

February 8, 2008

United Nations  
Office of High Commissioner for Human Rights

Written Information Submitted for the Summary of the Human Rights Situation in Japan  
to be Prepared by the United Nations Office of High Commissioner for Human Rights

Japan Federation of Bar Associations

## I Japan's Efforts at Implementing International Human Rights Treaties

### Positive Aspects

1. The Japanese government has ratified many of the core international human rights treaties, and through reviews and recommendations by treaty bodies, it has in part endeavored to implement treaty obligations domestically. In accordance with a policy of positive human rights diplomacy, Japan has served as a member of the UN HRC, and in other ways internationally shown its effort to play an active international role in the human rights area. At the same time, however, there are problems with the human rights situation in Japan that have been neglected and have seen no improvement for many years despite the recommendations of treaty bodies and special rapporteurs.

### Process of Preparing Japanese Government UPR Report

2. It is appreciated that the government set up a human rights diplomacy page on the Ministry of Foreign Affairs website, where it has posted an explanation about the HRC and Japan's pledge in the HRC first election, announced the UPR of Japan and invited opinions for reference for the government report. However, the Japanese government has not held consultations with NGOs and other stakeholders in the process of preparing the government report for the UPR (as of February 8, 2008). Prior to submitting this report to the UN Office of High Commissioner for Human Rights, the JFBA provided an advance copy and an explanation for the government.

## II Japan's Normative and Institutional Framework for Promoting Human Rights Protection

3. Japan's main normative framework for promoting human rights protection comprises the human rights provisions of its Constitution, the provisions of domestic laws connected with guaranteeing human rights, and international human rights instruments including international human rights treaties. Although Japan has ratified most of the core human rights treaties, it has not yet signed the ICCPR-OP2 or the ICRMW. Further, Japan has yet to ratify the ICCPR-OP1 or other optional protocols for individual complaint procedures, and has not declared its acceptance of them. In accordance with the spirit of Article 98.2 of the Constitution of Japan that provides the obligation of observing the treaties and established laws of nations, treaties ratified by Japan are incorporated into the domestic legal system and have the same force as domestic law. Japan has no national plans of action for the promotion and protection of human rights.

4. For the institutional framework, the courts do provide judicial redress for human rights violations, but Japan has yet to establish national human rights institution in accordance with the Paris Principles. Courts are disinclined to apply international human rights treaties as judicial norms, and in the interpretation of treaties, courts tend to ignore the general comments and views of treaty bodies. For that reason, concluding observations by the CCPR (1998) and the CESCR (2001) recommended that judges be given education and training in international human rights law (Appendix II-1), but implementation is still insufficient. Further, because the ground of appeals to the Supreme Court is limited to unconstitutionality, litigants cannot directly invoke a treaty violation as a ground of an appeal to the Supreme Court.

## III Major Concerns (General and Structural Problems)

### Uncooperative Attitude toward Treaty Bodies

5. In its pledge submitted in the HRC first election, Japan's government lauded itself for faithfully implementing the core human rights treaties, but in reality the Japanese government's attitude with respect to the reviews of government reports by treaty bodies is generally far different. Specifically, the government has been very late in submitting its reports to treaty bodies, and it has hardly implemented any of the recommendations made by treaty bodies. What is more, as evidenced in its rebuttals to recommendations (Appendix III and IV), the government evinces no will to sincerely implement those recommendations in the first place. There are even issues which the government has neglected for many years, taking no action at all, despite repeated recommendations from multiple treaty bodies to make improvements. Some examples are revision of provisions which discriminate against children born out of wedlock, abolition of substitute prison (*daiyo kangoku*), improvements in the way the capital punishment system is operated and in the treatment of death row inmates, and the establishment of a national human rights institution.

### National Human Rights Institution

6. The CCPR, CESCR, CERD, CEDAW, and CRC have advised Japan to as soon as possible establish a national human rights institution in accordance with the Paris Principles (Appendix II-2), and it should be done soon.

7. In March 2002 the government submitted a human rights protection bill to the Diet for the establishment of a national human rights commission, but the proposed legislation had fatal flaws including: (1) the human rights commission to be created by the bill would be under the virtual jurisdiction of the Minister of Justice as an extra-ministerial bureau of the Ministry of Justice, and therefore problematic in terms of independence from the government, and (2) the concept of the “human rights” for which redress and protection are to be provided is ill-defined, and the only types of human rights violations by public power that are eligible for investigations and redress are limited to “discrimination and abuse.” For this reason there is widespread opposition from JFBA and the public, and the bill has not passed the Diet. In 2005 there was another proposal for a revised bill that was even more regressive and discriminatory because it would introduce a citizenship requirement to qualify for the human rights protection commissioners who would serve for the human rights commission. JFBA and other NGOs that have been seeking the establishment of a national human rights institution in accordance with the Paris Principles have become more wary that such a bill might be submitted to the Diet and passed, and there has been no progress in efforts aimed at establishing a national human rights institution.

### Individual Complaint Procedures

8. Japan has yet to ratify, even sign any of the optional protocols for or declare acceptance of individual complaint procedures under international human rights treaties. This fact is indicative of an attitude totally removed from faithful implementation of core human rights treaties. In response to recommendations by treaty bodies on this matter, the Japanese government has for nearly 20 years repeated the same irrational excuse, that “it is possible problems would arise in connection with the judicial system, including the independence of judicial power, and it has been pointed out that the matter should be considered with great care, and therefore we are, while observing the implementation and other aspects of this system, seriously and carefully considering whether Japan should sign.” As such, there has been no progress at all. Considering that Japan, as a member of the HRC, tries to play an internationally positive role and discharge its responsibilities in the area of human rights, it is totally indefensible that individuals within its own jurisdiction are placed in circumstances where they cannot avail themselves of the individual complaint procedures, which are the international mechanisms for protection of human rights. Japan should accept all the individual complaint procedures immediately.

## **IV Major Areas of Concern (Specific Problems)**

### A. Problems Relating to Police Detention and Criminal Procedure

9. JFBA strongly requests that the HRC adopt a conclusion which asks the Japanese government to abolish substitute prison (*daiyo kangoku*) and to make electronic recordings of interrogations.

#### Police Detention (*Daiyo Kangoku*) Continuing Even after the Decision to Detention and Unverifiable Interrogation of Suspects

10. In Japan, even after suspects are passed into the custody of a judge, they go back to the police and are not transferred to detention facilities under Ministry of Justice jurisdiction. They are kept in police detention cells functioning as substitute prison (*daiyo kangoku*) until indictment (maximum 23 days), where they can be interrogated for that entire period of time by police and prosecutors. This time in police detention cells is too long and clearly violates international human rights standards.

11. There is no legal limit on interrogation time while in police custody, and suspects who deny the charges or maintain silence are subject to interrogation that continues far into the late night. When suspects deny the charges, written statements are sometimes not produced.

12. In Japan, interrogations of suspects in detention are conducted in total secrecy. Neither video nor audio recordings are made, and lawyers are not present. As such, there is no means of subsequently verifying whether an interrogation was conducted properly. In fact, there are continuing reports in which suspects claim that interrogators take advantage of behind-closed-doors conditions to subject suspects to

psychological pressure such as threats or the promise or offer of inducements, or force suspects to confess, or physically torture them with violence, indecent acts, or other means. There are many instances in which courts recognized such claims by defendants (Appendix II-3).

13. Records of interrogations by police officers and public prosecutors are statements created by having suspects sign and affix their seals to documents prepared by those investigators, but these documents do not contain questions and answers one by one and thus cannot be considered precise records of the statements of the suspects.

14. An internal document of the Ehime Prefectural Police, which created guidelines for police in interrogations, was revealed to the public by accident. These guidelines recommend that suspects who deny charges be “weakened” through long hours of questioning in order to gain confessions (Appendix II-4).

#### Ignoring Recommendations from Treaty Bodies

15. JFBA has been active for over 30 years in demanding the abolition of the substitute prison (*daiyo kangoku*) system. The concluding observations of the CCPR (1993, 1998) and of the CAT (2007) recognized that the substitute prison system is the cause of false coerced confessions obtained through inhumane interrogations. They strongly request that the substitute prison system be abolished and that interrogations be electronically recorded (Appendix II-5).

16. In response, JFBA has proposed that the substitute prison system be abolished, that interrogations be video or audio recorded in their entirety, and that lawyers be given the right to demand disclosure of all evidence held by prosecutors. To this end, JFBA has conducted continuing consultations with the Ministry of Justice, but none of these things has happened due to strong resistance from investigative authorities. Recently the Supreme Public Prosecutors Office has introduced on a trial basis a system in which prosecutors would make video or audio recordings of parts of interrogations when they deem it necessary, but partial audio or video recordings would be nothing more than prosecutors creating evidence or making presentations that would give judges (including citizens chosen for the lay judge system soon to be launched) a strong impression of the situation after coerced confessions had been extracted. Therefore as a means of interrogation transparency, partial recordings would be not just totally insufficient, but even harmful.

17. Another serious problem related to human rights violations while suspects are in police detention facilities is the lack of an institution, which investigates complaints, independent of the police (Appendix II-6).

18. The response of Japanese government, which openly ignores the repeated recommendations of treaty bodies, is incompatible with its diplomatic posture of making a contribution to guaranteeing human rights around the world as a member of the HRC. Despite JFBA’s consistent efforts, the domestic solution to this problem has proved especially difficult, thereby making it essential to have a decisive recommendation by the HRC.

#### B. Capital Punishment System and Treatment of Death Row Prisoners

19. Japan’s capital punishment system and its implementation are distinctly inhumane, and involve serious human rights problems. The UN High Commissioner for Human Rights also expressed concern over the recent execution (Appendix V). We vigorously request that the HRC respect the recommendations for improvements that the CCPR and CAT have repeatedly made to Japanese government, and issue stricter, more resolute improvement recommendations including a moratorium on executions.

#### Expansion of the Capital Punishment System and Lack of an Appropriate System for Stay of Execution

20. In Japan, over the last decade there has been no particular increase in homicide or other heinous crimes. However, the number of death row inmates has risen from 51 in 1997 to 98 at the end of 2006, and further to 109 as of November 15, 2007. Appeals against the death sentences are not mandatory. Although it is possible to request a retrial for finalized death sentences, such requests do not have legal effect to stay execution. Further, retrials for death sentences had been held for only four cases in the 1980s (Appendix II-8).

21. Death row inmates include a considerable number of people who have serious health problems or are of advanced age. Although the Code of Criminal Procedure prohibits carrying out execution on those

who are *non compos mentis*, there is no system under which outside physicians examine the health of death row inmates and determine whether a stay of execution is called for, and there are instances in which a mentally unsound inmate and an aged inmate were executed (Appendix II-9).

22. In 1975 there was only one instance in which the death penalty was commuted by a pardon, but for over 30 years since then there has been not a single pardon, showing that the pardon system is not working.

#### Torture and Inhumane Treatment of Death Row Inmates

23. Death row inmates are told the day of their execution on that very day, and usually about one hour in advance. Even relatives and lawyers are given no advance notice. Even for those inmates requesting retrials, there is no guarantee of a confidential meeting with their lawyers. In fact, in almost all cases a prison official is present during meetings of death row inmates with their lawyers. Letters exchanged with lawyers are all inspected. With no exceptions, death row inmates are kept in single cells for long periods, and contact with other prisoners is not permitted in principle (Appendix II-10). Strict limits are placed on meetings and correspondence with people other than relatives and lawyers.

24. The concluding observations of the CAT (2007) determined that such treatment could amount to torture or ill-treatment.

#### C. Discrimination

25. Even now the Japanese state itself commits legal and actual discrimination against foreigners, people born out of wedlock, and women, which in some ways fosters and reinforces discrimination by private persons. JFBA requests that the HRC adopt a conclusion asking the Japanese government to eliminate current de jure and de facto discrimination, rectify past discrimination, and take steps to rectify discrimination in the civil sector.

##### Foreigners

26. The number of foreigners in Japan has been increased 47% for the past ten years and the trend of their settlement has been in progress. However, creating the legal system aimed at the co-existence of multi-ethnic people and prohibition of racial discrimination is behind and there exists discrimination in such areas as labor, education and social security. On the other hand, a policy of strictly controlling and monitoring immigration and residence targeting foreigners for the purpose of preventing terrorism or crime by foreigners has been implemented or under consideration.

27. Right to Public Employment: The government's stance is that foreigners in general should not be eligible to take public service examinations for the posts whose work is anticipated to involve them in the exercise of public power or shaping the public will (Appendix II-11). However, closing the door totally on foreigners to become national government employees or local public employees, or assuming their supervisory positions just because they do not have Japanese citizenship violates articles 2, 25, and 26 of the ICCPR.

28. Acquiring Facial Images and Fingerprints from Foreigners: For the purposes of preventing terrorism and crime by foreigners, and reducing the number of undocumented foreigners, the Japanese government requires foreigners entering Japan, except foreigners such as special permanent residents, to provide fingerprints and facial images, which it claims will be used for crime investigations and the like. Requiring only foreigners to provide fingerprints in this manner violates Article 26 and is equivalent to degrading treatment under Article 7 of the ICCPR.

##### Discrimination against the Buraku Minority

29. In its concluding observations (1998), the CCPR recommended that Japan take measures to end the discrimination against the Buraku minority in education, income, and the system for effective remedies. Nevertheless, the Buraku minority is far behind the national averages in terms of college entrance rate and individual annual income. In Osaka Prefecture the unemployment rate for Buraku minority men in their 40s is about twice the prefectural average.

### Ainu

30. The Japanese government should recognize the Ainu as indigenous people and certify their land rights. Under the Hokkaido Former Natives Protection Act, the government managed the common assets of the Ainu, such as land and fisheries. Although in 1997 this law was abolished, their land rights have yet to be restituted (Appendix II-12). Treaty bodies recommended realization of the indigenous people's rights of the Ainu and elimination of discrimination against the Ainu (Appendix II-13).

### Children Born out of Wedlock

31. Obtaining Citizenship: Article 2.1 of the Citizenship Law provides that a child born of either a mother or father who has Japanese citizenship also gains Japanese citizenship, but when a child is born out of wedlock to a Japanese father and a foreign mother, it does not gain Japanese citizenship as the father-child relationship is not legally established, unless the father acknowledges it before birth (Appendix 2-14). Concluding observations of the CCPR (1998) and other treaty bodies express concern that this constitutes discrimination (Appendix II-15).

32. Discrimination in Inheritance: The Civil Code specifies that the inheritance share of children born out of wedlock is one-half that of children born in wedlock. Concluding observations of treaty bodies point out that this is discrimination (Appendix II-16). However, the Japanese government maintains that this provision is reasonable because it was created to protect families that comprise a husband and wife united in legal marriage, and children born between them. The Supreme Court has pronounced it constitutional (Appendix II-17).

### Women

33. In Japan, participation by women in policy, decision-making processes and employment is extremely low (Appendix II-18). In terms of wages, regular women employees are paid 67.1% those of men; women part-time workers receive about 45% wages of regular men workers, remaining very low standards.

34. Provisions prohibiting indirect discrimination were added to the amended Equal Employment Opportunity Law, which took effect in April 2007, but there is a problem in that the kinds of indirect discrimination prohibited are limited (Appendix II-19). The amended law is inadequate also because it has no provisions prohibiting sexual harassment.

35. Despite the Concluding observations of the CCPR (1998) and the Concluding Comments of the CEDAW (2003), the government has not abolished Civil Code provisions which are discriminative toward women with respect to marriage and family relationships, such as the lower minimum marriage age for women, the waiting period of remarriage for women after divorce (six months), and the fact that a wife and husband may not have different surnames (Appendix II-20).

36. With respect to violence against women, the Domestic Violence Law was amended to widen the scope of protection against violence, but victims of domestic violence are still latent, and the number of identified cases where a wife is victimized by her husband shows an increasing trend (Appendix II-21). Enhancement of assistance programs for self-reliance after temporary protective custody is needed. Regarding human trafficking, while human trafficking was newly criminalized to punish perpetrators, there is still a need for legislation under which the government would take responsibility for enacting measures to provide victims with comprehensive and effective relief. In May 2003 the Diet approved ratification of the Trafficking in Persons Protocol, but the Protocol has not yet been ratified. Additionally, on the “comfort women” issue, the government should immediately take legislative measures for a final resolution, including an apology and compensation for damages, in accordance with the recommendations of treaty bodies and other UN human rights bodies (Appendix II-22).

### Persons with Disabilities

37. In Japan there exists deep-rooted discrimination against persons with disabilities (Appendix II-23). The Basic Law for Persons with Disabilities provides prohibition of discrimination as a fundamental principle. However, it does not define discrimination (Appendix II-24) and thus is insufficient as the norm for judicial remedies. Enactment of a comprehensive law prohibiting discrimination against persons with disabilities was recommended by the CESCR (Appendix II-25).

\*\*\*\*\*