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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY THE STATES PARTIES IN ACCORDANCE WITH ARTICLE 40 OF THE COVENANT

Third periodic reports of States Parties due in 1991

Addendum

JAPAN*

[16 December 1991]

I. GENERAL COMMENTS

1. The institutional aspects of human rights protection in the Japanese legal system, of which the Constitution is the supreme law, have already been stated in the initial and second periodic reports. Important points and supplementary explanations are provided below for a better understanding.

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* For the initial report submitted by the Government of Japan, see document CCPR/C/10/Add.1; for its consideration by the Committee, see documents CCPR/C/SR.319, SR.320 and SR.324 and the Official Records of the General Assembly, Thirty-seventh session, Supplement No. 40 (A/37/40), paras. 53-91. For the second periodic report of Japan, see document CCPR/C/42/Add.4 and Corr. 1 and 2; for its consideration, documents CCPR/C/SR.827 to SR.831 and the Official Records of the General Assembly, Forty-third session, Supplement No. 40 (A/43/40), paras. 582-633.

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Respect for fundamental human rights in the Constitution

2. The Constitution of Japan is based on the principle of popular sovereignty. Pacifism and respect for fundamental human rights are the two important pillars of the Constitution.

3. The fundamental human rights guaranteed by the Constitution "are conferred upon this and future generations in trust, to be held for all time inviolate" (art. 97 of the Constitution). These fundamental human rights include (a) civil liberties, such as the right to liberty and the right to freedom of thought, speech and religion; (b) political rights as a means of participation by the people in the execution of State power; and (c) social and economic rights, such as the right to work, to lead a decent life, and the right to maintain the minimum standards necessary for a wholesome and cultured life. That the Constitution of Japan contains 10 articles which guarantee the rights of the accused and suspects involved in criminal cases attests to the fact that it attaches great importance to the rights of individuals.

4. Rights guaranteed by the Constitution are not limited to those enumerated in articles 14 to 40, but also include the rights recognized in judicial precedents in accordance with article 13, such as the people's rights to be respected as individuals and to pursue happiness (rights to honour, privacy, etc.).

5. The Constitution provides that human rights may be restricted by "public welfare" (arts. 12 and 13). This concept of "public welfare" is strictly interpreted as a restriction inherent in fundamental human rights, by which conflicting fundamental rights can be coordinated so that each individual's rights are respected equally; it is not a means of placing unreasonable restrictions upon human rights. When the State does restrict human rights, it is done in accordance with laws or regulations based on laws. This does not mean, however, that the State may restrict human rights without limitation. Restrictions are limited only to what is "reasonable", and "public welfare" is a criterion by which to judge whether they are reasonable or not. For example, if the exercise of the human right to freedom of expression infringes on other people's honour, a restriction shall be placed in accordance with the law. Because the purpose of restriction is to protect other people's honour by coordinating everyone's human rights, such a restriction would comply with the concept of "public welfare".

6. So far, there have been no legal precedents specifically invoking "public welfare", but as shown in the appendix, the Supreme Court has judged that disputed laws, regulations or official acts which restrict human rights on the basis of the concept of "public welfare" are constitutional.

Guarantee of human rights and the structure of government

7. In Japan, the three powers, namely legislative, administrative, and judicial, are attributed to the Diet, the Cabinet and the Courts, respectively. Protection of human rights is ensured through the separation of powers and strict mutual restraint.

8. The Cabinet (Government) makes efforts to protect rights and freedoms by faithfully implementing the laws enacted by the Diet. National institutions for the protection of human rights, which were established as government agencies to perform activities for the protection of human rights, are described in appendix 1 to the second periodic report (CCPR/C/42/Add.4). Additional information on the activities of national institutions for the protection and promotion of human rights is as follows:

(a) The number of Civil Liberties Commissioners, who are volunteers from the private sector, was about 13,000 as of 1 January 1991;

(b) In 1990, about 432,000 human rights consultation cases were brought before the officials of the Regional Legal Affairs Bureau and the Civil Liberties Commissioners;

(c) Most of the cases were conflicts between individuals. For example, there were many real estate cases concerning conflicts over land borders, rented houses, leased land, etc., as well as cases concerning compensation for traffic accidents and compensation for damages due to illegal acts;

(d) Most cases of human rights infringement take the form of "coercions by force", where individuals are forced to perform acts they have no obligation to perform or where individuals are obstructed from exercising their rights.

9. The national institutions for the protection of human rights, unlike criminal investigation authorities or judicial institutions, have neither competence to conduct compulsory investigations nor judicial power to decide authoritatively whether the persons have specific rights. When the institutions consider that human rights have been infringed, they persuade the persons who have infringed upon the human rights of others voluntarily to stop such infringement. If infringements have already been committed, the institutions urge them to refrain from making such violations in the future.

10. When the rights of an individual are violated, there is a judicial remedy in court (art. 32 of the Constitution stipulates that "No person shall be denied the right of access to the courts."). To ensure an independent and fair trial, the Constitution provides that "All judges shall be independent in exercising their conscience and shall be bound only by this Constitution and the laws" (art. 76, para. 3), and guarantees the status of judges (arts. 78, 79 and 80). The Constitution also provides that the trial and judgement shall be made in open court for cases which involve human rights guaranteed by the Constitution (art. 82). The Constitution provides that the court, having the above-mentioned independent status, is authorized to determine the constitutionality of any law, order, regulation or official act (art. 81).

Implementation of the International Covenant on Civil and Political Rights (ICCPR)

11. Thirteen years have passed since Japan ratified this Covenant. During these years, the Covenant has played a major part in further enhancing people's consciousness of human rights. Under the Japanese systems of

human rights protection summarized above, there is no great institutional obstacle to the application of this Covenant. But any country, including Japan, cannot be completely free from problems in ensuring the full enjoyment of human rights. The Japanese people, having resolved that they would make "constant endeavours" to protect fundamental human rights which "have survived the many exacting tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolable" (arts. 12 and 97), should make further efforts to protect human rights fully in the years ahead.

Relationship between ICCPR and domestic laws

12. The Constitution, which is the supreme law of Japan, provides that "the treaties concluded by Japan and established laws of nations shall be faithfully observed" (art. 98, para. 2). According to the intent of this article, the treaties concluded by Japan are supposed to be effective as domestic laws, if they are applicable in Japan. However, chapter III of the Japanese Constitution protects fundamental human rights as rights which existed prior to any statutory laws and are inherent in each individual, in the same ways as does this Covenant. Therefore, there is fundamentally no difference between human rights guaranteed by the Constitution and those guaranteed by this Covenant, even if they are different in terms of expression.

13. The State has an obligation to take legislative or other measures to assure the rights guaranteed by the Covenant in accordance with article 2, paragraph 2, of ICCPR. There are no judgements that explicitly mention the effect of ICCPR on domestic laws, but there are a number of judgements which state that laws, regulations or official acts do not contravene ICCPR.

14. The following is one of the important judgements which shows the relation between ICCPR and domestic laws: Freedom of expression is guaranteed by article 21, paragraph 1, of the Constitution and freedom to access and assimilate information is naturally derived from the spirit and purpose of this provision. Article 19, paragraph 2, of ICCPR provides the same intention.

15. When audiences take notes in courts, those taking notes should be respected and should not be obstructed without reason as long as it is done to understand and remember the proceedings. However, restrictions on such audiences taking notes, based on the power of the presiding judge to maintain the order of the court in accordance with the provisions of the Court Organization Law and the Code of Criminal Procedure, do not infringe article 19, paragraph 3, of ICCPR, which states that if laws are provided the restriction on the exercise of rights to freedom of expression is permissible. (Judgement of the Supreme Court, 8 March 1989.)

16. If laws, regulations, or official acts violate the provision of fundamental human rights of the Constitution or ICCPR, it is possible for the people to bring an action against the violating legislative organs, the administrative organs and/or the judicial authorities. The court usually plays a major role in the remedy if the rights of the people of infringed, or are likely to be infringed, in contravention of the Constitution or ICCPR.

17. The court is authorized to judge whether laws, regulations or official acts infringe the Constitution or ICCPR or not. The people may ask for a judgement of the court only when a specific case occurs regarding a specific legal issue. The courts do not make abstract judgements on whether laws comply with the Constitution or ICCPR. (Judgement by the Supreme Court, 8 October 1952.)

18. For example, people whose rights are infringed upon by the acts of the State or the local public entities may take legal action against the State, etc. for compensation for damages or for cancellation or nullity of the administrative acts. Requirements and methods for presenting such suits are provided by the Code of Civil Procedure, the Code of Administrative Case Procedure and other laws. In addition, defendents in criminal cases may assert that laws, regulations and official acts violate the fundamental human rights guaranteed by the Constitution or ICCPR to establish their innocence. In these cases, the courts shall judge whether laws and other acts violate the fundamental human rights guaranteed by the Constitution or ICCPR.

19. Because the Constitution stipulates that the Constitution is the supreme law of the nation (art. 98, para. 1), that public officials have an obligation to respect and uphold the Constitution (art. 99) and that treaties and established laws of nations shall be faithfully observed (art. 98, para. 2), the State and local public entities must respect the Constitution and treaties. And, as the people have the right to present a peaceful petition to the State and local public entities (art. 16), they can assert that laws, regulations, etc. violate the Constitution or ICCPR by means of petitions. Ordinances provide methods and requirements for presenting petitions to the Diet (Diet Law, Rules of the House of Representatives, Rules of the House of Councillors), petitions to the local assembly (Local Autonomy Law) and petitions by inmates (Prison Law, Prison Law Enforcement Regulation). In addition, those whose rights were infringed upon by the acts of an administrative organ may protest against the administrative organ or its higher organ, asserting that the fundamental human rights provided by the Constitution or ICCPR were infringed (Administrative Complaints Review Law).

20. Appendix 2 of the second periodic report provides information about the criminal procedure for measures to obtain remedy in cases where human rights are infringed. Supplementary explanations about the system of Kokoku appeal procedures are as provided below.

21. A Kokoku appeal is a complaint raised against the decisions or orders of the courts. There are two kinds of Kokoku appeal: general Kokoku appeals and special Kokoku appeals. General Kokoku appeal is further classified into two forms, i.e. ordinary and immediate. General Kokoku appeal is dealt with by High Courts (art. 16, para. 2 of the Court Organization Law).

22. Ordinary Kokoku appeals may be raised against the decisions of courts, except for such cases where immediate Kokoku appeal is allowed (art. 419 of the Code of Criminal Procedure). However, Kokoku appeals may not be allowed against decisions made prior to judgements relating to the jurisdiction of courts or legal proceedings. However, Kokoku appeal will be allowed against decisions relating to detention, release on bail, seizure of articles or restoration of articles seized, and decisions relating to confinement for

expert examination (art. 420, paras. 1 and 2, of the Code of Criminal Procedure). Moreover, the period for submitting Kokoku appeals is not limited (art. 421 of the Code of Criminal Procedure) and if Kokoku appeal is raised it usually has the effect of suspending the execution of the decision (art. 424, para. 1, of the Code of Criminal Procedure).

23. Immediate Kokoku appeals are allowed when the progress of a criminal procedure is obstructed or the human rights of the parties concerned are seriously affected, unless the Kokoku appeals against judgements of a derivative nature are settled immediately. Immediate Kokoku appeals are specified individually by law, and the period allowed for them is three days (art. 422 of the Code of Criminal Procedure). These Kokoku appeals have the effect of suspending the execution of the original judgement (art. 425 of the Code of Criminal Procedure).

24. Quasi-Kokoku appeals are requests for rescission or alteration of certain judgements (such as rejection of motion for refusal of a judge, detention, release on bail, seizure of articles or restoration of articles seized, confinement for expert examination, the judgements to order witnesses etc. to pay fines or compensation), or certain acts of public prosecutors, secretaries in the prosecutor's office or judicial police officials (such as those concerning the designation of interviews, seizure or return of items seized) (art. 429, para. 1 and art. 430 of the Code of Criminal Procedure). Requests for rescission or alteration of judgements that order witnesses to pay fines or compensation must be presented within three days.

25. Special Kokoku appeals may be presented against decisions or orders to which no objection is allowed in the Code of Criminal Procedure. They may be filed with the Supreme Court only when the decisions or orders are unconstitutional, misinterpret the Constitution or contradict the precedents of the Supreme Court. The period allowed for these Kokoku appeals is five days (art. 433 of the Code of Criminal Procedure). These Kokoku appeals have no effect of suspending the execution of original judgements (art. 434 and 424 of the Code of Criminal Procedure).

II. INFORMATION IN RELATION TO INDIVIDUAL ARTICLES OF THE COVENANT

Article 1

26. The right of peoples to determine their political future without external interference has been respected in international society. As stated in the initial and second periodic reports, Japan has consistently recognized the right to self-determination of people in accordance with the Charter of the United Nations and article 1 of the Covenant. Japan endorses the universal realization of this right and supports the early independence of colonial territories, and it has been endeavouring to achieve the full realization of the right to self-determination of peoples in the international community.

27. In Japan, the Constitution provides that sovereign power resides with the people, and the people have the right to amend the Constitution, determine their political status and pursue their economic, social and cultural development. The Constitution guarantees the private property ownership system and the right to own property.

Apartheid policy

28. Japan has consistently demanded the elimination of apartheid, and appreciates the recent progress toward the elimination of apartheid in the Republic of South Africa. In particular, Japan welcomes the fact that the fundamental law endorsing apartheid was abolished at the end of June 1991 and expects that parties concerned will begin full-scale negotiations to establish a new constitution as soon as possible.

29. Japan eased the regulations on exchanges of personnel in June in order to support the further development of South Africa in a desirable direction and to promote mutual understanding between that country and Japan. (Japan will not ease the regulation against the sports organizations in South Africa until the recognition of racial integration within the organization concerned.)

30. Japan will take positive measures with a view to eliminating apartheid, establishing once again a favourable relationship with South Africa, and contributing to the establishment of international order in the southern African region.

Support for blacks in South Africa

31. Japan has increased economic support for blacks in South Africa who are oppressed by apartheid. While South Africa is changing its situation and is establishing a new system after the elimination of apartheid, support for blacks in South Africa has become very important from the viewpoint of promoting peace in South Africa and bringing up the future generation to play a role in new political and economic systems. From these viewpoints, Japan started new schemes such as "Small-scale Grant Assistance" and "Acceptance of JICA Trainees" from 1990, in addition to the existing aid such as voluntary contributions to the various trust funds and programmes administered by the Centre against Apartheid and to the Joint Japan-European Community programme to assist the black majority population in South Africa (support for the aid organization Kagiso Trust in South Africa). Japan also contributes $3.2 million through UNHCR to support the return of refugees who left South Africa. (With this contribution, the total contribution of the Government of Japan for South African blacks in 1991 will amount to approximately $6 million. This amount is about 3.7 times as much as the previous year.)

Right to self-determination of the Palestinian people

32. The basic position of the Japanese Government is as follows.

33. Based on the principle that Japan does not accept the acquisition of territory by means of force, Japan hopes that Israel will promptly withdraw from all the occupied territories acquired in the 1967 war. Japan does not accept the illegal and unilateral measures taken by Israel in the occupied territories, such as construction of settlements, dismissal of mayors and dissolution of municipal assemblies in the West Bank and Gaza, adoption of the "Basic Law Concerning the Annexation of East Jerusalem" (which declared unified Jerusalem as its capital in 1967) and the application of Israeli domestic laws in the Golan Heights (1981).

34. Japan is strongly concerned about the worsening situation in the occupied territories after the Gulf crisis and the continuous uprisings (Intifadah) in West Bank and Gaza since December 1987. Therefore, Japan strongly urges the Government of Israel to exercise maximum self-restraint in dealing with the Palestinians in the occupied territories and to treat them with full humanitarian consideration in accordance with international law. The Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, should be applied to the West Bank and Gaza and be faithfully observed. The deportation of Palestinians by Israelis should be strongly condemned because it is against the Geneva Convention and further aggravates the situation in the occupied territories.

Article 2

35. The Constitution of Japan, recognizing the importance of the dignity of individuals, guarantees equality under the law by the provisions of its article 14, paragraph 1: "All of the people ... there shall be no discrimination ... because of race, creed, sex, social status or family origin". Equality under the law is a principle that governs the conduct of the legislature, administration and judicature. The Constitution stipulates that this principle shall "be the supreme consideration in legislation and in other governmental affairs" as part of the "right to life, liberty, and the pursuit of happiness" (art. 13). In addition, the utmost consideration is given to this principle by obligating public officials to respect and uphold the Constitution (art. 99).

Status and rights of foreigners

36. The rights of foreigners are guaranteed in line with the spirit of the Constitution which is based on respect for fundamental human rights and international cooperation, with the exception of the rights which are applicable, by definition, only to nationals, such as the right to vote, and foreigners are treated in the same way as Japanese within Japan.

37. Major problems in recent years concerning the human rights of foreigners living in Japan are provided below.

(a) Nationals of the Republic of Korea residing in Japan

(i) Residency

38. The issues of fingerprinting and the obligation to carry the foreign registration certificate, permanent residence permit, re-entry permit, etc., as well as the employment of nationals of the Republic of Korea as local civil servants, public school teachers, etc. were settled when a "memorandum", containing the policies to be taken by the Japanese Government, was concluded between the Foreign Ministers of Japan and the Republic of Korea. This memorandum was prepared based on the recognition of Prime Minister Kaifu, at the time of his visit to the Republic of Korea in January 1991, that Korean residents should have a stable life in Japan, in consideration of the historical background and steady settlement of Korean residents in Japan. This memorandum was also the result of consultations on "Sansei" (third generation) Korean residents (and their descendants) in Japan

(third-generation consultation) which were held between the two Governments since December 1988 in accordance with the provision of article 2 of the Agreement on Legal Status and Treatment of the Nationals of the Republic of Korea residing in Japan between Japan and the Republic of Korea.

39. The fingerprinting system based on the Alien Registration Law is a very reliable means to identify a person, and this system is intended to maintain the accuracy of the alien registration and to attain its basic purpose "to clarify the residence and family details of foreign residents". The fingerprinting system is also intended to prevent the illegal use or forgery of registration certificates. However, as mentioned in the "memorandum", the Japanese Government will take the following steps:

(a) Japan will develop an alternative means to replace the fingerprinting so that the third generation of Korean residents (and their descendants) may be exempt from fingerprinting, as well as the first and second generation of Korean residents;

(b) To attain this purpose, Japan will make utmost efforts to submit the necessary amendment bill to the next ordinary session of the Diet (to be held in January 1992) so that an alternative measure to fingerprinting may be implemented within two years;

(c) As for measures to replace fingerprinting, the Government is considering photographs, signatures and the addition of family details to the registration.

40. A system requiring the carrying of an alien registration certificate has been adopted to ensure the means to identify the residence and family details of foreigners immediately and on the spot. However, Japan decided to continue studying this system to find appropriate solutions, including how to operate this system.

41. "Agreed permanent resident permits" have been granted in accordance with the "Entry/Departure Control Special Law to Enforce the Agreement between Japan and the Republic of Korea" (hereinafter called "Japan-Korea Special Law") and "exceptional permanent resident permits" in accordance with "Immigration Control and Refugee Recognition Act" (hereinafter called "Immigration Law"). In addition, Japan decided to grant the special permanent residence permit to these permanent residents and to the new-born babies of Korean residents in Japan in a simplified procedure. A special law of the Immigration Law was passed in May 1991 for this purpose. The special permanent residents permit may also be granted to those who renounced Japanese nationality due to the enforcement of the Treaty of Peace with Japan, and their descendants, such as Korean and Taiwanese residents in Japan.

42. Regarding the re-entry permit, more advantageous conditions are given to the above-mentioned special permanent residents than to other foreigners. The valid period for re-entry is within four years for special permanent residents, and the extension of the re-entry permit may be applied abroad within one year after the issue of a re-entry permit. Thus, special permanent residents may stay in foreign countries up to five years (two years for other foreigners) under the re-entry permit.

43. Special permanent residents shall be deported if:

(a) Sentenced to imprisonment or heavier punishment for crimes involving internal disturbances, external troubles or diplomatic relations;

(b) Sentenced to imprisonment or heavier punishment for criminal acts against the head of foreign countries, etc. and if these criminal acts have a serious adverse effect on the diplomatic relations of Japan;

(c) Sentenced to imprisonment or penal servitude for life or more than seven years, and if the criminal acts seriously affect Japanese interests. (In the case of other foreigners, they shall be deported in accordance with the Immigration Law when they are sentenced to more than one year's imprisonment or penal servitude.)

(ii) Employment

44. Japanese nationality is required for civil servants who participate in the exercise of public power or in public decision-making, but it is understood that Japanese nationality is not necessarily required for civil servants who do not engage in the above-mentioned work. Korean residents in Japan have been employed as civil servants according to this principle.

45. It is stated in the above-mentioned "memorandum" of January 1991 that, based on the Japanese Government's legal view on reasonable differentiation by nationality in the appointment of public servants, local governments will be guided to expand employment opportunities for Koreans. The Government takes the standpoint that each local government can decide whether a civil servant participates in the exercise of public power or in public decision-making and whether it may employ a person who does not have Japanese nationality to any post.

46. In line with the result of the so-called "Japan-Korea third-generation consultation", the Government sent a notice to the Board of Education in all prefectures and designated cities on 22 March 1991. By this notice, local governments are guided to open the way for Korean residents to take the same examination qualifying for the regular teaching service as for the Japanese; they can be employed as full-time teachers without limiting the employment term and can be guaranteed stable status.

(iii) Education

47. If foreign nationals such as Koreans want to enter Japanese schools, they are admitted without any requirement at compulsory education level. Foreign nationals are admitted to upper secondary schools and universities on the condition that they have finished a course for a certain period of years at regular schools in Japan or in foreign countries. This condition is applied to the Japanese people in exactly the same way. Once admitted to school, foreign nationals are treated in the same way as the Japanese people regarding no tuition fees, free textbooks and qualification to enter upper schools. Also, scholarships are granted to the children of foreign nationals, such as those of Koreans with permanent residents permits, in the same way as the Japanese people. With regard to the entrance into public schools at

compulsory education level, in line with the result of the Japan-Korea third-generation consultation, the Government sent a notice to each prefectural Board of Education on 30 January 1991 to advise each municipal Board of Education to issue a notification concerning school enrolment to parents and guardians of Korean children of school age. Non-Korean residents in Japan are treated in a similar way.

48. In line with the result of the Japan-Korea third-generation consultation, the Japanese Government, in the notice of 30 January 1991, advised the Board of Education of all prefectures to take proper measures so that extracurricular study of Korean language and culture, which had been conducted according to the judgement of local governments, may be continued smoothly.

49. Various study courses are also offered at social education level, including learning of Korean language and culture, to deepen international understanding. These activities are offered through courses for young people, adults and women, at social education facilities such as public halls, depending on the circumstances of each prefecture.

50. If Korean residents in Japan do not wish to send their children to Japanese schools, they can send them to Korean schools. Almost all Korean schools are approved by prefectural governors as "miscellaneous" schools, and their independence is respected. Since, in general, it is difficult to regard graduates of Korean schools or miscellaneous schools as having the equivalent scholastic ability as graduates of Japanese upper or lower secondary schools, graduates of miscellaneous schools are not qualified to enter upper secondary high schools or universities.

51. In line with the purpose of the Employment Security Law, etc., the Government is endeavouring to advise employers to employ personnel on the basis of the aptitude and ability of the applicants themselves, regardless of whether they are Koreans or not.

(b) Foreign workers (including workers without working visas)

52. The Government's basic policy concerning the acceptance of foreign workers is, as shown in the Sixth Basic Employment Measures Plan decided in the Cabinet meeting in June 1988 etc., to try to accept workers with special or technical abilities and unique skills as much as possible, since such acceptance will help Japan become more vitalized and internationalized. But the matter of accepting unskilled workers should be carefully dealt with, taking account of the influence on the Japanese economy and society as well as the labour market.

53. In line with this policy, the Government has granted more residence permits to foreign workers by revising the Immigration Law so that Japan can accept more foreigners who will work in Japan using their professional technology, special skills, knowledge, etc.

54. Japan will continue to study the acceptance of foreign unskilled workers more carefully because this issue will have a large influence on Japanese society in general, and a national consensus has not yet been established.

55. The Immigration Law stipulates the requirements and procedures concerning foreigners' entry and stay in Japan. This Law also provides the procedure for raising Kokoku appeals against the decision to deport those who violated the Law. Proper treatment for detained persons is also guaranteed by this Law in consideration of human rights. The Immigration Law further provides that, in principle, foreigners should not be sent back to countries or regions where they may be persecuted (art. 53, para. 3), incorporating the principle that deportees should not be sent back ("non-refoulement") to countries specified in article 33, paragraph 1, of the Convention relating to the Status of Refugees.

56. Concerning foreign workers as well as Japanese workers, activities of so-called "recruiters" and "brokers" are subject to the provisions of the Employment Security Law and the "Law concerning the Proper Control of the Worker Dispatch Business and Appropriate Working Conditions".

57. The Employment Security Law provides that people should not be discriminated against on account of nationality in employment exchange, guidance, etc. (art. 3). Therefore, foreigners who are qualified to work in Japan can be given information about employment in the same way as the Japanese people. If recruitments or applications for jobs are against the law, the public employment security office does not accept those recruitments or applications (arts. 16 and 17 of the Employment Security Law). Accordingly, jobs violating the Immigration Law are not offered. Further, in order to enhance the employment security system with respect to foreigners, special officials were appointed, beginning in 1989, to take care of foreign workers at major public employment security offices.

58. The Japanese Government is seriously concerned that so-called recruiters and brokers, who bring illegal foreign workers into Japan, often take some amount from the wages of these illegal workers or force them to practise prostitution, resulting in human rights violation cases. The police control these vicious brokers, entrepreneurs, etc. under the following laws.

Employment Security Law

59. Paid employment exchange is the arranging of recruitments and applications for jobs or helping to conclude employment contracts between employers and applicants in exchange for a commission or reward (art. 5, paras. 1 and 3). Except for the cases involving jobs that require special technical skills and which are licensed by the Minister of Labour, those who engage in paid employment exchange shall be punished (art. 32, para. 1 and art. 64, item 1).

60. Labour supply means forcing workers to engage in work under the order of employers based on a labour supply agreement, and is different from the worker dispatch business (see below) (art. 5, para. 6). Except for the labour supply carried out by labour unions with the permission of the Minister of Labour, those who engage in labour supply shall be punished along with those who use supplied labourers (arts. 44 and 64, item 4).

61. The Government shall punish those who force workers to engage in jobs or who supply labourers by means of violence, intimidation, confinement or other

means that unreasonably restrict the mental and physical freedom of labourers or those who are engaged in such acts (art. 63, para. 1), those who make them engage in jobs which are harmful to public health and public morality or those who are engaged in such acts (art. 63, para. 2), and those who commit crimes stipulated in the Employment Security Law.

Laws concerning the Proper Control of the Worker Dispatch Business and Appropriate Working Conditions (Worker Dispatch Law)

62. The worker dispatch business is to make contracted workers work, not to get them employed (art. 2, para. 1). Unless the worker dispatch business is performed with the permission of the Minister of Labour or upon the notification to the Minister regarding certain works specified by law (applicable work), those who engage in the worker dispatch business shall be punished (art. 4, para 3; art. 5, para. 1; art. 16, para. 1; art. 59, paras. 1 and 2; and art. 60, para. 3).

63. Those who send workers to jobs which are harmful to public health or public morality (art. 58) and those who commit crimes stipulated in the Worker Dispatch Law shall be punished.

Labour Standards Law

64. Article 3 of the Labour Standards Law stipulates: "An employer shall not engage in discriminatory treatment with respect to wages; working hours or other working conditions by reason of the nationality, creed or social status of any worker." Those who violate this provision shall be punished (art. 119, para. 1).

65. Article 5 stipulates: "An employer shall not force workers to work against their will by means of violence, intimidation, imprisonment, or any other unfair restraint on the mental or physical freedom of the workers" and article 6 states "Unless permitted by law, no person shall obtain profit by intervening, as a business, in the employment of others." Those who violate these provisions shall be punished (art. 117 and art. 118, para. 1).

66. Articles from 24 provide the principles of currency payment, direct payment, etc. Those who violate these provisions shall be punished (art. 120, para. 1).

67. Various obligations are imposed on employers as to working hours and holidays by the articles from 32. Those who violate these provisions shall be punished (art. 119, paras. 1 and 2 and art. 120, para. 1).

68. In addition, those who violate the provisions concerning the restrictions on employment of young workers and female workers (arts. 56 to 64 and art. 64, para. 2, to 68, respectively) and other provisions of the Labour Standards Law shall also be punished.

Minimum Wages Law

69. Article 5, paragraph 1, states "The employer shall pay wages equal to or greater than the minimum wage amount to workers to whom the minimum wages are applicable." Those who violate this provision shall be punished (art. 44).

Industrial Security and Health Law

70. This law imposes various obligations on employers to ensure the security and health of workers through the prevention of industrial accidents. For example, employers have to take danger-preventive measures and implement medical checks. Employers who violate this law shall be punished.

71. The Government strictly controls recruiters, brokers, etc. who make huge profits by engaging in the illegal workers' employment exchange under the following laws which, in addition to the above-mentioned laws and the revised Immigration Law enforced in June 1990, directly punish these brokers for the crime of aiding illegal employment.

Penal Code

72. Foreigners who use disguised marriages in order to secure employment shall be arrested for the crime of illegal entry on the basis of officially authenticated instruments (arts. 157 and 158).

73. Those who forge passports to help foreigners get jobs in Japan shall be arrested for the crime of forgery of an official document and its use (arts. 155 and 158), and those who forge admissions or student admission certificates to national universities, etc. to change their status shall be arrested for forgery of a private document and its use (arts. 159 and 161). If brokers are involved in either of the above, they are arrested in accordance with article 60 (co-principals) and article 61 (instigator), even if they do not directly engage in these acts.

Anti-Prostitution Law

74. If brokers or gangsters receive profits by making foreigners practise prostitution, they will be arrested in accordance with article 6 (intermediation, etc.), article 7 (prostitution by means of violence, threat, etc.), article 10 (contract for prostitution), article 11 (offer of accommodation for prostitution) article 12 (prostitution business), etc.

75. The administrative offices concerned regularly hold meetings to exchange information about brokers, and closely cooperate with each other in order to control brokers. The Government is also asking foreign Governments concerned to strengthen their domestic measures by providing information, etc.

76. Labour-related laws are applied to foreign workers as well as Japanese workers. For example, laws such as the Labour Standards Law and the Workmen's Accident Compensation Insurance Law are applied to foreign workers, as long as these workers are employed by domestic enterprises. Therefore, to ensure that the labour standards-related laws are applied to foreign workers, the labour standards inspection institutions are taking measures to correct any violation

of these laws by employers. Also, a counselling system by professional counsellors for foreign workers was started at the major Prefectural Labour Standards Offices. The Trade Union Law and the Labour Relations Adjustment Law are also applied to all workers, regardless of whether they are foreigners or not.

77. In principle, the Government does not admit the entry of foreigners into Japan who wish to engage in unskilled work. For those who have already engaged illegally in unskilled work, the Government will deport them as a rule, paying due respect to their human rights.

78. The problem of illegal foreign workers cannot be ignored from the labour administration viewpoint, since this problem affects the domestic labour market and working conditions such as wages. The Government is advising employers to cooperate to prevent illegal employment.

79. However, in reality, the number of illegal workers is rapidly increasing. In particular, male illegal workers have markedly increased in recent years. It is considered that most of these workers come to Japan through the intermediation of brokers. But people belonging to criminal groups, who had been engaged in the business of recruiting foreign women for prostitution in Japan, began recruiting foreign male workers for factories and construction sites which are suffering from a labour shortage. The Government is strengthening control by applying various existing laws against them and against brokers who make profits by taking advantage of the weak position of these illegal foreign workers. (See paras. 56-75 above for information about the laws to be applied and the cooperation with foreign Governments concerned.)

80. National institutions for the protection and promotion of human rights under the Ministry of Justice are engaging in a wide range of activities throughout Japan to enlighten people to respect the fundamental human rights of foreigners and not to discriminate against them, through the campaign of "Internationalization of society and human rights" in 1988 and "Awareness of human rights suitable for an international age". If fundamental human rights are actually violated, the institutions try to protect the human rights of foreigners through the investigation of cases and the offer of counsel, and make efforts to prevent these cases from recurring. To give counselling to foreigners, a counselling centre was first opened in 1988 at the Tokyo Legal Affairs Bureau. Since then, similar centres have been opened at the Osaka Legal Affairs Bureau and bureaux in other places. The Government will continue to offer more counselling services to foreigners and will make efforts to protect their human rights.

81. In July 1990, the Immigration Information Centre was established in the Tokyo Immigration Bureau to counsel foreigners and others on various procedures concerning entry and stay in Japan. In 1991, a similar centre was established in Osaka. Full-time professional counsellors who understand foreign languages offer advice to those who visit the centre and answer inquiries by telephone every day except Sunday and holidays. The subjects of consultation include the procedures for entry into Japan of foreign personnel or trainees, spouses, etc., the residence-related procedures for acquisition or change of status of residence, renewal of the period of stay, permission for permanent residence, registration, application for entry and stay, and

other information on immigration. In addition, various consultative institutions for foreigners have also been established within local governments.

82. Remedy measures referred to in article 2, paragraph 3, of the Covenant are as mentioned in the initial and second periodic reports.

Disabled persons

83. In 1982, Japan established the Headquarters to Promote Measures for Disabled Persons to realize the theme of the International Year of the Disabled in 1981, "Full participation and equality", and formulated the Long-range Plan concerning Measures for Disabled Persons. Also, in 1987, Japan formulated the measures to be emphasized during the latter half of the United Nations Decade of Disabled Persons (1983-1992) "Important Measures of the Latter Half", and is now working hard to promote these measures in the final year of the decade, 1992.

84. Important Measures of the Latter Half are divided into eight items: "publicity for enlightenment", "health and medical care", "education and rearing", "employment and work", "welfare", "living environment", "promotion of sports, recreation and cultural facilities", and "promotion of international cooperation", showing the basic direction and the future important measures.

85. The Central Council for the Physically and Mentally Disabled, which is the government institution for investigating and deliberating measures related to the disabled and evaluating the efforts during the Decade, compiled a report summarizing the matters on which Japan should place emphasis in the final year of the decade. This report, with the concept of "rehabilitation" and "normalization", proposed suggestions to accomplish the goal of "full participation and equalization" of disabled persons and to promote building more accessible towns for the disabled in terms of accessibility to houses, buildings and public transportation facilities.

86. Other additional information is provided below:

(a) Concerning the domestic validity of the ICCPR and precedents, see part I;

(b) If laws, regulations or official acts infringe the fundamental human rights provision of the Constitution or the ICCPR, see part I for the methods and requirement to protest, as well as the precedents;

(c) Concerning the "public welfare" mentioned in articles 12 and 13 of the Constitution, as well as the precedents, see part I;

(d) Concerning the Optional Protocol to the International Covenant on Civil and Political Rights, Japan considers this protocol to be a noteworthy system of guaranteeing human rights on a global level. However, with respect to ratification, there are many problems yet to be resolved because Japan is concerned about the relation between this system and the Japanese judicial system and is also worried that this system might be abused. The government offices concerned are now studying this issue;

(e) Concerning the International Convention on the Elimination of All Forms of Racial Discrimination, the Japanese Government supports the concept of this Convention aiming at eliminating discrimination based on race, etc. However, since this Convention has articles which require the punishing of those who disseminate the idea of racial discrimination or incite to racial discrimination, Japan is carefully studying this Convention, taking into consideration the relation between this Convention and freedom of expression or the relation between this Convention and the Japanese system of law;

(f) Concerning the International Convention on the Suppression and Punishment of the Crime of Apartheid, this Convention declares that apartheid (including but not limited to that in South Africa) is a crime against mankind (arts. 1 and 2), and requires that measures such as legislation be taken to prohibit and punish this crime and bring cases to court in accordance with the judicial procedure (art. 4). Japan can understand the purpose of this Convention but abstained when it was adopted because the constituent elements of this crime are not clear;

(g) Japan has contributed $50,000 every year since 1986 to support the United Nations Voluntary Fund for Victims of Torture. Japan will continue to contribute to this fund if the domestic budget is approved.

Article 3

87. In Japan, the Headquarters for the Planning and Promoting of Policies Relating to Women (hereinafter "the Headquarters"), which is presided over by the Prime Minister and composed of the administrative Vice-Ministers and the equivalent of all ministries and agencies, formulates the action programmes for the advancement of the status of women, functioning as the national machinery. Measures related to women have been promoted in line with these action programmes. The Headquarters is also responsible for comprehensive and effective promotion of measures related to the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1985) in close cooperation with ministries and agencies concerned.

88. The national plans of action which have been formulated for the advancement of women include the National Plan of Action of 1977 and the New National Plan of Action for the Year 2000 (incorporating long-term measures for the years from 1987 to 2000 and medium-term measures from 1987 to 1990).

89. In May 1991, the Headquarters made the first revision of the New Plan of Action, incorporating concrete measures (the medium-term targets) to be implemented during the five years from 1991 to 1995, in line with the "Opinion" submitted by the Advisory Council to the President of the Headquarters and taking into consideration the achievements of the New National Plan of Action for the Year 2000 and the spirit of the recommendations and conclusions arising from the first review and appraisal of the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women to the Year 2000 adopted by the United Nations Economic and Social Council in 1990. The outline of the revised plan is given below:

(a) Reform of the people's awareness regarding equality between men and women. The aim is to correct stereotyped sex-role concepts to promote the advancement of women not only in terms of legislation and institutions but also practice. It also aims at enhancing awareness of the importance of maternity and the dignity of sex, and promoting maternal protection;

(b) Active and joint participation of men and women based on equality. The aim is to ensure opportunities for women to participate in all fields of activity on an equal footing with men, and to accelerate the participation of women in the policy-making process and the equality of men and women in employment. It also aims at promoting the active and joint participation of men and women in family and community activities, and measures for women in agriculture, forestry and fishing villages;

(c) Improvement of conditions to give wider choice to women. The aim is to improve conditions so as to give women wider freedom of choice so that women can make their own choices more easily as to how to live;

(d) Assuring women's welfare in their old age. The aim is to improve the environment of the ageing society where elderly women can fully demonstrate their energy and vitalities and ensuring their welfare in old age. It also aims at giving proper consideration to women who need it, such as mothers of fatherless families;

(e) Contribution to international cooperation and peace. The aim is to encourage women's participation in the various United Nations activities and to promote international cooperation so as to contribute to the advancement of women's status worldwide, taking into consideration the spirit of "Women in Development" and responding to the requirements of the Convention on the Elimination of Discrimination against Women and the Recommendations of the Nairobi Forward-looking Strategies in Japan. It also aims at deepening understanding of and respect for other countries and promoting women's contributions to peace, including proper consideration of female refugees, etc.

90. In Japan, since the Equal Employment Opportunity Law was enacted in 1986, the Government has made efforts to make the contents of the law fully understood by the people and has helped to solve disputes between women workers and employers over employers' discriminatory acts against women. Following the entry into force of the Equal Employment Opportunity Law, many companies have improved their recruiting, hiring, training and retirement management practices in line with the requirements of the law; the tide of the times is in favour of using women workers more effectively, and the spirit of the law is steadily being better understood.

91. First, an increasing number of companies are employing women. There has been an especially sizeable increase in the number of companies which employ women graduates of four-year colleges as candidates for higher managerial positions; this was rarely seen before the Equal Employment Opportunity Law came into force.

92. Women are also entering a wider range of fields. According to a survey conducted by the Ministry of Labour in 1990, women are now assigned to a wider range of duties and many companies have adopted policies to increase the

number of women employees. Women are increasingly found in managerial positions: over 20 per cent of companies have paved the way for women to be reassigned to broaden their career experience to prepare them for higher posts and have launched information campaigns to male employees. Equality of treatment of men and women in training is also advancing.

93. In addition, as the result of active efforts to induce employers to eliminate discrimination between men and women with respect to retirement ages, at present there are very few companies that still set different retirement ages for men and women. Also, according to the survey conducted by the Ministry of Labour, most enterprises answered that "there existed no system to force women to retire because of marriage, pregnancy or childbirth, and there was no need to change the system" at the time when the Equal Employment Opportunity Law was enforced. In addition to the companies that improved the system after the enforcement of the law, almost all companies have abolished the system to force women to retire on account of marriage, pregnancy or childbirth.

94. As more women entered the workplace and the labour shortage continued, there was a growing need for a child-care leave system, which is a core measure to make work and child care compatible. Accordingly, one enterprise after another began to introduce a child-care leave system through voluntary negotiations between labour and management, and interest in such a system began to grow rapidly, leading to a call for this system to be codified for the benefit of all workers. Consequently, the Government decided to codify the system and the Child-care Leave Law was enacted in May 1991 and will enter into force on 1 April 1992. This law allows male and female workers to take child-care leave in order to rear children of less than one year old, and also obliges employers to take measures such as reduction in working hours for those who bring up children of less than one year old without taking the child-care leave.

95. Rules concerning the application of laws were amended in 1989 to provide full male-female equality in the area of competence of the applicable law. The law concerning the application of laws in general stipulates which national law should be applied to international legal relationships; the recent amendments pertain mainly to marital and parent-child relations under law. The recent modifications have the following purposes. First, while previous rules concerning the application of laws on divorce and filial relationships gave priority to the male party's (father or husband) national law, equality of the sexes is to be achieved in this area in accordance with the spirit of the Convention. Second, many other countries have recently revised their international laws and nationality laws and harmonization with that legislation is to be sought. Finally, because of the growing number of marriages between Japanese and non-Japanese and of other legal matters involving relationships following the recent progress of internationalization, it was felt necessary to provide better rules on the choice of applicable laws concerning marital and parent-child relations and to offer better protection of children's welfare.

96. In order to realize equality between men and women in the employment of national civil servants, the Government has lifted the restrictions on women's eligibility to take examinations for the regular national civil service by

revising the regulations of the National Personnel Authority. As a result, there is now no restriction or discrimination against women in taking examinations for the regular national civil service, employment and so on.

97. The following tables show the ratio and the number of female members of the Diet, civil servants and managers in private enterprises.

Article 4

98. In all legislation referring to public emergency, there are no provisions which may restrict fundamental human rights. Should such an emergency occur, necessary measures, as the need arises, will be taken in accordance with the Constitution as well as the Covenant.

Article 5

99. Japan does not, in any way, interpret the provisions of this Covenant in such a way as to destroy any of the rights and freedoms recognized in the Covenant or to limit them to a greater extent than is provided for in the Covenant.

100. The absence of reference to some rights in the Covenant cannot be used in Japan as a pretext for violating these rights. This has already been stated in the second periodic report.

Article 6

101. Japan recognizes "that all peoples of the world have the right to live in peace, free from fear and want", as stated in the Preamble to the Constitution, and declares that "the Japanese people for ever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes" and that "the right of belligerency of the State will not be recognized" (art. 9). The other legal framework regarding the right to life in Japan is as described in the initial report. For information about the reduction of the infant mortality rate and the prevention of contagious diseases, see the reports on articles 10 to 12 of the International Covenant on Economic, Social and Cultural Rights (E/1986/3/Add.4).

102. In Japan, the death penalty is applied very strictly and carefully. In the 5 years between 1986 and 1990, a total of 30 (on average 6 per year) persons were finally sentenced to death, and all of them committed brutal murder or robbery and murder. (The law stipulates 17 crimes for which the death penalty may be applied. See the table below.) At present, the majority of Japanese are of the opinion that the death penalty should be maintained to punish those who commit extremely vicious offences, and this has been endorsed by the public opinion polls (the most recent one was conducted in June 1989).

Change in number of female members of the Diet

	Members of the Diet			Members of the House of Representatives			Members of the House of Councillors		
	Total number	Number of female members	Ratio of female members	Total number	Number of female members	Ratio of female members	Total number	Number of female members	Ratio of female members
	Person	Person	%	Person	Person	%	Person	Person	%
November 1950	699	24	3.4	449	12	2.7	250	12	4.8
May 1955	716	23	3.2	466	8	1.7	250	15	6.0
September 1960	698	24	3.4	451	11	2.4	247	13	5.3
December 1965	704	24	3.4	454	7	1.5	250	17	6.8
January 1970	733	21	2.9	486	8	1.7	247	13	5.6
October 1975	726	25	3.4	475	7	1.5	251	18	7.2
July 1980	762	26	3.4	511	9	1.8	251	17	6.8
December 1983	759	26	3.4	511	8	1.6	248	18	7.3
September 1984	757	27	3.6	508	8	1.6	249	19	7.6
January 1986	750	27	3.6	502	8	1.6	248	19	7.7
July 1986	763	29	3.8	512	7	1.4	251	22	8.8
March 1987	760	29	3.8	509	7	1.4	251	22	8.8
March 1988	757	29	3.8	506	7	1.4	251	22	8.8
February 1989	752	29	3.9	500	7	1.4	252	22	8.7
July 1989	749	40	5.3	497	7	1.4	252	33	13.1
February 1990	763	45	5.9	512	12	2.3	251	33	13.1

Based on the survey by the secretariats of both Houses.

Positions in the Diet held by women

House of Representatives	Number of female members of the Diet	Speaker (President)/ Deputy speaker (Vice-president)	Permanent Commissioner	Permanent member of the commission	Extra-ordinary member of the commission
	Person	Person	Person	Person	Person
February 1975	7	0	0	0	0
August 1980	9	0	0	1	0
January 1985	8	0	0	1	0
February 1986	8	0	0	2	0
March 1987	7	0	0	0	0
March 1988	7	0	0	0	0
February 1989	7	0	0	0	0
February 1990	12	0	0	0	0
House of Councillors					
February 1975	18	0	0	2	0
August 1980	17	0	0	3	0
January 1985	19	0	1	2	1
February 1986	19	0	1	3	0
March 1987	22	0	1	10	0
March 1988	22	0	2	6	0
February 1989	22	0	2	9	0
July 1989	33	0	2	4	1
February 1990	33	0	2	5	1

Appointment of women to positions equal to or higher than section chief class of national civil servants

(person)

	Bureau chief class		Section chief class		Total	
	Total number	Number of women	Total number	Number of women	Total number	Number of women
1976	1 271	1(0.1)	5 667	19(0.3)	6 938	20(0.3)
1981	1 559	3(0.2)	6 459	39(0.6)	8 018	42(0.5)
1985	1 623	2(0.1)	6 815	47(0.7)	8 438	49(0.6)
1986	1 606	4(0.2)	6 632	39(0.6)	8 238	43(0.5)
1987	1 626	7(0.4)	6 816	49(0.7)	8 442	56(0.7)
1988	1 638	5(0.3)	6 969	55(0.8)	8 607	60(0.7)
1989	1 630	7(0.4)	7 089	53(0.7)	8 719	60(0.7)
1990	1 657	7(0.4)	7 168	52(0.7)	8 825	59(0.7)

Materials: "Survey Report on Appointment Conditions of National Civil Servants" by the National Personnel Authority.

Note: Figures within ( ) show the ratio of women to the total number.

Conditions of female administrators by section

(Unit: %)

Industry size	Positions equivalent to general manager				Positions equivalent to section chief				Positions equivalent to sub-section chief			
	Total	Enterprises which have female administrators	Enterprises which have no female administrators	Positions equivalent to female general managers/ position equivalent to general managers	Total	Enterprises which have female administrators	Enterprises which have no female administrators	Positions equivalent to female general managers/ position equivalent to general managers	Total	Enterprises which have female administrators	Enterprises which have no female administrators	Positions equivalent to female general managers/ position equivalent to general managers
Total	100.0	6.3	93.7	1.2	100.0	15.9	84.1	2.1	100.0	33.2	66.8	5.0
Mining Industry	100.0	-	100.0	-	100.0	7.4	92.6	0.8	100.0	10.0	90.0	1.8
Construction Industry	100.0	7.7	92.3	1.2	100.0	11.8	88.2	1.0	100.0	26.5	73.5	2.4
Manufacturing Industry	100.0	5.5	94.5	1.0	100.0	15.4	84.6	2.3	100.0	32.0	68.0	4.4
Electricity, gas, heat supply, and water supply Industry	100.0	1.1	98.9	0.1	100.0	7.3	92.7	0.1	100.0	18.2	81.8	0.5
Transportation and communication Industry	100.0	2.5	97.5	0.6	100.0	8.4	91.6	1.6	100.0	21.8	78.2	3.0
Wholesale, retail Industry, and restaurant	100.0	6.7	93.3	1.4	100.0	21.7	78.3	2.6	100.0	39.4	60.6	7.1
Finance business and insurance business	100.0	3.2	96.8	0.1	100.0	30.3	69.7	0.6	100.0	58.0	42.0	5.8
Real estate business	100.0	0.6	99.4	0.1	100.0	13.9	86.1	1.4	100.0	30.9	69.1	5.3
Service Industry	100.0	9.9	90.1	2.5	100.0	17.3	82.7	3.2	100.0	40.4	59.6	8.0
(Employees)												
More than 5 000	100.0	12.2	87.8	0.1	100.0	45.2	54.8	0.6	100.0	71.5	28.5	2.2
1 000 - 4 999	100.0	6.7	93.3	0.2	100.0	26.4	74.6	1.1	100.0	51.7	48.3	2.6
300 - 999	100.0	2.6	97.4	0.3	100.0	16.9	83.1	1.0	100.0	37.6	62.4	3.3
100 - 299	100.0	4.0	96.0	0.9	100.0	14.4	85.6	1.9	100.0	33.3	66.7	6.7
30 - 99	100.0	7.5	92.5	3.0	100.0	16.0	84.0	5.7	100.0	32.0	68.0	11.8

Materials: "Basic survey of women's employment and management in 1989" by the Ministry of Labour.

Note: *Survey was conducted for enterprises which had applicable administrative positions.*

Table: Crimes for which the death penalty may be sentenced

(17 crimes)

(1) Ringleader of insurrection (art. 77, para. 1, item 1, of the Penal Code).

(2) Incitement of foreign aggression (art. 81 of the Penal Code).

(3) Assistance to enemy (art. 82 of the Penal Code).

(4) Arson to inhabited structure (art. 108 of the Penal Code).

(5) Destruction by explosives (art. 117, para. 1, and art. 108 of the Penal Code).

(6) Damage to inhabited structure by inundation (art. 119 of the Penal Code).

(7) Capsize of vessel and railroad train resulting in death (art. 126 of the Penal Code).

(8) Manslaughter caused by endangerment of traffic (art. 127 and art. 126, para. 3, of the Penal Code).

(9) Addition of poisonous material into water-main resulting in death (art. 146, latter part of the Penal Code).

(10) Murder (art. 199 of the Penal Code).

(11) Robbery resulting in death (including murder on the occasion of robbery) (art. 240, latter part of the Penal Code).

(12) Rape on the occasion of robbery resulting in death (art. 241, latter part of the Penal Code).

(13) Illegal use of explosives (art. 1 of the Explosives Control Act).

(14) Duel resulting in death (art. 3 of the Law concerning the Crime of Duelling and art. 199 of the Penal Code).

(15) Manslaughter by causing plane crash, etc. (art. 2, para. 3 of the Law concerning the Punishments for Acts to Cause Aviation Danger).

(16) Manslaughter caused by seizure of aircraft, etc. (art. 2 of the Law for Punishing the Seizure of Aircraft and other Related Crimes, etc.).

(17) Homicide of hostage (art. 4, para. 1, of the Law for Punishing Compulsion and Other Related Acts Committed by Those Having Taken Hostages).

103. The abolition of the death penalty is directly related to the national feeling and the domestic legislation based on it. Therefore, ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty should be studied carefully.

104. As mentioned in the first and second reports concerning article 14 of the Covenant, Japanese law guarantees the impartial trial by independent courts, the presumption of innocence, the offer of defence counsel and the application for new trials in higher courts. These guarantees are naturally applied to trials where the death penalty may be the sentence, as stated in the second report.

105. Article 11, paragraph 2, of the Penal Code of Japan provides that "The person who has been sentenced to death shall be detained in a prison until the execution." This detention is stipulated by the law as a physical restraint needed for the execution, and is implemented in the process of executing a court decision of death penalty. The period of detention is not counted against the limitation of the sentence.

106. Those on whom the death penalty has been passed are detained in a detention house or in a special section of a prison, separated from other sections, until the execution. They are treated generally in the same manner as those under detention awaiting sentence. To help them keep emotionally stable, exhortation by a chaplain and advice/guidance by volunteers are offered upon their request.

107. Persons sentenced to death are not excluded from application for amnesty. There have been precedents for commuting the death penalty to life imprisonment.

108. The Prison Law provides that the warden of the institution decides whether the persons sentenced to death may receive visitors on a case-by-case basis according to the purpose of the detention (art. 45, para. 1, of the Prison Law). In practice, the persons sentenced to death are allowed to receive visitors such as their family members and lawyers in the presence of officials, except where there is a probability of obstructing the realization of the purpose of the detention such as jeopardizing the security of the custody. The persons sentenced to death who received the decision from the court to start a retrial are allowed to see their defence counsels or any other persons who are going to be their defence counsels without the presence of officials in the same manner as those under detention awaiting sentence.

109. Police officers are allowed to possess small-sized weapons by article 67 of the Police Law, and the condition for the use of weapons is provided in article 7 of the Police Duties Execution Law. In addition, the use of a pistol, etc. as well as how to carry and keep them is stipulated in detail by the regulations within the police division.

110. Police officers are strictly restricted on the use of weapons by these regulations. Moreover, they may never inflict any injury upon any person except in such an unavoidable case as self-defence. If police officers use a

weapon in violation of these regulations, disciplinary measures may be taken against them or they may be subject to criminal liability. The following table shows the use of pistols by police officers:

Year	Number of cases	The way used		Cases causing harm		
		Threat	Firing against	Cases	Death	Injury
1986	10	9	1			
1987	13	10	3	3	2	1
1988	10	10				
1989	16	12	4	3		4
1990	19	15	4	4	1	4

Article 7

111. The legal framework of Japan regarding prohibition of torture and cruel punishment is as stated in the second periodic report. The outline is described below.

112. Article 13 of the Constitution provides that all of the people shall be respected as individuals and that their right to life, liberty and the pursuit of happiness shall be respected. Article 36 stipulates that "The infliction of torture by any public officers and cruel punishments are absolutely forbidden", and article 38, paragraph 1, provides that "No person shall be compelled to testify against himself".

113. To meet the requirements of the Constitution, article 195 of the Penal Code provides that when personnel performing or assisting in judicial, prosecutive or police functions or officials watching detained persons commit acts of violence or cruelty upon defendants in a criminal action or other persons (not limited to persons detained by laws), they shall be sentenced to imprisonment with or without forced labour. This cruelty means an act which inflicts physical or mental pain through means other than violence. Also, article 194 of the Penal Code provides that when personnel performing or assisting in judicial, prosecutive or police functions arrest or detain by abusing their authority, they shall be punished. Further, article 193 prohibits public officers from abusing their authority in any ways and causing a person to perform an act which he has no obligation to perform or obstructing a person from exercising a right which he is entitled to exercise, and stipulates that those who violate this provision shall be punished. In this way, Japan prohibits not only torture or cruel treatment or punishment but also inhuman treatment by public officers.

114. To ensure that no person may be exempt from punishment through the unfair disposition of non-prosecution by public prosecutors, a special criminal procedure (quasi-prosecution procedure) is stipulated in the Code of Criminal Procedure (arts. 262 et seq.). Through this procedure, those who are dissatisfied with the disposition of non-prosecution may apply to a district

court. If the court renders a ruling that the case shall be sent to a competent court for trial, it is deemed that the prosecution has been instituted as to the case.

115. In addition, article 38, paragraph 2, of the Constitution provides that "Confession made under compulsion, torture or threat or after prolonged arrest or detention shall not be admitted in evidence." The Code of Criminal Procedure also stipulates that not only the confession referred to above but also any confession suspected not to have been made voluntarily shall not be admitted in evidence, and thus guarantees through evidence-related provisions that such acts will not be inflicted on suspects (art. 319, para. 1).

116. As mentioned above, torture is prohibited by the provision of article 36 of the Constitution. Officials engaged in investigatory activities, such as public prosecutors and police personnel, take training courses in which a thorough explanation is given on the Constitution and the above-mentioned provision.

117. The prevention of human rights violations and remedy measures for them in criminal detention facilities are as described in the explanations on article 10 of this report and the initial and second periodic reports.

Article 8

118. The legal framework on freedom from bondage, involuntary servitude except as a punishment for a crime and on prohibition of the exploitation of children is covered in the second periodic report. More detailed descriptions are given below.

119. Article 18 of the Constitution provides that "No person shall be held in bondage of any kind". Thus, freedom from bondage and prohibition of any state of bondage are expressly guaranteed. Article 27, paragraph 3, of the Constitution stipulates that "Children shall not be exploited"; the exploitation of children is thereby forbidden.

120. In line with the spirit of these provisions of the Constitution, the Penal Code provides that those who engage in traffic in persons or sending of kidnapped persons out of Japan and those who commit so-called coercion causing a person to perform an act which he has no obligation to do, by the use of intimidation or physical violence, shall be punished by imprisonment with forced labour (art. 226, para. 2 and art. 223 of the Penal Code).

121. The Labour Standards Law prohibits forced labour and exploitation of workers (art. 5 and art. 69, para. 1, of the Labour Standards Law).

122. The Prostitution Prevention Law forbids making a person engage in prostitution by temptation or intimidation, concluding a contract for making a person practise prostitution and what may be called "managing a prostitution business". This law further stipulates that those who violate these provisions shall be punished with penal servitude or find (arts. 7, 10 and 12 of the Prostitution Prevention Law).

123. The Employment Security Law provides that those who engage in employment exchange, labour recruitment or labour supply by means of confinement, etc., shall be subject to penal servitude or fined (art. 63 of the Employment Security Law). The Child Welfare Law stipulates that those who keep a child of others in their house for over a certain period of time shall report the fact to the concerned office in order to prevent the slave trade, etc. (art. 30 of the Child Welfare Law). The Child Welfare Law also specifies acts which children must not be made to do, and provides that those who make children work until late at night, etc., shall be fined or sentenced to penal servitude (arts. 34 and 60 of the Child Welfare Law).

124. Persons who are physically detained without due legal procedure may apply for remedial action under the Habeas Corpus Law. Any act by a private person which treats another as a slave shall be nullified as an act violating public order under article 90 of the Civil Code.

125. In Japan, punishment equivalent to imprisonment with hard labour as provided for in article 8, paragraph 3 (b), of the Covenant includes imprisonment with forced labour (art. 12 of the Penal Code) and detention at a workhouse (art. 18 of the Code). Prisoners sentenced to imprisonment with forced labour shall be detained in prison and subjected to forced labour. This forced labour is implemented both as a punishment labour for a crime and as one of measures to resocialize offenders. Working conditions such as working hours are determined according to those of usual workers, and prisoners are rewarded with remuneration. A workhouse is a place where those who have not paid a fine are detained in accordance with a sentence. This workplace is attached to a prison. Those who are detained in the workplace are, in principle, allowed to wear their own clothes and to use their own bedding, but other treatment such as forced labour is imposed almost in the same way as prisoners sentenced to imprisonment with forced labour.

Article 9

126. The legal framework in Japan regarding the right to liberty and security of person is as stated in the initial and second periodic reports. Some important points are described below.

127. Article 31, paragraph 1, of the Constitution provides that "No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to the procedure established by law." Article 33 stipulates that "No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offence with which the person is charged, unless he is apprehended [while] the offence [is] being committed." And article 34 provides that "No person shall be arrested or detained without being at once informed of the charges against him or without immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and in the presence of his counsel." In line with these provisions of the Constitution, the Code of Criminal Procedure and other laws stipulate the conditions and procedures for arrest and detention.

128. The following administrative measures, all of which are taken in accordance with the laws stipulating reasons and procedures, may be taken against the right to liberty: detention of foreigners based on a deportation or detention order under the Immigration Law; protective detention of a juvenile under the Juvenile Law; detention under the Extradition Law; disposition under the Anti-Prostitution Law; custody or confinement under the Offenders Rehabilitation Law; custody or confinement under the Law for Probationary Supervision of Persons under Suspension of Execution of Sentence; compulsory detention and isolation of patients with infectious diseases under the Contagious Disease Prevention Law; hospitalization of narcotic addicts under the Narcotic Control Law; and involuntary admission to mental hospitals of mentally disordered persons who are liable to injure themselves or others, as well as voluntary admission, under the Mental Health Law.

129. The Mental Health Law was revised in 1987 to place more emphasis on human rights so that proper mental treatment and protection should be given to mentally disordered persons. The revised law provides as follows.

130. Physicians who have sufficient knowledge and experience in mental treatment are to be designated by the Minister for Health and Welfare as Designated Physician for Mental Health. A medical examination by these physicians is required to admit to a hospital involuntarily or to restrict deeds of in-patients. In-patients and related people may request prefectural governors to release them from hospital or to improve treatment. These requests will be reviewed by the Psychiatric Review Board (the independent body established in each prefecture and composed of physicians, jurists and men of learning and experience). Prefectural governors must take necessary measures according to the results of the review. The Board also reviews whether patients should be kept in hospital or not, according to the regular reports about patients' conditions. The revised law also includes provisions to prohibit imposing restrictions on sending and receiving correspondence, those to notify patients of the procedures for requesting discharge from the hospital at the time of the admission and others, so that the human rights of patients may be protected. The Mental Health Law incorporates provisions concerning the voluntary admission to a mental hospital and states that, as a rule, patients should be admitted voluntarily. Voluntarily admitted patients can, as a rule, leave hospital when they want to, and the above-mentioned provisions for protecting human rights, such as those to request the improvement of their treatment, are applied to these patients.

131. The number of patients admitted to mental hospitals is about 349,000 as of the end of June 1990.

132. Besides the review by the Psychiatric Review Board, patients who were involuntarily admitted by prefectural governors in accordance with article 29, paragraph 1, of the Mental Health Law may file suit against the prefectural governors, demanding the cancellation of the involuntary admission by them. They can also demand relief measures guaranteed by the Habeas Corpus Law. Parents or guardians with parental authority can demand the release of patients. In addition, concerned persons can accuse those who keep patients in hospital on charge of confinement (art. 220 of the Penal Code).

133. Regarding the rights provided by article 9, paragraph 3, of the Covenant, a judicial police officer, when arresting a suspect, shall immediately inform him of the essential facts of the crime for which he is being arrested and of the fact that he is entitled to select a defence counsel; the arrested person must also be given an opportunity to explain himself. After hearing the explanation, if the judicial police officer believes that there is no need to detain the suspect, he must release him immediately. If he believes that the suspect should be detained, he must send him to a public prosecutor within 48 hours after the suspected person was subjected to restraint (art. 203 of the Code of Criminal Procedure).

134. The public prosecutor who receives an arrested suspect must also give him an opportunity to explain himself, and if the prosecutor believes that there is no need to detain the suspect, the latter shall be released immediately. If the prosecutor believes it is necessary to detain the suspect, he shall request a judge for permission to detain within 24 hours after he received the suspect and within 72 hours after the suspect was subjected to restraint, except where a prosecution is instituted within this time-limit. The public prosecutor must release the suspect immediately if he does not request a judge for permission to detain or institute prosecution (art. 205 of the Code of Criminal Procedure).

135. The judge who received the request for detention shall question the suspect. He orders the detention if he considers it necessary (art. 207 of the Code of Criminal Procedure). The period of detention is up to 10 days after the request for detention is made. However, under certain circumstances, this period may be extended for not longer than another 10 days by request of the public prosecutor. The public prosecutor must release the suspect immediately if he does not institute prosecution during the detention period (art. 208 of the Code of Criminal Procedure). In this way, the detention period of suspects is strictly observed under the judicial system.

136. Because a certain detention period is allowed prior to each request for detention, suspects may be detained, in ordinary cases, up to 22 or 23 days from the time of arrest and detention to indictment. However, the custody period as well as detention period after arrest is strictly observed as specified in the Code of Criminal Procedure.

137. Although during the detention period investigation can be made on the facts other than those which caused the suspect to be arrested and detained, arrest or detention is to be determined only according to the suspected facts. If by an examination of the facts it is found that there is no need to arrest or detain the suspect he must not be arrested or detained for the purpose of investigating other facts. Accordingly, so-called "arrest or detention on a separate charge", which means suspects are arrested and detained by another fact (B) even though they are suspected of the fact (A), is not approved. If such an illegal arrest or detention on a separate charge is performed, it is possible to nullify such acts by eliminating evidence, including confessions made during the detention period, under the existing law.

138. Regarding article 9, paragraph 5, of the Covenant, article 17 of the Constitution provides that "Every person may sue for redress as provided for by law from the State or a public entity, in case he has suffered damage

through illegal act of any public official", and the State Redress Law was enacted according to this provision. In its article 1, paragraph 1, the State Redress Law provides that "If a public official authorized to exercise the power of the State or of a local public entity has inflicted, intentionally or through negligence, any damage on any person through an illegal act, in the conduct of his official duties, the State or the local public entity concerned shall be under obligation to make compensation for it." Any person who is unlawfully arrested or detained by the intention or negligence of a public official in charge of the exercise of public power in the performance of his duty may demand compensation for damage from the State or a public entity in accordance with the provision.

139. Even in a case where the arrest or detention is not illegal, article 40 of the Constitution provides that "Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law." Thus, the range of compensation has been expanded. In line with this provision the Criminal Compensation Law was enacted. The Law establishes compensation for damage caused by arrest or detention pending trial (art. 1, para. 1) and for damage caused by execution of penalty and confinement (art. 1, para. 2) for a crime of which the person concerned has been acquitted. The amount of compensation to be paid shall be determined by the court within the limits determined by the law (art. 4).

140. Also, as mentioned in the second periodic report, in the light of the seriousness of the economic, physical and mental disadvantages that an innocent person suffers as a result of arrest or detention even though he is not ultimately indicted, it is considered to meet the purport of article 40 of the Constitution and to agree with the idea of justice and equality that such person is compensated for his damage. It is for that reason that the Regulations for Suspect's Compensation (Instructions No. 1 of the Ministry of Justice dated 12 April 1957) were established. According to these regulations, compensation for damage caused by arrest or detention shall be made to the person who has not been prosecuted if there is a sufficient ground to recognize that he has not committed the crime (art. 2 of the Regulations).

Article 10

141. The legal framework related to article 10 of the Covenant is as described in the initial and second periodic reports, and all detainees are treated with humanity and with respect for the inherent dignity of human beings. Systems to prevent and remedy violations of human rights and remedies for those detained in penal institutions are provided as described below.

142. Concerning supervision and inspection systems and the system of grievance procedures, see the second periodic report.

143. Concerning publicizing of laws and ICCPR, suspects are notified of their rights by officials in charge of detention before they are detained. The training course for officials in charge of detention, includes education on the treatment of prisoners in accordance with the spirit of the related

regulations of the United Nations such as ICCPR and the Standard Minimum Rules for the Treatment of Prisoners. Inmates detained in correctional institutions may obtain a book of laws and regulations, including the ICCPR, at their own expense. They can also read books of laws kept in institutions.

144. Concerning interviews with family members and defence counsel, the first paragraph of article 34 of the Constitution provides that "No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel" and article 39, paragraph 1, of the Code of Criminal Procedure allows the suspect detained pending trial to have interviews with his defence counsels or any other persons who are going to be his defence counsels without the presence of officials. The right of suspects and defence counsels (and persons who are going to act as defence counsels) to have interviews is respected in the actual criminal investigation stage.

145. However, even this right is not an absolute one and can be restricted, as long as the spirit of the Constitution is not infringed. A request for an interview with the defence counsel may be rejected by the exercise of the right of interview designation in accordance with article 39, paragraph 3, of the Code of Criminal Procedure or by the administrative requirements of the prison where a suspect is detained. The right of interview designation may be used by a public prosecutor, etc., to designate a date, time, etc., for proposed interviews, when it is necessary to do so for the investigation, in accordance with the provision of article 39, paragraph 3, of the Code of Criminal Procedure: "A public prosecutor, public prosecutor's assistance officer or a judicial police personnel, when it is necessary for the investigation, may designate the date, place and time of interview and delivery or receipt or things mentioned in paragraph 1 only prior to the institution of prosecution." The Code, however, stipulates that the designation must not unduly restrict the rights of a suspect to a defence. This provision was established to keep a balance between the right to defence of a suspect and the requirements of the investigation. Sufficient consideration is given in exercising this right so that the right to defence of a suspect is not unduly restricted.

146. If a public prosecutor wishes to designate a suspect's interview with his defence counsel, he must send a notice in advance to the head of the prison informing him of the case in which he intends to designate the interview. If the defence counsel visits the prison and asks for an interview with a suspect regarding the case specified by the public prosecutor, an official of the prison will contact the public prosecutor and the latter will decide whether he will designate the interview or not. If the public prosecutor does not designate an interview or if he designates only the time of interviews, it is assumed that no designation of interview was performed. Therefore, if a defence counsel wishes to have an interview with a suspect, he should visit the prison directly, regardless of whether a public prosecutor has notified the head of the prison regarding designation of interview or not. Thus, in order to have an interview with a suspect, a defence counsel need not obtain a permit from a public prosecutor in advance and bring it to the prison. A suspect may appeal to a court if he is dissatisfied with the designation of interview date and time, etc., made by a public prosecutor, etc.

147. The Supreme Court passed a judgement on 10 July 1978 stating that the designation of interview date and time, etc., by the investigating institutions was an exceptional measure which was unavoidable under certain circumstances, but if a defence counsel asked for an interview with a suspect, he should in principle, be given a chance to have an interview at any time. If, for example, the investigation is substantially hindered by such an interview, if a suspect is being interrogated or if the presence of a suspect is required at that time for the inspection of scene, the public prosecutor may designate the date and time of interviews after conferring with the defence counsel so that the suspect may have a discussion with counsel, as soon as possible. The designation of interview is carried out with full respect for the intent of this judgement.

148. The Supreme Court stated in its judgements of 10 May 1991 and 31 May 1991 that the conditions for designation of interview mentioned above may also be applied when an interview with defence counsel will disrupt an already scheduled interrogation, inspection of scene, etc., for which the presence of the suspect is required.

149. With regard to the rejection of a request for interview attributed to the adminstrative requirements of prison, interviews at midnight, for example may be rejected unless it is an emergency. This kind of rejection is a reasonable restriction because the human and material resources are limited in the facility.

150. Although prison officials are present at interviews between detainees and persons other than a defence counsel, there is no restriction on visitors unless interviews are prohibited in accordance with the provisions of the Code of Criminal Procedure.

151. Convicts are allowed to have interviews only with their family members or relatives; as a general rule, interviews with other persons are permitted only when they are deemed necessary (art. 45, para. 2, of the Prison Law). In reality, however, these provisions are enforced with flexibility: for instance, interviews with persons other than family members or relatives of the prisoner are approved if the interviews are considered to be beneficial to the treatment of the prisoner. In principle, prison officials are present at interviews, but if it is considered necessary for the treatment of the prisoner or for other reasons, interviews without the presence of prison officials are allowed.

152. On 9 July 1991, a judgement was passed at the third regular chamber of the Supreme Court declaring that articles 120 and 124 of the Prison Law Enforcement Regulation were not in effect with respect to unconvicted prisoners. Under these provisions, interviews between inmates and children under 14 years old had not been allowed in principle and such interviews had been allowed exceptionally when the prison warden had considered them necessary. In line with this judgement, the necessary revisions were made to the related provisions of the regulations.

153. In Japan, most police stations have custodial facilities to hold detained suspects arrested in accordance with the Code of Criminal Procedure, as well as unconvicted prisoners detained by a detention warrant issued by a judge in

accordance with the relevant provision of the Code of Criminal Procedure. About 110,000 persons out of those arrested by the police are detained in these facilities per year. Persons who are arrested by the police are brought before a judge, except when they are released, and the judge decides whether they should be detained or not. The number of suspects detained at police custodial facilities is about 80,000 a year. The detained persons stay in the custodial facility for 15 days on average.

154. The Code of Criminal Procedure provides that suspects should be detained in prison (art. 64, para. 1, etc.) and the Prison Law stipulates that suspects may also be detained in a police custodial facility (the facility where unconvicted persons are detained is called a house of detention) (art. 1, para. 3, of the Prison Law). This system of detaining suspects in a police custodial facility instead of in prison is called the "substitute prison system". The place where a suspect is to be detained is determined by a court based on the request by the public prosecutor (art. 64, para. 1, of the Code of Criminal Procedure). The place of detention is determined at the discretion of a judge in consideration of the capacity of a facility, the distance from the investigating institution, the benefit to suspects, etc. The police custodial facility is administered by the prefectural police belonging to a local entity instead of by the National Police Agency, which is a national organ.

155. The custodial facility is designed to protect the privacy of detained persons. The front of the room is covered by an opaque board so that prison guards cannot see detained persons inside the room. The floor of the room is covered with a carpet or tatami mat, in consideration of the Japanese lifestyle. Thus, a detained person can keep a similar living style in the room of a house of detention. In principle, a room is allocated to each detained person. Standards are set in order to ensure the space to secure the right treatment of the detained for his benefit.

156. The behaviour of a detainee is not restricted in the room, as long as it does not hinder the peace of other detainees or is not directed against the purposes of detention.

157. In order to maintain the health of detained persons, a 30-minute exercise period is set per day so that they can freely exercise outside. This time-limit may be extended to more than one hour if requested by detainees. During sleeping hours, the room is darkened so as not to hinder sleep, interrogations takes place during office hours (usually from 8.30 a.m. to 5.15 p.m.). If the interrogation exceeds office hours due to unavoidable circumstances, the daily schedule, including sleeping hours, is respected.

158. Food, clothes, etc. may be purchased at the expense of detainees, or may be sent to them.

159. Interviews with the defence counsel and the delivery of letters to and from him are guaranteed as a general rule. Interviews with family members, etc. and the delivery of letters to and from them are also guaranteed in principle, except when the court imposes restrictions in order to achieve the purpose of detention. The detained persons are treated by officals in charge

of detention, whose duties are clearly separated from those of investigators. It is prohibited for investigators to deal with detained persons except for the purposes of the investigation. It is also prohibited for officials in charge of detention to discriminate against detainees according to the progress of the investigation or questioning by investigators.

160. As explained above, the human rights of detained persons in Japan are sufficiently ensured in the police custodial facility and the treatment given there meets the United Nations Standard Minimum Rules for the Treatment of Prisoners.

161. The Government is studying the Police Custodial Facility Bill to establish the provision concerning the treatment of persons detained in the police custodial facility which is managed by the prefectural police. The Bill includes the following provisions from the viewpoint of protecting human rights of detained persons:

(a) To ensure equal treatment in the police custodial facility and in the penal institution;

(b) To make it clear that detention is distinguished from investigation;

(c) To make it possible, by new provision, to lend or supply goods necessary for daily life and to improve the treatment of detained persons.

162. The treatment of accused juveniles concerning article 10, paragraph 2 (b), of the Covenant is as described in the second periodic report.

163. The legal framework system and the present situation concerning article 10, paragraph 3, are as described in the second periodic report.

Article 11

164. In Japan, non-fulfilment of a contractual obligation merely gives rise to a civil obligation to compensate. As stated in the second periodic report, such non-fulfilment does not constitute a crime under Japanese law. Therefore, no one shall be detained on that ground.

Article 12

165. As described in the second periodic report, article 22 of the Constitution guarantees freedom to choose and change residence and freedom to move to a foreign country. The right to return to one's own country is not expressly provided for in the Constitution, but it is understood that this right is also guaranteed as a matter of course.

166. The Immigration Law has no provisions restricting freedom to leave and return to one's country. It only stipulates the procedures for confirmation of departure from and return to Japan of Japanese citizens (arts. 60 and 61 of the Immigration Law).

167. The Law provides that foreigners are allowed to enter and reside in Japan, under the conditions that (i) foreigners who wish to enter Japan have valid passports issued by foreign Governments approved by the Japanese Government and are qualified for the status of residence spcified by the Law, and (ii) the applications meet the landing permit standards (if required by the Law). The period of stay is stipulated by the ordinance of the Ministry of Justice for each permit. (The period of stay of foreigners cannot be more than three years unless they have diplomatic, official or permanent residence status (art. 2-2, para. 3).)

168. Freedom of foreigners to choose and change residence in Japan is exactly the same as that of the Japanese people.

169. The Immigration Law does not have any provisions restricting foreigners' freedom to leave Japan, except for such cases as foreigners who have committed grave crimes and are being prosecuted or warrants of arrest have been issued (arts. 25 and 25-2). The provisions concerning procedures on the confirmation of departure from Japan are not regarded as a restriction on foreigners.

170. The rights stipulated in article 12 of the Covenant are restricted by the following laws, but all of the restrictions constitute the necessary minimum conforming to the provision of article 12, paragraph 3, of the Covenant:

(a) Restriction on the residence of the accused who are released on bail or whose execution of detention is suspended (arts. 93 and 95 of the Code of Criminal Procedure);

(b) Restrictions on place of residence and area of movement of foreigners given a provisional landing permission, special landing permission, etc. (art. 13, para. 3, art. 14, para. 3, art. 15, para. 4, art. 16, para. 3, art. 18, para. 4 and art. 18-2, para. 3 of the Immigration Law). During the procedure for landing permission, provisional landing permission may be given by the supervising immigration officer until the procedure is completed, when he considers it necessary (art. 13, para. 1, of the Immigration Law). When the supervising immigration officer gives provisional landing permission, he may impose restrictions concerning the area of residence and movement for the purpose of preventing escape or securing the obligation to appear at the Immigration Bureau when summoned, and other conditions if considered necessary. The supervising immigration officer may also order the payment of a deposit (art. 13, para. 3, of the Immigration Law);

(c) Restriction on issuance of a passport to a person prosecuted in criminal proceedings, etc. (art. 13 of the Passport Law);

(d) Segregation of patients with infectious diseases (arts. 7 and 8 of the Contagious Disease Prevention Law).

Refugee policy of Japan

171. Japan ratified the Convention relating to the Status of Refugees in October 1981, and from January 1982 introduced status determination procedures

to judge whether an individual asylum-seeker was a refugee according to this Convention and its Protocol. The number as of the end of August 1991 is as follows:

Applications	922 persons
Results	
Withdrawal	142 persons
Recognized as refugees	197 persons
Not recognized as refugees	525 persons
Being examined	58 persons

172. Japan has been making an effort to increase the number of settled refugees from the three Indo-Chinese countries (Viet Nam, the Lao People's Democratic Republic and Cambodia) since 1978. As a result, the number of refugees from Indo-China living in Japan is 7,680 as of the end of August 1991.

173. Japan has allowed the landing of so-called "boat people" since May 1975, and the number of the boat people who landed in Japan is 12,989 as of the end of August 1991. To cope with the rapid increase in the number of boat people, Japan introduced on 13 September 1989 the system of the examination of landing permission for the purpose of offering temporary protection to them (this is a screening system to distinguish genuine refugees who escaped from persecution from economic refugees who left their country seeking a more affluent life). This system is in line with the agreement reached at the International Conference on Refugees from Indo-China held in June 1989. After this system was introduced, 474 Vietnamese boat people landed in Japan as of the end of August 1991 of whom 27 people passed the screening procedure.

174. The Immigration Law provides that the requirements for permanent residence in Japan may be eased for those who are recognized as refugees in accordance with the Convention relating to the Status of Refugees so that these people could settle (art. 61-2-5 of the Immigration Law).

175. In line with the spirit of the Convention, Japan gives proper consideration to employment, education, social security, housing, etc. not only to those who are recognized as Convention refugees but also to refugees from Indo-China who are allowed to settle in Japan. For example, refugees from Indo-China are accommodated in the facility for refugees for six months so that they can settle in Japan more smoothly. The Japanese Government offers Japanese language courses, etc. there, and assists them to find jobs and houses when they leave the facility.

Article 13

176. The deportation of foreigners from Japan is carried out in accordance with the Immigration Law, which stipulates the reasons and procedures concerning deportation. Details are stated in the second periodic report.

Article 14

177. The legal framework in Japan regarding article 14 of the Covenant is as stated in the initial and second periodic reports. Additional information is as follows.

178. Regarding article 14, paragraph 3 (c), article 37 of the Constitution stipulates that in all criminal cases the accused shall enjoy a speedy and public trial. The Rules of Criminal Procedure provide that persons involved in a suit must collect and select as much evidence as possible before the first trial date, make the disputed point clear, and give an opinion to the court with regard to the period of time necessary for the proceedings. The Rules stipulate that the court be open every day and that the trial date cannot be changed except for unavoidable reasons (art. 178, para. 2 and art. 181, etc.). Effective and speedy trials are thus ensured.

179. With regard to the right to have legal assistance (art. 14, para. 3 (d)) the Code of Criminal Procedure provides that when a public prosecution is instituted, the court has to inform the defendant to select a defence counsel without delay; if the defendant cannot do so due to poverty, etc., the court must inform him that he can request a defence counsel to be assigned (art. 272 of the Code of Criminal Procedure). The court must assign a defence counsel by request of the defendant under the official defence counsel system (art. 36 of the Code of Criminal Procedure).

180. A defence counsel must be a lawyer as a general rule. The Lawyers Law (enacted in 1949) provides as follows to ensure the independence of lawyers:

(a) The mission of a lawyer shall be to protect fundamental human rights and realize social justice (art. 1, para. 1). A lawyer's duties include actions concerning a suit matter, a non-suit matter, an application for review, an action for objection, and a filing of complaint against government offices such as an application for reopening of the proceedings, as well as other general legal work (art. 3 of the Lawyers Law);

(b) A lawyer must complete a judicial training course to be fully qualified as a lawyer (art. 4 of the Lawyers Law). The qualification is the same as for a judge and a public prosecutor;

(c) Neither lawyers nor lawyers' associations are under the control and supervision of any government organs, and the administrative offices or courts have no competence to supervise lawyers or lawyers' associations. The Japan Federation of Bar Associations, which consists of lawyers and lawyers' associations established in each jurisdiction of a district court, supervises lawyers and each lawyers' association (art. 45 of the Lawyers Law).

Article 15

181. As stated in the initial report, article 31 of the Constitution provides that criminal penalty shall be imposed only according to procedure established by law, while article 39 prohibits ex post facto law. Thus, the right referred to in article 15 of the Covenant is guaranteed.

Article 16

182. As stated in the second periodic report, the Constitution provides that people shall be respected as individuals (art. 13), that people shall enjoy fundamental human rights (art. 11), that the right to life, liberty and the pursuit of happiness should be respected (art. 13) and that no person shall be denied the right of access to the courts (art. 32). Thus, the rights of individuals are ultimately guaranteed by judicial remedies.

Article 17

183. The legal framework in Japan regarding the protection of the rights established by article 17 of the Covenant is as described in the initial and second periodic report. The main points are as follows.

184. The Constitution provides that "The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued for adequate cause and particularly describing the place to be searched and thing to be seized ..." (art. 35, para. 1), thus forbidding unreasonable interference by public authorities in the homes, etc., of all persons. The Penal Code prohibits intrusion upon a human residence, etc., without good reason (art. 130), while the Minor Offence Law bans peeping into others' houses, etc., without justifiable reasons (art. 1, item 23). In addition, a doctor, lawyer or any other person who can know others' secrets in the course of the conduct of their profession is put under an obligation not to disclose such secrets by law (art. 134 of the Penal Code, art. 149 of the Code of Criminal Procedure and art. 281, para. 1, item 2 of the Code of Civil Procedure). Tranquillity of private life of individuals is ensured by these laws. National and local public service personnel are also put under an obligation to observe strict secrecy (art. 100 of the National Public Service Law, art. 34 of the Local Public Service Law).

185. Furthermore, the Radio Wave Law and the Wire Telecommunications Law, and the Telecommunications Business Law guarantee the secrecy of communication and personal information.

Personal Data held by Administrative Organs

186. With the progress of processing of personal data by computers in recent years, the Act for Protection of Computer-processed Personal Data held by Administrative Organs was enacted in October 1989 to protect the rights and interests of individuals. Administrative organs hold personal data files containing various personal data. In accordance with the above-mentioned Act, the lists of file record items, file holding purpose, etc., shall be available to the people through the personal data file directory prepared by each adminstrative organ. The Management and Coordination Agency also makes public notice of them in the official gazette. Any person is entitled to request disclosure of the data about himself/herself in personal data files published in the personal data file directory. If a person makes an application to correct wrong personal data about himself/herself, the administrative organs will make the necessary investigation and advise the person of the results. Administrative organs have restrictions on holding personal data files and an

obligation to strive for security and accuracy. Also, in principle, it is prohibited for administrative organs to use or provide personal data for other purposes than those designated.

187. The protection of the reputation and credit of individuals is ensured as follows:

(a) The Penal Code punishes a person defaming and insulting another person and defaming a dead person if such defamation is based on a falsehood (art. 230);

(b) To injure the credit of another is a crime to be punished under the Penal Code (arts. 231 and 233);

(c) A person whose honour and reputation are damaged may obtain compensation for mental damage (art. 710 of the Civil Code) and may also demand restoration (art. 723 of the Civil Code).

188. Today, the "right to portrait" and the right to non-disclosure of past events which may injure the honour and reputation of persons have been considered to be protected under the law under the name of "the right to privacy". These rights are recognized as human rights guaranteed by article 13 of the Constitution and by some precedents.

189. The first judgement of the Supreme Court recognizing the "right to portrait" was in December 1969:

> "Article 13 of the Constitution can be interpreted to provide that freedom of the people in their private life should be protected against the exercise of national powers such as police powers. And as one of the freedoms of an individual in his private life, every person should have freedom not to have taken a photograph of him without his permission. Apart from whether this right should be called the right to portrait or not, it is at least against the spirit of article 13 of the Constitution and should not be allowed a policeman to take a photograph of an individual, etc., without any due reason."

190. In recent years, there have been cases in which civil lawsuits (claim of compensation for damage and claim for publication of an apology) were brought into lower courts against the weekly photograph magazines on the ground that these magazines violated the right to privacy or portrait of individuals by carrying pictures in their private lives without their permission.

Article 18

191. As stated in the initial and second periodic reports, articles 19 and 20 and article 21, paragraph 1, of the Constitution provide for the right to freedom of thought, conscience, religion and expression, while article 14 of the Constitution prohibits discrimination on the ground of thought or belief. Thus, the intent of article 18 of the Covenant is guaranteed.

192. In particular, with regard to article 18, paragraph 2, of the Covenant, the Constitution provides in article 20, paragraph 2, that "No person shall be compelled to take part in any religious act, celebration, rite or practice." In addition, article 20, paragraphs 1 and 3, stipulate the non-religious nature of the State and forbid religious activities by the State and its organs.

193. Article 9, paragraph 1, of the Fundamental Law of Education stipulates that "The attitude of religious tolerance and the position of religion in social life shall be valued in education." Thus, religious education in private schools and at home is guaranteed.

Article 19

194. As stated in the initial and second periodic reports, the right to have opinions and freedom of expression are highly respected and guaranteed. They are regarded as essential for democracy. Restriction of freedom of expression shall be admitted only in exceptional cases as stated in the second periodic report.

Article 20

195. Regarding paragraph 1, a very strong negative feeling against war exists among the Japanese people in Japan and it is almost inconceivable that any propaganda for war could actually be carried out, as described in the initial and second periodic report. The situation has not changed. Should there emerge a danger of a harmful effect of propaganda for war in the future, legislative measures would be studied as the occasion demands, with careful consideration for freedom of expression.

196. Regarding article 20, paragraph 2, as stated in the initial and second periodic reports, should there arise in the future actual adverse effects which could not be regulated under the existing legislation, further legislative measures would be studied, with careful consideration for freedom of expression given to the extent that the public welfare is protected.

Article 21

197. As stated in the initial and second periodic reports, the right stipulated in article 21 of the Covenant is guaranteed under article 21, paragraph 1, of the Constitution. Restrictions on this right under article 5 of the Subversive Activities Prevention Law and article 19, paragraph 1, item 3, of the Contagious Disease Prevention Law are limited to the necessary minimum and in conformity with the provisions of this article.

Article 22

198. As stated in the initial report, the right referred to in article 22 of the Covenant is guaranteed by article 21, paragraph 1 and article 28 of the Constitution and by the Trade Union Law and the National Enterprise Labour Relations Law.

199. Besides guaranteeing the rights of this article under the domestic laws mentioned above, Japan has ratified the Convention concerning Forced or Compulsory Labour (No. 29), the Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (No. 98) and the Convention concerning Freedom of Association and Protection of the Right to Organize (No. 87) of the International Labour Organisation in 1932, 1953 and 1965, respectively, and has since been observing these Conventions sincerely. The fulfilment of the obligation mentioned in article 22, paragraph 3, is thus guaranteed.

Political Fund Control Law

200. The Political Fund Control Law provides that when political parties or other political organizations are established, parties concerned must report the name of the organization and that of its representative, etc., to the Minister of Home Affairs or the prefectural Election Administration Committee (called "the administrative organ" hereinafter), and that the political organization which has not reported this information may not receive or contribute donations for political activities. This law is not intended to regulate the establishment of organizations which engage in political activities but provides only that these organizations should report necessary particulars to the administrative organ after they have been established.

201. The administrative organ which received a report has the obligation to disclose the reported information, but the information to be disclosed is limited to the minimum such as a location of the head office and the name of the representative so that enough consideration may be given for freedom of association.

202. The Political Fund Control Law does not make specific regulations against political activities, but lays down regulations governing donations related to political activities (donations made to political organizations or donations made for political activities of politicians) such as the amount that one person can donate and donations from particular persons.

203. The Law also provides that political parties and other political organizations, as well as certain statesmen, must also report the income and expenditure of political funds and disclose them.

204. These regulations are imposed to put political activities under the supervision of the people through disclosure of the income and expenditure of political funds, and also to ensure justice and fairness of political activities, thus contributing to the development of a sound democratic system.

Union membership

205. In 1990, the number of labour unions (local unions) in Japan was 72,202 and the number of members belonging to labour unions (individual trade unions) was 12,265,000. The ratio of union members to all employees (estimated) is 25.2 per cent.

Article 23

206. In Japan, the marriage/family is protected as having an important relation to the basic order of people's life, based on the principle of individual dignity and the essential equality of the sexes by article 24 of the Constitution and the Civil Code. The Civil Code has provisions concerning property during marriage, distribution of property, custody and education of children, etc. The details are as stated in the second periodic report.

207. Measures such as supply of the child-rearing allowance are taken to aid a fatherless family after divorce, from a viewpoint of the healthy growth of children (the Child-Rearing Allowance Law).

208. As many questions are raised from various fields, including the possibility that a husband and a wife assume different family names, a national advisory commission has started its work on reviewing the entire range of provisions concerning marriage and divorce stipulated in the Civil Code.

Article 24

209. In regard to the right mentioned in article 24, paragraph 1, of the Covenant, article 14 of the Constitution guarantees equality under the law to all of the people, including children, stating that their human rights as individuals are guaranteed with no discrimination on account of race, creed, sex, social status or family origin. In particular, the Constitution prohibits the exploitation of children in its article 27, paragraph 3. Article 26 of the Constitution obligates all people to ensure that all boys and girls under their protection receive an education, and provides that the compulsory education shall be free of charge.

210. Concerning the guarantee of the rights of the children through family, society and the State, referred to in article 24, paragraph 1, of the Covenant, the following measures are taken in Japan. The outline of these measures are described below as supplementary explanations of the second report.

211. In the area of welfare, these measures are:

(a) The Child Welfare Law, which declares the basic idea that "The central and local governments as well as the guardians of children shall be responsible for the healthy growth of the children both in minds and bodies" (article 2);

(b) Payment of allowances for the protection of family and the rearing of children (Children's Allowance Law, Child-rearing Allowance Law, Child Welfare Law, etc.);

(c) Measures for maternity protection (Law on Health Care of Mothers and Children, Child Welfare Law, Law concerning the Promotion of Equal Opportunity and Treatment between Men and Women in Employment and other Welfare Measures for Women Workers, Labour Standards Law, Health Insurance Law, Law for the Welfare of Mothers and Children and Widows, etc.);

(d) Special measures concerning the custody of children (Juvenile Law: special measures for juvenile delinquents, Child Welfare Law: measures for child welfare and security, establishment of related facilities, etc.);

(e) Protection of children from exploitation, desertion, abuse, etc. (Penal Code, Labour Standards Law, Child Welfare Law);

(f) Restrictions on child labour and labour of minors (Labour Standards Law, Law on Control and Improvement of Amusement Businesses);

(g) Proper measures and guidances for mentally and physically handicapped children in accordance with the degrees of handicaps (Fundamental Law concerning Measures for Mentally and Physically Handicapped People, Child Welfare Law);

(h) Countermeasures to eliminate prostitution by children.

212. In contemporary Japanese society, it is evident that sex-related businesses are increasing and that information about sex is oversupplied by some mass media against a background of the decline in sexual morals due to the changing of the national sense toward sex and the pleasure-seeking trends in general society. People are very concerned about the influences which these trends will have on young people's sexual morals.

213. It is also a fact that violence groups are skilfully attempting to involve young persons in their business through various ways in order to expand their power, and these violence groups are engaged in prostitution-related activities as their main source of finance.

214. In this situation, young persons are increasingly involved in sexual delinquencies and more and more crimes harmful to the welfare of young persons are being committed, including prostitution by young girls.

215. The police are taking various measures to eliminate prostitution by young girls, prevent juvenile delinquency and promote the healthy growth of young people, including the following:

(a) Policemen in the juvenile section and women assistants patrol the amusement quarters to protect young boys and girls from becoming victims of prostitution crimes. In 1990, 4,902 girls were taken into protective custody for sexual offences;

(b) The increase in the number of crimes related to the amusement business which harm the welfare of young people (called "welfare crimes" hereinafter) is seen against the background of the pleasure-seeking tendency prevailing in today's society. These crimes, including prostitution by girls, have harmful influences on the mind and body of young people and badly obstruct their healthy growth. Therefore, the police have strengthened controls and are endeavouring to find and protect the young people involved in these crimes. In 1990, 10,653 persons were arrested for welfare crimes. Among them, 7,021 persons were involved in prostitution cases, accounting for about 66 per cent of these crimes;

(c) The police opened a juvenile counselling section to prevent and detect the signs of juvenile delinquency, running away from home, suicide, etc. at an early stage. Experts with psychological knowledge, experienced policemen and women assistants give necessary guidance and advice to young people not to be involved in prostitution and ask their guardians to cooperate with police so that prostitution by girls may be prevented. Also, prefectural police stations offer counselling by telephone. In 1990, the police received 31,328 calls from young people asking for advice. Among them, 6,282 calls were related to sex;

(d) The police organize sports and social activities for young people. Volunteer activities and production experience activities, classes and free-talking meetings on prevention of juvenile delinquency are organized as well in cooperation with family, school and local community, so that young people have the moral consciousness not to practise prostitution;

(e) The police are also taking measures in cooperation with government offices concerned to prevent young people from buying or reading harmful books, which might induce prostitution by giving them erroneous knowledge about sex. Further, the police are asking for voluntary regulation by the publishing industry, such as the review of sales methods and the contents of books, and are also promoting activities in cooperation with local residents and private volunteers to eliminate environments which would induce delinquency and prostitution.

216. In Japan, it is prohibited by law for teachers to inflict physical punishment on pupils (art. 11 of the School Education Law). However, there are cases of physical punishments by teachers in fact. Therefore, the Government has sent notices to the prefectural Boards of Education concerning the prohibition of physical punishment. It has been making efforts, on the occasion of meetings for teachers, to spread the idea of prohibition of physical punishment.

217. The national institutions for the protection and promotion of human rights under the Ministry of Justice (see appendix 1 of the second periodic report) study complaints or information concerning physical punishment if they receive such reports from persons concerned or such information from newspapers or magazines, and investigate the cases suspected to have infringed human rights, hearing the explanation from the teacher who inflicted physical punishment, or from a schoolmaster. After the investigation, the institution instructs the teacher and the schoolmaster to respect the fundamental human rights of children and not to repeat the act. If a school tends to allow physical punishment, the schoolmaster and the Board of Education are warned or requested to take the necessary measures for preventing such punishment.

218. The national institutions for the protection and promotion of human rights received 146 corporal punishment cases in 1987, 133 cases in 1988, 113 cases in 1989 and 122 cases in 1990.

219. The Fundamental Law of Education stipulates: "Esteem individual dignity and endeavour to bring up people who love truth and peace, while education

which aims at the creation of culture [in] general and rich in individuality shall be spread far and wide" (Preamble of the Law). The following are stipulated in laws:

(a) Equal opportunity in education (art. 3 of the Fundamental Law of Education);

(b) Nine-year compulsory general education and no tuition fee in schools established by the State and local public bodies for the compulsory school term (art. 4 of the Fundamental Law of Education, arts. 6, 22 and 39 of the School Education Law);

(c) Encouragement of social education (art. 7 of the Fundamental Law of Education, art. 3 of the Social Education Law);

(d) Aid to parents or guardians who have financial difficulty in sending children to compulsory school (arts. 25 and 40 of the School Education Law, etc.);

(e) Education for the mentally and physically handicapped according to the degree of the handicap (arts. 22, 39 and 74 of the School Education Law, etc.).

220. With regard to paragraph 2 of article 24, it is stipulated that all children shall assume the surname of their parents or their father or mother according to the case (art. 790 of the Civil Code). The naming of children becomes effective on reporting birth, and children will be registered in the family register of their parents or that of their father or mother (art. 18 of the Family Registration Law).

221. Article 2 of the Nationality Law contains provisions in compliance with the provision of the article 24, paragraph 3, of the Covenant concerning the acquisition of a nationality by a child.

Article 25

222. The legal framework in Japan relating to this article is as described in the second periodic report. The outline is given below.

223. The Constitution stipulates, in article 15, paragraph 1, that the people have the inalienable right to choose their public officials and to dismiss them. The Constitution also has provisions concerning the election of the members of the two houses of the Diet (art. 43), and the election of the chief executive officers of local public entities, members of their assemblies, etc. (art. 93), and stipulates the principle of universal adult suffrage and secrecy of the ballot in these elections (art. 15, para. 3 and art. 15, para. 4).

224. The Public Offices Election Law specifies the method of electing the members of the two houses of the Diet and the members of the assemblies and chief executive officers of local public entities. This Law also guarantees the right to vote and the right to be elected by the people, as well as secrecy of the ballot.

225. The National Public Service Law (article 33) and the Local Public Service Law (art. 15) provide that officials engaged in the public affairs of the State or local public entities shall be appointed on the basis of demonstrated ability.

Article 26

226. Article 14, paragraph 1, of the Constitution provides that "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin", and guarantees equality under the law. The legal framework relating to article 26 of the Covenant is as stated in the initial and second periodic reports. Supplementary explanations are provided below.

227. Article 14, paragraph 1, of the Constitution "shows a great principle that every person's individuality should be respected equally, and no person is allowed to be given a special privilege or specially disadvantageous treatment on account of the difference of race, religion, sex, profession, social status, etc." (judgement of the Supreme Court in May 1964). Today, this principle of equality and respect for the dignity of the individual is widely recognized among most Japanese people as the most important principle. However, it is also true that discrimination still remains among people in daily life, employment, etc. In such cases, the parties concerned may demand a remedy by the court. But it is more important that the people make efforts to make a society free from discrimination or infringement of human rights. The Government and the people must continue to strive for this purpose by enlightening the national consciousness.

228. The spirit of article 14, paragraph 1, of the Constitution is also applied to foreigners, except for special circumstances (judgement of the Supreme Court in November 1964).

229. It is prohibited by law to discriminate between workers with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any workers (art. 3 of the Labour Standards Law). It is also prohibited to discriminate against women with respect to wages (art. 4 of the Labour Standards Law). Further, equal opportunity and treatment between men and women is being promoted by the Equal Employment Opportunity Law.

The dowa problem

230. The Government has promoted various measures concerning the dowa problem, recognizing that this is an important problem relating to the fundamental human rights guaranteed by the Constitution of Japan. For example, the Government has enacted the Special Measure Law three times since 1969 concerning this problem. As a result, the gap between the dowa districts and the other areas has been narrowed, generally speaking, to a considerable extent through the improvement of the life of the dowa district residents and the living environment. Psychological discrimination is also being eliminated, and steady progress can be seen on the whole. However, discrimination still exists in terms of marriage, employment, etc.

231. It is therefore important to continue tenacious efforts to enlighten people from the viewpoint of encouraging respect for human rights, and to further ensure effective and positive measures in order to change the mentality of discrimination against the dowa district residents.

Article 27

232. In Japan, no person is denied the right to enjoy one's own culture, to practise one's own religion or to use one's own language.

233. As for the question of the Ainu* people raised in relation to article 27 of the Covenant, they may be called minorities under that article because it is recognized that these people preserve their own religion and language and maintain their own culture. The Ainu people are not denied the right mentioned above as they are Japanese nationals whose equality is guaranteed under the Japanese Constitution.

234. In order to improve the life of the Ainu people, the Government of Hokkaido has been taking comprehensive measures to promote their education, culture, industry and to improve their living environment, by formulating Hokkaido Utari** Welfare Measures three times since 1974.

235. In 1974, the Government of Japan established the Liaison Conference of the Ministries and Agencies Concerned on Hokkaido Utari Measures in order to cooperate in the Utari welfare measures with the Government of Hokkaido and to promote them smoothly. The Government is also making efforts to increase the budget related to the Utari welfare measures with the close cooperation of the administrative organs concerned.

236. According to the "Survey on the Hokkaido Utari Living Conditions" conducted by the Government of Hokkaido in 1986, the living standard of the Ainu people has improved steadily, but the gap between the living standard of the general public of Hokkaido and that of the Ainu has not narrowed as expected. Therefore, the Government is endeavouring to improve further the living standard of the Ainu people and to eliminate the difference between the general public and the Ainu by promoting the Third Hokkaido Utari Welfare Measures (1988-1995).

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* "Human being" in the Ainu language.

** "Compatriot" in the Ainu language.

Appendix

1. Judgement of 12 March 1948 of the court en banc of the Supreme Court

It is ruled in this judgement that even the people's right to life may be legally restricted or forfeited if this right is against the fundamental principle of public welfare, although article 13 of the Constitution provides that all the people should be respected as individuals and that their right to life should be the supreme consideration in legislation and in other governmental affairs.

2. Judgement of 4 April 1951 of the court en banc of the Supreme Court

It is ruled in this judgement that the disciplinary dismissal of an employee was lawful in the case in which the employee was fired for publicizing without any firm evidence that the company had taken unfair and unjust measures in reshuffling the personnel. According to the provisions of articles 12 and 13 of the Constitution, it is evident that freedom of speech, press and all other forms of expression guaranteed in article 21 of the Constitution should not interfere with the public welfare.

3. Judgement of 24 November 1954 of the court en banc of the Supreme Court

It is ruled in this judgement that the people essentially have a right to participate in a march or a mass demonstration so long as it does not have a purpose or a method which is against public welfare. However, if the local public entities establish regulations to restrict marches or mass demonstrations in certain places or using certain methods in order to maintain public order or to prevent serious interference with public welfare, such as requiring an advance notice of these actions under a rational and clear standard and prohibiting marches or mass demonstrations if they seriously interfere with public welfare, such regulations should not be interpreted as unduly restricting the people's freedom protected by the Constitution.

4. Judgement of 4 April 1962 of the court en banc of the Supreme Court

It is ruled in this judgement that the restriction on business hours based on article 22 of the Tokyo Metropolitan Ordinance for Enforcement of Law on Control and Improvement of Amusement Business, etc. in accordance with article 3 of the Law on Control and Improvement of Amusement Business is a necessary measure to prevent evil actions harmful to public morals; this measure should thus be approved for maintaining public welfare.

5. Judgement of 24 October 1962 of the court en banc of the Supreme Court

It is stated in this judgement that freedom of business guaranteed in article 22 of the Constitution may be restricted if it interferes with public welfare, and that the imposition of the deposit of security money on dealers in residential land and building who start a business, under items 7 and 8 of the additional rules to the law (Law No. 131 of 1957), which has partially revised the Building Lots and Building Transaction Business Law, should be approved as a necessary corrective measure; thus, this regulation is not against article 22 of the Constitution and it is not against article 13 of the Constitution because it does not ignore the individuality of a dealer.
