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

Concluding observations of the Human Rights Committee

Japan

1. The Human Rights Committee considered the fifth periodic report submitted by Japan (CCPR/C/JPN/5) at its 2574th, 2575th and 2576th meetings (CCPR/C/SR.2574, 2575 and 2576), held on 15 and 16 October 2008, and adopted the concluding observations below at its 2592nd, 2593rd and 2594th meetings (CCPR/C/SR.2592, 2593 and 2594), held on 28 and 29 October 2008.

A. Introduction

2. The Committee welcomes the State party's comprehensive fifth periodic report and written replies to the list of issues and the detailed answers given by the delegation to the Committee's oral questions. It notes, however, that the report was submitted in December 2006, although it was due in October 2002. The Committee appreciates the presence of a large high-level interministerial delegation and of a large number of national non-governmental organizations, showing a strong interest in the dialogue.

B. Positive aspects

3. The Committee welcomes the adoption of several legislative and institutional measures designed to advance the equal enjoyment of rights by men and women, in particular:

- (a) The adoption of the Basic Law for a Gender-Equal Society in 1999;
- (b) The appointment of a Government minister for gender equality;
- (c) The approval by the Cabinet in 2005 of the Second Basic Plan for Gender Equality, which sets the objective that women shall occupy at least 30 per cent of leadership positions in all fields of society by 2020;
- (d) The establishment of a gender equality bureau, which promotes the Basic Plan for Gender Equality and coordinates basic policies for the development of a gender-equal society.

4. The Committee notes the measures taken by the State party to protect and assist victims of gender-based violence and exploitation, including domestic violence, sexual violence and trafficking in persons, such as the establishment of spousal violence counselling and support centres, women's consulting offices and women's protection facilities; the increase in the number of protection orders and the extension of their scope under the revised Act on the Prevention of Spousal Violence and the Protection of Victims; and the adoption in 2004 of a plan of action on measures to combat trafficking in persons and the establishment of an interministerial liaison committee (task force) to combat trafficking.

5. The Committee welcomes the State party's accession to the Rome Statute of the International Criminal Court in 2007.

C. Principal subjects of concern and recommendations

6. The Committee is concerned that many of its recommendations made after the consideration of the State party's fourth periodic report have not been implemented.

The State party should give effect to the recommendations adopted by the Committee in the present as well as in its previous concluding observations.

7. The Committee notes the absence of information on domestic court decisions, other than Supreme Court judgements finding no violation of the Covenant, which make direct reference to provisions of the Covenant (art. 2).

The State party should ensure that the application and interpretation of the Covenant form part of the professional training for judges, prosecutors and lawyers and that information about the Covenant is disseminated at all levels of the judiciary, including the lower courts.

8. The Committee notes that one of the reasons why the State party has not ratified the first Optional Protocol to the Covenant is the concern that such ratification may give rise to problems with regard to its judicial system, including the independence of its judiciary.

The State party should consider ratifying the Optional Protocol, taking into account the Committee's consistent jurisprudence that it is not a fourth instance of appeal and that it is, in principle, precluded from reviewing the evaluation of facts and evidence or the application and interpretation of domestic legislation by national courts.

9. The Committee notes with concern that the State party has still not established an independent national human rights institution (art. 2).

The State party should establish an independent national human rights institution outside the Government, in accordance with the Paris Principles (General Assembly resolution 48/134, annex), with a broad mandate covering all international human rights standards accepted by the State party and with competence to consider and act on complaints of human rights violations by public authorities, and allocate adequate financial and human resources to the institution.

10. While taking note of the State party's explanation that "public welfare" cannot be relied on as a ground for placing arbitrary restrictions on human rights, the Committee reiterates its concern that the concept of "public welfare" is vague and open-ended and may permit restrictions exceeding those permissible under the Covenant (art. 2).

The State party should adopt legislation defining the concept of "public welfare" and specifying that any restrictions placed on the rights guaranteed in the Covenant on grounds of "public welfare" may not exceed those permissible under the Covenant.

11. The Committee reiterates its concern about discriminatory provisions in the Civil Code affecting women, such as the prohibition for women to remarry in the six months following divorce and the different age of marriage for men and women (art. 2 (1), 3, 23 (4) and 26).

The State party should amend the Civil Code, with a view to eliminating the period during which women are prohibited from remarrying following divorce and harmonizing the minimum age of marriage for men and women.

12. The Committee notes with concern that, despite numerical targets for the representation of women in public offices, women hold only 18.2 per cent of the seats in the Diet and 1.7 per cent of Government posts at the level of directors of ministries, and that some of the numerical targets set in the 2008 programme for accelerating women's social participation are extremely modest, such as the 5 per cent target for women's representation in positions equivalent to directors of ministries by 2010 (art. 2 (1), 3, 25 and 26).

The State party should intensify its efforts to achieve equitable representation of women and men in the National Diet and at the highest levels of the Government and in the public service, within the time frame set in the Second Basic Plan for Gender Equality adopted in 2005, by adopting special measures such as statutory quota and by reviewing numerical targets for women's representation.

13. The Committee is concerned about reports that women hold only 10 per cent of management positions in private companies and earn on average only 51 per cent of men's salaries, that women account for 70 per cent of informal workers and as such are excluded from benefits such as paid leave, maternity protection and family allowance, are vulnerable to sexual harassment owing to their unstable contractual situation, and that they are often forced to work as part-time workers to sustain family life (art. 2 (1), 3 and 26).

The State party should take measures to promote the recruitment of women as formal workers and to eliminate the gender wage gap, including (a) require all companies to take positive action to ensure equal employment opportunities for women; (b) review any deregulation of labour standards resulting in longer working hours; (c) further increase the number of child-care facilities, with a view to enabling women as well as men to balance work and family life; (d) relax the conditions for equal treatment of part-time workers under the revised Part-Time Workers Law; (e) criminalize sexual harassment at the workplace; (f) extend the prohibited forms of indirect discrimination under the Law on Equal Opportunity and Treatment of Men and Women to include the different treatment of employees on the basis of their status as heads of household or as part-time or contract employees; and (g) adopt effective measures to prevent indirect discrimination.

14. The Committee notes with concern that the definition of rape in article 177 of the Criminal Code only covers actual sexual intercourse between men and women and requires resistance by victims against the attack, and that rape and other sexual crimes cannot be prosecuted without a complaint filed by the victim except in cases where the victim is under 13 years of age. It is also concerned about reports that perpetrators of sexual violence frequently escape just punishment or receive light sentences, that judges often unduly focus on the sexual past of victims and require them to provide evidence that they have resisted the assault, that the monitoring and enforcement of the revised Prison Law and the guidelines of the National Police Agency for victim support is

ineffective, and that there is a lack of doctors and nurses with specialized training in sexual violence, as well as of support for non-governmental organizations providing such training (art. 3, 7 and 26).

The State party should broaden the scope of the definition of rape in article 177 of the Criminal Code and ensure that incest, sexual abuse other than actual sexual intercourse, as well as rape of men, are considered serious criminal offences; remove the burden on victims to prove resistance against the assault; and prosecute rape and other crimes of sexual violence ex officio. It should also introduce mandatory gender-sensitive training in sexual violence for judges, prosecutors and police and prison officers.

15. The Committee is concerned that sentences for perpetrators of domestic violence are reportedly lenient and that violators of protection orders are only arrested in cases of repeated violations or when they ignore warnings. It is also concerned that there is a lack of long-term assistance for victims of domestic violence, and that the delays in granting foreign victims of domestic violence residence status effectively bar them from applying for stable employment and from having access to social security benefits (art. 3, 7, 26 and 2 (3)).

The State party should review its sentencing policy for perpetrators of domestic violence, detain and prosecute violators of protection orders, increase the amount of compensation for victims of domestic violence and of child-rearing allowances for single mothers, enforce court orders for compensation and child support, and strengthen long-term rehabilitation programmes and facilities, as well as assistance for victims with special needs, including non-citizens.

16. While noting that, in practice, the death penalty is only imposed for offences involving murder, the Committee reiterates its concern that the number of crimes punishable by the death penalty has still not been reduced and that the number of executions has steadily increased in recent years. It is also concerned that death row inmates are kept in solitary confinement, often for protracted periods, and are executed without prior notice before the day of execution and, in some cases, at an advanced age or despite the fact that they have mental disabilities. The non-use of the power of pardon, commutation or reprieve and the absence of transparency concerning procedures for seeking benefit for such relief is also a matter of concern (art. 6, 7 and 10).

Regardless of opinion polls, the State party should favourably consider abolishing the death penalty and inform the public, as necessary, about the desirability of abolition. In the meantime, the death penalty should be strictly limited to the most serious crimes, in accordance with article 6, paragraph 2, of the Covenant. Consideration should be given by the State party to adopting a more humane approach with regard to the treatment of death row inmates and the execution of persons at an advanced age or with mental disabilities. The State party should also ensure that inmates on death row and their families are given reasonable advance notice of the scheduled date and time of the execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for this event. The power of pardon, commutation and reprieve should be genuinely available to those sentenced to death.

17. The Committee notes with concern that an increasing number of defendants are convicted and sentenced to death without exercising their right of appeal, that meetings of death row inmates with their lawyer in charge of requesting a retrial are attended and monitored by prison officials until the court has decided to open the retrial, and that requests for retrial or pardon do not have the effect of staying the execution of a death sentence (art. 6 and 14).

The State party should introduce a mandatory system of review in capital cases and ensure the suspensive effect of requests for retrial or pardon in such cases. Limits may be placed on the number of requests for pardon in order to prevent abuse of the suspension. It should also ensure the strict confidentiality of all meetings between death row inmates and their lawyers concerning retrial.

18. The Committee reiterates its concern that, despite the formal separation of the police functions of investigation and detention under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the substitute detention system (*Daiyo Kangoku*), under which suspects can be detained in police detention facilities for a period up to 23 days to facilitate investigations, without the possibility of bail and with limited access to a lawyer especially during the first 72 hours of arrest, increases the risk of prolonged interrogations and abusive interrogation methods with the aim of obtaining a confession (art. 7, 9, 10 and 14).

The State party should abolish the substitute detention system or ensure that it is fully compliant with all guarantees contained in article 14 of the Covenant. It should ensure that all suspects are guaranteed the right of confidential access to a lawyer, including during the interrogation process, and to legal aid from the moment of arrest and irrespective of the nature of their alleged crime, and to all police records related to their case, as well as to medical treatment. It should also introduce a preindictment bail system.

19. The Committee notes with concern the insufficient limitations on the duration of interrogations of suspects contained in internal police regulations, the exclusion of counsel from interrogations on the assumption that such presence would diminish the function of the interrogation to persuade the suspect to disclose the truth, and the sporadic and selective use of electronic surveillance methods during interrogations, frequently limited to recording the confession by the suspect. It also reiterates its concern about the extremely high conviction rate based primarily on confessions. This concern is aggravated in respect of such convictions that involve death sentences (art. 7, 9 and 14).

The State party should adopt legislation prescribing strict time limits for the interrogation of suspects and sanctions for non-compliance, ensure the systematic use of video-recording devices during the entire duration of interrogations and guarantee the right of all suspects to have counsel present during interrogations, with a view to preventing false confessions and ensuring the rights of suspects under article 14 of the Covenant. It should also acknowledge that the role of the police during criminal investigations is to collect evidence for the trial rather than establishing the truth, ensure that silence by suspects is not considered inculpatory, and encourage courts to rely on modern scientific evidence rather than on confessions made during police interrogations.

20. The Committee is concerned that the Penal Institution Visiting Committees, the Detention Facilities Visiting Committees established under the 2006 Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the Review and Investigation Panel for Complaints from Inmates of Penal Institutions reviewing complaints that have been dismissed by the Minister of Justice, and the Prefectural Public Safety Commissions responsible for reviewing complaints, petitions for review and reports of cases submitted by detainees lack the independence, resources and authority required for external prison or detention monitoring and complaint mechanisms to be effective. In this regard, it notes the absence of any verdicts of guilt or disciplinary sanctions against detention officers for crimes of assault or cruelty during the period from 2005 to 2007 (art. 7 and 10).

The State party should ensure (a) that the Penal Institution and Detention Facilities Visiting Committees are adequately equipped and have full access to all relevant information in order to effectively discharge their mandate and that their members are not appointed by the management of penal institutions and police detention facilities; (b) that the Review and Investigation Panel for Complaints from Inmates of Penal Institutions is adequately staffed and that its opinions are binding on the Ministry of Justice; and (c) that the competence for reviewing complaints submitted by detainees is transferred from the Prefectural Public Safety Commissions to an independent body comprising external experts. It should include in its next periodic report statistical data on the number and nature of complaints received from prisoners and detainees, the sentences or disciplinary measures imposed on perpetrators and any compensation provided to victims.

21. The Committee is concerned that death row inmates are confined to single rooms day and night, purportedly to ensure their mental and emotional stability, and that lifetime prisoners are sometimes also placed in solitary confinement for protracted periods of time. It is also concerned about reports that inmates may be confined to protection cells without prior medical examination initially for a period of 72 hours, which is indefinitely renewable, and that a certain category of prisoners are placed in separate “accommodating blocks” without the opportunity to appeal against this measure (art. 7 and 10).

The State party should relax the rule under which inmates on death row are placed in solitary confinement, ensure that solitary confinement remains an exceptional measure of limited duration, introduce a maximum time limit and require the prior physical and mental examination of an inmate for confinement in protection cells and discontinue the practice of segregating certain inmates in “accommodating blocks” without clearly defined criteria or possibilities of appeal.

22. The Committee notes with concern that the State party has still not accepted its responsibility for the “comfort women” system during the Second World War, that perpetrators have not been prosecuted, that the compensation provided to victims is financed by private donations rather than public funds and is insufficient, that few history textbooks contain references to the “comfort women” issue, and that some politicians and mass media continue to defame victims or to deny the events (art. 7 and 8).

The State party should accept legal responsibility and apologize unreservedly for the “comfort women” system in a way that is acceptable to the majority of victims and restores their dignity, prosecute perpetrators who are still alive, take immediate and effective legislative and administrative measures to compensate adequately all survivors as a matter of right, educate students and the general public about the issue, and refute and sanction any attempt to defame victims or to deny the events.

23. The Committee is concerned about the lack of statistical data on the (estimated) number of persons trafficked to and in transit through the State party, the low number of prison sentences imposed on perpetrators of trafficking-related crimes, the decreasing number of trafficking victims protected in public and private shelters, the lack of comprehensive support for victims, including interpretation services, medical care, counselling, legal support for claiming unpaid wages or compensation and long-term support for rehabilitation, and the fact that special permission to stay is only granted for the period necessary to convict perpetrators and that it is not granted to all victims of trafficking (art. 8).

The State party should intensify its efforts to identify victims of trafficking and ensure the systematic collection of data on trafficking flows to and in transit through its territory, review its sentencing policy for perpetrators of trafficking-related crimes, support private shelters offering protection to victims, strengthen victim assistance by ensuring interpretation, medical care, counselling, legal support for claiming unpaid wages and compensation, long-term support for rehabilitation and stability of legal status to all victims of trafficking.

24. The Committee is concerned about reports that non-citizens who come to the State party under the industrial training and technical internship programmes are excluded from the protection of domestic labour legislation and social security and that they are often exploited in unskilled labour without paid leave, receive training allowances below the legal minimum wage, are forced to work overtime without compensation and are often deprived of their passports by their employers (art. 8 and 26).

The State party should extend the protection of domestic legislation on minimum labour standards, including the legal minimum wage, and social security to foreign industrial trainees and technical interns, impose appropriate sanctions on employers who exploit such trainees and interns, and consider replacing the current programmes with a new scheme that adequately protects the rights of trainees and interns and focuses on capacity-building rather than recruiting low-paid labour.

25. The Committee notes with concern that the 2006 Immigration Control and Refugee Recognition Act does not expressly prohibit the return of asylum-seekers to a country where there is a risk of torture, that the recognition rates for asylum-seekers remain low in relation to the number of applications filed, and that there are often substantial delays in the refugee recognition process during which applicants are not allowed to work and receive only limited social assistance. It is also concerned that the possibility of filing an objection with the Minister for Justice against a negative asylum decision does not constitute an independent review because the refugee examination counsellors advising the Minister upon review are not independently appointed and have no power to issue binding decisions. Lastly, it is concerned about reported cases of rejected asylum-seekers having been deported before they could

submit an objection against the negative decision on their application to stay the execution of the deportation order (art. 7 and 13).

The State party should consider amending the Immigration Control and Refugee Recognition Act, with a view to explicitly prohibiting the return of asylum-seekers to countries where there is a risk of torture or other ill-treatment, and ensure that all asylum-seekers have access to counsel, legal aid and an interpreter, as well as to adequate State-funded social assistance or employment during the entire length of proceedings. It should also establish an entirely independent appeal mechanism, including for applicants who are deemed to be “possible terrorists” by the Minister for Justice, and ensure that rejected applicants are not deported immediately after the conclusion of the administrative proceedings before they can submit an appeal against the negative asylum decision.

26. The Committee is concerned about unreasonable restrictions placed on freedom of expression and on the right to take part in the conduct of public affairs, such as the prohibition of door-to-door canvassing, as well as restrictions on the number and type of written materials that may be distributed during pre-election campaigns, under the Public Offices Election Law. It is also concerned about reports that political activists and public employees have been arrested and indicted under laws on trespassing or under the National Civil Service Law for distributing leaflets with content critical of the Government to private mailboxes (art. 19 and 25).

The State party should repeal any unreasonable restrictions on freedom of expression and on the right to take part in the conduct of public affairs from its legislation to prevent the police, prosecutors and courts from unduly restricting political campaigning and other activities protected under articles 19 and 25 of the Covenant.

27. The Committee is concerned about the low age of sexual consent, which has been set at 13 years for boys and girls (art. 24).

The State party should raise the age of sexual consent for boys and girls from its current level of 13 years, with a view to protecting the normal development of children and preventing child abuse.

28. The Committee reiterates its concern that children born out of wedlock are discriminated against with regard to the acquisition of nationality, inheritance rights and birth registration (art. 2 (1), 24 and 26).

The State party should remove any provisions discriminating against children born out of wedlock from its legislation, including article 3 of the Nationality Law, article 900 (4) of the Civil Code, and article 49 (1), item 1, of the Family Registration Law prescribing that birth registration forms shall indicate whether or not a child is “legitimate”.

29. The Committee is concerned about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing, social security, health care, education and other fields regulated by law, as exemplified by article 23 (1) of the Public Housing Law, which applies only to married and unmarried opposite-sex couples and effectively bars unmarried same-sex couples from renting public housing, and by the exclusion of same-sex partners from protection under the Law for the Prevention of Spousal Violence and the Protection of Victims (art. 2 (1) and 26).

The State party should consider amending its legislation, with a view to including sexual orientation among the prohibited grounds of discrimination, and ensure that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples, in line with the Committee’s interpretation of article 26 of the Covenant.^[1]

30. The Committee notes with concern that, as a result of the non-retroactivity of the elimination of the nationality requirement from the National Pension Law in 1982 combined with the requirement that a person pay contributions to the pension scheme for at least 25 years between the ages of 20 and 60, a large number of non-citizens, primarily Koreans who lost Japanese nationality in 1952, are effectively excluded from eligibility for pension benefits under the national pension scheme. It also notes with concern that the same applies to disabled non-citizens who were born before 1962 owing to a provision that non-citizens who were older than 20 years at the time when the nationality clause was repealed from the National Pension Law are not eligible for disability pension benefits (art. 2 (1) and 26).

The State party should make transitional arrangements for non-citizens affected by the age requirements stipulated in the National Pension Law, with a view to ensuring that non-citizens are not discriminatorily excluded from the national pension scheme.

31. The Committee is concerned that State subsidies for schools that teach in the Korean language are significantly lower than those for ordinary schools, making them heavily dependent on private donations, which are not exempted or deductible from taxes, unlike donations to private Japanese schools or international schools, and that diplomas from Korean schools do not automatically qualify students to enter university (art. 26 and 27).

The State party should ensure the adequate funding of Korean language schools by increasing State subsidies and applying the same fiscal benefits to donors of Korean schools as to donors of other private schools, and recognize diplomas from Korean schools as direct university entrance qualifications.

32. The Committee notes with concern that the State party has not officially recognized the Ainu and the Ryukyu/Okinawa as indigenous peoples entitled to special rights and protection (art. 27).

The State party should expressly recognize the Ainu and Ryukyu/Okinawa as indigenous peoples in domestic legislation, adopt special measures to protect, preserve and promote their cultural heritage and traditional way of life, and recognize their land rights. It should also provide adequate opportunities for Ainu and Ryukyu/Okinawa children to receive instruction in or of their language and about their culture, and include education on Ainu and Ryukyu/Okinawa culture and history in the regular curriculum.

33. The Committee sets 29 October 2011 as the date for the submission of the sixth periodic report of Japan. It requests that the State party's fifth periodic report and the present concluding observations be published and widely disseminated in Japanese and, to the extent possible, in national minority languages to the general public, as well as to the judicial, legislative and administrative authorities. It also requests that the sixth periodic report be made available to civil society and to non-governmental organizations operating in the State party.

34. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within a year information on the follow-up given to the Committee's recommendations in paragraphs 17, 18, 19 and 21 above. The Committee requests the State party to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole.

[1] See *Young v. Australia*, communication No. 901/1999 and *X v. Colombia*, communication No. 1361/2005.