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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

Written statement* submitted by Japan Federation of Bar Associations,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[6 August 2004]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organisation(s).

On September 5, 2003, the Supreme Court of Japan ruled without citing any reason that provisions of the Prison Law¹ and the Prison Law Enforcement Regulations² prescribing censorship by custodial authorities of correspondence between a suspect or a defendant and that person's attorney did not violate Article 14, Paragraph 3 of the International Covenant on Civil and Political Rights (hereinafter referred to as "the ICCPR") and Article 17 of the ICCPR³.

In this connection, the March 25, 1992 decision of the European Court of Human Rights in the *Campbell vs. the United Kingdom* case concerning Article 8 of the European Convention on Human Rights, which has the same import as the provisions of Article 17 of the ICCPR, found the unsealing of correspondence between a detainee and his attorney to be a violation of the Convention. In response to this decision, the government of the UK abolished the unsealing and censoring of such correspondence in principle and newly established the rules that even where there was sufficient suspicion of the contents of a sealed document, it could only be unsealed in the presence of the addressee, and could not be perused.

In view of the existence of the above ruling of the European Court of Human Rights, the above attitude of the Supreme Court of Japan evidently shows that it completely lacks the understanding of the significance of international human rights treaties and totally disregards or even neglects such treaties.

The above decision of the Supreme Court is but one instance. In another case involving a dispute over the mandatory fingerprinting under the Alien Registration Law, the Supreme Court, without referring at all to the ICCPR, rejected the judgment of the Osaka High Court that the suspicion of violation of the ICCPR was undeniable⁴. Furthermore, in the case concerning interference with attorney-client interviews at the Tokushima Prison under the Prison Law Enforcement Regulations as in this case, the Supreme Court, without giving any explanations, simply ruled that the Regulations providing for restrictions on interviews did not violate the ICCPR⁵. The same is true of the case involving inheritance discrimination against children born out of wedlock, in which the Supreme Court, without any reference to international human rights treaties, concluded that the provisions of the Civil Code of Japan, prescribing that the inheritance of a child born out of wedlock shall be one half of that of a

¹ Prison Law, Article 50: Presence of an attending observer at interviews, censorship of correspondence and other restrictions on interviews and correspondence shall be prescribed by Ministry of Justice Ordinance.

² Prison Law Enforcement Regulations, Article 130, Paragraph 2: Correspondence sent and received by a prisoner should be censored by the superintendent.

Prison Law Enforcement Regulations, Article 130, Paragraph 3: Outgoing correspondence shall be submitted to the superintendent unsealed. Correspondence received shall be opened by the superintendent and receive a censorship stamp.

³ September 5, 2003 Decision of Supreme Court; 1850 Hanrei Jiho 61

⁴ September 7, 1998 Decision of Supreme Court; 990 Hanrei Times 112

⁵ September 7, 2000 Decision of Supreme Court; 1045 Hanrei Times 109

child born in wedlock was constitutional⁶. The Supreme Court took the same attitude in the case involving the prohibition against door-to-door canvassing.

The Human Rights Committee, in its Concluding Observations of November 5, 1998, recommended as follows:

The Committee is concerned that there is no provision for training of judges, prosecutors and administrative officers in human rights under the Covenant. The Committee strongly recommends that such training be made available. Judicial colloquiums and seminars should be held to familiarize judges with the provisions of the Covenant. The Committee's general comments and the Views expressed by the Committee on communications under the Optional Protocol should be supplied to the judges.

However, in view of the fact that even in September 2003, the Supreme Court concluded without citing any reason that the ICCPR was not violated, it is clear that the Supreme Court is still not dealing with these recommendations seriously.

The implementation of the international human rights treaties including the ICCPR in Japan is extremely inadequate. Even today, about 25 years after its ratification, the situation is one where the ICCPR can hardly be said to have been given full effect. One of the major causes of this is the passive attitude of the Supreme Court towards international human rights treaties.

As Japan has not ratified the First Optional Protocol to the ICCPR, the judgments of the Supreme Court have been exempted from international criticism, which permits the negative stance of the Supreme Court to international human rights treaties. The Japan Federation of Bar Associations believes that one of the most effective measures to ensure the domestic implementation is to encourage States to ratify the First Optional Protocol to the ICCPR which would no longer permit the Supreme Court to evade facing international human rights norms squarely.

Inadequacy in domestic implementation of international human rights treaties seems not only the case in Japan but also the case in many other States. It is of great importance to encourage States, including Japan, to ratify the First Optional Protocol to the ICCPR to improve this current status.

⁶ January 27, 2000 Decision of Supreme Court; 1707 Hanrei Jiho 121