, in Japan, no human rights institution of the type sought in the General Recommendation 10 and the Paris Principles has been established, despite the entreaties of NGOs such as the JFBA, and no proposal for such establishment is currently under review by either the government or the Diet.

Japan does have human rights protection organs such as the Civil Liberties Bureau of the Ministry of the Justice and a civil liberties system administered by the District Legal Affairs Bureaus and their branches, which are subordinate agencies administered by the Ministry of Justice, as well as a system of Civil Liberties Commissioners to assist these agencies. However, the Civil Liberties Commissioners lack ultimate authority to determine investigation policy or make final dispositions of cases, and the employees of the Civil Liberties Bureau of the Ministry of Justice have no particular expertise in human rights. Moreover, the Civil Liberties Bureau is not in a superior position to other administrative agencies in regard to human rights issues, and in the event of a human rights infringement committed by the national government or a local governmental entity, it is essentially powerless. According to a 'Nationwide Fact-Finding Investigation Regarding the Situation in Dowa Areas' carried out by the government (the General Affairs Bureau) regarding so-called 'Burakumin', only 0.6% of human rights infringements involved 'consultation with a Legal Affairs Bureau or with a Civil Liberties Commissioner', which shows clearly that the Legal Affairs Bureau/Civil Liberties Commissioner system is essentially toothless as a means to address violations of human rights.

Furthermore, the Civil Liberties Bureau and Civil Liberties Commissioners are given no authority to make recommendations on legislation or policy, or to provide human rights education for persons such as public officials.

In light of the current situation in Japan, the Human Rights Committee stated in its November 1988 Concluding Observations regarding Japan's Fourth Periodic Report that "[t]he Committee strongly recommends to the State party to set up an independent mechanism for investigating complaints of violations of human rights" (p. 9), and that "[t]he Committee is concerned that there is no provision for training of judges, prosecutors and administrative officers in human rights under the Covenant."

(2) Progress toward establishment of human rights relief system

In May of 1997, the Ministry of Justice consulted with the Council for Human Rights Promotion in regard to 'Basic Matters Concerning the Strengthening of Measures for Relief of Victims of Human Rights Violations', and the Council published on November 28, 2000 an 'Interim Report on Progress of Human Rights Relief System.' While this 'Interim Report' is laudable in that it represents a positive step toward the establishment of a national human rights institution, the human rights relief system contemplated by the report suffers from a number of defects, including the absence of adequate guarantees of independence from the government, the absence of functions to make legislative and policy recommendations and provide human rights education, and restrictions on the role to be played by the system in the case of human rights violations occurring in the exercise of public power (see Opinion of JFBA dated January 19, 2001).

6 Human rights education

I Human rights conventions and human rights education

A Opinion of JFBA

(1) The Japanese government must immediately adopt specific measures with respect to human rights education regarding economic,

social and cultural rights in order to carry out its obligations under Article 2, paragraph 1 and Article 13, paragraph 1 of the Covenant, as well as under General Comment 3, paragraph 7 of the Committee, to "take steps...with a view to achieving progressively the full realization of the rights recognized in the present Covenant."

(2) The Japanese government must immediately undertake to implement measures for human rights education, particularly the provision of human rights education to judges, prosecutors and administrative and law enforcement officers and the introduction of human rights into the school curriculum, which were undertaken as obligations under Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 19 of the Convention on the Rights of the Child, and were specifically recommended in paragraph 32 of the Concluding Observations of the Human Rights Committee in regard to the International Covenant on Civil and Political Rights (November 1998) and paragraph 23 of the Concluding Observations of the Committee on the Rights of the Child (June 1998).

B The Government Report

The Government Report does not discuss this issue.

C Rationale

(1) Article 2, paragraph 1 of the Covenant provides that "[e]ach State Party to the present Covenant undertakes to take steps...with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means," and paragraph 7 of General Comment 3 provides that "Other measures which may also be considered 'appropriate' for the purposes of article 2 (1) include, but are not limited to, administrative, financial, educational and social measures," making clear that full achievement of the rights set forth in the Covenant must involve the adoption of educational measures. Furthermore, Article 13, paragraph 1 of the Covenant states that "The States Parties to the present Covenant...agree that education shall...strengthen the respect for human rights and fundamental freedoms."

(2) Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Article 19 of the Convention on the Rights of the Child specifically require signatory states to provide human rights education. Human rights education is also discussed in General Recommendation V of the Committee on the Elimination of Racial Discrimination and in General Recommendation No. 3 of the Committee on the Elimination of Discrimination Against Women, and many of the provisions of these instruments also pertain to the economic, social and cultural rights of non-citizens, children and women.

(3) Incidentally, the Human Rights Committee pointed out in paragraph 32 of its November, 1998 Concluding Observations with regard to Japan's Fourth Periodic Report pursuant to the International Covenant on Civil and Political Rights the need for human rights education for judges, prosecutors and administrative officers, and specifically recommended as follows: "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." While these Concluding Observations were issued with regard to the status of Japan's implementation of the International Covenant on Civil and Political Rights, they apply equally to human rights in general, including economic, social and cultural rights.

(4) In addition, in June of 1998, the Committee on the Rights of the Child noted in paragraph 23 of its Concluding Observations regarding Japan's First Periodic Report under the Convention on the Rights of the Child that "[t]he Committee is concerned about the insufficient measures taken by the State party to introduce human rights education into school curricula in a systematic manner, in accordance with article 29 of the Convention." While these Concluding Observations were issued with regard to the status of Japan's implementation of the Convention on the Rights of the Child, they apply equally to human rights in general, including economic, social and cultural rights.

(5) The Office of the U.N. High Commissioner for Human Rights has published 'Professional Training Manuals' for use as a human rights educational material by persons employed in certain professions dealing

closely with human rights. Specifically, training manuals have been prepared for law enforcement officers, prison officials, judges, etc., and their use would be worthwhile in Japan as well. Japan should consider the use of these manuals.

II 'National Action Plan' regarding human rights education, 'Report' of Council for Human Rights Promotion, and 'Law Concerning Promotion of Human Rights Education and Human Rights Development'

A Opinion of JFBA

Based on the 'National Action Plan' developed by the Japanese government in 1997 pursuant to the Plan of Action of the 'United Nations Decade for Human Rights Education', the July 1997 'Report' of the Council for Human Rights Promotion, and the 'Law Concerning Promotion of Human Rights Education and Human Rights Development' enacted in November of 2000, the Japanese government should immediately adopt specific measures to implement education regarding human rights, including economic, social and cultural rights. Such measures should include the establishment of a controlling agency governing human rights education that is independent from the government, financial measures, the development of a concrete human rights education curriculum for persons in specified professions (persons working in fields related to human rights), and partnerships with NGOs.

B The Government Report

The Government Report does not discuss these issues.

C Rationale

(1) As described in section 1C(1) above, under Article 2, paragraph 1 and Article 13, paragraph 1 of the Covenant, as well as paragraph 7 of General Comment 3, signatory states are automatically under an obligation to provide human rights education to citizens.

(2) Establishment of 'National Action Plan', 'Report' of Council for Human Rights Promotion, and 'Law Concerning Promotion of Human Rights Education and Human Rights Development', and need for adoption

of specific measures

(a) After the need for human rights education was identified at the World Conference on Human Rights in Vienna in 1993, the General Assembly in 1994 decided to establish a 'United Nations Decade for Human Rights Education', and a detailed 'United Nations Plan of Action' was announced for the United Nations Decade for Human Rights Education, which would run from 1995 to 2004. Based on this plan, the Japanese government established a Cabinet-level 'Headquarters for Promotion of U.N. Decade for Human Rights' (Cabinet Promotion Headquarters) and in 1997 announced a 'National Action Plan'. However, this 'National Action Plan' is quite abstract, and contains no provisions for education regarding economic, social and cultural rights. Furthermore, the implementation of the 'National Action Plan' was to reflect the results of the investigation of the 'Council for Human Rights Promotion' (the 'Report'), but the subject matter of the report of the 'Council for Human Rights Promotion' is limited to human rights problems between private individuals, and the recommendations of the report cannot be reflected in the implementation of the 'National Action Plan'.

(b) In December of 1996, Japan enacted a 'Law for Promotion of Measures for Human Rights Protection' under which the government assumed the obligation to promote measures relating to (education and development to deepen mutual popular understanding of the concept of human rights (first question) and (remedies for victims of human rights violations (second question), and established a 'Council for Human Rights Promotion' pursuant to this Law. The Council subsequently held 29 meetings to discuss the first question between May 1997 and July 1999, and on July 29, 1999, issued its report. However, this report was restricted to the issue of human rights problems between private individuals, and furthermore it spent only four lines to mention in passing the existence of the Concluding Observations regarding the review of Japan's Fourth Periodic Report (November 1998) in connection with the International Covenant on Civil and Political Rights and regarding the review of Japan's First Periodic Report (June 1998) in connection with the Convention on the Rights of the Child.

(c) The 'Law Concerning Promotion of Human Rights Education and Human Rights Development' was enacted in November of 2000. However, this law completely ignores Japan's obligation to provide

human rights education in accordance with the human rights treaties mentioned above, and there is no mention whatsoever of key elements of human rights education such as specific national organs that handle human rights education, the duty to establish financial mechanisms, human rights education for persons in particular professions, or partnerships with NGOs.

(d) Therefore, while the Japanese government has developed laws and guidelines regarding human rights education to some extent through the 'National Action Plan', The 'Report' of the Council for Human Rights Promotion, and the 'Law Concerning Promotion of Human Rights Education and Human Rights Development', all of them are extremely abstract, and it is obvious that they do not comprise concrete measures that provide for human rights education of persons in particular professions or establish partnerships with NGOs, much less create a controlling agency governing human rights education or financial mechanisms.

Specific Topic 1

Gender equality

1 Measures to achieve a gender-equal society

A Opinion of JFBA

> The Basic Law for a Gender-Equal Society enacted in June of 1999 should be revised to enable achievement of true social equality pursuant to Articles 3, 6 and 7 of the Covenant.

B The Government Report

The Government Report states in paragraph 21 (in section H of its 'General Comments') that the government "is promoting the comprehensive and systematic implementation of the policy measures towards the realization of a gender-equal society (in which women and men shall be given equal opportunities to participate voluntarily in activities in all fields as equal partners and shall be able to enjoy political, economic, social and cultural benefits as well as to take equal responsibilities)."

C Conclusions

The 'Basic Law for a Gender-Equal Society' was enacted in June of 1999. However, the law does not seek equality of outcomes (equality of results). The precise English translation of the Japanese name for this law is 'Basic Law for a Society in Which Men and Women Participate Equally'. There are doubts as to whether the phrase 'gender-equal participation' encompasses the substantive guarantees of gender equality contained in the Convention on the Elimination of All Forms of Discrimination Against Women and the Japanese Constitution. Indeed, the text of the Basic Law guarantees merely 'equality of opportunity' between men and women, and contains no provisions prohibiting indirect discrimination in order to guarantee substantive equality.

Women in Japan are far behind in terms of participation in the most basic types of decision-making and access to power. According to the GEM (Gender Empowerment Measure), which is an index that indicates

the degree of participation in these areas, Japan ranked 38th out of 102 countries in 1998, which was a particularly low ranking among developed countries.

The status of women's participation in decision-making is still extremely poor, as seen from the fact that women comprised 18% of the members of the various government deliberative committees in 1999, 5% of members of the House of Representatives, and 17.1% of members of the House of Councilors. Only 54% of prefectural assemblies had female members, and of these, 76% had only one or two female members. Furthermore, in the area of the judiciary, the problem has been reported that only one female member of each class of students at the Legal Training and Research Institute is hired as a prosecutor, essentially as a token female.

In the area of employment, the percentage of women serving in management positions is extremely low, as discussed below. In particular, simultaneously with the 1997 revision of the Equal Employment Opportunity Law (hereinafter the 'Equal Employment Law'), the government eliminated the restrictions in the Labor Standards Law on women performing overtime work, holiday work and late-night work, ostensibly in order to guarantee women greater employment opportunities. However, as described in the next section, this revision has had the opposite effect of requiring women to work the same long working hours as men. Newspaper articles have reported an increase in the number of hours worked by women per day, and have pointed out the difficulties they consequently face in balancing their job duties with their family responsibilities. The result has been a significant shift toward non-regular employment offering substantially inferior labor conditions, such as part-time and temporary employment. The labor conditions of persons working in non-regular positions are much worse than those of persons working in regular jobs (see Chapter 6, section 4).

The Basic Law prescribes that positive actions shall be taken as 'positive improvement measures', as already provided in the 1997 revision of the Equal Employment Law. The taking of such actions, however, is not a legal duty, and the Equal Employment Law only provides that where an employer seeks to implement such positive actions, the government may provide consultation and assistance, which is inadequate.

As described above, recent actions by the government have strengthened only formal equality of opportunity between men and women, and apparently are not aimed at achieving substantive equality. In response to the enactment of the Basic Law, local governments have gradually enacted ordinances corresponding to the Basic Law, but the need remains to eliminate the overtime labor that prevents men and women from participating in society equally, to lessen the heavy burden on women with family responsibilities, and to improve societal systems such as the child care system.

2 Fair and equal labor participation (Articles 3, 6 and 7)

A Opinion of JFBA

> Because the abolition of restrictions against women performing overtime, holiday and night work contained in the 1997 revision of the Labor Standards Law effectively strengthens discrimination against women by making it more difficult to advance in the workplace, the Labor Standards Law should be amended in accordance with Articles 3, 6 and 7 of the Covenant.

B The Government Report

The Government Report provides in paragraph 40 that "[t]o promote equal employment opportunities and labour conditions for men and women, the Government... revised the regulations on protection of women in the Labour Standards Law and Mariners Law and reduced restrictions on women in regard to overtime work, working on holidays, late night work, and dangerous and hazardous work."

C Rationale

(1) Revision of Labor Standards Law

In the 1997 revision of the Labor Standards Law, the Government abolished the existing restrictions on women performing overtime, holiday and night work indicated below.

o Overtime and holiday work by women in industrial field

No more than six hours per week and 150 hours per year
Holiday work prohibited

o Overtime and holiday work by women in non-industrial field

No more than 36 hours every four weeks and 150 hours per year
One day of holiday work every four weeks

(2) Long working hours making work more difficult for women

Japan's system of long working hours, exemplified by the phenomenon of 'karoshi', or death from overwork, has not been eliminated. In addition, the belief in traditional gender roles is still strong in Japan, and consequently women still assume most of the responsibility for the household. In a 'General Affairs Agency Social Life Basic Survey' carried out in 1996, it was found that in households in which both spouses worked, women spent an average of four hours and 30 minutes per day on housework, while men spent 20 minutes. In households in which the woman was a full-time homemaker, the woman spent an average of seven hours and 30 minutes on housework, compared to 27 minutes for the man. As a result, Japan's long working hours make it difficult for women to stay employed, and excludes them from the workplace. In other words, due to the difficulties women face in simultaneously managing household and employment responsibilities, many women leave work to have or raise children, and subsequently have no choice but to work in non-regular jobs, such as part-time or temporary jobs, which are poorly compensated and unstable. Furthermore, even if they manage to continue working, the fact that women are unable to work long hours due to their family responsibilities has been used as a basis for denial of promotion. Further, based on women's inability to work long hours or for many years, the discriminatory placement of women in secretarial or assistant positions continues to exist to this day.

Therefore, the abolition of the previous provisions protecting women emphasizes only formal gender equality, violates the rights of women to continue working, and engenders discrimination in assignment and promotion, thereby as a practical matter promoting and strengthening gender discrimination.

(3) Need for stronger regulation of working hours

ILO Convention No. 156 (Workers with Family Responsibilities

Convention) and Recommendation No. 165 provide that a signatory state is responsible for creating conditions in which both men and women can continue to work while fulfilling their household responsibilities, and to that end advocates restrictions on daily working hours and on overtime work. A 1995 investigation by the ILO determined that 96 member nations impose limits on the amount of overtime that may be worked per day, as well as a maximum total number of hours that may be worked in a day. Of these countries, 40 permit a maximum of two hours of overtime work per day. By contrast, in Japan, where long working hours are the norm, strengthening of restrictions on overtime and night work for both men and women is needed, and the recent revision to the Labor Standards Law, which actually eliminated existing restrictions applicable to women, thereby promoting longer working hours, may well violate the ILO instruments described above. Such a policy furthermore cannot be said to comply with the principles of 'equal rights of men and women' and 'reasonable limitation of working hours' set forth in Articles 3 and 7 of the Covenant, respectively.

Given the excessive working hours currently prevalent in Japan, overtime should be restricted to 150 hours for the time being, and eventually to two hours per day or 120 hours annually. Considering the severe impact of night work on the worker's health and ability to raise a family, ILO Convention No. 171 regarding night work and ILO Recommendation No. 178 must be ratified and implemented, including provisions regulating (i) the number of hours worked in a day including overtime, and (ii) the amount of time between work periods, with exceptions allowed only to the extent necessitated by the nature of the work.

3 Disparity in status of men and women regarding pay, promotion and assignment (Articles 3 and 7)

A Opinion of JFBA

> The Japanese government should immediately adopt effective measures to eliminate the significant disparities that exist between men and women with regard to pay, promotion and assignment, which contravene the provisions of Articles 3 and 7 of the Covenant.

B The Government Report

The Government Report provides in paragraph 57 that "Japan...ratified ILO Convention No. 100 (Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value) in July 1967, and has established a legislative system in accordance with the Convention." Regarding promotion and assignment, the report states that

Ten years have passed since the enforcement of the Equal Employment Opportunity Law. The Law's goals are steadily being incorporated through the continuous efforts of enterprises to improve employment administration. According to the "Survey on Employment Management of Female Workers" conducted in 1995, among all companies, 14.3 per cent employ female workers holding positions equivalent to manager; 30.6 per cent employ female workers in positions equivalent to section chief, and 72.1 per cent employ female workers in positions equivalent to assistant manager.

C Rationale

(1) Pay differentials between men and women

Pay differentials between men and women in Japan are severe, and a number of U.N.-affiliated organizations have issued recommendations and opinions to the Japanese government. For example, the Committee of Experts on the Application of ILO Convention No. 100 stated in 1997 that "[f]or a number of years now, the Committee has encouraged the Government to take measures consistent with the Convention in order to reduce the high wage differential in the average earnings of men and women," the Committee on the Elimination of All Forms of Discrimination Against Women stated in 1995 that "[t]he Government of Japan should ensure that the private sector complies with the provisions of the Equal Employment Opportunity Act and report on the measures taken to address the indirect discrimination faced by women, both in terms of promotion and wages in the private sector," and the U.N. Human Rights Committee declared in 1993 that "the Committee expresses concern at...discriminatory practices that appear to persist in Japan against women with regard to remuneration in employment".

In particular, pay for women including part-timers (part-timers are included in international comparisons as well) was 50.9% of that of men in companies having 10 or more employees in 1993, and 51.1% in

1997. Even when regular employees only are included, women's pay was still only 63.1 % of men's pay in 1998, according to a 'Pay Structure Basic Statistical Survey' carried out by the Ministry of Labor. Such differentials, which have been increasing in the financial and insurance industries in particular since 1990, clearly violate the principle of 'equal remuneration for work of equal value.'

Moreover, because these salary disparities also affect calculations of retirement and pension benefits, wage discrimination against women has a lifelong impact.

(2) Status of men and women in terms of assignment and promotion

The statistics provided in the Government Report indicate only the percentage of businesses having at least one female manager, and do not indicate the total percentage of private-sector managerial positions held by women. According to 1998 statistics, only 7.8% of assistant managers, 3.7% of section chiefs and 2.2% of managers were women. Furthermore, women are also vastly underrepresented in the managerial ranks of local governments nationwide, and comprise only 3.4% of managers at the prefectural level and 2.9% of managers at the cities designated by cabinet orders.

Such disparities in assignment and promotion are directly related to disparities in pay, in that the difficulties faced by women in getting hired and promoted have the effect of exacerbating gender-based pay differentials.

(3) Obstacles to the promotion of gender equality

Despite the 1985 enactment and 1998 revision of the Equal Employment Opportunity Law and the 1999 enactment of the Basic Law for a Gender-Equal Society, the disparities between men and women in terms of pay, assignment and promotion have not improved, and have in fact worsened. The reasons for the absence of progress in regard to the unequal status of men and women include the following:

a. A high percentage of women work in non-regular positions, such as part-time jobs (37.4% of all female employees in 1999).

b. Many women work in low-paying secretarial or assistant-type jobs, and consequently have minimal opportunities regarding assignment and promotion regardless of their contribution to the business or the length of their employment. In particular, there is a trend toward adoption of a two-track employment system in which newly hired employees are assigned to a 'comprehensive' track or a 'general' track, and male hires are predominantly assigned to the 'comprehensive' track offering better pay, assignment and promotion opportunities, while women are assigned to the lower-paying and less competitive 'general' track.

c. An employee's acceptance of the customs of long hours and the 'tanshin funin' system in which the working spouse is posted to a position far away from home, even overseas, is an important factor in decisions regarding the employee's salary, assignment and promotion. As a result, women employees who cannot comply with these unwritten rules cannot receive the same pay, assignment and promotion as men who do accept them.

(4) Need for measures to achieve substantive equality

Through the enactment of such laws as the Equal Employment Opportunity Law, systematic, direct unfair treatment of women has been largely eliminated. However, indirect discrimination based on a false pretext, such as the type of unequal treatment described above, continues to exist. Furthermore, women with both work and family responsibilities are subject to long working hours and unfair labor conditions that prevent them from competing with men in the workplace on an equal footing.

Accordingly, in order to achieve substantive equality between men and women, the Japanese government must establish (1) an effective system that establishes policies and mechanisms to ensure that men and women can fulfill both their work duties and their family responsibilities, such as through the shortening of working hours and the strengthening of the child care system, and (2) a mechanism of remedies to ameliorate unfair employment customs and practices and resulting disparities in employment status.

4 Remedial measures to redress discrimination

A Opinion of JFBA

In order to effectively remedy workplace discrimination against women, the arbitration system administered by the Ministry of Health and Welfare and the Ministry of Labor and the rules regarding litigation should be revamped.

B The Government Report

The Government Report states in paragraph 41 as follows:

To firmly guarantee equal opportunity and treatment between men and women in employment, the Government revised related laws including the Equal Employment Opportunity Law in 1997. The Revised Equal Employment Opportunity Law mainly includes the following revisions....

(i) It prohibits discrimination against women in recruitment, hiring, assignment and promotion....

(iv) It establishes a system to officially announce non-compliance of employers with recommendations concerning correction of infringement of the provision concerning prohibition of discrimination against woman [sic]....

(v) As for Mediation System, it makes it possible to initiate mediation upon request of one of the parties.

C Rationale

In order to eliminate gender discrimination, a system that provides immediate and appropriate remedies is required. However, the mediation system established by the Equal Employment Law does not function as a remedial system that will redress discrimination.

Because under the old Equal Employment Law the mediation system could not be invoked without the other party's consent, only one company underwent mediation in ten years. Under the revision to the law, the other party's consent is no longer required to initiate mediation proceedings, but the condition that mediation must be 'deemed necessary by the chief of the Women's and Young Worker's Office' remains in existence. Even now, the two-track personnel system described above has been ruled not subject to mediation by the chief of the Women's and

Young Worker's Office for the official reason that it is not based on 'gender'.

Furthermore, from a review of the first case involving an application for mediation to occur since the revision of the Equal Employment Law, the Japan Airlines promotion discrimination case, no decision regarding mediation was issued for as long as four months after the application, and even after mediation was approved, the actual commencement of mediation was delayed substantially due to procedural obstacles such as the filing of applications by representatives. As a result, the proposed mediation ruling issued by the mediation panel solved nothing. Consequently, not only must the mediation system be improved, but an independent administrative body that can quickly issue remedial orders and enforce compliance therewith is also required, and provisions that impose sanctions on non-compliance must be enacted.

In light of these circumstances, women seeking relief from discrimination have no choice but to file suit. However, even in actions aimed at remedying discrimination in pay, assignment and promotion, since relief is granted only where the complaining woman has been working the same long hours as men in an equivalent job, a remedy may prove difficult to obtain where the complaining woman has been discriminatorily placed and kept in a secretarial or assistant-type position. In particular, in cases involving substantial disparities in the status of male and female employees who were hired in the late 1950's and early 1960's and had been working continuously for 30 to 40 years, recent decisions have found that gender discrimination does not exist, based on the so-called 'era limitation principle' described below in connection with the Sumitomo Electric Industries case. The decision issued by the Osaka District Court in the Sumitomo Electric Industries Gender Discrimination Case (July 31, 2000) held that (1) while it was illegal to assign only women to 'secretarial and assisting tasks', and to treat them as a lower class of employee, the need for gender equality must be balanced against considerations such as a company's freedom to run its business and its property rights, and (2) because the mid-1960's were a time in which people had strong gender role attitudes whereby women were expected to work for a short amount of time, not transfer to other locations, and not work overtime and holidays like men, the continued second-class treatment of women who were hired for 'secretarial and assisting tasks' is not illegal.

Moreover, even in cases where discrimination has been recognized to exist, in only one case of a district court and one of a higher court have promotion been awarded as a remedy. In all other cases, damages for past harm were the only remedy awarded. Furthermore, it often takes up to 10 years to obtain a district court ruling. As a result, many women who suffer discrimination have no choice but to accept their fate without complaint.

Under these circumstances, in order to provide an effective remedy for discrimination against women in the workplace, it is essential that the mediation system administered by the Ministry of Health and Welfare and the Ministry of Labor under the Equal Employment Law, as well as the rules regarding litigation against employers, be improved.

Specific Topic 2

The rights of the child

1. Economic assistance for child-rearing (Article 10)

A Opinion of JFBA

(1) A system should be established in Japan to ensure that an agreement regarding child support is reached after the mother and father divorce, including an amicable divorce, and that child support payments are actually made.

(2) The Child-Rearing Allowance system should be improved to eliminate irrational discrimination and restrictions on payment of benefits.

(3) The number of preschool facilities should be increased to meet rising demand, and efforts should be made to reduce their cost.

B The Government Report

The government summarizes the various schemes pertaining to the Child Rearing Allowance benefit in paragraph 110 of the current Report, to child support after divorce in paragraph 134 of the First Periodic Report on the Convention on the Rights of the Child, which is referred to as a reference, and to preschools in paragraph 111 of the current Report as well as in paragraph 200 of the First Periodic Report, but provides no information regarding the problems arising in connection with such schemes.

C Rationale

(1) Need to enforce child support payments

In divorces agreed to by both spouses, which account for approximately 90% of all divorces in Japan, there is no obligation to agree on a system for the payment of child support by the non-custodial spouse, and in practice very few such agreements are reached. Furthermore, the system to ensure performance of child support obligations includes only

recommendations, orders and compulsory collection, and such recommendations and orders are limited to cases in which the agreement on child support was reached with the involvement of the family court, resulting in there being very few cases in which the system is used. Compulsory collection is difficult to obtain because the procedure is complex and cumbersome. The JFBA proposed in 1992 that the government establish a system for the easy collection of child support payments, such as a child support agreement notification system, a child support payment order system in privately-negotiated divorces, a salary deduction system, and a government substitute payment scheme, but so far none of these have come to fruition. As a result, only 14.9% of divorced wives receive child support from the non-custodial husband, according to a 1993 survey by the Ministry of Health and Welfare entitled 'Nationwide Survey on Single-Mother Households'.

(2) Problems with Child-Rearing Allowance system

The Child Rearing Allowance benefit is paid to single-mother households, but not single-father households. While it is a fact that because women workers receive lower pay than men, women workers and single-mother households are in more difficult economic circumstances, to uniformly exclude single-father households from receiving the benefit constitutes discrimination against children of single-father households in favor of single-mother households, violating Article 10, paragraph 3 of the Covenant.

Furthermore, the Child Rearing Allowance Law contains a provision stating that the benefit will not be paid on behalf of a child whose parents are divorced if the father's yearly income exceeds a specified level. The restriction has not been enforced so far because this provision has not been applied, but once the government decides on a date to begin implementation of this provision, the restriction will apply immediately. However, because fathers with high incomes do not necessarily pay child support, and there is no system in place to ensure that they do, this restriction based on the father's yearly income should be abolished.

Moreover, under the current Child-Rearing Allowance Law, Child-Rearing Allowance benefits are paid for a child born out of wedlock, regardless of whether child support is being paid by the father. However,

if such a child is then acknowledged by the father, the benefit is cut off, and is resumed only after one year elapses without child support payments being made (see paragraphs 2 and 3 of Article 1 of the enforcing ordinance). However, since the benefit is paid on behalf of children of divorced parents regardless of whether child support payments are being made, this system improperly discriminates against children born out of wedlock, and constitutes a violation of Article 10, paragraph 3 of the Covenant.

(3) Need for more preschools and lower tuition

The number of children in Japan has declined in recent years, but the number of children seeking to enroll in preschools has risen sharply. The number of children who unsuccessfully applied for preschool admission in 1998 (wait-listed children) exceeded 58,000. Working parents have sought to find care for newborns and infants (infant care), and to have the hours of preschool care extended, but only 20% of government-funded preschools handle infants, and only 3% offer extended hours. This has resulted in a dramatic increase in the number of unlicensed preschools not subject to government supervision, and in the number of 'baby hotels', low-quality preschools with poor conditions of care. Before the June 1997 revision of the Child Welfare Law, child care tuition was based on the yearly income of the parent or guardian, and amounted to between eight and ten percent of estimated household income for even a household with income exceeding the national average, but after the revision the standard was changed from being based on the guardian's ability to pay to being based on the age of the child, and child care expenses became an even larger burden due to the loss of income percentage limits. In Japan, after-school child care institutions that provide after-school supervision of elementary-age children whose parents both work were established about thirty years ago, and were legalized for the first time in the revision to the Child Welfare Law. The number of such institutions has increased dramatically over the last three years. However, while at least one such child care facility is needed for each elementary school district, the number of after-school child care facilities corresponds to only slightly over 40% of all elementary schools, and such institutions have inadequate human and material resources.

2 Care of children requiring protection

A Opinion of JFBA

(1) Effective measures should be adopted to ensure the speedy discovery, protection and rehabilitation of abused children, and treatment for the abusing parent.

(2) Specific programs to increase the number of foster parents should be implemented.

(3) The 'Minimum Standards for Child Welfare Institutions' governing the living standards of infants and children entering infant homes and child protection facilities should be improved immediately to ensure that such standards are commensurate with modern Japanese living standards and to ensure that such children are provided the special care needed in order to help them heal from the psychological harm they have suffered and become independent.

(4) In order to protect the rights of infants and children living in such institutions, measures to prevent corporal punishment and excessively strict treatment should be adopted, and a system should be implemented under which children may lodge complaints regarding their treatment.

(5) A program should be established to ensure that delinquent children and juveniles are given guidance and education in society and are promptly allowed to return to society.

B The Government Report

The Government Report gives a summary explanation of the system governing these matters, but provides no information regarding the inadequacies or the problems with the system.

C Rationale

(1) Need for measures relating to child abuse

As was reported in paragraph 154 of Japan's First Periodic Report submitted pursuant to the Convention on the Rights of the Child, cases of child abuse in the home are increasing rapidly. However,

measures to address this problem are severely lacking. There is no effective notification system by which citizens discovering child abuse can report it to the authorities. There are only 175 Child Guidance Centres nationwide, and half of all case workers have no special training. Networking with other related agencies and private organizations is inadequate due to budgetary limitations. As a result, the number of cases involving guidance offered at Child Guidance Centres represents only the tip of the iceberg, and even in these cases, the help is sometimes ineffective. The number of cases of child abuse resulting in the death of the child despite the involvement of a Child Guidance Centre climbed to 15 in 1997, according to a March 30, 1999 report by the Planning Department of the Family Bureau of the Ministry of Health and Welfare entitled 'Current Status of Involvement of Child Guidance Centers in Child Abuse'. While the Committee on the Rights of the Child recommended in paragraph 40 of its Concluding Observations issued in June of 1998 in connection with the Convention on the Rights of the Child that the Japanese government take effective steps to address the problem of child abuse, the government has so far failed to take sufficient action.

(2) Need for increase in number of foster parents

As noted in paragraph 141 of Japan's First Periodic Report on the Convention on the Rights of the Child, the number of registered foster parents, the number of foster parents caring for foster children and the number of foster children being cared for have been declining drastically since 1970. The government states in that paragraph that the Japanese government "has been working to promote the new foster-parent system," but from the insufficient number of staff working to locate new foster parents, the uncertain legal standing of foster parents, the inadequacy of the government allowance paid to foster parents, and the institutional preference for placing children in institutions, it is apparent that the government is taking few if any steps to address the real causes in the decline in the number of foster care placements.

(3) Need for improvement of minimum standards for child welfare institutions

The conditions governing the personnel and physical premises at institutions are governed by the 'Minimum Standards for Child Welfare Institutions' established by the government, but these standards were put

into place through the 1948 enactment of the Child Welfare Law, and were based on the living standards prevalent when Japan was impoverished and in ruins after World War II. Although these standards were supposed to be raised to match the improving living standards of the Japanese people, they are essentially unchanged since they were first enacted. While they were partially amended in February 1998, not only do the number of employees and the size and quality of the facilities not conform to the basic living standards of ordinary Japanese, but these facilities are far from the level required to enable them to provide the special care needed in order to help children heal from the psychological harm they have suffered and become independent, and they suffer from a number of problems requiring improvement.

(4) Need to protect rights of children in institutions

There have been numerous reports of corporal punishment and overly harsh treatment at infant homes and child protection facilities, such as were reported in May of 1995 regarding an institution in Fukuoka prefecture, in April of 1996 regarding an institution in Chiba prefecture, and in August of 1999 regarding an institution in Kanagawa prefecture. Such institutions do not consider children as independent human beings and provide care accordingly. Rather, the staff tend to justify their actions as 'for the children,' resulting in the problems of excessively strict control and corporal punishment. In February of 1998, the government incorporated provisions banning corporal punishment into the minimum standards described above, but this has not resulted in a change of attitude among staff at such facilities, and there is no agency or body with which children can easily lodge a complaint or report. Furthermore, the Committee on the Rights of the Child recommended in paragraph 45 of its Concluding Observations described above that the Japanese government take effective steps to eliminate corporal punishment at these institutions.

(5) Society-based treatment of delinquent children and juveniles

Delinquent children (aged 13 or younger) are offered guidance at Child Guidance Centers, and may be incarcerated at Child Self-Sufficiency Assistance Centers. Cases involving minors (persons aged 14 to 19) who commit crimes are adjudicated in family court, and protective dispositions such as probation, or transfer to a Self-Sufficiency Assistance Center or a Juvenile Training School, may be taken. However,

for youths other than children and minors sent to an institution such as a Self-Sufficiency Assistance Center or a Javenile Training School, although they are placed under the guidance of a Child Guidance Center or a Probation Office, there are no educational programs aimed at rehabilitating them and returning them to society in which they may participate regularly, nor are there any agencies or institutions to administer such programs. In light of the basic principle that child or juvenile delinquents should be treated within general society, programs that effectively treat such youths in society are obviously necessary. The Committee on the Rights of the Child recommended in paragraphs 27 and 48 of the Concluding Observations mentioned above that Japan review its juvenile justice system for compatibility with the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and in paragraph 48 expressed its concern regarding the insufficiency of alternatives to detention and to the use of pre-trial detention as a last resort.

3 Right to education

A Opinion of JFBA

(1) The government should take steps to ensure that primary and lower secondary education is essentially tuition-free.

(2) In higher secondary education, the government should increase the number of students accepted at public high schools and reduce the financial burden on parents.

(3) The government should reduce standard class sizes in public elementary, middle and high schools and offer fine-tuned education that accommodates the individuality and needs of each student.

(4) The government should enact legal provisions setting forth safety standards that must be followed by school management to prevent accidents at school facilities, and offer safety education for teachers and students.

(5) Japan should take appropriate steps to prevent and combat excessive stress and school phobia caused by Japan's highly competitive educational system, and devise and promptly implement

a comprehensive program to eliminate corporal punishment and bullying.

B The Government Report

While the Government Report summarizes the school education system, it does not address the deficiencies in the system, and describes in only cursory fashion the serious problems of school phobia, corporal punishment and bullying.

C Rationale

(1) Although tuition and textbooks are free at elementary and junior high schools, parents are responsible for meal expenses, supplementary educational materials, musical instruments, school supplies, uniforms and gym clothes, making educational expenses an overwhelming financial burden for many households. Therefor, measures should be taken to ensure essentially tuition-free.

(2) While the percentage of students advancing to high school is unquestionably high, not all children who want to enroll in a public high school can do so. In the mathematical deviation system constituting the background of Japan's test competition and the disparities between schools, the school in which a student enrolls must be chosen based on performance and mathematical deviation from the norm, and consequently students are often forced to choose to enroll in private schools. Moreover, annual educational expenses even for a public high school total 270,000 yen (approximately 2,500 U.S. dollars) or more, according to a 1996 survey of parents in the Tokyo area. Considering the additional expense of tutoring in preparation for school entrance exams, school is a major financial burden for families with children. Therefore, the number of students accepted to public schools should be increased and measures should be taken to reduce the financial burden on the parent.

(3) The national standard for public elementary, junior high and high schools is 40 students per class, which means that ordinarily one teacher teaches 40 students. As a result, in schools with students in lower grades, schools with a slower pace of learning, or schools with a high number of 'problem students,' education specifically tailored to the individual temperaments and needs of the students cannot be carried out, which

causes the phenomenon of school phobia, or so-called 'class disintegration'. The Ministry of Education announced in May 2000 that it would maintain the national standard of 40 students per class but allow each prefecture to set its own standard. However, a more proactive approach will be required in order to reduce class sizes below the current level.

(4) According to an investigation by the Japan Physical Education and School Health Center, 1,580,000 accidents occurred in 1997 under the supervision of school personnel, involving approximately 8% of all enrolled students. Death resulted in 175 of these incidents. However, there are few legal provisions setting forth safety standards that must be followed for school facilities to prevent accidents, and there is little or no safety education for teachers and students. The Japan Physical Education and School Health Center does offer financial compensation as an after-the-fact remedial measure for such incidents, but the amount of money provided and the time period in which it may be received are limited, making it insufficient as compensation. There are procedural obstacles as well, in that one must apply through the principal to receive it, and the right to apply expires after two years. Demanding damages through legal action is time-consuming and costly, and also entails the problems that it is difficult to prove liability and the amount allowed is small. The JFBA lobbied in 1977 for the establishment of a no-fault accident compensation system, but no such system has been adopted.

(5) In response to the Japanese government's First Periodic Report on the Convention on the Rights of the Child, the Committee on the Rights of the Child recommended in June of 1998 in its Concluding Observations regarding said report that Japan take appropriate steps to prevent and combat excessive stress and school phobia caused by Japan's highly competitive educational system, and devise and promptly implement a comprehensive program to eliminate corporal punishment and bullying. However, the Japanese government has failed to adopt any concrete measures or programs in accordance with the Committee's recommendations, and consequently there has been no improvement in regard to the serious educational problems of truancy, corporal punishment, bullying and dropping out. For example, the number of students in 1997 who missed at least 30 days of school for the reason that they 'don't like school' totaled 20,765 elementary school students (0.26% of the total), and 84,701 junior high school students (1.89% of the total). As for corporal punishment, it can be assumed that only a small percentage

of incidents are reported, but based even on the reports of principals to school boards, in 1997 there were 989 cases of corporal punishment (which resulted in disciplinary actions against teachers in 109 cases and warnings, etc., in 305 others), according to the Ministry of Education. The Ministry also announced that (i) a total of 111,989 students dropped out of school in 1996 (2.5% of all students), and (ii) there were 42,790 incidents of bullying in 1997. Furthermore, child suicides have continued, and the number of suicides committed by minors (persons aged 19 years or younger) was 469 (35.4% of them were high school students) in 1997, according to the National Police Agency. No effective measures have been enacted regarding child suicide, despite the concerns and recommendations noted in paragraphs 21 and 42 of the Concluding Observations of the U.N. Committee on the Rights of the Child.

Specific Topic 3

Rights of the elderly

1 Establishment of basic rights of elderly (Articles 10 and 11)

A Opinion of JFBA

(1) The Japanese government should enact a Basic Law for the Elderly to guarantee the basic rights of elderly persons.

(2) The Japanese government should implement policies to guarantee the right of the elderly to an adequate standard of living, and to support families that include older persons.

(3) The Japanese government should immediately establish a system to provide appropriate care services required by the elderly.

B The Government Report

The Government Report does not discuss the elderly in its sections regarding either Article 10 concerning protection of the family or Article 11 concerning adequate living standards. The report does state in section G(2) of its General Comments, regarding measures for elderly persons, that the government is steadily promoting the basic framework of services for older persons by means of the 'Gold Plan' and the 'New Gold Plan', but it does not mention how the basic rights of the elderly, the right of the elderly to an adequate standard of living, or the rights of their families, are being protected.

C Rationale

(1) Need for Basic Law for the Elderly

In the 'International Plan of Action on Ageing' (1982), the 'United Nations Principles for Older Persons' (1991), and the 'Proclamation on Ageing' (1992), the U.N. General Assembly has repeatedly emphasized the need to guarantee the fundamental rights of the elderly, and has confirmed in the United Nations Principles for Older Persons that older persons should be able to (1) benefit from family care and health care, (2)

enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, and (3) live in dignity and security and be free of exploitation and physical or mental abuse. At the same time, the General Assembly specifically recommended in these resolutions that member states, which are faced with rapidly increasing elderly populations, take measures in accordance with the provisions of the Covenant to enhance respect for the rights of the elderly and promote integration of the elderly into society.

By contrast, the Japanese government's approach, as seen from the Basic Law Regarding Measures for the Aging Society enacted in 1995, does not guarantee the fundamental rights of the elderly, and is concerned only with how to deal with the aging of society. However, despite the fact that the elderly have made all manner of contributions to society for many years, their standard of living and even such fundamental rights as housing are threatened by the intensifying devotion to the abstract principles of market economics and free competition. It is essential that a basic law for the elderly be enacted to comprehensively guarantee the rights of such elderly in accordance with the various resolutions of the General Assembly mentioned above.

(2) Rights of elderly regarding adequate living standards and rights of families of elderly

Article 11 of the Covenant guarantees the right to an adequate standard of living. The 'United Nations Principles for Older Persons' adopted in 1991 provide that "older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help." Furthermore, with regard to Article 10 of the Covenant concerning protection of the family, the International Plan of Action on Ageing recommends, in addition to a guaranteed right to housing, government efforts to support, protect and strengthen the family in responding to the needs of its ageing members, the provision of social services to support families of the elderly, and home care assistance for the elderly.

Among the targets established in the New Gold Plan as the basic framework of the government's policy toward the elderly, to be reached by the end of March 2000, are the following:

In-home helpers	170,000 people
Short stay facilities	60,000 beds
Day services/Day care	17,000 establishments
Special nursing homes	290,000 beds
Health facilities for the elderly	280,000 beds

Around-the-clock circulating home assistance service
Private rooms in special nursing facilities

However, the targets established by the New Gold Plan were quite low relative to the population of approximately 2.8 million elderly requiring care. The government, recognizing that the targets were inadequate, is now devising a new five-year plan encompassing the years up to 2004, but given that the population of elderly requiring care is estimated to increase to 3.5 million in the next five years, in no way the can existing capacity, even with some increase, adequately handle the need.

Even if the goal of 170,000 in-home helpers who assist in home care is reached, it amounts to only 8 helpers per thousand elderly persons aged 65 or older, a rather low standard. According to standards established by the Ministry of Health and Welfare, the population that may be served by 170,000 full-time in-home helpers amounts to 250,000 to 380,000 persons, but the number of persons requiring care in 2000 was estimated at 2.8 million, or 1.85 million even if the target number of people to be serviced by residential facilities such as special nursing homes is excluded, revealing an obvious shortfall in the number of in-home helpers.

The target for the number of special nursing home beds is 290,000, but this amounts to only 10% of the 2.8 million persons requiring care in 2000. At present, over 60,000 persons are on waiting lists for admission to such facilities, and there is insufficient capacity to accommodate future demand. Therefore, it cannot be said that the government is steadily promoting the basic framework of services for the elderly. In urban areas, where admission to a special nursing home requires a wait of two to three years, it cannot be said that necessary care is being provided.

Because the quantitative targets of the New Gold Plan are

themselves infeasible and at least 70% of local governments lack sufficient funds or manpower, as of the end of 1999, the targets of the New Gold Plan had not been met.

In response to this situation, the Japanese government has sought to save money by entrusting home care to poorly paid, part-time in-home helpers and citizen volunteers, but without ensuring the quality and number of these in-home helpers comprising the main providers of home care assistance, which is the main form of elderly care, it will be difficult to protect the right of older persons to an adequate standard of living and the rights of families of the elderly.

(3) Problems with insurance system governing care of elderly

The Long-Term Care Insurance system that went into effect in April of 2000 represents a major overhaul of the previous system, in which welfare for the elderly was covered by the national government from tax revenues. Under the new system, such services are provided under the social insurance system. Under the social insurance system, because benefits are based on the payment of insurance premiums, persons who are recognized as requiring care receive care in kind based on the payment of 10% of the costs of care.

However, in order to provide proper care, a system under which the necessary care may be provided to elderly persons requiring care must be established, but Japan has so far failed to establish a sufficient infrastructure for such a system. As a result, in municipalities lacking adequate facilities, the threshold degree of need for care required for admission to a facility has had to be raised.

Furthermore, because a care recipient is responsible for 10% of the costs of care, persons who are unable to pay such costs are able to receive only the degree of care that they can afford. As a result, since the introduction the Long-Term Care Insurance in April of 2000, some low-income elderly in particular who require care are not receiving the appropriate care services.

Because persons who received three hours of home help services twice a week at no cost under the old welfare system are now required to pay 4000 yen per month under the new 10% co-payment system, the

number of elderly who are cutting back on the number and length of visits by helpers in order to save money are increasing.

Consequently, because elderly persons in need of care are refraining from receiving needed care, the use of physical care has not increased, and the demand has concentrated on inexpensive household assistance, large corporate care-givers' projected large revenues from the care business did not materialize, resulting in a contraction of business and termination of home helpers and creating a social problem.

The Long-Term Care Insurance system is a system in which care is received only when the insured person is recognized by the municipality as requiring care or assistance. As a result, since the introduction of the Long-Term Care Insurance system, some elderly persons who do require care have been determined to be self-sufficient and not in need of care, and the municipalities responsible for making such evaluations have consistently reported a low degree of need for care regarding people suffering from symptoms of senile dementia. A survey of elderly applicants and their families reveals that half of the respondents felt that they could not trust the determinations regarding the need for long-term care.

The degree of care required by an elderly person changes significantly over time. It is doubtful whether a system in which a third-party makes the determination regarding the degree of need for care or assistance can produce an appropriate index.

When a person is determined to require care or assistance, the insured party enters into a care services contract with a private caregiver and receives care services thereunder.
Before the introduction of the new insurance system, as a matter of policy the national government provided appropriate care or assistance services in response to the need for care and assistance, but under the current system, long-term care insurance is subject to an insurance contract. A system must be established under which the rights of the elderly are protected when need for care determinations are carried out and care contracts are drafted, executed and enforced. For the time being, a review system that functions as a complaint system exists, but it is time-consuming and cannot handle situations in which care is urgently needed. Without the establishment of a comprehensive system for the

protection of the rights of the elderly, such as a third party welfare ombudsman system, the elderly will be left with no rights.

2 Health insurance system for elderly and right of elderly to social insurance (Articles 12 and 9)

A Opinion of JFBA

(1) In order to guarantee the rights of the elderly established under Articles 9 and 12 of the Covenant, the Japanese government should immediately revise the current system under which elderly are responsible for a portion of their medical costs, as well as the policy under which people who are late in paying their national health insurance premiums lose their insurance.

(2) The system of compensation for treatment under which elderly may be required by hospitals to prematurely terminate their stay must be changed.

B The Government Report

The Government Report does discuss in paragraphs 83 through 94 the health insurance system and its financial structure, as well as old age insurance, but does not touch on the problems that 'partial payment by the patient' and the desired 'necessary revisions of the system with a view to fair burden-sharing among generations as well as appropriate and efficient medical fees for the elderly' are creating with regard to the quality of medical care actually provided to elderly persons.

The Government Report also discusses in paragraphs 181 through 205 the health projects under the National Health Insurance Scheme and the Law Concerning Health and Medical Services for the Aged, but fails to discuss the problems occurring at the places where treatment is provided to the elderly.

C Rationale

(1) Need for old-age health care system

Articles 9 and 12 of the Covenant, as well as the International

Plan of Action on Ageing (1982), and the Social Security (Minimum Standards) Convention (No. 102) and Invalidity, Old-Age and Survivors' Benefits Convention (No. 128) of the ILO, call for signatory states to establish a compulsory old-age health care system that provides medical care for the elderly regardless of the ability to pay.

(2) Problems with medical care of elderly in Japan

(a) In 1982, the Law Concerning Health and Medical Services for the Aged changed the prior law to require the elderly to pay a portion of their medical fees, and in 1984, the amount for which the elderly patient was responsible was increased to 20%. As a result, there is a danger that low-income elderly will no longer be guaranteed access to medical care.

Furthermore, the current situation invites a scenario in which insurance coverage is cancelled for a person that fails to make payment on insurance premiums, thereby preventing the person from seeing a doctor when illness strikes. The Ministry of Health and Welfare has announced that in 1998, over 3.2 million households, 16.5% of the total number of insured households, failed to pay premiums under the National Health Insurance Scheme, and that the government terminated the policies of 330,000 households for defaulting on their premiums. This constitutes a violation of a citizen's right to health care.

(b) With the introduction of the old-age health care system, hospitals with large numbers of elderly patients have become categorized under the system as 'old-age hospitals', and as special licensed hospitals such hospitals have seen the number of doctors and nurses on staff decline and the number of caregiver staff increase. Moreover, in order to limit the costs of medical care for the elderly, treatment of elderly patients 70 years of age or older is reimbursed at a lower rate than care for younger patients, which means that such hospitals can no longer make money from the admission and treatment of elderly patients.

As a result, some elderly patients are forced to leave the hospital prematurely, and others are denied admission in the first place. Such a system constitutes discrimination against the elderly and denies them proper medical care.

(c) In the 1998 revision of the medical treatment fee

reimbursement scheme, a diminishing return system was incorporated in which the amount of reimbursement declined as the length of the hospital stay increased. As a result, because hospitals determined that low-reimbursement elderly patients and patients needing long hospitals stays were a bad business proposition, they began to refuse care to elderly persons requiring long-term care, and to compel existing long-term patients to end their hospital stay. This also constitutes a violation of the right of the elderly to appropriate medical care.

(d) In 1990, the government introduced long-term care beds, as well as a 'fixed payment system' regarding treatment fee reimbursement to special licensed hospitals classified as 'old-age hospitals'. This system has the seemingly positive feature of offering enhanced care at 'old-age hospitals', where such care is included in the reimbursement, but in fact, since it is more profitable to admit patients requiring less care but offering the same reimbursement, patients requiring the most intensive degree of care are sometimes denied admission or are required to leave the hospital.

3 Old-age pension

A Opinion of JFBA

(1) The Japanese government should revise the pension system to ensure that the elderly receive benefits sufficient to afford them an adequate standard of living.

(2) In response to the increase in the number of persons in arrears on their national pension scheme insurance premiums and the number of persons not participating in the system, the Japanese government should enact measures to restore trust in the national pension scheme and improve the system to allow elderly persons who are not able to share in the payment of insurance premiums to receive some benefit.

B The Government Report

The Government Report summarizes the two public pension systems -- i.e., the National Pension Scheme and the Employees Pension Insurance Scheme -- in paragraph 92. However, it does not indicate

whether the benefit standard under these systems is designed to enable the elderly to be economically self-sufficient, and does not discuss the percentage of people in default or exempted from premium payment, or how elderly persons ineligible to receive a pension are treated under the social security system.

C Rationale

(1) Problems with public pension system

Of the 18.3 million old-age basic pension benefit recipients as of the end of March 1998, 8,380,000, or 45%, received as their sole benefit income only the National Pension benefit in the monthly amount of 47,000 yen. The amount was only 70,000 to 90,000 yen for married couples.

According to statistics from a 1994 basic survey of national living standards, the average income of a Japanese was 2,110,000 yen per year, or 176,000 yen per month, which shows clearly that one cannot live only on the monthly pension benefit. As a result, elderly households comprised 44% of National Assistance benefit recipients in 1994. Such a situation can only make elderly fearful and insecure about their survival. Furthermore, among Employees' Pension Insurance benefit recipients, the average monthly old-age pension benefit amount was 183,000 (as of the end of March 1998), barely reaching the average monthly income in Japan. These statistics indicate that many of Japan's elderly are receiving a public pension benefit that is insufficient even to meet the minimum amount needed to live.

(2) Problems with increase in benefit eligibility age

Furthermore, in the April 2000 revision, the pension benefit amount of the wage-proportional portion of the Employee's Pension was reduced by five percent, the reflection of the national average wage increase over the base portion was discontinued for persons 65 or over, and the benefit eligibility age was raised from 60 to 65 effective in 2013. In the current environment, where corporations are enforcing a mandatory retirement age of 60, raising the benefit eligibility age will make it even more difficult for elderly to survive. In addition, as a result of the increase in the eligibility age, the five percent reduction in the

wage-proportional portion, and the freezing of the average wage reflection adjustment, Japanese nationals 40 years and under will see a total reduction in benefits of 10 million yen over their lifetimes, and citizens 60 years old will see a five million yen total reduction, making it increasingly difficult for Japan's elderly to live on their pension.

(3) Handling of persons in default or exempted from premium payment

As of the end of March 1998, nine million otherwise eligible persons were either in default or were exempted from premium payment or had failed to enroll in the National Pension Scheme. Of the 19.24 million persons covered by the National Pension Scheme, 3.92 million, or approximately 20%, were in default on their premiums. The rising numbers of persons in default or not enrolled reflects not only the economic difficulties of the insured, but also an overall sense of distrust about the program in general. The government should take immediate measures to restore public trust in the national pension system.

Article 25 of the Japanese Constitution guarantees to all citizens the right to maintain the minimum standards of wholesome and cultured living, and Article 13 guarantees the right to respect for the individual and the pursuit of happiness. In addition, under Article 9 of the Covenant, as well as the Social Security (Minimum Standards) Convention (No. 102) and Invalidity, Old-Age and Survivors' Benefits Convention (No. 128) of the ILO, when older persons reached a certain age, they should receive an old-age pension or other assistance sufficient to allow them to enjoy a minimum standard of living regardless of their past record of premium payments.

Specific Topic 4

Rights of persons with disabilities

1 Measures to eliminate discrimination against persons with disabilities

A Opinion of JFBA

(1) The Japanese government should make clear that discrimination against the disabled represents a failure to give respect to the individual, and should adopt measures to eliminate such discrimination and enact an anti-discrimination law that ensures an effective remedy for such discrimination.

(2) The Japanese government should abolish qualification restrictions based on physical or mental disability.

(3) The Japanese government should recognize that the long-term institutionalization of persons having an intellectual or physical disability is problematic from the standpoint of respect for the individual, and should adopt measures to ensure that such persons are allowed to live in an integrated environment.

B The Government Report

The Government Report does not discuss these issues.

C Rationale

(1) Need for anti-discrimination law

In 1994, the Committee pointed out in General Comment 5 that even in countries which have a relatively high standard of living, persons with disabilities are very often denied the opportunity to enjoy the full range of economic, social and cultural rights recognized in the Covenant, and that very little attention is paid to this problem in the Periodic Reports submitted by signatory states. These observations certainly apply to Japan.

Although the Covenant does not explicitly mention persons with disabilities, the aforementioned General Comment 5 notes that the requirement contained in Article 2, paragraph 2 of the Covenant that the rights "enunciated ... will be exercised without discrimination of any kind" clearly applies to discrimination on the grounds of disability, and that signatory states are required to take appropriate measures to ensure that persons with disabilities are enabled to seek to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability.

In Japan, there exists a deep-rooted prejudice against the disabled, who suffer from discrimination and second-class status in all areas of life, including work, family life, living standards, housing, medical care and education. In order to eliminate this prejudice and comprehensively guarantee the various rights of persons with disabilities under the Covenant, legislation prohibiting discrimination on the basis of disability must be enacted.

(2) Abolition of qualification restrictions

General Comment 5 provides that "[f]or the purposes of the Covenant, 'disability-based discrimination' may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights." It is clear that disqualification provisions of some laws governing qualifications and licensing based on the existence of a disability comprise classifications, exclusions and restrictions based on disability, and accordingly constitute 'disability-based discrimination'. Moreover, disqualification provisions contained in various licensing, permit and appointment systems often lack a rational basis in the current environment, in which various support systems are in place.

According to statistics compiled by the Prime Minister's Office in 1999, a total of 63 separate programs or schemes included disqualification provisions. The government is conducting a wholesale review of such provisions, but the basic policy governing this review is that absolute disqualification (a blanket, non-discretionary disqualification where a certain type of disability is determined to exist) will be changed to relative disqualification (in which the person in charge exercises discretion in

determining whether to qualify an applicant, based on an evaluation of the severity of the disability and the difficulty such disability would present to effectively performing the job, task, etc.). However, because it is a qualification system, the existence of a requisite degree of professional qualification or skill should be determined based on a qualification exam or other objective standard, and should not be entrusted to the unstable discretion of the person in charge only in cases involving a person with a disability.

The 'Draft Revision of Road Traffic Law' issued by the National Police Agency states that "where a person that passes a driver's license exam suffers from epilepsy, schizophrenia, etc., in the interest of traffic safety, such person shall in principle be denied a license in accordance with standards established by government ordinance," (Section 2, paragraph 2) and makes clear the policy that, as in the past, the existence of a mental disability constitutes a basis for disqualification from receiving a driver's license. However, because a driver's license constitutes a means of transportation that is essential to everyday life in some areas, to persons having a mental disability, the policy of the National Police Agency amounts to a denial of their very ability to participate in society.

Furthermore, while a specialized education at a high school or university is often required in order to obtain a qualification, where a person with disability is denied admission based on the construction of the facilities of the school or based on the entrance examination method, it amounts to a deprivation of the opportunity to prepare for the examination to obtain the qualification. Accordingly, in order to eliminate discrimination, the adoption of measures to enable persons with disabilities to enroll in educational institutions is essential.

(3) Right to live in integrated environment

Rule 6 of the 'Standard Rules on Equalization of Opportunities for Persons with Disabilities ' adopted in 1993 provides that "States should recognize the principle of equal primary, secondary and tertiary educational opportunities for children, youth and adults with disabilities, in integrated settings."

In Japan, a policy to segregate persons with disabilities through such means as institutionalizing them in segregated facilities (hospitals)

in violation of the principle set forth above, classifying children with disabilities in a separate category from children in general, educating them in a separate environment, etc., has long existed. This situation represents a violation of the 'guarantee of life in an integrated setting' set forth in Rule 6 of the Standard Rules above.

2 Labor and income rights of persons with disabilities (Articles 7, 8 and 11)

A Opinion of JFBA

(1) The Japanese government should implement measures to promote integration of persons with disabilities into the labor market, as well as to guarantee that such persons are able to earn a living wage.

(2) The Japanese government should guarantee that persons with disabilities will receive an income sufficient to enable them to enjoy an adequate standard of living.

B The Government Report

The Government Report does not discuss the right of persons with disabilities to work. It merely summarizes disability benefits in paragraph 2 of the section pertaining to 'Article 9', but doesn't mention the issue of income guarantees for persons with disabilities who do not qualify for disability benefits.

C Rationale

(1) Right of persons with disabilities to work

Regarding employment of persons with disabilities, although the Japanese government has put into place an employment rate system (a percentage of disabled employees that companies are obligated to hire relative to the total number of employees), the current rate of 1.8% is too low to absorb into the labor market all of the persons with disabilities who are able to work. In addition, to promote the employment of persons with disabilities, workplaces should be made 'barrier-free', i.e., physical impediments to access should be removed.

Regarding wages, a minimum wage system enforced by sanctions is in effect, but an exception is recognized in connection with the employment of persons with disabilities. Since the minimum wage is calculated in terms of the minimum amount of income needed to live in the particular region, a reduction in the minimum wage for persons with disabilities makes it even more difficult for such persons to survive. The provision permitting this exception should be revised immediately.

(2) Income guarantee

According to the Government Report, the basic disability benefit standard in Japan is 83,283 yen for persons with a Class 1 disability and 66,625 yen for persons with a Class 2 disability as of April 1998, which is far lower than the income level required for normal living.

In particular, the largest problem with the income assistance program for persons with disabilities is the fact that such income assistance in the form of wages for work, pension, etc. is not applied uniformly to all persons with disabilities as a type of 'safety net'. Basic disability benefits are paid only to persons suffering from a serious Class 1 or Class 2 disability, but persons having a Class 3 or lower level of disability are neither entitled to a pension nor are necessarily guaranteed an opportunity to work, and even if they do find work, as a result of their disability, they may not be even be guaranteed the right to receive the minimum wage.

Therefore, the Japanese government should implement a blanket income guarantee system covering employment, minimum wages and pension benefits in order to ensure that persons with disabilities can enjoy the right to an adequate standard of living.

Specific Topic 5
Rights of foreign nationals

1 Right of asylum seekers to livelihood assistance

A Opinion of JFBA

> Applicants for refugee status who do not have a working visa under the Immigration Control and Refugee Recognition Act are prohibited from working while the determination of their refugee status is pending, and there is no policy to provide living assistance during this period. This represents a violation of the right to an adequate standard of living set forth in Article 11 of the Covenant, and the government should implement a living assistance guarantee program either through the issuance of a working visa or through living assistance.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

There are a number of cases in Japan in which the determination of refugee status has taken several years. Quite a few applicants for refugee status do not have a working visa under the Immigration Control and Refugee Recognition Act, while some lack a valid visa because they have overstayed a valid visa or have entered the country surreptitiously. Because these persons do not have a working visa, under Article 19 of the Immigration Control and Refugee Recognition Act, they are legally prohibited from working in Japan, and yet there is no particular policy to provide assistance to such persons while the determination of their refugee status application is pending. While there are examples of Refugee Headquarters, a private organization, subsidizing the costs of living for refugee applicants, this support is not public assistance, and Immigration Bureau staff does not publicize or inform refugee status applicants of this assistance program. As a result, most refugee status applicants are unaware of it.

Furthermore, in Japan, under Article 39 of the Immigration

Control and Refugee Recognition Act, where it is suspected that sufficient grounds exist to require deportation of a foreign national, the foreign national is detained, and examples of refugee status applicants being detained while their refugee status application process is pending are not uncommon. Even where provisional release is granted, a personal guarantor is sometimes required as a condition of release. However, because refugee status applicants usually lack a working visa, most cannot obtain a guarantor who is willing and able to assume financial responsibility for the applicant, and consequently such applicants often remain in detention while their application is pending.

While it cannot be said that the denial of a working visa constitutes a violation of Articles 6 and 7 of the Covenant, the denial of work and the failure to provide living assistance until the government's determination is issued surely comprises a violation of Article 11's guarantee of an adequate standard of living.

2 Rights of undocumented workers in connection with working conditions

A Opinion of JFBA

Even where foreign nationals who work without a working visa (foreigners lacking residency status, or those who have residency status but no working visa) are not paid wages, they are not in a position to negotiate with employers who treat them poorly or unfairly from fear of being reported to the Immigration Bureau, and cannot complain to the Labor Standards Inspection Office, which is one avenue of redress available to a Japanese or to a foreign worker who has a working visa. While the Japanese government is aware of this situation, it is not making efforts to ensure that the provisions of the Labor Standards Act and the role of the Labor Standards Inspection Offices is widely known, and is ignoring the problem. Because this violates the right to just and favorable working conditions as provided in Article 7 of the Covenant and the obligation imposed on Japan in paragraph 1 of Article 2, the government should immediately take steps to rectify the problem.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

Even where a person lacks a working visa under the Immigration Control and Refugee Recognition Act, Japanese domestic law guarantees the right to receive wages for work already performed. However, because working without a proper visa is prohibited, and an official determination that one has worked without a visa can lead to deportation, foreign nationals who work without a working visa are in an extremely weak position. In other words, they are subjected to low wages and long working hours, do not receive overtime pay as prescribed by the Labor Standards Act, and sometimes do not receive even the pay that was agreed upon. In such circumstances, normally the Labor Standards Inspection Office will determine such conduct to be a violation of the Labor Standards Act, etc., and issue an instruction to the employer. However, Article 62, paragraph 2 of the Immigration Control and Refugee Recognition Act imposes the following reporting obligation on public officials: "Employees of the national government or of a prefectural government who learn of the existence of a foreign national defined in the preceding paragraph (a foreign national suspected of being subject to deportation), shall report such fact." Regarding this point, Inter-Agency Memo No. 41 (issued by the Labor Standards Inspection Office of the Labor Standards Bureau of the Ministry of Labor to all prefectural and local labor standards bureau directors on October 31, 1989) provided as follows:

When handling an application, it is possible that a foreign worker related to the application will be determined to be working illegally, but as a Labor Standards Inspection Office, the first task is to seek to redress the rights of the applicant under labor standards-related laws and ordinances by eliminating the violation, and in principle no notification is to be issued to the Immigration Bureau.

Furthermore, Inter-Agency Memo No. 20 (issued by the Labor Standards Inspection Office of the Labor Standards Bureau of the Ministry of Labor to all prefectural and local labor standards bureau directors on June 1, 1990) noted that discussions with the Ministry of Justice were underway:

Regarding the provision of information concerning illegal employment to immigration control enforcement agencies, because we are in currently in discussions with the Ministry of Justice, and a separate notification regarding the results of such discussions is scheduled to be issued, for the time being the existing policy shall remain in effect.

However, at present, because this internal notification from the Labor Standards Inspection Office is not widely known and undocumented foreign workers fear employers directly reporting to the Immigration Bureau, foreign nationals working without a working visa are not in a position to receive guidance from the Labor Standards Inspection Office even where a violation of the Labor Standards Act exists, and undocumented foreign workers who suffer from poor working conditions and withholding of pay have no choice but to accept their situation.

While the Japanese government is aware of this problem, the fact that no notification will be issued to the Immigration Bureau has not been widely publicized among foreign workers who may potentially seek redress of their rights under the Labor Standards Act, the instructions of the Labor Standards Inspection Office and other labor standards-related laws and ordinances. This constitutes a violation of Article 7 of the Covenant regarding the right to acceptable working conditions, as well as a violation of Article 2, paragraph 1 regarding implementing obligations imposed on signatory states.

3 Discrimination against foreigners in regard to public employment

A Opinion of JFBA

The policy of the Japanese government that a permanent or long-term resident foreigner may not work as a clerical civil servant violates Article 6, paragraph 1 and Article 2, paragraph 2 of the Covenant. The Japanese government requires that civil servants that participate in the exercise of public power or in public decision-making' must have Japanese nationality, but foreign nationals should be hired as clerical national civil servants and as other types of civil servants.

B The Government Report

The Government Report states in paragraph 8 of the General Comments that "Japanese nationality is required for civil servants who participate in the exercise of public power or in public decision-making."

C Rationale

Under current Japanese law, a foreign national may not be appointed or hired as a diplomat or as a self-defense official. Foreign nationals are also not hired as judges or prosecutors. While there is no provision of law that prevents foreigners from working as clerical national civil servants, because National Personnel Authority Rule 8-18 provides that "[p]ersons that do not have Japanese nationality may not sit for the hiring examination," foreign nationals are not hired for clerical national civil service positions, which are filled based on a hiring examination. In a case that challenged the Tokyo government's practice of barring foreign nationals from sitting for the managerial position selection examination, the Tokyo District Court held that

While foreign nationals residing in Japan may not be appointed to local government civil service positions that are involved directly or indirectly in the exercise of sovereign power through participation in the exercise of public power or in public decision-making, they may be appointed to other local government civil service positions, such as positions in which one performs clerical or assisting work under the instruction of a supervisor, or performs specialized academic or technical work. (May 16, 1996 decision of Tokyo District Court)

The Japanese government's interpretation of a 'civil servant who participates in the exercise of public power or in public decision-making' is excessively broad, and effectively bars any foreign national from being hired as a national civil servant as a matter of principle. This constitutes a violation of Article 6 of the Covenant guaranteeing the right to work, which includes the right of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts.

4 National pension

A Opinion of JFBA

(1) The denial of welfare benefits for the elderly to resident North

and South Koreans who were older than 60 years of age on April 1, 1986 violates Article 9 and Article 2, paragraph 2 of the Covenant. The Japanese government should pay old-age welfare benefits to resident Koreans, etc. in the same manner in which they pay them to Japanese who were older than 50 on the date the national pension scheme was established.

(2) The denial of disability welfare benefits to North and South Korean residents with disabilities who were older than 20 years of age on January 1, 1982 violates Article 9 and Article 2, paragraph 2 of the Covenant. The Japanese government should pay disability welfare benefits to Korean residents with disabilities, etc. in the same manner in which they pay them to Japanese who were older than 20 on the date the national pension scheme was established.

(3) The denial of disability welfare benefits to persons who were not Japanese nationals on November 1, 1959 but who subsequently acquired Japanese nationality is a violation of Article 9 and Article 2, paragraph 2 of the Covenant.

B The Government Report

The Government Report does not discuss the government's denial of old-age welfare benefits and disability welfare benefits to resident North and South Koreans, etc.

C Rationale

(1) At the time the national pension scheme was established, the Japanese government adopted the following measures to ensure that Japanese nationals who did not qualify to receive benefits were not left entirely without pension benefits. First, because Japanese nationals who were older than 50 years of age as of April 1, 1961 (the date on which premiums for the national pension scheme began to be collected) could not participate in the national pension scheme, the government established an automatic old-age welfare pension that paid benefits once the beneficiary reached the age of 70 regardless of whether the beneficiary made premium payments. Second, regarding Japanese nationals with disabilities who were older than 20 on November 1, 1959, the date on which the National Pension Act went into effect, because such persons

were not eligible for disability pension benefits even if they belonged to the national pension scheme, the government established a disability welfare benefit system.

(2) The Covenant entered into force on September 21, 1979. Thereafter, on January 1, 1982, the Japanese nationality requirements for participation in the national pension scheme were abolished in the revision of the law that took place in conjunction with Japan's ratification of the Convention relating to the Status of Refugees and its associated protocol, and foreign nationals became eligible to participate in the national pension scheme on the same date. The National Pension Act was then amended in 1985, at which time a route was established by which foreign nationals who had not satisfied the 25-year qualification period for receipt of benefits at the time that the nationality requirement was abolished could receive old-age basic benefits. However, foreign nationals who were older than 60 as of January 1, 1986 were not made eligible to receive old-age welfare benefits. Furthermore, no provisional measures authorizing treatment on a par with Japanese nationals were adopted with regard to disabled resident Koreans, etc. who were older than 20 on January 1, 1982, and such persons remained ineligible to receive disability welfare benefits.

These policies impose disadvantageous treatment on foreign nationals relative to Japanese nationals, and accordingly violate Article 9 and Article 2, paragraph 2 of the Covenant.

(3) A suit seeking disability welfare benefits filed by a South Korean resident of Japan who was recognized on November 1, 1959 as being disabled under Class 1 of the table attached to the Law, and obtained Japanese nationality through naturalization on December 16, 1970, was dismissed on August 21, 1972, and this decision was upheld by the Supreme Court (March 2, 1989 decision of the First Petty Bench of the Supreme Court, Hanrei Jihou Vol. 1363, p.68). When the plaintiff filed suit once more after the nationality requirement was abolished on January 1, 1982, the suit was dismissed on March 19, 1985 on the ground that the abolition of the nationality requirement had only prospective effect, and this decision was upheld by a lower court (August 24, 1994 decision of the Osaka District Court, Hanrei Times Vol. 855, p. 181). However, with the coming into force of the Covenant, the basing of disability welfare benefit eligibility determinations on whether the

applicant is a native Japanese or a naturalized Japanese should be considered a violation of Article 2, paragraph 2 of the Covenant.

5 Social security

A Opinion of JFBA

The denial of benefits under the Public Officials Pensions Act and the Family of the War Wounded and War Dead Support Law to resident Koreans who served as soldiers or civilian staff in the Japanese army, and who were deprived of Japanese nationality based on the post-war independence of their former native country, on the ground that they do not have Japanese nationality, is a violation of Article 9 and Article 2, paragraph 2 of the Covenant, and should be stopped immediately.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

During World War II, persons born in Korea, which was a Japanese colony, were automatically deemed Japanese nationals. Among these persons were persons who served as military staff in the Japanese army. However, these persons lost their Japanese nationality when the San Francisco Peace Treaty was signed on April 28, 1952, granting independence to Korea.

The Public Officials Pensions Act provides that loss of Japanese nationality constitutes a ground for the termination of pension benefits under the law. In a case seeking the recission of a denial of increased benefits to a Korean national who was injured while serving in the Japanese army in World War II, the court ruled that in light of the nature of such benefits, and given that (i) such assistance is a burden on the resources of the Japanese nation, and (ii) each state is responsible for protecting its own citizens, the Japanese nationality provision that restricts benefits to Japanese nationals is rational, and that the provision does not violate Article 26 of the International Covenant on Economic, Social and Cultural Rights (July 31, 1998 decision of the Tokyo District

Court, Hanrei Jihou Vol. 1657, p.43), but there was no argument in this case that the provision violated the International Covenant on Economic, Social and Cultural Rights.

The Family of the War Wounded and War Dead Support Law is intended to provide financial support to persons who are wounded, become ill or die while serving in the Japanese armed forces in a military capacity, or their families, based on the spirit of compensation by the state. The law has a Japanese nationality requirement as in the case of the Public Officials Pensions Act, and benefits are not paid on behalf of persons who are not Japanese nationals. There are many court cases on this point, all concluding ultimately that there is no violation of law (October 11, 1995 decision of the Osaka District Court, etc.). On September 10, 1999, the Osaka High Court held that the equality principle in the Covenant did not prohibit distinctions having a rational basis, and on October 15, 1999, it held that with regard to the Human Rights Committee's view in its General Comment 18 that the anti-discrimination principle set forth in Article 26 of the International Covenant on Civil and Political Rights is not limited to the rights provided in said Covenant, that the rights set forth in the International Covenant on Economic, Social and Cultural Rights and the rights set forth in the International Covenant on Civil and Political Rights cannot be considered on an equal basis, and that the comments of the Human Rights Committee do not legally bind the court's interpretation of both Covenants.

Pension payments made under the Public Officials Pensions Act should be regarded as compensation by the state for public duties performed, and have no relationship to a subsequent change in nationality. The Human Rights Committee, in its comments regarding its review of Japan's Third Periodic Report, clearly noted that "persons of Korean and Taiwanese origin, who served in the Japanese Army and who no longer possess Japanese nationality, are discriminated against in respect of their pensions." Because the Family of the War Wounded and War Dead Support Law proceeds from the standpoint of support offered as compensation by the state, as described above, such support is logically unrelated to a change in the nationality of the recipient. The denial of benefits under these provisions of law to persons who lost their nationality after the war violates Article 9 and Article 2, paragraph 2 of the Covenant.

6 Medical insurance

A Opinion of JFBA

> The Japanese government's policy that the national health insurance program does not apply to foreign nationals who have not resided in Japan at least one year with a valid visa violates Article 9, Article 12, paragraph 1 and Article 2, paragraph 2 of the Covenant. Application of the national health insurance program to such foreign nationals should be approved.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

Under the National Health Insurance Act, health insurance is provided by municipal governments, and persons to which the law applies (insured) are defined as persons residing within the boundaries of the municipality (Article 5 of the Act). The Ministry of Health and Welfare issued a notification on March 31, 1992 entitled 'Re: Application of National Health Insurance to Foreign Nationals' (MHW, Health Insurance Bureau, No. 41, addressed to directors of public welfare departments (bureaus) of prefectural governments). This notification provided that the criteria for foreign nationals' eligibility for National Health Insurance were as follows: (i) registration as an alien with the government, and an entry visa allowing an initial stay of at least one year, or (iii) even if their entry visa permitted a less than one year, recognition that the registrant will reside in Japan for more than one year, considering their purpose in entering the country and their life since entering the country.

In a case seeking to overturn a decision refusing to grant health insurance eligibility to a Filipina, the Tokyo District Court ruled that the law did not legally recognize the stay or residency of the Filipina, and that the mere fact of her residence in Japan did not amount to 'having an address' within the meaning of Article 5 of the National Health Insurance Act (September 27, 1995 decision of the Tokyo District Court, Hanrei Jihou Vol. 1562, p.41). Subsequently, in a similar case, where a foreign

national lacking residency status was determined to have an address within the municipal boundaries, the foreign national was deemed by the Tokyo District Court on July 16, 1998 to be eligible as an insured under the national health insurance program administered by the municipality (July 16, 1998 decision of the Tokyo District Court, Hanrei Jihou Vol. 1649, p.3).

An address means the 'home base' from which one leads one's life, which is irrelevant to the legality of one's residence in the country. While deportation for illegal entry is a matter for the Immigration Control and Refugee Recognition Act, as long as they live in Japan until the deportation is carried out, foreign nationals should be covered by national health insurance, which is essential in order to live in good health. Japan's position denying national health coverage based on the absence of residency status under the Immigration Control and Refugee Recognition Act comprises discrimination based on 'other status' within the meaning of Article 2, paragraph 2 of the Covenant and violates Article 9, Article 12, paragraph 1 and Article 2, paragraph 2 of the Covenant. The Japanese government should immediately rescind the notification referred to above and extend national health insurance coverage to foreign nationals lacking residency status.

7 Livelihood protection and medical benefits

A Opinion of JFBA

The Japanese government's policy denying livelihood assistance to foreign nationals who are not permanent residents and to foreign nationals who lack residency status violates Article 11, paragraph 1 and Article 2, paragraph 2 of the Covenant. The Japanese government should authorize payment of livelihood assistance benefits to such non-Japanese residents in the same manner that such benefits are provided to Japanese nationals.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

Historically, the Ministry of Health and Welfare has authorized the application of the Daily Life Security Law to foreign nationals who are not permanent residents or who lack residency status (Notifications by Director of Social Affairs Bureau of MHW addressed to prefectural governors dated November 6, 1950 and entitled 'Re: Policy regarding welfare measures on foreign nationals in financial straits', and notification by Director of Social Affairs Bureau of MHW dated May 5, 1954 and entitled 'Re: Daily life security measures for foreign nationals who are in financial straits'). However, the Ministry of Health and Welfare, in the welfare guidance staff block meeting that it sponsored on October 25, 1990, issued an oral instruction to prefectural governments stating that the Daily Life Security Law applies only to the categories of foreign nationals specified in Table 2 of the Immigration Control and Refugee Recognition Act (i.e., permanent residents and long-term residents), and that foreign nationals who were not permanent residents or did not have residency status were not eligible for living assistance, and subsequently the application of the law was terminated as to such foreign nationals. Subsequent lower court decisions have interpreted the Daily Life Security Law as applying only to Japanese nationals, and have held that the obligation to achieve equality for foreigners, as imposed by the Covenant, is a political responsibility, and does not directly confer concrete rights on individuals (May 29, 1996 decision of the Tokyo District Court, Hanrei Jihou Vol. 1577, p.76, April 24, 1997 decision of the Tokyo High Court, Hanrei Jihou Vol. 1611, p.56, etc.).

Since medical care assistance is included among the benefits provided under the Daily Life Security Law, and because medical care assistance is not provided to foreign nationals under the Law, foreigners who are not permanent or long-term residents who suffer from a serious illness or injury have difficulty receiving care. Under Article 19 of the Medical Act, doctors may not refuse to treat a patient without reasonable grounds. However, if even the medical benefits portion of the Daily Life Security Law does not apply to foreign nationals, hospitals will refuse to provide medical care to foreigners, leading to a continuous 'passing of the buck'.

The court decisions mentioned above have determined that eligibility for benefits under the Daily Life Security Law depends on the existence of Japanese nationality. The position of the Ministry of Health and Welfare is essentially identical, except that eligibility is conferred on

permanent and long-term foreign residents as a favor. The denial of eligibility for benefits under the Daily Life Security Law to non-permanent or long-term foreign residents, and the withdrawal of eligibility from persons previously deemed eligible, violates Articles 11 and 12 and Article 2, paragraph 2 of the Covenant, and must be ended immediately.

8 Right to education

A Opinion of JFBA

(1) The denial of recognition of students and graduates of schools and universities that impart an education that enables foreign residents of Japan to preserve their native language and the culture of their country and ethnic group, who have completed education equivalent to the compulsory education, secondary education and university education set forth in Article 1 of Japan's School Education Law, and the refusal to allow such students to sit for legally-sanctioned public employment certification exams and university entrance exams, violates Articles 6 and 13 and Article 2, paragraph 2 of the Covenant.

(2) In regard to the provision of public subsidies that help defray the costs of education, Japan should not discriminate against such schools and universities that impart an education that enables foreign residents of Japan to preserve their native language and the culture of their country and ethnic group, and should provide such subsidies in the same manner that they are provided to Japanese schools.

(3) The various scholarship programs offered in Japan should be applied without discrimination to children, pupils and students in the schools for foreign nationals described above.

B The Government Report

The Government Report does not discuss these issues.

C Rationale

While foreign nationals living in Japan are deemed to possess the

right to enjoy the language of their own ethnic group or nation, as well as other cultural rights, public elementary and secondary schools and universities established under Japan's School Education Law do not offer an education that sufficiently promotes the language and culture of the ethnic group or nationality of such foreign nationals. It is also considered impossible for private schools established pursuant to said Law to provide education sufficient to maintain the language and culture of the ethnic group or nationality of foreign nationals, considering the time required to teach the curriculum required in order to be approved under the law. As of 1995, the number of Korean schools operating without accreditation under the School Education Law comprised 75 beginner schools (equivalent to elementary schools), 52 mid-level schools (equivalent to middle schools), 12 high-level schools (equivalent to high schools), one university, and 32 international schools.

Because no Korean beginner or mid-level school has been approved as an elementary or middle school, a graduate of such a schools is not allowed to sit for an entrance examination for a Japanese high school, nor are students enrolled at such high-level schools allowed to transfer to Japanese high schools. An extremely large number of exams that must be taken in order to enter a particular occupation or job require graduation from a high school or higher level institution, as shown on the attached sheet. Therefore, because graduates of these foreign schools cannot qualify to sit for the exam, they cannot work in the occupations that require an exam. Although roughly half of all prefectural and private universities allow graduates of Korean high-level schools to sit for the institution's entrance exam, 95 national universities do not allow such graduates to take their entrance exam. The conditions offered by prefectural and private universities are even worse for graduates of international schools, who are not allowed to take the entrance examination of any national university. In order to avoid this type of unfair treatment in regard to finding employment or advancing to university, some students enroll in night school or take a university entrance exam qualification test. However, the burden of such a path is very heavy, and in some cases, the student is barred from enrolling in the night school for lack of sufficient qualifications.

While the content of an education is important, it is also true that occupational or examination qualifications should be conferred based on the content and standards of the education. While Korean schools and

international schools teach a foreign language in their primary language classes or teach other classes in a foreign language, if such a school maintains content and standards essentially equivalent to those set forth in the School Education Law, it should be treated as a school equivalent to a Japanese elementary, secondary or high school or university, and the students thereof should be deemed eligible to sit for job qualification exams and university entrance exams. The fact that the government does not consider the contents and standards of their education, and uniformly denies the graduates from such schools the right to sit for job qualification exams and university entrance exams because they do not teach Japanese as the primary language or teach other subjects in Japanese, deprives the foreign national students of the right to freely choose their occupation and the right to receive education, and constitutes a violation of Articles 6 and 13 and Article 2, paragraph 2 of the Covenant.

Furthermore, because the Japanese government does not recognize the quality of the schools for foreign nationals referred to herein and deems them at the same level as various technical schools, despite the fact that the education provided by such foreign schools is equivalent to the compulsory education and high school education offered by Japanese schools, and is in no way inferior to a Japanese public school education, public subsidies provided by local governments to foreign national schools offering the equivalent of compulsory education and high school education are no more than ten percent of the subsidies provided to Japanese private schools that provide an equivalent education. Consequently, children and students who receive an education that maintains the language and culture of their nationality or ethnic group are not able to receive compulsory education free of charge, and the salaries and other benefits received by the teaching staff of these schools are less than half of the amounts teachers responsible for the equivalent education in Japanese schools obtain. In one recent example (a Korean school in Nagoya city, Aichi prefecture), salaries to the teaching staff were in arrears from April through December of 2000. Further, while Japan has various scholarship programs such as 'Japan Ikueikai' funded by the national budget and supervised by the government, and other programs offered by local governments, students at foreign national schools are denied the benefit of these scholarships, and there are no similar programs available to for such students.

In light of General Comment 13 of the Human Rights Committee,

this state of affairs amounts to a violation of Article 13, paragraph 2 (a), (b), (c) and (e).

Specific Topic 6
Labor

1 Policies related to labor (Article 6)

A Opinion of JFBA

> Japan's failure to adopt measures to guarantee the right to work in the midst of the worst unemployment and economic conditions since the end of World War II, and its implementation of policies that in fact diminish individual employment opportunities, constitute a violation of Article 6 of the Covenant.

B The Government Report

The Government Report states in paragraph 31 that "[t]o achieve and maintain full employment, which is the goal of the employment policy, appropriate and substantial employment measures should be implemented based on the conditions of the economy and employment."

C Rationale

(1) As indicated by the rise in the total unemployment rate from 2.1% in 1990 to 4.8% in April 2000, representing 3.46 million people, Japan is suffering the worst enployment conditions since World War II. Through various methods such as mergers, sale of goodwill, decentralization, etc., and using the terms revitalization, restructuring, etc., companies have implemented easy and tyrannical restructurings and terminations, including the example of employee purges or one-time mass firings followed by re-hiring of only the employees with lower salaries. As a result, worker insecurity about employment is rising rapidly, with the number of suicides increasing to over 33,000 people in 1999.

The Industry Revitalization Law (August 1999), the Civil Revitalization Law (December 1999) and the revision to the Commercial Code dealing with corporate decentralization (May 2000) are designed to promote corporate revitalization and survival, and have no concern for the security of workers' jobs. On the contrary, because the government is playing the role of legalizing the dictatorial slashing of personnel by

abetting and promoting it through the provision of public funds to promote the layoffs that result from mergers and acquisitions, they are called 'restructuring promotion laws'. Even the mass media have pointed out that "the government's policy on restructuring has been enacted at the strong request of industry, and the perspectives of workers' rights and employment have been practically non-existent." The government has taken no concrete stops to assist the families of the workers who lose their jobs in these wholesale layoffs, such as the recent layoff of 20,000 workers by Nissan.

(2) Personnel reductions by corporations have gone beyond the bounds of necessity, and such corporations are making up for the shortfall with 'free overtime' work (uncompensated overtime work). The Social Economy Productivity Institute established by business interests has said that "if free overtime were eliminated, employment would increase by 900,000 persons, and eliminating overtime itself would result in an increase of 1.7 million jobs, adding up to an increase in employment of 2.6 million." However, the government has adopted an extremely negative stance regarding elimination of free overtime, which clearly violates the Labor Standards Law.

(3) Furthermore, in such an environment, the courts -- which in the past protected employment of workers by requiring four factors, i.e., (a) is there a need for personnel reduction?, (b) did the company exhaust all available avenues to avoid layoffs, (c) did the company fully discuss the matter with the workers' union? and (d) is the company selecting those to be terminated in a fair manner -- in order to find a termination due to unfavorable business results legal, have issued in a number of cases decisions and rulings in which disputed terminations that have not meet the above four conditions have been easily permitted, further adding to workers' insecurity about their jobs.

2 Policies to improve worker productivity (Article 6), restrictions on working hours and paid vacations (Article 7)

A Opinion of JFBA

The revisions to the Labor Standards Law promulgated in 1997 and 1998 promote longer working hours in violation of Articles 6 and 7 of the Covenant.

B The Government Report

The Government Report states in paragraph 35 that "[t]he reduction of working hours has become a national task towards which the entire nation should make efforts so that people can lead more fulfilling lives. The Government actively encourages reduction of working hours by emphasizing the full use of annual paid holidays and reduction of overtime working hours, with the establishment of the 40-hour work week as the primary issue."

The report further states in paragraph 71 that "an employer may extend working hours in the case of an emergency (art. 33), or when a written agreement between labour and management on overtime work has been duly submitted to the local administrative office (art. 36)," in paragraph 76 that "the reduction of working hours is difficult for small and medium-sized companies compared with larger companies," and in paragraph 77 that "[a]nnual paid holidays are often not taken fully since workers tend to save their holidays in case of emergencies such as sickness."

C Rationale

At present, Japan has not ratified even one of the ILO conventions relating to working hours, and Japan's long working hours, as reflected by the Japanese phenomenon of 'death from overwork', have long been the subject of international concern. Working hours have particularly increased as the number of employees has fallen in the wake of the recent restructuring boom. In 1997, the average annual hours worked in Japan totaled 1,983, substantially more than the 1800 hours set as a target by the government. However, in 1997 the government completely abolished the existing prohibition against women working more than 150 hours of overtime annually, eliminated the daily and weekly overtime restrictions for both men and women, and set an annual standard of 360 hours per year for both men and women, but did not make violations of this standard punishable by sanctions. A person's life comprises an accumulation of each day. Given the fact that a 1995 investigation by the ILO also determined that 96 countries restrict the amount of overtime that can be worked in a day, Japan's relaxation of its own restrictions is troublesome.

Furthermore, in 1998, the government revised the Labor Standards Law to leave the question of working hours to workers. It significantly relaxed the requirements regarding (i) discretionary labor, in which, even if long hours are worked for the company only some of the hours are recognized as worked, and (ii) irregular work, in which work hours vary depending on the state of the business. These recent government labor policies are the result of heavy lobbying by industry, and will only spur on the trend toward long working hours. In a subsequent survey by the Japanese Trade Union Confederation discretionary labor, 33.7% of respondents indicated that 'working hours have increased' and 32.1% stated that 'there is less family time.'

The Government Report states that "[the Labor Standards] Law also stipulates that an employer may extend working hours in the case of an emergency (art. 33), or when a written agreement between labour and management on overtime work has been duly submitted to the local administrative office (art. 36)," making it sound as if overtime work were exceptional and limited. However, in fact, overtime work is an everyday occurrence, and illegal overtime not based on any labor-management agreement is increasing. A particular problem is free overtime (uncompensated overtime). In Japan, employers pay employees for only a fixed number of hours of overtime, or pay nothing at all, and many employees do not ask for overtime allowance out of fear of receiving a poor evaluation. While this is referred to as free overtime, it is not included in the numbers regarding hours worked in a year mentioned above. This type of illegal overtime labor is ubiquitous. As a result, the actual number of hours worked in Japan far exceeds 2000 hours yearly.

As for paid vacations, an average of only 9.4 paid vacation days are taken each year, and as pointed out in the Government Report, the percentage of days actually used is very low because they tend to be saved up for use in the event of illness, or because the workplace situation makes it difficult to take a paid vacation, or because the worker fears receiving a low performance evaluation.

It can thus be seen from the above discussion that the actual life of a Japanese worker is far from the 'fulfilling life' claimed by the government. Japan's long working hours are causing Japanese workers to lose their health, even their lives, and are depriving them of time to

spend with their families and as members of society as a whole, which constitutes a violation of the provisions of Article 7 of the Covenant regarding 'just and favourable conditions of work' and 'reasonable limitation of working hours'. Consequently, comprehensive policies to shorten working hours are urgently needed.

3 Safe and healthy working conditions (Article 7)

A Opinion of JFBA

In order to protect the rights conferred under Article 7 of the Covenant, the Japanese government should immediately adopt measures that address corporate policies that impose on workers excessive workloads, long working hours and severe mental strain, which lead to 'karoshi' (death from overwork) and suicide due to overwork.

B The Government Report

The Government Report states in paragraph 64 that "[t]he number of casualties due to industrial injuries (accidents while on duty or while commuting and occupational illnesses) has continued to decrease after reaching a peak in 1961."

C Rationale

Even though the number of work-related deaths has generally decreased, it was still as high as 1,844 in 1998, and it has risen again in 1999 to 1992. In particular, in 1998, the number of workers who were hospitalized for brain or heart disease due to long and intensive work reached a record 90, and 42 of these patients died due to overwork. These numbers represent only cases recognized by the government or the courts, and the potential number of cases of 'karoshi' is much higher. In response to the widespread occurrence of 'karoshi', a group of attorneys specializing in this area has set up a telephone counseling service each year ('Karoshi 110'), which provides counseling for workers and their families in around 200-300 cases each year. Several years ago, the Economic Planning Agency determined that the risk of 'karoshi' became significant when a worker worked more than 3100 hours per year, and surveys have determined that one out of six Japanese men works such hours.

A particularly prevalent problem is suicide due to overwork, which has been increasing of late. In 1999, there were 93 claims for compensation for suicide due to overwork, and in 11 of those cases the cause of death was recognized to be suicide related to overwork. Suicide due to overwork was particularly notable among younger workers. In one court case, a 24 year-old worker whose suicide was ruled death by overwork left the office in the middle of the night every day for six months. Two months before his death, he left the office after two o'clock in the morning every three days and worked overnight every four days, leading inexorably down the road to his eventual suicide. The problem has become so serious that the Labor Ministry has to relax its standards for recognizing when a death is due to overwork.

In some of these cases, the business has been ordered to pay damages by the court, but the government has consistently failed to adequately investigate or supervise the labor situation. No investigation has been carried out to determine true working hours, which include the real number of hours that are worked but are not reflected in statistics because they consist of discretionary labor hours or free overtime, nor have measures been taken to eliminate such unpaid overtime.

In addition, it takes a long time under worker's compensation insurance to receive official recognition of a labor-related incident, such as death from overwork or the occurrence of an occupational health problem, and the standards for recognition are quite strict. Where an application for recognition under the worker's compensation system is denied, it can take up to several years to obtain a judicial determination that the condition was work-related. Therefore, prompt remedies for workers who suffer from workplace-related death or injury, as well as for their families, must be ensured.

4 Discrimination in regard to conditions of employment (Article 7)

A Opinion of JFBA

Discrimination against part-time and other non-regular workers in regard to conditions of employment, particularly as reflected in the revision to the Temporary Worker Law that went into effect on December 1, 1999, harms job stability and officially

sanctions discrimination against non-regular workers in violation of Articles 6 and 7 of the Covenant.

B The Government Report

The Government Report states in paragraph 51 that "the minimum wage is applied to all workers including full-time, temporary and part-time employees," but does not discuss temp labor.

C Rationale

(1) 'Japanese Management for a New Age', announced by the Japan Federation of Employers' Associations (Nikkeiren) in 1995, advocated that the labor force policy for the 21st century involve a steady reduction in the number of regular workers and a corresponding increase in the number of non-reguler workers, such as part-time and temp workers. Since then, employment of non-regular workers has skyrocketed. In particular, during Japan's long economic slowdown, there have been few full-time hires, and as a result of restructuring, large numbers of full-time workers have been replaced with part-timers, temp workers, contract workers, and other non-regular employees. The goals are 'low wages' and 'workers who can be let go at any time to adjust the workforce'.

Only some of workers representing this increase in part-timers and temp workers chose non-regular employment based on their own needs, as described by the government, and a number of non-regular workers are tolerating their status as part-timers, etc., simply because it is difficult to find full-time employment. The number of workers forced to work nights at another job because their regular wages are too low to enable them to earn a living is increasing.

According to a 'Manpower Survey' carried out in 1999 by the Prime Minister's Office, non-regular workers totaled 11,380,000 workers (comprising 21.8% of the total work force), 67.8% of whom were women. Part-timers account for 37.4% of all women workers (over 50% of all female workers aged 35 or older). Women find it particularly difficult to find full-time employment. In 1998, earnings of female full-time workers were only 63.9% of those of male full-time workers, and female part-timers earned only 68.4% of the earnings of female full-time workers (Source: Labor Ministry, 'Wage Structure Basic Statistical Survey').

Although classified as non-regular employees, the actual conditions of employment for such employees are often exactly the same as those for regular employees. In the Maruko Alarm Case, involving a lawsuit filed by female temporary employees who worked for many years alongside regular employees and did the same jobs, the trial court recognized the disparity in pay between the non-regular and regular workers (Nagano District Court, March 15, 1996) and a settlement was reached in the High Court. Although this precedent was finally established, similar conditions are prevalent.

Non-regular workers enjoy much worse terms of employment than regular workers, in that they are subject to immediate layoffs, they receive no paid vacation, and they receive no severance pay or retirement allowance. Nevertheless, Japan's Part-Time Workers Law does not address these problems. Japan should immediately ratify ILO Convention No. 175 (the 'Part-Time Work Convention'), and revise the Part-Time Workers Law to require 'equal treatment' with regular workers.

(2) As of December 1, 1999, temp labor, which was previously limited to 26 occupations, has now been liberalized in principle, subject only to a few exceptions. The work categories eligible for temp labor are restricted by ILO Convention 181, and other countries impose restrictions on the types of work that may be performed by temp workers (Germany, Italy), on the grounds for using temp labor (France, Italy), and on the introduction of temp workers in businesses that have recently reduced the number of employees (Italy, Korea). Some countries also require that temp employees who work for a particular employer for a certain length of time must be hired as regular workers (Germany, France, Italy, Korea). By contrast, in Japan, temp workers are subject to immediate termination, wages in violation of contract, work hours outside the scope of the contract, workplace bullying, and other practices that emphasize the instability and powerlessness of such workers, and Japan has not only taken no action to address these problems, but has dramatically expanded the number of jobs that may be filled by temp workers and has deregulated the temp industry in principle.

The temp labor industry has emphasized the advantages of the shift to temp workers, i.e., (1) reduced employment responsibilities, and (2) lower workforce size adjustment costs and personnel costs. The recent

deregulation of temp labor was implemented at the strong behest of industry. Many companies have suspended new hires of regular workers solely in order to reduce costs. We are seeing a dramatic and sudden shift from regular workers to temporary workers, and a large increase in the number of temporary workers is expected in the future. As a result, more and more employees work in unstable jobs which may disappear at any time, suffer discrimination in their terms of employment relative to regular workers at the same company, and have no rights to social security or other fringe benefits.

5 Labor unions (Article 8)

A Opinion of JFBA

(1) The Japanese government's blanket refusal to allow national civil servants to enter into labor agreements or to strike, or to allow prefectural civil servants to strike, violates paragraphs 1, 2 and 3 of Article 8 of the Covenant.

(2) The denial of basic labor rights to self-defense personnel, police officers and firefighters is a violation of paragraphs 2 and 3 of Article 8 of the Covenant.

(3) The Japanese government's discrimination against particular labor unions, and its refusal to adopt measures to prohibit such discrimination, violate Article 8 of the Covenant.

B The Government Report

The Government Report states in paragraph 47 that "Article 28 of the Constitution guarantees the right of workers to organize and to bargain and act collectively," and in paragraph 48 that "[t]he basic labour rights of national public employees...are limited because of the characteristics of their positions and their public duties; such employees, except for those working in government enterprises, may not conclude labour agreements concerning employment conditions, including salaries."

C Rationale

(1) Public employees may be subject to restrictions on their right due

to their 'public duties'. However, there is no reason to enforce a blanket prohibition on the right to strike, or to deny the right to organize. Japan's National Public Service Law and local laws pertaining to civil servants generally prohibit strikes, and impose criminal penalties for violations of this rule. The ILO has conveyed its concern on this point to the Japanese government (Committee of Experts on Application of Conventions and Recommendations, 1995). Furthermore, police officers and firefighters are denied the right to organize, which is certainly a violation of Article 8 of the Covenant. Court decisions have found no violation of the Covenant or of ILO conventions on such grounds as "the treaties do not guarantee civil servants the right to strike," "reasonable restrictions are permissible," and "in Japan, the right of civil servants to strike is withheld." In Japan, the number of civil servants whose basic labor rights are being restricted exceeds 4,000,000, comprising 8% of Japan's work force. The denial of rights to these workers has a significant effect on all workers.

The ILO has also indicated that it regards as problematic the inability of Japanese firefighters to organize. The government responded to the ILO's comment by establishing a 'Firefighting Personnel Committee', deeming it as a substitute for the right to organize, but this Committee does not function as a labor union in any sense of the term, and cannot constitute a reasonable ground for the restriction of the firefighters' right to organize.

(2) Naturally, government discrimination against particular unions and union members is impermissible under the Covenant. However, national civil servants experience discrimination in regard to assignment and promotion based on the labor union to which they belong. For example, in connection with the ZENZEIKAN (All Japan Customs Workers' Union Case, several courts recognized discrimination in terms of assignment and promotion, but 20 years after the suit was filed, the government has failed to adopt any labor administration reforms.

(3) The matter involving the refusal of JR to retain the 1,947 members of the National Railway Workers' Union (KOKURO) and All National Railway Locomotive Engineers' Union (ZENDORO) after the 1989 privatization of the railway company has still not been resolved after ten years. On November 18, 1999, the ILO noted that the Japanese government actively encouraged the privatization of the railway, identified anti-union discrimination as a problem, pointed out the

government's involvement as alleged by the unions, and stated that "The Committee urges the Government to actively encourage negotiations between the JR companies and the complainants." The government should immediately take responsibility for resolving this problem.

(4) Regarding the appointment of Labour Relations Commission members, who have an important responsibility in the Labor Relations Commission system, nearly all of the members of Prefectural Labour Relations Commissions, and all of the members of the Central Labour Relations Commission, are appointed from persons recommended by only one union (the Japanese Trade Union Confederation, which has approximately 7.5 million members). Members recommended by a different union (the National Confederation of Trade Unions, which has 1.6 million members) have not been appointed. This can only be regarded as discrimination against a specific union by the prefectural and national governments.

(5) The infringement of the right to organize, which constitutes disadvantageous treatment of a labor union, and the failure to promptly remedy such infringement, is a major factor in weakening a union's ability to organize and win concessions on labor demands, which are the two principal activities of a labor union, and this has resulted in a decline in union membership. Recently, there have been virtually no strikes in Japan, and in 1998, the rate of union membership was 22.4% and falling.

Specific Topic 7
Environmental protection

1 Environmental measures (Article 12)

A Opinion of JFBA

(1) The government's continued failure to meet many of the environmental standards established to prevent pollution violates Article 12 of the Covenant. Appropriate policies must be devised and implemented immediately to attain these standards.

(2) The government must acknowledge its failure to date to carry out policies to protect the health of the Japanese people and the natural environment from the effects of toxic chemicals that have a serious environmental impact, such as dioxin, and must impose and enforce regulations that conform to international standards.

B The Government Report

The First Periodic Report submitted in March 1989 stated with regard to environmental measures that (1) environmental pollution had progressed to a significant degree and had impacts on human health, (2) comprehensive environmental policies were being implemented to address the problem and were resulting in overall improvement of the environment, but that improvement was slower to occur in urban areas, and (3) while efforts were being made to establish and achieve environmental standards regarding such problems as air and water pollution, noise and vibration, and soil contamination, further improvement efforts were required.

However, in general, the report simply discussed the establishment and implementation of government policies, and did not specifically describe the harm caused by pollution or the extent to which its environmental standards were being attained. It also did not discuss any measures to prevent nuclear accidents, such as those at nuclear power plants.

In the Second Periodic Report, the government discussed in paragraph 206 only its legal scheme for dealing with waste, and supplied

no information whatsoever regarding the dioxin created during the disposal of waste, environmental toxins, or any other environmental problems.

C Rationale

After the Second World War, Japan was the birthplace for victims of such grave environmental problems as Minamata disease, 'Itai-Itai' disease, air pollution and airplane noise. Victims were inevitably forced to litigate for many years in order to receive damages. As of December 1999, approximately 64,000 patients had received compensation under the Pollution Health Damage Compensation Law, which is based on the principle of liability for civil damages. Furthermore, persons living near highways continue to suffer injury from air pollution, and cases seeking damages and injunctions continue to be filed.

In response to the increase in environmental problems, the government in the late 1960's established various environment standards, but these numerical standards have yet to be met at many regional measuring stations. Environmental standards are administrative standards that are desirable from the standpoint of protecting human health and preserving the living environment, and are deemed targets to be sought, but the repeated failure year after year to reach such environmental standards must ultimately be considered the failure of the government to discharge its responsibility to protect the health of the people. It is important to prevent pollution and environmental destruction before they occur, which is why at the very least environmental standards must be achieved. Japan's long-term failure to achieve its own environmental standards flies in the face of Article 12's call for the "improvement of all aspects of environmental and industrial hygiene...to achieve the full realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

Although Japan has an Environment Agency that addresses environmental problems, it is smaller than other agencies in terms of personnel and resources, and its direct authority is highly circumscribed. As a result, it is criticized for being weak in its dealings with other agencies, and it has not taken sufficient steps to implement environmental measures or achieve environmental targets. As of January 1, 2001, the Environment Agency was finally designated the Environment

Ministry, but beyond merely changing its designation from an agency to a ministry, the government must actively take substantive steps, such as by giving the Environment Ministry the authority to enact and enforce regulations to ensure the prompt attainment of Japan's existing environmental standards.

(2) The lives and health of large numbers of Japanese are being harmed by such things as the dioxin emitted from waste treatment plants and the toxic chemicals emitted from factories. Japan has more waste incinerators than any other country in the world, and the threat to agricultural products posed by dioxin from these plants has become a serious social issue, to the point of causing social panic.

After taking no action for a long time, the government in November 1999 finally enacted a Law Concerning Special Measures against Dioxins. Although this Law sets the Tolerable Daily Intake (TDI) for dioxin at 4 picograms per kilogram of body weight, and establishes a number of other environmental standards, many of these values are relatively weak compared to international standards. The Law also includes provisional standards applicable over a limited period of time, but this constitutes inadequate regulation from the standpoint of protecting the health of Japanese citizens.

2 Nuclear facilities (Article 12)

A Opinion of JFBA

(1) After a succession of nuclear accidents in Japan, the Japanese government must clearly determine the causes of these accidents, implement measures to prevent such accidents in order to protect the health of the residents of the areas surrounding nuclear facilities, as well as the environment, and immediately establish policies to protect residents in the event of an accident.

Furthermore, administrative agencies responsible for safety regulation must be given sufficient authority to discharge their responsibilities and sufficient resources (in terms of staff, facilities, etc.) to do so.

(2) Construction of new nuclear power plants and expansion of

existing plants should be halted, and existing plants must be gradually taken off line and shut down. Reprocessing of spent fuel should be stopped.

(3) While the Japanese government has enacted a law authorizing the final disposal of high-level radioactive waste from nuclear power plants 300 meters underground, because there is no guarantee of absolute safety, and the risk of contamination of ground water cannot be completely dismissed, the law violates the spirit of Article 12.

B The Government Report

The Government Report did not discuss any measures to prevent nuclear accidents, such as those at nuclear power plants, nor did it address measures to deal with radioactive waste.

C Rationale

(1) In close succession, Japan experienced the Monju reactor sodium accident in December 1995, the Tsuruga power plant accident involving leakage of cooling water in July 1999, and the Tokaimura uranium criticality accident in September 1999, increasing public concern regarding the safety of nuclear power plants and nuclear power.

In particular, the September 1999 Tokaimura accident, which involved a nuclear explosion accident, i.e., a criticality accident, resulted in the death of two workers and the radiation exposure of many employees and surrounding residents, exposed the sloppiness of nuclear power management, and increased the concern of local residents.

(2) While measures to prevent nuclear accidents and measures to ensure the safety of residents in areas where accidents occur are urgently needed, and although the government loudly trumpets its strengthened safety regulations regarding nuclear power, accidents keep happening nonetheless. This is the result of the government's failure to thoroughly investigate accidents, and its consideration of the causes of each accident in isolation while failing to apply the knowledge it obtains to all power plants. From the standpoint of the legal system, a Nuclear Power Safety Commission exists separately from regulatory agencies (the Ministry of International Trade and Industry and the Science and Technology

Agency), and this separation is supposed to provide a double check to ensure safety, but the Nuclear Power Safety Commission lacks the authority to enforce safety rules, and in general is ineffective in implementing safety regulations. Furthermore, although a system is in place to immediately warn surrounding residents in the event of an accident, employee accident reports are always late, and the applicable standards for acceptable radiation exposure are much weaker than international standards. Furthermore, there is no consideration of the safety needs of surrounding residents.

(3) The U.S., Germany, France and other countries have already abandoned plutonium-based fast breeder reactor technology, and have shelved plans for construction of new nuclear power plants. This trend away from nuclear power derives not only from safety issues, but from the fact that, in light of its high costs, including the cost of processing radioactive waste, it is clearly not competitive with other forms of energy generation.

However, policies promoting nuclear power are still being followed. Japan is currently planning to increase the number of nuclear power plants from the current 52 to 65 by 2010. This trend cannot be justified in terms of safety, cost, or any other standpoint.

Furthermore, in Japan, the spent fuel from nuclear power plants must be reprocessed.

However, when one considers the dangers posed by the plutonium that results from reprocessing, the high amounts of radiation emitted during reprocessing, the risk of an accident, and the difficulty of processing high-level radioactive waste, the disadvantages of extracting plutonium through reprocessing are greater than any possible advantages. The use of plutonium in fast breeder reactors based on policies favoring reprocessing are being abandoned worldwide, and such policies should be abolished in Japan as well.

(4) In particular, the processing of high-level radioactive waste generated by nuclear power plants is extremely dangerous. Nuclear waste is highly radioactive, and generates a great deal of heat when it decays. Such waste is said to take tens of thousands to hundreds of thousands years before its danger level decreases to the level of natural uranium.

Japan has maintained its pro-nuclear policy despite the fact that no method for processing and disposal of this dangerous high-level radioactive waste has been clearly determined.

In May of 2000, the government enacted a law providing that final disposal of this high-level radioactive waste will involve burial at least 300 meters underground.

However, because this disposal method amounts to final burial of high-level radioactive waste without human supervision, 'absolute safety' is essential. If the high-level radioactive waste escapes into underground aquifers and contaminates the environment, there will be severe damage to human lives and property, and the permanent danger posed by such waste will be pushed off onto future generations. Particularly in an earthquake-prone country such as Japan, the safety of underground disposal cannot be assured.

Therefore, Japan's promotion of underground burial despite the absence of safety guarantees violates Article 12's recognition of "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health," and its call for "steps...[to improve] all aspects of environmental and industrial hygiene."

3 Waste processing (Article 12)

A Opinion of JFBA

(1) The illegal disposal of Japan's industrial waste, such as the illegal dumping of industrial waste at Teshima Island and the illegal export of industrial waste to the Philippines, has become a social issue. In order to prevent illegal waste disposal and improper waste treatment, Japan should increase the responsibility of waste disposal businesses, and develop a workable system (a manifest system) involving the recording and management of the movement of such substances from emission through final handling.

(2) In light of the capacity restraints being faced by existing waste handling plants, and in order to create a 'recycling society' that follows the principles of 'reduce, reuse and recycle,' Japan should introduce an enhanced waste producer responsibility system that

clearly establishes the principle that waste disposal is the producer's responsibility.

(3) After acknowledging the fact that the building of waste disposal facilities contaminates the natural environment, etc., Japan should establish regulations that restrict the building of such facilities to locations away from waterways and water sources, and should immediately adopt preventive measures that involve public disclosure of information and citizen participation regarding liquid seepage pollution levels and water barrier techniques.

B The Government Report

While the Government Report states in paragraph 206 that (1) municipal authorities (cities, towns and villages) are responsible for the management and disposal of general waste, and for establishing a general waste disposal plan for their respective area, (2) in principle, the person or entity generating industrial waste is responsible for its disposal and proper management, and (3) all operations, such as collection, transportation, treatment and final disposal of waste, must comply with legal standards, and speaks as if the government were properly handling and managing waste, it does not talk about the problems of illegal disposal and toxic chemical emissions from waste treatment plants, nor does it discuss the civil lawsuits that have been filed as a result.

C Rationale

(1) The largest case of illegal waste dumping in Japanese history occurred on Teshima Island, in Kagawa prefecture. The waste disposal firm subsequently became insolvent and went bankrupt, leaving behind 500,000 tons of industrial waste. Because the waste company went bankrupt and was unable to remove it, the prefectural government, which had failed to detect the illegal dumping, took responsibility for it, and decided to dispose of it elsewhere after treating it to make it non-toxic. There are other similar cases throughout Japan. Oddly, however, while they are willing to expend a great deal of tax money to deal with waste, governments fail to inquire into the responsibility of the producers that generate the waste.

In December of 1999, the illegal export of toxic waste to the

Philippines was discovered. While the waste was shipped back to Japan in this case, the illegal dumping and burning of waste is an ongoing problem. Another social problem is the pollution damage in the area surrounding the city of Tokorozawa due to the dioxin that is generated by illegal burning of waste, as well as due to the concentration of small-scale incineration plants, causing local residents to apply for mediation of the pollution dispute.

The never-ending illegal dumping and burning, and the continuing improper incineration practices (according to an April 1999 survey, in 1997 there were 855 cases of illegal dumping, involving 400,000 tons of waste), are the result of (1) the light punishment of illegal disposal, and (2) the fact that, once a waste-producing firm contracts out the disposal of waste to a waste treatment firm, the waste-producing company is absolved from responsibility for any illegal disposal practices committed by the waste treatment firm. No fundamental solution to the problem of illegal waste disposal is possible until waste generator responsibility and extended producer responsibility (EPR) are established in Japan.

The government has finally revised its Waste Processing Law (effective October 10, 2000) and strengthened the responsibility of waste producers by imposing a duty of care. The determination of whether a breach of this duty of care has occurred must be made very strictly. For example, the waste producer should be required to bear the burden of proving the absence of negligence. Furthermore, while a recording system (manifest system) that comprehensively manages the movement of substances from emission through processing and final disposal has been implemented in Japan as a countermeasure against illegal and improper dumping, there is little regulation of the widespread fraud occurring in the system, so the system is ineffective at present.

(2) In Japan, final treatment plants have reached their capacity limits (general waste final processing plants are said to have another eight years of use left, while industrial waste final processing plants have approximately three years of use remaining), which requires that Japan become a 'recycling society' that practices the three principles of 'reduce, reuse recycle' and generates as little waste as possible. In order to accomplish this goal, it is important to place responsibility on the producer by clearly establishing EPR and building a system in which the producer is held liable from the manufacturing stage onward, up to the

point at which its waste impacts the environment. In Japan, such a law imposing EPR has historically not existed, but a recently-enacted Recycling Society Basic Law went into effect in June of 2000.

However, this law is merely a statement of ideals, and lacks effectiveness. It is based on separate existing laws imposing on consumers a portion of the responsibility for waste, and merely sets out a theory of shared responsibility, i.e., that responsibility should be divided among the national and prefectural governments, waste producing firms and consumers.

By contrast, in Germany, for example, the principle that the contaminating party pays for waste disposal is strictly adhered to, and the producers are charged with heavy responsibilities, including the obligation to collect used items free of charge.

(3) In Japan, it is becoming increasingly difficult to locate waste disposal plants in urban areas, and such plants are now being built in forests and other undeveloped areas, as well as in watershed protection areas.

However, growing popular concern regarding environmental contamination has resulted in opposition to the building of treatment plants in unspoiled areas and near rivers, and injunctions against construction have been issued in some cases. Because it is extremely expensive and time-consuming to restore an area to its natural state once it has been contaminated, preventing such contamination is the first option that should be considered.

In order to accomplish this, regulation of waste disposal site placement must be strengthened. Because current standards governing such facilities do not discourage or even regulate placement in watershed areas, laws prohibiting the placement of waste disposal facilities in such areas should be enacted.

Furthermore, a duty to disclose information regarding emissions and water barrier techniques should be imposed, and a procedure should be established to ensure that residents of surrounding and downstream areas are sufficiently heard prior to final placement decisions.

4 Sewage treatment facilities (Article 12)

A Opinion of JFBA

(1) The focus of sewage treatment should be changed from 'drainage' to 'reclaimed water', and the principle of self-treatment of contaminated water at the source of contamination via a combination septic tank system that treats both toilet sewage as well as other household waste water, etc., should be promoted.

(2) Single-purpose septic tanks that are designed only to treat toilet sewage and allow other types of household wastewater to enter without treatment, which is a significant factor in water contamination, should immediately be abolished.

B The Government Report

The Government Report states in paragraph 208 that (1) local governments such as municipal authorities (cities, towns and villages) and prefectures are responsible for the construction and maintenance of sewage facilities, (2) the government provides local governments with financial and technical assistance for the construction of sewage facilities, (3) wastewater must be treated by sewage purification plants, and (4) such treatment preserves the quality of public bodies of water, making it sound as if Japan has a flawless sewage system.

C Rationale

The water quality of public bodies of water such as rivers and streams is poor and is not improving, as is revealed from the low (80% in the case of rivers) rate of compliance with environmental standards such as the BOD (or COD) index, which is a representative water quality index.

One of the causes of this problem is the daily household sewage discharged from the kitchen, laundry, bathroom, etc.

Historically, it has been believed that rivers and oceans may be made clean again if wastewater from communities is treated in a sewage treatment system before it is released, and the need to develop a sewage system has been emphasized.

However, even though a huge amount of money (approximately 4 trillion yen annually) has been invested, the sewage system to treat household wastewater has not been adequately improved. While in areas that do not have sewage treatment facilities it is necessary to install septic tanks as a means to treat toilet sewage, in such cases, single-purpose septic tanks, which are less expensive and have a smaller footprint than combination septic tanks that handle both toilet sewage and other types of household wastewater, are used in large numbers (it is believed that this type of septic tank is used by more than 30,000,000 people). These single-purpose septic tanks ironically cause the very river pollution they purport to combat, because households with single-purpose septic tanks release non-toilet household wastewater untreated into rivers, while the standards governing the release such wastewater are very lax. Furthermore, responsibility for the sewage system is shared by a number of different government bodies: The sewage systems directly leading from communities are installed and maintained by municipal governments (cities, towns and villages), the sewage systems near rivers are installed and maintained under the management of the prefectural government (both systems are governed by the City Bureau of the Ministry of Construction), while single-purpose septic tanks are installed and maintained by individuals (and are governed by the Housing Bureau of the Ministry of Construction). Because these different government agencies have different policies, water system-related budgets are fragmented, and wasteful expenditures often result.

Moreover, because the prefectural sewage systems near the ocean release the treated water into the ocean, the treated clean water does not return to the river. As a result, medium-sized and small rivers face the risk of insufficient water flow. Since living creatures are nourished and maintained based on the water cycle, and because the water in rivers in particular is limited and precious, it is extremely important to maintain the water cycle in sewage treatment as well. Therefore, we must promote self-treatment of wastewater at the source using combination septic tanks and community treatment plants. The quality of the treated water must also be maintained at or above a fixed standard. Single-purpose septic tanks should be abolished immediately, and the water quality standards for the treated water released from wastewater treatment facilities must be raised.

5 Protection of natural heritage sites (Article 15)

A Opinion of JFBA

(1) The system of laws established to protect the natural environment from development should (i) have the perspective of ecosystem preservation, (ii) implement comprehensive measures to protect nature, including the natural environment within communities, and (iii) comprise a uniform system of laws that incorporates these principles.

(2) The lack of recognition by the courts and administrative tribunals of environmental rights and the right to enjoy nature must be addressed immediately.

B The Government Report

The government report, in paragraphs 258 through 261, makes the following statements:

a) "Under the Nature Conservation Law, the Government conducts surveys to understand the natural environment of the nation, designates nature conservation areas, and manages such areas to preserve the natural environment appropriately."

b) "The Government also designates and manages natural parks based on the Natural Parks Law to conserve and properly use the prominent natural landscapes."

c) "The area covered by the National Parks Law amounted to 5,330,000 hectares in 1994, which is 14 per cent of the total land area of the nation."

d) "To protect animal and plant life and preserve the natural environment through the preservation of primitive forests, Japan designates and manages a significant part of the national forests as protected forests such as the Forest Ecosystem Reserves."

These statements make it sound as if Japan were adequately protecting Japan's natural heritage sites.

C Rationale

(1) Once a site is designated an 'old-growth natural environment protected area' under the Nature Conservation Law, it is strictly protected, and may not be entered, but because only areas owned by national or local bodies are eligible for such a designation, very little land (only 0.015% of the land area of Japan) has received it. Similarly, few areas have received 'natural environment protected area' status (10 areas totaling 21,593 hectares), and there are cases in which development of such areas has been allowed based solely on a notification of intended development, which makes clear that these areas are 'protected' in name only.

Moreover, even where a designation under the National Parks Law is issued, only a limited number of areas within the national parks have received the designation of 'special protection region', which indicates that logging is prohibited ('special protection regions' comprise only 6.2% of the total area of national parks). In most national park forests, therefore, industrial activities such as logging are permitted. The National Parks Law is no more than a law to enable people to use areas that have good scenery, and is not truly intended to protect the national environment.

Furthermore, even if a national forest is designated a protected forest, there is insufficient legal protection due to the absence of legal enforceability, and the scope of protection is limited (forests designated as Forest Ecosystem Reserves comprise only 4% of all national forests). Some of these areas may even be sold off as one measure to address the financial crisis underway in the national forest program.

The 'Yakushima' and 'Shirakami Sanchi' sites designated as world heritage sites are no exception. As of March 1993, only 1,219 hectares within Yakushima and 14,043 hectares within Shirakami Sanchi had been designated 'old-growth natural environment protected areas,' and logging activities can be observed in some locations within the Shirakami Sanchi borders.

In the area of wildlife protection as well, the law (such as Law Regarding Preservation of Wild Animals and Plants Facing Extinction, for

example) establishes rules only from the perspective of protection of individual rare animals and plants.

Therefore, the government should carry out thorough investigation and research regarding the natural environment to get a clear picture of the current situation, and from the standpoint of ecosystem preservation, should immediately implement comprehensive preservation measures that encompass the entire natural environment, not just areas that offer nice views or that have scientific value, and a unified system of laws to that end should be enacted.

(2) Environmental rights may be defined as follows: 'Citizens have the right to manage the environment and enjoy a thriving environment. Where a person contaminates the environment, injures our capacity to live a comfortable life, or attempts to do so, citizens may seek to eliminate or prevent this harm based on such rights.' If such rights are recognized, where the natural environment is threatened with destruction by development activity, citizens may file suit in court to obtain an injunction based on environmental rights.

However, there are no provisions for 'environmental rights' in Japan's legal framework regarding the environment. The Environment Basic Law enacted in 1993 provided that the government should take the environment into account in formulating and implementing policies, but did not clearly establish environmental rights. As a result, where the natural environment is under threat from a public works project, citizens have no effective remedy.

The land reclamation project at Isahaya Bay and the dam construction project at the mouth of the Nagara River are good examples of this. Isahaya Bay had the largest tidelands area in Japan and enjoyed abundant wildlife, and citizens' groups and environmental NGOs led a movement to protect it, but the reclamation project was ultimately forced through. Similarly, the Nagara River dam construction project faced citizen opposition but in the end was rammed through by the government.

There was even a plan to build a 'Seishu Rindo' road in Shirakami Sanchi. In this case, local residents mounted an opposition campaign to protect the area by raising objections to the construction project, and ultimately stopped the plan, but the incident exposed serious

flaws in Japan's legal framework for protecting the environment.

The Japanese government should recognize environmental rights, as well as the 'right to enjoy nature (the right of citizens to enjoy the blessings of nature that are essential to maintain cultured living)', which flows from the concept of environmental rights. Such recognition would enable citizens to file suit based on environmental rights (or the right to enjoy the environment), and would offer a means to prevent the environmental destruction that results from development.

6 Environmental preservation (Articles 12, 15)

A Opinion of JFBA

(1) In order to prevent environmental destruction, an assessment procedure that allows citizens and NGOs to present opinions, request disclosure of information and raise objections regarding policies, plans and programs at the initial drafting stage must be established from a comprehensive perspective encompassing not only the social and economic aspects of a project, but also environmental considerations.

(2) The current environmental assessment system should be immediately revised to establish a neutral, third-party review board to ensure the objectivity and trustworthiness of both the procedure and the substantive content of assessments, and an obligation to explore alternate proposals should be imposed.

B The Government Report

The Government Report does not address these issues.

C Rationale

(1) To prevent environmental destruction from occurring, there must be a procedure by which knowledgeable residents and environmental NGOs can request information and present opinions when development policies, plans and programs are first proposed.

However, there are no provisions in Japan's system of environmental laws that establish a procedure for resident participation,

such as through information disclosure or public hearings.

In 1997, an Environmental Impact Assessment Law was enacted that allowed residents to express their opinions by submitting opinion statements on two occasions.

However, the law applies only to the initial stage of a particular project, and the projects to which it applies are limited. It does not require an environmental impact assessment during the process of high-level planning that forms the basis for a particular project. Because in many cases a development project is commenced based on an implementation plan formulated via this high-level planning process, once a high-level plan is established, even if residents are able to submit input at the construction phase of an individual project, it is very difficult to stop or change the plans at that stage. Therefore, it is essential to implement a comprehensive assessment (strategic assessment) system that incorporates environmental as well as social and economic considerations from the design phase of a policy, plan or program, as well as to establish a procedure that enables resident participation in the process.

Opportunities for resident participation could take the form of a public hearing procedure in which residents and developers have a chance to exchange opinions, and a procedure by which objections may be lodged regarding either the process by which the environmental impact assessment was reached or the substance of its conclusions.

(2) Moreover, in order to ensure the impartiality and reliability of the inquiry into the procedural fairness and substantive accuracy of the environmental impact system, a neutral third party review system or a procedure through which concerned residents and environmental NGOs can participate in the process is needed, but such a system does not exist in the current environmental impact review system.

Furthermore, the current law is inadequate because it does not clearly establish as a basic component of the assessment system a requirement that alternatives to a proposed project be submitted for comparison and consideration.

For these reasons, it cannot be said that adequate procedural

mechanisms for environmental protection exist, and it is clear that improvements in the system are urgently required.

Specific Topic 8
Right to adequate standard of living (Article 11) - right to housing

1 Homeless people

A Opinion of JFBA

(1) The Japanese government must immediately carry out an investigation, on its own and together with prefectural governments, regarding the extent, current status and causes of homelessness in Japan.

(2) After ascertaining the true situation regarding homelessness in Japan, the Japanese government must enact comprehensive measures and apply existing laws currently on the books, such as the Livlihood Protection Law, to ensure that the homeless are able to enjoy an adequate standard of living.

(3) The Japanese government, on its own and together with prefectural governments, must not forcibly evict homeless persons without first talking with them and offering them appropriate alternative places to go.

B The Government Report

The Government Report states only in paragraph 166 that "[t]here are no statistical data on homeless people, illegal residents, and evictions," and does not discuss the problem.

C Rationale

(1) Need for Investigation regarding Extent of Homelessness

Due to the increased unemployment resulting from layoffs caused by the Japan's economic rcession during the last decade, as well as due to the aging of society, the number of homeless persons in Japan has increased dramatically. The most recent government surveys report that there were 8,660 homeless persons living in the city of Osaka in 1998, and that there were 17,174 homeless persons nationwide in 1999 (source: Social Relief Bureau, Ministry of Health and Welfare). However, it is

doubtful whether the methodology of these surveys enabled accurate numbers to be obtained, and it is estimated that the true number of homeless is several times the official number. The government's ignorance of the true state of homelessness in Japan is the largest reason for its failure to take effective remedial measures to assist the homeless.

The Committee also requested in its questions to the government ("29. Please provide detailed information on the number of homeless persons and of forced evictions in Japan.") that information be provided on this issue.

(2) Need for Comprehensive Measures addressing the True Situation

These homeless persons live on riverbeds, which are swampy, unsanitary and subject to flooding, or in parks or on streets, where one can easily be attacked by young hoodlums. In the city of Osaka, 252 people died in parks or on streets in 1990, versus 191 in 1995. If persons who die within 24 hours of arriving at a hospital are included, the number exceeds 400 yearly. Most homeless are middle-aged, with approximately half in their 50's, and around 90% in their 40's through 60's. Most are single men. Many homeless persons have health problems, and an increasing number of older homeless persons are dying from a combination of poor nutrition and exposure to the cold of winter or the heat of summer.

Sixty percent of all homeless persons became homeless since 1999, and 90% since 1998, indicating that homelessness is largely a product of Japan's long-term economic decline since the collapse of the bubble economy. In addition, as a result of the revision of provisions regarding welfare and other living assistance beginning in the 1980's, the conditions for receiving such living assistance have become quite strict. Consequently, the number of persons receiving living assistance declined from 1,430,000 in 1985 to 885,000 in 1995. Prefectural living assistance programs have also begun to deny assistance to those in need on the ground that they have 'no fixed address' or are 'capable of employment', further increasing the ranks of the homeless. Another cause of the rise in homelessness is the lack of a housing policy, which points out the need for a policy to provide low-rent housing of good quality on a nationwide scale.

Although some prefectural governments have begun to address

the homeless problem by offering housing assistance, job training, medical care, etc., the national government has failed to adopt any comprehensive measures to ensure that homeless persons are able to enjoy their right to an adequate standard of living.

The Ministry of Health and Welfare announced a 'Homeless Self-Sufficiency Assistance Program' in March 2000, but even the 'street consultation' component of this program (which at least serves to notify the homeless population that they have the right to receive living assistance) is not adequately implemented. The 'Homeless Self-Sufficiency Assistance Program' was to provide housing facilities for 1300 persons in eight locations nationwide during 2000, but this number is clearly insufficient to cope with the number of homeless and the wide variety of locations in which they live.

In particular, while Japan has a Daily Life Security Law that guarantees a minimum standard of living and provides assistance to promote self-sufficiency, the law is not applied to many homeless persons. The reason for this is that the Japanese government requires an 'address' in order to receive assistance, and accordingly denies assistance under the Daily Life Security Law to homeless persons who do not have a fixed abode, on the ground that they lack an 'address'. However, residency registration is not required in order to receive living assistance benefits, and the Livlihood Protection Law needs to be applied to guarantee minimum housing and living standards to persons having no fixed address.

(3) Forced eviction

On January 24, 1996, the city of Tokyo began forcibly evicting homeless persons from city-owned underground property at the west exit of the Shinjuku train station, where they had lived for many years. Prefectural governments then began to carry out a similar policy of forced eviction. In Japan, homeless people faced with eviction or expulsion based on the exercise of public authority have no systematic right to be heard, to be provided an alternate location, or to receive compensation, which constitutes an infringement of their rights under Article 11 of the Covenant.

2 Great Hanshin-Awaji Earthquake

A Opinion of JFBA

(1) In order to prevent major damage in the event of an earthquake, the Japanese government should, on its own or in conjunction with prefectural governments, provide adequate information to residents in consideration of the possible size of the earthquake and adopt preventive measures with regard to buildings likely to be damaged in an earthquake.

(2) In order to implement preventive measures and provide assistance in the event of a natural disaster, the Japanese government should establish shelters sufficient to handle the likely scope of the damage and ensure that the assistance provided in the event of a disaster is adequate to maintain the dignity of the victims.

(3) In order to provide temporary housing to those who require housing after a disaster, the Japanese government should devise and implement standards to ensure that housing of sufficient quality and quantity is made available.

(4) The Japanese government should carry out an investigation to determine how many people were unable to rebuild their houses after the Earthquake and the circumstances they currently face, and adopt measures to ensure that such people have housing, It should also implement measures to lessen the debt facing persons who have lost their home due to destruction or fire.

B The Government Report

The Government Report does not discuss these issues.

C Rationale

(1) The Great Hanshin-Awaji Earthquake and Japan's response

The Great Hanshin-Awaji Earthquake, which struck at 5:46 a.m. on January 17, 1995, was centered directly under a major city, which had never occurred before in Japan. Approximately 6,300 persons were killed, over 43,100 were injured, and the event claimed more victims and caused

more damage than any Japanese natural disaster since the Great Kanto Earthquake. In response to the earthquake, the Japanese government designated 10 cities and 10 towns in Hyogo prefecture and five cities in Osaka prefecture as eligible for disaster assistance under the Disaster Relief Law. It ended this designation on August 20, 1995 (source: Health and Welfare White Paper, 1996).

(2) Provision of Earthquake Information, Implementation of Measures

Approximately 440,000 households were victims of the Great Hanshin-Awaji Earthquake, and 250,000 houses were either totally or partially destroyed or completely burned down. 5,500 persons died as a direct result of the earthquake, with 88% of these dying after being crushed by structures or furniture, and 10% of the fatalities due to fire. As these numbers indicate, collapsing buildings and fire were direct causes that increased the damage.

Furthermore, experts had pointed out in 1974 and again in 1986 that 'the city of Kobe resides on a number of fault lines, and an earthquake located directly under the city could have a magnitude of 6.0.' In 1988, in a suit by citizens trying to stop the construction of a railway line to an artificial island in Kobe, a geologist testified that "Given the possibility of a large, M7-class earthquake, the land selected for construction of the new line has a bad foundation, and is not appropriate for an elevated highway structure. If a major earthquake occurs, the railway line could be destroyed and the island could become isolated." However, the city of Kobe, after learning that a 6.0-magnitude earthquake would require a budget sufficient to construct a large-scale evacuation shelter having an earthquake-proof and fireproof water tank, determined that a 6.0-magnitude earthquake was not a realistic hypothesis, and developed disaster plans based only on the assumption of a 5.0-magnitude earthquake. In addition, while under the Building Standards Law prefectural governments are empowered to order that structurally unsound buildings be improved and strengthened, the city of Kobe failed to adopt any measures based on the assumption of a 6.0-magnitude earthquake.

General Comment 4 of the Committee provides that the right to adequate housing guaranteed in the Covenant includes the "right to live

somewhere in security, peace and dignity." The Japanese government has an obligation to, either on its own or in conjunction with prefectural governments, based on the assumption of the highest possible magnitude of earthquake for each area, to provide information to local residents and implement preventive measures with regard to structurally unsound structures. Furthermore, the Japanese government should, together with prefectural governments, in order to prevent further injury due to the collapse or burning of buildings, review their earthquake readiness and disaster prevention plans. The central and local goverments should also provide adequate information to residents as well as invoke the Bulding Standards Law to order the retrofitting of existing buildings that are structurally deficient and restrict the building of new structures on active fault areas.

(3) Need for Adequate Evacuation Shelters and Assistance that considers the Dignity of Victims

After the earthquake, there were a total of 1,153 evacuation shelters in use at the peak (January 23, 1995), which housed 326,678 affected residents (source: Health and Welfare White Paper, 1996). However, because public shelters were insufficient, many people were forced, in the middle of winter, to seek refuge in parks, school playgrounds, river banks, partially destroyed houses, etc. It took 40 days for portable toilets to be installed in public parks, etc. Public evacuation shelters did not separate men and women. The privacy required by women in particular was not sufficiently ensured, and elderly people were forced to sleep on a concrete floor, resulting in health problems for some.

The insufficient number of public shelters, and the resulting poor conditions faced by many earthquake victims, were caused by the government's failure to take measures beforehand to establish evacuation shelters sufficient to handle the number of victims that could have been anticipated. The goverment's standards for care of evacuees that ignored the needs of victims, i.e., as detailed in a notification issued by the Vice Minister of Health and Welfare, '13,000 yen per 100 persons per day' to run the shelter, and '860 yen per person per day' for food and fuel were also to blame

Moreover, even though on August 20, six months after the earthquake, the city of Kobe still had approximately 10,000 persons living

in 250 shelters, it closed the shelters and stopped providing meals. The poor living conditions that these persons faced after the shelter closures ended up claiming 800 more victims from the people that were originally helped in the earthquake.

(4) Insufficient Quantity and Quality of Temporary Housing

Families who required new housing as a result of the earthquake numbered 188,000 households, which includes only those Hyogo prefecture households whose houses were completely destroyed or burned in the earthquake. In response, temporary housing for 48,300 families was built in Hyogo prefecture, which covered only 25.7% of households whose houses were completely destroyed. As a result, the majority of earthquake victims were unable to live in temporary housing, and were forced to live in shelters in other prefectures, or to live on the street or partially destroyed houses. This situation was the result of a notification issued by the Vice Minister of Health and Welfare that called for temporary housing construction that would serve only 30% or fewer of those whose houses were completely destroyed or had burned down, and completely ignored the remaining 70% of victims in need of housing.

Furthermore, the temporary houses that were built were very small, at only 26.4 square meters per house (33.0 square meters for larger households), with insufficient privacy and insulation from the elements. Moreover, because the persons eligible for temporary housing were determined through a lottery, many victims were relocated to temporary housing located far from where they were living, placing them in a situation in which they were unable to maintain personal relationships in their home community. Consequently, in the four years following the earthquake, from January of 1995 to December of 1998, 235 persons died alone, with no one by their side and nobody noticing. Of these, 28 committed suicide, and four died from starvation or weakening.

(5) Rebuilding Permanent Homes, Measures needed to provide Housing to Persons for whom it is Difficult to Rebuild

According to statistics from the Ministry of Home Affairs, approximately 460,000 households in Hyogo prefecture saw their homes completely or partially destroyed in the earthquake. In response, the prefectural government developed a plan to construct 125,000 homes, and

in fact provided 180,000 to 200,000, but the whereabouts of the remaining 250,000 households remains unknown. Even if the number of houses estimated to have been rebuilt by their owners is excluded, it is anticipated that many victims are still not assured of new housing, but there are no statistics or surveys regarding such victims, nor have any measures been adopted on their behalf.

Many Japanese who obtain a house are able to do so only by taking out loans from public housing funds or from banks. As a result of the earthquake, 4,000 houses financed by public housing fund loans totaling 40 billion yen, and 15,000 houses financed by bank loans totaling 150 billion yen, were destroyed, and each owner of a destroyed home was left with an existing average debt of 12 million yen or higher. While making payments on this existing debt, these earthquake victims were then forced to assume new debt to pay for reconstruction. On behalf of these victims, the Japanese government, based on the Law Regarding Disaster Relief Fund Benefits, began to make loans from a disaster assistance fund that limited loan amounts to 3.5 million yen (as of March 1, 1996, the number of loans totaled 55,613). However, this is insufficient relief for families whose homes were destroyed in the earthquake, both because the amount is too small and because the funds consist of loans that must be repaid. As a result, some victims were forced to give up on rebuilding their home, or were forced to sell their property in order to pay off their existing mortgage without rebuilding their house.

Specific Topic 9
Social security

1 Social security expenditures

A Opinion of JFBA

(1) Japanese government expenditures related to social security are much lower as a percentage of the budget than in the developed countries of Europe and North America. This contravenes Japan's obligation, as set forth in Article 2 of the Covenant, to take steps "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant." Japan should increase social security expenditures to a level at which they are in accord with its economic strength.

(2) The Japanese government's scaling back of the pension system in March of 2000, its changing of the eligibility age, and its reduction in the amount of benefits, violate Article 2 of the Covenant.

(3) In June of 2000, the Japanese government, as part of a fundamental reform of the structure of the social welfare system, abolished the existing system of welfare measures and changed it to a contract-based system via the replacement of the Social Welfare Services Law with the Social Welfare Law. This policy of decreased government responsibility may well lead to less protection of the rights set forth by Article 9 of the Covenant.

B The Government Report

The Government Report states in paragraph 105 that "the share of the national budget allotted to social security and the burden on the national economy have been increasing," and provides numbers, but does not discuss recent changes affecting the social security system.

C Rationale

(1) Social security expenditures as percentage of GDP

In order to accurately determine the degree of a country's

commitment to providing social security benefits for its people, i.e, its standards regarding social security, one must look at the country's social security expenditures as a percentage of its Gross Domestic Product (GDP). In 1993, Sweden topped the list with 38.5%, followed by France with 27.9%, Germany with 25.3% and Britain with 21.1%. Japan, by contrast, devoted only 11.9%, which increased slightly to 13.4% in 1996. From this it is clear that from an international perspective, Japan's commitment to social security is comparatively low.

Japan's social security policies accordingly conflict with its duty under Article 2 of the Covenant to take steps "to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant."

(2) Weakening of pension system

In March of 2000, based on the worsening financial condition of the pension system due to the rapid aging of Japan's population, the Japanese government revised the pension system to reduce expenditures. Specifically, it cut the welfare pension (the portion proportional to recipient's average monthly compensation before retirement) by 5%, increased the age of eligibility from 60 to 65, froze the wage slide, which reflects the increase in the average wage of current work force, and made beneficiaries between the ages of 65 and 69 who receive other income responsible for the payment of premiums. The worsening condition of the pension system due to the aging of the Japanese population could have been predicted many years ago, and the government's decision to solve the issue by withdrawing income security in the form of reducing benefits contravenes Article 2 of the Covenant, which imposes a duty of achieving progressively the full realization of the rights recognized in the present Covenant.

(3) Shift to contract-based social welfare system

In a basic structural reform of the social welfare system, the Japanese government conducted a fundamental overhaul of the social security/social welfare scheme that had been in place since the end of World War II, and with the stated goal of eliminating waste and repairing dysfunctional aspects of the system, it implemented welfare reform based on a theory of moving from big government to small government. The

goals of the reform are to abolish the existing system on the noble-sounding pretext of securing diversification on the provider side to meet the wide variety of needs and to ensure the recipient's right to choose, and to shift to a contract-based system. The shift was carried out through the June of 2000 revision of the former Social Welfare Services Law, which was renamed the Social Welfare Law. The intention of the government is to abolish the existing system and introduce contract-based 'market welfare'. However, Article 9 of the Covenant recognizes the right of all persons to social security, and the government has implemented various social security and social welfare policies as its public responsibility. The current shift to a contract-based system may lead to an abandonment of Japan's public responsibilities in the area of social welfare and social security.

2 Family benefits and protection of the family

A Opinion of JFBA

The family benefit scheme, including the Child-Rearing Allowance, should be improved in order to support 'adequate living standards' for families, including children, pursuant to Article 11 of the Covenant.

B The Government Report

The Government Report provides in paragraph 110 the most recent numbers regarding the Child Allowance, Child Rearing Allowance and Special Child Rearing Allowance, but does not evaluate the effectiveness of these programs, nor does it discuss any future policies to strengthen or improve them.

C Rationale

In 1998, the birth rate (the number of children that one woman has in her life) dropped to a record 1.38. One of the factors identified as spurring this trend toward fewer children is the lack of facilities where children can be placed while the mother is working. So long as child-rearing is seen as a burden on the parents, it is clear that it is the children who bear the brunt of the strain. Therefore, Japan's first priority should be to increase its support of families with children. One way in

which it can do this is to improve the family benefit scheme, including the Child Rearing Allowance, in order to support 'adequate living standards' for families, including children, pursuant to Article 11 of the Covenant.

However, rather than strengthening such support, the Japanese government has in fact weakened the system by which it is provided. In other words, in 1999 the government enacted a 'child raising tax cut' that increased by 100,000 yen the tax deduction for each dependent child under 16, but only one year later, in March of 2000, it suddenly abolished this measure. In return, it increased the age of children conferring eligibility for the Child Allowance benefits from 'under 3' to 'before the age of compulsory education' (before the end of the first year after reaching the age of six), which increased the number of children eligible for such benefits by three million. However, on the other hand, household with children aged six to 16, who are not eligible for Child Allowance benefits, as well as households with children under 3 who were already eligible (out of a total eligible child population of 19 million), actually have to pay more taxes as a result of the abolition of the child raising tax cut. This measure must therefore be restored promptly.

Furthermore, the Child Allowance and Child Rearing Allowance benefit amounts fall below international standards, and should be raised.

In particular, in connection with assistance for the raising of children with disabilities, discrimination and prejudice against persons with disabilities is deeply rooted in Japan, and cases have been reported in which a parent, fearing for the future of a child with a disability after the parent's death, have killed the child and then committed suicide. This is evidence of the fact that in Japan, children with disabilities are not raised in an environment where respect for the dignity of their existence is assured. The Japanese government should not slough off the entire burden and responsibility of raising children with disabilities on the parents, and should implement measures to allow society to assist in the upbringing of these children. As such a measure, the Special Child Rearing Allowance system should be revised immediately to provide such assistance.

3 Right to adequate standard of living (Article 11)

A Opinion of JFBA

(1) In light of the duty imposed by the Covenant to take steps to ensure the realization of the right to an adequate standard of living, the Japanese government should raise the benefits provided under the Daily Life Security Law.

(2) The Japanese government should adopt measures to eliminate unnecessary requirements and relax excessively strict standards of review in order to ensure that persons who are in real need of living assistance are not excluded from eligibility for benefits under the law.

B The Government Report

The Government Report simply indicates, in paragraph 141, a table showing changes in the amount of the livelihood assistance benefit between 1986 and 1996, but does not discuss the appropriateness of the level of such benefit and the actual effectiveness of the Daily Life Security Law.

C Rationale

Article 25 of the Japanese Constitution guarantees the right to maintain minimum standards of wholesome and cultured living, and the Daily Life Security Law serves as a key government program to fulfill this commitment. However, the fact that some people are actually dying from starvation indicates that the Daily Life Security Law is not functioning effectively from either a substantive or a procedural standpoint.

In 1981, the Ministry of Health and Welfare issued a notification entitled 'Regarding Promotion of Appropriate Implementation of Living Assistance' that, in the name of preventing fraudulent receipt of benefits, imposed a requirement of 'consultation' when an application is filed, strengthened the preliminary investigation of applicants, and issued guidance to restrict the acceptance of applications. This excessively strict standard for acceptance of applications has had the effect of denying benefits even to persons in real need of living assistance, and some of these persons have actually died from starvation as a result.

Furthermore, as described above, using the excuse of the lack of an 'address' as required under the Daily Life Security Law, prefectural

governments have denied benefits to homeless persons as well. As a result, some homeless persons have actually died from illness on the street after being denied benefits under the law. The Japanese government has recently begun to implement an assistance program in cooperation with the larger prefectures, but this is by no means sufficient. First, deaths of homeless persons must be prevented by emphasizing assistance aimed at restoring their health, followed by measures aimed at improving employment stability and creating jobs. In addition, mental health care and counseling for persons who have lost jobs, families or their health is essential.

Specific Topic 10
Development assistance/International economic relations

A Opinion of JFBA

(1) In regard to official development assistance, the Japanese government should immediately devise policies by which to implement international human rights standards, particularly the various obligations set forth in the Covenant.

(2) In order to ensure effective implementation of the policies described above, the Japanese government should work to involve NGOs in the formulation of these policies and provide better disclosure of information pertaining to official development assistance.

(3) The Japanese government should immediately develop realistic and effective policies to provide debt relief for heavily indebted poor countries, including debt forgiveness, from the standpoint of protection of the rights of the citizens of such countries under the Covenant.

(4) The Japanese government should immediately devise policies to ensure that the Covenant-based rights of citizens of countries that trade with or receive investment from Japanese individuals or corporations are respected.

B The Government Report

The Government Report discusses Japan's provision of official development assistance in the areas of education, health, social infrastructure and social services (paragraphs 163, 164, 210, 232, 233 and 269 through 277), but provides no other specific information. In addition, there is no discussion of international economic relations.

C Rationale

I Official development assistance

(1) Status of implementation of official development assistance

The Japanese government is under an obligation pursuant to Article 2, paragraph 1 of the Covenant to provide international assistance and cooperation, particularly economic and technical assistance, in order to "achiev[e] progressively the full realization of the rights recognized in the present Covenant." (General Comment 3, paragraph 14)

In Japan's 'ODA Annual Report (1999)' (report to Cabinet issued in October 2000), it is reported that Japanese government development assistance in 1999 was 15.32 billion yen, an increase of 44.0% over the previous year, and that Japan has been the world's top ODA donor country every year over the past nine years since 1991. The report further noted that bilateral aid accounted for 70% of this assistance, or 10.48 billion yen (a 22.5% increase over the previous year), that it consisted of grants totaling 2.32 billion yen (an increase of 7.1% over the previous year), technical assistance worth 3.16 billion yen (an increase of 15.4%), government loans totaling five billion yen (an increase of 36.9%), etc. It is also reported that aid via international organizations (international development assistance organizations such as the World Bank, as well as United Nations development-related agencies) accounted for 30% of total aid, and equaled 4.85 billion yen (an increase of 132.3% over the previous year).

(2) Problems with government ODA

However, the development assistance extended by the Japanese government to date has been criticized in that (a) it has mainly been aimed at the construction of gigantic facilities such as dams, ports and harbors, industrial belts, roads and power plants, which not only do not effectively promote social development in recipient countries, but lead to the destruction of their environmental and cultural heritage, (b) it has served to breed corruption in the countries receiving these huge sums of aid, (c) it has been provided principally to Asian countries, indicating a geographical bias, and (d) there is insufficient disclosure of information regarding Japan's ODA. For example, the percentage of bilateral aid provided in the Asian region was 98.2% in 1970. It was still high at 63.2% in 1999.

(3) Policies related to ODA

In Japan's Official Development Assistance Charter (approved by

the Cabinet on June 30, 1992) the Japanese government established its basic policies regarding ODA, which included the following four principles:

(a) Environmental conservation and development should be pursued in tandem.

(b) Any use of ODA for military purposes or for aggravation of international conflicts should be avoided.

(c) Full attention should be paid to trends in recipient countries' military expenditures, their development and production of mass destruction weapons and missiles, their export and import of arms, etc., so as to maintain and strengthen international peace and stability, and from the viewpoint that developing countries should place appropriate priorities in the allocation of their resources in their own economic and social development.

(d) Full attention should be paid to efforts for promoting democratization and introduction of a market-oriented economy, and the situation regarding the securing of basic human rights and freedoms in the recipient country.

Because the past criticisms of Japan's ODA policies have been bolstered by the recent discovery of cases of corruption in connection with Japanese ODA, the government has announced new guidelines regarding its ODA system. For example, in its "Medium-Term Policy on Official Development Assistance (ODA)" (issued August 10, 1999), the government announced its basic approaches in regard to ODA and identified overall priority issues and sectors, as well as those by region, for the next five years, and in a document entitled 'Toward Improving the Transparency and Efficiency of ODA' (November 27, 1999 meeting of executive directors regarding international economic cooperation), the government noted that it should disclose information regarding Japan's ODA to increase its transparency, and to increase the efficiency of aid through a flexible approach that meets the actual circumstances and needs of the recipient country.

(4) Need for application of Covenant, NGO participation and information disclosure

These government guidelines reforming ODA were intended to respond to criticisms of the current state of Japanese ODA, but there has been no investigation into whether they will actually prove effective in mitigating the existing problems with the Japanese ODA system. Furthermore, because the government's ODA Charter and ODA guidelines make no mention whatsoever of the Covenant, it is unclear to what extent they are successful in discharging Japan's obligations under the Covenant. Japan must not only develop ODA policies that meet international human rights standards, especially those that fulfill its duties under the Covenant, but must also, in order to make these policies more effective, seek to involve NGOs more closely in ODA policy formulation and to disclose ODA-related information in a more timely and forthcoming fashion.

(5) Debt relief for Heavily Indebted Poor Countries (HIPC)

The urgent need to relieve the debt burden on heavily indebted poor countries - located primarily in Africa - that suffer from a particularly large external debt burden, partly in order to ensure the rights of the citizens of such countries under the Covenant, was agreed upon at the Koln Summit of developed countries in 1999, resulting in what is known as the Enhanced HIPC Initiative. While Japan declared that it, together with the other G7 countries, would make efforts toward early implementation of the Enhanced HIPC Initiative, its proposed method for debt relief involves not direct debt forgiveness, but a debt-relief grant scheme under which "when effecting 100% debt reduction to countries eligible for the Enhanced HIPC Initiative, Japan will first reschedule its claims and then receive repayments from the debtor country while providing grant aid equivalent to the amount repaid." However, given the widespread international agreement regarding emergency debt forgiveness for HIPCs, Japan's debt-relief grant scheme has been criticized for being overly complex and unrealistic in its requirement that Japan receive repayment of existing debts before offering relief under the new scheme.

The Japanese government should immediately adopt realistic and effective policies regarding debt relief for HIPCs, including debt forgiveness, from the standpoint of giving effect to the rights of citizens of such countries under the Covenant.

II International economic relations

Japan has an obligation under Article 2, paragraph 1 of the Covenant to "take steps...through international assistance and co-operation...with a view to achieving progressively the full realization of the rights recognized in the present Covenant." This obligation is thought to include the obligation to regulate to a certain extent, or issue guidance in connection with, foreign trade and investment carried out by Japanese individuals or corporations, in order to ensure respect for the rights of citizens of the other country under the Covenant.

Laws pertaining to foreign trade and investment carried out by Japanese individuals or corporations include the Foreign Exchange and Foreign Trade Control Law (hereinafter the 'Foreign Exchange Law'), and various government and ministerial ordinances, bulletins and notifications promulgated or issued thereunder. The Foreign Exchange Law is a law that comprehensively controls all foreign transactions, such as trade transactions, non-trade business transactions, capital transactions, and other transactions that give rise to foreign exchange transactions. According to Article 1, the Foreign Exchange Law is based on the principle of "carrying out the minimum necessary degree of control and adjustment of foreign transactions, based on the freedom to conduct foreign exchange, foreign trade and other overseas transactions." The Foreign Exchange Law has no provisions that establish goals or impose restrictions on export trading or foreign investment with regard to respect for the rights of citizens of the other countries under the Covenant.

For example, in the event of direct foreign investment, there are no restrictions imposed under the Foreign Exchange Law, other than the submission of a notification with the Minister of Finance, in the following cases (Article 23 if the Law):

(1) A significant negative impact on the smooth operation of the Japanese economy may result.

(2) International peace and safety may be harmed, or the maintenance of public order may be hindered.

In regard to international trade, in order to avoid 'harm to international peace and safety', the trading of certain items such as weapons and nuclear materials, as well as exports to certain countries, requires the permission of the Minister of International Trade and

Industry, and from the standpoint of 'promotion of a fair balance of trade and the healthy development of the international economy,' the export of certain goods to certain regions requires the approval of the Minister of International Trade and Industry. (Article 48 of the Law)

However, the Foreign Exchange Law sets forth no goals or restrictions from the standpoint of ensuring respect for the rights, such as human rights, possessed under the Covenant by the citizens of Japan's trading partner countries. As a result, it is difficult to regulate export transactions and foreign investment deals involving private Japanese individuals or companies under Japanese domestic law, even where such transactions have serious impacts on the labor conditions, child protections, health, environment or culture of the people in the other countries involved in such transactions.

Therefore, the Japanese government should immediately formulate policies to ensure that the rights of citizens of Japan's trading partners are respected in connection with export transactions and foreign trade transactions carried out by private Japanese individuals and corporations.

Special Topic 11
Right to health

1 Right to appropriate medical care

A Opinion of JFBA

(1) The Japanese government should adopt effective measures to improve the quality of general medical care and ensure the safety of medical care.

(2) The Japanese government should establish a system to provide prompt and appropriate remedies for persons injured in medical accidents.

B The Government Report

The Government Report does not discuss these issues.

C Rationale

(1) Article 12 of the Covenant recognizes "the right of everyone to the highest attainable standard of physical and mental health."

(2) Under Article 12, all victims of a violation of the right to health should be entitled to adequate reparation, and any victim of such a violation should have access to effective judicial or other appropriate remedies (General Comment 14, paragraph 59).

Furthermore, national ombudsmen, human rights commissions, consumer forums, patients' rights associations or similar institutions should address violations of the right to health (see above), and the need for a specific agency that (a) carries out investigations to learn the true state of affairs with a view to providing effective remedies to victims of violations of the right to health, and (b) issues recommendations regarding such remedies, is emphasized.

(3) However, there have been an increasing number of reports in Japan recently regarding such serious medical accidents as operations being performed on the wrong person, intravenous injections of antiseptic

solution, etc., and the apprehension of the Japanese people regarding their right to receive safe medical care is rising.

These medical accidents are occurring against a background of a shortage of nursing staff, excessive working hours, inadequate attention to clinical education in the physician training curriculum, among other things.

(4) In order to prevent these medical accidents, the following steps are required: (a) information-gathering regarding medical accidents to learn the present state of affairs; (b) analysis of this information to determine the causes of such accidents; and (c) formulation and implementation of specific policies to prevent accidents. However, in Japan, there is not even a system by which to gather information regarding medical accidents, much less a national system by which to learn lessons from medical accidents and apply them to the effective prevention of such accidents in the future.

(5) In Japan, while a system - however imperfect - does exist to remedy harm caused by side effects from pharmaceutical drugs, there is no administrative system in place to provide remedies to victims of medical accidents, seeking a remedy in court is both expensive and time-consuming, and there is no guarantee of prompt and effective relief. Therefore, many victims of medical accidents are left to fend for themselves.

The fact that there are no systems in place by which to extend relief to the victims of medical accidents translates to a difficulty in understanding the true state of affairs regarding such accidents, and therefore constitutes a key obstacle to improving the quality of medical care and ensuring the safety of medical care.

(6) Consequently, Japan must immediately carry out an investigation to determine how to improve the quality of medical care, how to ensure the safety of medical care, and how to provide appropriate medical care, as well as to develop a system by which to provide a remedy to victims of medical accidents.

To carry out such an investigation, it is essential to have an open discussion that sufficiently reflects the perspective of persons who receive

medical care, especially those who have experienced medical accidents, by such means as a deliberative committee.

The Japanese government should devise effective measures to ensure the safety of medical care, as well as develop a system to provide remedies to persons injured in medical accidents.

2 Rights of patients (Article 12)

A Opinion of JFBA

(1) The Japanese government should take steps to ensure that persons who receive medical care have a legal right to access information regarding their own care, such as medical charts.

(2) The Japanese government should take steps to ensure that persons who receive medical care have a legal right to select their own course of treatment after being provided with sufficient information (informed consent).

(3) In connection with medical research and experimental treatment, the Japanese government should establish uniform legal measures to protect the subject of such experiment or research.

B The Government Report

The Government Report does not discuss these issues.

C Rationale

(1) Rights guaranteed under Covenant to medical patients

The right to access information regarding one's own medical care is not only recognized in paragraph 12 of the Committee's General Comment 14 in connection with Article 12 of the Covenant, but is also clearly recognized in paragraph 10 of General Comment 16 of the Human Rights Committee in connection with the rights guaranteed in Article 17 of the International Covenant on Civil and Political Rights, regarding the right to access personal information as an element of the guarantee of privacy. Furthermore, in the area of mental health treatment, in which

compulsory treatment is an issue, in principle, patients have a recognized right to access information regarding their care (see 1991 U.N. General Assembly Resolution A/RES/46/119, 'The protection of persons with mental illness and the improvement of mental health care', paragraph 19).

Regarding a patient's right of informed consent, paragraph 8 of General Comment 14, above, provides that "The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body...and the right to be free from interference." In connection with the right of informed consent, the right to control one's body is guaranteed more directly by the right of privacy guaranteed by Article 17 of the International Covenant on Civil and Political Rights. Furthermore, detailed provisions regarding informed consent are also contained in paragraph 11 of the U.N. resolution regarding the 'protection of persons with mental illness and the improvement of mental health care' described above.

Paragraph 8 of General Comment 14 of the Committee regarding Article 12 states that the right to health includes the right to be free from non-consensual medical treatments, and Article 17 of the International Covenant on Civil and Political Rights includes the right to not be subjected to medical experimentation without having freely given consent beforehand.

(2) Right to access medical information

In Japan, there are no laws that recognize a patient's legal right to read his or her own medical charts, and due to the deeply-rooted attitude of paternalism in doctor-patient relationships and the closed attitude of hospitals, etc., patients are generally unable to obtain their own charts. Although in recent years a movement to permit patients to view their own charts has been growing, the Ministry of Health and Welfare has established an 'Investigative Committee Regarding the Use of Charts and Other Medical Information', and has called for the disclosure of charts to patients, Japan is still lags behind in terms of its legal regulation of this area. However, because the right of a patient to access his or her own medical charts is guaranteed in the Covenant as described above, the government should take steps to ensure that the right is protected under Japanese law as well.

(3) Informed consent

There are no provisions of law in Japan that explicitly guarantee a right of informed consent, and at present, while the need for a right of informed consent has been pointed out, hospitals and clinics still do not give patients sufficient information, and patients do not have the right to select their own course of treatment. However, since the right to receive adequate information and the right to select one's own course of treatment are guaranteed in the Covenant, as described above, the government should take steps to ensure that they are protected under domestic law as well.

(4) Protection of subject in connection with medical research or experimental treatment

Although experimental treatment and drug administration is widely carried out in Japan, there are no uniform rules protecting the physical well-being and health of the subject of such treatment or administration. While the Ministry of Health and Welfare has promulgated, under the Drugs, Cosmetics and Medical Instruments Act, rules that require clinical trials for new pharmaceutical drugs to conform to GCP (Good Clinical Practice), GCP is totally inadequate, as it does not impose a duty of compliance punishable by sanctions, etc., nor does it establish a procedure by which a subject may lodge objections or seek a remedy. The Japanese government should enact uniform legal measures to protect subjects of experimental medical treatment.

3 Side effects of pharmaceutical drugs (Article 12)

A Opinion of JFBA

(1) The Japanese government should interpret and apply the Law Concerning Access to Information Held by Administrative Organs so as to widen the scope of available information obtained by the government regarding the safety and efficacy of pharmaceutical drugs, and should establish a system whereby the government and pharmaceutical companies proactively disclose and announce such information on their own in order to prevent injuries due to pharmaceutical drugs.

(2) A procedure should be established whereby (a) anyone believing that a pharmaceutical drug may pose a threat to life or health may apply to the government seeking issuance of an emergency order halting sales of the drug or instituting a recall, and (b) the government has an obligation to explain and justify its response to the application.

(3) In order to monitor whether the government and pharmaceutical companies are properly ensuring the safety and efficacy of pharmaceutical drugs, a monitoring agency should be established that has the authority to investigate the activities of the government and pharmaceutical firms and issue any necessary recommendations, and that includes both experts and consumer representatives.

B The Government Report

The Government Report does not discuss these issues.

C Rationale

(1) Rights guaranteed in the Covenant regarding harm caused by pharmaceutical drugs

The rights guaranteed by Article 12 of the Covenant are interpreted as including not only the right to live in health, but also the right to control one's own physical and mental health (General Comment 14, paragraph 8), as well as the right to request, receive and disclose information regarding one's own health (Article 19, paragraph 2 of the International Covenant on Civil and Political Rights.

(2) Repeated incidents of harm due to pharmaceutical drugs

Cases of injury from pharmaceutical drugs or other treatments have occurred with disturbing regularity in Japan, from the damage caused by thalidomide and SMON (Subacute Myelo-Optico-Neuropathy), to the recent problems of SORIVUDINE and AIDS caused via unsterilized blood products. Even though regulatory and administrative shake-ups have followed these incidents, the new laws and regulations never seem to be able to prevent the next outbreak.

Reasons for Japan's inability to eliminate this problem include: (a) the vagueness of regulatory standards and criteria for evaluating efficacy, beginning with the GCP, which applies at the clinical study stage; the inadequacy of the information-gathering system used by the government and pharmaceutical companies regarding pharmaceutical products; (c) the close ties between researchers, supervising administrators and pharmaceutical companies; (d) the unnecessary administration of medicines by hospitals in order to pad their profit margins; and (d) the blind trust that patients have in pharmaceutical drugs. Of these reasons, the most important is the total inadequacy of the system by which pharmaceutical drugs are investigated, monitored and approved by the government. In the government, it is only recently that the administrative department that focuses on nurturing the pharmaceutical industry has become independent of the department that investigates the safety of pharmaceutical drugs, and the system that reviews and approves the numerous new drugs submitted on a daily basis is administered by an investigation center having only 50 staff members. It is widely recognized that even the people responsible for reviewing new drug applications lack the time or resources to adequately review documents generated overseas or investigate the various types of drugs that they are charged with regulating.

(3) Need for proactive information disclosure by government and pharmaceutical firms

Information obtained by the government regarding pharmaceutical drugs may now be disclosed to the general public under the Law Concerning Access to Information Held by Administrative Organs, which went into effect in April of 2001. However, where disclosure of such information may harm the competitive position or otherwise infringe on the legitimate interests of a large number of firms, it will not be disclosed in principle (Article 5, paragraph 2 of the Law), and although an exception to this limitation is made for information regarding which public disclosure is recognized to be necessary to protect human life or health, there is a danger that the Law may be interpreted or applied so as to obstruct the disclosure of information regarding pharmaceutical drugs. Therefore, in interpreting and applying the Law, the Japanese government should follow a policy of wide disclosure of information pertaining to the safety and efficacy of pharmaceutical drugs, from the

standpoint of ensuring enjoyment of the right to control one's own physical and mental health.

Furthermore, the Japanese government is under an affirmative obligation to ensure the safety and efficacy of pharmaceutical drugs not only pursuant to Article 12 of the Covenant, but also under domestic law (Article 1 of the Drugs, Cosmetics and Medical Instruments Act). This affirmative obligation includes the duty to disclose information regarding the safety and efficacy of pharmaceutical drugs and the duty to prevent harm from the use of such drugs. Therefore, the government is required to establish a system, on its own or together with the pharmaceutical industry, under which information regarding the safety and efficacy of pharmaceutical drugs is promptly and appropriately made public. Such a system need not be based on the Drugs, Cosmetics and Medical Instruments Act, and may involve the mass media, the Internet, etc.

(4) Need for application system regarding dangerous pharmaceutical drugs

Moreover, the possibility that a pharmaceutical drug may have caused injury or harm is usually recognized most quickly by the target population, i.e., the patients or consumers that use such drugs. Citizens' groups that monitor side effects of medicines also exist, and information regarding safety is often collected by such groups. Consequently, in order to widely collect information on pharmaceutical drugs, quickly discover those drugs that may be dangerous to human life or health, and take the necessary measures in response, a procedure is required by which anyone can file an application for an order halting sales or instituting a recall of a pharmaceutical drug.

Furthermore, in light of the government's duty to widely disseminate information regarding the safety and efficacy of pharmaceutical drugs, the application system described above should require that the government disclose the results of any investigation taken in connection with such an application within a prescribed period of time, and explain the reasons for any action it has taken in response.

(5) Need for monitoring body including citizen participation

Given the repeated incidents over the past few decades involving

injury from pharmaceutical drugs, caused ultimately by the ineffective functioning of the current regulatory system regarding pharmaceutical drugs administered by the pertinent government office (the Ministry of Health, Labour and Welfare), the regulatory system regarding pharmaceutical drugs should not be entrusted to a single agency, and a system by which the effective operation of the regulatory system itself is continually monitored must be established.

To prevent the occurrence and spread of injury due to pharmaceutical drugs, in addition to the application system described above, a permanent monitoring agency is necessary. Such an agency should have the authority to investigate the activities of the government and pharmaceutical firms and issue any necessary recommendations, and should include both experts and consumer representatives.

4 Policies regarding infection

A Opinion of JFBA

> The Japanese government should adopt measures to eliminate discrimination against persons suffering from infections, such as HIV-infected persons and AIDS patients, as well as measures to enable such persons to live on their own.

B The Government Report

While the Government Report states in paragraph 184 that government "has been making efforts to prevent the possibility of AIDS contraction and to disseminate accurate information on AIDS," it does not describe any government measures to address the discrimination faced by AIDS or HIV victims or the difficulties such persons face when seeking to become self-sufficient.

C Rationale

Japan's policies regarding infection are slanted toward systematic prevention of infection, and its policies regarding the discrimination encountered by persons already infected, and regarding the difficulties such persons face when they seek to live on their own, are insufficient. While the government did enact a Leprosy Prevention Law for Hansen's

disease, sufferers of which have experienced particularly severe discrimination, and has enacted a so-called AIDS Prevention Law with respect to persons infected with HIV or suffering from AIDS, the general focus of Japanese infection policy on prevention of infection tends to promote and increase prejudice and discrimination against persons already infected.

Regarding employment discrimination in private companies against HIV-positive persons and AIDS patients, while it is recognized that it is a violation of the right to privacy for an employer to carry out HIV testing or obtain the results of such a test without the consent of the person tested, and it has been determined that the firing of an employee based on the employee's HIV-positive status is an abuse of the right to terminate and is accordingly invalid (June 12, 2000 decision of Chiba District Court, Roudou Hanrei Vol. 785, p. 10). However, other than to leave the issue for the courts to grapple with under tort law and employment law, the government has taken no specific steps to eliminate such discrimination.

Regarding persons infected with HIV, a system wherein the infection itself is treated as a handicap and the person is protected as a physically disabled person went into effect in 1998, and some progress has been observed. However, the government has still failed to enact legislation or adopt specific measures to eliminate discrimination and prejudice against persons who are HIV-positive, or to assist them in being self-sufficient, such as by ensuring their right to employment.

In October of 1998, the 'Law Concerning Prevention of Infection and Treatment of Infected Persons' was enacted, and the imprecise definitions of terms used in the Law, such as 'new infection' or 'designated infection', has been criticized as constituting an infringement of the rights of infected persons.

5 Current and past Hansen's disease patients

A Opinion of JFBA

The Japanese government should acknowledge its erroneous policy of lifelong forced isolation of persons with Hansen's disease for the past 90-plus years, take responsibility for the gross violation of

the human rights of such patients and their families that its policy has engendered, and immediately take the following steps:

a. Issue an apology to current and past Hansen's disease patients and their families, take specific steps to restore the honor and dignity of such patients, and provide adequate compensation for the harm they have suffered.

b. Adopt concrete measures to eliminate discrimination and prejudice related to Hansen's disease.

c. Develop a permanent mechanism to offer livelihood assistance and protection to current and past Hansen's disease patients.

d. Clarify the reasons for its policy of forced lifelong isolation, and adopt measures to prevent such mass violations of human rights from occurring again in the future.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

(1) Violations of human rights of Hansen's disease patients

In the years after its 1907 enactment of a law entitled 'Regarding Prevention of Leprosy', persons acquiring Hansen's disease were forcibly quarantined in sanitariums, and a policy to eradicate victims was followed. Even though it was known by then that Hansen's disease was not highly contagious, in 1931 the government enacted a new law named the 'Leprosy Prevention Law', whereby it intensified its policy of forced isolation, rounded up infected persons in the name of cleansing the race, carried out a program of mass disinfection of the houses of such persons and the areas they walked, and implanted in the public the incorrect notion that 'Hansen's disease is a highly contagious disease', thereby promoting fear, prejudice and discrimination.

After being forcibly relocated to sanitariums, Hansen's disease patients not only did not receive proper treatment, but were required to provide forced labor under harsh conditions, which only worsened the symptoms and after-effects of their disease. Trips outside the sanitariums were severely restricted, patients were subjected to inhuman treatment by

the staff, and persons that escaped the sanitarium or opposed the government's policy were arbitrarily punished or placed in detention. Sanitariums in name only, the facilities were in fact warehouses. To get married within a sanitarium, men were required to undergo sterilization (i.e., a vasectomy), and women who got pregnant underwent forced abortions. Due to the thick wall of prejudice and discrimination erected by the government's campaign of fear to convince people that Hansen's disease was highly contagious, the families of Hansen's disease sufferers were subjected to extreme prejudice and discrimination, and patients were ostracized by both their families and society. Persons diagnosed with Hansen's disease were completely deprived of their right to live in peace as a member of society, and their very status as a 'human being' was taken from them.

(2) Baseless policy of forced lifelong isolation

The bacterium 'Mycobacterium leprae' that causes Hansen's disease has an extremely low level of infectivity and virulence, and there was absolutely no need for the government's 1907 policy of forced segregation. After World War II, with the development of the highly effective medicine Promin, Hansen's disease became a completely curable disease.

However, even with the Japanese Constitution in place, the Japanese government perversely strengthened its policy of forced isolation, and in 1953, dismissing the opposition of patients' groups, enacted the 'Leprosy Prevention Law' that continued to accept the principle of forced segregation introduced under the previous law.

Ignoring the increasing body of knowledge being amassed by medical professionals overseas indicating that isolation was unnecessary and harmful, and disregarding the recommendations of international organizations that the Japanese government abolish its law, the government continued its policy of forced isolation under the 'Leprosy Prevention Law'. The Leprosy Prevention Law did not establish a system for outpatient treatment, and offered scant assistance to enable patients to re-enter society. Even those patients who were allowed to leave the sanitarium, or those who escaped and began to live a normal life in society, found it very difficult to live in the midst of the deeply rooted prejudice and discrimination that had been created by the government

against current and past Hansen's disease sufferers. All were forced to go to great lengths to hide their condition, and many ruined their health and were forced to return to their former institution.

In the 13 leprosy sanitariums nationwide, the ashes of 23,000 patients, many of whom maintained their resentment of their unjust treatment until their death, are being housed without being returned to the soil of their native regions. 4,500 patients with an average age of 74 continue to live quietly in small sanitariums, and do not return home because they do not wish to cause trouble for their relatives. No government support is provided for persons who have left sanitariums to live in society (other than a maximum of 2.5 million yen as a social re-entry assistance measure), and faced with society's firmly entrenched, prejudiced and discriminatory attitudes against them, and fearing being labeled a 'leper', they are forced to hide their personal histories, cannot obtain sufficient employment opportunities, and have no choice but to continue to live quietly by their own means.

(3) Government's non-reaction to its mistaken policy, and the filing of lawsuits

The 'Leprosy Prevention Law' was finally abolished in March of 1996. However, while the government has issued a formal apology for taking so long to abolish the law, it has not taken responsibility for perpetrating a severe violation of human rights for over 90 years, and has offered no compensation for the damage suffered by former patients. Until the government admits that its previous policy was wrong, it is obvious that the labels applied to such patients by the government, and the prejudice and discrimination they engendered, will continue to remain firmly entrenched in the consciousness of many Japanese.

Accordingly, in July of 1998, 13 former Hansen's disease patients filed suit seeking a clear acknowledgement of Japan's responsibility, as well as an apology and compensation by the national government for violation of their human rights. Referred to as the 'Human Being Status Restoration Suit', this action represented about 600 parties plaintiff nationwide as of the end of January 2001. However, despite the suit, the defendant government has refused to declare its responsibility, has refused to hear the voices of the plaintiffs demanding that the government recognize that they are human beings before they die, and continues to

contest the action.

Based solely on the fact that they had Hansen's disease, current and past patients were forcibly housed in sanitariums, separated from their families and society, subjected to continuous violations of their human rights, and given no choice but to live a lonely life without enjoying their children and grandchildren in their old age. It is no exaggeration to say that they were deprived of their very lives by the government.

Based on the Covenant and General Comments issued thereunder, the government should humbly take responsibility for the mistake of its forced segregation policy and the ensuing unprecedented violations of human rights, and urgently adopt various measures to restore the human rights of current and past Hansen's disease patients in accordance with its purported concern for the sanctity of human rights which the government proclaims to international society.

6 Right of persons with mental health disorders to health (Articles 2, 12)

A Opinion of JFBA

The special rule in the Medical Service Law governing the allocation of staff for psychiatry units that requires one physician for every 48 patients and one nurse for every six patients, in comparison with the requirement of one physician for every 16 patients and one nurse for every three patients for other units, unjustly violates, based on their mental condition, the right of the patients to receive the same level of medical care as that received by other members of society, and should be revised immediately.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

(1) In the portion of its General Comment 5 issued in 1994 that pertains to people with disabilities, the Committee defines discrimination

based on disability as follows: "For the purposes of the Covenant, 'disability-based discrimination' may be defined as including any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights."

Similarly, paragraph 34 of General Comment 5 (section F), pertaining to the right to physical and mental health, cites Rule 2, paragraph 3 of the 'Standard Rules on the Equalization of Opportunities for Persons with Disabilities ' regarding medical care as follows: "States should ensure that persons with disabilities, particularly infants and children, are provided with the same level of medical care within the same system as other members of society."

(2) It is clear that the special rule of the Medical Service Law that provides that the minimum number of staff members for psychiatry units is one physician for every 48 patients and one nurse for every six patients, as opposed to one physician for every 16 patients and one nurse for every three patients for other units, is in violation of the right of psychiatric patients to receive the same level of medical care as other members of society. During an answer at a Diet session, the government admitted that "according to the results of a medical monitoring survey in 1999, 346 psychiatric hospitals, or approximately 29 percent of all such hospitals (1,193 hospitals) did not meet the standard regarding the required number of physicians, and 53 psychiatric hospitals, or approximately four percent of the total, did not meet the standard regarding the required number of nurses" (answer of the parliamentary vice-minister to a question asked by Mr. Yamanoi, a member of the Public Welfare Committee of the House of Representatives, during the 150th Diet session).

Psychiatric patients are admitted to closed wards in single-unit mental hospitals, many of which are situated in the mountain areas in the western part of Tokyo, for example, and this already limits their right of access to medical care. In addition, they are subjected to discriminatory treatment through the receipt of an inferior level of medical care due to the special rule in the Medical Service Law, and this constitutes discriminatory treatment based on 'other status' in violation of Article 2 of the Covenant.

(3) This issue was examined in a review by the Public Welfare Committee of the House of Councilors during the 150th Diet session in 2000, and in response to questions to the government compiled by Diet member Toshihiro Asahi, the government expressed its views essentially as follows:

(i) While 'discrimination based on disability' as described in Article 2 of the International Covenant on Economic, Social and Cultural Rights is interpreted as being prohibited as discrimination based on 'other status', said provision intends to prohibit only discrimination lacking a rational basis, and does not prohibit the creation of rational distinctions, and in this regard, the government adopts the concept of 'reasonable discrimination' (answer to said questions).

(ii) The standards for psychiatric units provided in the Medical Service Law were established in order to ensure medical care that is suited to the general characteristics of mental disorders, and do not support discrimination in the provision of health and medical services to persons with mental disabilities (answer given by the parliamentary vice-minister to questions asked by Diet member Toshikazu Hori).

(iii) While the meaning of the phrase 'the same level of medical care within the same system as other members of society' provided in Rule 2, paragraph 3 of the 'Standard Rules on the Equalization of Opportunities for Persons with Disabilities ' adopted as a resolution of the U.N. General Assembly is not altogether clear, so long as each patient is ensured an appropriate level of medical care that is suited to his or her condition, no problems arise in terms of said Rule, or in connection with Article 2, paragraph 2, or Article 12 of the International Covenant on Economic, Social and Cultural Rights (answer to said questions).

Specific Topic 12
Domestic violence (Violence against the wife)

A Opinion of JFBA

(1) The Japanese government must immediately investigate the true state of affairs regarding domestic violence, either on its own or through consultations with local governments, prosecutors, hospitals and medical care providers, etc.

(2) Based on the results of its investigation, the government must use public reports, studies, school education, social education and other forms of human rights education to change the mindset of the Japanese people regarding domestic violence and effectively convey the fact that domestic violates is a violation of human rights.

(3) As an emergency measure, in order to ensure the safety of victims of domestic violence, the government should establish a nationwide network of domestic violence shelters and widen the range of victims who may be protected by these shelters. Public subsidies for private shelters that supplement public shelters should also be provided.

(4) The Japanese government should establish facilities and devote sufficient human resources to create a care system that will help both victims and perpetrators of domestic violence recover their mental and physical stability.

(5) The government should introduce a comprehensive domestic violence law containing measures that will prevent domestic violence, raise social awareness, and provide effective remedies for victims.

B The Government Report

The Government Report does not discuss these issues.

C Rationale

(1) Need to eliminate domestic violence

The need to eliminate violence against women has become a worldwide issue, given that it contravenes both attainment of gender equality (Article 3 of the Covenant) and the goal of raising the status of women. In December of 1993, the U.N. General Assembly adopted the Declaration on the Elimination of Violence Against Women. The 1996 'Special Report on Violence Against Women' prepared by Radhika Coomaraswamy, the 'Special Rapporteur on Violence Against Women' for the U.N. Human Rights Committee, emphasized that domestic violence represents a violation of women's human rights and that each country has an obligation to prevent domestic violence.

(2) Problems with approach of Japanese government

The Japanese government's December 1996 'Plan for Gender Equality 2000' set out specific policies to address violence against women, including stricter treatment of perpetrators of sex crimes, measures to prevent sexual harassment, strengthening of the consultation system for victims, employee training and education, strengthening of crime prevention programs, etc. In the following years, the following specific steps were taken:

(a) Policies against sexual harassment were included in the revision of the Equal Employment Opportunity Law;
(b) In order to prevent a 'second rape' by law enforcement officers, the National Police Agency established new policies governing the treatment of victims of violence against women, particularly sex crimes, including information-gathering by women prosecutors and appointment of Sex Crimes Investigation Guidance Officers, and prefectural police agencies also established a consultation office staffed by women prosecutors;
(c) Via the Headquarters for General Equality, the government placed articles in magazines and other media as part of a campaign to promote awareness that violence against women is illegal;
(d) The government carried out its first nationwide 'Investigation Regarding Violence Between Men and Women' in November of 1999; and
(e) The so-called 'Stalker Law'(Law Regarding Regulation of Stalker Activities, etc.) was enacted in May of 2000 (and went into effect in November of 2000).

In April of 2000, the Violence Against Women Section of the Council for Gender Equality announced its 'Interim Report'. This 'Interim

Report' investigates 'violence by husbands and partners', and 'sex crimes', but its proposed remedies are totally inadequate. In other words, it advocates dealing with domestic violence solely through the application of existing laws, and does not seek the passage of a domestic violence prevention law that would establish comprehensive prevention and relief measures regarding domestic violence. Regarding sex crimes, while it advocates action on behalf of victims, it does not reach any conclusion regarding a review of the laws pertaining to forcible rape (the sentence established by law for rape is weaker than that for robbery), and in general does not offer any forward-thinking proposals on how to change the Japanese societal mindset that tacitly accepts violence against women.

On July 31, the Council on Gender Equality issued a report entitled 'Basic Policy on Violence Against Women'. This report pointed out that the domestic violence problem is prevalent and insufficiently understood by society, and that the current system is inadequate in how it deals with both victims and perpetrators. The report sought only the application of existing laws and did not reach a clear conclusion regarding the need for introduction of a domestic violence prevention law or revision of other provisions of law.

(3) Need for revision of current legal scheme

Under current law, a victim of 'violence by a husband or partner' cannot demand that the perpetrator leave their joint residence, and the only way for the victim to escape the violence is to leave on her own. Moreover, even if the victim wishes to leave, there are not enough safe shelters in which victims can stay.

Women's consultation centers and temporary protection shelters exist in each prefecture as public shelters (emergency shelters). However, the temporary protection shelter system was originally established under Article 34 of the Prostitution Prevention Law, and broadening the scope of protection offered by the shelters beyond 'women at risk of committing prostitution' simply amounted to protecting women who have no connection to prostitution. Furthermore, these shelters have no system by which the safety of victims of domestic violence from their husbands or partners is protected, nor any counseling or other psychological or emotional assistance programs. Nevertheless, the number of women seeking refuge in temporary protection shelters nationwide from domestic

violence committed by husbands or partners comprised 34.5% of all shelter residents in 1992, rising to 42% in 1996.

It is expected that Women's Life Assistance Facilities (former Dormitories for Mothers and Children) will serve as shelters for victims of domestic violence who have children, but the locations of these facilities are publicly known, and it is uncertain whether they can offer complete safety to their clients.

Consequently, a network of private shelters exists to supplement the public shelters, but many of these shelters are quite small and are concentrated in major cities only, and face difficult financial circumstances. Many of them must rely on donations, and most of their staffs comprise volunteers.

As a result of the deficiencies in these various shelters, a large number of women suffer from domestic violence but have nowhere to turn for help. Based on the results of telephone consultations carried out by the JFBA, approximately 40% of victims of domestic violence by a husband or partner have never left their home. This indicates how difficult it is for victims of domestic violence to leave their home to escape the violence.

(4) Actions by JFBA

In order to eliminate violence against women and child abuse, the JFBA in September of 1998 adopted a resolution calling on the national and prefectural governments to take the following measures:

(a) Investigate the current situation and make people aware that such violence constitutes a violation of human rights.

(b) As an emergency measure, widen the scope of persons eligible to enter temporary protection shelters, make efforts to ensure the safety of victims, and provide public subsidies for private shelters.

(c) Establish a system providing prompt remedies for victims, policies to promote self-sufficiency of abused spouses, and a program for education of parents regarding child abuse.

Specific Topic 13
Remedy for former 'comfort women' and wartime sex slaves

A Opinion of JFBA

Japan should accept legal responsibility for former 'comfort women' and other wartime sex slaves, and should immediately provide the following remedies to such women in order to protect their rights under the Covenant:

(a) A thorough investigation of the true picture regarding 'comfort women' during wartime, and public disclosure of the results;

(b) Payment of compensation and implementation of other measures to restore the honor of victims; and

(c) Inclusion of information regarding this issue in domestic school education curricula.

B The Government Report

The Government Report does not discuss this issue.

C Rationale

(1) Harm caused to 'comfort women'

So-called 'comfort stations' established by Japan during and before World War II existed in Japan, China, the Philippines, the former Malaya, Thailand, the former Burma, Hong Kong, Macao and the former French Indonesia. The number of 'comfort women' is difficult to determine, but is said to have totaled 200,000 (JFBA Declaration on "The Issue of 'Comfort Women'", January 1995). 'Comfort women' came from such countries as Japan, Korea, China, Taiwan, the Philippines, Indonesia, Holland, Vietnam, Malaysia, Thailand, the former Burma, and India (see Declaration, above).

The victims, i.e., the 'comfort women' who came out publicly after keeping silent for a long time were harmed not only during the war by the acts committed by the former Japanese military, but after the war as well: Many such women still suffer from cystitis, endometritis, ovarian abnormalities, hematemesis, menopausal pain, and uteral pain, and many

suffered from reproductive problems including infertility and venereal diseases, and some underwent hysterectomies. Some still suffer from nervous symptoms such as pain, or skeletal deformities or dysfunction from injuries received when hit or kicked. The mental stress suffered by the 'comfort women' was substantial, with many still suffering from post-traumatic stress disorder (PTSD). These women not only suffer from chronic worrying, insomnia and headaches, but many also cannot build a trusting relationship with others, or suffer from depression (see Declaration, above). Now, 55 years after the end of the war, many of these victims are aging and passing away, having been unable during their lives to obtain any remedy for the harm they endured.

(2) Responsibility of Japanese government

On August 4, 1993, the government issued the following statement through then-Chief Cabinet Secretary Yohei Kono in connection with an announcement of the results of surveys regarding comfort women issues, which acknowledged the organizational involvement of the former Japanese military in the 'comfort women' system that existed before and during World War II:

Comfort stations were operated in response to the request of the military authorities of the day. The then Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women. The recruitment of the comfort women was conducted mainly by private recruiters who acted in response to the request of the military. The Government study has revealed that in many cases they were recruited against their own will, through coaxing coercion, etc., and that, at times, administrative/military personnel directly took part in the recruitments. They lived in misery at comfort stations under a coercive atmosphere.

Furthermore, conditions in the 'comfort stations' and the involvement of the former Japanese military were also described in the Report of Ms. Radhika Coomaraswamy, the Special Rapporteur on violence against women, its causes and consequences, in accordance with Commission on Human Rights resolution 1994/45 ('Report on the mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the issue of military sexual slavery in wartime', E/CN.4/1996/53/Add.1).

(3) Response of Japanese government

Those victims who have come out and publicly acknowledged that they were 'comfort women' have sought a formal apology and compensatory damages from the Japanese government. The JFBA has demanded that the government offer a complete and sincere apology and acknowledgement of its actions during wartime, make payment of compensation and implement other measures to restore the honor of victims, and include information regarding this issue in domestic school education curricula (see JFBA Report, above). In addition, Special Rapporteurs designated by the U.N. Commission on Human Rights have repeatedly called for Japan to take legal responsibility for victims, as well as to (1) carry out a thorough investigation and publicize the results, (2) offer a public apology, (3) provide legal compensation, and (4) punish the persons responsible (Coomaraswamy report, above; 'Systematic rape, sexual slavery and slavery-like practices during armed conflict' [Final report submitted by Ms. Gay J. McDougall, Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1998/13])

In July of 1995, the Japanese government established an Asian Women's Fund to provide privately-funded lump-sum payments to former 'comfort women' and to offer government assistance to groups offering medical care and welfare services to such women. To this point, the Asian Women's Fund has, to former 'comfort women' in the Philippines, Korea, and Taiwan, (i) sent a heartfelt letter from the Prime Minister expressing sincere feelings of apology and remorse; (ii) provided one-time payments of two million yen to each woman as atonement money, derived from private sources; and (iii) authorized public funding of medical and welfare activities for such women (source: "Recent Policy of the Government of Japan on the Issue Known as 'Wartime Comfort Women'", Foreign Ministry, November 2000).

However, the Asian Women's Fund does not constitute the public apology and legal compensation demanded by victims, nor does it conform to the proposals set forth in the JFBA's Report mentioned above. As a result, many victims have refused to accept the Prime Minister's apology and lump-sum payment, or have continued to maintain civil lawsuits in Japan against the Japanese government, as described below.

(4) Position of the Japanese government regarding legal responsibility

As described above, while the Japanese government has acknowledged the organizational involvement of the former Japanese military in the establishment and operation of 'comfort stations', it has refused to assume legal responsibility, for the following reasons (Position of the Government of Japan as set forth in Addendum 1 to Report of the Special Rapporteur on violence against women', E/CN.4/1996/53/add.1):

(a) The actions of the former Japanese military in connection with comfort stations, including raping, were not acts prohibited by international law at the time they were carried out;

(b) Individual 'comfort women' have no legal right under international law to demand damages;

(c) All claims were extinguished or conclusively resolved by postwar treaties such as the San Francisco Peace Treaty; and

(d) All liability for harm to 'comfort women' has been extinguished through prescription.

All of these counter-arguments put forth by the Japanese government have been refuted in detail in the McDougall report mentioned above (E/CN.4/Sub.2/1998/13).

(5) Remedies granted by Japanese courts to victims

Former 'comfort women' from Korea, the Philippines, Holland, China and Taiwan, as well as other victims of sexual abuse, have filed suit for damages in Japanese courts against the Japanese government. Many of these actions are or have been litigated as class actions. To date, eight cases are pending, and decisions have been handed down in the following cases:

- Yamaguchi District Court, Shimonoseki branch, decision of April 27, 1998 (former Korean 'comfort women')

- Tokyo District Court, decision of October 9, 1998 (sexual abuse of Filipina women)

- Tokyo District Court, decision of November 30, 1998 (former Dutch 'comfort women')

- Tokyo District Court, decision of October 1, 1999 (resident

Korean former 'comfort women')

- Tokyo High Court, decision of November 30, 2000 (resident Korean former 'comfort women')

- Tokyo High Court, decision of December 6, 2000 (sexual abuse of Filipina women)

The above cases all denied relief to the victim plaintiffs on the grounds that the victim had no right to relief under international law, that the state was immune from liability under Japanese law as it existed before and during World War II, and that the plaintiffs' rights under civil law were extinguished through prescription. The decision of the Shimonoseki branch of the Yamaguchi District Court ordered the Japanese government to pay 300,000 yen as apology money, on the ground that the Japanese government's acknowledgement of involvement in the 'comfort women' system created an obligation on the part of the government to enact legislation providing relief to the victims, and that the government's failure to fulfill this obligation constituted illegal conduct.

Therefore, at present, former 'comfort women' and other victims of sexual abuse are unable to obtain relief via the Japanese judicial process.

(6) Steps that should be taken by Japanese government

Because former 'comfort women' and other victims of sexual abuse suffered serious harm at the hands of the former Japanese military, they are still being deprived of their rights to an adequate standard of living and to the highest attainable standard of physical and mental health. Considering the legal responsibility of the Japanese government toward such women, as well as the government's obligation to ensure the social, economic and cultural rights of the victims of the former Japanese military's 'comfort women' system in particular, and given that many of these victims are now old and dying, the government has a duty to adopt immediate measures on their behalf.

References

1 Guarantee of social rights under Japanese Constitution

1-1 Provisions of the Constitution regarding basic human rights (Articles 10-40, 98)
1-2 Comparison of provisions of International Covenant on Economic, Social and Cultural Rights and provisions of the Constitution providing for social rights
1-3 Representative decisions by Japanese courts with regard to the social rights guaranteed under the Constitution
1-4 Discussion

2 Cases involving the International Covenant on Economic, Social and Cultural Rights

2-1 List of all cases included in case reports
2-2 Important cases involving the Covenant
2-3 Discussion (including classification of cases)

1-1 Comparison of provisions of the International Covenant on Economic, Social and Cultural Rights and provisions of the Constitution providing for social rights

THE CONSTITUTION OF JAPAN

CHAPTER III. RIGHTS AND DUTIES OF THE PEOPLE

Article 10.
The conditions necessary for being a Japanese national shall be determined by law.

Article 11.
The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights.

Article 12.
The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare.

Article 13.
All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

Article 14.
1 All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.
2 Peers and peerage shall not be recognized.
3 No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it.

Article 15.

1 The people have the inalienable right to choose their public officials and to dismiss them.
2 All public officials are servants of the whole community and not of any group thereof.
3 Universal adult suffrage is guaranteed with regard to the election of public officials.
4 In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

Article 16.
Every person shall have the right of peaceful petition for the redress of damage, for the removal of public officials, for the enactment, repeal or amendment of laws, ordinances or regulations and for other matters; nor shall any person be in any way discriminated against for sponsoring such a petition.

Article 17.
Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

Article 18.
No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 19.
Freedom of thought and conscience shall not be violated.

Article 20.
1 Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.
2 No person shall be compelled to take part in any religious act, celebration, rite or practice.
3 The State and its organs shall refrain from religious education or any other religious activity.

Article 21.
1 Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.

2 No censorship shall be maintained, nor shall the secrecy of any means of communication be violated.

Article 22.
1 Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare.
2 Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Article 23.
Academic freedom is guaranteed.

Article 24.
1 Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.
2 With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

Article 25.
1 All people shall have the right to maintain the minimum standards of wholesome and cultured living.
2 In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.

Article 26.
1 All people shall have the right to receive an equal education correspondent to their ability, as provided by law.
2 All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Article 27.
1 All people shall have the right and the obligation to work.
2 Standards for wages, hours, rest and other working conditions shall be fixed by law.

3 Children shall not be exploited.

Article 28.
The right of workers to organize and to bargain and act collectively is guaranteed.

Article 29.
1 The right to own or to hold property is inviolable. Property rights shall be defined by law, in conformity with the public welfare.
2 Private property may be taken for public use upon just compensation therefor.

Article 30.
The people shall be liable to taxation as provided by law.

Article 31.
No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 32.
No person shall be denied the right of access to the courts.

Article 33.
No person shall be apprehended except upon warrant issued by a competent judical officer which specifies the offense with which the person is charged, unless he is apprehended, the offense being committed.

Article 34.
No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

Article 35.
1 The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and things to be seized, or except as provided by Article 33.
2 Each search or seizure shall be made upon separate warrant issued by

a competent judical officer.

Article 36.
The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article 37.
1 In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.
2 He shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.
3 At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

Article 38.
1 No person shall be compelled to testify against himself.
2 Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence.
3 No person shall be convicted or punished in cases where the only proof against him is his own confession.

Article 39.
No person shall be held criminally liable for an act which was lawful at the time it was committed, or of which he has been acquitted, nor shall he be placed in double jeopardy.

Article 40.
Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law.

CHAPTER X. SUPREME LAW

Article 98.
1 This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or their act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

1-2 Comparison of provisions of the International Covenant on Economic, Social and Cultural Rights and provisions of the Constitution providing for social rights

Covenant	Constitution
Part I	
1-1. People's right of self determination	N/A
2. People's right to freely dispose of their natural wealth and resources	N/A
People's right to means of subsistence	Articles 25, 29
Part II	
2-1. State party's obligation to take steps towards realization of rights recognized in Covenant	Article 25, para. 2
2. Guarantee of non-discrimination in enjoyment of such rights	Article 14
3. Guarantee of economic rights of non-nationals in developing countries	N/A
3. Equal right of men and women	Article 14
4. Limitations Compatibility of limitations with the nature of the Covenant-recognized rights Promotion of general welfare in a democratic society	Articles 12, 13
5-1. Nonexistence of any right to destroy the rights recognized by the Covenant	N/A
2. Prohibition of restriction of existing rights guaranteed in any country	
Part III.	
6-1. Right to work, state parties' obligation to take steps to safeguard this right	Article 27
7. Right to just and favourable conditions of work	Article 27, para. 2
a. Fair wages	Articles 14, 25
i. Equal pay for equal work, guarantee for women of conditions of work not inferior to those of men	Article 14
ii. Remuneration that provides workers with a decent living for themselves and their families	Article 25
b. Safe and healthy working conditions	Article 27, para. 2
c. Equal opportunity for promotion	

----------N/A (Article 14 may serve as reference)

d. Rest and leisure----------Article 27, para. 2

Paid holidays, remuneration for public holidays-------N/A

8-1. Basic labor rights

a. Right to form and join trade unions----------Article 28

b. Trade unions' right to form national federations or confederations----------Article 28

c. Trade unions' right to operate freely----------Article 28

d. Right to strike----------Article 28

2. Lawful restrictions on basic labor rights of members of the armed forces, police or the administration of the state

----------N/A (Articles 12 & 13 are related)

9. Right to social security, including social insurance

----------Article 25, para. 1, 2

10-1. Protection and assistance of the family, freedom to marry

----------Article 24

2. Protection and paid leave before and after childbirth

----------Article 27, para. 2

3. Protection and assistance of children and young persons

----------Articles 25,27, para. 3

11-1. Right to an adequate standard of living

2. a. Right to be free from hunger----------Article 25, para. 1, 2

b. production and conservation of food

12. Right to enjoy the highest attainable standard of physical and mental health----------Article 25, para. 1

13-1. Right to education----------Article 26

2. a. Primary education----------Article 26, para. 2

b. Secondary education----------Article 26, para. 1

c. Higher education----------Article 26, para. 1

d. Fundamental education----------Article 26, para. 1, 2

e. Development of school system, establishment of scholarships----------Article 26, para. 1

3. Freedom to choose private education

----------N/A, Article 21, para. 1

4. Freedom to establish and direct educational institutions

----------N/A, Article 21, para. 1, Article 20, para. 1

14. Plan to implement free compulsory education

----------Article 26, para. 2

15-1. Right to science and culture

a. Right to take part in cultural life-------Article 25, para. 1

b. Right to enjoy the benefits of scientific progress ------- N/A

c. Protection of scientific, literary or artistic production ---------- N/A, Article 21

2. Freedom of science and creation ---------- Articles 21, 23

3. International cooperation ---------- N/A

1-3 Representative decisions by Japanese courts with regard to social rights guaranteed by the Constitution

* The 'holding' is excerpted from the judgment.

1. Inheritance Discrimination Against Out of Wedlock Child Case

July 5, 1995 decision by the Grand Bench of Supreme Court, Civil Case Report 49-7-1789

Meaning of equality under the law pursuant to Article 14, paragraph 1 of the Constitution

Case:

The constitutionality of the provision of Article 900, paragraph 4 of the Civil Code that limits inheritance by an child born out of wedlock to half of the amount that may be inherited by a child born in wedlock was challenged as violating the principle of equality under the law guaranteed by the Constitution.

Holding:

1. The principle of equality under the law as provided in Article 14, paragraph 1 of the Constitution intends to prohibit discrimination with no rational basis, and the establishment of distinctions in legal treatment based on various economic, social and other factual differences between individual does not violate the above principle so long as the distinction has a rational ground (May 27, 1964 decision of Grand Bench of Supreme Court (1962(O) No. 1472), Civil Case Report Vol. 18, No. 4, p. 676; November 18, 1964 decision of Grand Bench of Supreme Court (1962(A) No. 927), Criminal Case Report Vol. 18, No. 9, p. 579).

2. An inheritance system determines how and by whom the assets of a decedent should be inherited. The form of the system varies over history and from one society to another. In adopting an inheritance system, the traditions, social circumstances and emotional makeup of the people of each nation must be considered, and the inheritance system of each country reflects these situations and elements to varying degrees. Further, the current inherence system is closely related to the concept of family,

and cannot be established separately from the rules and regulations regarding marriage and parent-child relationships in the country. The nature of the inheritance system to be established after comprehensive consideration of all of these elements is entrusted to the rational discretion of the legislature.

As described above, given that the legal inheritance provisions including the provision in question do not provide that inheritance must be carried out in accordance with said rules, but only function supplementally when there is no will to set forth instructions regarding inheritance, the distinction between children born in and out of wedlock with regard to legal inheritance is based on a rational legislative reason, is not substantially unreasonable when considered in connection with the above legislative reason, and does not exceed the limits of rational discretion conferred on the legislature. Therefore, said provisions do not constitute discrimination without a rational basis, and are not in violation of Article 14, paragraph 1 of the Constitution.

2. Horiki Case Second appeal

July 7, 1982 decision by Grand Bench of Supreme Court, Civil Case Report 36-7-1235

Meaning of social rights provided by Article 25, paragraph 1 of the Constitution

Case:

The constitutionality of the prohibition in the Child Rearing Allowance Law of payment of Child Rearing Allowance benefits to a mother who receives disability welfare benefits was challenged as being in violation of the right to survival provided by Article 25 of the Constitution.

Holding:

This court has already ruled that (i) the provision of Article 25, paragraph 1 of the Constitution providing that "[a]ll people shall have the right to maintain the minimum standards of wholesome and cultured living" indicates that, under the so-called welfare state doctrine, it is the government's duty to administer state affairs in a manner that permits

everyone to maintain the minimum standards of wholesome and cultured living, (ii) the provision of paragraph 2 of said Article providing that "[i]n all shared life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health" declares that, also based on the so-called welfare state doctrine, it is the government's duty to make efforts to create and improve social legislation and social facilities, and (iii) paragraph 1 is properly construed as not providing that the government owes such obligation in specific and practical terms as to each individual, but as meaning that that specific and practical rights to living of each individual are established and improved through the creation and improvement of social legislation and social facilities, which comprises a government duty under paragraph 2 (September 29, 1948 decision of Grand Bench of Supreme Court (1948 (Re) No. 205), Criminal Case Report Vol. 2, No. 10, p. 1235).

As described above, the provisions of Article 25 of the Constitution establish certain goals and the government is accordingly expected to take proactive steps to achieve those goals. Moreover, (i) the "minimum standards of wholesome and cultured living" referred to in said provision constitutes an extremely abstract and relative concept, (ii) the specific nature of this concept should be determined in correlation with the degree of cultural development, economic and social conditions, and general way of life of the people at any given time, and (iii) in implementing the provision in the form of an actual law, the financial circumstances facing the government cannot be ignored, and multi-disciplinary, complex, diverse and highly technical consideration and political judgements based thereon are needed. Therefore, the selection or decision regarding the precise legislative measures to be specifically taken in response to the intent of the provisions of Article 25 of the Constitution are entrusted to the wide discretion of the legislature, and except in cases where the selection or decision is markedly unreasonable and clearly constitutes a deviation from reason or abuse of discretion, such matter is not appropriate for examination or judgment by the court.

3. Shiomi Case (Second appeal)

March 2, 1988 decision of First Petty Bench of Supreme Court, HANJI [Need translation] 1363-68

Meaning of provisions of Article 25

Case:

The constitutionality of the nationality requirement of Article 81, paragraph 1 of the National Pension Law governing eligibility to receive disability welfare benefits was challenged as being in violation of Articles 14 and 25 of the Constitution.

Holding:

1. Regarding the question of whether the nationality requirement at issue in this case is in violation of the provisions of Article 25, the National Pension System was created (i) in order to realize the intent of the provisions of Article 25, paragraph 2 of the Constitution, (ii) with the goal of preventing through popular union the loss of stability of people's lives due to aging, disability or death, and (iii) on the principle that pensions are provided based on the premiums paid by the insured via the insurance method. It was decided, however, that the benefits guaranteed by this system would be enjoyed by those who were already elderly or suffered from a certain degree of disability, as well as by those who were recognized as being unable to pay the premiums for a required period of time at the time that the system was created, i.e., those who would not be eligible to receive benefits if the insurance principle were strictly followed, and welfare pensions based on no premium payments were created as a transitional or supplementary means. The disability welfare pension referred to in Article 81, paragraph 1 of the law also was created as a transitional remedial measure at the time the system was created, and constitutes a pension that is not based on premiums and is borne entirely by the National Treasury, and in this connection it should be noted that the legislature has wide-ranging discretion to determine the population eligible to receive benefits. In addition, regarding the treatment of resident foreigners in social security policies, in the absence of special treaties, the government can make decisions based on its political judgment and in consideration of the diplomatic relationship with the countries to which the resident foreigners belong, the changing international situation, domestic political, economic and social circumstances, etc., and it is understood that the government should be allowed to place a higher priority on its own people than on resident

foreigners in providing welfare benefits from its limited financial resources. Therefore, the exclusion by Article 8, paragraph 1 of resident foreigners from eligibility for disability welfare pension benefits should be seen as a matter falling within the discretion of the legislature.

2. Regarding the issue of whether the nationality requirement and the non-provision of disability welfare pension benefits to those who obtained Japanese nationality via naturalization on or after November 1, 1959 violate the provisions of Article 14, paragraph 1 of the Constitution, while said paragraph establishes the principle of equality under the law, it intends to prohibit discrimination with no rational basis, and the establishment of distinctions in legal treatment based on economic, social and various other factual differences of each individual does not violate said paragraph so long as such distinctions have a rational basis (see November 18, 1964 decision of Grand Bench of Supreme Court (1962(A) No. 927), Criminal Case Report Vol. 18, No. 9, p. 579; May 27, 1964 decision of the Grand Bench of the Supreme Court (1962(O) No. 1472), Civil Case Report Vol. 18, No. 4, p. 676). There is a distinction between applicants who possessed Japanese nationality and those who did not on the day on which recognition of disability was conferred in connection with eligibility for disability welfare pension benefits described in Article 81, paragraph 1 of the Law, but as explained above, because the legislature has discretion to place priority on Japanese nationals over resident foreigners and exclude resident foreigners from eligibility for disability welfare pension benefits, as well as to require that an applicant be a Japanese national as of November 1, 1959, the day on which recognition of disability was conferred, the rationality of the above distinction in treatment cannot be refuted, and said distinction cannot be said to violate Article 14, paragraph 1 of the Constitution.

4. Zen-norin (Japan Agriculture, Forestry and Fisheries Ministry Workers Union) Opposition Against the Revision of the Performance of Police Functions Law Case (Second appeal)

December 5, 1995 decision of Third Petty Bench of Supreme Court

Meaning of 'public welfare' under Article 13 of the Constitution - doctrine of human rights limitation

Case:

The issue of whether the prohibition regarding strikes by national civil servants under the National Civil Servants Law is permissible on the ground of public welfare as set forth in Article 13 of the Constitution was raised in connection with a 29-minute employee meeting held by national civil servants.

Holding:

Article 28 of the Constitution guarantees "the right of workers to organize and to bargain and act collectively", i.e., so-called basic labor rights. This guarantee of basic labor rights is based on the so-called right to survival set forth in Article 25 of the Constitution, and together with the guarantee of the right to work, as well as Article 27's guarantee that working conditions will be fixed by law, seeks to improve the economic well-being of workers. Based on the basic spirit of such basic labor rights, even though, unlike workers in private enterprises, civil servants are not in a position to determine their wages and other working conditions by means of an agreement with the employer, they are no different from general workers in that they obtain a living by providing labor as workers, and therefore, the guarantee of basic labor rights set forth in Article 28 of the Constitution should be construed to cover civil servants as well. However, because these basic labor rights are recognized as means to improve the economic well-being of workers, as explained above, and are not absolute rights, i.e., the rights themselves are not the goal, they cannot avoid being limited from the standpoint of the common interest of the people as a whole, including workers, and this is unquestionable in light of the intent of the provisions of Article 13 of the Constitution (here, 'public welfare' as set forth in Article 13 of the Constitution can be interpreted to mean the common interest of the populace as a whole, including all persons who are workers).

1. While civil servants, unlike workers in private enterprises, are appointed by the government that is responsible for the administration of state affairs based on the trust of the people, as provided in Article 15 of the Constitution, as a practical matter, the employer of civil servants is the entire nation, and civil servants are liable to the populace as a whole to discharge their duty to provide labor. Although civil servants cannot be denied the right to organize and other basic labor rights based on this ground only, in view of the special position of civil servants and the public

nature of their duties, it should be noted that there is an adequate rational basis for limiting the basic labor rights of civil servants to an unavoidable degree. Indeed, civil servants work for the public interest, and in order to ensure the smooth transaction of public business, they must perform their job responsibilities in their individual workplaces regardless of the nature of the job, and strikes by civil servants not only do not conform to their special position and the public nature of their duties, but also more or less bring public business to a halt, which would or could have a substantial effect on the common interest of the entire populace, including workers.

1-4 Discussion

(1) The Japanese Constitution is a modern constitution that was established by the Diet under the influence of the United States immediately after the end of the World War II, was promulgated on November 3, 1946, and took effect on May 3, 1947. It provides that the people have sovereign power and includes peace provisions that renounce war, etc., as well as various articles guaranteeing human rights. With regard to many of the social human rights recognized in the Covenant, the Constitution includes provisions setting forth similar rights. Section 1-2 indicates the similarities between the two instruments in the form of a list.

(2)(A) However, there are very few cases in which the Japanese courts have ruled that a law created by the Diet was unconstitutional and therefore invalid based on the provisions of the Constitution regarding social rights, and have accordingly provided a remedy to the plaintiff.

In many cases, the court has not recognized the rights of the plaintiff, often using the following reasoning as the ground for the decision.

"The provisions guaranteeing social rights merely declare the obligation of the government."

"The provisions of the Constitution do not confer specific rights on individuals."

"The legislature has a wide scope of discretion."

"If the object of the legislation is rational, distinctions is permitted as long so long as they are not substantially unreasonable."

"The rights of the individual may be limited by the 'public welfare', i.e., the interests of the entire people."

(2)(B) Many academics criticize the judgments of the courts.

(3) In cases in which a right recognized in the International Covenant on Economic, Social and Cultural Rights is at issue, the courts often determine that the right is identical to a similar right provided for in the Constitution, and then reiterate their prior negative rulings with regard to the provisions of the Japanese Constitution that guarantee social rights, as described in paragraph (2)(A) above. In particular, many experts object

to the Japanese courts' interpretation of the equality principle set forth in Article 14 of the Constitution.

2-1 Lise of Cases

Covenant-related court decisions(in chronological order)

No.	Date	Court (all civil cases)	Ruling by court	Issues	Other information
1	22.Sept.1982	Tokyo District Court	Covenant does not confer specific rights	Foreigners/Pension (general)	
2	22.Sept.1982	Tokyo District Court	Same as above	Foreigners/Pension (general)	
3	20.Oct.1983	Tokyo District Court	Japan has responsibility to promote measures protecting social rights of foreigners pursuant to Article 9	Foreigners/Pension (general)	Appeal in case (1)
4	19.Dec.1984	Osaka District Court	Covenant is type of treaty requiring implementing/legislationCovenant is not valid ground for decision	Foreigners/Pension (general)	Shiomi case
5	14.Aug.1986	Tokyo District Court	Covenant scope of limitation identical to that of 'public welfare'/Reasonable restrictions permissible	Civil servants	
6	16.Dec.1987	Tokyo District Court	Does not prohibit classification regarding taxes	Other	Child-rearing tax deduction for biological child
7	15.Nov.1988	Tokyo District Court	In Japan, ratification of Covenant regarding right of public employees to strike is 'withheld'	Civil servants	
8	2.Mar.1989	Supreme Court	Article 9 is a mere declaration of political responsibility/Does not confer immediate rights on individuals	Foreigners/Pension (general)	Second appeal in Shoimi case (case (4))
9	31.Oct.1989	Tokyo District Court	Japan withholds ratification of the Covenant regarding right to strike	Civil servants	
10	30.Mar.1990	Sendai District Court	Covenant does not guarantee public employees right to strike	Civil servants	
11	5.Feb.1991	Kyoto District Court	(1) Not determined under Covenant/(2) Orderd part of darages accured before filing on application from interpretation of Child-Rearing	Other	Child-Rearing Allowance
12	2.Mar.1993	Supreme Court	p152	Civil servants	Supreme Court decision in case (10)
13	18.Jun.1993	Osaka District Court	Does not directly apply between individuals/Does not impose specific duty of conduct on individuals	Between private individuals	Building lease between individuals and responsibility of Osaka Prefecture real estate agent to supervise
14	24.Mar.1994	Osaka District Court	Covenant does not confer specific, immediate rights on individuals	Foreigners/Pension (general)	Second suit in Shiomi case
15	15.Jul.1994	Tokyo District Court	Article 2-2 and Article 14 of Japanese Constitution prohibit irrational discrimination to same degree/current classification is rational classification/Inadequacy from standpoint of legislative policy pointed	Foreigners/Pension (public employee)	
16	2.Jul.1995	Tokyo District Court	Same as ground for decision in case 9	Foreigners/Between private individuals	Appeal in case (9)
17	19.Jun.1995	Tokyo District Court	Emergency medical care measures are a legislative policy issue, not an issue requiring judicial examination	Foreigners/Medical care	Emergency medical care,Foreigner lacking residency status
18	27.Sep.1995	Tokyo District Court	Whether foreigner having no address in Japan can be eligible for national health insurance is within scope of national legislative policy	Foreigners/Medical care	National health insurance, no proper visa
19	29.May.1996	Tokyo District Court	Whether foreigner having no address in Japan can be eligible for national health insurance is within scope of national legislative policy	Foreigners/Medical care/Civil servants	Emergency medical care
20	24.Apr.1997	Tokyo High Court	Rational classification permitted/Covenant prohibits irrational discrimination, does not prohibit rational discrimination	Foreigners/Medical care	Appeal in case (19)
21	7.Nov.1997	Otsu District Court	Same as above	Foreigners/Pension (public employee)	
22	27.Mar.1998	Kyoto District Court	Basic intent of Covenant and of Article 14 of Japanese Constitution are identical	Foreigners/Pension (public employee)	
23	16.Jul.1998	Tokyo District Court	Remedy granted recognizing erroneous interpretation of law/No examination of violation of Covenant	Foreigners/Medical care	Remedy granted
24	31.Jul.1998	Tokyo District Court	No decision regarding Covenant/However,Japanese government alleged that Covenant does not confer specific rights on individuals	Foreigners/Pension (public employee)	
25	29.Sep.1998	Tokyo High Court	Koso appeal of July 15,1995 Tokyo District Court decision (proposing legislative remedy) - legislative discretion recognized	Foreigners/Pension (public employee)	Appeal in case (15)
26	17.Mar.2000	Supreme Court	Covenant not interpreted to guarantee public employees right to strike	Civil servants	Second appeal in cases (9) (16)

* 'Foreigners' includes persons who subsequently obtain Japanese nationality
* Remedy under Covenant?

[1 - 26, except 3]
No
[3]
Yes

2-2 Important cases involving the Covenant

Decision No. 3

Court: Tokyo High Court
Date: October 20, 1983
Case name: Erroneous Administration Regarding National Pension Benefits For Resident Korean Appeal Case (Settled without second appeal.)

Case:

The denial of a claim for payment of old-age pension benefits by a resident Korean who paid premiums for ten years under the old National Pension Law, which limited eligibility for benefits to Japanese nationals, was found illegal on the ground that in light of the principle of faith and equality, the claimant's legal status should be deemed equivalent to a situation in which the nationality requirement was met.

Holding:

In accordance with the principle of faith and equality, the relationship of trust that arose between the appellant and the administrative authorities under the factual circumstances recognized above, may be violated only where an unavoidable necessity to protect the public interest exists. Although the appellant does not meet the nationality requirement, maintaining and insisting that the nationality requirement be met in every case does not fall within said necessity to protect the public interest, because (i) the nationality requirement should not affect the basis of the pension system in a manner that does not allow for any exceptions, and (ii) the necessity to maintain and insist on the nationality requirement against the trust of the appellant does not exist in order to protect the public interest because (a) the nationality requirement has not been applied to U.S. nationals on the basis of the U.S.-Japan Treaty of Friendship, Commerce and Navigation, (b) under Article 9 of the International Covenant on Economic, Social and Cultural Rights, Japan has had the responsibility to promote social security measures on behalf of foreign nationals since 1979, and (c) the nationality requirement was abolished through the revision via adjustment laws when Japan ratified the Convention Regarding the Status of Refugees, etc.

in 1982. Accordingly, because the relationship of trust that had arisen between the appellant and the administrative authorities cannot be overturned by the administrative authorities, it should be said that a legal situation equivalent to the situation in which the nationality requirement is met is present with regard to the appellant, and the defendant cannot deny the claim for old-age pension benefits filed by the appellant on the ground that the above requirement is not met.

Therefore, the disposition by the defendant in this case dismissing the claim for old-age pension benefits filed by the appellant was illegal and should be rescinded.

Decision No. 4

Court: Osaka High Court
Date: December 19, 1984
Case name: Shiomi Appeal Case

Holding:

However, as explained below, because the Covenant is not the kind of treaty that may be directly applied in the same manner as domestic law, but is the kind that must be implemented through legislative measures, it cannot be directly used as a standard for legal actions and does not immediately affect the validity of law.

No. 8

Court: First Petty Bench of Supreme Court
Date: March 2, 1988
Case number: S60 (Gyo Tsu) No. 92
Case name: Shiomi Pension Case (Second appeal)

Reference provisions: Articles 56 and 81 of the National Pension Law (prior to 1981 revision via Law No. 86)

Case:

* National Pension Law (hereinafter the 'Law') prior to revision by Law No. 86 in 1981

* The decision of the governor of Osaka prefecture to deny a claim for disability welfare pension benefits provided under Article 81, paragraph 1 of the National Pension Law (prior to the 1981 revision via Law No. 86) filed by a person who was a Korean national when the National Pension Law took effect but who acquired Japanese nationality thereafter, was found legal on the ground that the appellant did not possess Japanese nationality on the disability recognition date (the date on which the National Pension Law took effect).

Holding:

In addition, while Article 9 of the International Covenant on Economic, Social and Cultural Rights (Japanese Treaty Series 1972, No. 6) provides that "[t]he States Parties to the present Covenant recognize the right of everyone to social security, including social insurance," this provision confirms that the right to social security is deserving of protection by the national social policies of the state, and declares that the government has a political responsibility to actively promote social security policies to obtain the realization of the above right, but does not provide that concrete rights should be immediately conferred on individuals. This is clear from Article 1, paragraph 1 of the Covenant, which provides that "[e]ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." Therefore, it cannot be said that the intent of the Covenant directly bars the nationality requirement.

No. 12

Court: Third Petty Bench of Supreme Court
Date: March 2, 1993
Case name: Demand of Rescission of Disciplinary Action Case

Case:

A warning issued to a plaintiff who participated in a employees' meeting that was held by the Sendai group of the Tohoku chapter of the

National Weather Workers' Union for the purpose of obtaining a salary increase, which was organized by the staff of the Weather Agency, and consumed approximately 18 minutes of official work time, was not deemed a deviation from or abuse of the discretion of the defendant, in view of the fact that the plaintiff participated in the meeting as a group leader and played a central role therein.

Holding:

None of the provisions of Article 8, paragraph 1(c) of the Covenant on Economic, Social and Cultural Rights (Japanese Treaty Series 1979, No. 6), Article 3 of the ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise (Japanese Treaty Series 1965, No. 7) and Article 3 of the ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Japanese Treaty Series 1954, No. 20) referred to in the arguments cannot be interpreted as guaranteeing civil servants' right to strike, and therefore Article 98, paragraph 2 of the National Civil Servants Law is not in violation of the above instruments.

No. 13

Court: Osaka District Court
Date: June 18, 1993
Case name: Claim Regarding Confirmation of Right to Rent, etc. Case

Case:

A refusal by a landlord to rent an apartment unit to the plaintiff based on the fact that the plaintiff was a foreign national (a permanent Korean resident of Japan) was found to violate the duty of good faith that exists in the pre-contract stage of a contractual relationship, and the landlord was ordered to pay damages accordingly.

Holding:

The plaintiff asserts that the refusal by the defendants Kitaura et al. to rent [the apartment unit] violates the Japanese Constitution and the International Covenant on Economic, Social and Cultural Rights, but the provisions of Articles 13, Article 25, paragraph 1, Article 22,

paragraph 1 and Article 14, paragraph 1 of the Constitution that guarantee basic human rights are standards for situations involving public authorities, and are not directly applicable to legal disputes between private individuals. Moreover, the intent of the above provisions should be realized through various provisions of individual private laws. In addition, the extent to which each provision of the Covenant functions as a source of binding domestic law is limited, in that the Covenant commands only that the national or local governments adopt legislative and administrative measures along the lines of each provision, and it is understood that the provisions of the Covenant do not directly affect relationships between private individuals. Therefore, the court does not adopt any of the arguments made by the plaintiff.

No. 15

Court: Tokyo District Court
Date: July 15, 1994
Case name: Lawsuit Demanding Rescission of Dismissal of Claim Filed by Ex-civilian Employee of the Japanese Military Forces for Disability Pension Benefits under the Family of the War Wounded and War Dead Support Law

Case:

* The nationality requirement of paragraph 2 of the Appendix to the Family of the War Wounded and War Dead Support Law was found not in violation of Article 14, paragraph 1 of the Constitution, and it was determined that the provision was still in force even after the so-called Japan-Korea Agreement.

* Violation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights was asserted.

Holding:

Because Article 2, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights and Article 2, paragraph 2 of the International Covenant on Civil and Political Rights provide that the rights set forth in the provisions thereof may be protected in concrete

terms only via legislature measures enacted by each state party, and because the rights set forth in Article 9 of the International Covenant on Economic, Social and Cultural Rights and Article 26 of the International Covenant on Civil and Political Rights may be specifically enforced only pursuant to domestic law in the signatory state, individuals may not demand that the government specifically guarantee such rights based on the above provisions of said treaties.

No. 20

Court: Tokyo High Court
Date: April 24, 1997
Case name: Claim for Rescission of Dismissal of Application for Living Assistance Case (appeal case)

Reference articles: Article 14, Article 14, paragraph 1, and Article 25 of the Japanese Constitution; Articles 1, 2 and 69 of the Daily Life Security Law; treaties

Case:

The non-application of the Daily Life Security Law to resident foreigners was found not to violate Articles 14 or 25 of the Constitution, the Universal Declaration of Human Rights, or the International Covenant on Economic, Social and Cultural Rights.

Holding:

(1) The appellant asserts that, based on Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights, which Japan ratified in 1979, the Daily Life Security Law should be interpreted to apply not only to persons possessing Japanese nationality, but also to all persons residing in Japan, including foreign nationals, and that even if such an interpretation is not adopted, the government's action is in violation of said provision. Indeed, Japan did ratify the International Covenant on Economic, Social and Political Rights, which does have legal binding force on Japan, and because Article 2, paragraph 2 of said Covenant sets forth the equality principle providing that "[t]he States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without distinction

of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," it should be examined whether the Daily Life Security Law, which applies only to Japanese nationals, is in violation of said provision. However, it is clear that the scope of application of said Law was not automatically, i.e., without revision of the Law, changed to include foreign nationals, as the appellant maintains, that. In addition, the provision of the Covenant that sets forth the equality principle intends to prohibit discrimination without a rational basis, and distinctions in legal treatment based on economic, social and various other factual differences between each individual are not in violation of said provision, so long as said distinctions have a rational basis, and as the original decision indicates, the exclusion of foreign residents from the population of eligible recipients of benefits under the Daily Life Security Law, and the placing of priority on Japanese nationals over foreigners, falls within the scope of discretion conferred on the legislature, and the rationality of said distinction cannot be denied.

No. 25

Court: Tokyo High Court
Date: September 29, 1998
Case name: Disability Pension Benefits Claim of Resident Korean Ex-civilian Employee of Japanese Military Forces Case (Koso appeal)

Reference provisions: Article 14, paragraph 1 of the Japanese Constitution, Article 9 of the International Covenant on Economic, Social and Cultural Rights, Article 26 of the International Covenant on Civil and Political Rights, paragraph 2 of the Appendix to the Family of the War Wounded and War Dead Support Law, treaties

Case:

* The provisions of paragraph 2 of the Appendix to the Family of the War Wounded and War Dead Support Law, which provides that said Law does not apply for the time being to resident Koreans, who are not subject to the Family Register Law, had a rational basis at the time that the Law was established, and continues to have a rational basis even after the execution of the San Francisco Peace Treaty, and is not in violation of Article 14, paragraph 1 of the Constitution or of the provisions

of said Covenants.

* The nationality requirement contained in said Appendix was not recognized to have lost validity for being in violation of the equality principle (Article 14, paragraph 1 of the Constitution, etc.) after the execution of the Agreement on the Settlement of Problems concerning Property and Claims and on Economic Cooperation Between Japan and Republic of Korea (1965).

Holding:

According to evidence Ko No. 112, in connection with its Concluding Observations regarding Japan's Third Periodic Report under the International Covenant on Civil and Political Rights, the U.N. Human Rights Committee noted in October 1993 in the section entitled 'Principal Subjects of Concern' that "persons of Korean and Taiwanese origin who serve in the Japanese Army and who no longer possess Japanese nationality are discriminated against in respect of their pensions," but because the Committee's comment did not indicate that said Appendix was in violation of the Covenant, and was not contained in the 'Suggestions and Recommendations' section, said comment cannot be construed as directly affecting the validity of legislation enacted by signatory states, and therefore, it does not affect the above-referenced judgment.

Considering that (i) the resident Korean appellants, Seki and the late Chin, were abandoned, so to speak, without being able to receive any compensation from either the Japanese or Korean government for 46 years after the establishment of the Family of the War Wounded and War Dead Support Law and for over 33 years after the execution of the Agreement on the Settlement of Problems concerning Property and Claims and on Economic Cooperation Between Japan and Republic of Korea (1965), (ii) there is no guarantee even today that resident Koreans will become eligible to receive compensation, and meanwhile resident Koreans who were victims of war or suffered damages from war are aging, as exemplified by the late Chin, who passed away during this case, and (iii) when the San Francisco Peace Treaty took effect, resident Koreans were unilaterally deprived of Japanese nationality without any failure or responsibility on their side, so to speak, and were deprived of any means by which to receive compensation, the emotional path that led the

appellants to file this lawsuit with a sense of urgency is quite understandable, and one cannot help but feel sympathy for their plight. From a humanitarian perspective, as well as in light of the fact that this issue was pointed out by the U.N. Human Rights Committee as a 'Principal Area of Concern', it is Japan's political and administrative obligation to immediately adopt appropriate measures. Moreover, according to the evidence, the number of war wounded or their families who are originally from the Korean Peninsula and were denied the right to seek benefits under the Law due to the absence of Japanese nationality totaled only 24, so that financial considerations cannot justify their exclusion from eligibility for compensation....It is strongly urged that the nationality requirement of the Family of the War Wounded and War Dead Support Law and the Appendix thereto be abolished, and that a law enabling resident Koreans to receive compensation under said Law be established, or that equivalent administrative special measures be adopted on behalf of resident Korean war wounded.

2-3 Discussion (including classification of cases)

The Human Rights Committee requested that the Japanese government report on examples of judicial application of the Covenant in its review of the Third Periodic Report, but as shown in 2-1, the number of such cases was quite small.

(1) The cases may be classified in the following manner.

A. Classification by nature of case

a. Cases regarding civil servants' right to strike.
Case Nos. 5, 7, 9, 10, 12, 16, a total of seven cases

b. Cases regarding foreign nationals
A total of 17 cases

- Of those, cases regarding the national pension scheme
Case Nos. 1, 2, 3, 4, 8, 14, a total of six cases
- Cases regarding public officials' pensions
Case Nos. 15, 21, 22, 24, 25, a total of five cases
- Cases regarding medical treatment
Case Nos. 17, 18, 19, 20, 23, a total of five cases
- Cases regarding emergency care
Case Nos. 17, 18, 19, 20, 23, a total of five cases
- Cases regarding child-rearing benefits
Case No. 11, a total of one case

B. Classification by types of parties

a. Cases involving private parties only
Case No. 13, a total of one case

b. Cases involving private parties and the national or local governments
All 26 cases other than Case No. 13

(2) Of the cases involving the International Covenant on Economic, Social and Cultural Rights included in the case reports, the right of an individual based on said Covenant was recognized only in one case, i.e., case No. 3.

However, the point of the ruling is not clear. The timing of the ruling was four years after Japan's ratification of the Covenant, and all of the other 25 decisions are consistent in holding that the International Covenant on Economic, Social and Political Rights does not establish binding judicial standards. No rulings providing a remedy for a violation of individual rights were issued in the 17 years following the decision of case No. 3. This judicial stance is consistent with the courts refusal to recognize the social rights of individuals guaranteed by the Japanese Constitution based on the provisions of the Covenant on Economic, Social and Political Rights. The Commission on Economic, Social and Political Rights pointed out in its General Comment No. 2 that state parties are obligated to immediately take steps to implement some of the rights set forth in the Covenant, and the interpretation of the Covenant seen in the above Japanese court cases is unjust.

(3) The grounds on which the courts have denied the rights of individuals recognized in the International Covenant on Economic, Social and Cultural Rights may be classified as shown below.

a. The Covenant does not directly guarantee the rights.

- Case Nos. 1, 2, 8, 14, 15, 17, a total of six cases

b. The Covenant cannot function as direct judicial standards.

- Case Nos. 4, 15, a total of two cases

c. The restriction is permitted under legislative policies. It is within the scope of legislative discretion.

- Case Nos. 17, 18, 19, 20, 25 , a total of five cases

d. The restriction is a rational distinction and does not constitute a discrimination prohibited by the Covenant.

- Case Nos. 5, 15, 20, 21, 22, a total of five cases

e. Japan has reserved ratification of the Covenant with regard to the civil servants' right to strike.

- Case nos. 7, 9, 10, 16, 26, a total of five cases

f. The Covenant is not directly applicable to matters between private persons.

- Case No. 13, a total of one case

g. The alleged complaint has nothing to do with the Covenant.

- Case Nos. 6, 10, 12, a total of three cases

(4) Both the courts and government are unwilling to recognize as legal standards (a) the right to enjoy the rights guaranteed by the Covenant without discrimination (Article 2), (b) the right to emergency food that may affect one's survival, and (c) the right to emergency medical care, which are all interpreted as being directly guaranteed to all by the Covenant on Economic, Social and Cultural Rights. The courts do not possess sufficient resources regarding the Covenant on which to base their judgements, and it is very unlikely that the courts' negative attitude will change in the foreseeable future.