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HUMAN RIGHTS COMMITTEE

REPLIES TO THE LIST OF ISSUES (CCPR/C/JPN/Q/5) TO BETAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE FIFTH PERIODIC REPORT OF THE GOVERNMENT OF JAPAN (CCPR/C/JPN/5)*

[22 September 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Replies to the List of Issues to be taken up in connection with the consideration of the Fifth Periodic Report of the Government of Japan

Question 1

The following are cases where the plaintiff invoked the provisions of this Covenant and the court judged on the possibility of a violation of the said provisions by the laws and regulations of Japan (since the examination of the fourth periodic report). No violations of the Covenant by the laws and regulations of Japan were recognized by the Supreme Court.

- Supreme Court November 10, 1998 Judgment of the Third Petty Bench

A case where Article 14 Paragraph 1 of the Alien Registration Act, prescribing a fingerprinting system for foreigners staying in Japan, could not able to be seen as a violation of the provisions of the Covenant.

- Supreme Court June 13, 2000 Judgment of the Third Petty Bench

A case where the provisions of the Article 39 Paragraph 3 of the Code of Criminal Procedure (specifying an interview with a prosecutor or others) were not found to be in violation of Article 14 Paragraph 3 (b) and (d) of the Covenant.

- Supreme Court September 7, 2000 Judgment of the First Petty Bench

A case where the text of Enforcement Ordinance Article 121 of the Prison Law, prescribing the interview time with the sentenced inmate to be within 30 minutes, and the text of Enforcement Ordinance Article 127 Paragraph 1, prescribing the need for the attendance of prison personnel at the interview, were not found in violation of Article 14 of the Covenant.

- Supreme Court September 25, 2001 Judgment of the Third Petty Bench

A case where the provisions of the Public Assistance Act, which do not cover to illegal foreign residents, could not be seen as a violation of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICCPR), and the provisions of the Universal Declaration of Human Rights adopted at the third session of the United Nations.

- Supreme Court September 9, 2002 Judgment of the First Petty Bench

A case where all provisions of the Public Offices Election Law, prescribing the prohibition of door-to-door canvassing and restrictions on distribution of written materials, were found not to be in violation of Articles 19 and 25 of the Covenant.

- Supreme Court September 10, 2002 Judgment of the Third Petty Bench

A case where all provisions of the Public Offices Election Law, prescribing the prohibition of door-to-door canvassing and pre-election campaigning were found not to be in violation of Articles 19 and 25 of the Covenant.

- Supreme Court September 5, 2003 Judgment of the Second Petty Bench

A case where the provisions of Article 50 of the Prison Law and Article 130 of the Enforcement

Ordinances of the Prison Law, prescribing restrictions on the giving or receiving of correspondence by prison inmates were found not to be in violation of Article 14 Paragraph 3 and Article 17 of the Covenant.

Question 2

In March 2002, the Japanese Government submitted to the Diet a human rights protection bill that would establish a new, independent administrative commission on human rights and a human rights remedy system supported by the commission. However, the bill was not passed because of the dissolution of the House of Representatives in October 2003.

The bill was drafted based on the May and December 2001 reports by the Council for Human Rights Promotion established based on the Act for the Promotion of Measures for Human Rights Protection passed in December 1996.

While the Japanese Government aims to submit to the Diet a bill for the establishment of an independent national human rights institution based on the above reports, a draft law is under review by the Ministry of Justice at present because of various argument over the scope of human rights violations subject to relief, the authority of the human rights commission and so on.

Question 3

It is considered that the individual communication procedure prescribed in the first Optional Protocol to the ICCPR is a noteworthy system from the view point of effectively securing the implementation of the treaty. However, due to the concern that it may raise some problems in regard to Japan’s judicial system, including the independence of the judiciary, the conclusion of the first Optional Protocol by Japan is under serious and careful consideration, while paying attention to the actual practice of the system.

More specifically, the Japanese Government is gathering as many examples of communications from individuals as possible, and conducting research on the responses of the Human Rights Committee and other committees as well as those of the State Parties concerned.

Question 4

“Public welfare” is mainly a concept which, under the idea of achieving a balance between different human rights, allows for certain restrictions upon human rights, denoting that the protection of human rights is not absolute or without limits.

In fact, when the pros and cons of the restriction on human rights are at issue, for example, in a case in which whether or not regulatory ordinances infringed upon the right to freedom of assembly was disputed, the Japanese Supreme Court rendered an opinion after concretely examining “the legality of the purpose of the regulation which sought to prevent adverse effects

caused by the exercise of the right, the rationality of the method of preventing the adverse effects and the balance between the interest gained and the interest lost by the restrictions."

In Japan, "public welfare" can not be relied on as a ground for allowing the State to place arbitrary restrictions on human rights, and the Government of Japan will never place arbitrary restrictions on human rights, relying on the concept of the "public welfare".

Question 5

In February 1996, the Legislative Council of the Ministry of Justice, an advisory council to the Minister of Justice, made a report on "Outline of the Bill for Partial Amendments to the Civil Code." The proposals made as the matters for revision under this Procedures, included the marriageable age to be 18 years of age for both men and women, and shortening of the period of prohibition of remarriage post divorce to 100 days. These issues of Civil Code revisions are important matters that relate to the marriage system and how the family should be, with various arguments made across all levels of society and between all relevant parties, hence currently attention has been given to the trends of opinions amongst the citizens.

The provisions on the period of prohibition of remarriage(Civil Code Article 733) were prescribed as one way of avoiding the difficulties of identifying the fatherhood of a baby, born to a woman who remarries within a short period after the dissolution of her previous marriage, between the husband of the previous marriage and the husband of the new marriage (ref. Civil Code Article 772). The system involved is based on logical reasoning seeking to prevent disputes arising regarding relations between fathers and children.

Also, marriage is the act of forming a new family, the basic unit of society, and should not be recognized for those who have not yet reached a certain level of maturity. Accordingly, the law uniformly prohibits the marriage of youths who have not yet reached the necessary maturity for marriage. However, there are physical and mental differences in the age at which men and women reach the maturity necessary for marriage. There is a rationale behind the provisions giving different marriageable age for men and women that reflect these physical and mental differences between men and women.

Question 6

Promotion of women's participation in the decision-making process is important in establishing a gender-equal society. Accordingly, the Japanese government set the objective that women will take at least 30% of the leadership positions in all fields of society by 2020. The government specified this objective as one of the highlights of the Second Basic Plan for Gender Equality formulated in 2005, and is now pursuing it.

With the need for more strategic initiatives to expand the participation of women, the

Headquarters for the Promotion of Gender Equality formulated the Program for Accelerating Women's Social Participation in April 2008. The Program set out three measures - achieving a work-life balance, giving full support for developing women's capacity building and its utilization, and changing awareness – as its basic directions. Specific undertakings to be carried out by FY2010 are determined, with the aim of accelerating participation of women in every field.

In the said Program, women's participation in the public service in particular is considered as one of three priority fields where greater activity by women is hoped for but currently the participation is not sufficient. Therefore, initiatives are being taken toward this, including the setting of a target for improving the ratio of women in positions equivalent to directors of Ministries from 1.7% (as of FY2005) to 5% by the end of FY2010. Appeal has also been made to encourage the promotion of female civil servants in the local governments.

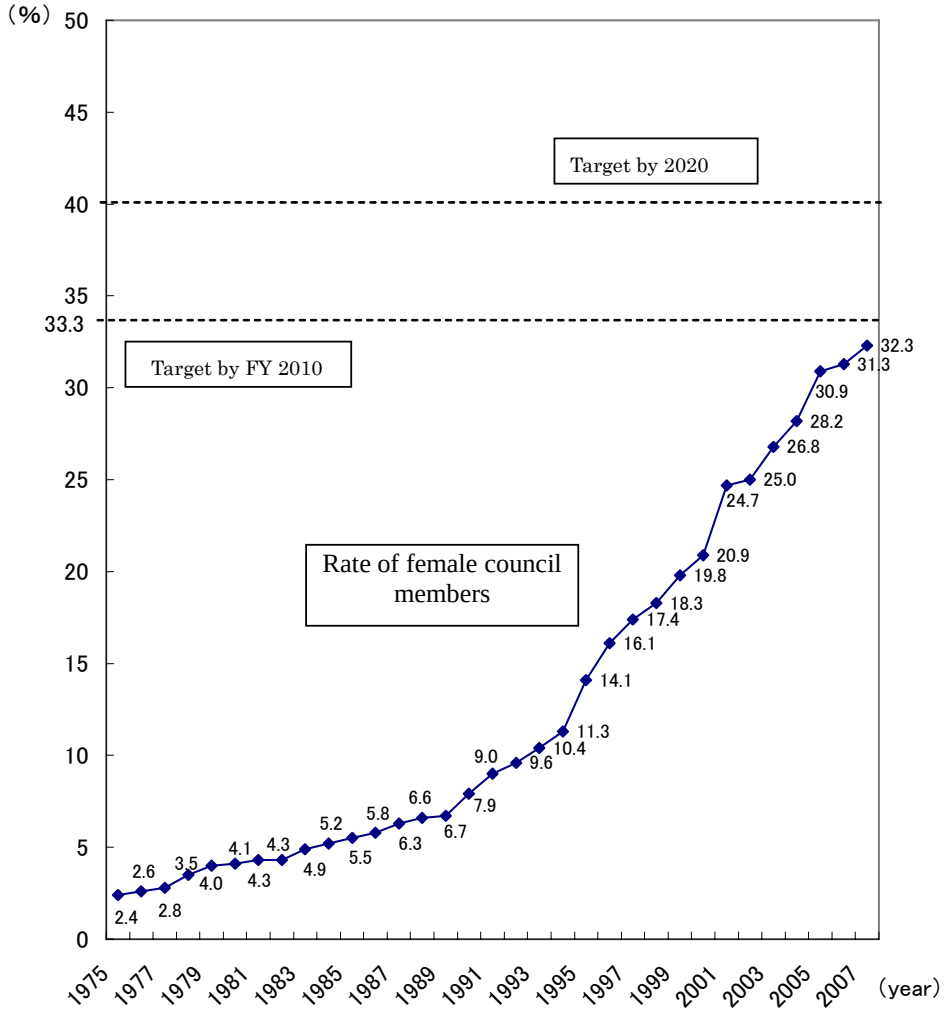
The numbers of female members of government advisory councils and so on was 32.3% at the end of September 2007, having already reached the target figure of 30% (reached as of the end of September 2005). Initiatives are in place with the objectives of ensuring that by 2020, neither male or female members of the government advisory councils overall falls below 40% of the total number of council members, while attaining the current goal of reaching 33.3% for female members by the end of FY2010.

Date of survey	Total number of councils	Number of councils including female members	Rate of councils including female members (%)	Total number of councils' members (persons)	Number of female members (persons)	Rate of female members (%)
January 1, 1975	237	73	30.8	5,436	133	2.4
June 1, 1980	199	92	46.2	4,504	186	4.1
June 1, 1985	206	114	55.3	4,664	255	5.5
March 31, 1990	204	141	69.1	4,559	359	7.9
March 31, 1991	203	154	75.9	4,434	398	9.0
March 31, 1992	200	156	78.0	4,497	432	9.6
March 31, 1993	203	164	80.8	4,560	472	10.4
March 31, 1994	200	163	81.5	4,478	507	11.3
September 30, 1995	207	175	84.5	4,484	631	14.1
September 30, 1996	207	185	89.4	4,472	721	16.1
September 30, 1997	208	191	91.8	4,483	780	17.4
September 30, 1998	203	187	92.1	4,375	799	18.3
September 30, 1999	198	187	94.4	4,246	842	19.8
September 30, 2000	197	186	94.4	3,985	831	20.9
September 30, 2001	98	94	95.9	1,717	424	24.7
September 30, 2002	100	97	97.0	1,715	429	25.0
September 30, 2003	102	100	98.0	1,734	465	26.8
September 30, 2004	103	102	99.0	1,767	499	28.2
September 30, 2005	104	103	99.0	1,792	554	30.9
September 30, 2006	106	105	99.1	1,804	565	31.3
September 30, 2007	113	111	98.2	1,872	604	32.3

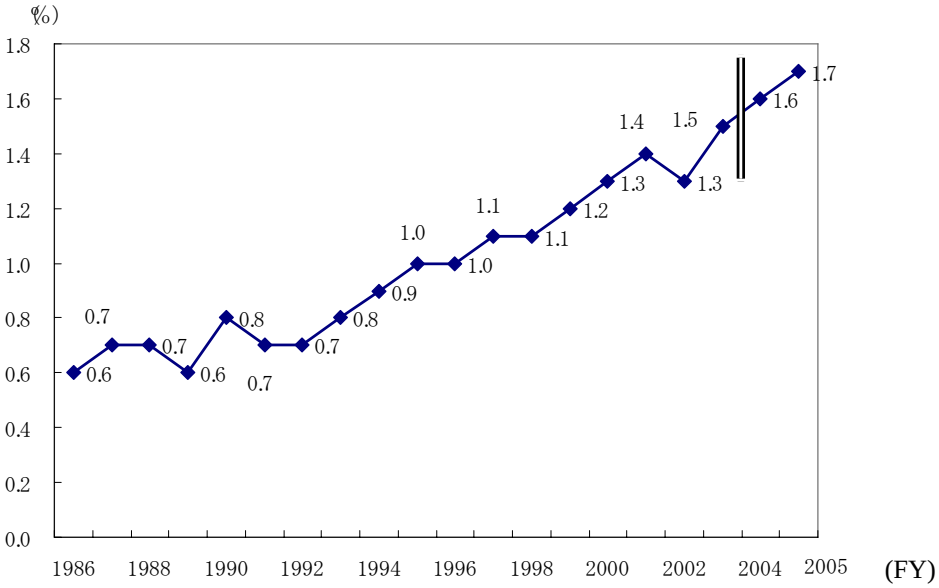
Changes in Female Council Members' Participation in National Advisory Councils, etc.

・The Cabinet Office conducted surveys for National Councils, etc. (excluding those being discontinued, those council members had not been appointed yet, or those under being appointed and placed in local branch bureaus and divisions), based on Article 8 of the National Government Organization Law and Articles 37 and 54 of the Cabinet Office Establishment Law.

Changes in Female Council Members' Participation in National Advisory Councils, etc.



Percentage of Females in Management Posts among Government

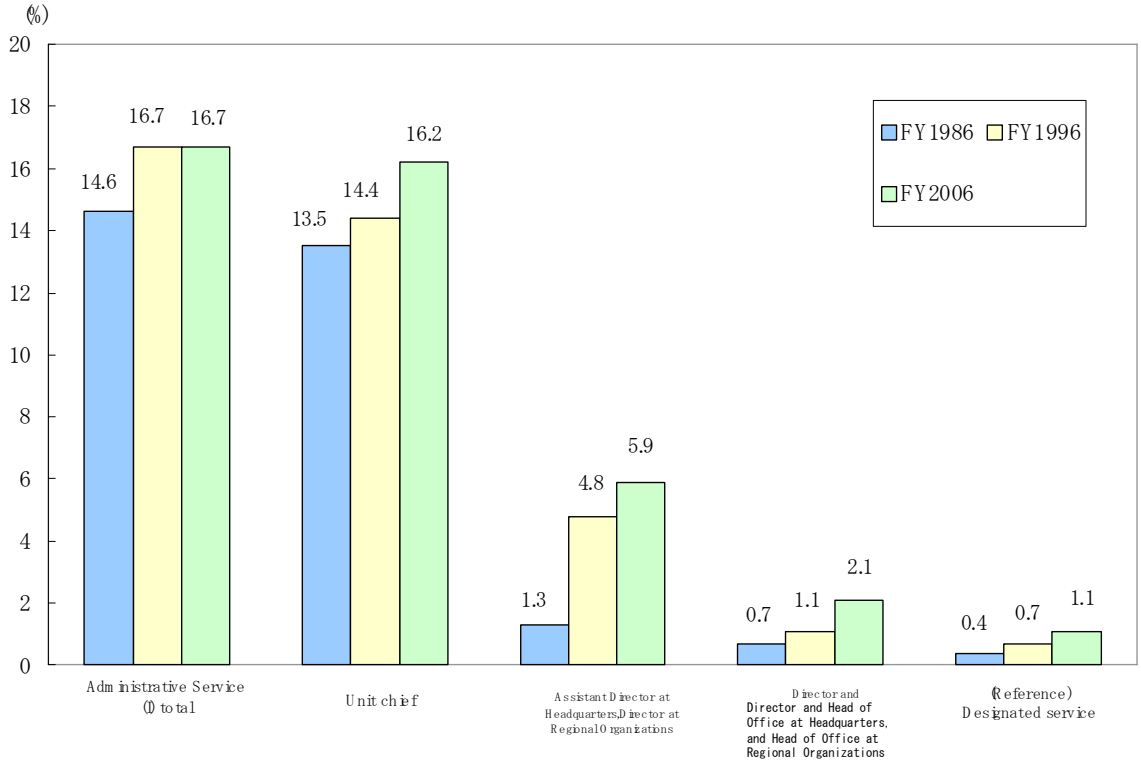


Notes:

1. Up to FY2003, the data was prepared by National Personnel Authority's "The Status Report on Appointments of National Public Employees in the Regular Service." After 2004, the data was prepared from "Follow-up Implementation Survey Regarding Expanding Conditions, etc. of Employment and Promotion for Female National Government Officials", provided by the Ministry of Internal Affairs and Communications and the National Personnel Authority.

2. The target of the examination is different before FY2004 and after FY2004.

Ratio of Female National Public Employees in the Regular Service, by Positions
(Administrative Service (I))



(Notes)

1. Data from the "The Status Report on Appointments of National Public Employees in the Regular Service" by the National Personnel Authority
2. Data for FY1986 and FY1996 is as of the end of the fiscal year, and data for FY2006 is as of January 15
3. Figures show the ratio of female among employees covered by the salary schedule for Administrative Service (I): Unit Chief at 4th to 6th salary grades (3rd and 4th grades for FY2006), Assistant Director at Headquarters, Director at Regional Organizations at 7th and 8th grades (5th and 6th grades for FY2006), and Director and Head of Office at Headquarters, Head of Office at Regional Organizations at 9th and 11th grades (7th to 10th grades for FY2006)

Question 7

The ratio of women in management positions in Japan shows an increasing trend over the long term, but remains at a low level overall. Promoting the promotion of women into such positions

is recognized as a vital issue.

Accordingly, the appointment of women to management positions is being promoted and action is being taken through the encouragement of positive action in order to ensure that women do not face unfair discrimination in companies' employment administration. This positive action takes such forms as (1) ensuring the implementation of the Law on Equal Opportunity and Treatment between Men and Women in Employment, which prohibits discrimination and indirect discrimination (see note below) in recruiting, employment, placement and promotion; (2) introducing good examples and holding training seminars in regard to improving employment administration to promote active careers for women.

(Note) Prohibition of indirect discrimination was put into action by the 2006 Amendment to the Law on Equal Opportunity and Treatment between Men and Women in Employment (effective since April 2007) which stipulated the following three measures if taken without just cause being given, are illegal: (1) Setting recruiting / employment conditions on a person's height, weight or physical strength; (2) Setting recruiting / employment conditions for standard career track positions involving transfer of postings nationwide; (3) Setting promotion conditions that require experiences of transfers to other locations.

The amended law has only been in place for a short period time so that no moves have been made to strengthen sanctions or expand the scope of indirect indiscrimination, but the said scope will be reviewed as necessary after examining the enforcement of the law.

Question 8

The spousal rape is punishable under the Article 177 of the Penal Code of Japan.

Examples of measures to protect and support victims of gender-based violence are as follows.

(1) Consideration for women suspects / detainees /sentenced inmates

Consideration is given to the interrogation of female suspects by ensuring the presence of a female police officer as necessary, in order to prevent sexually inappropriate incidents. Additionally, as a means of criminal investigation;

a) physical search of a female must in principle be done with the presence of a female adult
b) physical examination of a female must be done with the presence of a physician or a female adult, and
c) strip physical examination of a female without the warrant even with her consent is completely prohibited.

Treatment of female detainees in detention facilities is carried out as much as possible by female police officers. In particular, physical examinations and the bathing of female detainees are to be conducted without fail by female police officers or staff. Setting up of female-only detention facilities staffed by female police officers is also being promoted. Even in cases when female

detainees are not able to be detained at female-only facilities, all treatment of detainees outside cells will be under a plural number of detention officers, while detainees will be placed as much as possible with other female detainees in cells. Where detainees are placed alone, patrols by executive staff members are enhanced. While it is not yet possible to place all female detainees in female-only facilities, our intention is to increase the number of such facilities and expand trainings given to staff.

Regarding penal institutions, placement of female prison officers has been expanded and staff training program to ensure proper treatment has been improved and enhanced. In principle, doors of the female inmates' rooms can be opened only by female staff members. At least two male staff members, in principle, attend visits or exercise of female inmates in case where no female staff members are available. To prevent inappropriate treatment of female inmates, oversight systems have been in place with surveillance cameras in the corridors of the female inmates' quarters and patrols by executive staff members are intensified.

The Ministry of Justice is trying to increase the numbers of female prison officers, while it is difficult to have treatment of female inmates carried out only by female officers under the current composition of the staff in penal institutions.

(2) Measures for victims of sexual crimes

In order to minimize the psychological burden on the victims of sexual crimes and prevent concealment of damages by sexual crimes, measures such as the following are being taken by prefectural police forces: (1) special investigators with appropriate training are to be placed to direct and coordinate investigations of sexual crimes, compile how the crimes occurred, and train the expert investigators; (2) female police officers are in charge of the duties involving the victims of sexual crimes, including questioning of the victims; (3) counseling rooms and hotline network for counseling on sexual crime incidents and investigations of such crimes are set up and staffed by female police officers. Measures, including support for the costs necessary for emergency contraception and construction of a network with gynecologists are also being promoted.

(3) Training for judges

The government understands that the Legal Training and Research Institute, which conducts the training of judges, every year gives training seminars related to gender issues, including domestic violence, as part of the various forms of training conducted for judges at their time of investiture or taking up of new posts and so on.

(4) Training for law enforcement officers

ICCPR is covered in the lectures on international law given as compulsory training for the Immigration Bureau (in the Elementary Training Course for newly-appointed Immigration Inspectors and Administrative Officials, the Elementary Training Course for newly-appointed Immigration Control Officers, and the Intermediate Training Course for Immigration Officers). In addition, the intermediate level training includes lecturers by related organizations such as the International Organization for Migration (IOM) which gives lectures focused on such issues as trafficking in persons, ensuring greater awareness of and knowledge of such issues. Human rights training in 2008 will include lecturers from various organizations giving lectures focusing not only on the trafficking in persons but also domestic violence.

Training related to gender issues is given to correctional officers at the Training Institute for Correctional Personnel, such as training for newly recruited officials, training for lower level senior officials, and upper level senior officials. During the course of such training, lectures are given on the aim of the Act on the Prevention of Spousal Violence and the Protection of Victims, the prevention of sexual harassment and other forms of violence against women and gender equality.

Workplace training is also provided in each correctional institution, such as role playing and case studies on the treatment of female inmates.

MOJ is providing various training programs for the officers of public prosecutors offices and, in those programs, offering lectures on appropriate considerations with regard to gender and necessary protection/ support for victims, especially of the sexual crimes.

Compulsory training is given in Police Academies for those newly recruited or those being promoted, as well as specialized training for police officers involved in crime investigation, detention services or working with victims of crime. These trainings aim to give the officers necessary knowledge and skills to carry out their duties appropriately while respecting human rights of suspects, detainees and victims. These training include education on the appropriate treatment of women suspects and detainees, as well as assistance to and protection of female victims of violence.

Question 9

1. Crimes of domestic violence

Crimes of violence committed inside the home and other crimes of violence committed elsewhere are both dealt with the same articles for the crimes of assault, bodily injury, etc. of the Penal Code. Among these violent crimes, it would not be appropriate to deal with domestic violence more severely than with those non-domestic violent crimes. This is because assaults or bodily injuries etc. committed domestically vary with motives, means and degrees of impact on those involved, and are not necessary constitute a category which is worse than other violent

crimes. In addition, the punishment of serious domestic violence can be dealt appropriately within the range of existing statutory penalties for crimes of assault, bodily injuries, etc.
(Reference statute) Penal Code
Article 204: A person who causes another to suffer injury shall be punished by imprisonment with work for not more than 15 years or a fine of not more than 500,000 yen.
Article 208: When a person assaults another without injuring the other person, the person shall be punished by imprisonment with work for not more than 2 years, a fine of not more than 300,000 yen, misdemeanor imprisonment without work or a petty fine.
In Japan, provisions for crimes of homicide, injury causing death, bodily injury, assault, abduction, confinement, etc. are applicable to domestic offences as well and do not require victim's complaint for indictment.

2. Protection of and assistance to victims of domestic violence
Spousal Violence Counseling and Support Centers have been set up in 180 locations (as of April 1, 2008) in Women's Consulting Offices or other appropriate facilities in prefectures all over Japan, based on the Act on the Prevention of Spousal Violence and the Protection of Victims. These support centers provide counseling for the victims of spousal violence, medical and psychological assistance to victims of spousal violence cooperation with doctors and psychiatrists, temporary protection at the Women's Consulting Offices or private shelters, and helping them in order to promote the self-reliance of victims by finding work and housing. The victims can also be accommodated at Women's Protection Facilities if necessary even after having left their temporary places of protection, and receive assistance for recovering their mental and physical health as well as for gaining independence and achieving stability in their lives.
Temporary protection for victims of spousal violence and their families is given by the Women's Consulting Offices, one being established in each of the 47 prefectures. Temporary protection can also be entrusted to those who meet certain criteria. The number of facilities entrusted to give temporary protection was 168 in FY2004, 198 in FY2005, 229 in FY2006 and 256 in FY2007, showing an increase in the number of such shelters year by year. Budget for entrusted temporary protection were fully sufficient in FY2008.
In cases where there is serious threat of causing severe physical harm or loss of life through physical violence by the spouse, Protection Orders can be issued by court against spouses through petition from the victim. Protection Orders come in five types; (1) orders prohibiting approaching the victim, (2) orders prohibiting phone or other behaviors(including sending e-mails) with the victim, (3) orders prohibiting approaching the victim's children, (4) orders

prohibiting approaching the victim's relatives, and (5) deportation orders. Duration of (1) to (4) are six months, with (5) lasting for two months. The number of protection orders is increasing year by year; 1,128 orders were issued (with 1,426 new orders requested) in 2002, the first year after the enactment of the Act on the Prevention of Spousal Violence in 2001, while 2,186 orders were issued (2,779 new orders requested) in 2007.

In order to give full assistance to victims of domestic violence to gain independence, the Ministry of Health, Labour and Welfare takes measures to strengthen temporary protection system, which include legal assistance and arrangements with lawyers in regards to divorce and residence status, placing of psychotherapists in the places of temporary protection and ensuring of people to act as guarantors of victims in finding rental apartments or looking for work.

IDs issued by the Women's Consulting Offices and similar places make it easier to go through procedures to gain separate medical insurance from that of the spouses, as well as making it easier to change the recipient of the child-care allowance from the spouse to the victim, starting FY2008 onwards. Measures of assistance involving procedures for changing Basic Pension Number and the Basic Resident Register make it possible to avoid pursuit by the spouse and enable separation from the spouse.

Access by single mothers including mothers escaping from their spouses because of domestic violence to employment is provided through the Work / Self Reliance Assistance Centers for Solo Parents project, which has a comprehensive program offering job hunting information, courses on finding work and career counseling for single mothers. The Work / Self Reliance Assistance Centers for Solo Parents has been expanding their projects, including seminars for those wishing to work at home. In order to improve the self-reliance and living of single mothers who wish to work but have difficulty in finding jobs, "Hello Work" (a public job placement office) and other welfare offices cooperate in providing assistance for finding employment that matches each person's need and situation.

As economic assistance, child-raising allowance is provided to the mother or care-giver of children for whom the household income would no longer be the same as before due to the absence of the father in the household after divorce or separation, which increases welfare for the child and encourages independence and a stable environment for such a household. The Single Mother / Widow Welfare Loan System provides no-interest loans to allow the acquisition of necessary skills for finding work, and the maximum amount for loan has been raised to further improve this system.

Spousal violence is a major violation of human rights including the case of a crime, and it requires a prompt and appropriate response from a humanitarian viewpoint. As such, an appropriate response in humanitarian terms is made for the protection of foreign national victims, with sufficient consideration being given to individual circumstances and the will and point of

view of such a victim in their status of residence examinations and deportation procedures.
The Immigration Bureau encourages humanitarian protection in line with the purposes of the Act on the Prevention of Spousal Violence and the Protection of Victims and, in consideration of the individual circumstances of those applying for extention of their period of stay or a change of status of residence when forced to separate or divorce from their spouses due to spousal violence, permission are given for a change of status of residence.
Even in cases where the victim is under the grounds for deportation, special permission to stay in Japan is granted in consideration of the individual circumstances involved, and from the perspective of securing a stable legal status.

Question 10

1. Question regarding the amendment of the Daiyo Kangoku System (the substitute prison system)
The Prison Law of 1908 has been changed extensively with the consecutive amendments of May 2005 and June 2006, and has been renewed as the Act on Penal Detention Facilities and Treatment of Inmates and Detainees. Under the new Act, the previous substitute prison system has been replaced by a new substitute detention system in which unsentenced inmates, including pre-indictment detainees or suspects, can be placed in police detention facilities instead of penal institutions.
As the practice of Japanese police, investigators have been prohibited from controlling the treatment of suspects held in detention facilities, while the detaining officers, who are not to engage in investigation and belong to the separate department of the organization are to treat detainees. This thorough separation of functions of investigation and detention both organizationally and operationally allowed detention facilities to treat detainees with full respect for their human rights. The above-mentioned amendments made this principle of separation of detention and investigation explicit on the text of the Act, in order to further clarify that sufficient consideration must be paid for the human rights of the detainees. From the same perspective, systematic improvements have been made under the above amendments, such as the establishment of the Detention Facilities Visiting Committees, which consist of ordinary citizens, and the enhancement of complaints mechanisms (These are also significant in strengthening the function to check the separation of detention and investigation.) (Further details of such improvement can be found in the pamphlet “Police Detention Administration in Japan”).
Furthermore, procedure to detain a suspect is also respectful of the human rights such that it is for judiciary to decide on the detention according to the conditions specified under the Code of Criminal Procedures, such as the risk of the suspect to flee or to destruct evidences. It is also in

respect for the suspect's human rights that it is the discretion of the judiciary to decide on where to detain the suspects by considering the various circumstances (the nature of the case, the benefit for the defense activities of the suspect, accommodation capacity of the facility, etc.) based on the Code of Criminal Procedures and other relevant standards.

The investigation, including the interrogation of suspect, to the precision and the accurate indictment decision are the quintessence of the Japanese criminal justice. On the other hand, the period to hold the custody of suspects prior to indictment is only warranted with several judicial screenings with a limitation of duration up to 23 days as the maximum.

In order to conduct interrogation of the suspect and other investigations smoothly and effectively within this limited period of detention, and to make it more convenient for those who visit the detainee such as the suspect's family, the counsel, and others, detaining the suspects in one of the detention facilities that spread throughout the country is practical and in fact plays a vital role.

Abolishing the substitute detention system has the danger of destroying the foundation of the merits of the Japanese criminal justice system mentioned above, namely precise investigations and accurate indictments supported by these investigations, which are conducted within the limited detention period. Currently, there are no strong demands from the citizens to change the criminal justice system to a brief investigations and lower standards for indictment, hence we consider it not appropriate to immediately revise the above-stated Act on Penal Detention Facilities to abolish the substitute detention system.

2. Use of alternative measures at the pre-trial stage and regarding the suspect to have access to relevant materials in police records after indictment

Japan does not permit to release the pre-indictment detainee on bail but permits it after the indictment even before the first trial date.

The prosecutor has been required to give the accused and the counsel an opportunity to review the evidential documents and materials before requesting their examination on the trial. Further, the 2004 amendment of the Code of Criminal Procedure introduced the pre-trial and inter-trial arrangement proceedings. In such proceedings, the prosecutor is to disclose the evidence which he/she has requested the examination to the accused and his/her counsel. In addition, the prosecutor also needs to disclose, after balancing the necessity and the harmful effect of the disclosure, (1) the evidence that falls under a certain category and is deemed to be important to judge the credibility of particular evidence requested by the prosecutor for examination and (2) the evidence which is deemed to be connected to the allegation raised by the suspect or the counsel. When there is a disagreement in relation to whether or not to disclose the particular evidence, the court is to rule.

3. Regarding the suspect to have an access to court-appointed lawyers

At present, the judge is to appoint a counsel to detained suspects of cases punishable with death penalty, imprisonment for life or imprisonment not less than a year and if the suspect is unable to appoint a defense counsel due to the indigence or other reasons. From May 2009 onwards, the applicable cases will be expanded to those punishable with death penalty, imprisonment for life, or a imprisonment of more than three years.

In order to ensure the right to request the assistance of a state appointed counsel, judicial police officials and prosecutors must inform arrested suspects of such right and give them suitable opportunity to prepare for such request.

Question 11

The prosecutor has been required to give the accused and the counsel an opportunity to review the evidential documents and materials before requesting their examination on the trial. Further, the 2004 amendment of the Code of Criminal Procedure introduced the pre-trial and inter-trial arraignment proceedings in order to sufficiently arraign the issues. In such proceedings, the prosecutor is to disclose the evidence which he/she has requested to the accused and his/her counsel. In addition, prosecutor also needs to disclose, after balancing the necessity and the harmful effect of the disclosure, (1) the evidence that falls under a certain category and is deemed to be important to judge the credibility of particular evidence requested by the prosecutor for examination by the court and (2) the evidence which is deemed to be connected to the allegation raised by the suspect or the counsel. When there is a disagreement in relation to whether or not to disclose the particular evidence, the court is to rule.

Question 12

In Japan, crimes that enlist death penalty as an option among the statutory penalties are limited to 18 serious crimes, such as homicide and robbery causing death. Even for these crimes except the instigation of the foreign aggression, there are possibility to be sentenced with imprisonment with work or without work.

In addition, the decision to chose death penalty among statutory punishments are to undergo extremely strict and careful examination of the circumstances in consideration to the criteria shown in the precedents of the Supreme Court. Accordingly, use of the death penalty is limited only to those who have committed a brutal crime that involves intentional killing with extremely high criminal culpability.

Hence, in Japan, the death penalty is sentenced only for the most serious crimes after extremely strict procedures.

Considering the situations where the majority of our public opinion perceives that sentencing death penalty is unavoidable for extremely vicious and cruel crimes, and where the brutal crimes such as killing multiple victims or killing after kidnapping the victim, Japan considers that it is not appropriate to introduce a general moratorium on the execution of death penalty upon all those who are convicted. It is also possible to result in even more inhumane situation by installing the moratorium once but revoking it later for the moratorium would have raised the expectation of the convict not to be executed.

Hence, it is not appropriate to take a general moratorium on the execution of death penalty for all those who received the sentence.

According to the law in Japan, commutation of the sentence as pardon can be also applied to those who are convicted for death penalty.

Question 13

Japanese criminal justice system consists of three-tier court proceedings that the defense may appeal twice to argue the conviction itself or the severity of the sentence. In addition, for the case with statutory punishment of death penalty, it is mandatory to appoint a defense counsel and the counsel can independently file an appeal. Considering the large number of death penalty cases that have been and are being appealed, it seems unnecessary to establish a mandatory system for appeals in death penalty trials.

In the Act on Penal Detention Facilities and Treatment of Inmates and detainees, enacted on June 1, 2007, stipulated that an inmate sentenced to death shall be permitted to send/receive letters to/from and receive visits by an attorney who is regarded as a person with the necessity to have a correspondence or visit in order for the inmate to carry out a business pertaining to personally, legally, or occupationally important concern of the inmate, such as pursuance of a lawsuit, with inspection of the letters and attending at the visits by staff members of the penal institution. As for the visits to an inmate sentenced to death by his/her attorney in charge of petition for a retrial, it is stipulated that attendance by the staff member during the visits may be omitted when it is deemed appropriate, considering the following on a case by case basis: the existence of any particular circumstances where the omission is regarded as appropriate, the effects on maintenance of discipline and order in the penal institution, and the necessity to grasp the mental state of the inmates. Legal provisions for unsentenced inmates apply mutatis mutandis to sending or receiving letters to or from his/her retrial attorney in case the decision to begin a retrial has established. Letters a sentenced inmate receives from the attorney shall be examined within the limit necessary for ascertaining that the letters are sent by the attorney. Thus, certain consideration is given to those letters. As for visits, staff members do not attend at visits under the provisions of Article 39 Paragraph1 of the Code of Criminal Procedure.

For the seriousness of the consequence, sufficient consideration is given before ordering the execution of the death penalty. Upon consideration, the issues surrounding the request for the retrial or application for the pardon would also be taken into account although these issues are not the statutory ground to suspend the execution. If the application for the pardon could suspend the execution, repeated application would prevent the execution to ever take place, thus the result of the criminal trial would become impracticable. Hence it is not appropriate to suspend the execution of the death penalty for all those who requested the retrial or applied for the pardon.

Question 14

Decisions to place sentenced inmates throughout day and night in a single room, or to extend its period, are carefully reviewed by a board of review composed of relevant staff of the penal institution, and when necessary, the opinions of doctors or special staff regarding the inmate's physical and mental condition are obtained. Measures are taken for those placed in a single room throughout day and night to endeavor to remove the causes of such confinement, including meetings with institution staff to encourage the inmates to return to the group treatment rooms or examinations by psychiatrists.

In cases where disciplinary punishment is to be given to inmates, appropriate measures are taken such as giving consideration to the inmate's age, physical/mental condition and everyday behavior, the nature, gravity and motive of the disciplinary offense, the impact which the disciplinary offence has imposed on the administration of the penal institution, and the inmate's attitude after the disciplinary offense. Sufficient opportunity is also to be given for the inmates to explain their actions. Obtaining the opinion of medical doctors on the staff of the penal institution is also required when a disciplinary punishment is executed.

Measures taken regarding the confinement in the protection room also include: the confinement must be suspended immediately in cases where the necessity of confinement ceases to exist, the period of the confinement shall be 72 hours or less, although it can be extended every 48-hours if there is a special necessity to continue the confinement; when confining an inmate in a protection room or renewing the period of the confinement, the opinion of a medical doctor on the staff of the penal institution must be promptly obtained.

If an inmate files a complaint to the Minister of Justice based on the Act on Penal Detention Facilities and Treatment of Inmates and Detainees regarding measures such as isolation, disciplinary punishment including disciplinary confinement or confinement in a protection room, and when the Minister is about to decide that the measures taken are not illegal or not unjust, the Ministry of Justice will set up an Investigation Committee for the Complaints from the Inmates of Penal Institutions, composed of outside experts (attorneys, medical doctors, etc.), to have the

third party's view on the validity of these measures.

Those inmates sentenced to death face an extremely painful mental burden in facing their own death, hence the penal institution must ensure the mental and emotional stability of the said inmate as well as secure the custody of the inmates. Under Article 36 of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, inmates sentenced to death are to be placed in a single room throughout day and night and are not permitted, in principle, to make mutual contacts even in the outside of the inmates' rooms. However, if it is deemed advantageous to help the inmate maintain peace of mind, they may be permitted to make mutual contacts.

In order for the inmates sentenced to death to avoid suffering from loneliness, various measures are taken with ingenuity to help the inmates maintain peace of mind. These include provision of interview with nongovernmental volunteers, religious teachings, and interview with the staff of the penal institution when necessary by virtue of their office. Self-supplying articles permitted for such inmates are of a greater range than those permitted for sentenced inmates and unsentenced inmates, and opportunities are given them to watch videos or television programs.

Question 15

Penal Institution Visiting Committees have been established as a mechanism for making statements reflecting the views of the citizens in regards to the overall administration of penal institutions, after accurately ascertaining reality of the conditions involved. The Committees have a certain degree of independence from the Ministry of Justice and the penal institutions in terms of their authority and procedures for appointment of their members and so on. They are able to operate to investigate cases where inappropriate action by penal institution staff are suspected and to request the warden of the institution to present relevant information.

Under the inmates' complaints mechanism, with regard to complaints made through (1) a Claim for Review and (2) a Report of Cases, when the Minister of Justice is about to decide that the measures taken are not illegal or not unjust, the Ministry of Justice will set up an Investigation Committee for the Complaints from the Inmates of Penal Institution, composed of outside experts (attorneys, medical doctors, etc.), to have the third party's view on the validity of these measures.

In addition to the above complaints mechanism, inmates can bring complaints to the Minister of Justice or others, file a civil or administrative lawsuit, or make a complaint / accusation to investigative organs. Complaints made through such means reached 11,316 in 2005, 13,021 in 2006, and 13,237 in 2007 (see note below). No data is possessed, however, on the number of inmates' complaints in regards to torture or other cruel treatment, the number of related inquiries and compensation given to the victims of such treatment.

Note: This includes complaints made under the former complaints mechanism, which was abolished with the enforcement of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees on June 1, 2007.

Criminal or disciplinary measures caused by violence by the staff of penal institutions towards inmates are shown below.

		2005	2006	2007
Criminal measure		0	0	0
Disciplinary measure	(Discharge from duty)	0	0	0
	(Suspension from duty)	0	0	0
	(Pay cut)	0	0	3
	(Reprimand)	2	0	0

Under the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, a new system has also been established where Detention Facilities Visiting Committees composed of third parties visit detention facilities, interview detainees and state their findings to the administrator of the said facilities.

Under the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees, the Act has also set up complaint mechanisms where detainees' complaints can be made to Prefectural Public Safety Committees. The Prefectural Public Safety Committees are set up as representatives of the wisdom of local citizens and function as a collegiate body to guarantee the democratic operation of the prefectural police forces. While administering the prefectural police forces from an impartial viewpoint, the Committees also investigate as appropriate complaints made from detainees.

There were 350 complaints which had made under the Act on Penal Detention Facilities and the Treatment of Inmates and Detainees since its enactment on June 1, 2007 to December of the same year. Other procedures for making complaints by detainees include a filing of complaints to the Prefectural Public Committees based on the Police Law, and amongst the complaints registered through other procedures, the complaints made by detainees regarding detention services were 9 in 2005, 14 in 2006 and 5 in 2007. All those complaints were appropriately responded to based on the relevant ordinances, and no detention officers were pronounced guilty verdicts or subject to disciplinary actions, nor was any payment of compensation recognized.

In addition to the cases involved with the complaints mentioned above, there has been no case over the period from 2005 to 2007 of guilty verdict against detention officers for crimes of assault and cruelty by special public officers, or assault and cruelty by special public officers leading to injury or death.

Question 16

1. Time limits for the duration of interrogation of detainees and systematic surveillance of interrogations

The police has its own regulation that it shall avoid conducting interrogation of a suspect in midnight or for a long period of time, except when there are inevitable reasons. Also, the police has rules that the advanced approval by the Chief of the Police Station or other appropriate officers in charge of the investigative department is required for cases below;

a) When interrogation is to be carried out between the hours of 10pm and 5am the following day
b) When interrogation is to be carried out over eight hours in a single day.

The police introduced the inspection system to ensure appropriate interrogations. In this system, officers who are not engaged in investigations inspect whether interrogations are conducted appropriately or not and may require investors to stop the interrogations if they identify acts which lead to inappropriate treatments.

2. Ensuring the presence of counsel during interrogations

Due to the fact that effective methods of acquiring evidence that are legitimate in other countries, such as plea-bargaining, interception of communications, etc are almost entirely prohibited in Japanese criminal procedures, the interrogation of the suspect plays critical role in finding the truth in the case at hand. Mandating the presence of the counsel during the interrogation, would pose a great risk on the investigation, such as:(1) by greatly diminishing the principal function of the interrogation to have investigator to confront, intensely hear and persuade the suspect and through winning the suspect’s respect, have the suspect to disclose the truth, and (2) it would be difficult to take the usual measures taken during interrogation that is to present certain evidence to the suspect and request the suspect’s explanation in relation to that evidence. For example, investigators may present suspect with certain evidence that contradicts suspect’s statement then inquire about why this contradiction exists in order to measure the veracity of the suspect’s statements and of the evidence. However by mandating the counsel’s presence, the investigators would less likely to choose to disclose the evidence to the counsel at investigative stage thus to have sufficient interrogation becomes difficult.

This issue requires careful consideration from various other perspectives in regards to the role and the function of interrogation in criminal procedures overall.

3. Medical services in police detention facilities

Medical measures for detainees include visits by a doctor hired by the detention services managers approximately twice a month for health checkup, and any necessary medical care when any injuries or disease occurring to the detainee, which is to be given immediately using public expenditure. These are stipulated in the Act on Penal Detention Facilities and are operating as described. In 2006, the number of medical measures taken by doctors for the detainees reached about 250,000 times.

4. Confessions

There are no clear statistics showing the ratio of confessional cases out of all the convictions, but out of the total number of 89,016 people convicted at the courts of first instance (either the District or Summary Courts, excluding summary proceedings) in 2006, 81,254 offenders confessed. However, the Code of Criminal Procedures prohibits conviction if the confession is the sole evidence of the case, hence guilty verdicts built purely on confession are not possible in Japan.

Question 17

The Immigration Control and Refugee Recognition Act does not stipulate any wording or definition of torture, however, Article 53 Paragraph 2 of the said Act stipulates that in cases where the person cannot be deported to the country of nationality or the country of citizenship, such person shall be deported to the country in which the person had been residing immediately prior to the person's entry into Japan, or another country in which the person once resided before the person's entry into Japan pursuant to the person's wishes. Such cases where deportation to the country of nationality cannot be made include not only the cases where this is simply physically impossible but also cases where there is sufficient evidence to prove that the deportee will face torture in the country of their nationality (country of citizenship).

In addition, in paragraph 3 of the same Article, the provisions of Article 33 of the Convention Relating to the Status of Refugees that stipulates the principle of non-refoulement is enshrined into the Japanese law, and it clearly stipulates that in principle deportation shall not be made to the territories where deportee's life or freedom would be threatened.

Thus, the provisions of Paragraphs 2 and 3 of the same Article 53 ensure that no deportation to the country of nationality (or country of citizenship) will be made if there is the threat of torture in that country, and in such a case the person will be deported to another country pursuant to his/her wishes.

In due course, the Immigration Bureau is in the process of collecting information on overseas case examples, and conducting surveys and research to consider the necessity of amending the

act from the perspective for further clarifying that the destination of return(“refouler”) does not include a country where the person under the deportation procedure would be in danger being subjected to torture.

Question 18

Those detained in detention facilities of the Immigration Bureau, when they have complaints against immigration control officers in regards to their own treatment, can submit such complaints to the head of the facility, based on Regulations for Treatment of Detainees. If there is dissatisfaction with the judgment of the head of the facility, there is a system which is implemented to allow filing an objection with the Minister of Justice. This makes it possible for appropriate treatment of detainees, hence no new measures have been put into practice to establish an independent audit or motion for complaints mechanism. However, from the perspective of securing the transparency of treatment in detention facilities, the Immigration Bureau is in the process of collecting information on the operation statuses of the Penal Facility Visiting Committees and on overseas case examples, and conducting surveys and research in order to consider the pros and cons and whether to establish a third-party treatment monitoring system.

Under the Immigration Control and Refugee Recognition Act, those foreigners that receive the order of deportation remain in custody when they undergo the deportation procedures. However, when such persons are unable to be deported over a long period of time or they need to be given special considerations due to their ages, health conditions and other humanitarian reasons regardless of the length of detention, flexible operation of provisional release is applied to such persons, allowing temporary relief from physical custody, as part of efforts to avoid prolonged detentions.

The number of cases where temporary release was granted through the Provisional Release system after receiving deportation orders reached 262 cases in 2003, 382 in 2004, 769 in 2005, 671 in 2006, and 938 in 2007.

Question 19

In order to cope with the staff shortage, over the last five years, the number of staff at penal institutions has been increased by 1,398, from 17,119 at the end of FY2003 to 18,517 at the end of FY2008.

The number of inmates who are committed to penal institutions has been increasing since 1998. Though there are signs that the trend is beginning to slow down recently, there are still many facilities in an overcrowding situation. There were 79,809 inmates at the end of 2007. The number has been increased by 10,307 (15%) over the last five years.

In particular, the numbers of sentenced inmates stood at 70,918 as of the end of March, 2008 (preliminary figures), or at 104% of the detainment capacity. The number shows that the

situation is still severe.

In order to solve the overcrowding situation, our efforts have focused on expanding available capacity through building new accommodating facilities. Capacity has been expanded by 5,000 in FY2007 and expected to be added another 4,500 by the end of FY 2008 through new buildings using private finance initiatives. If the number of inmates who are committed to penal institutions remains at the current level, it is expected that by the end of FY2008 the capacity would be sufficient to meet the number of the inmates.

Question 20

1. Data on entry into Japan and transit to another country of trafficking in persons

The Immigration Bureau is actively working to enhance the countermeasures against trafficking in persons, and it partially amended the Immigration Control and Refugee Recognition Act in 2005 in order to protect the victims of trafficking in persons. Since the said amendment, 115 persons (including 7 children) were offered protection in 2005, with 47 (9 children) in 2006, and 40 (no children) in 2007. There is no statistical data on the number of transit of victims of trafficking in persons through Japan to another country.

2. Protection of victims of trafficking in persons and measures to decriminalize these victims

(1) Use of Women’s Consulting Offices and private shelters

The government's Action Plan of Measures to Combat Trafficking in Persons, formulated in 2004, decided on the use of the Women’s Consulting Offices and similar places having been established throughout the 47 prefectures for the protection of the victims of trafficking in persons. By the end of March 2008, 222 victims had been given protection in such places. With this use of Women’s Consulting Offices as official shelters for victims of trafficking in persons, the government has made full efforts to protect such victims, by assigning psychotherapists to the temporary shelters and covering the costs of translators for foreign victims, as well as subsidizing medical fees for those in temporary protection and providing legal support.

In addition, starting FY2005, the use of private shelters as temporary shelters for the victims of trafficking in persons has been introduced and the private shelters are commissioned to provide protection when they are expected to give more appropriate protection for certain reasons, such as providing staff speaking the native language of the victims involved.

(2) Effective prosecution and punishment of those involved in trafficking in persons and improvements with witness protection

The Penal Code was revised in 2005 to criminalize all forms of trafficking in persons to meet all

the criminalization requirements under the Palermo Protocol and subsequently, these trafficking offences are being prosecuted and convicted.
In terms of witness protection, under certain situation, such as the public prosecutor finds a risk of physical or property harm, etc. to the victim by disclosing the information that could identify the victim, the public prosecutor may request the defense counsel during the disclosure proceeding, not to disclose those information to identify the victim to the accused or other parties. In addition, by the amendment of the Code of Criminal Procedures in 2007, the court can decide not to disclose name, address and other information of the victim during public trial, for certain crimes including the crime of buying or selling of persons for obscene purposes.
With these provisions, a victim acting as a witness is protected.

(3) Granting victims permission to stay and assessment of the risks that victims face when returning to their home country by an independent institution
The Immigration Bureau, in cases where someone specified as a victim of trafficking in persons is also known to be in violation of the Immigration Control Act, gives special permission to stay in order to promptly stabilize the legal position of such a person and to help protect them, giving consideration of the following circumstances,(1) the danger to their lives and body when returned home, (2) cooperation with police procedures (such as witnesses for the prosecution of perpetrators), (3) physical and mental condition of the victim and, the need for protection. Those who wish to continue to stay in Japan may be granted an extension of period of stay or change to a different status of residence, giving consideration towards all matters involved.
In 2005, the Immigration Control Act was amended to exclude the victims of trafficking in persons from a part of grounds of denial of landing and the grounds for deportation, and was clearly specified to enable those in an illegal stay because of having been under the control of others involved in trafficking in persons to be granted special permission for landing and special permission for status of residence. Since this amendment to the end of 2007, special permission to stay has been granted to all of them in illegal stay.
Those who wish to return to their home countries will obtain a risk assessment again made by the International Organization for Migration (IOM), which supports such return. In cases where there may be a risk to the persons involved if they return home, such a situation will be explained to the individual and measures will be taken from a humanitarian perspective to cope with each situation, including the provision of continued temporary protection. In order that the person does not once again become the victim of trafficking in persons, support to recover within their own society after returning their home country is given through IOM in light of the individual’s particular case while respecting their own determination.

(4) Measures taken to increase access for helping victims

(i) Setting up of an anonymous phone line system

In order to give protection at an early stage to women and children who are the victims of trafficking in persons or crimes involving harming the welfare of children through such crime as child prostitution, an anonymous phone line system has been set up since October 2007. Entrusted Organizations receive information notified anonymously by citizens and provide such information to the police.

(ii) Leaflets

Leaflets have been produced (in nine different languages) to make it easier for victims of trafficking in persons to contact with the police, Immigration Bureau or other organizations. These are distributed widely in such places as the visa application offices of relevant diplomatic missions of Japan, at the Immigration gates of international airports, at relevant embassies in Tokyo, and at NGOs.

Question 21

In the first place, the Covenant does not apply retroactively to issues that arose before 1979, when the GOJ acceded to the Covenant, and thus, it is beyond the mandate of the Committee to deal with the issue of “comfort women” for the consideration of the report. With this as a premise, the GOJ submits the following facts, concerning this issue.

The GOJ devoted its fullest efforts to conducting surveys concerning the issue of “comfort women” from December 1991 to August 1993 and announced the result of the surveys. Upon announcing the result in August 1993, the GOJ released a statement by Chief Cabinet Secretary, which acknowledged the issue of “comfort women” as having severely injured the honor and dignity of many women. In the statement, thereupon, the GOJ extended apologies and remorse. This position, presented in the said statement, is the GOJ’s consistent basic position, which has remained unchanged to this date.

As for the issue of reparations, assets, and claims related to the Second World War, the GOJ has been responding in good faith pursuant to the San Francisco Peace Treaty, bilateral peace treaties and other relevant treaties, etc. In this way, such issues of claims concerning the War, including the issue of “comfort women”, have been legally settled with the countries that are parties to these treaties, etc.

In accordance with such position, the GOJ, together with the people of Japan, seriously discussed what could be done about this issue, which led to the foundation of the Asian Women’s Fund (AWF) in July 1995. The Fund was designed to facilitate feasible remedies for former “comfort women” who had reached advanced ages. The GOJ exerted its maximum efforts for the projects of AWF, by such means as contributing approximately 4.8 billion yen from the national budget,

until the Fund was dissolved in March 2007. The AWF publicized its activities as well as the factual findings on the issue of "comfort women" via its website (http://www.awf.or.jp/e-guidemap.htm). The Japan Center for Asian Historical Records has also disseminated historical documents of GOJ relating to this issue via its website (http://www.jacar.so.jp). The GOJ also delivered the "letter from Prime Minister to the former comfort women" through the activities of the AWF.

The GOJ will continue its efforts to promote an understanding of the sympathy of the Japanese people represented by the activities of the AWF. Succeeding the purpose of the AWF, the GOJ will actively cooperate with the activities for caring former "comfort women".

Question 22

The Minister of Justice determines applicants' eligibilities for refugee status based on the results of inspections by refugee inquirers. If the applicants are denied recognition of refugee status, a notice including the individual detailed reasons on which the judgment was based will be given to the applicant. The said notice also informs the applicant that he or she can complain about the decision by filing an objection with the Minister of Justice according to the provisions of Article 61-2-9 of the Immigration Control and Refugee Recognition Act.

Along with the notice of the denial of recognition of refugee status above, a document indicating how to file a revocation suit, based on the provisions of Article 46 of the Law on Suits against the Government, is also shown, in consideration of the applicant's right to have a trial at court.

In order to stabilize the legal status of illegal foreign residents in the process of applying for refugee recognition, a system was established where permission for provisional stay is granted if certain conditions do not apply. For those with this permission for provisional stay, deportation procedures will be suspended while their refugee recognition is under examination, and they may legally stay in Japan without detention, while the procedures to determine their status will be prioritized. As for those who are not granted permission for provisional stay, the law clearly stipulates that the refugee applicants will not be deported while their application is in processing, thus maintaining their protection.

Under the Immigration Control Act, there are no provisions restricting applicants for refugee recognition from appointing a lawyer as their proxy, hence those with applications made for refugee status can do so.

In regards to interpreters for refugee recognition procedure, due regard is given to the sensitivity of the applicant's position and as much as possible interpreters of the desired language of the applicants are provided.

Article 61-2-9, paragraph 3 requires the Minister of Justice to consult with the refugee examination counselors for every case of such objection, when making a decision on the

objection.
Refugee examination counselors are appointed from among experts with neutral stances, who are specialized in a broad range of fields such as law, academia, and non-government organizations (NGOs). Three of such counselors, each specialized in a different field, form a unit to inspect cases.

Refugee examination counselors may ask the Minister of Justice to provide applicants who are filing for an objection with opportunities to present their opinions orally, and the counselors may also observe the oral statements by the applicants and question them pursuant to Article 61-2-9, paragraph 5 and 6. Such counselors in these ways are entitled to directly interview the applicants filing objections, in order to formulate the counselors' determinations.
Since the system of refugee examination counselors was enforced in May 2005, there has been no case thus far in which the Minister of Justice has made a decision that has deviated from the majority opinions presented by refugee examination counselors.
In these ways the refuge procedures under the Immigration Control Act ensure adequate procedures considerate of the refuge applicants' rights and interest, all the way from the point of making an application through to the point of filing an objection. Furthermore, the system of refugee examination counselors is in place as a neutral, third-party institution to inspect refuge applications on a secondary basis being operated in ways to respect the counselors' opinions.

Question 23

1. Based on the authority and duty under Japanese Law(Trade Union Law(Law No.174 of 1949) Article 27-11), to maintain the order of hearing etc. it is the policy of the Central Labour Relations Commission not to authorize the wearing of armbands by the party concerned or observers in order to maintain the order of hearings .This issue is related to the examination procedure for unfair labour practices, a quasi-judicial procedure, and it is the view of the GOJ to respect how the Central Labour Relations Commission, an independent administrative commission, handles the issue at its sole discretion.

2. In spite of the above-mentioned policy, since April 2000, the Central Labour Relations Commission has never refused a hearing, as a matter of fact, for the reason that workers wore armbands.

Question 24

Such amendments would not be necessary as such acts are already punishable appropriately under Japanese laws.

For instance, with regard to the dissemination or expression of ideas involving discrimination or similar contention if the content would be offensive to the honor or reputation of an individual or a group, that would be punishable under the Penal Code either as crimes of defamation, damage to credit or obstruction of business. If the contents of the expression constitute a threat toward a particular individual, then the act would constitute either a crime of intimidation under the Penal Code or the intimidation committed by a group or the intimidation committed habitually under the Act on Punishment of Physical Violence and Others, or other relevant crimes. In addition, acts of violence motivated by such discriminatory thought are punishable under the Penal Code as crimes of bodily injury, assault and other violent crimes.

Question 25

Comprehensive support is given to prevent child abuse and ensure the healthy physical and mental growth of all children, thus encouraging their social independence through an unbroken chain of support structures to prevent such abuse, discover it and act on it as quickly as possible and to give protection to the victims. In particular, the formation of cooperating network among relevant local institutions (not only welfare institutions but also those involving medicine, health, education and the police forces) is being encouraged. The child abuse prevention network (Regional Council for Children in Need of Protection) is acting effectively at the local body level at every stage from prevention to support for self-sufficiency and is working actively with various measures.

The Child Abuse Prevention Law became effective in November 2000 and amendments made to it and the Child Welfare Law in 2004 to further help prevent the abuse of children. Revised versions of both laws were passed in 2007 and became effective in April 2008, with stronger measure taken to prevent child abuse in such ways as (1) strengthening measures for face-to-face / house-call examinations to ascertain the safety of children; (2) strengthening limitations on meetings / communications with parents/guardians; (3) clarifying measures to be taken when parents or guardians fail to follow guidance set out; (4) clarifying the obligation of national and public organizations to study examples of children who were severely abused and suffered extreme physical / mental damage as a result.

To cope with the growing need for therapy and counseling, financial aid is being supplied to strengthen counseling for guardians and parents with the cooperation of local psychotherapists in Child Guidance Centers. In addition, psychological counselors are placed in child care facilities.

While the overall number of local government officials is under restraint nationwide, the number of child welfare workers in Child Guidance Centers is being increased by use of local taxes, and training curriculums have been developed for the professional skills of both child welfare workers and those members of local public bodies engaged with child abuse.

In order to restrict child pornography and child prostitution, and to protect children from sexual exploitation and sexual abuse, the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children was enacted in 1999. The said law was revised in 2004 to increase the statutory penalties for crimes of child prostitution and the provision of child pornography to unspecified persons or a number of persons, as well as to expand the scope of punishable crimes by criminalizing the provision of child pornography to specified small number of persons. In recognition of the importance of eliminating the demand for the child pornography in order to eliminate the child pornography itself, a bill was proposed in the Japanese Diet in June 2008 to criminalize the simple possession of child pornography.

Question 26

As stated in General Comment No. 18, Paragraph 13, Japan considers that non-discrimination stipulated by the Covenant is to prohibit unreasonable discrimination, but that it does not prohibit differentiation based on reasonable grounds.

Japan makes a comprehensive evaluation of whether a differentiated treatment is reasonable or not, taking into consideration the aim of that particular differentiated treatment and various detailed facts specific to that particular treatment, including socio-economic factors.

Japan endeavors to prohibit discrimination, as stipulated in the Covenant, and will not indulge in arbitrary discrimination on the pretext of what the Human Rights Committee calls “reasonable discrimination.”

Question 27

1. Nationality

Article 2 Paragraph 1 of the Nationality Law of Japan states that any child acquires Japanese nationality if the child’s mother or father is a Japanese national at the time of the child’s birth. This law finds a binding connection between the Japanese mother or father as the legal parent of the child and the country of Japan and thus assigns the child Japanese nationality, regardless of whether the child is born in or out of wedlock.

Article 3 Paragraph 1 of the Nationality Law stipulates that a child born out of wedlock to a Japanese father and non-Japanese mother and not receiving Japanese nationality at the time of birth under the provisions of Article 2, may be able to acquire Japanese nationality by application if the said couple marry and the child is considered to have gained legitimate status through this marriage. This is because the marriage of the said couple is, under normal circumstances, considered to make them part of the Japanese family system and form a binding relationship with the country of Japan.

However, in June 2008 the Supreme Court ruled that the provisions of Article 3 Paragraph 1 of

the Nationality Law, where a child recognized by its father after birth and acquiring legitimate status through the marriage of the couple involved gains Japanese nationality while a child only recognized by its father but not granted legitimate status may not gain Japanese nationality, is creating discrimination without rational grounds, thus in contravention of Article 14 Paragraph 1 of the Constitution of Japan. Accordingly, the said Article 3 of the Nationality Law is now under review towards amendment with sufficient examination of the verdict of the Supreme Court.

2. Inheritance rights

In February 1996, the Legislative Council of the Ministry of Justice, an advisory council to the Minister of Justice, made a report on “Outline of the Bill for Partial Amendments to the Civil Code.” Matters for amendment in this outline included a proposal for statutory share in inheritance by child born out of wedlock to be made the same as statutory share in inheritance by child born in wedlock. These issues of Civil Code revisions are important matters that relate to the marriage system and how the family should be, with various arguments made across all levels of society and between all relevant parties, hence currently attention has been given to the trends of opinions amongst the citizens.

The proviso to Article 900 (4) of the Civil Code recognizes the statutory share in inheritance of half the portion given to the child born in wedlock to a child born out of wedlock, in respect of the position of a child born in wedlock born to a married couple while giving due consideration to the position of a child born out of wedlock. This is an attempt to strike a balance between giving respect to legal marriages and providing protection for child born out of wedlock, and is not an act of irrational discrimination.

Under the current Japanese law, the phrase “illegitimate child (hichakusyutushi)” is not used.

Question 28

1. Measures for people of Korean residents in Japan

Children that go to compulsory education schools can be given opportunities to maintain contact with their native language and culture on extra-curricular activities.

People of Korean residents in Japan have opportunities to learn the distinct Korean culture at many schools for people of Korean residents. Almost all of these schools are sanctioned by the competent authorities (the prefectural authorities), with the competent authorities providing subsidies for these schools.

Entrance to Japanese universities is not barred on grounds of nationality and is open to graduates of a Japanese secondary school or those recognized as having equivalent or higher level of education. Greater flexibility has been introduced to the requirements for entrance to Japanese universities since September 2003, graduates of an international school in Japan in the following

categories was newly recognized: (1) graduates of an educational facility in Japan recognized as being of the same level under the educational system of a foreign country as a secondary school or equivalent in the said country; (2) graduates of an international school recognized by an international accreditation associations (Western Association of Schools and Colleges, European Council of International Schools, Association of Christian Schools International); (3) those independently recognized by a university to be able to enter the said university. Non-Japanese children are already given widespread recognition for access to Japanese universities.

2. Measures for the Ainu people

Based on the Act on the Promotion of the Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition, etc., support is being given to the following projects implemented by the Foundation for Research and Promotion of Ainu Culture, in order to further the promotion of the Ainu culture.

(1) Learning Project of the Ainu language for parents and children

In cooperation with speakers and researchers of the Ainu language, the Ainu language is to be promoted and the Ainu tradition preserved through learning of the language by parents and children of the Ainu people.

(2) Preparation and Distribution of supplementary textbooks for elementary and junior high school students

In order to deepen understandings among children of the Ainu history and culture, supplementary textbooks to be used in school education will be produced and distributed to elementary and junior high schools nationwide to promote the dissemination and enlightenment of knowledge about the Ainu history and culture.

Question 29

The creation of the Fifth Periodic Report for the Covenant involved informal hearings with non-governmental organizations in 2001 and 2003, as well as the soliciting of written opinions on the report through the official website of the Ministry of Foreign Affairs.

The informal hearings in October 2001 involved the participation of 35 non-governmental organizations and ten governmental ministries and agencies, and allowed free discussion of opinions in regards to the creation of the Periodic Report. The October 2003 informal hearings included 44 non-governmental organizations and ten governmental ministries and agencies, with the participation of non-governmental organizations involved with minority groups, and had a lively discussion.

The Ministry of Foreign Affairs is actively involved in creating pamphlets and finding other

means of publicizing information on the international covenants on human rights among the public. It created a pamphlet called “The Universal Declaration of Human Rights and International Covenants on Human Rights” and created another pamphlet called “International Society and Human Rights” in 2006. Information outlining the International Covenants on Human Rights is included on the official website of the Ministry of Foreign Affairs.
