

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties
due in 1986

Addendum

JAPAN */

[24 December 1987]

Part I: General Comments

1. The Constitution of Japan came into force in 1947, and the year 1987 marks the fortieth anniversary of its enforcement. During these four decades, the Constitution has played an important role in the protection and promotion of human rights of the Japanese people, and has made a great contribution to the political, economic, and social development of Japan. The fundamental principles and spirit of the Constitution have taken deep root in the Japanese people.

2. The institutional aspects of human rights protection in the Japanese legal system, in which the Constitution is the supreme law, have already been outlined in Part I of the initial report (CCPR/C/10/Add.1). Background information for better understanding is provided below:

Respect for fundamental human rights in the Constitution

(a) The Constitution of Japan is based on the principle of popular sovereignty. Together with its pacifism, respect for fundamental human

*/ For the initial report submitted by the Government of Japan, see CCPR/C/10/Add.1; for its consideration by the Committee, see 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), paragraphs 53-91.

rights is one of the important pillars of the Constitution. The idea of popular sovereignty is stated in the preamble of the Constitution as follows: "Government is a sacred trust of the people, the authority for which is derived from the people, the powers of which are exercised by the representatives of the people, and the benefits of which are enjoyed by the people". Pacifism is also expressed in the preamble: "We, the Japanese people, ... resolved that never again shall we be visited with the horrors of war through the action of Government". No freedom exists without peace and we cannot enjoy freedom as far as there exists a war or a threat of a war. In this sense, pacifism and respect for fundamental human rights have a close relation to each other.

(b) The fundamental human rights guaranteed by the Constitution "are conferred upon this and future generations in trust, to be held for all time inviolable" (article 97 of the Constitution), and the idea of respect for these rights is declared in a straightforward manner in the provisions of article 13: "All of the people shall be respected as individuals". These fundamental human rights include civil liberties, such as the right to liberty, the right to freedom of thought, speech and religion, political right as a means of the people's participation in the execution of State power, and social and economic rights, such as the right to work for people to lead a decent life and the right to maintain the minimum standards of wholesome and cultured living. In particular, the Constitution of Japan has 10 articles for guaranteeing the rights of the accused and suspects involved in criminal cases. This attests to the fact that the Constitution attaches great importance to the rights of individuals.

(c) The Constitution provides that human rights may be restricted on account of "public welfare" (article 12 and 13). But "public welfare" is strictly interpreted as a principle inherent in fundamental human rights which serves to harmonize conflicting fundamental rights so that individuals' rights will be equally respected, and it is not a concept to place unreasonable limits upon human rights.

Guarantee of human rights and governing structure

(a) In Japan, the three powers, legislature, administration and judicature, are given to the Diet, the Cabinet and the Courts, respectively. Protection of human rights is also ensured through their strict mutual restraint.

(b) The Diet is the "highest organ of State power" and consists of the duly elected representatives of the people. As the "sole law-making organ", it exercises legislative power to defend the rights and freedom of the people. The Cabinet (Government) similarly makes efforts to protect the rights and freedoms by implementing sincerely the laws enacted by the Diet (national institutions for the protection of human

rights, which are directly engaged in human rights protection activities as government agencies, is described in Appendix 1). When the rights of the people are violated, there is a judicial remedy at court (article 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 the exercise of their conscience and shall be bound only by this Constitution and the laws" (article 76, paragraph 3).

3. Implementation of the International Covenant on Civil and Political Rights

Eight years have passed since Japan ratified this Covenant. In these years, the Covenant has played a major part in further enhancing people's consciousness of human rights. Under Japan's 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 any problem in ensuring the full enjoyment of human rights. The Japanese people, having resolved that they would make "constant endeavour" to protect the 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" (articles 12 and 97), will continue to strive for attainment of the cause of protection of human rights in the years ahead.

Part II: Information in relation to individual articles of the Covenant

Article 1

The right of peoples to determine their political future without external interference has been respected in international society. As stated in the initial report, Japan has consistently recognized the right to self-determination of peoples in accordance with the Charter of the United Nations and this article. Japan endorses the universal realization of this right and supports 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 society.

Article 2

1. The Constitution of Japan, recognizing the importance of the dignity of individuals, guarantees the 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".

2. 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" (article 13). In addition, the utmost consideration is given to this principle by, among others, obligating public officials to respect and uphold the Constitution (article 99).

3. The rights of aliens are guaranteed in accordance with the spirit of the Constitution which is based on respect for fundamental human rights and international co-operation, with the exception of the rights which are applicable, by definition, only to nationals such as the right to vote.

4. The remedies set forth in article 2, paragraph 3 of the Covenant are explained in Part I of the initial report as well as in the present report.

Article 3

1. In 1985, Japan enacted, for the furtherance of realization of equality between the sexes, the Law concerning the Promotion of Equal Opportunity and Treatment between Men and Women in Employment and Other Welfare Measures for Women Workers. It also amended the provisions for protection of women in the Labour Standards Law, the Mariners Law, etc. In the area of public service, too, necessary measures for more job opportunities for women were taken by the revision of the Rules of the National Personnel Authority. In addition to these improvements in domestic laws and regulations, Japan ratified in 1985 the Convention on the Elimination of All Forms of Discrimination against Women.

2. Japan formulated in 1977 a "National Plan of Action" in line with the documents adopted at the World Conference of the International Women's Year held in 1975. Since then, Japan has taken measures to build a social environment where women will enjoy equally with men all of the rights guaranteed by the Constitution relating to politics, education, labour, health, family life, etc., and where both men and women will participate in and contribute to every sphere of national life.

3. The Japanese Government has decided to continue and expand after the United Nations Decade for Women the system for promoting policies relating to women. Its purpose has been to integrate into national policies the decisions adopted at the Nairobi World Conference to Review and Appraise the Achievements of the United Nations Decade for Women held in July 1985, the final year of the Decade and to implement, in a comprehensive way, measures relating to women to be taken as a result of the ratification of the Convention on the Elimination of All Forms of Discrimination against Women and other measures relating to women. In May 1987, the Japanese Government formulated the new National Plan of Action towards the year 2000 (for further details, refer to the initial report submitted by Japan in accordance with article 18 of the Convention (CEDAW/C/5/Add.48, 26 March 1987).

Article 4

In any legislation referring to public emergency, there are no provisions which may restrict fundamental human rights. Should such an emergency arise, Japan will take, if necessary, adequate measures in accordance with the Constitution as well as the Covenant.

Article 5

1. 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.

2. 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 initial report.

Article 6

1. The legal framework regarding the right to life in Japan is as described in the initial report.

2. In Japan, the death penalty is applied very strictly and carefully. In the five years between 1981 and 1985, a total of only 10 (on average two per year) persons were finally convicted to death, and all of them committed brutal homicide or robbery and homicide. At present, the majority of the Japanese are of the opinion that the death penalty should be maintained to punish those who commit extremely vicious offenses, and this has been supported by several opinion surveys.

Number of persons whose death sentence
has become final

Year	Total number
1981	3
1982	1
1983	1
1984	3
1985	2

Note: Statistical Annual Report of the Public
Prosecutor's Office

3. Although the legal system of the sentence and execution of the death penalty, special amnesty and commutation in Japan is described in the initial report, the following two additional points are included in this report:

The fact that the legal system in Japan guarantees fair trials by independent courts, presumption of innocence, defense and reviews by superior courts and other legal procedures is stated in the initial report and in the present report regarding article 14 of the Covenant. These guarantees quite naturally apply to the trials in which the death penalty is pronounced.

Treatment of persons sentenced to death:

(a) 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.

- (b) 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 emotional stability, exhortation by a chaplain and advice and guidance by volunteers are offered upon their request.

Article 7

1. The legal framework of Japan regarding prohibition from torture and cruel punishment is as stated in the initial report. More details are described below:

Article 13 of the Constitution provides that "All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs". Article 36 stipulates that "The infliction of torture by any public officer and cruel punishments are absolutely forbidden". And article 38, paragraph 1 provides that "No person shall be compelled to testify against himself".

The Penal Code stipulates as follows: (a) When a public officer abuses his authority and causes a person to perform an act which he has no obligation to perform, or obstructs a person from exercising a right which he is entitled to exercise, (b) when a person performing or assisting in judicial, prosecutive or police functions abuses his authority and arrests or detains another, and (c) when a person performing or assisting in judicial, prosecutive, or police functions, in the performance of his duties, commits an act of violence or cruelty upon the defendant in a criminal action or another person, these officers shall be sentenced to imprisonment with or without forced labour (articles 193 to 195). This punishment is also ensured by a special criminal procedure (quasi-procedure for prosecution) provided for the Code of Criminal Procedure (articles 262 et seq.). According to these provisions, those who are dissatisfied with the disposition made by a public prosecutor not to prosecute may apply to a 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, and a practising attorney designated by the court shall sustain the prosecution on such case.

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 Penal Procedure further stipulates that not only the confession referred to above but also any confession suspected not to have been made voluntarily shall not be admitted as evidence, and thus guarantees from the side of the legal framework on evidence that such acts will not be inflicted on the suspect (article 319, paragraph 1).

2. As noted above, torture is prohibited by the provisions of article 36 of the Constitution. Thorough education on it is given in the training courses of police personnel, the Constitution being a required subject in the curricula.

3. The prevention of human rights violations and remedies in criminal detention facilities will be described in the comments on article 10 in this report.

Article 8

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

Article 18 of the Constitution provides that "No person shall be held in bondage of any kind: thus recognizing expressly freedom from bondage and prohibiting any state of bondage. Article 27, paragraph 3 stipulates that "Children shall not be exploited", thereby forbidding the exploitation of children.

In line with the spirit of these provisions of the Constitution, the Penal Code provides that those who are engaged in traffic in persons or sending of kidnapped persons out of the country and those who commit so-called "coercion" (Kyoyo Koi), causing a person to perform an act which he is not bound to perform, by the use of intimidation or physical violence shall be condemned to imprisonment at forced labour (article 226, paragraph 2, article 223).

The Labour Standards Law prohibits forced labour and exploitation of workers (article 5, article 69, paragraph 1).

The Prostitution Prevention law forbids making a person a prostitute by embarrassment or intimidation, concluding a contract for making a person a prostitute and, what may be called, "managing a prostitution business", and stipulates that those who violate these provisions shall be punished with penal servitude or be fined (articles 7, 10 and 12).

The Employment Security Law provides that those who engage in employment exchange, labour recruitment or labour supply by means of imprisonment, etc. shall be subject to a penal servitude or be fined (article 63). The Child Welfare Law stipulates that a person keeping a child of others in his house for over a certain period of time shall report the fact to the governor of prefecture with a view to preventing traffic in children, etc. (article 30).

Furthermore, a person who is physically restrained without due legal procedure may apply for remedial action under the Habeas Corpus Law. Any juristic act of persons which aims at enslavement is to be nullified under article 90 of the Civil Code.

2. In Japan, the punishment equivalent to imprisonment with hard labour stipulated in article 8, paragraph 3 (b) of the Covenant is imprisonment at forced labour provided for in article 12 of the Penal Code and the detention at a workhouse provided for in article 18.

Article 9

The legal framework in Japan regarding the right to liberty and security of person is as stated in the initial report. Some points are elaborated on below:

1. 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 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 offense with which the person is charged, unless he is apprehended, the offense 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 the presence of his counsel". In line with these provisions of the Constitution, the Code of Criminal Procedure and other laws establish the requirements and procedures for arrest, production and detention.

(a) Administrative measures relating to deprivation of liberty include the following, but all of these measures are taken in accordance with the law establishing reasons and procedures; detention of aliens under deportation or detention orders in accordance with the Immigration-Control and Refugee-Recognition Act (see Note); measures under the Juvenile Law; detention under the Extradition Law; guidance disposition under the Prostitution Prevention Law; taking into custody or confinement under the Offenders Rehabilitation Law; taking into custody or confinement under the Law for Probationary Supervision of Persons under Suspension of Execution of Sentences; 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 of those persons having mental disorders who may do harm to themselves or others under the Mental Health Law. Measures under the Mental Health Law such as admission with the consent of the person responsible for the protection of the patient is also to be regarded as deprivation of liberty.

(b) In September 1987, a revised version of the Mental Health Law was passed by the Diet (the amended law was renamed the Mental Health Law). The revised law provides for the introduction of a designated physician for the mental health system and the establishment of a Psychiatric Review Board. Under the mental health system, a designated physician will judge whether a mentally-ill person should be hospitalized other than of his own free will, and psychiatric treatment is given with sufficient regard to human rights. The Psychiatric Review Board will examine the necessity of involuntary admission of persons with mental disorders, and the propriety of their treatment. The recent amendment was made to give more consideration to the human rights of persons suffering from mental disorders, etc. in implementing mental psychiatric treatment and protective measures for these persons.

2. As regards paragraph 5, 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 stipulates 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 intention or negligence of a public official in charge of exercise of public power in the performance of his duty may demand compensation for damage to the State or a public entity in accordance with the provision.

(a) Even in a case where the arrest or detention is not against the law, 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", and in line with the provision the Criminal Compensation Law was enacted. The Law establishes compensation for damage caused by arrest or detention in pendency (Article 1, para. 1) and for damage caused by execution of penalty and confinement (Article 1, para. 2), in which the person concerned is acquitted. The amount of compensation is to be determined by the court within the limit established by the Law (Article 4).

(b) The provision of Article 40 of the Constitution quoted above does not establish the obligation to compensate the damage incurred on those who receive a disposition not to institute a prosecution after they have been arrested or detained. But 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 when he has not been indicted ultimately, it is considered to meet the purport of Article 40 of the Constitution and agree with the idea of justice and equity to compensate such person for his damage. It is for that reason that the Regulations for Suspect's Compensation (No. 1 Instructions 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 a person who has not been prosecuted if there are sufficient reasons to recognize that the person has not committed the crime (Article 2).

(Note: The Immigration Control Order quoted in the initial report was amended in 1981 as a part of adjustment of domestic laws following Japan's ratification of the Convention Relating to the Status of Refugees and its Protocol. Its name was changed to the Immigration-Control and Refugee-Recognition Act.)

Article 10

1. The legal framework relating to Article 10 of the Covenant is as described in the initial report, and all persons detained are treated with humanity and with respect for the inherent dignity of the human person. The following elaborates on the systems of prevention of human rights violations and remedies for those detained in criminal detention facilities.

Supervision and inspection systems

There exist two systems of internal supervision and inspection of prisons and other detention facilities. One of them is "visit for inspection" by the official appointed by the Minister of Justice (Article 4, para. 1 of the Prison Law), while the other is supervision and inspection by the Regional Correction Headquarters as the intermediate supervision agencies. The visit for inspection is to be made at least once every other year for each of the prisons, and regional supervision and inspection are conducted with similar frequency. Judges and public prosecutors may also inspect prisons to see the conditions of execution of sentence and to obtain data helpful to their duties (Article 4, para. 2 of the Prison Law).

System of complaint procedures

Any person in prison may petition the Minister of Justice or a prison inspection official if he is dissatisfied with any treatment in the prison (Article 7 of the Prison Law). The system of interviews by the prison warden with prisoners (Article 9 of the Enforcement Regulations of the Prison Law) also serves the purpose of allowing complaints to be heard.

The above-mentioned petition should be made in writing to the Minister of Justice and either in writing or orally to a prison inspection official; in both cases, prisoners are guaranteed the secrecy of their petition. The system of interviews is also positively utilized, including interviews by the representative appointed by the prison warden.

Besides the means mentioned above, such steps as civil action, administrative litigation, complaints, accusations and reports of human rights violations are also available.

Interviews with family and defence counsel

Persons detained pending trial are allowed to have interviews with their defence counsel or any other person who is going to be their defence counsel without having an official present (Article 39 of the Code of Criminal Procedure). Although prison officials are present at interviews with other persons, there is no restriction on visitors, except when interviews are prohibited in accordance with the provisions of the Code of Criminal Procedure, nor is any restriction placed on the content of interviews so far as the interviews are not inconsistent with the purpose of detention pending trial and cause is no obstacle to the management of the detention facilities.

Convicted persons are allowed to have interviews only with their family or relatives as a general rule, and interviews with other persons are permitted only when they are deemed necessary (Article 45, paragraph 2 of the Prison Law). But in actual circumstances of penitentiary, these provisions are enforced flexibly; for instance, interviews with persons other than the family members or relatives of the prisoner are approved positively in case 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.

The Prison Law was enacted in 1908, and a bill concerning criminal detention facilities, which aims to revise the Prison Law, has been submitted to the Diet. This effort aims, in view of the recent development of criminal policy ideas, at ensuring better treatment of prisoners in criminal detention facilities, by giving them systematic treatment according to their character and environment and introducing a more effective method of treatment for correction and rehabilitation of prisoners.

The Japanese Government also submitted a bill on confinement facilities to the Diet for the purpose of improving the regulations regarding the treatment of those confined in these facilities which are operated by the prefectural police.

2. The following elaborates on paragraph 2 (b):

The Juvenile Law provides that accused juvenile persons shall be separated from other suspects or accused persons so that they may not be in contact with them and that the proceedings for the juvenile criminal case shall be separated in so far as the proceedings are not hindered by such separation (Article 49, paras. 1 and 2). The Law also stipulates that no warrant of detention shall be issued in respect of accused juvenile persons unless the issue is unavoidable in the circumstances, and that in the event that juvenile persons are detained, they shall be confined in a Juvenile Classification Home (Article 48, paras. 1 and 2). It further provides that if a juvenile is detained in a prison for confinement, he shall be separated from adults (Article 49, para. 3).

The detention of juvenile suspects and other juveniles prior to the institution of prosecution is also allowed only in exceptional cases, as in the case of accused juveniles. If there is the need to detain these juveniles, they should be committed to the Juvenile Classification Home in principle (Articles 17, 43 and 44).

A charge brought against a juvenile shall also be heard speedily according to Article 1 of the Code of Criminal Procedure.

3. The legal framework concerning paragraph 3 is described in the initial report. The basic principle of treatment of prisoners at prisons in Japan is the correction of prisoners for the purpose of their reformation and social rehabilitation. More details of the prison system in Japan are described below:

Classified treatment system

In order to realize the above-mentioned aims, there is the need to treat individual prisoners, taking into account personal characteristics and their environmental and social backgrounds. Thus, scientific studies are conducted so as to know the problems of each prisoner, and treatment programmes are formulated on the basis of the outcome of these studies. To carry out these programmes effectively, prisoners are classified into groups, and effective treatment is given according to the needs of each group.

Progressive treatment system

A number of stages are established in the process of the execution of sentence, and prisoners are promoted to a higher stage according to their performance in the prison. As prisoners go up the ladder, their treatment is progressively upgraded and their freedom expanded, thereby preparing them for social life after they are released. At the same time, prisoners are required to shoulder responsibility in collective life in the prison in an attempt to encourage their voluntary reformation and to fit them for the society.

Open treatment

This is a treatment based on trust in the sense of self-restraint and responsibility of prisoners. This treatment is given to those prisoners who are suitable for it, such as traffic offenders.

Labour in prisons

Labour in prisons is one of the important treatments of prisoners for their reformation and social rehabilitation, and aims at developing prisoners' motivation for work, training their vocational skills and knowledge and helping them acquire patience and ability to concentrate. Labour in prisons is classified into production work, vocational training and self-employed work according to its nature and purposes. There are more than 20 types of labour, including woodwork, printing, dressmaking, metalworking and leatherwork; prisoners are assigned to appropriate labour according to their aptitude.

Treatment of juvenile offenders

As for those juveniles who are sentenced to imprisonment with or without forced labour, their sentence is executed in a juvenile prison or in a ward especially reserved for them on the premises of the prison in the light of their status as juvenile offenders. If it is considered appropriate to treat these juveniles in the same place even after they reach 20 years of age, their sentence may be executed in the place until they reach 26 years of age. As a consequence, juvenile prisons also accommodate young inmates less than 26 years old. These prisoners are properly grouped to give them a better treatment. The treatment of these inmates lays special emphasis on vocational training, education in school subjects and orientation. People in the local communities co-operate actively in the implementation of such training and education.

Vocational training represents one of the priority activities in juvenile prisons. With the aim of promoting the reformation and social rehabilitation of juveniles, the provision of this training is particularly stressed.

Article 11

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

Article 12

1. As described in the initial 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.

2. In line with the above-mentioned provisions of the Constitution, the Immigration-Control and Refugee-Recognition Act, which aims at controlling immigration in general, 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 (procedures for placing the stamps of departure and return on the passport; Articles 60 and 61).

The Law does not have any provisions restricting freedom of aliens to leave Japan either. It only provides for the procedures for confirmation of departure from Japan, except those aliens who have committed a grave crime and are prosecuted or against whom a warrant of arrest has been issued (Articles 25 and 25-2).

3. The rights stipulated in this Article are restricted by the laws enumerated below, but all of these restrictions constitute the necessary minimum in conformity with the provisions of paragraph 3 of this Article.

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

(b) Restrictions on place of stay and area of movement of those given a permission of provisional landing, landing of special cases, etc. (Article 13, para. 3, Article 14, para. 3, Article 15, para. 4, Article 16, para. 3, Article 18, para. 4 and Article 54, para. 2 of the Immigration-Control and Refugee-Recognition Act)

(c) Restriction on issuance of a passport to a person under prosecution in criminal proceedings, etc. (Article 13 of the Passport Law)

(d) Accommodation and isolation of patients with infectious diseases (Articles 7 and 8 of the Contagious Disease Prevention Law)

Article 13

1. The deportation of an alien from Japan is limited to cases falling under any of the reasons for deportation stipulated in Article 24 of the Immigration-Control and Refugee-Recognition Act.

2. The reasons for deportation of an alien provided for in Article 24 of the Law apply to any person who has entered Japan illegally and is in the country unlawfully (Item 1 of the Act), any person who has landed illegally (Items 2 and 3), any person who breaches the conditions of provisional landing (Item 5) and who stays in Japan beyond the allowed period of stay (Item 4 (b), Items 6 and 7). No person who stays in this country lawfully will be expelled therefrom unless; he breaches the conditions of stay (Item 4 (a)); offends criminal laws and regulations (Item 4 (f), (g), (h) and (i)); is engaged in prostitution related business (Item 4 (j)); has aided the illegal entry or illegal landing of an alien into Japan (Item 4 (k)); attempts or advocates the overthrow of the Constitution of Japan or the Government of Japan by means of force or violence (Item 4 (l), (m) and (n)); the Minister of Justice finds he has committed acts detrimental to the interests of security of Japan (Item 4 (o)).

3. A suspect who is found to come under any one of the items for deportation by the examination of the Immigration Inspector (Article 45) may request an oral hearing by the Special Inquiry Officer (Article 48). Furthermore, a suspect may file an objection with the Minister of Justice (Article 49), in case he does not accept the findings of the Special Inquiry Officers. In the hearing mentioned above, the alien is given the opportunity of explanation and defence in the presence of the Special Inquiry Officer, and may entrust his representative with these proceedings (Article 48).

Article 14

1. The legal framework in Japan regarding Article 14 is as stated in the initial report. Further details are discussed below as to some of the paragraphs of the article.

2. Although the Constitution, the Code of Criminal Procedure and other domestic laws and regulations now in force do not expressly provide for the presumption of innocence referred to in paragraph 2, it is considered as one of the fundamental principles of criminal procedure, and criminal proceedings are structured on the basis of this principle. A public prosecutor bears the burden of proof of the charge and a judge pronounces the sentence of guilty only when he considers that the offence has been proved beyond reasonable doubt. Therefore, the principle expressed in the legal maxim, "In doubt, give the accused the benefit of the doubt", is fully respected.

3. With regard to the guarantees referred to in the subparagraphs of paragraph 3, the following laws stipulate these guarantees:

Subparagraph (a); the law stipulates that the essential facts of the crime shall be communicated to the suspect, when he is arrested or is given the opportunity to explain before being transferred to a public prosecutor in case he is arrested and when the suspect is examined in case a request for detention is filed with a judge (Article 203, para. 1, Article 204, para. 1, Article 205, para. 1, Article 61 and Article 207, para. 1 of the Code of Criminal Procedure). In informing the suspect of the essential facts of crime, he is assisted by an interpreter if he cannot understand Japanese.

A copy of the information shall be served on the accused without delay after the institution of prosecution (Article 271). When the information is read at the court, the court should employ an interpreter if the accused cannot understand Japanese.

Subparagraph (b); the Code of Criminal Procedure obligates the court to serve the accused with a copy of the information without delay when prosecution has been instituted (Article 271, para. 1). The Code also stipulates that there shall be a reasonable interval prescribed by the Rules of Court between the first date for public trial and the service of the writ of summons on the accused (Article 275). In line with these provisions, the Rules of Criminal Procedure provide that the service of a writ of summons against the accused for the first public trial shall not be effected before the service of a copy of the information and that at least five days shall intervene between the first date for public trial and the service of a writ of summons against the accused (Article 179, paras. 1 and 2). As described above, the accused is promptly served with a copy of the information and so may know the facts constituting the offence for which he is prosecuted. In addition, he has at least five days before the first public trial and can make sufficient preparations for defence. The Code of Criminal Procedure obligates a public prosecutor to give his opponent, in advance, an opportunity to know the name and address of witnesses, etc., and to inspect, in advance, documentary or real evidence (Article 299, para. 1), while the Rules of Criminal Procedure provide that the inspection, etc., shall be done as soon as possible (Article 178-6 and 178-7). Thus, the suspect and his counsel can examine the evidence presented by a public prosecutor prior to the date of the first public trial. Consequently, under Japanese law, time and facilities for the defence of the accused are sufficiently guaranteed.

The Code of Criminal Procedure provides that "The accused or the suspect under physical restraint may have an interview with his defence counsel or any other person who is going to be his defence counsel upon request of the person who is entitled to select defence counsel, without having any official present, and may deliver or receive any documents or any other things (Article 39, para. 1)". Thus, free interviews and communication between the accused and his counsel are guaranteed. Under Japanese law, the accused is given sufficient opportunity to contact his counsel.

Subparagraph (c); the Constitution guarantees in Article 37 the right of the accused to a speedy and public trial. The Supreme Court also guarantees the right of the accused to be tried without undue delay; if there arises an abnormal situation in which it is considered, in individual cases, that the above constitutional guarantee is clearly negated and the right of the accused to a speedy trial is prejudiced as a result of a long delay, the Supreme Court will pronounce the sentence of acquittal.

Subparagraph (d); the Code of Criminal Procedure guarantees the right of the accused to be tried in his presence referred to in this subparagraph. Moreover, the Code sufficiently guarantees this right by stipulating that public trial shall not be held if the accused is not present on the date of the trial (Article 286), except when the case is a minor one (Articles 284 and 285) or when the accused waives his right by, among others, refusing to appear (Article 286-2). Even in a case provided for in Article 286-2, the accused may be present at the court so far as he is willing to do so. Thus, the right of the accused to appear in the court is guaranteed.

As regards the right of the accused to have legal assistance assigned to him referred to in subparagraph (d), the Code of Criminal Procedure stipulates that if there is no defence counsel or the defence counsel does not appear in the court on the date of the public trial of the offence charged which is punishable with death, imprisonment with or without forced labour for life or for a maximum penalty of more than three years, the presiding judge must assign a defence counsel and have the defence counsel attend the trial (Article 289). If the ability of the accused to defend himself is insufficient, that is, if the accused is a minor, or not less than 70 years of age, or deaf or mute or suspected to be insane or weak-minded, or if it is deemed necessary for any other reasons, the court may ex-officio assign a defence counsel to the accused (Article 37). These provisions of Article 37 apply also to a case where the counsel does not appear on the date for public trial (Article 290).

Subparagraph (e); Article 37, paragraph 2 of the Constitution provides that "He (the accused) shall be permitted full opportunity to examine all witnesses, and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense". In accordance with these provisions, the Code of Criminal Procedure recognizes the right of the accused or his defence counsel to be present at the examination of a witness (Article 157) and stipulates that the accused or his defence counsel may cross-examine witnesses (Article 304 of the Code and Article 199-2 to 199-5 of the Rules of Criminal Procedure). Moreover, Article 320 et seq. disclaim the probative value of hearsay evidence except in special cases. Thus, the right of the accused to cross-examination is fully guaranteed.

The Code of Criminal Procedure stipulates that a public prosecutor, the accused or his defence counsel may request the examination of evidences (Article 298), making no discrimination between a public prosecutor and the accused or his defence counsel. Therefore, the accused may request the attendance and examination of witnesses on his behalf on the same conditions as those for witnesses against him.

Subparagraph (f); the Code of Criminal Procedure provides that "when a person not versed in the Japanese language is required to make a statement, an interpreter shall be caused to interpret (Article 175)", that "when a deaf or a mute person is required to make a statement, an interpreter may be caused to interpret (Article 176)" and that "letters, signs or marks not in the Japanese language may be caused to be translated (Article 177)".

Subparagraph (g); Article 36 of the Constitution forbids the infliction of torture by any public officer. In addition, Article 38, paragraph 1 provides that "No person shall be compelled to testify against himself", thereby prohibiting forced testimony against oneself. Paragraph 2 of this Article negates the probative value of confession by compulsion, torture, threat, etc. by stipulating that "Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence". And the Code of Criminal Procedure obligates a judicial police official, public prosecutor and judge, etc. to notify the accused of his right to refuse any statement (Article 198, paragraph 2, Article 291, paragraph 2). The Code expressly guarantees this right (Article 311, paragraph 1) and stipulates that not only the confession provided for in Article 38,

paragraph 2 of the Constitution but also any other confession which is suspected not to have been made voluntarily shall not be admitted in evidence (Article 319, paragraph 1), thus denying the probative value of such confession. As described above, the provisions referred to in Article 14, paragraph 3(g) are fully guaranteed from the standpoint of both procedure and evidence.

4. As regards paragraph 4, the Juvenile Law has a number of provisions to achieve the purpose stated therein: an accused juvenile shall be separated from other accused persons so that he may not be in contact with them (Article 49, paragraph 1); the proceedings for the juvenile criminal case shall be separated in so far as the separation does not obstruct the trial, even in cases where an accused juvenile case is connected with other accused cases (Article 49, paragraph 2); trial for juvenile criminal cases shall be conducted in compliance with Article 9 (Article 50); and in making investigations of a juvenile case, every effort shall be made to make efficient use of medical, psychological, pedagogical, sociological and other technical knowledge, especially the result of the examination conducted in the Juvenile Classification Home, in regard to the conduct, career, temperament and environment of the juvenile, his guardians or of other persons concerned (Article 9). The Rules of Criminal Procedure stipulate that "In the hearing of juvenile cases caution shall be taken to be kind, and evidence examined by the Family Court shall, to make the true facts of cases clear, be examined as far as practicable (Article 277)". Article 61 of the Juvenile Law forbids the publication of such accounts or photographs on newspapers or other publications as contain the name, age, etc. which may identify a juvenile who has been brought to proceedings in a Family Court or prosecuted of an offence. As outlined above, Japanese law gives consideration to a variety of procedures for juvenile cases by, for example, establishing special rules, to ensure sound growth of juveniles. The provisions of Article 14, paragraph 4 of the Covenant are thus fully guaranteed.

5. In regard to paragraph 5, the Code of Criminal Procedure gives the accused the right of appeal (Article 351), and the accused may lodge Koso appeal to a High Court against a judgement rendered in the first instance to receive retrial (Article 372 of the Code; Article 16 of the Court Organization Law). The grounds of Koso appeal include errors in findings (Article 382 of the Code), improper or unjust determination of penalty (Article 381), misapplication of laws and regulations (Article 380) and violation of law or ordinance of procedure (Article 379). Therefore, the right provided for in Article 14, paragraph 5 is fully guaranteed. The Code of Criminal Procedure further recognizes the right of the accused to lodge Jokoku appeal to the Supreme Court on the grounds of violation of the Constitution or violation of judicial precedents (Article 405 et seq.).

6. As regards paragraph 6, when new evidence is discovered as to a final judgement made, by which a person has been convicted of a criminal offence, and the new evidence clearly proves that the person is innocent, etc., or when there are some other reasons (Article 435 of the Code of Criminal Procedure), the person pronounced guilty, a public prosecutor, etc. may request the reopening of procedure (Article 439). If the request is well-founded, a ruling for commencing the reopening of procedure shall be rendered (Article 448), and a court shall conduct trial anew depending on the instance concerned and pronounce a judgement of guilty, not guilty, etc. (Article 451).

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". In accordance with these provisions, the Criminal Compensation Law was enacted. This Law stipulates that any person who has been acquitted may claim compensation for arrest or detention pending trial (Article 1, paragraph 1) and one for execution of penalty or confinement (Article 1, paragraph 2). The amount of compensation is determined by the court within the limit stipulated by the Law (Article 4).

Article 17 of the Constitution stipulates 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 acts of any public official", and in line with these provisions the State Redress Law was established. In its Article 1, paragraph 1, the Law stipulates 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". A person who has been prosecuted unlawfully by the wilfulness or negligence of police officers, public prosecutors or judges in the performance of their duty, and has been pronounced guilty and served a sentence may sue for compensation as provided for by this Law from the State or a local public entity.

7. Under Article 39, paragraph 7, the Constitution guarantees the principle of prohibition of double jeopardy.

Pursuant to these constitutional provisions, the Code of Criminal Procedure stipulates that when a final judgement has already been rendered for a crime, a pronouncement of acquittal shall be made for the crime (Article 337, item 1), and prohibits disadvantageous retrial (Articles 435, 436 and 452).

Article 15

As stated in the initial report, Article 31 of the Constitution provides for the principle of nulla poena sine lege, nullum crimen sine lege, while its Article 39 prohibits ex post facto laws. Thus, the right referred to in Article 15 of the Covenant is guaranteed.

Article 16

The first part of Article 13 of the Constitution stipulates that "All of the people shall be respected as individuals", declaring expressly the purpose of Article 16 of the Covenant. Article 11 of the Constitution also provides that "The people shall not be prevented from enjoying any of the fundamental human rights". And the second part of Article 13 says that "Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs". This part recognizes the need to respect the rights of individuals fully in every sphere of legal systems. Article 32 of the Constitution guarantees that "No person shall be denied the right of access to the courts". Thus, the rights of individuals are ultimately guaranteed by judicial remedies.

Article 17

The legal framework in Japan regarding the protection of the rights established by Article 17 of the Covenant is as described in the initial report. Below, the main points are enlarged upon:

1. 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 things to be seized, ... (Article 35, paragraph 1)", thus forbidding arbitrary interference by public authorities with the homes, etc. of all persons. The Penal Code prohibits intrusion without good reason upon a human habitation etc. (Article 130), while the Minor Offence Law bans peeping into others' houses, etc. without justifiable reason (Article 1, item 23). In addition, a doctor, lawyer or any other person who can learn others' secrets in the course of the conduct of his profession are put under an obligation not to disclose such secrets by some laws (Article 134 of the Penal Code, Article 149 of the Code of Criminal Procedure and Article 281, paragraph 1, item 2 of the Code of Civil Procedure). These provisions give consideration to a peaceful private life of individuals.

National and local public service personnel are also put under an obligation to observe strict secrecy (Article 100 of the National Public Service Law, Article 34 of the Local Public Service Law). Personal information is thus protected.

2. The reputation and credit of individuals are protected as follows:

(a) The Penal Code punishes a person who defames another by publicly alleging facts and who defames a dead person if such defamation is based on a falsehood (Article 230).

(b) To injure the credit of another is a crime to be punished by the Penal Code (Article 233).

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

3. As for prohibition of interference with communications, Article 21, paragraph 2 of the Constitution guarantees the secrecy of any means of communication. In addition, the Postal Law and the Telecommunications Business Law guarantee this secrecy in compliance with the spirit of the Constitution and oblige those who are engaged in related business to keep secret any fact which they come to know concerning communications in the course of the conduct of their profession.

4. Of late, so-called "privacy right", that is, "the right against arbitrary disclosure of private life", which includes the right to portrait and the right to non-disclosure of past events which may injure the honour and reputation of persons, without good reason, has been considered as the object of legal protection.

Article 18

1. As stated in the initial report, Article 19, Article 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 because of thought and belief. Thus, the implementation of Article 18 of the Covenant is guaranteed.

2. In particular, in regard to paragraph 2 of Article 18, the Constitution provides in its 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 the religious activities of the State and its organs.

3. 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

1. As stated in the initial report the rights referred to in Article 19 are guaranteed under Articles 19, 21 and 23 of the Constitution. In particular, the right to freedom of expression mentioned in paragraph 2 is guaranteed by Article 21 of the Constitution, and the greatest respect is paid to this right as essential to the maintenance of democracy.

2. On the other hand, the right to freedom of expression has a social nature, unlike freedom of one's inward thoughts. Because of this, some restrictions are put on this right as those described below, but all of these restrictions are the necessary minimum and meet the provisions of paragraph 3 of Article 19.

(a) Prohibition of distribution of obscene literature (Article 175 of the Penal Code).

(b) Prohibition of defamation and insult (Article 230 et seq. of the Penal Code).

(c) Prohibition of instigation of insurrection, inducement of foreign aggression and assistance to the enemy (Article 38, paragraph 2, item 2 of the Subversive Activities Prevention Law).

(d) Political neutrality of education in schools for compulsory education (Articles 3 and 4 of the Temporary Measures Law concerning Security of Political Neutrality of Education in Schools for Compulsory Education).

(e) Certain restrictions on documents and pictures used in election campaigns (Article 142 et seq. of the Public Offices Election Law).

(f) Prohibition of false or exaggerated advertisement of medicines, etc. (Pharmaceutical Affairs Law), restrictions on outdoor advertisements (Outdoor Advertisements Law), etc.

3. As for broadcasting in Japan, the Broadcast Law regulates it so that it may meet the requirements of public welfare and development soundly. The Law also stipulates that broadcast programmes shall not be interfered with by anyone except under the authority provided for by law (Articles 1 and 3 of the Broadcast Law). In addition, the Public Offices Election Law includes provisions for ensuring that in an election equal opportunity broadcast political views is given to all candidates (Articles 150 and 151).

Article 20

1. With regard to paragraph 1 of Article 20, as stated in the initial report, a very strong negative feeling against war exists among the Japanese people, and it is almost inconceivable that any propaganda for war could actually be carried out. The situation has not changed since the Committee's consideration of the initial report. Should there emerge a danger of a harmful effect of propaganda for war in the future, legislative measures would be studied as occasion demands, with careful consideration for freedom of expression.

2. As regards paragraph 2, as stated in the initial report, should there arise in the future actual adverse effects which could not be countered under the existing legislation, further legislative measures are to be studied, with careful consideration for freedom of expression to be given to the extent that the public welfare is protected.

Article 21

As described in the initial report, the right referred to in this Article 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 Article 21.

Article 22

1. As stated in the initial report, the right referred to in this Article of the Covenant is guaranteed not only under Article 21, paragraph 1 and Article 28 of the Constitution but also under such domestic laws as the Trade Union Law and the National Enterprise Labour Relations Law.

2. Besides the guarantee under domestic laws mentioned above, Japan has become party to 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 ILO in 1932, 1953 and 1965, respectively, and has since been observing these Conventions sincerely. The fulfilment of the obligation mentioned in paragraph 3 of Article 22 is thus guaranteed.

Article 23

1. In Japan, the family is protected by Law in compliance with Article 23 of the Covenant as a unit having important relations with the basic order of the life of the people.

2. Article 24 of the Constitution provides that (1) marriage shall be based only on mutual consent of both sexes, (2) it shall be maintained through mutual co-operation on the basis of the equal rights of the husband and the wife, and (3) laws regarding marriage and the family shall be enacted from the standpoint of individual dignity and the essential equality of the sexes. With regard to paragraph 2 of Article 23, the right of both sexes to marriage after they reach a certain age is recognized under the Civil Code (Article 731).

3. Japanese laws regarding paragraph 4 are outlined below; steps are taken in compliance with the paragraph.

Steps during marriage

The Civil Code provides for a statutory scheme of marriage relationship (i.e., sharing of the expenses of the married life (Article 760 of the Civil Code), joint and several liability for daily household matters (Article 761) and separate property and property in co-ownership (Article 762)), and custody and education of children (Articles 818 and 820).

Steps on dissolution of marriage (divorce)

(a) Besides the provisions concerning the distribution of property (Article 768), there are provisions on compensation for damage by the responsible spouse and measures to provide maintenance after dissolution of marriage.

(b) For the protection of children of divorced couples, there are provisions regarding the designation of the parent having parental authority (Article 819, paragraphs 1, 2, 3 and 5).

4. The Family Courts have been established to handle domestic problems in an appropriate way in consideration of the nature of these problems.

Article 24

1. In regard to the right mentioned in paragraph 1 of Article 24, the provisions of Article 14 of the Constitution guarantee equality under the law to all of the people, including children, whose human rights as individuals are guaranteed with no discrimination because 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 ordinary education, and guarantees the provision of compulsory education free of charge.

In order to guarantee the rights of the children referred to in paragraph 1 as are required on the part of their family, society and the State, the following measures are taken in Japan:

Welfare

(a) The Child Welfare Law declares the fundamental 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) Provision of allowances for the protection of the family and rearing of children (Children's Allowance Law, the 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 Welfare for Mothers and Children and Widows, etc.).

(d) Special measures for 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 young people (Labour Standards Law, Act to Control and Improve Businesses Affecting Public Morals).

Education

In accordance with the object of the Constitution, the Fundamental Law of Education stipulates rules on education on the basis of the idea: "Esteem individual dignity and endeavour to bring up the people who love truth and peace, while education which aims at the creation of culture general and rich in individuality shall be spread far and wide" (Preamble of the Law). As regards Article 24, paragraph 1 of the Covenant, the following matters are stipulated on the basis of the Fundamental Law:

(a) Equal opportunity in education (Article 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 compulsory school term (Article 4 of the Fundamental Law of Education, Articles 6, 22 and 39 of the School Education Law).

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

(d) Aid to the protectors who are recognized to have difficulty in sending their children of compulsory school age to school for financial reasons (Articles 25 and 40 of the School Education Law, etc.).

(e) Education for the mentally and physically handicapped according to the degree of the handicap (Articles 22, 39, 71 and 74 of the School Education Law, etc.).

2. With regard to paragraph 2, it is stipulated that all children shall assume the surname of their parents or their father or mother according to the case (Article 790 of the Civil Code), and that the naming of children becomes effective by a report of birth and children enter the family register of their parents or their father or mother (Article 18 of the Family Registration Law).

3. As regards the acquisition of a nationality by a child referred to in paragraph 3, Article 2 of the Nationality Law contains provisions in compliance with the paragraph.

Article 25

1. The legal framework in Japan relating to Article 25 of the Covenant is as described in the initial report. Some more details are given below:

"Sovereign power resides with the people" is one of the fundamental principles of the Constitution of Japan. In its Article 15, paragraph 1, the Constitution stipulates that "The people have the inalienable right to choose their public officials and to dismiss them". This right to choose or dismiss public officials is executed directly in the election of the members of the two Houses of the Diet (Article 43), in the election of the chief executive officers of local public entities, members of their assemblies, etc., (Article 93), and in the review of the appointment of the judges of the Supreme Court (Article 79). Article 15, paragraphs 3 and 4 provide for the principle of universal adult suffrage and secrecy of the ballot in these elections.

2. In line with the spirit of the Constitution, the Public Offices Election Law stipulates matters relating to the election of the members of the two Houses of the Diet and the members of the assemblies and chief executive officers of local public entities. Japanese nationals who are 20 years or more of age possess the right to vote (Article 9), while the right to be elected is guaranteed to Japanese nationals who are 25 years or more of age or who are 30 years or more of age depending on the kind of elections (Article 10). Voting is restricted to a single vote per person for each election (Article 36). And as for the secrecy of votes, the Law provides that no person shall have the duty to disclose the name of candidates for whom electors have cast their votes (Article 52).

3. The National Public Service Law (Article 33) and the Local Public Service Law (Article 15), which prescribe rules concerning officials engaged in the public affairs of the State or local public entities, have provisions to the effect that public officials shall be appointed on the basis of demonstrated ability, in conformity with Article 25 (c) of the Covenant.

Article 26

1. The dignity of individuals is one of the fundamental principles of the Constitution, and the Constitution guarantees equality under the law to all of the people (Article 14, paragraph 1). In addition, equality under the law is guaranteed by other related laws mentioned in the initial report relating to Article 26 of the Covenant.

2. Article 25, paragraph 1 of the Constitution also guarantees "the right to maintain the minimum standards of wholesome and cultured living," while paragraph 2 of the Article provides that "In all spheres of life, the State shall use its endeavours for the promotion and extension of social welfare and security, and of public health", thus establishing the responsibility of the State in this field. Consideration is also given to the equal and effective protection of the rights of individuals; for example, Article 26 guarantees the "right to receive an equal education" and stipulates that "compulsory education shall be free", and Articles 27 and 28 guarantee the right to work.

In accordance with the constitutional provisions mentioned above, the Japanese Government is endeavouring to improve systems for social security and welfare so that the people may enjoy equal and effective protection. In particular, it places emphasis on the improvement of social welfare for those in a socially weak position, such as the handicapped, the aged and children.

In the area of education, the Fundamental Law of Education provides for equal opportunities of receiving education in order to avoid discrimination based on a person's economic situation (Article 3, paragraph 1 of the Fundamental Law of Education), and the School Education Law stipulates the provision of necessary aid to the protectors who are recognized to have difficulty in sending their children of compulsory school age to school for financial reasons (Articles 25 and 40 of the School Education Law, etc.). Equal opportunity to receive education is thus guaranteed.

As for labour, the Labour Standards Law forbids employers to discriminate against workers (Article 3). Efforts are made to secure employment opportunities for workers according to their ability and willingness by taking measures according to the Employment Measures Law and the Employment Security Law among others.

Residents in Dowa districts are hindered from the stability and improvement of living environments, etc. for historical and social reasons. A variety of measures, which aim to improve their living environments, promote their industrial activities, stabilize their employment, better their education, reinforce the activities to protect human rights and improve their social welfare, have been taken to achieve the stabilization of life and improvement of welfare for these residents.

Article 27

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.

As for the question of the people of Ainu raised in relation to Article 27, while it is recognized that these people preserve their own religion and language and maintain their own culture, they are not denied enjoyment of the right mentioned above, as Japanese nationals who are guaranteed equality under the Japanese Constitution.

Appendix 1

National Institutions for the Protection and Promotion of Human Rights and Their Activities

The respect of fundamental human rights of the people is one of the important pillars of the Constitution of Japan. To protect these human rights, special administrative organs were established: The Civil Liberties Bureau of the Ministry of Justice, and its lower organizations, Regional Legal Affairs Bureaux and District Legal Affairs Bureaux. In addition, there is the system of Civil Liberties Commissioners, who are appointed by the Minister of Justice from among civilians.

1. National institutions for the protection and promotion of human rights

Civil Liberties Bureau of the Ministry of Justice and its lower organizations

The Civil Liberties Bureau is established in the Ministry of Justice as a central administrative organ for the protection of human rights of the people (including foreigners in Japan; the same hereinafter). And as the lower organizations of the Bureau, the Civil Liberties Department and Civil Liberties Division are established in the Regional Legal Affairs Bureaux and the District Legal Affairs Bureaux, respectively. These organs are performing duties assigned to them.

Civil Liberties Commissioners

Civil Liberties Commissioners are the volunteer civilians who are assigned to perform activities for the protection of human rights.

The system of these Commissioners was created on the basis of the idea that it would be desirable to protect human rights by obtaining co-operation from those selected from among residents in each community who are of fine character and of wisdom and by sharing the daily life of the people of each community.

Civil Liberties Commissioners are selected and assigned by the Minister of Justice from among those residents in each municipality who are considered well-qualified to pursue the task of protecting human rights. For selecting these Commissioners, democratic and deliberate procedures are established as follows:

(a) The chief executive officers of cities, towns and villages listen to the opinions of the assemblies of these municipalities and recommend, as candidates for the Commissioners, those who are of fine character and of wisdom, are familiar with social situations broadly and have deep understanding of protection of human rights.

(b) The Minister of Justice assigns these candidates to Civil Liberties Commissioners after he consults the Bar Association and the Prefectural Federation of Consultative Assemblies of Civil Liberties Commissioners.

In this way, Civil Liberties Commissioners are selected from almost all walks of life. As of 1 January 1987, there are about 11,500 Civil Liberties Commissioners all over Japan.

2. Activities of national institutions for the protection and promotion of human rights

Public information and educational programmes for the promotion of universal respect for human rights

The officials of the Civil Liberties Bureau and Civil Liberties Commissioners are closely co-operating with each other to achieve the popularization and promotion of human rights ideas.

(a) General activities for enlightenment

These activities are for the general public. They take diverse forms: lecture meetings, round-table discussions, discussion meetings, film shows; TV and radio programmes, press releases, public relations publications; distribution of pamphlets, leaflets and other printed matters; posters, banners, signboards; tours of public relations cars; and exhibitions of human right-related articles.

"Human right model districts" activity is one of them, too. Every year, about 20 local municipalities are chosen across the country as "human right model districts." In these districts, activities for protection of human rights are positively organized with the aim of spreading the spirit of respect for human rights which are developed in these municipalities among other areas. Active enlightenment campaigns are carried out by co-operation from those of municipal governments and assemblies and from residents.

(b) Individual activities for enlightenment

These activities are for particular individuals. They include investigation and settlement of cases of infringement of human rights and counselling service on human rights, and aim at solving specific problems of human rights.

As described above, activities for enlightenment on the importance of universal respect for human rights are organized in diverse ways. These activities reach a peak in the "human rights week" ending on 10 December every year, during which large-scale enlightenment campaigns are organized. The National Federation of Consultative Assemblies of Civil Liberties Commissioners designates 1 June as the "Day of Civil Liberties Commissioners" commemorating the day when the Civil Liberties Commissioners Law was enacted (1 June 1949). Since 1982, the Federation has carried out nation-wide activities for human rights enlightenment on this day.

Counselling service on human rights

The Regional Legal Affairs Bureaux and District Legal Affairs Bureaux and their branches have a permanent human rights counselling office. In addition, temporary human rights counselling offices are established at department stores, public halls, etc. At these offices, officials of the Bureaux and Civil Liberties Commissioners offer counselling service on human rights. Civil Liberties Commissioners provide this service at their home, too.

Counselling service is free, and no complex procedures are required. And the secrecy of counselling is strictly observed.

The problems on which counselling service has been requested cover a very broad range; they include family troubles relating to divorce, inheritance and support of family, disputes with neighbours and problems relating to rented land or houses. The number of counselling cases is increasing year after year. In 1986, the figure reached about 392,000, some 158,000 of them were handled by Civil Liberties Commissioners.

Upon request for counselling, the official of the Bureau or Civil Liberties Commissioner gives advice on the procedure needed to protect human rights, refers the person to the competent government or public authorities, or helps him otherwise according to the nature of the problem.

Investigation and settlement of cases of infringement of human rights

National institutions for the protection of human rights look into whether there is an actual violation of human rights regarding alleged cases, and take proper steps in accordance with the results of the investigation. They also carry out activities for enlightenment on the importance of universal respect for human rights which would lead to ensure further protection of human rights.

Violation of human rights handled by these institutions is not limited to acts in violation of laws and orders; it includes "any act which is against the idea of respect for human rights, one of the fundamental principles of the Constitution" as well.

If an act of violation of human rights comes under the object of a criminal or civil procedure, these institutions do not deal with such a case in principle, as such an act should be referred to the court, the Public Prosecutor's Office and the police, etc.

In 1986, the number of alleged cases of violation totalled about 15,000.

If investigation reveals that violation of human rights is continued, measures are taken to stop such violations, and relieve the victim. If acts of violation have already been committed, the person who has committed a violation and those who are in a position to supervise the person are advised to take proper steps, in writing or orally. In case some administrative reform is considered necessary, the fact is reported to the authorities concerned.

Legal aid system

This is a system under which the State provides financial aid to those who are unable to file a civil suit due to poverty (including foreigners in Japan), by making advance payments for all expenses, including lawyer's fees. In actual practice, this legal aid is delegated to the Legal Aid Association; the Civil Liberties Bureau supplies necessary funds to the Association from among subsidies it receives from the national treasury, and supervises the affairs of the Association.

Appendix 2

Outline of Criminal Procedure as Relief Measures
for Infringement of Human Rights

1. If an act of infringement of human rights constitutes a crime, the victim may lodge a complaint or an accusation in accordance with the Code of Criminal procedure. Article 230 of the Code provides that "A person who has been injured by an offence may file a complaint", while Article 231 stipulates the right of the legal representative and relations of the victim to lodge an independent complaint. And Article 239, paragraph 1 says that "Any person who believes that an offence has been committed may lodge an accusation".

The Code of Criminal Procedure of Japan adopts the principle of State prosecution, and provides that, "Prosecution shall be instituted by a public prosecutor" (Article 247). Thus, no prosecution by a private person is recognized. But to reflect the popular will on the execution of the right to public action and to attain proper use of this right, there is the system under which the Prosecution Examination Council examines the appropriateness of dispositions by public prosecutors not to institute a public prosecution. Those who have lodged a complaint or an accusation or injured parties may apply to the Council for such examination (Prosecution Examination Council Law).

The Code of Criminal Procedure establishes a special criminal procedure (quasi-procedure for prosecution) in its Article 262 et seq. As to abuse of authority by a public officer, abuse of authority by a special public officer, use of violence and cruelty by special public officials (Articles 193 to 196 of the Penal Code), etc., those who have lodged a complaint or an accusation and who are dissatisfied with the position taken by a public prosecutor not to prosecute may apply to a court for committing the case to a court for trial. If a court accepts this application and renders a ruling to commit the case to a court for trial, prosecution shall be deemed to have been instituted, and the practising attorney designated by the court sustains the prosecution.

2. With regard to relief measures for those who are arrested and detained on a charge of a criminal offence, the second part of Article 34 provides that "... nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel", thus guaranteeing against illegal detention. The Code of Criminal Procedure stipulates in detail the procedures for indicating the reason for detention and for rescission of detention in its Articles 82 to 87 and Article 207, paragraph 1. In addition, the Code prescribes the procedures for quasi-Kokoku appeal, Kokoku appeal and extraordinary Kokoku appeal against the rulings for detention made by the court. With these provisions, any person may request an indication of the reason for detention and rescission of detention.

3. The accused who has been convicted is guaranteed the right to appeal (Article 351 of the Code of Criminal Procedure), and may lodge Koso appeal to a High Court against a judgement rendered in the first instance by a District Court on account of errors in findings, improper or unjust determination of penalty, misapplication of laws and regulations, violation of law or ordinance of procedure, etc. (Articles 377 to 384). He also may lodge Jokoku appeal to the Supreme Court against a judgement rendered by a High Court on grounds of violation of the Constitution or violation of judicial precedents.

As for rulings other than judgements (mainly rulings on matters arising in relation to the progress of procedure leading to judgements), Kokoku appeal, quasi-Kokoku appeal, extraordinary Kokoku appeal, etc. may be lodged in accordance with the provisions of Article 419 et seq. of the Code of Criminal Procedure.

4. If clear evidence has been newly discovered relating to a case in which a judgement of guilty has become final and the evidence clearly shows that the judgement of not guilty should instead be pronounced, or if there is some other reason (Article 435 of the Code of Criminal Procedure), a person who has been pronounced guilty, etc. may request the reopening of proceedings (Article 439). If the request is well-founded, a ruling for commencing the reopening of proceedings is rendered (Article 448), and the court examines the case and pronounces a verdict of guilty or not guilty, etc.

5. As for a ruling of protective measures for a juvenile, a complaint may be raised to seek corrective action in accordance with the provisions of the Juvenile Law regarding Kokoku appeal and Sai-Kokoku appeal (Article 32 et seq.).

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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic reports of States parties due in 1986

JAPAN

Corrigendum

- (1) Article 3 (page 4) Para. 1, 4th line

Insert "which aims to secure equal opportunity and treatment between men and women in employment" after "Women Workers"

- (2) Article 10 (page 11) Para. 2, 8th line

Substitute "may be confined" for "shall be confined"

- (3) Article 10 (page 11) Para. 2, 17th line

Substitute "case" for "charge" and substitute "tried" for "heard"

- (4) Article 19 (page 21) Para. 3, 6th line

Substitute "equal opportunity to broadcast" for "equal opportunity broadcast"

- (5) Article 20 (page 21) Para. 2, 5th line

Substitute "welfare is not interfered with" for "welfare is protected"

- (6) Article 24 (page 22) Para. 1, 7th line

Substitute "have" for "ensure that"

- (7) Article 26 (page 25) Para. 2, 16th and 17th line

Substitute "of receiving education without discrimination on account of economic position" for "of receiving education in order to avoid discrimination based on a person's economic situation".

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JAPAN

Corrigendum

- (1) Article 3 (page 4) para.3, 10th to 12th lines
Substitute "towards the year 2000. (For further details, refer to the initial report submitted by Japan in accordance with article 18 of the Convention (CEDAW/C/5/Add.48, 26 March 1987).)" for "towards the year 2000 (for further details, refer to the initial report submitted by Japan in accordance with article 18 of the Convention (CEDAW/C/5/Add.48, 26 March 1987))."
- (2) Article 9 (page 8) para.1(a), 14th line and para.1(b), 1st line
Substitute "Mental Hygiene Law" for "Mental Health Law"
- (3) Article 14 (page 18) para.7, 1st line
Substitute "With regard to paragraph 7, article 39 of the Constitution" for "Under article 39, paragraph 7 the Constitution"
- (4) Article 21 (page 21) 3rd to 5th lines
Substitute "Restrictions on this right (such as those under Article 5 of the Subversive Activities Prevention Law and Article 19, paragraph 1, item 3 of the Contagious Disease Prevention Law)" for "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"