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HUMAN RIGHTS COMMITTEE

Ninety-fourth session

SUMMARY RECORD OF THE 2574th MEETING

Held at the Palais Wilson, Geneva,  
on Wednesday, 15 October 2008, at 3 p.m.

Chairperson: Mr. RIVAS POSADA

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT (agenda item 8) (continued)

Fifth periodic report of Japan (CCPR/C/JPN/5; CCPR/C/JPN/Q/5 and Add.1)

1. At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.
2. Mr. UEDA (Japan), introducing the fifth periodic report of Japan (CCPR/C/JPN/5), said that Japan was actively involved in protecting and promoting human rights in both the domestic and international arenas. In 2007, it had signed the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance and had acceded to the Rome Statute for the International Criminal Court. In the same year, it had invited the former United Nations High Commissioner for Human Rights, Louise Arbour, to visit Japan for an exchange of views with top Government officials on a wide range of topics, including Japan's human rights policies and judicial system. Japan was endeavouring to take the international lead in the area of the elimination of discrimination, one example of which was its sponsorship at the eighth session of the Human Rights Council of a resolution on the elimination of discrimination against persons affected by leprosy.
3. The Japanese Government was actively engaged in amending its laws and adapting its policies in order to keep abreast of developments in the human rights situation in Japan. Particular emphasis was placed on protecting the rights of vulnerable members of society, including women, children, persons with disabilities, ethnic minorities and foreigners. In addition, considerable efforts were being made to improve the treatment of prisoners, eradicate human trafficking and promote human rights education.
4. Turning to question 1 of the list of issues (CCPR/C/JPN/Q/5), he said that in all the cases enumerated in the written replies to the list of issues (CCPR/C/JPN/Q/5/Add.1) the Supreme Court had found no violation of the Covenant.
5. Regarding question 2, he said that the Japanese Government planned to resubmit to the Diet a bill for the establishment of an independent national human rights institution. Under that bill, the function of the institution would be to promote human rights and to provide redress for violations, as well as to transmit opinions to the Government and to the Diet. The bill was currently being reviewed by the Ministry of Justice.
6. With regard to question 3, he noted that there was concern in Japan that the introduction of the individual communications procedure might create problems for Japan's judicial system, in particular by calling into question the independence of the judiciary. For that reason, accession to the first Optional Protocol to the Covenant was under careful consideration by the Government.
7. Turning to question 4, he reiterated that, although the protection of human rights was not absolute or without limit in Japan, the concept of "public welfare" could not be invoked as a ground for allowing the State to place arbitrary restrictions on human rights.

8. In connection with question 5, he said that proposals had been made by the Legislative Council of the Ministry of Justice to amend the Civil Code in order to set the marriageable age for both men and women at 18 and to shorten the period during which it was prohibited to remarry following divorce to 100 days. Those important issues were currently under discussion by a wide cross section of civil society in Japan.
9. The Government had been implementing a broad range of measures aimed at protecting women's rights and improving women's position in society. Most noteworthy among those was the adoption by the Cabinet in 2005 of a second Basic Plan for Gender Equality, which outlined a policy for the establishment of a gender-equal society and set out measures aimed at supporting a compatible work, family and community life for both men and women. The implementation and impact of those measures were being discussed in the Council for Gender Equality, whose opinions were transmitted to the Prime Minister and other relevant ministers.
10. Regarding question 6, he noted that a chart showing trends in the proportion of women in leadership positions in each Government department had been annexed to the replies to the list of issues. A programme for accelerating women's social participation had been developed in April 2008 and identified women's participation in public service at the national level as a main area of priority. An appeal had also been made to encourage the promotion of female civil servants to positions in local government. Furthermore, initiatives had been taken with the objective of ensuring that the proportion of male and female members of the government advisory councils did not fall below 40 per cent for each sex by 2020, and that the current goal of 33.3 per cent female members would be reached by the end of fiscal year 2010. A visible testimony to the increased participation of women in government service was the number of women members of the Japanese delegation at the present meeting.
11. With regard to question 7, he reported that the ratio of women in management positions showed a long-term upward trend but remained low overall; accordingly, efforts to promote women to such positions were recognized as vital. Such efforts were being made within the framework of the Equal Employment Opportunity Law, which prohibited gender and indirect discrimination in employment and promotion and encouraged positive action. According to a 2007 survey conducted by the Ministry of Health, Labour and Welfare, the ratio of women in positions at the levels of chief, section manager and director had risen to 12.5 per cent, 6.5 per cent and 4.1 per cent, respectively, over those reported in a similar survey conducted in 2003.
12. In addition to the measures to combat wage disparities enumerated in the report, a research committee of experts had been convened to consider more effective ways of reducing male/female wage disparity. The committee had been tasked with assessing the prevailing situation and analysing the effect thereon of companies' wage systems. The Work/Life Charter and an action plan to promote work/life balance formulated by the Government in 2007 had set targets aimed at raising the proportion of women taking maternity leave to 80 per cent and that of men taking paternity leave to 10 per cent by 2017. The plan also aimed to ensure that the proportion of women who went back to work after the birth of their first child was at least 55 per cent by 2017.
13. Turning to question 8, he said that spousal rape was punishable under article 177 of Japan's Penal Code. A number of measures had been adopted to protect and assist victims of

gender-based violence, including: special procedures for the treatment of female suspects, detainees and sentenced inmates; procedures to facilitate reporting and address the psychological suffering of victims of sex crimes; training of judges in gender issues, including domestic violence; and training in human rights and gender issues for law enforcement officers, including immigration officials and those working in correctional institutions. Basic and intermediate training courses for immigration officials included education in the Covenant and trafficking in persons. Police recruits were trained in the appropriate treatment of women suspects and detainees, as well as in providing assistance to and protecting female victims of violence. Officers working in correctional facilities were given training in the Act on the Prevention of Spousal Violence and the Protection of Victims, gender equality and the prevention of sexual harassment and other forms of violence against women. In addition, lectures on gender issues relating to the treatment of women were provided to officials in the public prosecutor's office.

14. Turning to questions 9 to 16, he said that the Act on the Prevention of Spousal Violence and the Protection of Victims had been enacted in 2001 and amended in 2004 and 2007. It established systems through which victims of spousal violence could report problems and have access to counselling and support. The 2007 revision obliged municipalities to formulate their own plans for the prevention of domestic violence and the provision of support to victims of spousal abuse, and extended the scope of court-ordered protection measures to cover not only victims but their family members as well. The Cabinet Office regularly dispatched advisors to provide effective advice, training and coaching to local support centres, and was working with a private entity on a trial basis to establish self-reliance support measures for victims of domestic violence.

15. Spousal violence counselling and support centres and women's consulting offices gave advice and support as well as temporary protection to victims of domestic abuse. Various types of protection orders could be issued by courts at the behest of victims of spousal violence, and the Ministry of Health, Labour and Welfare provided victims with legal, practical and psychological assistance. Victims attempting to establish their independence were also given an opportunity to borrow money. Lastly, the Government took steps to protect foreign nationals who were the victims of such abuse, for example by permitting them to change their legal status in Japan.

16. Under the substitute prison system, the human rights of detainees were ensured through the separation of the functions of detention and investigation. Conditions of detention were monitored by visiting committees, consisting of ordinary citizens. Prosecutors were obliged to disclose evidence to the defence, including any deemed to be connected to allegations raised by the suspect. The right of suspects to have court-appointed counsel depended on the severity of the penalty and the wealth of the defendant; currently, some 80 per cent of defendants facing charges under the Penal Code were eligible for court-appointed attorneys.

17. The death penalty was supported by public opinion. It was applied only for extremely vicious and cruel crimes involving homicide, and involved very rigorous procedures. There were no plans to introduce a moratorium on executions. In criminal cases, defendants had the right to appeal twice, and persons facing the death penalty regularly availed themselves of that right. There was therefore no need for a mandatory system of appeals in such cases. Inmates sentenced to death were able to receive correspondence and visits, including visits from their lawyers.

18. The disciplinary confinement of some inmates in a single room for extended periods was a decision subject to review by the relevant penitentiary staff, which could include doctors or other specialized personnel. There were specific criteria for the maintenance of such measures, and inmates were allowed to appeal against them by filing a complaint with the Minister of Justice.

19. Monitoring of conditions in prison and prison administration in general was carried out by Penal Institution Visiting Committees, which had a degree of independence from the Ministry of Justice. Inmates were also able to file complaints with the Ministry of Justice, which set up investigation committees composed of outside experts to consider their merits. Inmates could also file civil or administrative lawsuits, or bring their cases to the attention of investigative bodies. Detainees' complaints could also be brought before Prefectural Public Safety Committees, which were collegial bodies composed of local citizens. The Constitution ensured the rights of all people, including suspects in criminal cases, and confessions made under compulsion, torture or duress were inadmissible in court. Barring exceptional circumstances requiring specific authorization procedures, interrogation must be carried out during the day and must not exceed eight hours in a single day. The police had recently established a system for internal oversight of interrogation.

20. In the Japanese legal system the interrogation of suspects played a critical role in ascertaining the truth, as Japanese criminal procedure prohibited plea-bargaining, interception of communications and many other methods of gathering evidence acceptable in other countries. Mandating the presence of counsel during an investigation would therefore place the investigation itself at risk. However, the Code of Criminal Procedure stipulated that suspects were allowed to have interviews with counsel at any time except when the requirements of the investigation precluded them, and recent instructions from the police authorities had broadened the possibilities for such consultation.

21. In addition to the medical services provided free of charge at police facilities, detainees were also able to receive medical treatment at their own expense and from a doctor of their choosing.

22. Turning to questions 17 to 19, he said that deportation could not be carried out if it would place the deportee's life or freedom in jeopardy. Persons detained with a view to deportation were able to submit complaints to the head of the detaining facility and later to the Minister of Justice. To deal with overcrowding in prisons, the Government had recently made efforts to expand capacity and hired additional prison staff.

23. Mr. SHEARER welcomed the high level of interest in Japan's human rights situation shown by national non-governmental organizations (NGOs) and said he hoped that a three-way dialogue between the Committee, the State party and NGOs would continue in the years to come. Referring to question 1 of the list of issues, he expressed concern that all the examples given of the Covenant being invoked concerned the Supreme Court. He asked whether there were any examples of the Covenant being invoked in Japan's lower courts; it was especially important for the lower courts to be familiar with the Covenant, since it was at that level that the human rights issues covered by the Covenant were most likely to arise in practice. While the Covenant was generally considered to be part of Japanese law, it was not always consistently recognized by all officials in courts. In that regard, he asked whether training related to the Covenant was provided to judges at all levels of the judiciary and public prosecution services, and to practising lawyers.

24. With regard to question 3 of the list of issues, he noted the State party's concern that acceding to the first Optional Protocol to the Covenant might raise problems in regard to the national judicial system, which suggested that the implications of accession had not fully been understood. He urged the State party to consult the Committee's draft general comment 33 on States parties' obligations under the first Optional Protocol for further information in that regard and expressed the hope that Japan would reconsider its position regarding possible accession to that instrument.

25. Mr. O'FLAHERTY, Country Rapporteur, expressed concern at the late submission of the State party's report. Referring to question 2 of the list of issues, he noted that an independent national human rights institution still had not been established. In 2002, the Japan Federation of Bar Associations had called for a national human rights commission to be established in accordance with six criteria: the commission should be established under the Cabinet rather than under a specific ministry; it should have transparent procedures for selecting its members; it should have an independent procedure for members' appointment and removal; its members should have appropriate knowledge and experience; it should be present in each prefecture; and its mandate should embrace all international human rights standards adopted by Japan. He asked the State party to respond to each of those criteria, and to give its assurance that Japan was determined to establish such an institution, in full compliance with the Paris Principles.

26. Referring to question 4 of the list of issues, he said that while he welcomed the State party's assertion that it would never place arbitrary restrictions on human rights on the grounds of "public welfare", he was concerned that a restrictive interpretation of the Covenant remained an institutional possibility. He invited the State party to comment on the compatibility of the "public welfare" restriction with its international commitments, and whether it would consider the proposal made by former Committee member Mr. Nisuke Ando that the specific restrictions provided for in the Covenant should be adopted as the interpretative tool for the term "public welfare" in the Japanese Constitution.

27. He asked the State party to comment on reports of discrimination against same-sex cohabiting couples in the areas of employment and housing, and whether it was true that sexual orientation had not been included as one of the categories covered by discrimination legislation. If it had not, he invited the State party to address that issue as a matter of urgency.

28. Ms. PALM, referring to question 5 of the list of issues, asked for information on the status of the bill on partial amendments to the Civil Code, which would amend existing provisions concerning the age of consent and the period of prohibition of remarriage following divorce. The Committee had already expressed its concern at those provisions, which discriminated against women, in the concluding observations it had issued 10 years previously. Was the Civil Code actually going to be amended and, if so, when?

29. Referring to question 6 of the list of issues, she welcomed the institutions, strategies, plans and programmes that existed for the promotion of equality between women and men, but said that she would welcome information on more concrete steps. Education and awareness-raising activities were important when attempting to incorporate the idea of equality of women and men into mainstream thinking. She observed that the targets set for women's participation in the decision-making process were too low. She would like more information on what practical measures were being taken to encourage women to apply for senior positions in the civil service

and the Diet, such as the recruitment practice whereby it was compulsory to submit one male and one female candidate for any given post. She would also like to know what concrete measures had been introduced to encourage private-sector enterprises to recruit women to senior posts.

30. Ms. MAJODINA, referring to question 8 of the list of issues, welcomed the progress made in the area of gender-based violence but expressed concern at reports of the ineffective response of police officers when approached by women who were victims of sexual crimes, many of whom experienced secondary victimization. It appeared that no legal provisions required the adoption of gender-sensitive training for law enforcement officers. To supplement the information provided in the written replies, she invited the delegation to provide the number of law enforcement officers who had received appropriate training, the number of female police officers who had specialized duties, and the number of counselling rooms and hotline networks set up. Greater enforcement of guidelines and policies for victim support was necessary.

31. Turning to question 9, she expressed concern that the State party considered that it was not appropriate to deal with domestic violence more severely than with non-domestic violent crime and that the maximum penalty imposed was a two-year prison sentence. She asked whether the State party intended to introduce a minimum prison sentence for domestic violence. She welcomed the measures described in the written replies regarding the protection and assistance provided to victims of domestic violence but said that she would like more information on how those measures were implemented in practice as well as on any research carried out to ascertain their effectiveness. It would also be useful to be provided with figures concerning the number of foreign victims of domestic violence who had been given special consideration when seeking to change their status of residence over the previous five years.

32. She asked whether the Government of Japan intended to investigate the phenomenon of comfort women, prosecute those who had been responsible for that phenomenon who were still alive, educate the general public on the matter and provide compensation to victims.

33. With regard to question 17 of the list of issues, she would be interested to hear how many people had benefited from the third-country refugee resettlement programme, particularly given the low rates of refugees being granted legal status.

34. She would have appreciated a fuller written reply to question 18, concerning the establishment of an independent inspection and complaint body to monitor conditions in immigration detention. Reports had been received that deportations were still carried out without due process of the law, and there were many cases of indefinite detentions, for example of Vietnamese nationals who remained in detention because their country of origin did not accept their return. She would be interested in hearing the State party's comments on that matter.

35. Ms. CHANET said she hoped that developments in Japan would be highlighted during the current exchange and that the recommendations made by the Committee in 1993 and 1998 would not need to be repeated. She welcomed the presence of women in the delegation and wished to hear their views in particular.

36. Referring to question 10 on the list of issues, she said that both the Committee and the Human Rights Council had condemned the Daiyo Kangoku substitute prison system, considering

it incompatible with the State party's international commitments. The system revolved around confessions extracted over a period of 24 days and nights in police stations without videotaping or the presence of legal counsel. The weight given to the indicting authority failed to respect article 14, paragraph 1, of the Covenant, and the marginalization of legal counsel also constituted a definite breach of that article. Scientific policing offered a real alternative to the present archaic system and could enhance police efficiency without exerting pressure on individuals in custody, which led to false confessions that were subsequently disavowed by scientific evidence.

37. Referring to question 12 on the list of issues, she said that Japan's position that it would neither abolish the death penalty nor accede to the second Optional Protocol was known. However, she wished to know why the number of death sentences had increased if capital punishment was indeed an effective deterrent to the crimes that warranted it. Unlike the Protocol, the Covenant was not optional. The list of crimes that warranted capital punishment in the State party included the illegal use of explosives; however, that offence did not belong in the most serious group of crimes recognized by the international community.

38. The Committee wanted the State party to respect article 6 in conjunction with article 14 and to provide all judicial guarantees to persons at risk of capital punishment, both during the pretrial phase and during the appeals phase. She asked the delegation to clarify whether sentences under appeal were suspended and requested further information on the duration of the execution procedure, in the light of reports from NGOs that executions lasted for an hour and a half. Moreover, she wished to know whether the families of those executed were now informed of the execution before it took place or whether they continued to learn of it through the media.

39. Although the delegation had argued that public opinion favoured the death penalty, the Government had passed legislation that went against public opinion on other matters, such as trial by jury for criminal hearings. Public opinion also favoured the death penalty in countries where it had been abolished; moreover, many voices, including those of NGOs, the Bar Association and members of Parliament, were calling for its abolition.

40. Sir Nigel RODLEY said that the delegation's replies indicated that it had neither read the Committee's concluding observations from 1998 nor changed its thinking with respect to the substitute prison system or the death penalty. Although the Committee had asked the State party not to raise the public opinion argument, the fact that it had done so again was disheartening and caused him to wonder whether the dialogue between the State party and the Committee was productive or constructive.

41. Drawing attention to question 13 on the list of issues, he asked why so few appeals were lodged against death sentences, as NGO reports indicated. The State party had explained that appeals were lodged in a large number of such cases and that it was therefore unnecessary to establish a mandatory system for appeals. However, he wondered whether so many people were being executed without vindicating their rights because it was difficult to appeal successfully against a conviction. He asked the delegation to clarify what access condemned prisoners had to legal advice.

42. In view of the increasing number of death sentences handed down annually, he asked the delegation to clarify how it viewed its dialogue with the Committee. It was not sufficient for



States merely to describe current practices; the objective of the dialogue was to make sense of the Covenant and apply it consistently across different systems in different countries. He hoped that the present exchange would lead to more constructive results.

43. Ms. WEDGWOOD said that the Committee's high expectations of the State party had been set by the impressive work done by Mrs. Ogata, the former United Nations High Commissioner for Refugees, in the field of humanitarian law and by Japan's considerable contribution to overseas development assistance and the peacekeeping and refugee work of the United Nations.

44. Referring to question 1 on the list of issues, she asked the delegation to comment on a particular case in which the Covenant had been cited in its domestic courts and in which the court had found the prohibition on door-to-door political canvassing by ordinary citizens to be compatible with article 19.

45. With reference to question 6, she noted that the Government had set a goal of filling 30 per cent of all leadership positions with women by 2020 and asked whether broader interim goals had been set, such as including gender equality in the school curriculum, challenging gender stereotypes and creating a family culture in the workplace, with a view to enabling women and men to live more balanced lives. She wished to know whether the State party's legislation prohibited sexual harassment in the workplace. She suggested that Japan should review existing distinctions in law between men and women, such as differences in marriageable age or the requirement that women must delay remarriage following divorce, as such distinctions served to reinforce gender stereotypes.

46. Referring to question 8, she asked whether any convictions for spousal rape had been handed down in the State party. She also wished to know why it had not been possible to appoint sufficient female prison guards to guard women prisoners.

47. She endorsed Sir Nigel Rodley's observations in respect of question 10, adding that convictions could be obtained using milder methods; videotaping could provide useful evidence for the prosecution and discouraged misconduct. Moreover, police warnings and the right to silence did not constitute obstacles to obtaining a conviction. She expressed her astonishment at the existing arrangements, under which legal counsel was appointed only after a 72-hour delay and could not observe an interrogation, and at the fact that silence was taken to indicate guilt. The use of high technology would make it possible to prevent false confessions without excluding counsels from the process, an arrangement that would be more consonant with the image and role of Japan in the United Nations system. The duty to disclose exculpatory evidence to the defence in a timely manner must be absolute under article 14 of the Covenant, in particular in a country with the death penalty.

48. Mr. SANCHEZ-CERRO, referring to question 2 of the list of issues, said that the State party's failure to date to establish a national human rights institution in accordance with the Paris Principles was discouraging, in view of the repeated recommendations by both the Committee and the Human Rights Council that the State party should do so. While Japan had indicated in its written replies that the bill on that question had not been passed by the Diet, the Committee had been given to understand that the draft had been defective and had been strongly opposed by

NGOs. The current review of the bill should pay particular attention to the Paris Principles and take into account the need for a national human rights institution to be independent from the Government and the Ministry of Justice, with independent funding and membership.

49. With regard to gender issues, he drew attention to the State party's historic responsibility towards the comfort women provided as a sexual diversion to its military forces before 1945 and insisted that the State party must restore its dignity and redress past injustices by providing those women with immediate compensation before they died while also bringing to justice and punishing those responsible for instituting that phenomenon before they, too, died.

50. Although the State party had indicated that changes had been introduced to the substitute prison system, the Committee considered that the system should be abolished, as it involved prolonged and painful interrogation of suspects and violated human dignity and human rights. The Committee and the Human Rights Council had made numerous recommendations in that regard, and the State party was requested to ensure that its legislation was consistent with the provisions of the Covenant.

51. Mr. LALLAH said that the delegation's written reply to question 16 led him to conclude that it had completely misunderstood the role of the investigator and the judge, and was confused as to why the presence of counsel was necessary during interrogations. The presence of counsel was necessary to ensure that the rights of suspects were guaranteed. The reasons provided by the delegation for not mandating the presence of counsel indicated the State party's failure to understand the nature of prosecutions and investigations and demonstrated the complete invasion by the police of the role of the court.

52. In addition to the violations of article 14, paragraph 1, mentioned by other Committee members, he saw a further violation of the right to silence under article 14, paragraph 3, which provided that an accused person should not be compelled to testify against himself or to confess guilt. That minimum guarantee was applicable during trial and should also be given by the investigating authorities. He wished to know how the investigating authorities dealt with suspects who remained silent. Moreover, since the delegation had stated in its reply to question 16 that its Code of Criminal Procedure prohibited convictions based solely on confession, he wished to know why confessions were sought if they were unnecessary and prohibited by law. The State party appeared to have misunderstood article 14 and should review its entire criminal procedure carefully, since it affected the lives of innocent people.

53. Ms. KELLER, referring to question 12 on the list of issues, wished to know how public opinion on the death penalty was gauged. It would be helpful to have actual figures, in order to determine whether the majority was large or small, and to know the date on which the data were collected. She asked whether the Government intended to take measures to demonstrate the problematic aspects of the death penalty to citizens.

The meeting rose at 6 p.m.