ANNEX

Annex to UPR submission document: ALRC-UPR-2-007-2008

Additional information for the submission is as follows;

I General Concerns

2. While HRC clearly stated in 1998 that "The Committee regrets that its recommendations issued after the consideration of the third periodic report have largely not been implemented", the situation has not changed since then.

5. Problem in Judiciary

There have been successive decisions delivered by the Japanese Supreme Court, which are contrary to the recommendation of human rights bodies.

The Supreme Court Decision (5 July 1995, 27 January 2000, 28 March 2003, 31 March 2003, and 14 October 2004)

The Supreme Court found that Article 900, paragraph 4, of the Civil Code, which clearly discriminates against the inheritance rights of children born out of wedlock does not violate Article 14 of the Constitution, which guarantees equal rights. It is contrary to the HRC (1998) recommendation.

The Supreme Court Decision (22 November 2002)

The Supreme Court affirmed the constitutionality of Article 2 of the Law of Nationality, which prescribes that the children born out of wedlock cannot get Japanese nationality.

According to the court, children born out of wedlock cannot gain Japanese nationality, even if the father is Japanese in the interpretation of Article 2 of the Nationality The Supreme Court also decided that such a distinction is all rational and is not unconstitutional. It is contrary to the HRC (1998) observation.

Prior to the decision, the Osaka District Court declared that a State party of ICCPR is not legally bound by HRC's General Comments and Concluding Observation (the Osaka District Court Decision (25 September 1998)).

The Supreme Court Decision (2 March 1993 and 17 March 2000)

The Supreme Court found that the complete prohibition of strikes by public employees does not conflict with ILO Convention No.87 and ICESCR Art.8, which is contrary to the opinions of the ILO Committee of Experts on the Application of Conventions and Recommendations and those of the Committee of Economic, Social and Cultural Rights.

The Supreme Court Decision (10 May 1993)

The Court found that the detention incommunicado for total 200 days intermittently, 50 days for each time, does not conflict with ICCPR Article.7 and Article.10

II Specific Concerns

1-1-1 Pre-trial Detention

2 The relevant remarks of HRC (1998) concluding observations are as follows:

21. The committee is deeply concerned that the guarantees contained in Articles 9.10 and 14 are not fully complied with in pre-trial detention in that pre-trial detention may continue for as long as 23 days under police control and is not promptly and effectively brought under judicial control; the suspect is not entitled to bail during the 23-day period; there are no rules regulating the time and length of interrogation; there is no State-appointed counsel to advise and assist the suspect in custody; there are serious restrictions on access to defense counsel under article 39(3) of the Code of Criminal Procedure; and the interrogation does not take place in the presence of the counsel engaged by the suspect. The Committee strongly recommends pre-trial detention.

23. The Committee is concerned that the substitute prison system (Daiyo Kangoku), though subject to a branch of the police which does not deal with investigation, is not under the control of a separate authority. This may increase the chances of abuse of the rights of detainees under Articles 9 and 14 of the Covenant. The Committee reiterates its recommendation, made after consideration of the third periodic report, that the substitute prison system should be made compatible with all requirements of the Covenant.

25. The Committee is deeply concerned about the fact that a large number of the convictions on criminal trials are based on confessions. In order to exclude the possibility that confessions are extracted under duress, the Committee strongly recommends that the interrogation of the suspect in police custody or substitute prison be strictly monitored, and recorded by electronic means.

(2) In accordance with Article 60 of the Code of Criminal Procedure, police can restrain suspects within 3 days by writ of arrest. A judge can issue the writ of pre-trial detention which enables the detention of suspects within 10 days upon a prosecutor's request when the danger of escape or manufacture of the evidence can be recognized. This detention can be extended no less than 10 days. However, the percentage of the dismissal of writs made by judges has been less than 5% in all cases. In 1996, the rate of dismissal of the writ of pre-trial detention was 0.31% while it was 3.4% in 2006. The percentage rate of dismissal is increasing, but it is still rare for suspects not to be detained.

http://www.courts.go.jp/sihotokei/nenpo/pdf/B18DKEI15~16.pdf

1-1-3. Police and Ministry of Justice are main opponents of the introduction of audio/video recording , and of the entire custodial interrogation.

1-1-4 Nabari case is a clear example of judiciary excessively relies on the confession.

In the case, the defendant Mr. Okunishi confessed after 40 hours of interrogation by the police. In 2006, the Nagoya High Court found that "The process clearly shows that the applicant confessed

his involvement in the offence during voluntary interrogation before custody." "Since such a confession was made voluntarily, it is normal to think that the confession is a truth which had come from his own experience. If he is not the offender, he would not have dared to make a false confession by making up the story of the crime." (Nagoya High Court, 26 December 2006).
Mr. Okunishi was acquitted by his first instance court in 1964. However, Nagoya High Court reversed, convicted and sentenced him to death in 1969 and latter decision was confirmed by the Supreme Court in 1972. Mr. Okunishi(81 years old) has been in death row since 1969, claiming his innocence. The details of the case can be found on the web:
http://www.ahrchk.net/ua/mainfile.php/2007/2568/

1-2-2. Discovery

(1) The relevant remarks of HRC (1998) concluding observation is as follows

> 26. The Committee is concerned that under the criminal law, there is no obligation on the prosecution to disclose evidence it may have gathered in the course of the investigation other than that which it intends to produce at the trial, and that the defense has no general right to ask for disclosure of that material at any stage of the proceedings. The Committee recommends that, in accordance with the guarantees provided for in Article 14, paragraph 3 of the Covenant, the State party ensure that its law and practice enable the defense to have access to all relevant material so as no to hamper the right of defense.

(2) The outline of the new provision on discovery (Article 316-14-27 of the Code of Criminal Procedure) is as follows:

1) A prosecuting attorney has the absolute obligation of disclosure
All evidence or statements which the prosecuting attorney will submit to trial as proof of guilt.
The name and address of persons the prosecutor intends to call as witnesses in trial.
Relevant written statements which can show the substance of the testimony,

2) A prosecuting attorney shall disclose the following information upon the defendant's request of particular disclosure when the request meets following two conditions:
［Conditions］
a. it is recognized as important to examine the credibility of the evidence which the prosecuting attorney intends to submit, and,
b. the prosecuting attorney recognizes that the disclosure is adequate in light of the importance and necessity for preparation of defense as well as the harmful impact of the disclosure,
[Information]
a. Inspection statements
b. Statements of scientific tests and experiments
c. Relevant written statements of witnesses whom the prosecutor intends to call at the trial or whose testimony is related to proof of guilt

d. Defendant's statements

e. Written documents which police officers and the prosecuting office are obliged to write with regard to the situation of the interrogation of the defendant

3) A prosecuting attorney shall disclose the evidence related to the defendant's argument of the trial upon the defendant's request of particular disclosure, when the prosecuting attorney recognizes that the disclosure is adequate in light of the importance, and when necessary for the preparation of the defense as well as the harmful impact of the disclosure.

4) The court shall decide on disclosure when it recognizes that the disclosure is necessary in the light of considering the harmful impact of the disclosure and other elements in accordance with the claim made by the defense attorney or prosecuting attorney.

2 Death Penalty

(1) HRC (1998) recommended that Japan take measures towards the abolition of the death penalty or that the penalty be limited to the most serious crimes.

(2) Incumbent Minister of Justice Hatoyama proposed automatical execution of condemned people without order of the Minister, and publicly articulated that "I suppose the abolishment of death penalty is not accepted in Japan". The execution has always been conducted suddenly, without any advance notification for convicted persons and their families.

On December 7 2007, three people including some over 75 years of age were suddenly executed without advance notification for the convicted persons or their families.

(3) According to the UN News of December 7 2007, Louise Arbour, the High Commissioner for Human Rights stated that she deplores executions and appealed to Japan to reassess its approach to the death penalty. Louise Arbour said, "This practice is problematic under international law, and I call on Japan to reconsider its approach in this regard," and "it is difficult to see what legitimate purpose is served by carrying out such executions of the elderly, and at the very least on humanitarian grounds, I would urge Japan to refrain from such action."

4 Economic Social and Cultural Rights

4-2 Retrogressive Measures

In addition, a law to cut child care allowance for single parent by up to 50 % was enacted in 2002 and the law should have come into force in 2008. Since many single mothers criticise the law, the government decided to suspend the implementation of the law temporarily. However, to date, the government has no plan to amend the law.

As the General Comment 3 of the ICESCR states, "any deliberately retrogressive measures would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources." In the case of Japan, the above retrogressive measures against a very most vulnerable group cannot be justified.

5 Discrimination

5-1 Discrimination against children born out of wedlock

(1) THE NATIONALITY LAW （excerpt）

The Nationality Law (Law No.147 of 1950, as amended by Law No.268 of 1952, Law No.45 of 1984, Law No.89 of 1993 and Law.No.147 of 2004)

(Purpose of this Law)

Article 1. The conditions necessary for being a Japanese national shall be determined by the provisions of this Law.

(Acquisition of nationality by birth)

Article 2. A child shall, in any of the following cases, be a Japanese national:

(1) When, at the time of its birth, the father or the mother is a Japanese national;

(2) When the father who died prior to the birth of the child was a Japanese national at the time of his death;

(3) When both parents are unknown or have no nationality in a case where the child is born in Japan.

(Acquisition of nationality by legitimation)

Article 3

1 A child (excluding a child who was once a Japanese national) under twenty years of age who has acquired the status of a legitimate child by reason of the marriage of its father and mother and their recognition, may acquire Japanese nationality by making notification to the Minister of Justice, if the father or mother who has effected the recognition was, at the time of the child's birth, a Japanese national and such father or mother is presently a Japanese national or was, at the time of his or her death, a Japanese national. 2.A child who makes notification in accordance with the preceding paragraph shall acquire Japanese nationality at the time of the notification.

5-4 Discrimination against Foreigners

5-4-2. Violent action against the resident Korean minority occurred notably right after the North Korean government officially admitted to abductions of Japanese nationals in September 2002 as well as when the North Korean government launched a missile over Japanese airspace in July 2006. The violent acts included threatening directly or by way of the Internet. Threats included comments such as, “I will kill Koreans” or “Cockroaches should leave Japan.” Actions included cutting a girl’s school uniform in a the crowded train and kicking a Korean student in public.

5-4-5. As an example of the government’s violations of right of access to courts in January 2007, eight Bangladesh people were deported from Japan three hours after the deportation orders were issued. Some of them clearly stated that they wanted to contact their lawyer but the immigration officer put handcuffs on them and took them by force to the airport. This case is currently before the Tokyo High Court (as of February 2008).

5-4-7. Asylum seekers and refugees

(1) Regarding the independent agency of refugee recognition procedures, even the introduction of the “Sanyoin” system by ICRRA amendment in 2004 is not a solution. “Sanyoin” are private-sector persons of experience and academic standing. They shall deliver their opinions to the Minister of Justice on the appeal process but their opinions are not binding. Also, one criticism is that that they are not organizationally independent from the government because they are appointed by the Minister of Justice. Also, administrative matters of “Sanyoin” are delegated to the Immigration Bureau. The appointment procedure is not transparent and only four of the eight persons nominated as “Sanyoin” by UNHCR have been appointed by the Minister of Justice to date.

(2) The Ministry of Justice admits that the government has leaked asylum seekers’ confidential information to their countries of origin in cases listed below. According to the Ministry, the leaks occurred in the process of trying to determine the reliability of the documents submitted by the asylum seekers to the Immigration Bureau in the course of the refugee recognition procedure.

In 2000 One Ethiopian case, one Iranian case and one Cameroonian case

In 2001 Two Afghani cases and one Iraqi case

In 2002 Four Afghani cases, three Turkish cases, one Ethiopian case, one Tunisian case and four Sudanese cases

In 2003 Five Afghani cases, five Iranian cases, seven Turkish cases, four Myanmarese cases, and one Pakistani case

In addition, from June to July of 2004, the officials of the Japanese Ministry of Justice visited the Republic of Turkey and met officials of the Turkish Ministry of Justice, government prosecutors and local governors and had them check the authenticity of the arrest warrants which had been submitted by some Turkish asylum seekers in the refugee recognition procedure. In doing so, the Japanese officials showed those arrest warrants to the Turkish officials. They then visited those asylum seekers’ families living in rural villages, taking Turkish security forces with them. They asked the family members in front of the security forces, why those asylum seekers in Japan had left Turkey. The UNHCR Tokyo office, the Japan Federation of Bar Association, the Amnesty International, and other related groups condemned this misconduct.

6 Freedom of Thought, Conscience and Expression

6-2 On 29 June (2006), the Tokyo District Court convicted a government worker for his distributing political party’s brochures (Horikoshi Case).

On 7 September 2007, the Fukuoka High Court High Court convicted one man for visiting individual homes in the course of election campaigning movement (Oishi Case). The Supreme Court, on 28 January 2008, turned down the appeal made by Oishi , finding that criminalization of visits to private homes in the course of electioneering is neither unconstitutional nor a violation of ICCPR.

7. Effective Remedy

As for the comfort women’s cases, in 1995 the government established the Asian Women's Fund (AWF), which sent privately-raised financial compensation to each victim, although many victims refused the funds. While AWF has already finished its function, currently the State provides no function to redress victims’ claims.

While CAT (2007) observed that “The survivors of the wartime abuses experience continuing abuse and re-traumatization as a result of the State party's official denial of the facts, concealment or failure to disclose other facts, failure to prosecute those criminally responsible for acts of torture, and failure to provide adequate rehabilitation to the victims and survivors”, to date, the State of Japan has not taken any measures toward s rectifying the situation.