

# **The Rights of Minorities in Japan: The Japanese Government's Four Periodic Reports to the United Nations Human Rights Committee for the Covenant of Civil and Political Rights**

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## **Introduction**

The present report is based on the study I conducted from 1993 to 2005 on the rights of minorities in Japan. After twelve years of research, I was able to complete my doctoral thesis on “LAS MINORÍAS EN JAPÓN – UNA APROXIMACIÓN HISTÓRICA Y CULTURAL” (Minority Groups in Japan: A Historical and Cultural Approach). Among other sources consulted, United Nations documents played an important role in contributing to the objectivity of the investigation. The four periodic reports submitted by the Japanese government to the United Nations Human Rights Committee (hereafter UNHRC) of the Office of the United Nations High Commissioner concerning the Covenant of Civil and Political Rights were consulted and thoroughly studied. However, the present paper will focus on the first three reports, which offer a detailed picture of the current situation regarding human rights in general and the rights of minority groups in particular as the Japanese government views them. In addition to the periodic reports, the counter reports of non-governmental organizations and other groups that were also submitted to the UNHRC to “correct” the Japanese government view will be also examined to help understand the actual situation of the human rights of minorities in Japan. The Fourth Periodic Report will to be examined in the next issue of the *Sophia Junior College Faculty*

Bulletin as Part II of this paper. Part II will be based on the three previous UNHRC reports and will give an overall view so that the reader will be able to understand the failures and successes of the struggle for a better society in Japan — a Japan where the minorities themselves continue to strive to be recognized as full members on equal footing with the rest of the population.

## **The Declaration of Human Rights and the Treatment of Minorities**

For a better understanding of the aim of this paper, it is convenient to mention here that in this study the concept of the rights of minorities is based on the Declaration of Human Rights and other covenants and documents related to the safeguarding of those rights issued by the United Nations Organization (hereafter UNO). All UNO member states are not only committed to implementing the criteria in the declaration and covenants but also must submit periodic reports to the UNO Human Rights Committee on how the covenants are observed in their countries. This study deals only with the reports concerning the Covenant on Civil and Political Rights (hereafter CCPR).

The proposals and observations given by the committee evaluating the periodic reports are the key to understanding this study. They not only offer objectivity and clarification about the issues presented by the government but also point out problems that are found in the report. The committee finally gives advice and proposes solutions for the unresolved issues, fixing the goals to be reached in the following years before the next periodic report is submitted. The realization of the goals that the committee has set must be given

priority in order to fulfill the requirements of the covenant that the state party, in this case Japan, has signed.

### **Reports on Promotion and Protection of Human Rights**

Japan, having signed and ratified the UNO International Covenant on Civil and Political Rights, has already submitted four periodic reports about the progress achieved regarding the civil and political rights of the citizens in its territory since it signed the Covenant. The four submitted reports are the following:

1. Initial State Party Report, October 24, 1980.<sup>1</sup>
2. The Second Periodic Report, December 12, 1987.<sup>2</sup>
3. The Third Periodic Report, December 16, 1991.<sup>3</sup>
4. The Fourth Periodic Report, June 6, 1997.<sup>4</sup>

These documents reflect the situation of minorities in Japan that have been segregated or discriminated against to a minor or major extent.

The UNO, considered by all countries to be a “moral authority,” constitutes today what is called the “world conscience” with its repertory of declarations, guidelines, principles, and legislation that promote human rights for all, thus influencing directly or indirectly the laws and constitutions of most countries in the world. Within that framework, two principal issues have been selected for this study, namely, the prohibition of discrimination and the rights of minority groups. These two principles are examined in light of the following documents, on which the present study is based and from which it derived its inspiration:

Charter of the United Nations (1945)  
Universal Declaration of Human Rights (1948)  
International Covenant on Economic, Social and Cultural  
Rights (1976)  
International Covenant on Civil and Political Rights and  
Its Facultative Protocol (1976)  
Minority Rights (1992)

In light of these documents, the status of the rights of minorities in Japan will be analyzed to see how Japan has been influenced by the moral authority of the UNO to change its policies and make progress in recognizing that segregation and discrimination should be eradicated from its society.

## **Minority Rights and Discrimination**

### *Overview of Minority Rights and Discrimination*

The acknowledgment that each person must be respected and recognized as an individual endowed with inalienable rights represents the essence and core of UNO doctrines. Likewise, to affirm that each human being must be considered an *individual person* to whom equality of treatment is due by law, as well as by different political, administrative, and legislative organizations whatever his or her condition regarding sex, race, nationality, and social condition might be, is the basic element that underlines all the activities of the UNO, and therefore constitutes also the basis for the acknowledgment of the rights of minority groups. To say, however, that the human person is the subject of all the fundamental rights may not be so clearly understood nor agreed to by some countries where the individual does not count unless integrated into a group. In such situations, the

person only counts in relation to the group from which the individual is granted all the rights that the community enjoys. Outside the group, the individual is alienated and loses all the rights “granted” to the person belonging to it: the person is for the group, not vice versa. This concept is the root of many frictions and conflicts in the international sphere where the rights of individuals and persons belonging to minority groups within a community are at risk and need to be safeguarded.

Bearing in mind that there are differences in the treatment of the individual regarding human rights, it will be convenient for us to review here some of the UNO statements declaring that the center and basis of human rights is the individual person:

We...determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to practice tolerance and live together in peace with one another as good neighbors...<sup>5</sup> [Charter of the United Nations]

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.<sup>6</sup> [Universal Declaration of Human Rights. Preamble]

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or

other opinion, national or social origin, property, birth or other status... because all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The States Parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.<sup>7</sup>

The Organization is based on the principle of the sovereign equality of all its Members.<sup>8</sup>

### *The Human Person as the Foundation of Equality in Defending Human Rights*

According to the UNO, the individual person is not only the axis around which human rights rotate but also constitutes the foundation on which the equality of the defense of those rights rests. In the case of Japan, although the concept of equality is deep rooted in its tradition and culture, equality is not considered inherent to the person; rather, it is bestowed by the group to the individual according to the level or rank in which the person is situated in a vertically stratified society. At the same level of stratification, all individuals share the same kind of equality, but it does not mean that any person can reclaim the essential equality that the UNO speaks of:

To ensure equal treatment in social, economic, and com-

mercial matters for all Members of the United Nations and their nationals ...<sup>9</sup>

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>10</sup>

Everyone, without any discrimination, has the right to equal pay for equal work.<sup>11</sup>

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.<sup>12</sup>

*The State as Guarantor of the Rights of the Individuals Living in Its Territory*

As expressed in the International Covenant on Economic, Social and Cultural Rights, the States Parties to the Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.<sup>13</sup> Developing countries, however,

with due regard to human rights and their national economy, may determine to what extent they will guarantee the economic rights recognized in the present Covenant to non-nationals.<sup>14</sup>

*The Law as Protector of the Individual's Right Against all Kinds of Discrimination*

It is in the field of law where Japan is working to adapt its legislation to the spirit and words of the UNO documents signed by Japan concerning human rights. Due to the effort of many jurists and lawyers in Japan, as well as the work of many NGOs, there has been great progress in the task of eradicating all kinds of violations of human rights in the country. The following texts, however, testify to what extent there is a need to change habits and tendencies among the Japanese people that go counter to the principles adopted by the UNO:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.<sup>15</sup>

Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Every child shall be registered immediately after birth and shall have a name. Every child has the right to acquire a nationality.<sup>16</sup>

All persons are equal before the law and are entitled with-



out any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>17</sup>

*“Person” as the Focus of Human Rights*

It was only a few years ago that the Japanese government recognized what has been obvious to many in Japan and abroad: the existence of minority groups within Japanese society. Some of these groups are not newcomers. Their roots can be traced back more than 300 years, and the Ainu (Utari), for example, are considered the native inhabitants of Japan. The ignorance or negation of this reality shows an attitude worthy to be analyzed in detail. This analysis will lead to a better understanding of the connection it has with the atmosphere that makes possible the existence of what has been called “the apartheid of the minorities” in Japan. This atmosphere is the reason for the need to promote reflection on what is required of the UNO States Parties regarding the rights of minorities:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.<sup>18</sup>

States shall protect the existence and the national or

ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. States shall adopt appropriate legislative and other measures to achieve those ends.

Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic, and public life.

Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. Persons belonging to minorities have the right to establish and maintain their own associations.

Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.<sup>19</sup>

It will be impossible to list here all the UNO pronouncements about the person as an individual possessing inalienable human rights, as an individual having the right not to be discriminated against, as an individual to be respected, and as an individual who can enjoy human rights as a member of any minority group. The selection of the texts mentioned above will be sufficient as a universally accepted reference that can help clarify the concepts and issues with which this study is concerned.

### **The Civil and Political Rights Periodic Reports**

After examining the periodic reports regarding the safeguarding of civil and political rights submitted by all States Parties to the Human Rights Committee, the committee comments and points out in the Concluding Observations the most important issues that must be addressed in the future and gives recommendations to the government on how these problems might be solved before the next report is submitted.

The committee made these remarks after the Initial Report of November 14, 1980, thanking the government of Japan for submitting its report on time and in conformity with its reporting obligations. They noted, however, that the report was too brief, was limited to questions relating to the legal framework, and was lacking in information about actual practices in the country. In particular, it asked whether any of the long traditions of the country had affected the implementation of the rights provided for by the Covenant. They asked whether the Covenant had been translated into Japanese; whether the text was easily obtainable; whether police and prison personnel and civil servants were apprised of the Covenant during their training and of the obligations it imposed on the state; and

what measures were being taken to publicize the contents of the Covenant and make the general public aware of the rights conferred by it, especially as far as minorities and women were concerned.

Commenting on a phrase that appears several times in the Japanese Constitution stating that the exercise of human rights in Japan can be restricted on the grounds of “public welfare,” members of the committee pointed out that this phrase was not in accordance with the Covenant because “public welfare” was not one of the grounds to justify discrimination. They requested explanations on the concept of “public welfare” as well as a few examples of its application where it affected the freedom of the individual.

Commenting also on Article 2 of the Covenant, the members noted that whereas this article stressed the obligation of states parties to ensure to all individuals the rights recognized in the Covenant without distinction of any kind certain articles of the Japanese Constitution referred alternately to the “people,” “persons,” or “nationals,” and it was asked whether the difference in terminology was one of substance or incorrect translation. In this connection, reference was made to a disadvantaged social group in Japan called the *Burakumin*, which was known to have suffered from discrimination based on certain traditions, and it was asked whether persons belonging to that group were still discriminated against in regard to marriage and the education of children, to what extent the government was responsible for that discrimination, and what the government was doing to remedy it.<sup>20</sup>

Considering all the issues one by one, the committee pointed out practices that were not in accordance with the Covenant, designating them as problems to be remedied before submission of the next periodic report. In the last paragraph of the Concluding Observations,

the Japanese representative, addressing the committee's concerns, explains thus:

Replying to questions raised under article 27 of the Covenant the representative stated that "minority" meant a group of nationals who ethnically, religiously or culturally differed from most other nationals and could be clearly differentiated from them from a historical, social and cultural point of view; that the Ainus, who were more properly called "Utari people," were Japanese nationals and treated equally with other Japanese; that the Koreans who had been living in Japan for a long period of time were not considered minorities but aliens and, as such, did not have the right to vote or stand for election to public office. The representative gave a detailed account of the treatment of Koreans residing in Japan and the various rights and privileges enjoyed or not yet enjoyed by them, and stated that he was not in possession of data on the number of Koreans living in Japan in communities with their own particular characteristics but that an answer would be submitted in writing at a later date.<sup>21</sup>

These assertions at the end of the Initial Report to the Human Rights Committee by the Japanese state representative do not correspond to reality, especially in reference to not having data about the number of Koreans. Since the enactment of the Alien Registration Law (ARL No.125) in 1952, all foreigners, mostly Koreans and Taiwanese, were deprived of Japanese nationality, were required to register with the government, and suffered from authoritarian

control, both individually and collectively. Moreover and even more surprising are the repeated assertions in subsequent periodic reports that the government lacks data about foreigners living in Japan and other concerns dealt with in the Initial Report.

Thus, in the Second Periodic Report submitted on March 24, 1988 the committee again stated the following concerns in the Concluding Observations. (1) Regarding foreigners, members of the committee asked whether there were, in Japan, any special factors and difficulties concerning the effective of enjoyment by minorities of their rights under the Covenant and, in particular, what the situation was in regard to Koreans, Chinese, the Utari people and the Dowa people. (2) In his reply, the representative of Japan provided figures concerning the composition of the groups of persons referred to in the question and stated that in Japan no one was denied the right to enjoy his own culture, to practice his own religion, or to use his own language. (3) The members of the committee expressed satisfaction with the thorough, constructive and fruitful dialogue, which had taken place between the representatives of Japan and the committee. They noted with appreciation that the report had already been publicly discussed in Japan and that many non-governmental organizations and groups had been involved. In their opinion, that demonstrated the keen interest in human rights matters that existed in Japan. They noted that many elements of traditional law existed in Japanese society; they had the impression that in the current state of affairs, Japanese legislation was an amalgam of various legal concepts and was expected to evolve further. Hence, it was sometimes difficult to determine with certainty whether some provisions of the legislation were compatible with the Covenant. They noted that some improvements in the Japanese legal system from

the point of view of human rights could already be seen, in particular with regard to the ban on war propaganda, the human rights of mental patients, the management of penitentiary establishments and the use of police cells for holding persons awaiting trial in custody. They also referred to the comments made in the course of the consideration of the report concerning the difficulties in obtaining naturalization in Japan, allegations of maltreatment of prisoners, the application of the death penalty, and certain forms of discrimination against certain ethnic groups and certain communities of the Japanese population as well as against women and aliens. The members expressed the view that the measures needed to deal with the questions raised related to both legislation and practice, and they expressed the hope that the Japanese Government would consider the committee's comments. (4) In the conclusion of consideration of the Second Periodic Report, the chairman also thanked the Japanese delegation for its contribution to a fruitful dialogue with the Committee and expressed the hope that all questions left in abeyance at the current session would be dealt with in Japan's next periodic report.<sup>22</sup>

Thus, Japan being told that "*...all questions left in abeyance at the current session would be dealt with in Japan's next periodic report,*" the Japanese government was urged to make progress in improving the status of minorities who had been marginalized and discriminated against. Years later, in 1992, the Third Periodic Report was submitted.

### **The Third Periodic Report on Civil and Political Rights (1992)**

When Japan submitted the Third Periodic Report to the Human Rights Committee, several non-governmental organizations working for the rights of minorities in Japan also submitted the results of

a survey to the committee. This document was meant to help the committee in its discussion with the Japanese delegation on the various issues presented in the report. The survey played an important role by clarifying the status of minority rights in Japan from a perspective different from the one depicted by the government. The committee took into consideration this difference in its Concluding Observations in its recommendation to the Japanese government to listen more earnestly to minority demands for their full rights.<sup>23</sup> The principal issues are pointed out below.

### *Unequal Treatment of Foreigners in Comparison to Nationals*

Article 25 of the Japanese Constitution states, “All people shall have the right to maintain the minimum standards of wholesome and cultured living and, that in all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.”<sup>24</sup> In practice, this does not apply to the majority of foreigners. The Supreme Court has judged that “the treatment of aliens residing in Japan in the social security policies may be determined with political consideration by the state, unless it exist in any treaty concerned therewith.” It holds that “the state is allowed to prioritize its own nationals over aliens residing in Japan in providing welfare support under financial constraint.”<sup>25</sup>

The Office of Foreign Affairs has also declared the following:

...among [the Constitution’s] various freedoms and rights, some are guaranteed to aliens and some are not. Those that are not, include the right to suffrage (Article 15), the right to social welfare and public health [benefits] (Article 25), the right to receive education (Article 26), and the



right to work (Article 27). By their nature, these rights inherently belong to Japanese nationals and, as such, do not extend to aliens. It is considered, however, that the remaining freedoms and rights in the Constitution are guaranteed to aliens as well (e.g. from Articles 28, 29, and 31 to Articles 40, etc.). Basically, even if the fundamental freedoms and rights of aliens are guaranteed, it is considered permissible to treat aliens differently from Japanese nationals should there be some reasonable purpose in doing so.<sup>26</sup>

It must be added here that regarding education (Article 26 of the Constitution), the Japanese government has never admitted positively the right to ethnic education to non-nationals in Japanese territory since the 1965 ministerial directive.<sup>27</sup> However, in spite of this policy enacted and applied, the Japanese government does not report this administrative practice and legal decisions; on the contrary, it maintains that “fundamentally there is no difference between the human rights guaranteed by the Constitution and those guaranteed by this Covenant though there might be purely semantic differences.”<sup>28</sup>

### *Different Treatment of Foreigners According to the Residence Status Granted*

Classifying foreigners according to different categories of residence would not necessarily constitute discrimination in relation to their fundamental rights and freedoms. In Japan, however, there is an inconsistency difficult to understand when looking at the illogical consequences of the regulations that divide foreigners into four

categories with arbitrariness in their treatment:

1. Permanent Residents with the category special/general, granted in 1991 to 638,034 people (94.5 percent Koreans and 9 percent Chinese)
2. Residents for more of one year, including 365,583 people belonging to different nationalities and also including Koreans and Chinese (Taiwan) not included in the first group. According to the 1992 registration law, *only this group is obliged to register their fingerprints.*
3. Residents for less than a year, including 217, 274 people of different nationalities to whom neither national health insurance nor medical treatment in case of emergency is granted
4. Residents with irregular status, an estimated 292,791 people in 1992 including mostly people from Thailand, Korea, Malaysia, the Philippines, and Iran. These people are not granted marriage and child protection rights.

The Japanese government has not yet clarified which fundamental rights are to be applied equally to all foreigners and which are not.

Regarding the reason of not applying to foreigners all the rights stipulated in the Covenant, the Japanese government gives two reasons. First, the principle that determines the immigration control system, namely, that foreigners can only reside in Japan if they are granted permission from the state and that their fundamental status is different from that of the Japanese nationals. Second is the principle of “public security.” With respect to the latter point, however, the Human Rights Committee, on the occasion of the Second Periodic

Report, had already pointed out to the Japanese delegation that it is not allowed to restrict the specified human rights for reasons of “public security” in matters concerning the right to reside in the country.<sup>29</sup>

### **The Problems Resulting from the Alien Registration Law**

Since it came into effect in January 1993, the law that has replaced the previous one generates more complications because of the division of foreigners into categories based on status of residency. This means a different and arbitrary treatment depending on the category.

First, the unequal treatment of nationals and foreigners regarding the socially discriminatory control of the past still persists. Foreigners are always required to carry an identification card and are severely penalized for failure not to comply with this regulation. Nationals are not subject to this treatment.

Second, this law has also introduced unequal treatment among foreigners. It divides them into different categories not existing before, leading to different and arbitrary treatment of foreigners with respect to their fundamental rights. Furthermore, it requires that some foreigners register their fingerprints, whereas others are not subject to do so. The government contradicts itself in its previous policy of fingerprinting all foreigners claiming that it was equal treatment for all. The government has not explained so far the reasons for introducing these changes regarding the different treatment among foreigners.

Third, without resolving the problem that underlines these changes, the situation worsens in other aspects. (1) All the different

categories of foreigners are obliged to register every five years. (2) The smallest infraction of the law is severely penalized. The disproportionate punishment for small infractions contradicts the content of the Covenant on Civil and Political rights that Japan has signed. (3) It is against the Covenant not to allow the renewal of a residence permit to those who refuse to have their fingerprints or signature registered in objection to a law that they consider discriminatory as a matter of conscience. (4) Even for the first category of foreigners, the new system of registration worsens the situation. Every five years they have to provide detailed information about their families, thus infringing on the right to one's own privacy and the privacy of one's family, in effect submitting to tighter control than before.

In regard to these provisions, the Japanese government claims that other countries follow similar ones, but the government does not recognize that it is only in Japan where these measures are extremely detailed, unnecessarily strict, and reach an exaggerated level of control extending even to the descendants of the second, third, and later generations of foreigners holding permanent resident status. Even the smallest infractions are dealt with as if they were severe criminal offences. Thus, contrary to the claim of the Japanese government, the committee report continues, such restrictions have no parallel in other advanced democracies.<sup>30</sup>

Finally, it is also pointed out that since foreigner residents are identified under fiscal control measures (e.g., tax laws) like Japanese nationals, why is it not possible to verify their identity with the same methods that are used to identify the Japanese? Why is it only the foreigners who must suffer so much discrimination and be severely punished for such minor and common infractions of administrative control? Japan has sufficiently sophisticated technological means

to be able to collect information about all nationals and foreigners entering and leaving Japan. Therefore, it is difficult to understand why the new registration law is so full of discriminatory measures inappropriate for a technologically advanced society and world economic leader like Japan.

### **The Meaning of the Third Periodic Report**

The Third Periodic Report on the safeguarding of civil and political rights in Japan presents, among other realities, the status of discrimination against foreigners and other minority groups in the country. It is questionable whether the Japanese government is totally convinced of the success of the 1992 Alien Registration Law and to what extent it can be considered a just document in accordance with the human rights recognized in the Charter of the United Nations and other documents enacted by the international organization. If the Japanese government were totally convinced that the previous Alien Registration Law was just, no changes would have been necessary. However, having promulgated a new one is a sign that something was wrong with the old law.

The changes introduced in the 1992 Alien Registration Law, however, are not sufficient. The changes are superficial. Nothing has changed substantially. In Japan, many persons from minority groups and some Japanese citizens fight to end discriminatory treatment against foreigners. Many voices asking that human rights prevail are strongly and frequently heard. These voices are signs that many Japanese are willing to end the so-called *sakoku*, national isolation or exclusion of foreigners, a discriminatory practice towards non-nationals and minority groups.

## **The Concluding Observations from the Human Rights Committee to the Japanese Third Periodic Report**

### *General Remarks*

In the introduction to its remarks, the committee commends the government of Japan on its excellent report, which was prepared in accordance with the committee's guidelines for the presentation of state party reports and submitted on schedule. The committee appreciates in particular the participation in its consideration of the report of a competent delegation from the government of Japan, which consisted of experts in various fields related to the protection of human rights. The committee appreciates that the government of Japan gave wide publicity to its report, thus enabling a great number of non-governmental organizations to become aware of the contents of the report and to make known their particular concerns. In addition, some of them were present during the committee's consideration of the report.<sup>31</sup>

### *Concerns of the Committee*

The committee, however, notes that the government of Japan sometimes experiences difficulties in taking measures to implement the Covenant owing to various social factors, such as the traditional concept of the different roles of the sexes, the unique relationship between individuals and the group they belong to, and the unconscious particularities owing to the homogeneity of the population.<sup>32</sup> The principal subjects of concern are discussed below.

First, it is not clear that the Covenant would prevail in the case of conflict with domestic legislation and that its terms are not fully

subsumed in the Japanese Constitution. Furthermore, it is also not clear whether the “public welfare” limitation of Articles 12 and 13 of the Constitution would be applied in a particular situation in conformity with the Covenant.

The committee also expresses concern about the continued existence in Japan of certain discriminatory practices against social groups, such as Korean permanent residents, members of the *Buraku* communities, and persons belonging to the Ainu minority. The requirement that it is a penal offence for alien permanent residents not to carry documentation at all times, while this does not apply to Japanese nationals, is not consistent with the Covenant. Moreover, persons of Korean and Taiwanese origin who served in the Japanese Army and who no longer possess Japanese nationality are discriminated against in respect to their pensions.

In addition, the committee expresses concern about other discriminatory practices that appear to persist in Japan against women with regard to remuneration in employment and notes that de facto problems of discrimination more generally continue to exist. The situation regarding mentally ill persons has significantly improved, but problems continue regarding access to employment.

In particular, the committee is concerned about the discriminatory legal provisions concerning children born out of wedlock. Specifically, provisions and practices regarding birth registration forms and the Family Registry are contrary to Articles 17 and 24 of the Covenant. Furthermore, discrimination in the right of such children to inherit property and assets is not consistent with Article 26 of the Covenant.<sup>33</sup>

The number and nature of crimes punishable by the death penalty under the Japanese penal code disturb the committee as well.

The committee recalls that the terms of the Covenant tend towards the abolition of the death penalty and that those states that have not already abolished the death penalty are bound to apply it only for the most serious crimes. In addition, there are matters of concern relating to conditions of detainees. In particular, the committee finds that the undue restrictions on visits and correspondence, and the failure of notification of executions to the family are incompatible with the Covenant.

The committee is concerned that the guarantees contained in Articles 9, 10 and 14 are not fully complied with. Specifically, they cite the following: (1) pre-trial detention takes place in cases where the conduct of the investigation does not require it; (2) detention is not promptly and effectively brought under judicial control but is left under the control of the police; (3) most of the time interrogation does not take place in the presence of the detainee's counsel and rules regulating the length of interrogation do not exist; (4) the substitute prison system (*daiyo kangoku*) is not under the control of an authority separate from the police; and (5) the legal representatives of the defendant do not have access to all relevant material in the police record to enable them to prepare their defense.<sup>34</sup>

Another important concern of the committee is the exclusion of Koreans from the government's concept of minorities. This exclusion is not justified by the Covenant, which does not limit the concept of minority to those who are nationals of the state concerned.<sup>35</sup>

### *Suggestions and Recommendations*

The committee further recommends that the Japanese legislation concerning children born out of wedlock be amended and that discriminatory provisions contained therein be removed to bring it



in line with the provisions of Articles 2, 24 and 26 of the Covenant. All discriminatory laws and practices still existing in Japan should be abolished in conformity with Articles 2, 3 and 26 of the Covenant. and the government of Japan should make an effort to influence public opinion in this respect.

The committee further recommends that Japan take measures towards the abolition of the death penalty. In the meantime, the death penalty should be limited to the most serious crimes, the conditions of death row detainees should be reconsidered, and preventive measures of control against any kind of ill treatment of detainees should be further improved.

With a view to guaranteeing the full application of Articles 9, 10 and 14 of the Covenant, the committee recommends that pre-trial procedures and the operation of the substitute prison system (*daiyo kangoku*) should be made compatible with all requirements of the Covenant and, in particular, that all the guarantees relating to the facilities for the preparation of the defense should be observed. The document is dated November 5, 1993.

## **Conclusion**

Having read these final observations written in Japan's Third Periodic Report, it is remarkable to notice the clear tendency of the Japanese government to maintain the ambiguous line between what the Constitution proclaims and what the Covenant defines. Wishing apparently to safeguard the two, the scales, however, drop on the side of the Constitution whenever a difficulty or conflict appears between the two. However, the committee insists that the Covenant must prevail and that the internal laws of the country must be adapted to it.

The committee reiterates that the Japanese government continues to assert that “public welfare” is the reason to maintain the status quo, whether of the Constitution, legislation related to it, or of certain persistent discriminatory practices within the country without defining the term with objective criteria. This “public welfare” is sometimes synonymous with what the majority thinks, whether it is in conformity with the Covenant or not. The committee further notes that the tendency in Japan to define the norm of good and evil according to what the majority backs, ignoring what is established in the Covenant and in international legislation, is a prevailing mentality in Japanese tradition and history.

Grasping well this mentality, the committee strongly recommends that the Japanese government implement a policy to create an understanding among the Japanese people of the supremacy of the human rights recognized in the Covenant, whether these rights are popular among the public or not. The Japanese people must make efforts to reach the “highest” understanding of them and to open their minds to the perspective offered in the Covenant. To adapt universal law to Japanese public opinion would reflect a narrow and wrong mentality. The Japanese people need to be educated to acquire an international mentality without losing their unique and traditional heritage, provided that maintaining traditional values does not mean an unjustified rejection of the human rights mentioned in the Covenant.

The Fourth Periodic Report, submitted to the Human Rights Committee in 1998 will be the object of study in a separate article, and the results will be analyzed as the second part of this study.

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## End Notes

1. Initial State Party Report, CCPR/C/10/Add.1 (November 14 1980).
2. Second Periodic Report, CCPR/C/42/ Add.4 (March 24, 1988) +Corr.1 (April 28, 1988) +Corr.2 (March 13, 1988).
3. Third Periodic Report, CCPR/C/70/Add.1 (March 30, 1992) + Corr.1 (September 30, 1993) +Corr.2 (October 20, 1993).
4. Fourth Periodic Report, CCPR/C/115/Add.3 (October 1, 1997) +Corr.1 (October 2, 1998).
5. Cf. “Charter of the United Nations” (CUN), Preamble; “Pacto Internacional de Derechos Civiles y Politicos”, (PIDCP) Artículo 3.
6. “Declaración Universal de Derechos Humanos” (DUDH), Preámbulo.
7. Cf. “CUN”, Art. 1, n. 3; Art. 13, n. 1; Art. 62, n. 2; Art. 76 c, “DUDH”, Arts. 1, 2 y 3; “Pacto Internacional de Derechos Económicos, Sociales y Culturales” (PIDESC), Art. 2.
8. Cf. “CUN”, Art. 2, no 1
9. Ibid. Art. 76 d.
10. Cf. “DUDH”, Arts. 18 y 19; “PIDCP” Art. 18, no 1.
11. Cf. “DUDH”, Art 23, no 2.
12. Cf. “DUDH”, Art 26, no 2; “PIDESC”, Art. 13, no 1.
13. Cf. “PIDCP” Art. 2, no 1.
14. Cf. “PIDESC”, Art. 2, no 2 y 3, Arts. 3 y 4.
15. Ibid. Art. 20, no 2.

16. Ibid. Art. 24, no 1 y 3; “PIDESC”, Art. 10, no 3.
17. Cf. “PIDCP” Art. 26. Ibid. Art. 20, no 2. Ibid. Art. 24, no 1 y 3; “PIDESC”, Art. 10, no 3. Cf. “PIDCP” Art. 26.
18. Ibid. Art. 27; “Declaración de los Derechos de las Minorías,” Arts. 1-5.
19. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Art. 1, 2.
20. CCPR Initial Report, No. 55, 56, 58.
21. Cf. CCPR A/37/40 (1982) Concluding Observations; para. 91.
22. Concluding Observations A/43/40; paras. 630-633.
23. CCPR/C/70/Add.1 and Corr.1 and 2 “Comments of the Human Rights Committee” at its 1280th meeting (forty-ninth session) on November 1993, Cfr. Anexo.
24. The Constitution of Japan, Art. 25
25. Cf. the sentence of Shiomi case, Mar. 2, 1989, in OIKUMENE, Suggested Questionnaire for the Discussion of the Japanese Government’s Third Report on the ICCPR to the Human Rights Committee, Tokyo 1993, p.18, nota 3.
26. Ibid. p. 42.
27. Ibid. p. 19, note 4, Ministerial Directive of Deputy-Minister of Education, Dec. 26, 1965.
28. CCPR/C/70/Add. 1, para.12
29. CCPR/C/SR. 827, para.38, El-Shafei; para.53 Kunieda; Japan; CCPR/C/SR. paras.26,61 Higgins; para.60, Kunieda, Japan
30. Ibid. p. 24.
31. Concluding Observations, CCPR/C/79/Add. 28, No. 2-3
32. Ibid. No. 4.
33. Ibid. No. 8-11.
34. Ibid. 12-13

35. Ibid. 15  
36. Ibid. 17-19

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- . C/70/Add.1 and Corr.1 and 2. Comments of the Human Rights Committee at its 1280th meeting (forty-ninth session) in November 1993.
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- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Adopted by General Assembly resolution 47/135 of 18 December 1992.
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- Pacto internacional de derechos civiles y políticos. Adoptado y abierto

a la firma, ratificación y adhesión por la Asamblea General en su resolución 2200 A (XXI), de 16 de diciembre de 1966.

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Adoptado y abierto a la firma, ratificación y adhesión por la Asamblea General su resolución 2200 A (XXI), de 16 de diciembre de 1966.

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