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United Nations  
Office of High Commissioner for Human Rights

Written Information Submitted for the Summary of the Human Rights Situation in Japan  
to be Prepared by the United Nations Office of High Commissioner for Human Rights

Japan Federation of Bar Associations

## **I Japan's Efforts at Implementing International Human Rights Treaties**

### Positive Aspects

1. The Japanese government has ratified many of the core international human rights treaties, and through reviews and recommendations by treaty bodies, it has in part endeavored to implement treaty obligations domestically. In accordance with a policy of positive human rights diplomacy, Japan has served as a member of the UN HRC, and in other ways internationally shown its effort to play an active international role in the human rights area. At the same time, however, there are problems with the human rights situation in Japan that have been neglected and have seen no improvement for many years despite the recommendations of treaty bodies and special rapporteurs.

### Process of Preparing Japanese Government UPR Report

2. It is appreciated that the government set up a human rights diplomacy page on the Ministry of Foreign Affairs website, where it has posted an explanation about the HRC and Japan's pledge in the HRC first election, announced the UPR of Japan and invited opinions for reference for the government report. However, the Japanese government has not held consultations with NGOs and other stakeholders in the process of preparing the government report for the UPR (as of February 8, 2008). Prior to submitting this report to the UN Office of High Commissioner for Human Rights, the JFBA provided an advance copy and an explanation for the government.

## **II Japan's Normative and Institutional Framework for Promoting Human Rights Protection**

3. Japan's main normative framework for promoting human rights protection comprises the human rights provisions of its Constitution, the provisions of domestic laws connected with guaranteeing human rights, and international human rights instruments including international human rights treaties. Although Japan has ratified most of the core human rights treaties, it has not yet signed the ICCPR-OP2 or the ICRMW. Further, Japan has yet to ratify the ICCPR-OP1 or other optional protocols for individual complaint procedures, and has not declared its acceptance of them. In accordance with the spirit of Article 98.2 of the Constitution of Japan that provides the obligation of observing the treaties and established laws of nations, treaties ratified by Japan are incorporated into the domestic legal system and have the same force as domestic law. Japan has no national plans of action for the promotion and protection of human rights.

4. For the institutional framework, the courts do provide judicial redress for human rights violations, but Japan has yet to establish national human rights institution in accordance with the Paris Principles. Courts are disinclined to apply international human rights treaties as judicial norms, and in the interpretation of treaties, courts tend to ignore the general comments and views of treaty bodies. For that reason, concluding observations by the CCPR (1998) and the CESCR (2001) recommended that judges be given education and training in international human rights law (Appendix II-1), but implementation is still insufficient. Further, because the ground of appeals to the Supreme Court is limited to unconstitutionality, litigants cannot directly invoke a treaty violation as a ground of an appeal to the Supreme Court.

## **III Major Concerns (General and Structural Problems)**

### Uncooperative Attitude toward Treaty Bodies

5. In its pledge submitted in the HRC first election, Japan's government lauded itself for faithfully implementing the core human rights treaties, but in reality the Japanese government's attitude with respect to the reviews of government reports by treaty bodies is generally far different. Specifically, the government has been very late in submitting its reports to treaty bodies, and it has hardly implemented any of the recommendations made by treaty bodies. What is more, as evidenced in its rebuttals to recommendations (Appendix III and IV), the government evinces no will to sincerely implement those recommendations in the first place. There are even issues which the government has neglected for many years, taking no action at all, despite repeated recommendations from multiple treaty bodies to make improvements. Some examples are revision of provisions which discriminate against children born out of wedlock, abolition of substitute prison (*daiyo kangoku*), improvements in the way the capital punishment system is operated and in the treatment of death row inmates, and the establishment of a national human rights institution.

### National Human Rights Institution

6. The CCPR, CESCR, CERD, CEDAW, and CRC have advised Japan to as soon as possible establish a national human rights institution in accordance with the Paris Principles (Appendix II-2), and it should be done soon.

7. In March 2002 the government submitted a human rights protection bill to the Diet for the establishment of a national human rights commission, but the proposed legislation had fatal flaws including: (1) the human rights commission to be created by the bill would be under the virtual jurisdiction of the Minister of Justice as an extra-ministerial bureau of the Ministry of Justice, and therefore problematic in terms of independence from the government, and (2) the concept of the “human rights” for which redress and protection are to be provided is ill-defined, and the only types of human rights violations by public power that are eligible for investigations and redress are limited to “discrimination and abuse.” For this reason there is widespread opposition from JFBA and the public, and the bill has not passed the Diet. In 2005 there was another proposal for a revised bill that was even more regressive and discriminatory because it would introduce a citizenship requirement to qualify for the human rights protection commissioners who would serve for the human rights commission. JFBA and other NGOs that have been seeking the establishment of a national human rights institution in accordance with the Paris Principles have become more wary that such a bill might be submitted to the Diet and passed, and there has been no progress in efforts aimed at establishing a national human rights institution.

### Individual Complaint Procedures

8. Japan has yet to ratify, even sign any of the optional protocols for or declare acceptance of individual complaint procedures under international human rights treaties. This fact is indicative of an attitude totally removed from faithful implementation of core human rights treaties. In response to recommendations by treaty bodies on this matter, the Japanese government has for nearly 20 years repeated the same irrational excuse, that “it is possible problems would arise in connection with the judicial system, including the independence of judicial power, and it has been pointed out that the matter should be considered with great care, and therefore we are, while observing the implementation and other aspects of this system, seriously and carefully considering whether Japan should sign.” As such, there has been no progress at all. Considering that Japan, as a member of the HRC, tries to play an internationally positive role and discharge its responsibilities in the area of human rights, it is totally indefensible that individuals within its own jurisdiction are placed in circumstances where they cannot avail themselves of the individual complaint procedures, which are the international mechanisms for protection of human rights. Japan should accept all the individual complaint procedures immediately.

## **IV Major Areas of Concern (Specific Problems)**

### **A. Problems Relating to Police Detention and Criminal Procedure**

9. JFBA strongly requests that the HRC adopt a conclusion which asks the Japanese government to abolish substitute prison (*daiyo kangoku*) and to make electronic recordings of interrogations.

#### Police Detention (*Daiyo Kangoku*) Continuing Even after the Decision to Detention and Unverifiable Interrogation of Suspects

10. In Japan, even after suspects are passed into the custody of a judge, they go back to the police and are not transferred to detention facilities under Ministry of Justice jurisdiction. They are kept in police detention cells functioning as substitute prison (*daiyo kangoku*) until indictment (maximum 23 days), where they can be interrogated for that entire period of time by police and prosecutors. This time in police detention cells is too long and clearly violates international human rights standards.

11. There is no legal limit on interrogation time while in police custody, and suspects who deny the charges or maintain silence are subject to interrogation that continues far into the late night. When suspects deny the charges, written statements are sometimes not produced.

12. In Japan, interrogations of suspects in detention are conducted in total secrecy. Neither video nor audio recordings are made, and lawyers are not present. As such, there is no means of subsequently verifying whether an interrogation was conducted properly. In fact, there are continuing reports in which suspects claim that interrogators take advantage of behind-closed-doors conditions to subject suspects to psychological

pressure such as threats or the promise or offer of inducements, or force suspects to confess, or physically torture them with violence, indecent acts, or other means. There are many instances in which courts recognized such claims by defendants (Appendix II-3).

13. Records of interrogations by police officers and public prosecutors are statements created by having suspects sign and affix their seals to documents prepared by those investigators, but these documents do not contain questions and answers one by one and thus cannot be considered precise records of the statements of the suspects.

14. An internal document of the Ehime Prefectural Police, which created guidelines for police in interrogations, was revealed to the public by accident. These guidelines recommend that suspects who deny charges be “weakened” through long hours of questioning in order to gain confessions (Appendix II-4).

#### Ignoring Recommendations from Treaty Bodies

15. JFBA has been active for over 30 years in demanding the abolition of the substitute prison (*daiyo kangoku*) system. The concluding observations of the CCPR (1993, 1998) and of the CAT (2007) recognized that the substitute prison system is the cause of false coerced confessions obtained through inhumane interrogations. They strongly request that the substitute prison system be abolished and that interrogations be electronically recorded (Appendix II-5).

16. In response, JFBA has proposed that the substitute prison system be abolished, that interrogations be video or audio recorded in their entirety, and that lawyers be given the right to demand disclosure of all evidence held by prosecutors. To this end, JFBA has conducted continuing consultations with the Ministry of Justice, but none of these things has happened due to strong resistance from investigative authorities. Recently the Supreme Public Prosecutors Office has introduced on a trial basis a system in which prosecutors would make video or audio recordings of parts of interrogations when they deem it necessary, but partial audio or video recordings would be nothing more than prosecutors creating evidence or making presentations that would give judges (including citizens chosen for the lay judge system soon to be launched) a strong impression of the situation after coerced confessions had been extracted. Therefore as a means of interrogation transparency, partial recordings would be not just totally insufficient, but even harmful.

17. Another serious problem related to human rights violations while suspects are in police detention facilities is the lack of an institution, which investigates complaints, independent of the police (Appendix II-6).

18. The response of Japanese government, which openly ignores the repeated recommendations of treaty bodies, is incompatible with its diplomatic posture of making a contribution to guaranteeing human rights around the world as a member of the HRC. Despite JFBA’s consistent efforts, the domestic solution to this problem has proved especially difficult, thereby making it essential to have a decisive recommendation by the HRC.

#### B. Capital Punishment System and Treatment of Death Row Prisoners

19. Japan’s capital punishment system and its implementation are distinctly inhumane, and involve serious human rights problems. The UN High Commissioner for Human Rights also expressed concern over the recent execution (Appendix V). We vigorously request that the HRC respect the recommendations for improvements that the CCPR and CAT have repeatedly made to Japanese government, and issue stricter, more resolute improvement recommendations including a moratorium on executions.

#### Expansion of the Capital Punishment System and Lack of an Appropriate System for Stay of Execution

20. In Japan, over the last decade there has been no particular increase in homicide or other heinous crimes. However, the number of death row inmates has risen from 51 in 1997 to 98 at the end of 2006, and further to 109 as of November 15, 2007. Appeals against the death sentences are not mandatory. Although it is possible to request a retrial for finalized death sentences, such requests do not have legal effect to stay execution. Further, retrials for death sentences had been held for only four cases in the 1980s (Appendix II-8).

21. Death row inmates include a considerable number of people who have serious health problems or are of advanced age. Although the Code of Criminal Procedure prohibits carrying out execution on those who are *non compos mentis*, there is no system under which outside physicians examine the health of death row

inmates and determine whether a stay of execution is called for, and there are instances in which a mentally unsound inmate and an aged inmate were executed (Appendix II-9).

22. In 1975 there was only one instance in which the death penalty was commuted by a pardon, but for over 30 years since then there has been not a single pardon, showing that the pardon system is not working.

#### Torture and Inhumane Treatment of Death Row Inmates

23. Death row inmates are told the day of their execution on that very day, and usually about one hour in advance. Even relatives and lawyers are given no advance notice. Even for those inmates requesting retrials, there is no guarantee of a confidential meeting with their lawyers. In fact, in almost all cases a prison official is present during meetings of death row inmates with their lawyers. Letters exchanged with lawyers are all inspected. With no exceptions, death row inmates are kept in single cells for long periods, and contact with other prisoners is not permitted in principle (Appendix II-10). Strict limits are placed on meetings and correspondence with people other than relatives and lawyers.

24. The concluding observations of the CAT (2007) determined that such treatment could amount to torture or ill-treatment.

#### C. Discrimination

25. Even now the Japanese state itself commits legal and actual discrimination against foreigners, people born out of wedlock, and women, which in some ways fosters and reinforces discrimination by private persons. JFBA requests that the HRC adopt a conclusion asking the Japanese government to eliminate current de jure and de facto discrimination, rectify past discrimination, and take steps to rectify discrimination in the civil sector.

#### Foreigners

26. The number of foreigners in Japan has been increased 47% for the past ten years and the trend of their settlement has been in progress. However, creating the legal system aimed at the co-existence of multi-ethnic people and prohibition of racial discrimination is behind and there exists discrimination in such areas as labor, education and social security. On the other hand, a policy of strictly controlling and monitoring immigration and residence targeting foreigners for the purpose of preventing terrorism or crime by foreigners has been implemented or under consideration.

27. Right to Public Employment: The government's stance is that foreigners in general should not be eligible to take public service examinations for the posts whose work is anticipated to involve them in the exercise of public power or shaping the public will (Appendix II-11). However, closing the door totally on foreigners to become national government employees or local public employees, or assuming their supervisory positions just because they do not have Japanese citizenship violates articles 2, 25, and 26 of the ICCPR.

28. Acquiring Facial Images and Fingerprints from Foreigners: For the purposes of preventing terrorism and crime by foreigners, and reducing the number of undocumented foreigners, the Japanese government requires foreigners entering Japan, except foreigners such as special permanent residents, to provide fingerprints and facial images, which it claims will be used for crime investigations and the like. Requiring only foreigners to provide fingerprints in this manner violates Article 26 and is equivalent to degrading treatment under Article 7 of the ICCPR.

#### Discrimination against the Buraku Minority

29. In its concluding observations (1998), the CCPR recommended that Japan take measures to end the discrimination against the Buraku minority in education, income, and the system for effective remedies. Nevertheless, the Buraku minority is far behind the national averages in terms of college entrance rate and individual annual income. In Osaka Prefecture the unemployment rate for Buraku minority men in their 40s is about twice the prefectural average.

### Ainu

30. The Japanese government should recognize the Ainu as indigenous people and certify their land rights. Under the Hokkaido Former Natives Protection Act, the government managed the common assets of the Ainu, such as land and fisheries. Although in 1997 this law was abolished, their land rights have yet to be restituted (Appendix II-12). Treaty bodies recommended realization of the indigenous people's rights of the Ainu and elimination of discrimination against the Ainu (Appendix II-13).

### Children Born out of Wedlock

31. **Obtaining Citizenship:** Article 2.1 of the Citizenship Law provides that a child born of either a mother or father who has Japanese citizenship also gains Japanese citizenship, but when a child is born out of wedlock to a Japanese father and a foreign mother, it does not gain Japanese citizenship as the father-child relationship is not legally established, unless the father acknowledges it before birth (Appendix 2-14). Concluding observations of the CCPR (1998) and other treaty bodies express concern that this constitutes discrimination (Appendix II-15).

32. **Discrimination in Inheritance:** The Civil Code specifies that the inheritance share of children born out of wedlock is one-half that of children born in wedlock. Concluding observations of treaty bodies point out that this is discrimination (Appendix II-16). However, the Japanese government maintains that this provision is reasonable because it was created to protect families that comprise a husband and wife united in legal marriage, and children born between them. The Supreme Court has pronounced it constitutional (Appendix II-17).

### Women

33. In Japan, participation by women in policy, decision-making processes and employment is extremely low (Appendix II-18). In terms of wages, regular women employees are paid 67.1% those of men; women part-time workers receive about 45% wages of regular men workers, remaining very low standards.

34. Provisions prohibiting indirect discrimination were added to the amended Equal Employment Opportunity Law, which took effect in April 2007, but there is a problem in that the kinds of indirect discrimination prohibited are limited (Appendix II-19). The amended law is inadequate also because it has no provisions prohibiting sexual harassment.

35. Despite the Concluding observations of the CCPR (1998) and the Concluding Comments of the CEDAW (2003), the government has not abolished Civil Code provisions which are discriminative toward women with respect to marriage and family relationships, such as the lower minimum marriage age for women, the waiting period of remarriage for women after divorce (six months), and the fact that a wife and husband may not have different surnames (Appendix II-20).

36. With respect to violence against women, the Domestic Violence Law was amended to widen the scope of protection against violence, but victims of domestic violence are still latent, and the number of identified cases where a wife is victimized by her husband shows an increasing trend (Appendix II-21). Enhancement of assistance programs for self-reliance after temporary protective custody is needed. Regarding human trafficking, while human trafficking was newly criminalized to punish perpetrators, there is still a need for legislation under which the government would take responsibility for enacting measures to provide victims with comprehensive and effective relief. In May 2003 the Diet approved ratification of the Trafficking in Persons Protocol, but the Protocol has not yet been ratified. Additionally, on the "comfort women" issue, the government should immediately take legislative measures for a final resolution, including an apology and compensation for damages, in accordance with the recommendations of treaty bodies and other UN human rights bodies (Appendix II-22).

### Persons with Disabilities

37. In Japan there exists deep-rooted discrimination against persons with disabilities (Appendix II-23). The Basic Law for Persons with Disabilities provides prohibition of discrimination as a fundamental principle. However, it does not define discrimination (Appendix II-24) and thus is insufficient as the norm for judicial remedies. Enactment of a comprehensive law prohibiting discrimination against persons with disabilities was recommended by the CESCR (Appendix II-25).

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## Appendix 1

### Conclusions that the Japan Federation of Bar Associations Seeks from the United Nations Human Rights Council

The Japan Federation of Bar Associations requests that, in the conclusion of its UPR on Japan, the UN HRC set forth the following concerns or recommend that the Japanese government implement the following measures:

- 1 The Council recommends that Japanese government carry out all the recommendations issued so far by each treaty body.
- 2 The Council also recommends that Japan establish a national human rights institution, which is in accordance with the Paris Principles.
- 3 The Council further recommends that Japan ratify or declare its acceptance of all optional protocols for individual complaint procedures under international human rights treaties, including ratification of the ICCPR-OP1.
- 4 (1) The Council expresses serious concern at the substitute prison (*daiyo kangoku*) system, which subjects suspects in police detention cells even after court's decision for detention, and enables prolonged interrogations; the system is against the requirement to separate investigation from detention, and increases the possibilities of inhumane treatment and coercion of false confessions, leading to many false convictions.  
(2) The Council requests that Japanese government immediately abolish the substitute prison system, provide for the transparency of all interrogations by measures such as video recordings, and take measures to set a legal limit on the length of interrogations.
- 5 (1) The Council is gravely concerned that the death penalty is being more widely applied and lacks appropriate institutional guarantees, and that the treatment of death row prisoners constitutes torture or inhumane treatment because of lack of advance notice of their executions, or because of prolonged solitary confinement.  
5 (2) The Council requests that Japanese government institute a stay of executions, and take measures to reform torture or inhuman treatment concerning the death penalty and treatment of death row prisoners.
- 6 The Council expresses concern that Japan still practices de jure and de facto discrimination against foreigners, children born out of wedlock, and women, which in some ways fosters and reinforces discrimination by private persons, and requests the government to eliminate current de jure and de facto discrimination, rectify past discrimination, and take steps to rectify discrimination by private persons, against those including foreigners, Buraku minority, Ainu, children born out of wedlock, women and persons with disabilities.

## Appendix 2

### Supplementary Documentation

#### 1 (1) Concluding observations of the CCPR (1998)

Para. 32. “The Committee is concerned that there is no provision for training of judges, prosecutors and administrative officers in human rights under the Covenant. The Committee strongly recommends that such training be made available. 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.”

#### (2) Concluding observations of the CDESCR (2001)

Para. 35. “The Committee also recommends that the State party improve teaching and training programmes on human rights for judges, prosecutors and lawyers in order to enhance knowledge, awareness and application of the Covenant.”

#### (3) Conclusions and recommendations of the CAT (2007)

Para. 22. “In addition, all categories of law enforcement personnel, as well as judges and immigration officials, should be regularly trained in the human rights implications of their work, with a particular focus on torture and the rights of children and women.”

#### 2 (1) Concluding observations of the CCPR (1998)

Para. 9. “The Committee is concerned about the lack of institutional mechanisms available for investigating violations of human rights and for providing redress to the complainants. Effective institutional mechanisms are required to ensure that the authorities do not abuse their power and that they respect the rights of individuals in practice. The Committee is of the view that the Civil Liberties Commission is not such a mechanism, since it is supervised by the Ministry of Justice and its powers are strictly limited to issuing recommendations. The Committee strongly recommends to the State party to set up an independent mechanism for investigating complaints of violations of human rights.”

#### (2) Concluding observations of the CERD (2001)

Para. 12. “Regarding the prohibition of racial discrimination in general, the Committee is further concerned that racial discrimination as such is not explicitly and adequately penalized in criminal law. The Committee recommends that the State party consider giving full effect to the provisions of the Convention in its domestic legal order and ensure ...the access to effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination.”

#### (3) Concluding observations of the CDESCR (2001)

Para. 38. “The Committee welcomes the State party’s indication that it proposes to establish a national human rights institution and urges the State party to do so as soon as possible and in accordance with the 1991 Paris Principles and the Committee’s general comment No. 10.”

#### (4) Concluding comments of the CEDAW (2003)

Para. 373. “While noting with satisfaction that the Government submitted a Human Rights

Protection Bill to the Diet in March 2002, the Committee is concerned about the independence of the proposed human rights commission, which would be placed under the Ministry of Justice.”

Para. 374. “The Committee recommends that the human rights commission proposed in the Human Rights Protection Bill be established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134 of 20 December 1993, annex, known as the “Paris Principles”) in order to ensure that it will be an independent institution and adequately address women’s human rights.”

(5) Concluding observations of the CRC (2004)

Para. 14. “The Committee is concerned that there is no independent nationwide system to monitor the implementation of the Convention. At the same time, the Committee welcomes information that three prefectures have established local ombudsmen and that the bill on the establishment of a Human Rights Commission will be resubmitted to the Diet at its next session. In light of the information provided by the delegation that the draft bill envisages a Human Rights Commission that is responsible to the Minister of Justice, the Committee is concerned about the independence of that institution. In addition, it is concerned that the planned Human Rights Commission does not have an explicit mandate to monitor the implementation of the Convention.”

Para. 15. “In light of its general comment No. 2 (2002) on the role of independent national human rights institutions in the protection and promotion of the rights of the child, the Committee recommends that the State party:

- (a) Review the Human Rights Protection Bill to ensure that the planned Human Rights Commission will be an independent and effective mechanism in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex);
- (b) Ensure that the Human Rights Commission has a clearly defined mandate to monitor the implementation of the Convention, to deal with complaints from children in a child-sensitive and expeditious manner and to provide remedies for violations of their rights under the Convention;
- (c) Promote the establishment of local ombudsmen within prefectures, and establish a system for them to coordinate with the Human Rights Commission once it is established;
- (d) Ensure that the Human Rights Commission and local ombudsmen are provided with adequate human and financial resources and easily accessible to children.”

3. Recent cases are Shibushi Case, Toyama Himi Case, and Kitakata Case. Brief descriptions of them are as follows:

- (a) Shibushi Case: The charge was violation of Public Offices Election Law, where defendants were accused of bribing for votes in Kagoshima prefecture councilor election. The Kagoshima district court acquitted all twelve defendants on February 23, 2007 and the judgment became final. With no such an incident, the case was made up by the police using coercive interrogation called "tataki-wari," which originally means "smashing into pieces" but contextually means inducing false confessions by psychological pressure.
- (b) Toyama Himi Case: The defendant was falsely arrested by the Toyama Prefectural Police under charge of rape. In the process of the non-compulsory investigations, the defendant denied the charge, but as a result of false confession induced by coercive interrogation,

sentence of imprisonment was finalized; Coming out of a true offender after the defendant had served term of imprisonment revealed the defendant's innocence.

(c) Kitakata Case: The defendant, who was indicted under charge of killing three women and demanded death sentence by the prosecutor, was acquitted by the final judgment in Saga prefecture. In the judgment, the court pointed out that illegal prolonged interrogation amounting to ten hours per day, which was aimed for acquiring confession, continued for seventeen days.

In the past there were retrials for the finalized death penalty cases, which are described in detail in paragraph 8.

4. In April 2006 it was found that, among documents leaked from the personal computer of a police inspector with the Ehime Prefectural Police, apparently due to a virus in the file exchange software "Winny," there was a document called "Guidelines for the Interrogation of Suspects." In 13 items it described rules for investigators to follow in interrogations. They included instructions such as "once you enter an interrogation room, do not leave there until you make the suspect confess," "If you start wondering that the suspect's claim might be true or if the investigation is getting nowhere, you might want to call it quits, but if you leave the room then, you'll have lost," and "If a suspect denies the charges, keep him in the interrogation room from morning until night (this also has ramification of weakening the suspect)," all of which encourage investigators to "weaken" suspects who deny charges by prolonged interrogations in order to acquire confessions.

In the May 2007 review of the report of the Japanese government by the CAT, the government admitted that the document was an internal police training document.

#### 5 (1) Concluding observations of the CCPR (1998)

Para. 22. "The Committee is deeply concerned that the guarantees contained in articles 9, 10 and 14 are not fully complied with in pre-trial detention in that pre-trial detention may continue for as long as 23 days under police control and is not promptly and effectively brought under judicial control; the suspect is not entitled to bail during the 23-day period; there are no rules regulating the time and length of interrogation; there is no State-appointed counsel to advise and assist the suspect in custody; there are serious restrictions on access to defence counsel under article 39(3) of the Code of Criminal Procedure; and the interrogation does not take place in the presence of the counsel engaged by the suspect. The Committee strongly recommends that the pre-trial detention system in Japan should be reformed with immediate effect to bring it in conformity with articles 9, 10 and 14 of the Covenant."

Para. 23. "The Committee is concerned that the substitute prison system (Daiyo Kangoku), though subject to a branch of the police which does not deal with investigation, is not under the control of a separate authority. This may increase the chances of abuse of the rights of detainees under articles 9 and 14 of the Covenant. The Committee reiterates its recommendation, made after consideration of the third periodic report, that the substitute prison system should be made compatible with all requirements of the Covenant."

#### (2) Conclusions and recommendations of the CAT (2007)

"Daiyo Kangoku (detention in the substitute prison system)"

Para. 15. "The Committee is deeply concerned at the prevalent and systematic use of the Daiyo Kangoku substitute prison system for the prolonged detention of arrested persons even after

they appear before a court, and up to the point of indictment. This, coupled with insufficient procedural guarantees for the detention and interrogation of detainees, increases the possibilities of abuse of their rights, and may lead to a de facto failure to respect the principles of presumption of innocence, right to silence and right of defence. In particular the Committee is gravely concerned at:

- (a) The disproportionate number of individuals detained in police facilities instead of detention centres during investigation and up to the point of indictment, and in particular during the interrogation phase of the investigation;
- (b) The insufficient separation between the functions of investigation and detention, whereby investigators may be engaged in the transfer of detainees, and subsequently be in charge of investigating their cases;
- (c) The unsuitability of the use of police cells for prolonged detention, and the lack of appropriate and prompt medical care for individuals in police custody;
- (d) The length of pre-trial detention in police cells before indictment, lasting up to 23 days per charge;
- (e) The lack of effective judicial control and review by the courts over pre-trial detention in police cells, as demonstrated by the disproportionately high number of warrants of detention issued by the courts;
- (f) The lack of a pre-indictment bail system;
- (g) The absence of a system of court-appointed lawyers for all suspects before indictment, regardless of the categories of crimes with which they are charged. Currently, court-appointed lawyers are limited to cases of felony;
- (h) The limitations of access to defence counsel for detainees in pre-trial detention, and in particular the arbitrary power of prosecutors to designate a specific date or time for a meeting between defence counsel and detainees, leading to the absence of defence counsel during interrogations;
- (i) The limited access to all relevant material in police records granted to legal representatives, and in particular the power of prosecutors to decide what evidence to disclose upon indictment;
- (j) The lack of an independent and effective inspection and complaints mechanism accessible to detainees held in police cells;
- (k) The use of gags at police detention facilities, in contrast with the abolition of their use in penal institutions.

The State party should take immediate and effective measures to bring pre-trial detention into conformity with international minimum standards. In particular, the State party should amend the 2006 Prison Law, in order to limit the use of police cells during pre-trial detention. As a matter of priority, the State party should:

- (a) Amend its legislation to ensure complete separation between the functions of investigation and detention (including transfer procedures), excluding police detention officers from investigation and investigators from matters pertaining to detention;
- (b) Limit the maximum time detainees can be held in police custody to bring it in line with international minimum standards;
- (c) Ensure that legal aid is made available to all detained persons from the moment of arrest, that defence counsel are present during interrogations and that they have access to all relevant materials in police records after indictment, in order to enable them to prepare the defence, as well as ensuring prompt access to appropriate medical

- care to persons while in police custody;
- (d) Guarantee the independence of external monitoring of police custody, by measures such as ensuring that prefectural police headquarters systematically include a lawyer recommended by the bar associations as a member of the Board of Visitors for Inspection of Police Custody, to be established as of June 2007;
- (e) Establish an effective complaints system, independent from the Public Safety Commissions, for the examination of complaints lodged by persons detained in police cells;
- (f) Consider the adoption of alternative measures to custodial ones at pre-trial stage;
- (g) Abolish the use of gags at police detention facilities. ”

#### "Interrogation rules and confessions"

Para. 16. "The Committee is deeply concerned at the large number of convictions in criminal trials based on confessions, in particular in light of the lack of effective judicial control over the use of pre-trial detention and the disproportionately high number of convictions over acquittals. The Committee is also concerned at the lack of means for verifying the proper conduct of interrogations of detainees while in police custody, in particular the absence of strict time limits for the duration of interrogations and the fact that it is not mandatory to have defence counsel present during all interrogations. In addition, the Committee is concerned that, under domestic legislation, voluntary confessions made as a result of interrogations not in conformity with the Convention may be admissible in court, in violation of article 15 of the Convention.

The State party should ensure that the interrogation of detainees in police custody or substitute prisons is systematically monitored by mechanisms such as electronic and video recording of all interrogations; that detainees are guaranteed access to and the presence of defence counsel during interrogation; and that recordings are made available for use in criminal trials. In addition, the State party should promptly adopt strict rules concerning the length of interrogations, with appropriate sanctions for non-compliance. The State party should amend its Code of Criminal Procedure to ensure full conformity with article 15 of the Convention. The State party should provide the Committee with information on the number of confessions made under compulsion, torture or threat, or after prolonged arrest or detention, that were not admitted into evidence.”

6. In April 2004 a male suspect held in a cell in the Wakayama Higashi Police Station died of suffocation when police put a gag on him to keep him from shouting. This suspect allegedly had been shouting, so the police double-gagged him, and put a straitjacket and nylon belt-style handcuffs on him. Then he was covered with a futon from his forehead down and was left in this state, which did not allow sufficient monitoring, and which is thought to have led to his death by suffocation.

In this case, the three police officers involved — a police inspector who was in charge at that time (age 56), an assistant police inspector (54), and a police sergeant (44) — were reported to the prosecutor’s office, but not arrested, on the charge of negligent manslaughter in the course of duty, and were fined 500,000 yen. For having neglected their responsibility of supervision, the director of the Wakayama Higashi Police Station was reprimanded, and the assistant director and two others received admonition by the chief of the prefectural police headquarters. That died suspect’s family has filed a lawsuit, currently pending, against the state seeking compensation and a full accounting. This case strongly suggests the need for an independent investigative authority.

#### 7 (1) Concluding observations of the CCPR (1998)

Para. 20. "The Committee is gravely concerned that the number of crimes punishable by the death penalty has not been reduced, as was indicated by the delegation at the consideration of Japan's third periodic report. The Committee recalls once again that the terms of the Covenant tend towards the abolition of the death penalty and that those States which have not already abolished the death penalty are bound to apply it only for the most serious crimes. The Committee recommends that Japan take measures towards the abolition of the death penalty and that, in the meantime, that penalty should be limited to the most serious crimes, in accordance with article 6, paragraph 2, of the Covenant."

Para. 21. "The Committee remains seriously concerned at the conditions under which persons are held on death row. In particular, the Committee finds that the undue restrictions on visits and correspondence and the failure to notify the family and lawyers of the prisoners on death row of their execution are incompatible with the Covenant. The Committee recommends that the conditions of detention on death row be made humane in accordance with articles 7 and 10, paragraph 1, of the Covenant."

#### (2) Conclusions and recommendations of the CAT (2007)

##### "Death penalty"

Para. 19. "While noting the recent legislation broadening visiting and correspondence rights for death row inmates, the Committee is deeply concerned over a number of provisions in domestic law concerning individuals sentenced to death, which could amount to torture or ill-treatment, and in particular:

- (a) The principle of solitary confinement after the final sentence is handed down. Given the length of time on death row, in some cases this exceeds 30 years;
- (b) The unnecessary secrecy and arbitrariness surrounding the time of execution, allegedly in order to respect the privacy of inmates and their families. In particular, the Committee regrets the psychological strain imposed upon inmates and families by the constant uncertainty as to the date of execution, as prisoners are notified of their execution only hours before it is due to take place;

The State should take all necessary measures to improve the conditions of detention of persons on death row, in order to bring them into line with international minimum standards."

Para. 20. "The Committee is seriously concerned at the restrictions imposed on the enjoyment of legal safeguards by death row inmates, in particular with respect to:

- (a) The limitations imposed on death row prisoners concerning confidential access to their legal representatives, including the impossibility to meet with them in private, while on appeal requesting retrial; the lack of alternative means of confidential communication and the lack of access to state defence counsel after the final sentence is handed down;
- (b) The lack of a mandatory appeal system for capital cases;
- (c) The fact that a retrial procedure or a request for pardon do not lead to suspension of the execution of sentence;
- (d) The absence of a review mechanism to identify inmates on death row who may be suffering from mental illness;
- (e) The fact that there has been no case of commutation of a death sentence in the last 30 years.

The State party should consider taking measures for an immediate moratorium on executions and a commutation of sentences and should adopt procedural reforms which

include the possibility of measures of pardon. A right of appeal should be mandatory for all capital sentences. Furthermore, the State party should ensure that its legislation provides for the possibility of the commutation of a death sentence where there have been delays in its implementation. The State party should ensure that all persons on death row are afforded the protections provided by the Convention.”

8. In the 1980s there were four succeeding instances of retrials in death penalty cases, all of which ended in acquittals. In all these cases, the death sentences were finalized in the Supreme Court.

(a) Menda case (the case of Mr. Sakae Menda): The judgment of acquittal in the retrial was issued on July 15, 1983.

(b) Saitagawa case (the case of Mr. Shigeyoshi Taniguchi): The judgment of acquittal in the retrial was issued on March 12, 1984.

(c) Matsuyama case (the case of Mr. Sachio Saito): The judgment of acquittal in the retrial was issued on July 11, 1984.

(d) Shimada case (the case of Mr. Masao Akahori): The judgment of acquittal in the retrial was issued on January 31, 1989.

9. In 1993 there was an execution of a person supposedly suffering serious schizophrenia. Two of four persons executed on December 25, 2006 were elderly, being 77 and 75 years old. The latter required a wheelchair in his daily life.

10. There is a tendency for death row inmates to be imprisoned for a long time. In almost all cases, they are imprisoned for at least five years after their death sentences are finalized, and there are several cases in which more than 30 years have elapsed.

11. Supreme Court Grand Bench decision of January 26, 2005 on case no. 1998 (Gyo tsu) 93

“The following understanding is appropriate for local government employees who perform jobs involving actions which amount to exercising public power that, for example, directly shapes, and determines the extent of, the rights and duties of local citizens, or who make or participate in making decisions on important policy measures of general local governments (hereinafter referred as ‘public employees wielding public power’). Carrying out the duties of public employees wielding public power directly and indirectly gives them substantial involvement in the lives of local citizens, such as by determining their rights and duties or legal status, or having a de facto heavy influence upon them. Hence based on the principle of the sovereignty of the people, in light of the fact that the citizens in their capacity as the sovereigns of the Japanese nation are to bear the ultimate responsibility for the way in which the national government and general local governments govern (see articles 1 and 15.1 of the Constitution), the proper view should be that, it is assumed that people with Japanese citizenship will hold jobs as public employees wielding public power, and that Japan’s legal system does not assume holding of such offices by foreigners who belong to countries other than Japan and have rights and duties as citizens of those countries.

“Further, when general local governments set up their public employee systems, they may use this as the basis for judgment when setting up integrated systems for appointing people to administrative positions, including the positions of public employees wielding public power, and the jobs which employees should previously hold in order to gain the work experience necessary for promotion to such positions. As such, when general local governments, having

established appointment systems for administrative employees as described above, adopt measures which provide that only employees who are Japanese citizens may advance to administrative positions, such distinction between employees who are Japanese citizens and those who are foreign residents has reasonable grounds, and it is reasonable to understand this as not violating either Article 3 of the Labor Standard Law or Article 14.1 of the Constitution. This principle is the same for the aforementioned special permanent residents.” This decision thereby sanctioned the decision by Metropolitan Tokyo not to allow Republic of Korea citizens who are special permanent residents to take the test for appointment to administrative positions.

12. Due to the repeal of the Hokkaido Former Natives Protection Act in 1997, the government returned common assets of the Ainu indigenous minority, such as land and fisheries, which had been managed by the government, with paltry sum of 1,470,000 yen; the amount was equivalent to the land's value at the time of the beginning of the governmental management. A lawsuit was filed to nullify this disposition, but this effort ended in defeat with finalization by the Supreme Court on March 24, 2006.

13 (1) Concluding observations of the CCPR (1998)

Para. 14. “The Committee is concerned about the discrimination against members of the Ainu indigenous minority in regard to language and higher education, as well as about non-recognition of their land rights.”

(2) Concluding observations of the CERD (2001)

Para. 17. “The Committee recommends that the State party take steps to further promote the rights of the Ainu, as indigenous people. In this regard the Committee draws the attention of the State party to its General Recommendation XXIII (51) on the rights of indigenous peoples that calls, *inter alia*, for the recognition and protection of land rights as well as restitution and compensation for loss.”

(3) Concluding observations of the CDESCR (2001)

Para. 40. “...the Committee recommends that the State party continue to undertake necessary measures to combat patterns of *de jure* and *de facto* discrimination against all minority groups in Japanese society, including the Buraku people, the people of Okinawa and the indigenous Ainu, particularly in the fields of employment, housing and education.”

(4) Concluding observations of the CRC (2004)

Para. 25. “...The Committee recommends that the State party undertake all necessary proactive measures to combat societal discrimination and ensure access to basic services, in particular, for ... Ainu and other minorities...through, *inter alia*, public education and awareness campaigns.”

Para. 49. “The Committee ... is concerned that ... (f) Children of minorities have very limited opportunities for education in their own language:...”

Para. 50. “The Committee recommends that the State party ... (d) [e]xpand opportunities for children from minority groups to enjoy their own culture, profess or practise their own religion and use their own language;...”

14. As shown below, the Supreme Court allows the acquisition of Japanese citizenship only in

“special circumstances.”

Supreme Court Second Petty Bench Decision of October 17, 1997 on case no. 1996 (Gyo-tsu) 60 concerned a child born in September 1992 to a Japanese man and a Korean woman who were married but living apart at the time. In December of the same year after the couple had divorced, there was a request for conciliation on the recognition of no parent-child relationship between the child and mother’s former husband, and on June 2, 1993 the no-relationship confirmation was finalized. On June 14 the biological father, a Japanese citizen, notified the acknowledgment of the child. In this circumstance, if the child had not been presumed born in wedlock based on a family register entry, and there were special circumstances calling for acknowledgment that the Japanese father would probably have acknowledged the child before birth, then just as if the unborn child had been acknowledged before birth, it is construed that the application of the Nationality Law Article 2.1 is allowed, and the child would acquire Japanese nationality by birth. The Court, finding that such special circumstances did exist, recognized that under the Nationality Law Article 2.1, Japanese nationality was granted to the child acknowledged by the said Japanese father. The Court went on to say, however, “In order to acknowledge the existence of special circumstances, the procedure to establish absence of the relationship between the mother’s husband and the child should be initiated without delay after the birth of the child, and once the absence of such a relationship was established and the notification of acknowledgment became possible, the notification should be made promptly.”

Supreme Court First Petty Bench decision of June 12, 2003 on case no. 2001 (Gyo tsu) 39 concerned a case in which a Korean mother who, on the next day after divorce from her Japanese husband, gave birth to a child of a different Japanese man. A lawsuit was filed over eight months after the child’s birth seeking to confirm the absence of a parent-child relationship between the former husband and the child. The father acknowledged the child four days after the final court decision confirming the absence of the said relationship. After delivering the child by cesarean section, the mother was convalescing at home and was unable to contact her former husband. Saying that, in view of this fact situation, there were special circumstances in which it should be considered that if there had been no presumption of birth in wedlock based on the family register, the father would have acknowledged the child before birth, the court granted the child Japanese citizenship on the basis of the Nationality Law Article 2.1.

#### 15(1) Concluding observations of the CCPR (1998)

Para. 12. “The Committee continues to be concerned about discrimination against children born out of wedlock, particularly with regard to the issues of nationality, family registers and inheritance rights. It reaffirms its position that pursuant to article 26 of the Covenant, all children are entitled to equal protection, and recommends that the State party take the necessary measures to amend its legislation, including article 900, paragraph 4, of the Civil Code.”

#### (2) Concluding observations of the CESCRC (2001)

Para. 14. “The Committee is also concerned about the persisting legal, social and institutional discrimination against children born out of wedlock, in particular as regards the curtailment of their inheritance and nationality rights.”

(3) Concluding observations of the CRC (2004)

Para. 31. "The Committee is concerned that a child of a Japanese father and foreign mother cannot obtain Japanese citizenship unless the father has recognized that child before its birth, which has, in some cases, resulted in some children being stateless..."

16. (1) Concluding observations of the CCPR (1998)

Para. 12. "The Committee continues to be concerned about discrimination against children born out of wedlock, particularly with regard to the issues of nationality, family registers and inheritance rights. It reaffirms its position that pursuant to article 26 of the Covenant, all children are entitled to equal protection, and recommends that the State party take the necessary measures to amend its legislation, including article 900, paragraph 4, of the Civil Code."

(2) Concluding comments of the CEDAW (2003)

Para. 371. "The Committee...is also concerned about discrimination in law and administrative practice against children born out of wedlock with regard to registration and inheritance rights and the resulting considerable impact on women."

(3) Concluding observations of the CRC (2004)

Para. 24. "The Committee is concerned that legislation discriminates against children born out of wedlock..."

Para. 25. "The Committee recommends that the State party amend its legislation in order to eliminate any discrimination against children born out of wedlock, in particular, with regard to inheritance and citizenship rights and birth registration, as well as discriminatory terminology such as 'illegitimate' from legislation and regulations..."

17. Supreme Court Grand Bench decision of July 5, 1995 on case no. 1991 (Ku) 143 held: "The legislative intent behind the qualifying proviso to the first part of Article 900.4 of the Civil Code is to respect the status of a child born in wedlock between spouses who are legally married, and, with due consideration for the status of a child born out of wedlock, grant a statutory share of one-half of the former child's share in order to protect the latter child. Because the current Civil Code is based on marriage by law, there are reasonable grounds for the aforementioned legislative intent, and therefore it cannot be said that granting children born out of wedlock one-half the statutory inheritance as that of children born in wedlock pursuant to this provision is, in connection with said legislative intent, highly unreasonable, or that it transcended the scope of reasonable discretion provided to the legislature, and therefore it cannot be said that this provision constitutes discrimination without reasonable cause, or that it violates Article 14.1 of the Constitution." However, five of the fifteen justices dissented. In Supreme Court Second Petty Bench decision of March 28, 2003 on case no. 2002 (O) 1630, Supreme Court First Petty Bench decision of March 31, 2003 on case no. 2002 (O) 1963, and Supreme Court First Petty Bench decision of October 14, 2004 on case no. 2004 (O) 992, two of five justices in all three similar decisions dissented.

18. As of 2006, Japan was placed 42nd among 75 countries according to the gender empowerment measure (GEM).

19. Indirect discrimination prohibited by the said law is limited in the following respects:  
Equal Employment Opportunity Law Enforcement Regulations, Article 2

1. Measures relating to the recruitment and hiring of workers, which involve worker height, weight, or physical strength as requirements.
2. Measures relating to the recruitment and hiring of workers (in cases where proprietors have established multiple tracks based on workers' job types, qualifications, and other attributes, and perform employment management differently according to tracks, this is limited to situations involving those tracks whose workers perform planning, sales, research and development, and other jobs related to key operations of the said proprietor's business), which require that workers accept to comply with transfers that require moving.
3. Measures relating to worker promotion, which require a worker to have been transferred to a place of business different from the one where the worker works.

20 (1) Concluding observations of the CCPR (1998)

Para. 16. "The Committee is concerned that there still remain in the domestic legal order of the State party discriminatory laws against women, such as the prohibition for women to remarry within six months following the date of the dissolution or annulment of their marriage and the different age of marriage for men and women. The Committee recalls that all legal provisions that discriminate against women are incompatible with articles 2, 3 and 26 of the Covenant and should be repealed."

(2) Concluding comments of the CECAW (2003)

Para. 371. "The Committee expresses concern that the Civil Code still contains discriminatory provisions, including those with respect to the minimum age for marriage, the waiting period required for women to remarry after divorce and the choice of surnames for married couples. It is also concerned about discrimination in law and administrative practice against children born out of wedlock with regard to registration and inheritance rights and the resulting considerable impact on women."

Para. 372. "The Committee requests the State party to repeal discriminatory legal provisions that still exist in the Civil Code and to bring legislation and administrative practice into line with the Convention."

21. *White Paper on Gender Equality 2007* reports, "Looking at trends in the number of the identified crimes between partners where women are victims, assault and injury have increased since 2000. Injuries decreased in 2004 from the previous year, however, in 2006, assault increased by 312 cases (86.9 %) to 671 cases, and injury also increased by 30 cases (2.4 %) to 1,294 cases from the previous year respectively."

22 (1) Recommendations in the Report of the Special Rapporteur on Violence Against Women, E/CN.4/1996/53/Add.1 (1996).

(2) Concluding observations of the CESCR (2001)

Para. 26. "The Committee expresses its concern that the compensation offered to wartime 'comfort women' by the Asian Women's Fund, which is primarily financed through private funding, has not been deemed an acceptable measure by the women concerned."

Para. 53. “The Committee strongly recommends that the State party find an appropriate arrangement, in consultation with the organizations representing the ‘comfort women’, on ways and means to compensate the victims in a manner that will meet their expectations, before it is too late to do so.”

(3) Concluding comments of the CEDAW (2003)

Para. 361. “While appreciative of the comprehensive information provided by the State party with respect to the measures it has taken before and after the Committee’s consideration of the second and third periodic reports of the State party with respect to the issue of ‘wartime comfort women’, the Committee notes the ongoing concerns about the issue.”

Para. 362. “The Committee recommends that the State party endeavour to find a lasting solution for the matter of ‘wartime comfort women.’”

23. As a practice, persons with disabilities are discriminated in the specific scenes, including schools (such as segregated education), work places (such as harassment based on disabilities, difference in wages), buildings (such as lack of slope to doorway, narrow streets and lack of elevators for wheelchair users), mobility (such as lack of restrooms for wheelchair users in trains, lack of elevators for wheelchair users to reach platforms), and access to services (procedures difficult for persons with disabilities to understand). In addition, abusive conducts of physical or verbal violence by staffs of institutions for persons with disabilities are reported, and the staffs are criminally penalized. There is no simple and speedy procedure to rectify discrimination and to provide remedies against such discrimination or abusive conducts.

24. Article 3.3 of the Basic Law for Persons with Disabilities.

"No person shall engage in any act of violation of rights and interests, including discrimination against persons with disabilities, on the basis of disability."

25. Concluding observations of the CESCR (2001).

Para. 25. “The Committee notes with concern that discrimination against persons with disabilities continues to exist in law and practice, particularly in relation to labour and social security rights. ”

Para. 52. “The Committee recommends that the State party abolish discriminatory provisions in statutes and that it adopt a law against all kinds of discrimination relating to persons with disabilities. It further urges the State party to continue, and speed up, progress in enforcing the employment rate for persons with disabilities in the public sector that is provided in legislation. ”

### Appendix 3

#### Comments of the Japanese Government on the Concluding Observations adopted by the Committee on the Elimination of Racial Discrimination on March 20, 2000, regarding initial and second periodic report of the Japanese Government

1. With regard to the ethnic composition ratio of the population in paragraph 7, regarding the recommendation of providing information on economic and social indicators of all minorities covered by the scope of the Convention, including the Korean minority, Burakumin and Okinawa communities;

(1) First of all, in relation to economic and social indicators of the Ainu, we will also make a report next time as we did in the initial and second periodic reports. Furthermore, we will consider what information can be offered on economic and social indicators of Koreans residing in Japan.

(2) On the other hand, we consider the scope of application of the Convention as follows.

a. In the first place, Article 1(1) of the Convention provides "racial discrimination" subject to the Convention as "all distinctions based on race, color, descent, or national or ethnic origin...". Therefore, the Convention is considered to cover discrimination against groups of people who are generally considered to share biological characteristics, groups of people who are generally considered to share cultural characteristics and individuals belonging to these groups based on the reason of having these characteristics. Those who live in Okinawa prefecture or natives of Okinawa are of the Japanese race, and generally, in the same way as natives of other prefectures, they are not considered to be a group of people who share biological or cultural characteristics under social convention, and therefore, we do not consider them to be covered by the Convention.

b. Furthermore, concerning "descent" provided in Article 1(1) of this Convention, in the process of deliberation on the Convention, there was the problem that the words "national origin" may lead to the misunderstanding that the words include the concept of "nationality" which is a concept based on legal status. In order to solve the problem, "descent" was proposed together with "place of origin" as a replacement for "national origin". However, we know that the wording was not sufficiently arranged after that, and "descent" remained in this provision.

Based on such deliberation process, in application of the Convention, "descent" indicates a concept focusing on the race or skin color of a past generation, or the national or ethnic origins of a past generation, and it is not understood as indicating a concept focusing on social origin.

At the same time, with regard to the Dowo issue (discrimination against the Burakumin), the Japanese government believes that "Dowo people are not a different race or a different ethnic group, and they belong to the Japanese race and are Japanese nationals without question."

(3) The Population Census in Japan is a statistical survey conducted by obliging all people living in Japan to answer, therefore it is carried out by limiting the number of census topics to

the minimum for performance of national basic policies in consideration of the burden of those filling it out.

2. With regard to "the population in Okinawa seeks to be recognized as a specific ethnic group and claims that the existing situation on the island leads to acts of discrimination against it" in paragraph 7;

(1) We know that some people claim that the population in Okinawa is a different race from the Japanese race; however, we do not believe that this claim represents the will of the majority of the people in Okinawa. Also, as described in 1(2)(a), those who live in Okinawa prefecture or natives of Okinawa are of the Japanese race, and they are not generally considered to be a group of people who share different biological or cultural characteristics from the Japanese race.

(2) It is not necessarily clear what "the existing situation on the island leads to acts of discrimination against the population on Okinawa," which the Committee pointed out, specifically means. However, concerning U.S. military facilities and their areas in Okinawa, in order to relieve the burden on residents of Okinawa due to the concentration of 75% of all U.S. military facilities and areas in Japan, the Japanese government has been working on steady implementation of the final report by SACO (Special Action Committee on Okinawa), which aims at arrangement, integration and reduction of the U.S. military facilities and areas with full force in cooperation with the U.S. government.

(3) Also, for prevention of incidents and accidents by U.S. personnel, the Japanese government has been requesting enforcement of official discipline and prevention of reoccurrence to the U.S. side on repeated occasions, including at the ministerial level. The government will work on the U.S. side to make efforts to prevent incidents and accidents from occurring in the future. In relation to this, the cooperative system has been implemented since fall of 2000. Under the system, a working team composed of related parties such as the U.S. military, the Japanese government, local authorities, the local police force and the chamber of commerce and industry studies and decides concrete measures which can be taken especially for prevention of recurrence of incidents and accidents involving drinking.

3. (1) With regard to the meaning of "descent" in Article 1(1) of the Convention mentioned in paragraph 8, the Japanese government's understanding is as described in the above 1(2)(b), and therefore, the government does not share the interpretation of "descent" with the Committee.

(2) At any rate, on the basis of the spirit declared in the preamble of the Convention, we take it for granted that no discrimination should be conducted including discrimination such as the Dowa issue (discrimination against the Burakumin). For those related to the Burakumin, the Constitution of Japan stipulates not only guarantee of being equal as Japanese nationals under the law but also guarantee of equality of all rights as Japanese nationals. Therefore, there is no discrimination at all for civil, political, economic and cultural rights under the legal system.

(3) With the aim of resolving the problem of discrimination against the Burakumin through improvement of the low economic level, living environment, etc., of Burakumin communities, the government enacted three special measures laws, which are the Law on Special Measures

for Dowa Projects, the Law on Special Measures for Regional Improvement and the Law Concerning Special Government Financial Measures for Regional Improvement Special Projects, and has been actively promoting various measures for more than 30 years.

We believe that as a result of long-standing activities to resolve the problem of discrimination against the Burakumin by both the government and local public entities, gaps in various aspects have been largely reduced, including completion of establishment of a physical foundation such as improvement of the living environment in Burakumin. We also believe that education and enlightenment for relieving the sense of discrimination have been promoted based on various plans, and the sense of discrimination among the people has certainly been lessened.

#### 4. Paragraph 9 of the concluding observations

(1) The government is not in position to make comments on the ideal way of application of provision of the Convention related to individual cases at the courts. When generalizing, it is not concluded that the courts are reluctant to apply the Convention immediately because there are few cases referring to provision of the Convention in opinions in consideration of the following: 1) There is a constraint that applying law by the court premises a fact authorized by the court based on facts claimed or evidence submitted by the parties concerned: 2) Since the purport of the Convention has already been reflected in the provision of domestic law, there are considerable cases in which the conclusion would be the same even if the provision of the Convention itself is not applied.

(2) With regard to status of both the Convention and provisions thereof in domestic law, Article 98, Paragraph 2 of the Constitution of Japan provides that "The treaties concluded by Japan and established laws of nations shall be faithfully observed." Therefore, treaties, etc. which Japan concluded and published have effect as domestic law. There is no express provision concerning relation between treaties concluded by Japan and laws in the Constitution of Japan, however treaties are considered to be superior to laws.

However, since the substantive provision of the Convention (Article 2 to 7) provides "the States Parties undertake...", the Convention shall be considered not originally to establish individual rights and obligations but to place an obligation of elimination of racial discrimination on the States Parties. Japan has been fulfilling the obligations which the Convention places on the States Parties as reported in the initial and second periodic report of the Japanese Government.

#### 5. Paragraph 10 of the concluding observations

(1) Article 4 (a) and (b) put the States Parties under an obligation of penalization, however, as mentioned in 6 below, Japan puts reservation stating that the country fulfils obligations of Article 4 as long as it does not conflict with the Constitution. Since Article 4(c) does not provide any concrete measures which the States Parties should take, it is understood to be left to the rational discretion of each States Party.

Also, the preamble of Article 5 states, "In compliance with the fundamental obligations laid down in Article 2 of this Convention...", therefore, it is understood as not exceeding the scope

of obligations provided in Article 2. However, on the other hand, as it is obvious from the provision "by all appropriate means" in Article 2 (1), legislative measures are required by circumstances and are requested to be taken when the States Parties consider legislation appropriate. We do not recognize that the present situation of Japan is one in which discriminative acts cannot be effectively restrained by the existing legal system and in which explicit racial discriminative acts, which cannot be restrained by measures other than legislation, are conducted. Therefore, penalization of these acts is not considered necessary.

(2) Furthermore, with regard to dissemination and expression of ideas of racial discrimination, if the idea includes content which damages the honor or credit of a certain individual or group, it is possible to penalize them under the crime of defamation, insult or damage of credit/obstruction of business under the Penal Code. In addition, it is possible to penalize them under the crime of intimidation under the Penal Code if the ideas contain intimidatory content aimed at a certain individual. Also, violent actions with a motivation or background of a racially discriminatory idea can be penalized under the crime of inflicting injury, crime of violence, etc. under the Penal Code.

(3) Also, with regard to discrimination by private individuals, when an illegal act is committed, liability for damage arises for those who have conducted such act (Article 709 of the Civil Code, etc.). Also, in case of a juristic act of violation of public policy or good morals, the act shall be invalidated based on Article 90 of the Civil Code.

(4) The Council for Human Rights Promotion established in the Ministry of Justice has been intensively examining and deliberating "basic matters regarding the improvement of relief measures for the victims in cases of human rights infringement" since September 1999, and submitted a report on the ideal framework of the human rights remedy system in May 2001.

The report proposes that the new human rights remedy system the central core of which is the Human Rights Committee (tentative name), independent of the government, should be created and that the said committee should provide active relief measures with more effective investigatory procedure and remedial methods for the victims of certain human rights infringements. It also says that it is necessary to define the scope of human rights infringement against which active relief measures should be taken on the basis of the purport of the International Convention on the Elimination of All Forms of Racial Discrimination, including discriminatory treatment based on race, color, or national or ethnic origin, etc. in social life and harassment relating to race, etc. The government, having the utmost regard for the recommendations of the Council, will make every endeavor to establish the proposed new human rights relief mechanism.

6. Expression of concern by the Committee about reservation of Article 4 (a) and (b) in paragraph 11

We are sufficiently aware of General Recommendations VII and XV of the Committee on the Elimination of Racial Discrimination. However, the concept provided by Article 4 may include extremely wide-ranging acts both in various scenes and of various modes. Therefore, to regulate all of them by penal statute exceeding the existing legislation is liable to conflict with guarantees provided by the Constitution of Japan such as freedom of expression, which

severely requires both necessity and rationality of the constraint, and the principle of the legality of crimes and punishment, which requests both concreteness and definiteness of the scope of punishment. For this reason, Japan decided to put reservation on Article 4 (a) and (b).

Also, the government does not think that Japan is currently in a situation where dissemination of racial discriminatory ideas or incitement of racial discrimination are conducted to the extent that the government must consider taking legislative measures for punishment against dissemination of racial discriminatory idea, etc. at the risk of unjustly atrophying lawful speech by withdrawing the above reservation.

7. Recommendation of paragraph 12, ensuring both penalization of racial discrimination and effective protection from and remedies for racially discriminatory acts

As described in the above 6, Japan puts reservation of implementing obligations of Article 4 (a) and (b) as long as not conflicting with the above guarantee at the conclusion of the Convention in consideration of the importance of freedom of expression, etc. guaranteed under the Constitution. However, legislative obligation for punishment within the scope is sufficiently secured, as described in the above 5, by existing penal statute such as defamation, and claim for damages is also possible through Civil procedure, therefore there are sufficient domestic laws to secure fulfillment of the obligations under the Convention with the above reservation.

In addition, the Human Rights Organs of the Ministry of Justice actively conduct promotional activities concerning all forms of discrimination including racial discrimination with the aim of disseminating and enhancing respect for human rights. Human rights counseling rooms are set up to accept inquiries from those who have suffered discrimination. In addition, when specifically recognizing incidents of alleged infringement of fundamental human rights, the Organs promptly investigate the incidents as human rights infringements cases, find out the fact of the infringement, and based on the results, take proper measures for the case.

The Council for Human Rights Promotion established in the Ministry of Justice considered remedy measures for racial discrimination based on the purport of the International Convention on the Elimination of All Forms of Racial Discrimination. It submitted a report on the ideal framework of the human rights remedy system in May 2001. The report proposes that a new human rights remedy system the central core of which is the Human Rights Committee (tentative name), independent of the government, should be created, and that the said committee should provide active relief measures with more effective investigatory procedure and remedial measures for the victims of certain human rights infringements including discriminatory treatment based on race, color, or national or ethnic origin, etc. in social life. The government, having the utmost regard for the recommendations of the Council, will make every endeavor to establish the proposed new human rights relief mechanism so that it can provide effective remedies for victims of discriminatory treatments based on race etc.

8. With regard to "the Committee notes with concern discriminatory statements made by high-level public officials and, in particular, the lack of administrative or legal action taken by the authorities as a consequence in violation of Article 4 (c) of the Convention and the interpretation that such acts can be punishable only if there is an intention to promote and incite racial discrimination" in paragraph 13;

(1) The main paragraph of Article 4 limits subjects to be condemned by the States Parties to all propaganda, etc. which is based on ideas or theories of superiority of one race, etc., or which attempt to justify or promote racial hatred and discrimination. As it is clear from the limitation, the article places an obligation of taking certain measures against acts with the intention of promoting racial discrimination on the States Parties. Therefore, it is considered that acts without such intention are not the subject of the article.

(2) Japan is not the only country which makes such interpretation. For example, Article 18, Paragraph 5 of the Public Order Act of 1986 in the UK provides that "a persons who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not intend his words, or behavior, or the written material, to be, and was not aware that might be. threatening, abusive or insulting."

(3) Furthermore, the Joint Statement on "Racism and the Media" (a joint statement by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE (Organization for Security and Co-operation in Europe) Representative on Freedom of the Media and the OAS (Organization of American States) Special Rapporteur on Freedom of Expression) defines laws for discriminatory statements as follows: "No one should be penalized for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence."

9. With regard to "the Committee urges the States Parties to provide appropriate training to public officials, law enforcement officers and administrators" in paragraph 13;

The government has been conventionally taking subjects related to human rights in the curricula of various training programs for national public officials and thoroughly educating them on various conventions related to human rights and the idea of the Constitution of Japan which declares respect for human rights.

For police officers, the government has been providing classes related to human rights protection including respect for human rights and various human rights-related conventions at training provided for newly-employed police officers and promoted police officers at police academies. These classes are included in classes on the Constitution, a fundamental law for human rights, on ethics of duties and on social studies

Also, since police practices are duties deeply related to human rights, education is conducted based on the purport of the various human rights-related conventions and the Constitution on every occasion such as training at the working place, aiming at execution of duties in consideration of human rights.

Judges acquire qualification for the legal profession after receiving a course for legal apprentices at the Legal Research and Training Institute as well as public prosecutors and attorneys. In lectures during the course for legal apprentices, the International Covenants on Human Rights and various problems related to human rights are covered. Furthermore, after appointment to a judge, curriculums related to human rights problems such as the International Covenants on Human Rights are set up at various workshops at the Legal Research and Training Institute.

As such, Japan has been educating public officials, law enforcement officers and administrators about human rights including elimination of racial discrimination, and will continue to make further efforts for enrichment of the said education in the future.

10. In relation to "the Committee is concerned about reports on violent actions against Koreans, mainly children, students and about inadequate reaction of the authorities in this regard and recommends the Government to take more resolute measures to prevent and counter such acts," in paragraph 14;

(1) In Japan, such violent actions are criminalized based on the punishable violations of the law stipulated in the penal code, such as murder, infliction of bodily injury, and acts of violence. The Japanese government is exerting efforts to make impartial dispositions regarding violent actions motivated by racial discrimination based on law and evidence.

(2) The police have already taken measures to prevent further occurrence of such violent actions by keeping stricter watch at places where such actions are likely to take place and during the times in which students go to and leave school, as well as by collaborating with related organizations and cooperating with schools.

In addition, Article 189 (2) of the Code of Criminal Procedure provides that police officers shall, when they consider that there exists an offense, investigate the offender and evidence. Accordingly, active investigations have been made to resolve cases irrespective of whether the injured party was Japanese or non-Japanese by observing the equality under the law stipulated in Article 14 (1) of the Constitution of Japan. Therefore, "inadequate reaction" pointed out in the Concluding Observations is not true.

(3) Furthermore, the human rights organs of the Ministry of Justice promptly gathered information on these incidents of violence, and aggressively conducted awareness raising activities in order to prevent such violent actions by calling public attention to the prevention of discrimination on the streets, distributing information booklets and putting up posters in school-commuting roads and public transport that are used by many Korean children and students residing in Japan. The government will continue conducting positive investigations and implementing measures appropriate for each case regarding the cases that are suspected of infringing human rights, and making efforts to raise awareness of respect for human rights among those concerned.

11. In relation to paragraph 15;

(1) In cases where children of foreign nationality residing in Japan did not choose to receive Japanese education, it is undeniable that they might find some kind of difference in subsequent education, training and employment compared with those that received Japanese school education.

(2) It goes without saying that such difference must not lead to an infringement on the economic, social and cultural rights contained in article 5 of the Convention. Under the

Japanese system, these rights are guaranteed without distinction as to race, color, or national or ethnic origin.

12. In relation to "the Committee is particularly concerned that studies in Korean are not recognized and resident Korean students receive unequal treatment with regard to access to higher education," in paragraph 16;

(1) In Japan, regulations were amended in September 1999 to enable graduates from foreign schools including Korean schools in Japan to acquire the qualification for entering a college or university by taking the University Entrance Qualification Examination. In addition, since 1979, the qualification for entering a college or university has also been recognized for international school graduates who have acquired the International Baccalaureate (IB) Diploma provided by the International Baccalaureate Organization, a nonprofit educational organization in Switzerland.

(2) As mentioned in (1) above, the Japanese Government recognize the qualification for entering a college or university to graduates from foreign schools that do not meet the standards of public education on condition that they satisfy certain academic requirements, and our understanding is that such a practice is common throughout the world. Therefore, the insistence on "unequal treatment" in the Concluding Observations is inadequate.

(3) In fact, even schools in which most of students are Korean can be authorized as regular schools if they meet the public education standards. As a matter of fact, the qualification for entering a college or university is recognized for graduates from such authorized schools. Each school can decide whether or not they apply for that authorization.

(Reference)

The Japanese government has conducted a survey on other countries' situations concerning the status of foreign schools and treatment of the qualification for entering a college or university, targeting 23 countries/regions including Australia, Canada, China, France, Germany, India, Italy, the Republic of Korea, Singapore, Switzerland, Thailand, the United Kingdom, the United States (Released in July 1999). According to the results, there are a small number of countries that leave the eligibility of foreign school graduates to enter a higher educational institution to the discretion of the respective colleges and universities. However, most countries/regions do not institutionally recognize the qualification to enter a college or university in that country merely by the graduation from a foreign school. In most cases, the students are required to have a certain qualification such as the IB Diploma or to make a certain score on the nationwide standardized test of that country in addition to the graduation from a foreign school in order to acquire the qualification for entering a college or university. (See Annex 1)

13. In relation to "the State party is recommended to..... ensure access to education in minority languages in public Japanese schools," in paragraph 16;

(1) It is not clear what kind of education is specifically intended by "education in minority languages" mentioned in the Committee's recommendation. While we believe there exist linguistic minorities in the respective State parties of the Convention, the Japanese government is not aware that many of these countries provide public education using only a minority language. Therefore, it is considered inadequate to state that Japanese public education is discriminatory merely for the reason that the government does not provide the entire public education only in a minority language.

(2) Secondly, with respect to guaranteeing the right to education stipulated in the Convention without distinction as to race, color, or national or ethnic origin, the Japanese government provides the children who use minority languages with the opportunity to enter public elementary and lower secondary schools to receive the same education as Japanese children, if so desired. Also, in such cases, best efforts are made so that the children who use minority languages can receive Japanese education smoothly by offering Japanese language lessons, support by teachers and even support by staff members who can speak their native language (minority language). For instance, staff members who speak Korean language and the teachers collaborate to provide Japanese language lessons and other supports to Korean children and students who do not have sufficient Japanese language skills in order to help them receive Japanese education smoothly.

(3) The Japanese government recognizes that the right to education stipulated in the Convention are already guaranteed in Japan through the efforts described above.

14. In relation to "the Committee recommends the State party to take steps to further promote the rights of the Ainu, as indigenous people," in paragraph 17;

(1) As is incorporated in the Basic Policies on Measures for the Protection of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture (Prime Minister's Office Announcement No. 25 of September 18, 1997), in Japan, the Ainu, who lived in Hokkaido before the arrival of Wajin at least at the end of medieval times, have been recognized as a race that has original traditions and that developed a unique culture including the Ainu language, which is based on a different linguistic system from the Japanese language, as well as original manners and customs.

(2) However, since there is no fixed international definition of the term "indigenous people," the question of whether the people of Ainu are actually "indigenous people" in the sense mentioned above needs to be examined carefully.

(3) At any rate, in order to smoothly promote the Utari welfare measures, which are implemented by the government of Hokkaido Prefecture for improving the social and economic status of the Ainu people, the Japanese government established the Joint Meeting of the Ministers concerned in the Hokkaido Utari Measures in May 1974 and has been striving to enhance the various measures while keeping close contact among the related ministries. In addition, the Japanese government is engaged in various schemes relating to the Ainu people, such as advancement of measures for promoting Ainu culture as well as disseminating knowledge and raising awareness of the Ainu tradition among the public, based on the Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions

of the Ainu and the Ainu Culture (Law No. 52 of May 14, 1997) that was established for building a society in which the racial pride of the Ainu people is respected and having the Ainu culture and traditions contribute to development of diverse culture in Japan.

15. In relation to "the State party is also encouraged to ratify and or use as guidance the ILO Convention 169 on Indigenous and Tribal Peoples," in paragraph 17;

Since the ILO Convention includes many provisions other than the protection of workers which is mandated to the ILO and the Convention still includes provisions that conflict with Japan's legislation, the Japanese government abstained from the vote for adoption of the Convention at the International Labor Conference. The Convention is considered to include too many difficulties for Japan to ratify it immediately.

16. In relation to "the Committee expresses its concern that authorities reportedly continue to urge applicants to make such changes and that Koreans feel obliged to do so for fear of discrimination," in paragraph 18;

(1) The Japanese government is aware that there is discrimination against Koreans residing in Japan, but it has been making continuous efforts to create a society free of discrimination through school education programs and various awareness raising activities.

(2) In the meantime, there is no fact that the authorities are urging Koreans applying for Japanese nationality to change their names to Japanese names, but instead, the authorities are extensively informing applicants that they can determine their names freely after naturalization.

17. In relation to "the Committee is concerned that the national redress law offers remedies only on the basis of reciprocity, which is inconsistent with article 6 of the Convention," in paragraph 20;

(1) Japan's national redress law adopts reciprocity (Article 6 of the National Redress Law) based on the principle of sovereign equality of States in the international community, which is an internationally recognized principle.

In addition, if Japan acknowledges state tort liability regarding an injured foreign national when such liability is not at all acknowledged for Japanese nationals in the home country of the foreign national, it would unfairly discriminate against the Japanese people. Therefore, the current reciprocity can rather be considered to be virtually securing equality of Japanese and foreign nationals.

(2) Accordingly, no problems are expected to arise in relation to the International Convention on the Elimination of All Forms of Racial Discrimination even if there are cases where the national redress law is not applicable to a foreign national, whose home country does not acknowledge state tort liability regarding Japanese nationals, based on the reciprocity in Article 6 of the law, as this Convention does not apply to distinctions based upon nationalities.

18. In relation to "the State party is also invited to provide in its next report further information on the impact of (i) the 1997 Law for the Promotion of Measures for Human Rights Protection and the work and powers of the Council for Human Rights Promotion," in paragraph 23;

(1) The Law for the Promotion of Measures for Human Rights Protection stipulates, for the purpose of contributing to protection of human rights, the nation's obligations to develop educational and promotional measures to enhance public mutual understanding on the concept of respecting human rights, and to improve relief measures for the victims in cases of human right infringement. At the same time, the Law stipulates establishment of the Council for Human Rights Promotion in the Ministry of Justice designed for deliberating basic matters concerning these measures.

(2) At the first meeting, the Council was asked to advise on "basic matters concerning the comprehensive development of educational and promotional measures to enhance public mutual understanding of the concept of respect for human rights" (Item 1), by Minister of Justice, Minister of Education, Culture, Sports, Science and Technology, and Minister of Public Management, Home Affairs, Posts and Telecommunications and on "basic matters regarding the improvement of relief measures for the victims in cases of human right" (Item 2) by Minister of Justice. The Council submitted a report on Item 1 in July 1999, and a report on the ideal human rights redress system regarding Item 2 in May 2001. The Council will further proceed to deliberating the ideal system of Human Rights Volunteers.

(3) The Japanese government intends to respect the Council's recommendations to the fullest and to endeavor set up the proposed human rights remedy system. Information on the implemented measures will be provided in Japan's next report.

19. In relation to "the State party is also invited to provide in its next report further information on the impact of (iii) the Law Concerning Special Government Measures for Regional Improvement Special Projects and envisaged strategies to eliminate discrimination against Burakumin after the law ceases to apply, i.e. in 2002," in paragraph 23;

First of all, discrimination based on social origin is not covered under this Convention. In addition, the special measures limited to the Dowa district will be completed at the end of March 2002, and if any needs for additional measures would arise in and after April 2002, they will be dealt with by implementing required general measures in the same manner as for other areas.

20. In relation to Paragraph 24,".... the Committee recommends that the possibility of such a declaration be considered."

(1) The Japanese government considers that the system of receiving communications from individuals or groups of individuals set forth in article 14 of the Convention is noteworthy in that it aims to effectively secure implementation of the Convention. However, concerns have been pointed out that it may cause problems in relation to Japanese judicial system, including the possibility that it may obstruct independence of judicial power, and the government is currently conducting serious and careful examination on these points. Thus, the Japanese

government intends to be careful in determining whether or not to make the declaration, by taking these points into consideration.

(2) As for the problems that may occur in relation to Japanese judicial system, Japan adopts a three-instance trial system in order to conduct prudent examination, and provides the retrial system for filing appeals even after Judgement became final and binding. It also offers extraordinary relief procedures besides the system for filing appeals against decisions in the ordinary court procedures. Since Japanese judicial system is thus functioning sufficiently at present, there is a slight concern for the possibility that the declaration may confuse such domestic relief procedures.

21. In relation to "the Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention," in paragraph 25;

The Japanese government considers that obligations under the Convention are only binding upon the State parties in principle, so expenses relating to the Convention should be borne solely by the State parties, and the expenses should not be covered by the regular budget of the United Nations that is mainly financed by contributions from States including non-parties. Accordingly, it does not plan to ratify the said amendments at present.



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Note by the Secretariat

Comments by States parties on Concluding observations

1. The Committee on Economic, Social and Cultural Rights, at its 29<sup>th</sup> session held from 11 to 29 November 2002, decided that following the adoption by the Committee of concluding observations, if the relevant State party submits to the Committee its comments on the concluding observations, these comments will be published, as submitted, as a Committee document and referenced in the Committee's annual report. Such comments by a State party will be published for information purposes only.

2. Accordingly, this document contains Comments submitted on 16 July 2002 by the Government of Japan on the Concluding observations (E/C.12/1/Add.67) adopted by the Committee at its twenty-sixth session (13-31 August 2001) following its consideration of the second periodic report of Japan (E/1990/6/Add.21 and Corr.1).

1. The Government of Japan is of the view that the Concluding Observations of the Committee on Economic, Social and Cultural Rights adopted on 31 August last year is based on some apparent misunderstanding of the facts and that it requires our further explanation. Therefore, the Government of Japan conveys to the Committee the following comments.

2. First, the Government identifies in the Concluding Observations the following points which show that the Committee misunderstands or misrepresents facts.

(1) In paragraphs 11, 21 and 34, the Committee points out that Japan has made a reservation to Article 8 (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Nevertheless, it is Article 8(1)(d) that Japan makes a reservation to. Moreover, there is no

grounds for the Committee's claim in paragraph 21 that Japan violates Article 8(2) of ICESCR by limiting the right to strike, because Japan reserves the right not to be bound by the provision of Article 8(1)(d).

(2) Concerning paragraph 21, the ILO Convention No.87 is not understood to deal with issues related to the right to strike, judging from its wording, discussion at the negotiation, and interpretation. Therefore, it is not correct to claim that the prohibition of strikes for all public employees in Japan contravenes the ILO Convention No.87.

(3) Concerning paragraphs 21 and 48, the Committee of Experts on the Application of Conventions and Recommendations of ILO expresses its view that the restriction on the right to strike should be confined to "public servants exercising authority in the name of the State" or "essential services the interruption of which would endanger the life, personal safety or health of the whole or part of the population." Therefore, in the light of the above-mentioned ILO views, it is inappropriate that the Committee states the right to strike in public employees not working in essential services should not be subject to restriction.

(4) Concerning paragraphs 26 and 53, as the Government has repeatedly explained to the Committee in the Consideration of the report, the Asian Women's Fund (AWF) has been offering the atonement, which expresses sincere feeling of the Japanese people and the Government, to 285 former "wartime comfort women" acknowledged by the governments of the Philippines and South Korea, the authority of Taiwan, or related organizations which are entrusted by these governments and the authority. In addition, the AWF has been implementing projects related to the former "wartime comfort women" in Indonesia and Netherlands. These projects have been accepted appreciation of the former "wartime comfort women". Therefore, the Committee's claim that "the compensation ..... has not been deemed an acceptable measure by the women concerned" is not correct. Furthermore, the Committee's claim that AWF is "primarily financed through private funding" is not appropriate, because the Government of Japan has been bearing all costs for the AWF's operation and management, other than atonement which is original from the fund raised by the Japanese nationals. With regard to the issues of reparation, property and claims relating to the last war including the issue known as "wartime comfort women", the Government of Japan has sincerely fulfilled its obligations in accordance with the San Francisco Peace Treaty, bilateral peace treaties, and other relevant treaties and agreements. On the other hand, the Government recognizes that the issue known as "wartime comfort women" was a grave affront to the honour and dignity of a large number of women. Based on this recognition, the Government will continue its effort to render maximum support to the AWF through which the Government of Japan, together with the people of Japan, expresses its sincere sentiment to the issue known as "wartime comfort women", so that it can fulfill its objectives.

3. Secondly, to our great disappointment, it seems that the Committee does not fully understand the following points about which the Government of Japan, exhausted explanation both in its reply to the List of Issues and at the time of the Consideration of the report. And as a result, we suspect that the recommendations in the Concluding Observations may be based on misunderstanding of the facts or causal relationship. Here the Government of Japan limits itself to the following two typical cases. Nevertheless, it considers taking up and referring to other similar cases in its next report.

(1) Concerning paragraph 59 in which the textbook authorization system is mentioned; the Government of Japan makes the following clear. Involvement of a central government in textbook varies from country to country. In case of Japan, the Government requires textbook writers and editors of private sector to make revisions only in case that their textbooks include flaws such as an obvious mistake or a lack of balance in accordance with the Regulations of Textbook Authorization and the general standards for curricula (the Course of Study), and each board of education chooses textbooks to be used at schools out of the textbooks which are approved by the Government. Based on the Course of Study, all the Japanese textbooks include reference to respect for fundamental human rights, pacifism, mutual respect for sovereignty and the significance of international cooperation. Moreover, the textbook authorization is conducted strictly and appropriately based on the Regulations of Textbook Authorization which requires consideration from a viewpoint of mutual understanding and cooperation among Asian neighbouring countries. Therefore, the textbook authorization system enables the contents of school textbooks to be compatible with Article 13 of ICESCR that requires respect for human rights, fundamental freedom, mutual understanding, tolerance and friendship among various groups. Furthermore, other teaching materials are used in schools only when they are beneficial to and suitable for school education and the schools decide to use them. This system works appropriately under the management, direction and advice of each board of education. In Japan, textbooks are made and authorized under the system mentioned above. As a result, the contents of textbooks and other teaching materials are kept impartial and balanced so that they are compatible with ICESCR.

(2) Concerning paragraphs 27 and 28: the Government requests the Committee to appreciate precisely that the Government, Hyogo Prefecture, Kobe City, and other agencies concerned have been providing prompt and appropriate assistance to the welfare of the victims of the Great Hanshin-Awaji Earthquake by implementing various measures which are unprecedented in other advanced nations in addition to providing medical care, shelter, food, water and other necessities. The measures include construction of "Community based emergency temporary houses for aged people and physically handicapped people," where tenants are provided with services by "life support members", which is the special staff for supporting welfare of victims and provision of collective housing which facilitates the formation of a community, where aged people can live together without feeling isolated. The victims have been provided with mental care services, such as measures to facilitate collective move to permanent houses so that communities are kept intact, and home visit by nurses and "life support members". Special support has been provided for the victims who lost their families, by establishing "Mental Health Care Centers," implementing training and dispatch of "Staff promoting mental care," and stationing at schools teachers who are in charge of the mental care for children. Moreover, concerning payment of housing loans of earthquake victims, the Government has been taking special measures to help those who try to rebuild their houses with their own funds, by subsidizing interests for loans, extending the repayment period, subsidizing the borrower of more than one loans (new application and existing loan on damaged house). Therefore, the Government is confident that it has been supporting earthquake victims' welfare appropriately by taking various measures mentioned above.

4. Thirdly, the Government explains some fundamental issues which are included in the Concluding Observation.

(1) Concerning paragraphs 10 and 33, the position of the Government about the direct applicability of the provision of the ICESCR continues to be the same as was explained in the Consideration of the report. The Government points out that each state party to treaties, including ICESCR, has the prime authority to interpret the treaties, though it refers to the Observations of the Committee as one useful information. In Japan, whether certain provisions of treaties can be directly applicable is judged in each case, taking into account the purposes, contents and wording of the provisions concerned.

(2) Concerning paragraphs 34 and 48, the Government is of the view that it should be subjected to independent judgement of each state party to decide to withdraw reservations or not, though it understands that the Committee's interest in this issue is legitimate to the extent that it lies within the scope of its mandate. The Government notes that its reservations are made in accordance with the proper procedures prescribed in the provision of Vienna Convention on the Law of Treaties.

5. Finally, it is doubtful whether the following issues should be taken up in the Concluding Observations of the Committee.

(1) Concerning paragraphs 21 and 48, the Government notes that the ILO Convention No.87 is not understood to deal with issues related to the right to strike, and that there are no ILO documents explicitly dealing with the right to strike. Furthermore, neither the Committee on the Application of Standards nor the Committee of Experts on the Application of Conventions and Recommendations has mentioned that the restriction on fundamental labour rights of public employees contravenes relevant ILO Conventions. Therefore, it is doubtful whether the Committee, which has no authority to interpret the ILO Conventions, has the mandate to state that "This contravenes ..... the ILO Convention (No.87) .....". In this connection, the Government refers to the statement of the Committee of Experts on the Application of Conventions and Recommendations of ILO that the restriction on the right to strike and collective bargaining of public employees is compatible with the ILO Convention No. 98 on condition that there are measures to compensate.

6. Other comments from the concerned ministries and agencies are attached\*.

7. Having pointed out the above, the Government will refer to the Concluding Observations as a reference, and would like to continue its dialogue with the Committee to pursue more effective implementation of the obligations of the ICESCR.

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\*/May be consulted in archives of the Secretariat of the Committee on Economic, Social and Cultural Rights

## Appendix 5

### HIGH COMMISSIONER FOR HUMAN RIGHTS DEPLORES EXECUTION OF THREE PRISONERS IN JAPAN

10 December 2007

The High Commissioner for Human Rights, Louise Arbour, on 7 December expressed concern over the execution of three prisoners in Osaka, Japan, including one prisoner aged 75. The executions were reportedly carried out suddenly and without advance warning to either the convicts or their families. “This practice is problematic under international law, and I call on Japan to reconsider its approach in this regard,” she said. The High Commissioner also expressed particular dismay regarding the execution of the prisoner aged 75. “It is difficult to see what legitimate purpose is served by carrying out such executions of the elderly, and at the very least on humanitarian grounds, I would urge Japan to refrain from such action,” she said. The High Commissioner noted the decision of the Government to publicly release the names of the executed men, in contrast to the past practice of carrying out executions in secret. Japan is a party to the International Covenant on Civil and Political Rights (ICCPR), which places a legal obligation on States Parties to ensure strict safeguards in the application of the death penalty. It is widely accepted that the death penalty should not be carried out in secret (as to date and place) and without forewarning, which may amount to inhuman punishment and treatment under the ICCPR in respect of the executed person and his or her family. The High Commissioner urged the Government of Japan to join the growing number of countries that have implemented a moratorium on executions or banned the practice altogether.

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