



**International covenant  
on civil and  
political rights**

Distr.  
GENERAL

CCPR/C/SR.1277  
20 November 2008

Original: ENGLISH

---

HUMAN RIGHTS COMMITTEE

Forty-ninth session

SUMMARY RECORD OF THE 1277th MEETING

Held at the Palais des Nations, Geneva,  
on Wednesday, 27 October 1993, at 10 a.m.

Chairman: Mr. DIMITRIJEVIC

CONTENTS

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

Third periodic report of Japan

---

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

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

1. At the invitation of the Chairman, the representatives of Japan took places at the Committee table.
2. The CHAIRMAN said that the Committee was gratified that the Government of Japan was represented by such a large group of high-ranking persons competent in the various fields of human rights implementation.
3. At the expense of the Government of Japan, the proceedings would be interpreted to and from Japanese and the official languages of the Committee. The interpreters wished to make it clear, however, that the interpretation was not official, and that what was recorded in the Committee room could not be taken as an official record of the views interpreted to or from Japanese.
4. Mr. MAVROMATTIS, speaking on a point of order, asked whether the Committee was to be denied the opportunity of using the tapes for purposes of transcription. If so, it was not a proper procedure to follow.
5. The CHAIRMAN said that the interpretation was intended to be an assistance to understanding. Everybody would be entitled to make use of it - to take notes and even to record statements, but it was not to be taken as a definitive official translation of the proceedings.
6. Mr. POCAR asked what language would be used for the tape recording of the meeting.
7. Mr. LALLAH said he was concerned about the Committee's institutional memory. Tape recordings of the Committee's proceedings were used by the outside world as part of the Committee's documentation.
8. Mr. AGUILAR URBINA asked what would be the official language for the Committee's record of the Japanese delegation's interventions.
9. The CHAIRMAN said that the official tape recordings taken by the Conference Services would be the basis for future reference. They would be taken in the original language and in the English interpretation. The written official record made from those tapes would be subject to correction.
10. The announcement he had made was addressed to any persons who wished to make their own recordings in the Committee room. Such persons should understand that the interpretation was a provisional rendering that could not be quoted as an official source. He invited the representative of Japan to introduce the third periodic report.

11. Mr. ITO (Japan) said that his Government agreed with the view that human rights were universal values common to all mankind. To protect and promote those rights, it was essential for the entire international community - including Japan - to observe the fundamental principles contained in the international human rights instruments. His delegation had been extensively involved in the human rights activities of the United Nations, most recently the World Conference on Human Rights, and had welcomed the adoption of the Vienna Declaration and Programme of Action, stressing the importance of strengthening the United Nations Centre for Human Rights and providing for the establishment of a High Commissioner for Human Rights.

12. His Government recognized the important role of the Human Rights Committee, whose main function was to monitor the implementation of the rights set forth in the International Covenant on Civil and Political Rights. It welcomed the Committee's constructive dialogues with the States parties through its consideration of national reports, and believed that such dialogues contributed to the search for solutions to the problems that they faced, thus enabling the human rights enshrined in the Covenant to be fully realized.

13. His Government attached particular importance to the current consideration of its third periodic report. It had therefore sent a substantial delegation, consisting of experts well-versed in administrative practices, so as to be able to respond to any questions raised by members of the Committee, in full recognition of its obligations under the Covenant.

14. Mr. KUNIKATA (Japan) said that his Government was fully committed to respecting and promoting human rights. Since its ratification of the Covenant in 1979, it had faithfully implemented its obligations thereunder. That was demonstrated by the size of the delegation present at the Committee's meeting. It was also relevant that a number of individual Japanese experts were serving on the United Nations bodies concerned with human rights and that the current United Nations Commissioner for Refugees was a Japanese national.

15. On the whole, human rights were satisfactorily protected in Japan and efforts were being made to solve any problems that remained. A particular effort was being made to publicize human rights. Since 1949, a Human Rights Week had been observed in Japan each December. In 1993, Japanese Human Rights Week would fall on the forty-fifth anniversary of the Universal Declaration of Human Rights and commemorative ceremonies would be held.

16. The national institutions of the Ministry of Justice concerned with protecting and promoting human rights engaged in a wide range of activities, in cooperation with about 13,000 Civil Commissioners for the Protection of Fundamental Human Rights. Their activities ranged from investigating cases of human rights violations to public information and educational programmes. Although the investigations conducted by the national institutions were not compulsory and their findings only advisory, they aimed at preventing violations of human rights and his Government believed them to be one of the best methods of promoting and protecting those rights.

17. Various private organizations were also actively engaged in protecting human rights in Japan, including the Japan Federation of Bar Associations, which was completely non-governmental. His Government was aware that many non-governmental organizations

(NGOs) had published reports in connection with the current meeting and, insofar as they reported human rights conditions in Japan accurately and judged them fairly, it was ready to consider them.

18. In preparing Japan's third periodic report, the Government had made every effort to incorporate the purport of the Committee's general comments and the concluding observations made by Committee members at previous sessions. His delegation was also prepared to address any matters that were not dealt with in the report.

19. Six main areas were referred to in the third report in which progress had been made since consideration by the Committee of the previous report. In January 1991, a Memorandum had been drawn up describing the measures to be taken by his Government to improve the status of Korean residents in Japan.

20. The second area of improvement related to the acceptance of foreign workers. In June 1988, the Cabinet had adopted the Basic Employment Measures Plan, whereby workers with special or technical abilities would be accepted in Japan. In line with that policy, the Immigration Control and Refugee Recognition Act had been revised, so that more foreigners with professional skills would be able to work in Japan. The revised Immigration Act, which had come into effect in June 1990, also called for the prosecution of brokers who profited from the employment of illegal workers.

21. The third example of progress was the Child-Care Leave Law, which had come into effect on 1 April 1992. Under that statute, both male and female workers were able to take child-care leave in order to rear children.

22. The fourth instance concerned private international law. In 1989, amendments had been made to the Application of Laws Act, which secured full equality between men and women. There had also been other improvements in the position of women. The new Plan of Action for the Advancement of Women contained a number of medium-term measures to be implemented over the five-year period from 1991 to 1995.

23. Lastly, the Act for the Protection of Computer-processed Personal Data held by Administrative Organs, which came into effect in 1989, entitled anyone to request data about himself or herself kept in the personal data files held by the administrative organs.

24. An additional document had been submitted to the Committee (CCPR/C/70/Add.1/Corr.1) describing further progress since the submission of the third periodic report (paragraphs 39 bis and 140 bis). The first related to the fingerprinting system connected with the control of immigration. In 1991, his Government had adopted a Special Act on Immigration Control, concerning, inter alia, those who had renounced Japanese nationality on the basis of the Treaty of Peace with Japan. The Act applied chiefly to the large number of Koreans resident in Japan since before the end of the Second World War who had renounced Japanese nationality on the basis of the peace treaty, and their many descendants, also without Japanese nationality, who had continued to reside in Japan and established themselves in Japanese society.

25. The Special Act, which had come into effect on 11 November 1991, further stabilized the legal status of those Korean residents, taking into consideration the historical background, and granted them the status of Special Permanent Resident. Under the new Act, only those who had committed crimes violating the fundamental interests of the nation, such as acts of insurrection or aggression, could be deported, whereas other foreigners could be deported for a far wider range of offences. In addition, the period of validity for a re-entry permit had become five years, as against two years for other foreigners.
26. The Government had accordingly decided to amend the system of fingerprinting under the Alien Registration Act and abolish it as a requirement for Permanent Residents and Special Permanent Residents, who would be required instead to provide photographs, signatures and family information. The amended Act had been in force since 8 January 1993.
27. The second innovation related to compensation in juvenile cases, whereby the State might be ordered to pay compensation for physical restraint when a juvenile was subsequently found not to have committed any delinquent act, even if the restraint was not illegal. The Compensation in Juvenile Cases Act, which had come into force on 1 September 1993, thus brought the regulations concerning juveniles in such circumstances into line with those concerning adults.
28. The CHAIRMAN invited the representatives of Japan to respond to the questions in section I of the list of issues, concerning articles 2, 3, 4, 5, 23, 24, 26 and 27 of the Covenant.
29. Mr. KUNIKATA (Japan) said, replying to question I (a), that the provisions of the Covenant had been invoked in a number of cases. Two such cases were included in the official reports of cases of the Supreme Court. One was referred to in paragraph 15 of the third periodic report and the other was a judgement responding to an allegation that the regulations prohibiting national civil servants from political activity violated articles 18, 19 and 25 of the Covenant. The Supreme Court had ruled that the regulations did not violate those articles.
30. As examples of cases in which the provisions of the Covenant had been invoked before the High Court, he cited a decision of the Osaka High Court, of 2 February 1991, in response to an allegation that the Alien Registration Act, which required foreigners to confirm their registration every five years after the initial registration, violated articles 2 and 26 of the Covenant. The ruling had been that the alien registration system, which provided for different treatment for foreigners, was based on reasonable grounds and thus was not in violation of the Covenant.
31. A second case was the decision of the Tokyo High Court of 18 September 1991. It had been alleged that serving a charge sheet on a defendant who did not understand Japanese without a translation into a language which he could understand violated article 14, paragraph 3 (a). The Court had decided that the defence rights of the defendant were secured and that article 14, paragraph 3 (a), did not require the attachment of a translation to an original copy of a charge sheet in Japanese.
32. By a judgement of the Hiroshima High Court, of 28 November 1991, it had been decided, in response to an allegation that article 733 of the Civil Code, which prescribed a waiting period before remarriage in the case of women only, violated article 23 of the Covenant, that the article had been formulated in order to avoid problems of presumption of paternity and therefore did not violate the provisions of the Constitution or of the Covenant regarding equality of the sexes. It

had also been decided that there were no grounds for interpreting the Covenant as providing for the absolute prohibition of any discrimination on grounds of sex or reasonable control over the right to marry.

33. As described in paragraph 12 of the report, article 98, paragraph 2, of the Constitution, provided that treaties concluded by Japan were supposed to be effective as domestic laws, if they were applicable in Japan. In concluding a treaty, the Government carefully scrutinized possible conflict with existing domestic law and, to the extent that such conflict was found, made the necessary amendments to the national laws and regulations. That provision applied to the Covenant also. Thus, while there had been cases in which a party had invoked the provisions of the Covenant, there had been none in which the court declared provisions of domestic law null and void on the grounds that they were in violation of the Covenant. Should such a violation be found, however, it was considered that the Covenant would prevail.

34. In reply to question I (b), regarding the compatibility with the Covenant of the restrictions provided for in articles 12 and 13 of the Constitution, he said that article 12 required human rights to be respected to the utmost in legislation and other administrative procedures, as long as such respect was compatible with public welfare. That meant that human rights could be restricted to some extent, in order to coordinate conflicting fundamental rights and to ensure that each individual's rights were respected equally. Thus, a penalty for infringing upon another person's honour might be said to restrict the accused's freedom of expression, but such a restriction was required to protect the other party and could be justified by the concept of public welfare. However, where there was no question of interfering with the rights of other people, human rights could not be restricted by the concept.

35. While the concept of public welfare was not explicitly defined in the Constitution, it had been clarified by case-law and theories based on the inherent nature of each right. It was not possible, therefore, for human rights to be arbitrarily restricted by the authorities on grounds of public welfare. The Covenant defined the grounds on which rights could be restricted separately in each case, whereas the Japanese Constitution provided that human rights in general could be restricted by the concept of public welfare, but it was merely the form of restriction that differed, the content being substantially the same as the grounds provided in the Covenant.

36. In reply to question I (c), regarding the problems still being faced by Japan in connection with the ratification of the Optional Protocol, he said that Japan had no experience as yet of a system whereby matters in the field of human rights already adjudicated by a Japanese court would be subjected to further judicial inquiry by an international body. The way in which the judicial system would be affected by ratification of the Optional Protocol was currently under close scrutiny. Further consideration would have to be given to many of the issues that had come up: for example, how the emergence of differences of opinion in regard to specific Japanese legal cases was to be dealt with, whether the presentation of a report based on the Optional Protocol in respect of a current case would constitute a breach of the independence of the judiciary, and whether there might be abuses of the procedure for dealing with communications from individuals.

37. In reply to question I (d), regarding the legal mechanisms available to persons who claimed that their rights and freedoms under the Covenant had been violated, he said that several measures of redress were available: if the infringement had been caused by an administrative

agency, an objection could be lodged or an application made for an investigation, in accordance with the Administrative Appeal Act. Secondly, a suit could be filed for annulment of the provision in question, in accordance with the Act concerning Procedures for Administrative Litigation. At the time of the objection or suit, the party concerned could, if necessary, request that execution of the disposition should be suspended to avoid irreparable damage. Thirdly, when damage was caused by the illegal actions of public officials, due to malice or negligence, a request could be made to the State or the public organization concerned for compensation in accordance with the Government Compensation Act.

38. If the infringement had been caused by private individuals, a suit could be filed for an injunction, so that property or personal rights could be protected if the infringement could not be eliminated otherwise. Secondly, if it was difficult or impossible to achieve the purpose by awaiting those redress measures, application could be made to the court to order or prohibit a certain action or to take provisional action to secure the right. Thirdly, a person suffering damage through illegal action by a private individual, due to malice or negligence, could request compensation as prescribed in the Civil Code. A person subjected to unjust physical restraint could request redress from the court on the basis of the Habeas Corpus Act.

39. In addition, anyone could make a complaint of a human rights violation to the Civil Liberties Commissioners, the Legal Affairs Bureaux of the Ministry of Justice, or the other relevant human rights protection authorities, and request an investigation. Though not legally enforceable, that process could result in practical solutions through a simplified procedure.

40. In reply to question I (e), regarding measures to eliminate discrimination between men and women, particularly in respect of the status of divorced women and unmarried mothers and the position of women employed in the public and private sectors, he said that, in International Women's Year, 1975, his Government had established a Headquarters for the Planning and Promotion of Policies relating to Women, headed by the Prime Minister. In 1977, with the formulation of the first National Plan of Action, the Government had begun the active promotion of measures to eliminate discrimination. Much progress had been achieved as a result, especially in legal areas, including the ratification of the Convention on the Elimination of Discrimination against Women, the promulgation of the Equal Employment Opportunity Act, and amendments to the Civil Code, the Nationality Act, the National Pension Act, and others. In 1987, the Headquarters had formulated a new National Plan of Action, specifying long-range measures relating to women, and incorporating into Japanese policy the Nairobi Forward-Looking Strategies for the Advancement of Women.

41. The following specific steps had been taken to improve the status of women. In 1976, an amendment had been introduced to the effect that a spouse who, by reason of a divorce, had resumed the premarital surname could continue through a notification to use the marital surname to avoid inconvenience in connection with social activities (article 767 (2) of the Civil Code).

42. In 1980, the statutory surviving spouse's share of a succession had been increased. For example, where the spouse and the children were the successors, the spouse's share had been raised from one third to one half (article 900 of the Civil Code).

43. In the past, the effects of marriage had been governed by the law of the country of which the husband was a national, if the husband and the wife were nationals of different countries. In 1989, however, that provision had been amended to the effect that, if the spouses did not have the law of the country of which they were nationals in common, the effects of the marriage were governed by the law of the place of their common habitual residence or the place with which they were most closely connected.

44. As for the status of divorced wives and unmarried mothers, there was no provision in Japan for different treatment in respect of legal status. Comprehensive measures had, however, been instituted in respect of fatherless families and widows, including counselling for fatherless families, provision for survivors, basic pension and child-rearing allowances and home care, together with a system of welfare loans for fatherless families and widows.

45. While the number of women holding senior positions in various fields, including the public sector, was still quite small, it had gradually increased. During the United Nations Decade for Women, a special action programme had been established to promote women's participation in decision-making and efforts had been made in that direction. In the new National Plan of Action, expanding women's participation was also one of the basic policies to be promoted.

46. There had been some achievements, such as the increase in the proportion of women on the national advisory councils, from 2.4 per cent in 1975 to 10.4 per cent in 1993. The number of categories in the national examinations for government employees from which women had been excluded - 12 in 1975 - had been reduced to zero in 1989. The new National Plan of Action proposed to increase the number of women members of national advisory councils and committees to 15 per cent by the year 1995 and the appointment and promotion of female government employees was to be accelerated and their abilities developed through education and training. Efforts were also being made to secure equal opportunities and treatment for women in private employment, through legislation, together with measures to solve conflicts between female workers and employers.

47. In reply to question I (f), concerning the rights enjoyed by aliens, he said that, as described in paragraph 36 of the report, foreigners were guaranteed enjoyment of the fundamental rights provided in the Covenant under the Constitution of Japan and in national laws and regulations. The only exception was the right to vote and certain other political rights which were, of their nature, reserved for Japanese citizens only. The status of foreigners was not expressly provided for in the Constitution but, according to case-law, the basic position was that the fundamental human rights guaranteed in the Constitution applied equally to foreigners living in Japan.

48. Counselling officers on human rights for foreigners had been appointed to the Legal Affairs Bureaux in Tokyo, Osaka, and other important cities, with interpreters to provide advice for those who did not understand Japanese. A special counselling service was also offered, with interpretation, at other Legal Affairs Bureaux and district legal affairs offices. Advice was available in such areas as labour regulations, marriage, naturalization and compensation for damage.

49. In response to question I (g), regarding the measures adopted to improve the situation of nationals of the Republic of Korea residing in Japan (paragraphs 38 to 51 of the report), he said that, in the area of employment, three measures had been adopted to ensure equal opportunities



and the removal of unfair practices in respect of the employment of Korean residents in Japan: first, his Government had organized a programme of seminars to help Japanese employers gain a clear understanding of the employment problems faced by Korean residents and the need for an even-handed approach; secondly, it was providing special intensive individual guidance to employers in cases where unfair practices had occurred in the past or seemed likely to occur in the future; and, thirdly, it had mounted publicity campaigns to enhance awareness and understanding among the Japanese public in general, and Japanese employers in particular, regarding the employment-related problems of Korean residents in Japan.

50. The memorandum between Japan and the Republic of Korea referred to in the report had led to a further three improvements in the field of education. First, with regard to employment in public schools, the Government had issued instructions that Korean persons, such as Koreans residing in Japan who did not possess Japanese nationality, were nevertheless permitted to take examinations for employment as public schoolteachers. Those passing would be employed on a full-time basis and would not be offered limited-term contracts. Steps had been taken to comply with those instructions in all the prefectures and major cities of Japan.

51. Secondly, the Government had advised local authorities that they were permitted to provide - at their own discretion - extra-curricular education in the Korean language and culture to Korean residents in Japan enrolled in Japanese schools.

52. Thirdly, the Government had instructed all local education boards to issue school prospectuses giving details of enrolment procedures. Consequently, Japanese education boards were issuing appropriate educational prospectuses to all foreign parents with school-age children, except those who had confirmed that they had no intention of enrolling their children in a public school.

53. In reply to question I (h), regarding progress in dowa districts, he said that the dowa issue had been perceived by his Government as one relating to the basic human rights guaranteed by the Constitution (para. 230). Through special procedures and projects for regional improvements, 3.7 trillion Japanese yen had been spent on special measures to improve living conditions, promote industry and education, enhance human rights and protect and promote social welfare, in localities recognized as dowa districts. Through those measures, the gap between conditions in the dowa and other districts had narrowed considerably. Advances had also been made in eliminating psychological discrimination.

54. The Secretariat had been asked to distribute to the Committee members data from a 1985 survey describing those improvements in detail. The Government was again conducting a large-scale survey and new details would be available by March 1995. It was endeavouring to solve the dowa problem as soon as possible, being determined that discrimination should not persist until the twenty-first century.

55. In reply to question I (i), regarding the measures introduced under the Hokkaido Utari Welfare Plan (paragraph 234 of the report), he said that, according to a survey of living conditions conducted by the government of Hokkaido in 1986, there was a gap between the average living standard of the general public in the surrounding municipalities and that of the Utari people in respect of the ratio of school enrolment and the ratio of reception of welfare benefits. For example, the proportion of pupils attending senior high schools was 78.4 per cent

among the Utari people, compared with 93.9 per cent in the surrounding municipalities. The proportion of students attending universities was 8.1 per cent among the Utari people, as against 24.6 per cent among other people. The proportion of persons receiving welfare benefits was 6.09 per cent among the Utari people, as compared with 2.19 per cent in surrounding municipalities.

56. There had been some cases in the past, which had been dealt with by the Civil Liberties Bureaux of the Ministry of Justice, in which Utari people had been insulted or discriminated against in terms of marriage. The Hokkaido Utari Welfare Plan was a seven-year programme formulated by the government of Hokkaido for the integration of all measures aimed at promoting education, culture and industry and improving living conditions. Major specific projects included measures to promote education and culture through the provision of scholarships for senior high school and college students, the conducting of surveys and the recording of Ainu folk customs and cultural properties. Measures had been taken to improve living conditions by modernizing facilities and providing loans for building new houses. Industry had been promoted through exhibitions of folk art products, modernization of the infrastructure for agriculture and forestry, and the provision of financial aid for vocational training.

57. In reply to question I (j), regarding the legal situation of children born out of wedlock, he said that, as long as they had legal parents, children born out of wedlock acquired the rights and duties, such as those relating to support and the right of succession, provided in the Civil Code on the basis of a parent-child relationship. The treatment of children born out of wedlock differed from that of children born in wedlock in the following respects: first, a child born in wedlock had a legal father at birth, in most cases by virtue of the presumption in the Civil Code (art. 772) that a child born in lawful wedlock was deemed to be legitimate. A child born out of wedlock had a legal father only after acknowledgement by the father. Secondly, a child born in wedlock assumed the surname of its parents, whereas one born out of wedlock assumed the surname of its mother (article 790 of the Civil Code). Lastly, in the field of inheritance, the share in a succession of a child born out of wedlock was half that of a child born in wedlock (article 900 of the Civil Code).

58. In addition, according to the Family Registration Act, a distinction was made between children born in and out of wedlock at the time of the registration of birth. A child born in wedlock was registered in the Family Register in terms such as “son” or “daughter”, but a child born out of wedlock was registered as male or female. The differences were intended to protect lawful matrimonial relations. They were not deemed to create any unreasonable discrimination against children born out of wedlock.

59. The CHAIRMAN invited the members of the Committee to ask supplementary questions in respect of section I of the list of issues.

60. Mr. SADI said that the impressive size and composition of the Japanese delegation showed how seriously the Government took its dialogue with the Committee. The third periodic report was excellent and met the Committee’s guidelines to a considerable extent. Taken together, the initial and periodic reports gave a clear picture of the situation in Japan and the introduction to the report and the answers to the list of issues had thrown further light.

61. The Japanese report was particularly important because of Japan's position as a major regional and world Power. Whatever the Government of Japan did or said in regard to the Covenant had a locomotive effect, both regionally and internationally. He therefore regretted its somewhat conservative attitude to the ratification of other international instruments, such as the Convention against Torture and the Optional Protocol. He would like to see Japan setting the standard for the region and the world by assuming a leadership role in that regard.

62. His first question related to the central issue of the status of the Covenant (paragraph 12 of the report). He felt that phrases such as "according to the intent of this article" and "treaties concluded by Japan are supposed to be effective as domestic laws" implied that its position was rather shaky. It had been confirmed in the replies to section I that the Covenant had been invoked on some occasions and that the courts had decided that certain acts did not conflict with it.

63. He asked whether, when a court interpreted the Covenant, it was guided by the Committee's jurisprudence. It was essential to ensure that, when States parties interpreted the Covenant for their own juridical purposes, they were always guided by the Committee's interpretation of the various articles. With regard to article 2 of the Covenant (paragraph 35 of the report), he asked whether there was any particular reason why "national origin" had been omitted from article 14 of the Constitution of Japan guaranteeing equality under the law.

64. Regarding the status of Koreans in Japan, he asked whether the differential treatment accorded to Korean nationals was in reaction to their renunciation of Japanese nationality. He did not see why Korean Special Permanent Residents should not be given treatment completely equal to that of Japanese nationals, apart from the right to vote. The Japanese report had received widespread attention and members of the Committee had received information from various sources indicating that some 20,000 Korean nationals were arrested annually because of failure to carry their registration cards. He asked whether that information was correct.

65. The treatment of article 4 of the Covenant (para. 98) was extremely concise. He noted that, under the Covenant, Japan was duty-bound to enact legislation incorporating article 4 and all its paragraphs. The subject should therefore have been treated more extensively. In regard to women's rights, he asked whether a Japanese mother married to a foreign national would be able to pass on her nationality to a child, on the same terms as a Japanese father. With regard to the treatment of children born out of wedlock, he said that such children deserved to receive added protection rather than be penalized. Japan was making strides in according them equal treatment but more needed to be done.

66. Mr. MAVROMATTIS said that the leading part played by Japan on the international scene added to its moral obligation to serve as a model in the protection and promotion of human rights. The Government of Japan was undoubtedly doing much in that field. It was also enhancing development through bilateral assistance to many countries, thus advancing respect for economic rights, as well as providing direct assistance to organizations promoting human rights, including Centre for Human Rights itself.

67. He was concerned, however, about Japan's failure to adopt the Optional Protocol and found the explanations given unconvincing. In response to the argument that it might affect the independence of the judiciary, he said that scores of countries had acceded either to a universal or to a regional optional procedure for the promotion of human rights whereby communications

for individual petitions were allowed, and had encountered no problems. Normally, those mechanisms took over when local remedies were exhausted, provided such remedies were available and not unduly prolonged. He believed that Japan should accede to the Optional Protocol as soon as possible.

68. He commended the Government's action in making its report available to local and international non-governmental organizations (NGOs). The Committee was gradually moving towards the point of requesting all countries to make their reports officially available, on the grounds that local NGOs were in a better position to monitor respect for human rights and fundamental freedoms more closely and consistently. He had no doubt, from the reaction of the Japanese Government and the NGOs, that much good was resulting from that interplay.

69. Regarding the relationship between the Covenant and domestic laws, he said that the approach adopted seemed rather negative. While no judgement had explicitly mentioned the positive effect of the Covenant, a number of judgements had stated that certain laws, regulations or official acts did not contravene it. He would like to see Japan go a step further and accept rights on the grounds that they were set forth in the Covenant. The Committee had received information from the Japan Federation of Bar Associations, with respect to the assertion that a court would allow the provisions of the Covenant to prevail, that the Government had in fact been taking the contrary position in cases where it was itself a defendant. There had been no case in which a court had issued a judgement based on the Covenant. He asked whether interpretation had been available in the Tokyo High Court case referred to in the reply to question I (a). While it would have been better if the accused had also received the document in his own language, the Covenant required that the charge should at very least be interpreted and that before being indicted the accused should be informed of the charge against him in a language that he understood.

70. He believed it was essential for the meaning of the phrase "public welfare" used in article 12 of the Constitution to be defined precisely through legislation. In the absence of any legal precedent, he was unable to understand how it was interpreted. It appeared that the work of the Civil Liberties Commissioners (para. 8) was chiefly connected with civil disputes and the connection with human rights was unclear. He asked whether minorities, such as the Koreans, or underprivileged communities such as the inhabitants of the dowa districts, were represented on those commissions and what qualifications were required. Resort to commissioners rather than the courts, and replying on persuasion rather than actually claiming and obtaining rights, sometimes tended to confuse matters.

71. With regard to the treatment of Korean residents, he believed that past history imposed a duty on the Government of Japan to eliminate all the remaining restrictions, particularly those regarding registration and employment opportunities. While much progress had been made in respect of the dowa districts, more education was needed to eliminate the remaining inequities completely. He was surprised by the claim that the differential treatment accorded to children born out of wedlock was reasonable, and asked whether Japan had acceded to the Convention on the Rights of the Child. The sooner all those instances of discrimination were eliminated, the sooner Japan would truly be in compliance with the Covenant.

72. Mr. POCAR said he was impressed by the quality and punctuality of the third Japanese periodic report and the replies just given to the questions in section I of the list of issues. His comments should be seen against the background of his appreciation of the great efforts made by the Government of Japan in recent years to improve the human rights situation both within the country and outside it.

73. His criticism applied chiefly to issues of discrimination. He felt that, notwithstanding the efforts made by the Government and the authorities and the encouraging improvements in legislation and practice referred to in the responses to section I, discrimination persisted in a number of fields, both in law and in practice.

74. Reference had been made by previous speakers to the law applying to children born out of wedlock. He, too, had been surprised to hear the statement that it was regarded as justified. Article 900 of the Japanese Civil Code clearly contravened the Covenant. The Committee's general comment on article 24 related to discrimination in every field, including inheritance. The explanation had been given that the legislation was needed in order to protect the family. Such protection, however, could not be assured at the expense of the children and must be achieved by other means. Also in connection with the position of children, it was his understanding that the Tokyo Appeal Court had recently declared the provisions of article 19 (4) of the Civil Code to be unconstitutional. He would like to know the impact of that decision, whether it satisfied the provision of the Covenant or whether further legislation was required and, if so, how the Government intended to approach the matter.

75. There was still some discrimination against women in Japan, particularly in the workplace. The Committee had received information from a number of NGOs concerning the dismissal of workers for having certain ideas or behaving in a certain way. While he quite understood that such discrimination was against the law, he wondered whether it persisted because the remedies were not adequate. For instance, the process of appeal against dismissal could take many years and there seemed to be no machinery for prompt reinstatement or for obtaining an injunction.

76. It was highly desirable that Japan should ratify the Optional Protocol to the Covenant in the near future. He believed that it would have no negative impact on the judicial system. If a communication was sent claiming that a remedy was unreasonably prolonged, the only effect on the system would be to improve it. He noted that his own country had problems with the length of judicial proceedings and the support of international bodies such as the Committee could be very valuable in that regard.

77. Mrs. EVATT said that the size and strength of the Japanese delegation indicated the significance attributed to the Covenant in Japan. The Japanese report and the supporting material, which was itself very comprehensive, had also given rise to an unprecedented amount of material from NGOs. She herself had received submissions from more than 20 organizations, raising many issues, some of major importance. She welcomed the fact that the Government of Japan had confirmed at the current meeting that it would take the documents and the issues to which they gave rise into consideration.

78. From a reading of the second periodic report and the account of the proceedings on the last occasion, it would seem that the Committee's concerns at that time had included the status of the Covenant, the treatment of persons in custody, the application of the death penalty and various instances of discrimination. The same issues figured to some extent in the current report and certainly in the material received from NGOs.

79. In view of the call by the World Conference on Human Rights for universal ratification of individual communication procedures, it was important that the Government of Japan should give active consideration to the possibility of ratifying the Optional Protocol. Many States had already taken that step, which should in no way be seen as undermining the independence or standing of the judiciary in the State concerned. The provision regarding the exhaustion of domestic remedies meant that such procedures should not give rise to abuse, and they had not, in fact, done so.

80. Concern remained about the status of the Covenant in Japan, particularly in respect of the public-welfare limitation, which had been explained as a matter for the court to resolve in each case. She believed that that could lead to uncertainty about the application of rights. The Covenant itself provided for limitation by law but in defined situations in each case. The explanation in the report appeared to disregard the very significant requirement that any limitations that were permitted must be within the express terms set out in the Covenant. The specific case referred to in the report, and those mentioned in the replies to questions, gave rise to considerable concern and confirmed the desirability of opening up the matter for wider discussion through ratification of the Optional Protocol.

81. The report referred to a number of national institutions for the protection of human rights (para. 8). She would like more information on the work of the Civil Liberties Commissioners, particularly whether they took up cases of alleged violations by public agencies, since the report said that most of their work related to matters between private individuals.

82. The questions raised by the material which she had received about discrimination against women were probably too extensive for the Committee to discuss at its current meeting. She would merely note, therefore, that the National Plan of Action was a welcome step. Also, she had received a communication from ILO about the slow implementation of equal employment opportunities and equal pay in Japan. In view of the matters set out in paragraph 94, concerning the Child-care Leave Law, and Japan's obligations under article 23 (4) of the Covenant, she asked whether active consideration was being given to implementing the ILO Convention on Workers with Family Responsibilities. Part of the problem in Japan seemed to result from traditional assumptions about the roles of men and women in the family which acted as a barrier to the advancement of women in employment and to their participation in politics.

83. The heart of the problem of the continuing discrimination against children born out of wedlock seemed to lie in the strict requirements regarding the registration of names and family registration. A way of overcoming those requirements would have to be found, given the right of the individual, whether as a child or as an adult, to equal treatment without discrimination. She understood that the courts had recently pronounced on the inheritance law and asked for more information in that regard.

84. In the case of possible discrimination against the Ainu people, some groups reporting to the Committee had identified the problem as a failure to recognize the wish of the communities in question to maintain their individual cultural identity and language. More was needed than the improvements that had been referred to at the current meeting, in the form of an increasing level of consultation and participation by the communities themselves in planning for their own development.

85. Lastly, with regard to the electoral process and participation, she said that concern had been expressed to a number of Committee members about the very tight restrictions on people taking part in election campaigns. She asked how those restrictions met the requirements of article 25 for a free and open electoral process.

86. Mrs. HIGGINS said that she looked forward to a continuation of the dialogue initiated by Japan's second periodic report. The current report contained a great deal of information, set out in the sort of way needed for a useful dialogue, and the very competent delegation despatched by the Government would be in a position to reply fully to the Committee's queries and comments. Much work had clearly gone into the preparation of the excellent replies to the initial questions.

87. The Committee had received many submissions from NGOs, an input which it was delighted to have. It was also pleased by the Government's response to that healthy public exchange. Recent changes in legislation in important areas, improvements in administrative measures, and the significant affirmative action reported in the answers to the Committee's questions, were all encouraging features.

88. She had been struck by the two main reasons offered in regard to the failure to ratify the Optional Protocol: anxiety about the independence of the judiciary, and anxiety about possible abuse of the system. On the second point, she noted that the Optional Protocol itself contained provisions for the rejection of communications that were abusive and that there were also other mechanisms to protect both the Committee and the State party against abusive use of the procedure.

89. Some of the issues that had been of concern to the Committee on the last occasion seemed to subsist. She asked, therefore, what had actually happened after the second periodic report, in the sense of what level of government the Committee's observations had reached and what action had been taken as a result. The purpose of her question was to assess the efficacy of what was said in the Committee as a vehicle for change, as opposed to other extraneous factors that might lead to change, or factors leading to resistance to change where the Committee deemed it appropriate.

90. Regarding possible continuing discrimination against Koreans, she asked what was the purpose of the cards that had to be carried even by long-term residents and, with regard to re-entry permits, why the five-year cycle was still maintained for people with permanent residency. She also asked whether Koreans were recognized as an ethnic minority, since there was no reference to them under article 27. The only reference was to the Ainu people (para. 233), stating that they were "Japanese nationals whose equality was guaranteed under the Japanese Constitution". The Committee was disturbed at the increasingly common suggestions

that minority rights were available only to nationals. Minority rights should be available to all persons within the territory who belonged to a minority, even those who were there incidentally, and certainly to all those who were permanent residents.

91. Also in connection with the status of Koreans, she asked whether the statement was correct that, while the national curriculum was the same in Korean schools, problems were experienced in proceeding from those schools to high school and university. She also asked whether it was correct that students at Korean schools were charged more for the school commuters' railway pass. Lastly, she asked why Koreans over the age of 67 were denied the possibility of making good blank periods for the purpose of the accumulation of pension contributions, although the practice was otherwise encouraged.

92. Miss CHANET said that she was pleased to be able to continue the dialogue with the Government of Japan begun five years earlier when the second periodic report had been considered. When punctually submitted, such reports enabled the Committee to pass on from the already familiar legal and constitutional framework and engage in a much more effective exercise, that of discovering whether the comments made during the previous examination had been taken into account, and whether any reforms had taken place in the meantime.

93. A number of questions had already been asked regarding the different, and possibly discriminatory, treatment accorded to certain groups of persons. Among such groups were women, children born out of wedlock, aliens, minorities and the mentally ill. Apparently, national medical assistance was reserved for Japanese citizens and foreigners working in Japan, and though contributing to the Japanese economy, did not benefit on the same terms from social security and medical treatment. She would be grateful for any information in that regard.

94. As for children born out of wedlock, she asked how many children there were in Japan without nationality. She also associated herself with previous speakers regarding the discrimination against such children in matters of inheritance. Article 900 of the Civil Code and the instructions for registering births in different terms clearly did not comply with the Covenant and constituted discrimination. The Committee had been told that the purpose of the differentiation was to protect the matrimonial tie, but she could see no direct link between such protection and the discriminatory treatment of a child born of an other-than-matrimonial connection for which he or she was in no way responsible.

95. With regard to women, she noted that the Committee had just been told that measures were being taken to help settle conflicts between women and their employers in the public and private sectors. She asked whether there were any recourse measures for women who believed themselves to be discriminated against in their employment or to be the object of discriminatory remarks or treatment, and, if so, what was their legal basis. She also asked whether there were any specific institutions devoted to ensuring respect for the rights of women or other workers.

96. During the examination of the second Japanese periodic report, questions had been asked about the remedies available to the mentally ill and it had been admitted that discrimination against such persons still existed. For example, epileptics were prohibited from holding driving licences and some of the mentally ill were forbidden certain occupations. She asked whether legislation was under consideration in Japan to mitigate that situation, which she regarded as very serious. She asked whether the Eugenic Protection Act, which authorized certain measures



of constraint to be practised on mentally-ill persons, was still in force. She noted that mentally-ill persons who could be denied the opportunity to exercise an activity, could also be regarded as criminally responsible and sentenced to the death penalty. According to the information she had received, of the three persons condemned to death in 1993, one had been mentally-ill.

97. Mr. PRADO VALLEJO said that the third periodic report of Japan was very comprehensive, and the replies just given to questions had completed the picture of the human right situation in that country. He associated himself with those previous speakers who had referred to the non-ratification of the Optional Protocol and also thought it strange that Japan had not ratified the Convention against Torture, a basic instrument in the field of human rights. It would help human rights immensely, not just internally but also at the international level, if Japan ratified the Optional Protocol. He also endorsed the views expressed about the treatment of children born out of wedlock.

98. With regard to discrimination against women, he said that he had received a surprisingly large amount of material concerning the treatment of women by the police. It would appear that women in detention were more subject to police abuse than men. One positive point that had emerged in regard to women was the establishment of the Headquarters for the Planning and Promoting of Policies relating to Women and the formulation of the National Plans of Action (paras. 88 and 89). The report showed that the Government was actively engaged in promoting equality for women and in particular their participation in the international field.

99. Discrimination against Koreans seemed to persist, despite the conclusion of the memorandum between Japan and the Republic of Korea, and he urged the adoption of further measures to end it. He was also concerned about Japanese policy regarding asylum-seekers and refugees. From the information available, it appeared that reform was needed. Japan seemed to have a restrictive attitude with regard to both, and the treatment of those seeking asylum was not in accordance with international standards, despite the fact that Japan was a party to the Convention relating to the status of refugees.

100. A further concern was discrimination against non-nationals with respect to employment in the public service (para. 44). Apparently, Japan had not sought to remedy the restrictions on Koreans but rather had extended decision-making powers in that regard to the municipalities. The Covenant accepted discrimination only in regard to the political rights to vote and to be elected. All other rights must be respected and guaranteed to nationals and non-nationals alike.

101. There was a reference in paragraph 80 of the report to national institutions for the protection and promotion of human rights under the Ministry of Justice, but their powers were not described and it was not said whether they were State or non-governmental bodies. According to paragraph 9, they had no competence to conduct compulsory investigations or judicial power to decide that human rights had been infringed. He hoped that the Director of the Human Rights and Refugee Division of the Ministry of Foreign Affairs, who was a member of the Japanese delegation, would be able to tell the Committee how those institutions worked.

102. He noted from paragraph 215 (e) that the police had power to prevent young people from buying and reading certain books which were held to be bad for them. He believed that that constituted censorship, and asked whether the criteria for police intervention in that regard were national.

103. Mr. WENNERGREN said that he had been particularly pleased to hear that the Government of Japan was aware of the many reports that the Committee had received from NGOs and that it was willing to take those reports and their contents seriously.

104. On the basis of material in some of those reports respecting articles 23 and 24 of the Covenant, he said that it was his understanding that children of mixed parentage could be separated from a non-Japanese parent who was deported as an illegal resident, and asked what could be done to protect the family in such a situation. He also asked what was being done to enable children who became stateless because their parentage was unknown to acquire a nationality.

105. Paragraphs 216 and 217 of the report concerned physical punishment, a topic which had also been discussed during the examination of the second periodic report. Some improvements appeared to have been made, but he wondered whether the law could really be enforced since no real disciplinary measures seemed to be provided for. He asked whether any stronger measures were being considered.

106. A number of NGOs had referred to the question of post-war responsibility. The nationality clause in the laws on post-war responsibility could be looked upon as discriminatory with regard to the payment of compensation. He noted that one category - the so-called "military comfort women" - had been left out altogether and he asked whether any consideration was being given to awarding them compensation.

107. In conclusion, he endorsed the view of previous speakers that Korean residents of Japan should be looked upon as a minority group and thus as falling under the provisions of article 27. He noted that Korean schools did not enjoy the same status as ordinary schools in Japan and asked whether there were many Korean children who needed education in the Korean language and if so, what was being done to improve the situation.

The meeting rose at 1.05 p.m.