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Summary record of the 1279th meeting

Held at the Palais des Nations, Geneva, on Thursday, 28 October 1993, at 10 a.m.

Chairman: Mr. Wennergren

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The meeting was called to order at 10.10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(agenda item 4) (*continued*)

Third periodic report of Japan (continued) (CCPR/C/70 and Add.1 and 2)

1. **The Chairman** invited the Japanese delegation to respond to questions put to it by members at the 1278th meeting.
2. **Mr. Kunikata** (Japan), replying to questions relating to chapter I of the report, said that the screening of refugees applying for asylum in Japan was conducted with the utmost care and concern for the protection of their human rights, and the Ministry of Justice acted in close cooperation with representatives of the Office of the United Nations High Commissioner for Refugees in order to ensure objectivity. His Government believed that the procedure followed was in full compliance with its obligations under the 1951 Convention relating to the Status of Refugees.
3. With regard to the legal situation of children born out of wedlock, some members of the Committee had expressed views which differed from that of the Japanese Government, and his delegation intended to convey that view to the Committee in writing as soon as possible in order to give members a better understanding of the Japanese situation.
4. The reason for the prohibition of house-to-house canvassing during election campaigns in Japan was that it was regarded as possibly providing an opportunity for the receipt of bribes or similar inducements which might impair the freedom and fairness of elections.
5. With regard to the question of dismissal from employment without obvious reason, he said that the Japanese Labour Standards Law clearly stated that any discrimination based on nationality, creed or social status was strictly forbidden. In the event of unlawful discrimination being established upon investigation by the Labour Standards inspection bodies, they would demand that the employers rectify the situation. The dismissed employee was also able at any time to request examination of his case by an independent committee empowered to issue a remedial order. The employee could also apply to a court to nullify the dismissal.
6. In amplification of what his delegation had said at the preceding meeting concerning the relationship between the Japanese Constitution and the Covenant, he said that, while there was no express reference to the status of treaties in the Constitution, his delegation was of the view that, in the event of conflict between the Constitution and the Covenant, the former would prevail. However, as pointed out in paragraph 12 of the report, there was fundamentally no difference between the human rights guaranteed by the Constitution and those guaranteed by the Covenant, even if they differed in expression. Therefore, no contradiction or conflict could arise.
7. **Mr. Francis** said that he was perplexed to hear that view expressed of the relationship between the Japanese Constitution and the Covenant. The Japanese delegation must surely be aware that article 27 of the Vienna Convention on the Law of Treaties provided that a State should not invoke the provisions of its constitution or other laws in order to avoid carrying out its obligations under a treaty. He asked the delegation to explain how it reconciled the view it had expressed with its obligations under the Vienna Convention.
8. **The Chairman** observed that the delegation might well wish to have time to consult the relevant article of the Vienna Convention on the Law of Treaties before answering that question. For the time being, he invited it to comment on the 12 issues relating to chapters II and III of its report.

9. **Mr. Kunikata** said that, with regard to plans to curtail the number of offences punishable by the death penalty (issue II (a)), the Japanese Legislative Council, which was a standing committee of the Ministry of Justice, had, recommended in its 1974 report on revision of the Penal Code that the number of such offences should be reduced from 17 to 8. The Japanese Government had accordingly been seeking ways and means to introduce a bill on the complete revision of the Code but had not been successful because of opposition from, among others, the Japanese Federation of Bar Associations.

10. With regard to complaints of torture or inhuman treatment by public officials and measures taken to punish the guilty, provide compensation to the victims and prevent recurrence of such cases (issue II (b)), he said that an alleged victim or his family could file a complaint with the Public Prosecutor, and, in the event of a decision by the latter not to prosecute, the complainant could, if dissatisfied, apply to a Committee of Inquest — of which there were some 200 throughout Japan — comprising 11 members of the public selected by lot from the electoral role of the House of Representatives, to rule whether the decision was proper or not. The complainant could also, quite separately, apply to a district court to rule that the case should be sent for trial by a competent court, which would designate a practising attorney who sustained the decision. Procedural safeguards were thus in place to prevent unreasonable investigations of non-institution of prosecution. The number of complaints had decreased sharply from 1,652 in 1986 to 364 in 1992, and applications to Committees from 959 in 1985 to 68 in 1992, which was comparable to the fall in the number of persons applying to a district court from 1,182 in 1986 to 106 in 1992. Over the period from 1988 to 1992 four persons had been prosecuted by the Public Prosecutor on the basis of complaint and only one case of non-prosecution had been ruled improper by a Committee, while only three persons had been sent by a district court for trial. Although the number of cases prosecuted by Public Prosecutors on the basis of complaints was small, the figures he had just quoted pointed to the conclusion that the decisions made by public prosecutors were sound and that the system was operating satisfactorily.

11. In spite of the sharp decrease in the number of complaints of inhuman conduct by public officials, some complaints were still being received, and it had been deemed necessary not only to impose severe punishments upon officers found guilty but also to take measures to prevent the recurrence of offences and to compensate the victims. In some cases compensation was paid by the police officer concerned and in others by the local body employing him. Among preventive measures taken were the reprimanding of superior officers responsible for supervising the officers found guilty of offences, and the dissemination of the results of inquiries into the causes of such offences and related matters to all public officials.

12. Turning to issue II (c), which referred to paragraph 125 of the report, and requested clarification of the circumstances under which a person might be sentenced to forced labour or detained in a workhouse, and further information on the conditions of such imprisonment, he said that it was first of all necessary to correct a mistranslation: the phrase “imprisonment with forced labour” should be changed to “imprisonment with labour”. Apart from the death penalty, the Japanese Penal Code provided for three types of restricted freedom — imprisonment with labour, imprisonment without labour, and penal detention — and for pecuniary penalties – fine, minor fine, and confiscation. Imprisonment with labour, which was imposed for a wide range of crimes, including murder, bodily harm, and theft, was by far the most common penalty: at the end of 1992, for example, such sentences were being served by 37,090 of the 37,237 convicts detained in Japanese prisons. Prisoners serving sentences with labour were obliged to carry out the labour prescribed under the prison industry programme, whose purpose was to correct and rehabilitate prisoners by ensuring that they remained in good health, developed the will to work, and acquired skills needed for their employment upon release. The more than 20 prescribed labour

programmes included woodwork, metalwork, painting and dressmaking. The programmes also enabled prisoners to obtain certificates and other qualifications to assist them in obtaining employment on completion of their sentence. Prisoners serving sentences without labour could also opt to work, and almost all chose to do so, the only exceptions being those sick or undergoing disciplinary punishment. Prisoners worked the normal 40-hour week, with suitable breaks for rest and relaxation and their conditions of work were governed by the same requirements of the Labour Safety, and Hygiene Law as applied to the rest of the working population. They also received remuneration for their work.

13. Detention in a workhouse was normally imposed only on persons unable to pay a fine or minor fine in full, and the term of detention — 2 years or less — was specified by the judge at the time of imposing the fine. As at the end of 1992, there were 96 persons serving that type of sentence. Confinement was in the prison grounds, and the work performed was much the same as that of prisoners sentenced to imprisonment with labour.

14. In response to the request for further information on the maximum duration of detention before indictment, for comments on its conformity with the provisions of article 9, paragraph 3, of the Covenant, and for clarification of the term “ordinary cases” in paragraph 136 of the report (issue II (d)), he said that the latter term referred to crimes other than insurrection, foreign aggression and riots – crimes involving large numbers of persons or involving international relations which had been expected to require more time than usual for investigation. In such cases the 5-day detention period could, in exceptional cases be extended to 20 days by decision of a judge. In fact, however, there had been no detentions for such crimes for nearly 20 years, which was why they were not included in the report, where only ordinary cases were mentioned. For the latter the maximum pre-sentence period was as indicated in paragraphs 133–135 of the report: 2 days after arrest by police decision, 1 day by prosecutor’s decision, and a further 10 days, extendable to 20, by decision of a judge, which could all add up to 23 days when detention prior to each request for extension was counted. There were no exceptions to that procedure, even in cases involving large numbers of people. In practice, detention did not last as long as 20 days in all cases. The statistics for 1992, for example, showed the following figures for detentions of less than 10 days: ordinary cases — excluding professional traffic negligence and road traffic violations — 58 per cent; stimulant drug offences – 63 per cent; and theft — representing more than a quarter of all crimes — 78 per cent. Japanese criminal procedure did not preclude arrest or detention at other times in consequence of other acts: for example, when a suspect committed theft and murder at different times and places, arrest and detention could be effected for each case. It had previously been the practice to conduct investigations that might lead to another charge during one detention period — a procedure which had the advantage of shortening pre-sentence/detention as a whole — but it was now considered that the human rights of a suspect might be infringed if he were held on some minor charge, where there was clear evidence against him, in order that investigations could proceed on a more serious crime for which there were at that stage insufficient grounds for detention. Current procedure required that the decision to arrest and detain must be made separately in respect of each case on its own merits. Furthermore, a suspect was to be arrested and detained and as many cases as possible relating to him investigated simultaneously so that the process was not unduly prolonged. A further safeguard was that the necessity for arrest or detention was reviewed by a judge. A suspect could also appeal against detention through the *Kokoku* procedure. As a matter of course the propriety of arrest and detention were reviewed at subsequent trials and if they were found illegal, evidence obtained during detention was ruled inadmissible.

15. Although there were no direct statistics on the number of days of detention before indictment was completed for all cases involving suspects accused of more than one crime, the figures for length of detention of suspects in first instance cases showed that 63 per cent of them were sentenced or released on bail or for other reasons within 2 months, 83 per cent

within 3 months, and 96 per cent within 6 months. Those periods covered the time after initial indictment taken up by the trial procedure and included periods of arrest and detention for other crimes after indictment. In line with the first part of the first sentence of article 9, paragraph 3, of the Covenant, and as was indicated in the report, a suspect in Japan had to be brought before a judge within 72 hours of arrest and the reason for and necessity of arrest and detention examined by the latter at each stage of the process of issuing an arrest warrant — except in the case of arrest of an offender in flagrante — and of the determination of detention or detention period. The same procedure was followed in exactly the same way when arrest and detention were conducted for another case after the initial arrest and detention. His delegation therefore considered that the Japanese system and administration of pre-sentence arrest and detention were in full accord with the provisions of the Covenant. In line with the second part of the same sentence in article 9, paragraph 3, suspects had to be sentenced or bailed within 23 days in ordinary cases, without any exception. More than half of suspects detained for ordinary crimes — except professional traffic negligence or traffic violations — were sentenced or bailed within 10 days of detention. His delegation, therefore, considered that the Japanese legal system concerning arrest and detention was in full accord with the relevant article of the Covenant.

16. The general opinions of the Committee stated that pre-sentence restraint should be exceptional and as short as possible. In Japan, the Code of Criminal Procedure regarded a criminal investigation conducted on a non-compulsory basis as an essential principle of justice. In fact, in 1991 and 1992, out of a total of 2.2 million suspects under detention for crimes, only 3.6 per cent had been kept under pre-sentence restraint. His delegation therefore considered that the Japanese legal system of pre-sentence restraint fully met the requirements of the Covenant.

17. There were a number of remedies available to a person committed to a psychiatric institution by decision of a prefectural governor or the Psychiatric Review Board (issue II (e)). Both patients committed in that way and those voluntarily admitted to a psychiatric hospital could have their requests for discharge considered by Psychiatric Review Boards, and, if refused discharge, could have a further application considered by a different Board. Mental hospitals were also required to report every 6 months on the condition of committed patients and every 12 months on those voluntarily admitted. Committed persons could also apply to the Minister of Health and Welfare for a ruling on their case under the State Tort Liability Act. The purpose of hospitalization under the mental health law was, of course, to provide appropriate medical care and protection for the mentally ill, and his Government would continue to make every effort to ensure that that was done with full respect for their human rights.

18. The Japanese Code of Criminal Procedure certainly provided for a person detained by the police to contact immediately his family and a lawyer (issue II (f)). A person arrested or detained must be immediately informed by the police or the Public Prosecutor of his right to retain defence counsel, who must in turn be immediately informed by the arresting authority if the suspect chose to exercise that right (arts. 203, 209 and 78 of the Code). Provision was also made for counsel to interview the detainee without any official being present. As explained in paragraph 145 of the report, a public prosecutor or police officer could, when it was necessary for the investigation, designate the date, place and time of interview in accordance with article 39, paragraph 3, of the Code of Criminal Procedure, but the Code also stipulated that the designation must not unduly restrict the suspect's right of access to counsel, and, in practice, that right was scrupulously respected by both the police and public prosecutors. He drew attention to the further information concerning conduct of interviews in paragraph 146 of the report. A survey by the Ministry of Justice in June 1992 showed that, in over 96 per cent of cases, interviews with defence counsel had been conducted at the time and place chosen by the suspect. Moreover, if defence counsel did not wish to accept the arrangements prescribed by a public prosecutor he could apply to

a court for relief. The same survey showed that less than a quarter of interviews — 116 out of 483 — had not been held at the time requested by defence counsel. A consultative committee on suspects' rights to interview had been established in February 1988 by the Ministry of Justice in association with Japanese bar associations and had found that much progress had been made in improving arrangements in that respect.

19. An arrested person's family was immediately notified of his arrest and place of detention except when such notification would gravely impair the criminal investigation, for example when the police intended to search his dwelling or when there was a risk of evidence being destroyed. In the event of a suspect being detained but no defence counsel designated, the court was required to inform one of his relatives or another person designated by him of the fact and place of detention (arts. 207 and 79 of the Code of Criminal Procedure). Requests for interviews with family or other persons, apart from defence counsel, were granted by the police except when there were grounds for believing that such interview might impair the investigation or interfere with the proper management of the place of detention. Although interviews with family members or persons other than defence counsel were usually permitted, a court could refuse permission when there was reason to believe that the detainee might escape or destroy evidence – the latter contingency applying mainly to cases involving stimulant drugs. The Ministry of Justice's survey indicated that only about 18 per cent of the total number of detainees were affected by that restriction.

20. The Police Custodial Facility Bill referred to in paragraph 161 of the report (issue II (g)), contained provisions for the proper treatment and protection of the human rights of detainees (art. 1) and for a clear distinction to be made between detention and investigation (art. 5). The Bill also contained provisions regarding health care and medical treatment of detainees, freedom of religious activities, interviews with defence counsel, and such matters as sending and receiving of letters.

21. In answer to the question whether the lodging of a *Kokuko* appeal against a deportation order had suspensive effect (issue III (a)), he said that a suspect made the subject of a deportation order on grounds established by an immigration inspector had the right to request the hearing of his case by a special inquiry officer, and, if he did not accept the findings of the officer, could file an objection with the Minister of Justice. Deportation was never executed while those procedures were pending. A foreign national subject to a deportation order could apply to a court for cancellation of the order, but the fact of such application alone would not effect the suspension of execution of an administrative order, and the foreign national would have to make separate application to the court to obtain such suspension.

22. With regard to issue III (b), he said that telephone tapping was an indictable offence, and if the use of listening devices involved trespass upon a person's residence, that offence was punishable as a crime of housebreaking. No special legal provision covered the use of telephone tapping and listening devices in the course of criminal investigations. A judge had, however, ruled in a drugs case that the tapping of the suspect's telephone had been a proper means of collecting evidence inasmuch as a search warrant had been previously obtained. Such explicit approval of telephone tapping by the judiciary was, however, extremely rare, and the absence of legal guidance had become a serious problem, given the rapid growth in the number of crimes involving telephone use. He was unaware of any cases in recent years that had involved the use of listening devices.

23. As to the functions and activities of the Management and Coordination Agency "established under the Act for Protection of Computer-processed Personal Data held by Administrative Organs" (issue III (c)), he said that the Agency had not in fact been established under the Act and exercised general supervision over the activities of administrative organs, only part of which related to personal data files. The Act contained a

variety of provisions on the holding of such files, whether written or electronic, and on their use or provision for purposes other than those for which the files had been established. It also imposed an obligation on holders of files to ensure their security and the accuracy of the data contained in them. The Act gave individuals the right to request disclosure of personal data relating to themselves and made it obligatory for the administrative organs concerned to accede to such requests. Administrative organs were required to give prior notification to the Agency of their intention to open a personal file, and the Agency published lists of such notifications in the Official Gazette. The Agency also issued guidelines to administrative organs in order to ensure that they complied with the provisions of the Act.

24. Concerning the controls exercised on freedom of the press and mass media (issue III (d)), he said that although no specific reference was made to freedom of the press in the Japanese Constitution, article 29 guaranteed, among other things, freedom of speech, publication and all other forms of expression, and judicial precedent had established that it should be interpreted as including freedom of the press, which made an essential contribution to informed decisions on national political issues in a democratic society. Freedom of the press also implied the freedom to collect information and ensure its accuracy. A distinction was made under Japanese law between newspapers on the one hand and radio and television broadcasts on the other. The latter made use of a limited number of wavelengths, transmissions were instantaneous, and a great volume of information was purveyed to very large numbers of people over an extensive area. For those reasons, some discipline was imposed under broadcasting law: for example, that programmes should not undermine public peace or morals; that they should be politically fair; and that, on controversial subjects, as many viewpoints as possible should be presented. Broadcasting whose purpose was the destruction of the Constitution or the violent overthrow of government was expressly prohibited by article 107 of the Electric Waves Law. On the other hand, there were no laws regulating newspapers, only a code of conduct established by the newspaper companies themselves, which provided guidelines on social responsibility. While freedom to gather information was an essential component of press freedom, information gathering could infringe other human rights. Judicial precedent therefore imposed some restrictions, for example in order to ensure that an accused received a fair trial, and article 215 of the Code of Criminal Procedure forbade the taking of photographs, the making of recordings and broadcasting activities in a court room without the prior approval of the court. It was also an offence punishable by imprisonment not exceeding 1 year or by a fine not exceeding 30,000 yen to instigate an official to disclose secrets known to him from his employment in the national public service, which he was forbidden to divulge under national public service law.

25. With regard to restrictions on freedom of expression and freedom of association and assembly (issue III (e)), he said that those freedoms were guaranteed under article 21 of the Japanese Constitution. Freedom of expression did, however, have social implications and was accordingly subject to some restrictions, but they were minimal and in full accordance with the provisions of article 19 of the Covenant. The distribution of obscene literature, for example, was prohibited by article 175 of the Penal Code, and defamation and insult by article 230. Under relevant branches of the law it was forbidden to publish false or exaggerated claims for medicines, and there were restrictions on documents and pictures used in election campaigns. As to freedom of assembly, some restrictions were imposed on mass gatherings and marches under local by-laws, but they were kept to the absolute minimum and were in conformity with article 21 of the Covenant.

26. **The Chairman** thanked the Japanese delegation for its informative and relevant answers and invited members of the Committee to ask supplementary questions.

27. **Ms. Chanet** thanked Mr. Kunikata for the answers provided. She had particularly appreciated, the detailed answer to issue II (d), which had quoted the precise terms of the Covenant and compared them with Japanese law, although she did not entirely agree with the interpretation presented. The Committee preferred that approach to comparisons of one internal law with another or with internal policies or the results of opinion polls.

28. She felt that further clarification was required on the application of the death penalty in Japan. Whereas article 6, paragraph 2 of the Covenant stated that sentence of death might be imposed only for the most serious crimes, not all the 17 crimes carrying that penalty in Japan and listed on page 25 of the report appeared to be of that nature, in particular where death of the victim or victims was the result of a road, rail or maritime accident. She had the impression that more emphasis was placed upon the consequences of an action than on the degree of responsibility of the person responsible or the presence of wilful intent. She also wished to have further information about the opposition from the Bar and other bodies which had delayed the revision of the Penal Code referred to by Mr. Kunikata.

29. With regard to article 10, paragraph 1 of the Covenant, which stated that all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person, she wished to ask the delegation whether reports received by the Committee from NGOs concerning the severity of punishments under prison discipline in Japan were accurate. In particular, solitary confinement could apparently be imposed for trivial offences, such as speaking to another prisoner outside regulation hours. It was also alleged that prisoners in solitary confinement had severe limitations imposed on their activities, such as being forbidden to lie down during the day, being required to remain in view of the door, and even, in some cases, having their wrists tied even during meals.

30. The “substitute prison system” in Japan continued to give cause for concern. It provided for the holding of suspects in police custody for as long as 23 days during which every corner of their cells was under police surveillance for 24 hours a day. When the second periodic report of Japan had been submitted in 1988, the Committee had pointed out that the system raised serious issues, particularly with regard to articles 7, 10 and 17 of the Covenant as far as the rights to humane treatment and privacy were concerned. A period of detention of up to 23 days also seemed to exceed the “reasonable time” specified in article 9 of the Covenant, and the right to a fair trial established in article 14 of the Covenant appeared to be prejudiced because of the imbalance created between prosecution and defence if an accused was held so completely at police disposal, and could be interrogated without specified limitation, exposed to pressures to confess guilt, and deprived of the necessary conditions, particularly freedom of mind, to prepare his defence. The system had in fact been censured by the Supreme Court of Japan. The Japanese delegation, when presenting its second periodic report, had expressed the expectation that it would be in a position to report modifications to the system when it next came before the Committee. She wished to know what progress had been made to bring the system into line with the rights guaranteed under the Covenant.

31. **Mr. Dimitrijevic** thanked the Japanese delegation for its detailed answers, which were, however, only expansions of the information contained in the report concerning laws, statutes, regulations and norms. It was a regrettable fact that such prescriptions were not always reflected in real-life situations. The Covenant recognized the possibility of such discrepancies when it referred to “factors and difficulties ... affecting ... implementation” (art. 40, para. 2), but where such difficulties existed they should be surmounted and not serve as excuses for non-implementation of the Covenant.

32. Article 10, paragraph 3 of the Covenant clearly stated that the essential aim of the penitentiary system was the reformation and social rehabilitation of prisoners, not their punishment, and there must be serious doubts whether the Japanese system was directed towards that end. For example, solitary confinement, with the accompanying severe

restrictions on physical movement was difficult to reconcile with the provisions of the article, and seemed likely to predispose detainees to commit further offences. To provide the Committee with some measure of whether that was the case, he requested the delegation for statistics on the incidence of recidivism.

33. He shared Ms. Chanet's concern about the "substitute prison system", which was damaging to the image of Japan in the international community. The Committee was only too familiar with shortcomings in the treatment of detainees — inadequate food, lack of heating, poorly trained staff, and the like — which resulted from a lack of resources in some countries, but the Japanese institutions were equipped with every modern facility. The unceasing supervision of inmates not only amounted in itself to inhumane treatment but was particularly deplorable in view of the fact that the detainees had not yet been tried and, in accordance with article 14, paragraph 2, had to be presumed innocent.

34. Taking up a point raised in general terms by Mr. Pocar at the preceding meeting, he said that the right to a fair and public hearing by a competent tribunal referred to in article 14, paragraph 1, could be frustrated in practice if an inordinate amount of time elapsed before such hearing took place. An instructive example had occurred during the privatization of Japanese Railways, when a number of previous employees belonging to a trade union strongly opposed to that measure had not been re-employed by the successor company. A remedy had in theory been available to them, but that had involved passing through a regional Labour Commission, and then the national Labour Commission, to be then further frustrated by appeals by Government or the railways administration — a process that could drag on for many years. The consequence was that in practice, the former employees were denied a decision from a competent court. He requested the delegation to provide information on the duration of such proceedings in labour cases, and to indicate ways in which the situation could be improved — apart from the ratification by Japan of the Optional Protocol, which would make it possible for such cases to be brought before the Committee.

35. Turning to interference with privacy, the right to protection from which was guaranteed by article 17 of the Covenant, he said that it appeared to be a major problem in Japan, where employers and other authorities were known to engage in such practices as telephoning the parents of young female employees to suggest that they should leave their jobs upon marriage, that they should not take accommodation outside the parental home if unmarried, and the like. He wondered specifically what action was being taken to restrict the use of wiretapping against persons believed to be politically subversive, and, more generally, what steps were taken to ensure proper control of secret and political police activities. Were there, for example, special arrangements by which Parliament or other institutions could exercise such control? Secret police activities required the strictest supervision because abuse of their powers could easily lead to a futuristic nightmare, a fully transparent society which allowed no room for privacy. Action in that area was of crucial importance in preserving a free society.

36. **Ms. Higgins** thanked Mr. Kunikata for his informative, and carefully prepared answers.

37. She understood that persons condemned to death were often held for long periods before execution, sometimes in solitary confinement. She wished to know why that regime was applied. It also appeared that the visits that they were allowed to receive could be curtailed "for reasons of their stable condition" and she wished to be informed what precisely that phrase meant. It appeared that decisions on visits were taken by the wardens of individual institutions, and that there were no national guidelines, which seemed to her a disturbing situation. It also appeared that persons under sentence of death could only receive visits from close relatives or counsel and were not even allowed to write to persons

whose names were not on a permitted list. She also wished to know why there were no published nationwide regulations on execution procedure.

38. She shared the concern of previous speakers about the substitute prison system and was grateful to the delegation for having provided an extremely helpful document on that subject. She was disturbed to find that the system was now being institutionalized and defended, whereas the previous understanding of the Committee had been that it was a temporary arrangement to be used pending enhancement of regular prison facilities. The document stressed the need to take its contribution to the entire criminal justice structure into account when evaluating the system. She could not accept that view. There were many reprehensible activities prohibited under the Covenant which, if permitted, would facilitate the operation of the criminal justice system as a whole, but that was not the test to be applied. Nor could she accept the argument that the system was accepted by the public as a whole. That, once again, was not the test. When a government ratified the Covenant it was its duty to provide leadership and guide public opinion towards acceptance of policies compatible with the Covenant.

39. As to the argument that the system helped to shorten the period of detention, she could think of many procedures that would have that effect and yet were extremely reprehensible in themselves: for example, the use of torture could lead to a very rapid settlement of a case, but that was not of course a reason for applying it. In any case, the 23-day period seemed hardly an expeditious one, and it could be considerably extended by a succession of similar periods. Nor was she convinced by the argument that the places of detention made it possible to conduct the investigation or interview suspects "easily and smoothly and to assign personnel conveniently". The convenience of the State was not the criterion to be applied, and in any case, investigation and interview could easily be conducted in other places. The fact that there were now no more than 154 prisons in Japan and over 1,200 police custodial facilities was not in itself significant since it merely reflected policies that had been pursued. As to the statement that there was complete separation and segregation of the department of investigation from the department of custodial management in police stations, that separation was apparently regarded by detainees as more a matter of form than an actual reality – a view supported by the extremely long periods taken up by interrogation. It was also disturbing to find that the results of interrogations were not made available to the detainees themselves or to their counsel, and only to the court if it specifically so requested. It was also important to note that suspects were not entitled to have counsel present during interrogation. She very much hoped that, for the sake of its international reputation, the Japanese Government would not persist in defending a system which permitted and indeed facilitated excessively long and repeated interrogation of suspects but would give serious consideration to abolishing it.

40. With regard to article 9, paragraph 3, of the Covenant, she welcomed the reported improvements in procedures for dealing with the mentally ill and asked how the psychiatric review boards were functioning and how many patients had been discharged as a result of application to them.

41. She supported Mr. Dimitrijevic's criticisms of the operation of labour law in Japan. The impression given was of an anti-trade union culture, which permitted companies, including State-owned enterprises, to require their employees to attend sessions whose purpose was to "change their consciousness" – which in practice meant leaving their trade unions. Retraining programmes were also directed to persuading workers to leave their trade unions, and there were figures to show that those re-employed after retraining were those who chose to do precisely that. She wondered what action was being taken to ensure that the rights guaranteed by article 22 of the Covenant were protected and that true freedom of association was granted without such pressures being exerted on workers.

42. **Mr. Lallah** thanked the delegation for the very useful paper on the substitute prison system, which provided insight into the approach of the Japanese authorities to some important matters affecting the physical integrity and Covenant rights of individuals who found themselves pitted against the overwhelming might of the State. It was clear that the system was loaded in favour of the State. He agreed with Mrs. Higgins on the irrelevance of the appeal to public opinion and found unconvincing the comparison made between the allegedly poorly trained police forces of other countries that were distrusted by the public, and the highly trained, well-educated police force of Japan with its high standing in public confidence. Such claims would be more convincing if they were open to outside investigation and if they were borne out by the information received by the Committee. What mattered was whether the system was consistent with the Covenant. He wondered whether there was not a misreading by the Japanese authorities of article 9, paragraph 3, of the Covenant, which covered not only the pretrial process but the trial itself. He did not think it appropriate to place accused persons under executive control for periods of up to 23 days – which could be renewed. Moreover, detention under executive control for such lengthy periods might adversely affect an accused's right to a fair trial, especially given the difficulties placed in the way of access to counsel. The system appeared always to place the burden on the accused, who had to approach the court to obtain his rights, whereas it should be incumbent on the prosecution to justify the need for keeping a person in detention beyond a strictly reasonable and necessary period of time. Nor was he impressed by the statement that a warrant was always required before arrest: such a system existed in all countries. It was what happened after issue of the warrant that mattered. The information received from the Japanese Bar Association presented a different picture: a figure of 75 per cent was cited for cases in which accused persons had been detained until the verdict, and he requested further comments on that matter from the delegation. He noted the statement in the paper submitted by the delegation regarding the "principle of excluding from evidence confessions obtained by coercion and a procedural requirement that the court must examine the voluntariness of a confession before admitting it as evidence". That was good procedure, but where did the burden of proof lie? How did judges establish the admissibility of confessions? When a person was in detention he was at a low psychological ebb and might well say anything. Were his statements read over to him? Did his counsel have access to the statements? The Committee knew nothing about actual practice in such matters. Counsel could make certain requests to the courts but once again the burden seemed always to be on the defence. As to bail, the Bar Association paper complained that the deposit required to obtain bail was sometimes excessive. Was there any procedure for allowing bail on the accused's personal recognizance?

43. With regard to the trial process, the Bar Association's paper stated that police files were not made available to the defence. But surely it was the duty of police to make them available, and only thus could the balance between prosecution and defence be maintained. Without access to such records how could the defence prepare its case? And if material help by the police became available only during the trial, could counsel ask for a suspension of proceedings until he had time to consult the accused, or did confidence in the police run so high that courts accepted whatever the police put before them? Such procedures appeared to violate article 14, paragraph 3 (b), which stipulated that an accused person should have "adequate time and facilities for the preparation of his defence", which meant that the accused should be informed of the case he had to answer in the course of the trial. He also wished to know whether the information that he had received from the Bar Association that hearsay evidence could be used for purposes of conviction was accurate. The Association's paper said that the statement of a co-defendant could be relied upon to convict an accused person. If that was so, it was a denial of the right guaranteed by article 14, paragraph 3 (e), of the Covenant "to examine, or have examined, the witnesses against him". How was such examination to be conducted when the co-defendant who had made the statement stood side-by-side in the dock with the accused?

44. Article 14, paragraph 5, guaranteed the right of review of a conviction and sentence by a higher tribunal, whereas, if he understood correctly, restrictions were imposed in Japan on such appeals, which did not cover findings of fact, or reversal of a verdict of innocence.

45. Turning to articles 7 and 10 of the Covenant, he said that information received by the Committee indicated that privacy was sometimes not respected when suspects were made to undress and submit to examination of their private parts. It was a known fact that on some occasions, particularly in drug cases, persons hid evidence in their bodies, but such cases were quite exceptional and intimate search should be very sparingly used. He would like some indication from the delegation what measures were taken to ensure that the police did not unnecessarily violate the dignity and privacy of persons in that way.

46. He had been disturbed to receive information that morning about a Chinese alien in Japan who had been ill-treated by the police and detained for three hours in a police station because, although he possessed an identity card, he was not carrying it on his person at the time in question. Surely some arrangements could be made whereby a person in that situation should be allowed to produce a card to the police within a reasonable time.

47. He agreed with the criticisms that had been made of the very long delays — sometimes extending over 16 to 20 years — in providing remedies in industrial cases in Japan. Perhaps a system could be instituted by which increased compensation was paid to the injured party on final settlement, perhaps in the form of accumulated interest at bank rate, which might limit abusive recourse to appeal by employers.

48. **Mr. Prado Vallejo** associated himself with the observations made by previous speakers on the issues relating to chapter II of the report. There was cause for considerable concern when the penal system of a democratic, free, developed and prosperous society, such as that of Japan, presented so many grave problems. It seemed clear that much of Japanese legislation was substantially in accordance with the Covenant, but there seemed to be a wide gulf between written law and the realities of practice. It was, for example, claimed that torture was prohibited by law in Japan, but the Committee had received a considerable number of specific allegations, complete with names and dates, of torture and ill-treatment inflicted by the Japanese police. Such things occurred in many countries, including his own, but it would appear that in Japan no investigation was carried out into such matters or any measures taken to prevent their recurrence. His first question was, therefore, whether such allegations of torture and ill-treatment were investigated, and, if they were, what results had emerged? Had police officers, or other responsible persons, been punished, and in how many cases? The very long periods in which detainees remained in the hands of the police — not only for 23 days but for a succession of such periods which could, according to the information received by the Committee, total as much as 130 days — provided precisely the circumstances in which ill-treatment, and even torture, of detainees could occur, and be used, not only to pursue investigation, but also to obtain confessions. It was difficult to understand why in such a developed society, with so many resources available to it, the police were not trained to avoid resorting to such behaviour. There were, after all, established investigative techniques which Japan could afford to apply.

49. Among the information that had reached the Committee was a publication by the Japanese Bar Association entitled *Human rights in Japanese prisons*, which he was sure would also have been received by the Japanese Government. The Association was a very serious professional body, legally constituted, and its allegations surely deserved to be taken seriously. The publication contained detailed and specific allegations of ill-treatment, which clearly called for action by the Japanese Government. They covered such matters as inadequate provision of meals, lack of medical supplies, and provision for counsel to interview detainees out of the hearing of police officers. He wished to ask the delegation

whether the Japanese Government had taken note of such allegations, and what steps it proposed to take in response to them.

50. A related matter was the duration, apparently up to 10 hours a day — and frequency of interrogations — that could spread over several weeks. Such practices inevitably exerted great psychological and material pressure on detainees the apparent objective of which was to obtain confessions from them. He noted the claim that confessions so obtained would be nullified by the courts, but the question remained whether judges were always aware of the circumstances in which the confessions had been made. The situation was aggravated by the fact that many separate departments and authorities could question detainees, thus unduly prolonging the process. Could not a single department be made responsible for interrogation or the activities of several at least be coordinated?

51. He noted, but did not accept, the explanation presented of the Japanese Government's failure to abolish, or even reduce the application of, the death penalty, which was to the effect that social consensus was still being sought. The central Government had an obligation to bring its legislation into line with the requirements of the Covenant, and to guide society towards acceptance of the strong current of opinion in the international community that favoured the abolition of the death penalty. With regard to the conduct of executions, he could see no reason why they should be surrounded by such secrecy that even the day of execution was not divulged to the condemned person himself or to his family, thus making it impossible for a condemned person to make his final testamentary arrangements. Such a system seemed to him inhumane and unacceptable, as was also the holding of condemned persons in solitary confinement. He asked the delegation to explain why such a system was applied.

52. The fact that not all accused were allowed access to legal assistance was a clear denial of their rights under the Covenant and specifically conflicted with article 14, paragraph 3 (b). In his view, the Japanese Government should give the requisite attention both to the letter and spirit of that article, as well as articles 6, 7, 10 and 22. As had been pointed out by Mr. Dimitrijevic and Mr. Lallah, there were serious deficiencies in Japanese legal procedure in the industrial and labour field in respect of the last mentioned of those articles, which resulted in such protracted litigation as to amount to a denial of justice.

53. He believed that there was an urgent need for the Japanese Government to reconsider both its internal legislation and its practical procedures so that it could fulfil its obligations under article 2 of the Covenant to give effect to the rights recognized in the Covenant.

54. **Mr. Mavrommatis** said that he greatly regretted that the moratorium on the use of the death penalty in Japan had come to an end. He asked whether there were any statistics to show an increase in the incidence of crimes incurring the death penalty during the time the moratorium had been in effect, account being taken of the figures relating to other serious crimes. He agreed with Ms. Chanet that the number of offences incurring the penalty listed on page 25 of the report was by any measure excessive, and it was particularly disturbing to note its application in cases where there was no evidence of premeditation to take life, for example, in cases of illegal use of explosives. He would, however, welcome assurance from the delegation that the death penalty was not mandatory for the offences listed, and that lesser sentences could be imposed. He would also welcome further clarification of the reported opposition of the Federation of Bar Associations to reduction in the number of offences carrying the death penalty as it appeared to be the case that the Federation was in favour of complete abolition. With regard to the management of executions, the Federation and Amnesty International cited discrepant figures — 25 years in one case, 30 in the other — for the length of time individuals could be held on death row, but such long delays were in any event unconscionable. As Mr. Prado Vallejo had pointed out, it was also intolerably inhumane to keep the date of execution secret from the

condemned man's family, who might at least wish to spend his last night on Earth in prayer, or in meditation.

55. He would not repeat the criticisms already made about detention in police custody, but he did wish to ask on what possible grounds provision was made for appeal by the police against an order by a judge that a detainee should be transferred to an ordinary prison. Moreover, Japan appeared to be the only country that regulated by law or subsidiary legislation the time and place of visits by defence counsel to an accused person. There were, of course, countries where the right of access was restricted in practice by such devices as moving an accused from one place of custody to another, but none of them, as far as he knew, had legal provisions for thus frustrating the defence. Even if that occurred in only 3 per cent of cases in Japan, that was too much. The right of counsel to visit their clients at any reasonable hour was one of the ways of reducing the incidence of torture or ill-treatment of detainees. Accordingly, he must ask why it was felt necessary in Japan to regulate counsel's right of access in that way.

56. Turning to articles 17 and 19 of the Covenant, he said that most modern systems of law were moving towards abolition of defamation or libel as criminal offences because of the risk of unnecessary restriction of freedom of expression. In Japan, however, it appeared that defamation even of a dead person was an offence. He noted a reference in paragraph 187 of the report to defamation "based on a falsehood", and he wished to ask what defence was open to an accused on that account. Would, for example, justification be a complete answer to the criminal charge? And was it necessary to prove that there had been criminal intent to defame and not merely a wish to comment on a matter of, for example, public or political interest? And what of the criterion of "injuring the credit of another"? What did that mean – saying that he had not paid his debts, for example? He felt that further clarification by the delegation was required.

57. He took issue with the argument in paragraph 15 of the report that restrictions on freedom of expression did not infringe article 19, paragraph 3, of the Covenant if they were provided by law. The paragraph did indeed state that restrictions were permissible in that case, but only on the grounds there specified, viz. as being necessary for respect of the rights or reputations of others, and for the protection of national security, public order, or public health or morals. If the ground of public welfare in any way extended beyond those narrow specifications, it was contrary to the Covenant and could not be used to further restrict a vital right on which democracy depended.

58. He noted the particular restrictions imposed upon broadcasting — which presumably included television — as distinct from the press, to which Mr. Kunikata had referred. One of the requirements was that broadcast material should be politically fair, but who was to decide what was politically fair, and who was to do the vetting or impose the censorship? It would seem that the only freedom that was not subject to restrictions was a person's inward thoughts, but was not that because no restriction could in practice be applied?

59. He shared the disquiet expressed by other members of the Committee about the anti-trade union tendency in Japanese labour legislation, as illustrated by the still pending cases of former employees of Japanese Railways who had been active trade unionists.

60. **Ms. Evatt** thanked Mr. Kunikata for the important information given in his answers.

61. With reference to article 6 of the Covenant, she said that the relatively small number of executions carried out over the last few years suggested that the death penalty was playing very little part in the criminal justice system as either a punishment or a deterrent, and the time had clearly come for Japan to consider total abolition of the penalty and ratification of the second Optional Protocol. As Mr. Prado Vallejo had emphasized, it was for Government to provide leadership in moving public opinion towards acceptance of that

standard. She also felt that the imposition of the death penalty could not be dissociated from the issue of fair trial.

62. The treatment of detainees in Japan gave cause for considerable concern. In particular, unless the procedures required by the Covenant were followed from the beginning of pretrial detention, the validity and fairness of the trial process could be jeopardized. Under the present system suspects were being held for up to 23 days without charge and without bail, which, even if the average period of detention was less, was still too long, particularly when it was used for prolonged and repeated interrogations without the presence of a lawyer and without any electronic recording or other type of safeguard. The Committee was told that there was a high rate of conviction, in which confessions were an important factor, but that made it absolutely essential to ensure that such safeguards were provided – and, after all, electronic technology was available and affordable by the Japanese authorities. The denial of bail to pretrial detainees was quite unacceptable and did not comply with the intent of article 9, paragraph 3, of the Covenant, and, even after indictment, bail was granted only exceptionally — in 23 per cent of cases in 1988 — and the deposits required for bail had been increased considerably over the years. She wished to ask the delegation for up-to-date figures on the granting of bail. She shared the concern of previous speakers about restricted access by the defence to documents in evidence. It was an essential element of due process that the defence should have access to all such documents, including police files. The Committee was told that provision was made for access, but the defence had to ask to see specific documentation of which they had knowledge. That was not enough: the defence might very well not be aware of all the material in the possession of the prosecution. She wished to ask the delegation whether it was the case that the prosecution was not required to disclose evidence in its possession which it did not intend to use, thus obstructing preparation of the defence case. Mr. Lallah had also referred to the use of hearsay evidence. There were many aspects of the Japanese criminal justice system which raised serious doubts about the compatibility of the system as a whole with the requirements of the Covenant.

63. With regard to article 17 of the Covenant, there were allegations of illegal wiretapping by the police, and the complaint had been made that in one particular case where that abuse had been clearly established, no remedy had been provided. The danger of such cases was that they encouraged the perception that there was one law for the authorities and the police and another for the citizen.

64. Freedom of speech must mean the freedom to say things that were not popular and even things that later proved to be incorrect. Referring to the second judgement cited on page 50 of the report, which held that the dismissal of an employee who had criticized management of the company was justified on the grounds that freedom of speech should not interfere with “the public welfare”, she asked what legal provision had been relied upon in imposing that restriction on freedom of speech.

65. She noted that the Japanese Government had declared that it did not interpret article 22 of the Covenant as applying to fire services personnel in spite of the fact that the International Labour Organization had pointed out that there were no reasons for excluding them from the right to freedom of association.

The meeting rose at 1.05 p.m.