

SECTORAL ACTIVITIES PROGRAMME

Working Paper

**Public Emergency Services: Social Dialogue
in a Changing Environment:
A Study on Japan**

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Working papers are preliminary documents circulated
to stimulate discussion and comment

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Foreword

The ILO's Joint Meeting on Public Emergency Services: Social Dialogue in a Changing Environment (Geneva, 27-31 January 2003) reviewed emergency services issues such as trends in working conditions; safety and health; human resource planning; coordination structures; the state of social dialogue; and rights at work. The Meeting adopted the *Guidelines on social dialogue in public emergency services in a changing environment*, which were approved by the 288th Session of the Governing Body (Nov. 2003) for promotion among ILO member States.

The Guidelines seek to recognize the vital role of public emergency services and their workers in contributing to safety and security of our society, while at the same time ensuring quality services in a rapidly changing environment. The basic thrust of the Guidelines is that emergency workers should be given proper means, tools and funds so as to be able to respond effectively to changing needs of communities and that efforts should be made to retain properly trained and experienced personnel to ensure quality service delivery. The Guidelines emphasize that an enhanced social dialogue mechanism is the optimal way to allow the participation of emergency workers and their representatives in improving their working conditions and ensuring quality services.

The Guidelines are not binding, unlike ILO Conventions which Governments ratify. They are intended to provide guidance on how to achieve better public emergency services in a changing environment through social dialogue. All ILO tripartite constituents should make a good faith effort to use them. We are mindful of all the efforts put into the Guidelines by all parties concerned with a common objective to ensure quality emergency services delivered by competent and committed personnel, particularly at a time of heightened security considerations.

As a step toward promoting these Guidelines, we have undertaken some national studies to examine gaps, if any, between what is promoted in the Guidelines and actual practices in relation to public emergency services and how such gaps can be narrowed. This study on Japan is one of them. Studies such as this are intended to contribute to providing background information and can be used as a basis for discussion in national or regional forums.

ILO working papers are a vehicle for disseminating information on topics related to the world of work and the evolution of social and labour policies and practices. The opinions expressed are nevertheless those of the author and not necessarily those of ILO.

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Abbreviations

CIS	critical-incident stress
EEOL	Equal Employment Opportunity Law
EMS	emergency medical service
FDMA	Fire and Disaster Management Agency
GPR	General Principles for Civil Service System Reform
JTUC-RENGO	Japanese Trade Union Confederation
LPC	Local Personnel Commission
LPSC	Local Public Security Commissions
LSL	Labour Standards Law
NFA	National Firefighters' Association (Zenshokyo)
NPA	National Personnel Authority
NPSC	National Public Safety Commission
NPSL	National Public Service Law
OSH	Occupational Safety and Health
OSHL	Occupational Safety and Health Law
PES	public emergency services
PTSD	post-traumatic stress disorder
ZENROREN	National Confederation of Trade Unions

Background

The Joint Meeting on Public Emergency Services: Social dialogue in a changing environment (JMPES), Geneva 27-31 January 2003, adopted a set of *Guidelines on social dialogue in public emergency services in a changing environment*. In the annex of the *Guidelines*, it is stated that the Governing Body of the ILO is invited to request the Director-General to promote and follow it up through appropriate technical advisory services and technical cooperation to enable its effective application by governments, the social partners and other key policy-making bodies. The Guidelines were approved by the 288th Session of the Governing Body (Nov. 2003).

This is a study on Japan which may serve as a useful background material for possible future collaboration between the ILO and the Government authorities concerned for the purpose of effectively applying the *Guidelines*. The purposes of this report are to examine the gaps between what are promoted in the *Guidelines* and national legislation, as well as gaps between legislation and practice in public emergency services, including fire-fighting, police and emergency medical services. Close attention will be paid to the current state of social dialogue in Japan in light of the Civil Services System Reform. One of the biggest concerns in this report is denial of right to organize and to bargain collectively in fire services in Japan because those fundamental rights are the key to realizing a better work environment in the emergency services.

Introduction: Public emergency services in Japan

The sarin gas attack in the Tokyo subway system in 1995 killed 11 people; 3,796 were injured. In the earthquake in Kobe in the same year, some 5,500 people were killed and tens of thousands made homeless. Since that series of disasters, more attention has been given to the vital role of workers in public emergency services (PESs). They often have to risk their own lives to save others. The public emergency services are built upon these workers' dedication to the public and the public's respect and trust. On the other hand, during the same period of time, quite a few examples of police incompetencies or misconduct were observed in the course of serious criminal cases, implanting distrust and anxiety among the public (see section 3.5 below). Not only police officers but also public employees in general have been in the public eye recently because their moral standards are perceived to have fallen. Criticism on the organizational structures and human resource systems in the public sector gets widespread media attention almost every day, with the revelation of their misdeeds accelerating. Public workers involved in the organization and operation of public administration are stringently criticized for unreliable policy planning associated with precedent-based practices, and for lacking both cost-consciousness and a service-oriented attitude. Moreover, due to prolonged recession affecting the general public together with a huge fiscal deficit, public opinion of public employees is that "they are far better off than workers in the private sector" in terms of salaries, retirement and other fringe benefits, pension rights or employment security. For all these reasons, the General Principles for Civil Service System Reform (GPR)¹ document was adopted by the Cabinet on 25 December 2001 as one part of the ongoing Administrative Reform Package, which basically expands the authority of the Government in personnel management matters while continuing to place restrictions on the basic trade union rights of public employees.²

PES workers' right to decent work should be promoted while maintaining a good balance with the public's need for their services. The ILO has set itself the goal of securing Decent Work, which comprises four main pillars: the promotion of fundamental principles and rights at work for all workers, national and non-national, irrespective of where they work; the generation of employment and incomes; the extension of social protection and security especially to marginalized and vulnerable groups; and the organization and representation of workers and employers by strengthening social dialogue. To meet this goal for PES workers, the *Guidelines* provide that "public emergency services must be adequately funded and managed so that well-trained and properly resourced workers can deliver quality services which are effective, responsive to the needs of different sections of the community, and defined by high standards of ethical behaviour on the part of service deliverers". Since these are front-line workers going into dangerous or risky sites and directly dealing with threats to people's life and property, a decent working environment should be promoted for them in order to prevent misconduct or accidents as well as to maintain ethical standards among them.

Thus, although public service reforms are necessary to meet Japanese society's current needs, this should not be done without guaranteeing that PES workers be able to effectively exercise their fundamental rights at work as embodied in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Quality services are more likely to be assured by securing quality working conditions. Social dialogue mechanisms between PES employers and workers, based on the Decent Work approach, should be

¹ See Annex I, II, III of this study.

² It should be noted that the majority of PES workers in Japan are local public employees who are not directly affected by the GPR, which only targets nationally employed public officials. However, it is envisaged that local public service reforms will be implemented in conformity with the GPR.

constructed where they do not exist, because such mechanisms are the key to channelling their voices effectively in determining the conditions that make for effective services.

However, in course of the reforms, which at the moment target only national public employees, no mention was made of such mechanisms, despite the fact that public employees' basic labour rights have been restricted. Although the number of PES workers directly affected by the GPR is small since the majority of them are locally employed public officials, it is worth examining the GPR because local public service reforms are to be carried out in due course which will be very much in conformity with the GPR. Since the firefighters' right to organize has been the subject of discussion between the ILO supervisory bodies and the Government of Japan for decades, these reforms should not in fact be undertaken without addressing the issue. It is true that, instead of guaranteeing the right to organize, fire defence personnel committees have been established to allow firefighters involved in the discussion of their working conditions, including remuneration, working hours, equipment, as well as welfare and facilities. Although some improvements have been made to reflect their views, many structural problems with the committees have been pointed out, such as their unrepresentativeness, their holding only one meeting a year, and lack of freedom about what can be proposed for discussion.³ Because the GPR is the first major public service reform to be undertaken which may negatively affect the working conditions of PES workers, it should be carried out on the basis of full consultations with the social partners. However, the proposed GPR document provides as follows: "comprehensively taking into consideration how to assure stable and continuous public services and how reforms are to affect the life of Japanese people, the current restrictions placed on the fundamental labor rights of public workers shall be maintained, while ensuring adequate compensatory measures". In other words, even though the proposed GPR and subsequent local public service reforms to be carried out through applying the GPR *mutatis mutandis* bring about inferior working conditions for PES employees, they do not make any revisions to the restrictions on basic labour rights.

Given the fact that both firefighters and police officers play a crucial role in ensuring public safety and security by rescuing people from natural disasters, horrific accidents and premeditated terrorist attacks that threaten human lives and destroy or seriously damage economic and social infrastructure and property, due consideration should be given in the public service reforms to promoting the social dialogue mechanisms set forth in the *Guidelines*.

The present report aims to examine the gaps between Japanese legislation and what is promoted in the *Guidelines*, as well as gaps between the GPR, current legislation, and practice in the public emergency services. The issues covered include (1) employment and human resource development (employment level, employment diversity and training, including gender issues); (2) working conditions; (3) occupational safety and health; (4) social dialogue and rights at work, covering both content and structure of social dialogue; and (5) coordination in public emergency services. Close attention will also be paid, as a general consideration, to the current state of social dialogue in Japan in light of the GPR, given Japan's denial to firefighters and police officers of the right to organize and to bargain collectively. The reform is intended to radically change how work is organized in the public sector to meet public needs, but it should not be carried out without addressing these fundamental labour rights.

The report covers firefighting and police services. Firefighting services in Japan are also involved in ambulance-run and rescue services, including provision of emergency life support services.

³ ILO, *Public emergency services: Social dialogue in a changing environment* (Geneva, 2003), p. 95.

Methodology

A literature review was carried out of the available secondary information on the following:

1. Literature related to the General Principles for Civil Service System Reform
2. Japanese legislation related to national and public employees
3. Japanese labour laws
4. Government white papers on firefighting and police
5. Web sites
6. ILO Governing Body documents and other documents

Some additional information was provided by Japanese academics, the Japan Institute for Labour Policy and Training (JILPT) and the Fire and Disaster Management Agency on the issues of social dialogue in public emergency services and the public service reforms.

1. General considerations

Labour law in the public sector

In Japan, labour relations in the public sector are covered by administrative laws such as the Local Public Service Law (NPSL) and the National Public Services Law (LPSL). These laws restrict public employees' fundamental trade union rights, thereby denying them the basis for social dialogue (table 1).⁴ After World War II, employees in the public sector were provided with the same right to organize, bargain collectively and strike as workers in the private sector. But in 1948, General MacArthur of the Allied Powers, faced with a militant labour union movement led by leftists, ordered the Japanese Government to deprive public employees of their right to bargain collectively and to strike. Thereafter, all public employees in national and local civil services have been prohibited from going on strike and any violation is punishable by criminal sanctions. In respect of these restrictions on basic labour rights, the post-war period has seen constant political confrontation between public employees and the Government. The Supreme Court's judgement of 1973 which confirmed the constitutionality of the strike ban on national civil servants has become case law in Japan.⁵

Table 1. Fundamental rights at work guaranteed/restricted by public service laws in Japan

Law	Applicable to	Category	Right to organize	Right to bargain collectively	Right to strike
National public service law	National public service employee	Administrative/clerical workers	Legalized excluding the personnel in the police and Maritime Safety Agency	Not legalized	Not legalized
		Non-clerical workers, including the personnel in the IAls*	Legalized	Legalized	Not legalized
Local public service law	Local public service employee	Administrative/clerical workers	Legalized excluding the personnel in the police and fire defence	Not legalized; only informal agreement without any bargaining power	Not legalized
		Non-clerical workers	Legalized	Legalized	Not legalized

* IAls: The independent administrative institutions.
Source: GB.285-9 (Part II)-2002-11-0152-EN.Doc., p. 166.

⁴ See K. Sugeno, *Japanese Labor Law* (Tokyo, University of Tokyo Press, 1992), pp. 75-76. The Labour Standards Law does not in principle apply to national civil servants in an administrative/clerical category, and this exclusion corresponds to the exclusion of those civil servants from the Trade Union Law and the Labour Relations Adjustment Law. By contrast, the Labour Standards Law applies to employees working in four categories of public enterprises, such as mail services, printing services and local transport, although they hold public-employee status in an administrative/clerical category. Local civil servants in an administrative/clerical category who are not covered by the Trade Union Law and the Labour Relations Adjustment Law are also excluded from certain provisions of the Labour Standards Law, including those prescribing the equality of decision-making regarding working conditions, and those concerning work rules as a result of denial of the right to collective bargaining. Other provisions of the Labour Standards Law are excluded in accordance with special provisions, or provisions in special laws concerning local civil servants (e.g. the wage-payment principle, and compensation for work-related injuries). Unlike the national civil servants' situation, the other provisions apply to local civil servants in an administrative/clerical category. In addition, with regard to employees of enterprises operated by local government who are covered by the collective bargaining principle, the Labour Standard Law generally applies.

⁵ T. Araki, *Labor and Employment Law in Japan* (Tokyo, Japan Institute of Labour, 2002), pp. 10-11.

When the Constitution of Japan provides that “the right of workers to organize, to bargain and act collectively is guaranteed” (art. 28), how, then, can these restrictions be justified, and how are public employees’ basic labour rights being compensated?

Public employees both in national and local public services are servants of the people, and their jobs are of a public nature. The Constitution of Japan also provides that “the people have the inalienable right to choose their public officials and to dismiss them”, and that “all public officials are servants of the whole people and not of any group thereof” (arts. 15.1 and 15.2). There are other provisions in the Constitution, including art. 83 stipulating that “the power to administer national finances shall be exercised as the Diet shall determine”; art. 41 stipulating that “the Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State”; and art. 73.4 stipulating that “the Cabinet, in addition to other general administrative functions, shall administer the civil service, in accordance with standards established by law”. These constitutional principles are the legal justification for restricting public employees’ basic labour rights. But none of these provisions denies public employees’ participation in the decision-making process regarding their working conditions, even if the final decision-making power is to be reserved for the Diet or the Cabinet.

In order to provide compensation for these restrictions, an independent quasi-judicial body, the National Personnel Authority, is established to deal with national public employees’ status, recruitment and dismissal, remuneration and other working conditions. At the local level, the Local Personnel Commissions or the Local Equity Commissions are established, although their authority is limited as compared with the NPA. In addition, public employees are provided with somewhat better employment security than private-sector workers.

While there is in Japan no legal provision requiring just cause for a private-sector employer to dismiss an employee or – apart from some restrictions under Labour Standards Law (LSL) – regulating employers’ freedom to dismiss, the National Public Service Law (arts. 33.3, 75.1, 78, 82.1) and the Local Public Service Law (arts. 27.2-3, 28, 29) clearly stipulate that public officials should not be treated unfairly and against their will unless this is provided for under the law for the purposes of maintaining the stability and continuity of the public service as well as its political neutrality. Therefore, public officials’ status is tenured and their employment security is guaranteed.⁶ Under the private-sector labour law, the employer’s freedom to dismiss is curtailed by the development of case law called the “abuse of the right to dismiss” theory, which only *de facto* requires just cause for dismissal.

It has generally been believed that both public employees and private-sector workers in Japan have enjoyed lifetime employment based on seniority. But this aspect in the private sector has in fact been a myth. In reality, smaller firms employ very few graduates direct from university, and workers at these firms frequently quit and move on to other jobs. Even in large corporations with an established tradition of long-term employment, it is not unusual for employees to be farmed out, transferred to other companies, or to be offered early retirement. Accordingly, the only category of workers to which the terms “lifetime employment” and “job security” actually apply with legally recognized protection is that of public servants.

Given the need to maintain the public service’s stability and continuity as well as its political neutrality, public officials have been provided with stable and secure employment

⁶ Legislative restrictions on dismissals under the LSL apply to (1) dismissal during certain periods, including periods of medical treatment of a work-related injury and 30 days thereafter, and periods of leave before and after childbirth as provided under Art. 65 of the LSL and 30 days thereafter (LSL Art. 19.1); (2) dismissal without advance notice (LSL Art. 20); and (3) discriminatory dismissal.

through tenured status. This is not aimed at protecting their privileges, but rather at reflecting the interests of the public who benefit from their services.

Some argue that public employees' employment security is provided as compensation for the restrictions on their basic labour rights; however, the theoretical line between these two is too unclear to be justified. But as described above, a Supreme Court judgement of 1973⁷ confirmed the constitutionality of the prohibition of basic labour rights of national civil servants, considering that a series of measures embodied in the existence of the National Personnel Agency serves as compensation for these restrictions.⁸

The National Personnel Authority, the Personnel Commissions and the Equity Commissions

The National Personnel Authority (NPA) is the central personnel agency of the Japanese Government. It was established in December 1948 under the National Public Service Law (NPSL). Although coming under the jurisdiction of the Cabinet, the NPA operates as an independent authority. It seeks to maintain neutrality among government employees and to protect employees' welfare and interests in compensation for certain restrictions on their labour rights. The main functions of the NPA are (1) to define rules concerning appointment, promotion and recruitment; (2) to conduct recruitment examinations; (3) to recommend revisions in salary and plan alternative remuneration systems; (4) to coordinate and conduct training programmes; (5) to take charge of working conditions and welfare; (6) to monitor discipline and ethics; and (7) to review adverse action such as reduction in pay taken by ministries and agencies against their employees. At the local level, the Personnel Commissions and the Equity Commissions are established. The Personnel Commissions cover public employees in prefectures, designated municipalities, municipalities with a population of more than 150,000, and special municipalities; they deal with investigation, research, planning, programming, recommendation, examination, and evaluation related to personnel administration, working conditions and examination of unfair treatment. The Equity Commissions, which cover public employees in municipalities with a population of less than 150,000, can only make requests for measures concerning working conditions and examination of unfair treatment.

⁷ *Zen-no-rin keishoku hou* case, Supreme Court Grand Bench (25 Apr. 1973); *Keishu*, Vol. 27, No. 4, p. 547.

⁸ See GB.285-9 (Part II)-2002-11-0152-1-EN.Doc. p. 173. The Japanese government gives general explanations on fundamental labour rights of public employees, "who do indeed suffer some restrictions, due to the distinctive status and the public nature of the functions performed, in order to guarantee all the people's common interests. The public service legislation in Japan is based on this idea. Salaries, working hours and other working conditions for national public employees in the non-operational sector are under the deliberation right of the budget and legislative power of the Diet, because of the distinctive status of public employees who are ultimately employed by the people and whose salaries are paid by tax revenues. However, public employees have, as workers, specific rights that must be guaranteed, and benefit from compensatory measures, including the NPA recommendation system, etc. Concretely, compensatory measures for the restrictions on fundamental labour rights are: a guarantee of status; working conditions determined by law; the recommendation system; a procedure for requesting administrative measures on working conditions and filing objection to disadvantageous treatment, etc. Thus compensatory measures for the restriction of fundamental labour rights are systematically guaranteed. For the same reasons, salaries and other working conditions for local public employees in the non-operational sector are under the deliberation right of the budget and authority to enact ordinances of the local assemblies. The Personnel Commissions fulfill the same functions as the NPA and the governor, the local assemblies and other administrative organs have the obligation to carry out appropriate measures, as required, so that working conditions are in line with general circumstances in society. According to the government, the Supreme Court ruled as regards national public employees (25 Apr. 1973, Agriculture and Forestry case) that compensatory measures counterbalancing the restrictions on their fundamental labour rights are systematically guaranteed. For employees of national enterprises, etc., the right of association and the right of collective bargaining (including the right to conclude agreements) are granted; however, the right to strike is not."

The NPA is in charge of setting and revising the ceiling on the total number of staff members for each ministry as written into salary ranking scales; each Minister designated as having responsibility for personnel management can therefore only utilize human resources within the quota allocated by the NPA.

Thus, the NPA reviews adverse action taken by ministries and agencies against their employees, but it is questionable if this process provides sufficient compensation for the prohibition of public employees' right to strike; it would be more accurate to describe it as an individual dispute settlement mechanism rather than a collective dispute settlement mechanism that guarantees the right to organize, bargaining collectively and strike. The compensatory means of safeguarding their interests should comprise "fair, effective and speedy dispute settlement procedures, including conciliation, mediation and arbitration... or a mutually agreed legal process".⁹

Impacts of the public service reform on firefighters

Japan has gone through a series of drastic administrative reforms throughout its post-war history. One of the most recent, the General Principles for Civil Service System Reform (GPR), was adopted by Cabinet on 25 December 2001.¹⁰ At a time when Japan has suffered a decade of poor economic performance and mounting fiscal and social security deficits, criticism of public employees and public organizational structures for a perceived failure to meet ethical standards has become widespread among the population. Against this background, the GPR was laid down with the aim of improving government performance and ensuring the functioning, efficiency, continuity and stability required of the public services. The drastic reforms contained in the GPR were proposed in order to create an environment where public workers would fully be able to exercise their competencies through suitable competitions for posts to meet the needs of the public. The Government intends to revise the NPSL for reform and move to implement the new scheme in 2006. The revision of the LPSL will also be proceeded sooner or later in conformity with the NPSL.

The major changes proposed include the introduction of a competency-based grading system and reform of the recruitment/appointment system. According to a draft reform released in 2002 regarding the design of a new personnel scheme, the NPA will retain its responsibility for actual working conditions through regulations, recommendations or rules but performance criteria and the procedures for performance evaluation or promotion will be established in ordinances by the Cabinet, because these are not considered to be working conditions *per se* but rather criteria for and procedures in the process of setting working conditions. Up to now, job classification and the criteria underlying it have been established by the NPA; the proposed new competency-based grading system therefore implies a significant change to the current public service system. However, the GPR provides that "the NPA shall be involved in matters relating to working conditions. The NPA shall design the salary standard, make recommendations to the Diet and the Cabinet and express opinions to the Diet and the Cabinet on the number of employees for each competency-based grade which will determine the staff size. In addition, the NPA shall be able to make each Ministry act flexibly through standardization of working conditions and

⁹ ILO, Report, Joint Meeting on Conditions of Employment and Work of Fire-fighting Personnel, Geneva, 9-17 May 1990, p. 16; and ILO's *Guidelines on social dialogue in public emergency services in a changing environment*, 2003, p. 8.

¹⁰ Another administrative reform, which was proposed prior to the GPR under the regime of Prime Minister Hashimoto, was the reorganization of ministries and agencies implemented in 2001 under the regime of Prime Minister Mori. The GPR is one of the recent administrative reforms proposed together with public corporation restructuring.

ex post checks”.¹¹ The NPA will only be involved in prior consultation with the Cabinet regarding the decision-making. The remuneration scheme will also be changed by combining salary based on seniority with the performance-based salary which should be established by the person competent for personnel management. Despite these proposed changes, the GPR provides that “under the principle of democratic fiscal system and statutory working conditions ... taking into consideration how to assure stable and continuous public services and how reforms are to affect the life of Japanese people, the current restrictions on the fundamental labour rights of public workers shall be maintained”.

The GPR, including the draft reform on personnel matters, provides that the personnel management power of the NPA is to be reduced, while that of the Cabinet and each Minister is to be greatly expanded. This means that personnel management will increasingly be carried out at the level of each ministry. To achieve this goal, it becomes important to establish a fair personnel system or norms at the individual ministry level which ensure proper protection of the interests of public employees through such procedures as negotiations or agreements between public employees and personnel managers (or the authority in charge of personnel management). In this sense, a mechanism for collective labour relations needs to be established by developing the legal framework necessary for ensuring collective bargaining and public employees’ participation in the decision-making process. The social partners together with academics should discuss thoroughly and in concrete terms how these mechanisms could most effectively be set up.¹²

Moreover, the curtailment of the NPA’s power in this way while maintaining restrictions on fundamental labour rights, puts into question the constitutionality of such restrictions because the case law considers the NPA to be an alternative to restrictions on basic labour rights. It is still debatable whether the NPA is an absolutely essential compensation for these restrictions, but given the crucial role of the Authority in reflecting public officials’ opinions, it might be difficult to establish a complementary framework.¹³ The increased discretion of the Cabinet or a Minister in charge of personnel matters of public employees may affect the latter’s work unless their right to bargain collectively is provided for, even in a limited way. It is clear that the proposal for stronger management should be balanced with more participation in the decision-making process.

Recommendations by the Committee on Freedom of Association

Following the adoption of the GPR by the Cabinet, the Japanese Trade Union Confederation (JTUC-RENGO) and the National Confederation of Trade Unions (ZENROREN) alleged that the upcoming reform of the public service legislation, had been developed without proper consultation with workers’ organizations. They claimed that it would aggravate further the existing public service legislation as it maintains the restrictions on the basic trade union rights of public employees, without adequate

¹¹ See Annex II.

¹² See, for example, K. Yamaguchi, “Koumuin seido kaikaku no houkou to mondai” (Reform of civil service system and its problems); and M. Nishimura, “Koumuin seido kaikaku to roudoukijonken mondai” (Civil service reform and the problem of fundamental labour rights), in *Journal of Municipal Problems*, Vol. 55, No. 1, 2003.

¹³ See, for example, in *Jurist* (No. 1226, 2002), “Ko-muin seido kaikaku” (Public service reforms), featuring articles on the GPR.

compensation. In the 285th ILO Governing Body session, the Committee on Freedom of Association issued a report making the following recommendations about this case:¹⁴

- (a) The government should reconsider its stated intention to maintain the current restrictions on the fundamental labour rights of public employees.
- (b) The Committee strongly recommends that full, frank and meaningful consultations be held soon with all parties concerned on the rationale and substance of the public service reform to obtain a wider consensus on the subject, and with a view to amending the legislation and bringing it into conformity with freedom of association principles. These consultations should notably address the following issues, concerning which the legislation and/or practice in Japan are in violation of the provisions of Conventions Nos. 87 and 98:
 - (i) granting fire-defence personnel and prison staff the right to establish organizations of their own choosing;
 - (ii) amending the registration system at local level, so that public employees may establish organizations of their own choosing without being subject to measures tantamount to prior authorization;
 - (iii) allowing public employees' unions to set themselves the term of office of full-time union officers;
 - (iv) granting public employees not directly engaged in the administration of the State the right to bargain collectively and the right to strike in conformity with freedom of association principles;
 - (v) as regards workers whose collective bargaining rights and/or right to strike may be legitimately restricted or prohibited under freedom of association principles, establishing appropriate procedures and institutions, at national and local level, to compensate adequately these employees deprived of an essential means of defending their interests;
 - (vi) amending the legislation so that public employees who exercise legitimately their right to strike are not subject to heavy civil or criminal penalties.

Today's challenges

Following the ILO's recommendations, the Government's initial idea of submitting the GPR for discussion in the regular Diet session in July 2003 was put off. The submission of the draft for discussion in the current January 2004 Diet session was again postponed since the Minister of Administrative Reform stated his wish to reach an agreement after mutual discussion with Rengo.

The Japanese industrial world is going through a transition period and traditional labour relations are facing a new challenge. Once related legislation on the public service reforms has been re-drafted, as recommended by the Committee on Freedom of Association, full, frank and meaningful consultations should be held with all parties concerned on the rationale and substance of the public service reform to obtain a wider consensus on the subject, and with a view to amending the legislation and bringing it into conformity with freedom of association principles. It is high time that a thorough debate be held on basic labour rights issues in the public sector in Japan, as they have been discussed for over 50 years in the post-war history without a satisfactory conclusion. When debating,

¹⁴ GB.285-9 (Part II)-2002-11-0152-1-EN.Doc. The Committee made additional Recommendations in the 287th (Governing Body) Session. See GB.287-8 (Part II)-2003-06-0045-1-EN.Doc.

it should be noted that the line between the private and public sectors is becoming more and more unclear, at least in the service-oriented economy. The proposed GPR is to introduce more elements from private-sector management, including introduction of a merit-based system as well as exchanges of personnel between the private and public sectors. Up to now, the NPA has exercised a central personnel management power over working conditions; however, if the proposed new system for the public services is to involve a move towards decentralized and diversified personnel management, labour-management relations in the public sector cannot attain democracy without guaranteeing basic labour rights. The Office of Administrative Reform is proposing to enhance communication between labour and management as well as to promote a grievance mechanism to tackle the issues which would be expected to arise upon implementing the GPR. Once again, however, the mechanism is aimed at settlement of individual rather than collective disputes.

The restrictions on fundamental labour rights should be relaxed if the NPA's compensatory measures are reduced. The right to organize and to conduct collective bargaining, including the conclusion of a collective agreement, should be guaranteed while maintaining restrictions on the right to strike. It is a common understanding that the right to strike should be restricted for public officials, particularly those involved in services directly related to the public's life, security and health. Therefore, the role of the NPA should be maintained as compensation for loss of the right to strike, even when the right to organize and to bargain collectively are to be granted.

The nation's social partners should take the opportunity provided by ongoing reforms in the public sector to endeavour to fill in the gaps between internationally recognized labour standards proclaimed by the ILO and current national legislation or practices in Japan. The general public's view of public employees' working conditions is quite severe, but this should not be used to justify restricting the basic labour rights which democracy guarantees.

2. The organization and operations of PESs

Fire services

It has been half a century since the fire services in Japan were established as a local community-based body in 1949. Fire departments provide firefighting and prevention services, ambulance runs, and rescue services to protect the public. They are trained not only in firefighting techniques but also in emergency medical and rescue procedures.

Fire services in Japan are organized into permanent firefighting services and ad hoc voluntary fire brigades, both of which are delivered at each municipality level. The permanent firefighting services comprise fire headquarters, fire departments, and fire stations. According to the Fire Organization Law (art. 20), the Fire and Disaster Management Agency (FDMA) provides advice, guidance and recommendations to the local governments and municipalities on matters related to fire services, while the local governments are in communication as well as in coordination with the municipalities on matters related to fire services, and run firefighting schools.¹⁵

Table 2 presents the number of operations carried out in 2001 in Japan by the fire brigade members and firefighting officials by type of services. The table shows that the fire brigades and departments provided ambulance runs far more frequently than other services. Table 3 presents a breakdown of ambulance runs. There were 4,397,527 ambulance runs in 2001, a 5.1 per cent increase over the previous year. The number of ambulance runs has been steadily increasing over the past few years. Of the total, 2,278,811 were due to emergency illness (56.4 per cent), 687,516 were due to traffic accidents (15.6 per cent) and 557,292 were due to general injuries (12.7 per cent). There were on average 12,048 ambulance runs a day. Ambulance crews were called out on duty every 7.2 seconds, transporting one person in every 30.¹⁶ Table 4 shows a breakdown of rescue operations. Rescue crews save people from fire, traffic accidents, accidents on waterways, natural calamities, mechanical accidents, etc. and, if necessary, remove the risks and dangers. In 2001, there were 49,271 rescue cases, a 6.9 per cent increase over the previous year. The trend for the past few years also shows a constant increase in rescue cases. In 2001, 1,113,306 fire officials and 196,686 voluntary fire brigade members were on duty. A total of 1,488 rescue crews were established in 864 fire headquarters, comprising 23,645 crew members.¹⁷

The accounts settled on the fire services by local municipalities for 2000 came to 1,875.8 billion yen (14,854 yen per capita), a 0.1 per cent increase from 1999. The municipalities' financial resources comprise a general-account budget (central government tax revenues allocated to local governments, local taxes, etc.), local government bonds, national treasury disbursements, and national and local treasury subsidies. The national budget allocation to the FDMA for 2002 was 23,468.18 million yen, a 3.5 per cent increase from 2001. The accounts settled on the fire services by local governments in 2000 came to 114,241 million yen, of which 10,249 million yen was paid out and 440 million yen loaned to the local municipalities.¹⁸

¹⁵ Japan is administratively divided into 47 prefectures (*Todouhuku*), each subdivided into municipalities.

¹⁶ FDMA, *Shoubouhakusho* (Tokyo, 2002), pp. 246-247, 281-282.

¹⁷ *ibid.*, pp. 301-302.

¹⁸ *ibid.*, pp. 235-241.

The increase in the volume of work seems far greater than the corresponding budgetary increase. In order to respond to public needs quickly as well as to provide quality services, the increase in the workload should be matched by a sufficient budgetary allocation to assure the necessary staffing levels.

Table 2. Operations conducted by fire officials and fire brigades in 2001

Type of assignment		Fire officials	Fire brigades	Total	%
Fire	No. of operations	66 732	48 741	115 47	1.5
	No. of people	1 139 085	1 645 627	2 784 712	7.8
Ambulance runs	No. of operations	4 397 085	853	4 398 380	57.2
	No. of people	13 197 703	5 262	13 202 965	36.8
Rescue	No. of operations	78 767	1 495	80 262	1.0
	No. of people	844 632	22 802	867 434	2.4
Natural disasters	No. of operations	9 207	3 321	12 528	0.2
	No. of people	58 436	141 444	199 880	0.6
Exercise and training	No. of operations	221 710	166 812	388 522	5.1
	No. of people	1 239 809	4 832 820	6 072 629	16.9
Publicity and instruction	No. of operations	364 331	74 595	438 926	5.7
	No. of people	1 207 588	955 749	2 163 337	6.0
Prevention research	No. of operations	474 219	22 521	496 740	6.5
	No. of people	1 785 633	254 934	2 040 567	5.7
Fire cause investigation	No. of operations	61 941	94	62 035	0.8
	No. of people	287 859	1 091	288 950	0.8
Special precaution	No. of operations	113 846	75 788	189 634	2.5
	No. of people	1 239 329	1 598 927	2 838 256	7.9
Search	No. of operations	3 631	2 472	6 103	0.1
	No. of people	38 350	102 538	140 888	0.4
Preventive inspection	No. of operations	1 008 685	1 528	1 010 213	13.2
	No. of people	2 086 976	39 452	2 126 428	5.9
False report	No. of operations	38 746	4 549	43 295	0.5
	No. of people	385 726	62 010	447 736	1.2
Others	No. of operations	314 300	123 915	438 215	5.7
	No. of people	1 161 088	1 565 652	2 726 740	7.6
Total	No. of operations	7 153 642	526 684	7 680 326	100.0
	No. of people	24 672 214	11 228 308	35 900 522	100.0

Note: The number of operations shows how many times officials are on duty, regardless of whether they actually undertake them once called on duty.

Source: FDMA, *Shoubouhakusho* (Tokyo 2002), p. 247.

Table 3. Ambulance runs: Numbers of callouts, and persons transported

Type of accident	Year 2000		Year 2001		Year-on-year change	
	Number of callouts (number of transported people)	%	Number of callouts (number of transported people)	%	Number	%
Sudden illness	2 342 578 (2 190 545)	56.0 (54.8)	2 478 811 (2 315 317)	56.4 (55.2)	136 233 (124 772)	5.8 (5.7)
Traffic accident	681 154 (761 714)	16.3 (19.1)	687 516 (765 733)	15.6 (18.3)	6 362 (4 019)	0.9 (0.5)
General injury	514 564 (485 208)	12.3 (12.1)	557 292 (525 360)	12.7 (12.5)	42 728 (40 152)	8.3 (8.3)
Assailant	54 269 (52 233)	1.3 (1.3)	53 053 (50 434)	1.2 (1.2)	1 216 (-1,799)	-2.2 (-3.4)

Type of accident	Year 2000		Year 2001		Year-on-year change	
	Number of callouts (number of transported people)	%	Number of callouts (number of transported people)	%	Number	%
Self-incurred accident	54 020 (39 396)	1.3 (1.0)	55 561 (40 982)	1.3 (1.0)	1 541 (1 586)	2.9 (4.0)
Occupational hazard	46 619 (45 735)	1.1 (1.1)	47 171 (46 326)	1.1 (1.1)	552 (591)	1.2 (1.3)
Athletics/sport	27 439 (28 279)	0.7 (0.7)	29 756 (30 566)	0.7 (0.7)	2 317 (2 287)	8.4 (8.1)
Fire	23 011 (6 898)	0.5 (0.2)	24 346 (7 152)	0.5 (0.2)	1 335 (254)	5.8 (3.7)
Water accident	4 168 (2 568)	0.1 (0.1)	4 002 (2 401)	0.1 (0.1)	-166 (-167)	-4.0 (-6.5)
Natural calamity	333 (297)	0.0 (0.0)	304 (227)	0.0 (0.0)	-29 (-70)	-8.7 (-23.6)
Others	434 520 (385 069)	10.4 (9.6)	459 715 (406 399)	10.4 (9.7)	25 195 (21 330)	5.8 (5.5)
Total	4 182 675 (3 997 942)	100.0 (100.0)	4 397 527 (4 190 897)	100.0 (100.0)	214 852 (192 955)	5.1 (4.8)

Source: FDMA, *Shoubouhakusho* (Tokyo 2002), p. 282.

Table 4. Rescue operation by type of accident in 2001

	Fire	Traffic accident	Water accident	Natural calamity	Machine- related accident	Building- related accident	Gas or lack of air accident	Explosion accident	Others	Total
Rescue operations	6 610 (13.4)	22 335 (45.3)	2 015 (4.1)	152 (0.3)	1 088 (2.2)	9 783 (19.9)	98 (0.2)	1 (0.0)	7 189 (14.6)	49 271 (100.0)
Rescue workers on duty	1 390 (2.7)	29 519 (57.5)	1 740 (3.4)	278 (0.5)	1 478 (2.9)	9 899 (19.3)	165 (0.3)	1 (0.0)	6 847 (13.3)	51 317 (100.0)
Fire official On duty	301 042 (27.0)	418 577 (37.6)	54 858 (4.9)	3 390 (0.3)	24 385 (2.2)	126 593 (11.4)	3 936 (0.4)	20 (0.0)	180 505 (16.2)	1 113 306 (100.0)
On operation	68 425 (14.7)	212 216 (45.7)	30 111 (6.5)	1 303 (0.3)	10 712 (2.3)	78 092 (16.8)	1 143 (0.2)	8 (0.0)	62 482 (13.5)	464 492 (100.0)
Fire brigade member On duty	154 962 (81.3)	3 250 (1.7)	6 676 (3.5)	1 273 (0.7)	208 (0.1)	617 (0.3)	53 (0.0)	0 (0.0)	23 647 (12.4)	190 686 (100.0)
On operation	17 505 (55.4)	340 (1.1)	4 532 (14.4)	871 (2.8)	14 (0.0)	5.6 (0.2)	11 (0.0)	0 (0.0)	8 240 (26.1)	31 569 (100.0)
No. of rescue crew on operation per accident	13.0	9.5	17.2	14.3	9.9	8.0	11.8	8.0	9.8	10.1

Note: () represents the percentage (%). The number of rescue crew on duty represents those who were on duty for rescue activities. The number of rescue crew on operation represents those who were on operations among those who were on duty.

Source: FDMA, *Shoubouhakusho* (Tokyo 2002), p. 302.

Based on the lessons learned in the Kobe earthquake, the Emergency Firefighting Support Team was newly established for the purpose of expanding and strengthening the services in collaboration and coordination with local communities, civil society and enterprises, as well as achieving comprehensive control of firefighting and fire prevention. Not only the disaster in Kobe but also a changing social and economic environment has

resulted in an increase in the complexity and diversity of disasters and accidents. For example, in the central Shinjuku-Kabukicho area of Tokyo in September 2001, a conflagration in a building with an area of only 500 m² killed 44 people and injured three. In densely populated big cities like Tokyo, Osaka, Nagoya and Kobe, where there are thousands of small buildings comprising small shops, restaurants, housing and offices, a small-scale fire can cause huge damage to the public as well as other, secondary disasters. A nationwide inspection carried out after the Shinjuku fire established that 90 per cent of small buildings were in contravention of the fire laws in Japan. Moreover, in these big cities, traffic accidents are innumerable, requiring literally round-the-clock emergency services.¹⁹

In response to increasing social needs, the scope of the Emergency Lifeguard System, launched in 1991, has been expanded as presented in box 1 below. Crisis management in cases of terrorist attacks is another area in which the public has been calling for improvements. The scope of the fire services has been expanding rapidly in a changing environment.

Box 1. Role of Emergency Lifeguards

The Emergency Lifeguard System was established through a 1991 Law in order to improve the quality of paramedical first aid at emergency sites and on board the ambulance. The system has made significant progress in improving both the survival rates of patients experiencing cardiac arrest and first-aid services themselves. Under the terms of the Law, emergency lifeguards are allowed to perform the following three first-aid measures on emergency patients in cardiac or respiratory arrest, under the supervision of medical doctors: (a) electric shock measures; (b) Ringer's lactate infusion; (c) management of the airway by artificial respiration.

As of April 2002, there were 12,068 fire personnel who had obtained official qualifications as emergency lifeguards, of whom 10,823 were on emergency lifeguard duties. Of 4,595 ambulance crews in Japan, 2,884 (62.8 per cent) include at least one emergency lifeguard.

Statistics for 2001 comparing the one-month survival rate of emergency patients in cardiac arrest saved by ambulance crews and receiving first aid seem to show that the proportion of survivors among those treated by emergency lifeguards is higher than for those receiving first aid from crews not qualified as lifeguards.

While the Ministry of Health, Labour and Welfare and the Fire Defence Agency have been discussing the expansion of the system by broadening the scope of treatment which emergency lifeguards may administer, together with the necessity of building up appropriate medical control, errors have also been observed in emergency medical treatment at emergency sites. In one case, a tracheal intubation was performed, which emergency lifeguards are not allowed to do. Tracheal intubations need specific skills and training which should be supported and guaranteed medically.

Coordination between fire and rescue and medical services is a key to providing better-quality and riskfree emergency medical services. Such coordination includes not only providing medical control management but also improving the skills and building up the knowledge of ambulance crews through training, including in hospitals.

Source: FDMA, *Shoubouhakusho*, pp. 31-37.

Police services

Under the Police Law, the Japanese police are composed of the national police and local police. The local police departments are located in each municipality in order to protect the public's life, physical person, and property, and to maintain public security and order. The National Police Agency comes under the control of the National Public Safety Commission. Within the scope determined by the Law, the Agency supervises local police forces, which are in addition overseen by a local public safety commission. Coming under

¹⁹ *ibid.*, pp. 1-30.

local police forces are local police headquarters in local governments (prefectures), local police departments in local municipalities under local governments, police stations (police substations), police boxes, etc.²⁰

Police officers protect the public by maintaining law and order and by detecting and preventing crime, using appropriate tactics and investigative techniques and procedures. They are also involved in maintaining patrols, responding to call-outs, directing traffic, and providing first aid to traffic accident victims.

The national budget allocation to the National Police Agency for 2001 was 274,288.15 million yen, a 4.2 per cent decrease from 2000. The allocation to local police services by all the municipal and local governments amounted to 3,446,364 million yen in 2001, a 0.3 per cent decrease from 2000. Part of the national budget allocation was paid out to the local police services. The budget allocation per capita for 2001 was 29,000 yen. The number of inhabitants per police officer in 2001 was 551,²¹ which was far greater than in other countries: 385 in the US, 395 in the UK, and 293 in France.²² In 2002, the number of recognized crimes was 22,294, of which 11,186 were solved with 10,029 arrests. Although the number of recognized crimes has doubled during the last ten years, the number of unsolved crimes has been steadily increasing. (see table 5). Of the recognized cases, the numbers of robbery and indecent assault cases have more than doubled within the past five years.²³ Although cutting the number of public employees is one of the key points of the administrative reforms proposed, police staffing levels should be dealt with separately in consideration of the decline in public security due to the increase in the number of crimes.

Table 5. Recognized crimes and solved crimes, 1993-2002

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Recognized crimes	10 903	11 103	10 652	11 286	12 366	12 725	14 682	18 281	21 530	22 294
Solved crimes	9 701	9 891	9 643	9 925	10 798	10 700	10 491	11 049	11 418	11 186
Arrests	6 646	7 102	6 969	7 323	8 654	8 890	9 307	9 954	9 905	10 029
Clear-up rate (%)	89.0	89.1	90.5	87.9	87.3	84.1	71.5	60.4	53.0	50.2

Source: <http://www.npa.go.jp/toukei/index.htm> .

²⁰ <http://www.npa.go.jp/syokai/index.htm> . The police headquarters in Tokyo is called the Metropolitan Police Department.

²¹ <http://www.pdc.npa.go.jp/hakusyo/h14/h141003.html> .

²² <http://justice.i-mediatv.co.jp/sassa/010910/01.html> .

²³ <http://www.npa.go.jp/toukei/index.htm> .

3. Employment and human resource development

3.1. Employment trends

Fire services

In April 2002, 154,478 fire personnel in entire Japan were assigned to 900 fire departments, 1,690 fire stations, and 3,226 local offices in local municipalities. Although the number of fire personnel had been increasing, women personnel numbered just 2,547.²⁴ With regard to national fire personnel working in the FDMA, there are 111 men and two women. Among the 3,158 municipalities, 98.1 per cent of them, representing 99.8 per cent of the population in Japan are covered by the permanent firefighting services, while less-populated areas such as mountain areas or small islands are only covered by non-permanent volunteer fire brigades. All municipalities are covered one way or another by volunteer fire brigades. In April 2002, there were 3,627 fire brigades accounting for 937,169 members. The number of women brigade members increased from 8,234 in 2001 to 11,597 in 2002. With regard to age composition, 36.6 per cent were over 40 years old, and the average age was 37.1 years.²⁵ Although fire brigades are made up of volunteers, their members are all given special part-time local government official status so to motivate them for and maintain delivery of stable and quality services. Their status and terms of conditions are provided for in local ordinances. They are entitled to annual fixed-amount remuneration, payment for each service given and accident compensation.

Although the number of firefighters has been increasing, it is still proven to be inadequate when large-scale disasters, such as the Kobe earthquake or the Shinjuku building fire, occur. Faced with deregulation and financial constraints, fire services are often criticized for failure to respond to large-scale or particular disasters due to poor staffing levels and lack of sufficient equipment or facilities at each fire department. Yet instead of increasing staffing levels, the Government has been carrying out a large-scale merging and restructuring of municipalities. The firefighters' association Zenshokyo claims that unless there is an increase in the workforce, firefighters will remain unable to respond to changing and diversified disasters, in particular to large-scale disasters. Budget constraints also do not allow them to obtain sufficiently well-trained multi-functioned staff capable of dealing with different types of disasters.²⁶

Police services

In Japan, there was a total of 269,910 police staff under both national and local governments in 2001, a slight increase from 263,402 in 1999 (table 6). Of the total, there were 8,800 female police officers and 23,300 clerical staff. The number of inhabitants per

²⁴ Although the number of female workers is small in fire and police services in Japan, in general gender equality is better promoted in the public than in the private sector. For example, female administrative officials in local governments in 1996 already accounted for 31 per cent of the total, while female managers constituted 16.7 per cent. The proportion of women among those who pass the local government officials' exam has reached over 40 per cent in recent years. In the meantime, female administrative officials in the national government constituted 16 per cent of the total and women managers made up just 11 per cent. See H. Inatsugu, "Public service reforms: Perspectives of local public service reforms" in *Jurist* No. 1158, 1999, p. 41.

²⁵ FDMA, *Shoubouhakusho* (Tokyo, 2002), pp. 229-231.

²⁶ http://www.jichiro.gr.jp/zensyokyo/news/no65/65_04.html.

police officer fell from 555 in 1999 to 551 in 2001, as 2,580 local police officers had been recruited in the local governments and municipalities, where the workload had been observed to be excessive.²⁷ Despite a rise in the number of crimes, staffing levels have not been increased to meet the demand. The number of criminals arrested has also decreased as there have been few police officers available to patrol the streets and daily security on the street has deteriorated. Some police boxes which should be open around the clock are nowadays closed due to lack of manpower.²⁸

Women officers used to be involved mainly in such services as tyre inspection or juvenile affairs, but the scope of their work has gradually broadened to cover criminal investigations, organized crime control, guard duties and security work. Given the fact that such crimes as stalking, domestic violence, child abuse and sexual abuse have been increasing markedly in Japan, women officers are expected to play a more and more pivotal role in the police services, in particular with regard to helping crime victims. In consideration of the increased needs for women officers, the National Police Agency has been actively promoting women-friendly work organization by establishing, for example, childcare scheme.²⁹

Table 6. Police staffing levels in 2001

Type of services	NPA				Local police				Total	
	Police official	Imperial Palace security guard	Clerical official	Total	Police official		Clerical official	Total		
					Local executive	Police official				Subtotal
Number of police staff	1 504	922	5 163	7 589	582	232 591	233 173	29 148	262 321	269 910

Note: Local executive officials are national police officials who are appointed by the NPA.
Source: <http://www.pdc.npa.go.jp/hakusyo/h13/h130910.pdf>.

3.2. Gender equality

Public employees' equality of employment opportunity in Japan

The 1997 Equal Employment Opportunity Law (EEO) prohibits discrimination against women in recruitment and hiring (art. 5), assignment and promotion (art. 6), training and education (art. 6), fringe benefits (art. 7), mandatory retirement age, mandatory retirement by reason of marriage, pregnancy or childbirth, and dismissals (art. 8). Although the Law made substantial legislative progress in promoting gender equality in employment as compared with the former Law of 1985,³⁰ it does not provide effective enforcement measures. Local mediation committees are established under the EEO in order to mediate alleged discrimination cases, but the final settlement requires both parties' consent. With regard to both national and local public employees, however, the above provisions do not apply. Instead, the NPA, is in charge of promoting gender

²⁷ <http://www.pcd.npa.go.jp/hakusho/h13/h130903.html>.

²⁸ <http://justice.i-mediatv.co.jp/sassa/010910/01.html>.

²⁹ <http://www.pcd.npa.go.jp/hakusho/h13/h130903.html>.

³⁰ See, for example, T. Hanami, "Equal employment revisited" in *Japan Labour Bulletin*, Vol. 39, No.1, 2000, for details of the 1985 Law and the 1997 Law.

equality in employment for public employees through its rules. The local governments follow the NPA's initiatives in principle.

In 1999, the Fundamental Law for a Gender-equal Society also came into force, laying down the basic ideals of how a gender-equal society should be and dealing more broadly with gender equality issues. The legislation was enacted so that the human rights of men and women would be respected equally in order to create an effective and vital society which would respond to social and economic change. To that end, the Law clarifies the responsibilities of the government at both national and local levels, public bodies and the general public to establish and implement comprehensive measures that will bring about a gender-equal society.³¹

Recognizing that the Government should take the initiative in promoting gender equality, the NPA issued Guidelines concerning Enlargement of the Recruitment and Promotion of Female National Public Employees in 2001. These guidelines lay down the basic principles for enlarging such recruitment and promotion, and measures for analysing the present situation in the field of female recruitment and promotion. The guidelines provide that the national and local governments should pay due attention to establishing a work environment which is friendly to women as well as implementing measures in accordance with the guidelines.³² Since the enactment of the Law, positive actions to increase the number of women in the public sector have been taken in national and local governments.

Those efforts have partly contributed to increasing the number of female firefighters and police officers, but the total composition is still very small. It is standard practice for both national and local governments to set age and nationality restrictions on their recruitment notices, but there are no clear gender restrictions, although it is apparent that far fewer female officers are actually recruited. However, with regard to recruitment of police officers and firefighters by local governments, the procedures are often separated by gender. For example, to recruit police officers, quite a few municipalities set out separate notices and procedures for men and women, and the required number of female officers indicated on the notice is normally far smaller than for men. The recruitment of firefighters follows more or less the same pattern. In most cases, the local municipalities separate the recruitment of men from that of women and their recruitment benchmark for women is small. There are even cases of explicit gender restriction, such as the indication "male only" on a recruitment notice. According to the notice issued in 2003 by the Tokyo Metropolitan Authorities, for example, the benchmark number presented for recruitment of professional administrators – covering such areas as law, architecture, electrical and electronic engineering, telecommunications, chemistry, physics, civil engineering and machinery – was ten for males and only one female. The same Authorities' recruitment benchmark for non-clerical firefighters was 42 females and 650 males.³³

There are a few municipalities which have abolished gender-selective recruitment notices. In order to achieve greater gender diversity in employment in the fire and police services, more efforts should be made to eliminate prejudice and discrimination in line with the guidelines by implementing positive action to recruit more women.

The GPR reform also provides for the expansion of female recruitment and promotion as embodied in the fundamental Law and the guidelines. The GPR calls for establishment of action plans to achieve set benchmarks for female recruitment and promotion, followed

³¹ <http://www.jil.go.jp/jil/bulletin/year/1999/vol38-09/05.htm#2> .

³² http://www.jinji.go.jp/english/new_03/special_feature.htm .

³³ <http://www.tfd.metro.tokyo.jp/bsy/guide2003/index.html> .

up by monitoring their implementation, constant efforts to eliminate prejudice and discrimination at work, and training to raise public employees' awareness on equal participation. The GPR also lays down provisions regarding improvement of the work environment for women. The social partners should work together through dialogue in order to ensure that the reform contributes to the realization of a gender-equal society.

Balance between work and family life

For private-sector workers there is the Child Care and Family Care Leave Law aimed at harmonization of work and family life. In the public sector, there are similar Laws for national and local public employees. The NPA sets forth the targeted age for full-time childcare leave and part-time childcare leave depending on the age of the children. It also established a new fixed-term employment scheme to secure replacement personnel for those who are on childcare leave or nursing care leave and for the sick-childcare leave, the scheme introduced recently for the first time. In light of the fact that few men take childcare leave and nursing care leave, the NPA has been encouraging each government office and ministry to establish a work environment in which not only women but also men can easily take such leave. In order to create a family-friendly work environment, the NPA has also implemented measures for limiting overtime work and nightwork for those who have childcare or nursing-care responsibilities. Such measures are desirable because women face more difficulties in balancing work and family life due to long working hours, which are quite common in Japanese workplaces. According to the Laws, employers are not able to involve workers with nursing-care or childcare responsibilities in nightwork. The LSL also provides that employers are not able to involve pregnant workers in nightwork if they so wish. The Laws and similar measures can be more effectively implemented by providing sufficient childcare and nursing facilities while encouraging *men to share domestic obligations*.³⁴

Sexual harassment

Under the current Japanese laws, sexual harassment is not understood as a type of discrimination. However, in consideration of the fact that sexual harassment creates a hostile and offensive work environment, the EEOL (art. 21.1) provides that an employer must pay due attention in personnel management to ensure that a woman's reaction to sexual language or conduct in the workplace does not detrimentally affect her terms and conditions of employment or her working environment. The employer must take the appropriate personnel management measures necessary to that end. Accordingly, the employer has an obligation to give due consideration to prevent sexual harassment in the workplace. This provision applies to local public employees but not to national administrative employees.

For national public administrative employees, the NPA rule (10-10) provides the necessary basis for measures to prevent and eliminate sexual harassment. In accordance with the rule, each office and ministry in the national government established internal rules and set up a sexual harassment counselling system. The NPA carries out awareness-raising for the purpose of preventing sexual harassment. The NPA set the period from 4 to 10 December every year as the week designated for the protection of public employees from sexual harassment, and for the organization of a symposium. For one day during the week, a sexual harassment hotline is established in Tokyo.³⁵

³⁴ NPA, *Annual Report FY 2001*, pp. 79-81.

³⁵ *ibid.*, p. 113.

3.3. Ethnic and racial minorities

The ILO Convention No. 111 covers not only discrimination based on sex but also that on grounds of race, colour, religion and national extraction or social origin, as well as political opinion. Although the Convention is one of the core ILO labour standards, Japan has not yet ratified it.

Article 14 of the Constitution of Japan sets forth the principle of equality regardless of “race, creed, sex, social status or family origin”. However, actual anti-discrimination laws and remedies are not effectively enforced in reality. In principle, the protective labour laws, including the Labour Standards Law (LSL), the Minimum Wage Law, the Occupational Safety and Health Law, and the Workmen’s Accident Compensation Insurance Law, are applied to all workers regardless of their status. The LSL prohibits discrimination in working conditions on the basis of a worker’s nationality. This prohibition is enforced and penalties exacted by the Labour Standards Inspection Office. However, the LSL only covers a narrow range of discrimination in working conditions while the EEOL covers only gender discrimination in recruitment, hiring, job assignment and promotion. As a result, there are no special laws that effectively cope with ethnic and racial discrimination in job segregation. This is one of the reasons why Japan has not ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The general Japanese laws relating to the legal status of foreigners are not particularly discriminatory but, as with the EEOL, the question arises when it comes to their implementation, application and enforcement, or remedies available to victims of discrimination. Unless the courts are provided with power to enforce the principle of equality, promotion of ethnic and racial equality is difficult.

In the public sector, Japanese nationality is generally a requirement for recruitment and employment in national and public government offices, although some local municipalities do not restrict recruitment of foreigners in certain job categories. Such exceptions differ from one municipality to another. The general principle behind the exclusion is based on the assumption that such public positions involving administration, command of authority and participation in decision-making should be exclusively reserved for Japanese citizens. Thus, in most communities, foreigners are accepted only in teaching positions (professors, teachers), the field of medicine (doctors, dentists, nurses, X-ray technicians, nutritionists, midwives, etc.), transportation, technical jobs, and so on. However, there are some municipalities which have recently expanded the list of jobs such as general administrative posts available to foreigners.³⁶

The fire and police services are in principle considered to be services involving command of authority and participation in decision-making, hence requiring Japanese nationality. Therefore, most of the municipalities exclude foreigners from being firefighters or police officers. According to the Tokyo Fire Agency’s view, foreigners are not even allowed to be members of the fire brigades, by reason of the latter’s special part-time local government official status by which they can also be in “command of authority”. But there are some small municipalities which welcome foreign members to their fire brigade.

Given that firefighter levels are under strength and in view of a growing number of foreign residents in some communities, nationality restrictions at least on fire brigades should be abolished. Foreigners’ participation in the fire services can surely only enhance community ties and security.

³⁶ M. Weiner; T. Hanami (eds.), *Temporary workers or future citizens? Japanese and US migration policies* (NY, New York University Press, 1998), pp. 233-234.

3.4. Older workers

In Japan there are age restrictions on recruitment not only of fire officials and police officers but public employees in general. In most cases, young people in their 20s are recruited. Certain numbers of people are recruited every year and in general they work until their retirement age, which is 60. The average age of fire-fighting officials in 2001 was 40.8, slightly younger than administrative public officials (42.1).³⁷

3.5. Community-based police and fire services

The police and fire officials, who often risk their own lives to protect others, are usually well respected and trusted in society. But public respect and trust for the police have fallen in Japan. According to a poll taken in Japan in 2003 regarding the occupational groups people most trusted, firefighters came at the top of the list with 66.87 percentage points while police officers scored 26.19 percentage points and came in 16th.³⁸ This lower ranking for the police is due to a series of scandals and cases of misconduct which have been widely reported in the past few years.

In Japan, 39 police officers in 1999 and 38 police officers in the first half of 2000 were dismissed in disgrace. Most of the scandals were caused by misconduct on the part of top or executive officials who were detached from the national police to work for local police departments. Instances include seeking sexual favours from women suspects through blackmail, assault on colleagues, administrative concealment of misconduct, drug abuse, ignoring evidence relevant to serious cases up to and including murder cases, accepting bribes in the form of entertainment or wining and dining, leaking of confidential information, acts of obscenity, sexual harassment, and sexually abusing detainees.³⁹

There is a perception that a root cause of these scandals is the difference in career track between national and local police officers. National and local police officers are recruited and promoted separately⁴⁰ and the former are considered candidates for future executive posts in both national and local police services. Obtaining local experiences is one of the steps for national police officers on a career track to be promoted eventually in the national police service. In most cases, however, those national police officers are appointed to the top positions in local police departments without enough experiences and capacity and they are often ignorant of local situations. Their concerns are sometimes limited only to their own promotions once they get back to the national police force. A policy change is therefore needed to provide local police officers who are competent and knowledgeable of local situations with better opportunities for promotion in the interests of good governance and democratic rule of law because such officers will deliver quality service to the community.

In order to maintain democratic and quality police service supported by appropriate control and inspection and information disclosure, the National Public Safety Commission (NPSC) is in control of the National Police Agency and the Local Public Safety Commissions (LPSC) are in control of the local police departments. The chairman of the NPSC is the Minister of State and other members such as lawyers, employers, academics,

³⁷ FDMA, *Shoubouhakusho*, pp. 243-244.

³⁸ Nihon Riteiru Kenkyu-sho, *5th survey on reliability on different professions*, 2003.

³⁹ <http://www.pdc.npa.go.jp/hakusyo/h12/h120001.html> .

⁴⁰ National police officers go through examinations set by the NPA and are recruited by the National Police Agency, while the local police departments recruit local police officers. The level of examination set by the NPA differs depending on the category of job applied for. The so-called career-track national police officers are put into national public employee category I.

etc. are selected from the public. The LPSC's members are also selected from the public. These commissions were established in 1954 under the Police Law. After a series of scandals, the Advisory Council on Police Reform was established in 2000 to make reform proposals based on public concerns. Eleven intensive meetings were held among the council members comprising a lawyer, a journalist, employers, and a former politician. In its report submitted to the NPSC, the Council proposed that local police officers with an excellent performance record should be offered opportunities for promotion to the executive positions in the local departments while national officers should obtain more training based on local experience before they get promoted to higher positions such as police captain.⁴¹ Lack of local knowledge and of on-the-job local experience on the part of the national police officers who are dispatched to posts higher than those of local police officers, and national officers' perceived disregard for and irresponsibility towards the local community are said to demotivate the local officers.

The Police Law was revised in 2000 with a view to strengthening the role of public security commissions and to prevent abuse of police power. The NPSC set forth rules which authorize the NPSC and the LPSCs to undertake and provide directions for inspections when necessary. Additionally, the revision introduced a grievance mechanism for the public and set up committees in the local police departments to better reflect the voice of the community. So far, committees have been established in 1,265 police departments out of a total of 1,269. These local police department committees can play an interactive role in reflecting voices from the public, involving local communities, schools, non-profit organizations, women's organizations, or other community groups. Moreover, the Advisory Council thought that anonymity protected in police activities was another element that encouraged police misconduct because they did not have to be accountable for their activities. In order to restore a sense of order among police officers, the Council proposed that, as far as possible, anonymity should be removed and disclosure promoted. Subsequently, information disclosure has also been gradually promoted.⁴² But even after reforms were undertaken, cases of police misconduct have continued to surface. In order to restore a sense of security among citizens, more drastic reforms should be implemented so that the police can rebuild ties with the community.

Lower staffing levels have also been pointed out as another constraint in providing quality services to the public. The population per police officer in Japan is about 550, which is much larger than those in western countries, where they vary from about 300 to 400. There are local police departments around the Tokyo area with a population per police official exceeding 750 and which were accused of delayed response in serious cases and consequently lost the public's trust.⁴³ Effective delivery of services cannot be realized without increasing staffing levels to ensure decent work for the police officers concerned. The ongoing police reform should therefore be carried out at the same time as the staffing level is increased.

3.6. Recruitment and promotion

Both the police and the fire defence services adopt a hierarchical approach. Recruitment is undertaken by the NPA for national officials and by local police or fire

⁴¹ National police officers are recruited as police lieutenants and are promoted to police captain after training at the National Police Academy and a nine-month probation period at the local police departments. It takes only between one and two months to become a police captain. Two years after serving at the National Police Agency following local experience, they become police superintendents and are dispatched to the local police or the local public security commissions.

⁴² <http://www.pdc.npa.go.jp/hakusyo/h13/h130902.html> .

⁴³ <http://justice.i-mediatv.co.jp/sassa/010910/01.html> .

departments for local officials. The recruitment examinations and procedures differ according to job category. Once recruited, national and clerical officials are generally promoted on a merit and seniority basis; no further examination is conducted. Those who passed the level 1 national public official exams are, in practice, treated as fast streamers.

In contrast, non-clerical firefighters and police officers are required to take promotion examinations whenever they want to go for higher-ranking posts. Unless they pass those examinations, therefore, their promotion can be much slower than for those whose promotion is based strictly on seniority.

3.7. Training

Police services

The National Police Academy provides education and training courses for senior or future executive police officers who obtain necessary knowledge, technical skills, leadership and administrative capacity as well as advanced education and training for special police services. Those who attend the courses provided by the National Police Academy include those who will be assigned as chief of station, those who will be promoted to police inspector or assistant division chief, newly joined national police officers who passed the National Public Service Category I Examination, and other police officers in supervisory positions. The purpose of these high-level courses is to enable officers to obtain management and leadership skills as well as practical ones. The courses available at the National Police Academy vary as shown below (table 7).

Table 7. Education and training courses provided at the National Police Academy

Course	Period	Qualification and programme
Police Management Course	2 to 3 weeks	Those expected to be the chief of a police station are given education and training in organization management skills and the investigation command skills required for that position.
Course for Newly Appointed Inspectors (long-term course/short-term course)	3 month-short-term course 6 month-long-term course	Those promoted (or expected to be promoted) to the rank of police inspector are given education and training to master knowledge and skills required for the section chief of a police station.
Course for Newly Appointed Assistant Division Chiefs	2 weeks	Civilian police personnel promoted to assistant division chiefs (police inspector level) or expected to be promoted as such are given education and training to master knowledge and skills required for their posts.
Cadet Course	6 months	Newly recruited police officers who have passed the National Public Service Category I Examination are given the basic education and training required for senior level police officers.
Administrative Practice Course	3 weeks	Those who have passed the National Public Service Category II Examination and are promoted to the rank of police inspector are given the education and training required for the rank.
Physical Training Instructors Course	4 months	Those who are or are expected to be physical training instructors [judo, kendo, arresting techniques and physical education] are given education and training to master the technical knowledge and skills required for their posts.
Course for Instructors at Police Schools	1 month	Those who hold the rank of police inspector or assistant police inspector (including civilian police personnel holding the corresponding ranks) and are expected to be an instructor at a prefectural or regional police school are given training to master the knowledge and skills required for their posts.

Course	Period	Qualification and programme
Course for Experts	Required period	Those who hold the rank of assistant police inspector or above (including civilian police personnel holding the corresponding ranks) are given expert education and training to master a high level of knowledge and skills in specific fields and also carry out research in their specialized fields.

Source: <http://www.npa.go.jp/keidai/keidai-en.html> .

The Highest Training Institute for Investigation Leaders is specialized in providing advanced investigative training courses for those who need to enhance their expertise and develop their managerial capabilities. The target police officials are police inspectors with sufficient experience as investigators and deemed eligible for criminal investigation at the local police headquarters. The course is given on a small-sized seminar basis in which participants can discuss issues actively and sort out effective solutions for each criminal case.

There are also police schools at the local government level to provide local police officers with education and training courses.

Fire services⁴⁴

Given the increasingly specialized, complicated and diversified nature of fire services as well as their increasing demand for new technologies required to deliver quality services, constant efforts to provide personnel with the necessary skills and competencies to maintain a high degree of performance should be made through education and training.

Education and training for fire personnel and fire brigade members are provided at each fire headquarters, fire department, and fire brigade. There are also the national fire defence university and local fire defence schools (total 56 schools in 2002) to provide comprehensive training opportunities, as well as the lifeguard training institutions to provide the specialized and professional skills required for rescue crews. Education and training for firefighters, therefore, are implemented in coordination and collaboration with the Government, local governments, and municipalities.

General on-the-job training is planned in consideration of community-based demand at each fire department. Types of training include codes of ceremonies for firefighting exercise and training, firefighting operation standards, rescue operation standards, and safety management on exercise.

The training courses provided by the firefighting schools for fire officials are divided into introductory education (more than 6 months), professional education, executive-candidate education, and specialized education; while for fire brigades, courses are available for basic education (more than four days), professional education, executive-candidate education, and specialized education. In 2001, a total of 27,010 fire officials and 76,166 fire brigade members were provided with such training at the firefighting schools. Firefighting schools also provide training opportunities for local public officials, community-based voluntary fire prevention team members, women's fire prevention clubs, and enterprise employees with firefighting and prevention responsibilities.

The national fire defence university, on the other hand, focuses on high-level education and training for candidates for top management in the national and local fire departments. The kinds of training provided include knowledge development in various technical areas, risk management, dealing with post-traumatic stress, and operational crew

⁴⁴ FDMA, *Shoubohakusho* (Tokyo, 2002) pp. 268-280.

management in large-scale disasters. The university also provides technical assistance to local firefighting schools and other firefighting institutions. There were 700 graduates at the end of 2000.

Although the training provided is comprehensive, it had been pointed out that there were also some constraints given the increasing demands on fire services in a rapidly changing environment. The training programmes had been planned and implemented based on training standards set in 1970 and there had been a need for them to be tailored to respond to change. Some programmes called for simplification or modification and there was a need for new programmes to be introduced. In order to overcome these constraints and meet these needs, newly revised training standards were put into effect in November 2003. Additionally, the Fire Agency is even in the process of developing an Internet learning system to provide training opportunities at home, in remote places, and in the community.

To become an emergency lifeguard in rescue crews, candidates will be required to obtain an additional, nationally approved qualification. There are two institutes, one in Kyushu and the other in Tokyo, specializing in helping firefighters obtain this qualification. Fire departments in large cities have also set up their own training centres to the same end. According to the rules of the Ministry of Health, Labour, and Welfare, attending lectures (more than 853 hours) and practical training are required for this qualification, and 1,400 fire officials attended these courses in 2002.

Education and training are discussed in the fire personnel committees. Some improvements have been made reflecting the committees' views. For example, information technology training and anti-sexual-harassment lectures were provided in some municipalities, and study missions to learn about fire services in other industrialized countries were undertaken. Other examples include financing various outside training courses for fire personnel to obtain necessary skills.⁴⁵

⁴⁵ FDMA, *Cases of fire personnel committees* (Tokyo, 2003), pp. 23-24.

4. Working conditions

4.1 Hours of work, shift patterns and weekly rest

Firefighters

The maximum weekly hours of work under the Labour Standards Law in Japan are 40 hours excluding break time (art. 32), and a two-day weekly rest is adopted as the national standard. This is also applicable to fire and police workers. Article 32-2 to 32-5 provides that an employee may average a maximum working time of 40 hours over a period not longer than one year under certain conditions. Among these provisions, only article 32-2 applies to firefighters, allowing an employee to average 40 work hours over a one-month period. In order to utilize this system, an employer must so provide in the work rules (ordinances in public sectors) or conclude a labour-management agreement. The work rules or labour-management agreement must indicate a unit period shorter than one month during which working hours are averaged within the framework of maximum hours, and must specify the daily and weekly scheduled hours. Where such specification of scheduled hours is difficult, the employer may specify several work schedules in the work rules.

Fire departments in Japan usually adopt two types of duty hours in combination: one is a day shift, normally beginning at 8:30 a.m. and ending at 5:15 p.m., and the other a 24-hour shift from 8:30 until the same time the following day. Shift work has two patterns: a system combining two groups of workers in rotation every two weeks, in which one group works for 24 hours every other day; and another combining three groups of workers in rotation every three weeks, in which workers work a combination of on-duty, off-duty and one-day duty from 8:30 to 5:30.⁴⁶ According to the LSL rule regarding female workers, female firefighters are also able to be engaged in shift work, including nightwork, on condition that (a) separate nap places and toilets for men and women are established, and (b) certain categories of jobs such as those involving heavy loads or toxic gas are excluded.

Most firefighting headquarters in Japan adopt two shift patterns.⁴⁷ As shown in table 8, in the two-shift pattern where the rotation is a two-week cycle, a firefighter has three duty days (binding hours are 24 hours) and two consecutive weekly rest days in the first week and two duty days and two consecutive weekly rest days. The three-shift pattern, where the rotation is a three-week cycle, runs in a combination of on-duty days (binding hours are 24 hours), off-duty days and day duties. As binding hours are shorter in a three shift, it needs more staff than in a two shift.

Of the 24 hours on duty, actual working hours are considered to be 16 and the other eight are considered to comprise a rest period and nap break, which would satisfy the 40-hour week requirement under the Labour Standards Law. However, Zenshokyo claims that as long as firefighters are not allowed to leave the premises, these binding hours should be considered actually to be working hours. If the total binding hours are considered working hours, a firefighter is at work for an average of 60 hours a week.⁴⁸

According to the standard schedule in Japan, a firefighter is allowed 45 minutes of rest around noon, another 45 minutes of rest in the early evening and a rest, including a nap

⁴⁶ ILO, *Public emergency services: Social dialogue in a changing environment* (Geneva, 2003), pp. 36-37.

⁴⁷ Zenshokyo, *Shoubou Shokuba no Q & A-Chingin kinmu jikan hen* (Tokyo, 2001), pp. 14-15.

⁴⁸ <http://www2u.biglobe.ne.jp/~warriors/conference/> .

break, for six hours and 30 minutes from late in the evening to early in the morning, if no emergency arises. Although there is a restriction on free use of rest periods, the firefighter is considered completely off duty unless an emergency arises. Accordingly, the rest period for firefighters can be used for meals, baths, naps, etc.

Table 8. Types of shifts in fire services

Two shifts

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
○	×	○	×	○	×	△	△	○	×	○	×	△	△

Three shifts

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
○	×	△	○	×	□	○	×	△	○	×	△	○	×	△	○	×	△	○	×	△

○ : on duty in shift (8:30 a.m. – 8:30 a.m.)

×

△ : off

□ : day duty (8 :30 a.m. – 5:15 p.m.)

Under the Labour Standards Law in Japan, a rest period refers to the period of time when workers are assured of being completely relieved from their work, in order to accord them some relaxation (art. 34.3). Article 34.3 accordingly prohibits employers from imposing any restrictions on the workers' conduct during rest periods. Article 34.2 also provides that rest periods shall be provided to all the workers at the same time. However, for the convenience of the public, the principle that rest periods be provided at the same time has been eliminated in service industries, enterprises engaged in the transportation of passengers or freight, commercial enterprises, financial institutions, the film and theatre production and performance industries, postal and telecommunications enterprises, hospital and health and hygiene services, hotels and restaurants, and governmental and public offices including police and fire offices. In addition, police officers and firefighters are excluded from the principle of free use of rest periods (Ordinances of LSL art. 33).

When an emergency arises and workers go on duty, the rest period is considered working hours and they are entitled to overtime work allowances. In an emergency, overtime and rest-day work may be required for public employees. In the event of temporary necessity for purposes of public duties, working hours may be extended for national and local civil servants in governmental and public offices (art. 8.16) other than those enumerated in article 8, and such workers may be required to work overtime or on rest days (LSL art. 33.3). This provision covers almost exclusively local civil servants' administrative duties. Additionally, article 40 provides that ministerial ordinances shall be able to provide separate rest period rules only when they are necessary for the convenience of the public.

The case laws in Japan are split over whether nap breaks should be considered as working hours. In light of the principles of the hour-averaging scheme as well as of free use of rest periods under the Labour Standards Law, nap breaks should be considered as working hours. But given the public nature of fire services and the justification for excluding public employees from the application of certain provisions (in particular art. 40), as well as the fact that the issue on working hours should be objectively determined in light of the Law, it might be difficult under the Law to conclude that nap breaks for firefighters are considered to be working hours. The court decision⁴⁹ regarding nap breaks for police officers ruled that such breaks are not considered to be working hours on the grounds of article 40 and the public nature of their duty.

Under the working hour averaging schemes, prescribed hours exceeding daily hours or weekly working hours are not considered as overtime work hours if the average number of scheduled working hours does not go beyond the maximum in the framework of the averaging unit period. There is no limit to a daily or weekly distribution of hours. But as described above, exceeding daily or weekly maximum hours is allowed on the condition that such daily or weekly hours are scheduled in advance in either the work rules or labour-management agreement. Therefore, hours exceeding scheduled hours and at the same time exceeding maximum hours become illegal overtime work even when the total hours worked within the unit period do not exceed the maximum framework which is scheduled in the work rules or labour-management agreement. In this regard, firefighters' overtime work exceeding 16 hours of duty is illegal overtime work. For example, suppose the two-week rotation work schedule in a two shift is as follows: 16, 0, 16, 0, 16 (rest days), 16, 0, 16, 0 (rest days). If a worker works 17 hours on Monday, the 17th hour is regarded as illegal overtime even though the worker works less than a total 40-hour work week, because the 17th hour is not scheduled in advance in the averaging scheme.⁵⁰ It is questionable if this is even justified by reason of art. 40 or the public nature of their duty as described above.

The *Guidelines* provide that “when on duty, the rest periods of PES workers should be counted as working hours” and the application of laws regarding weekly hours of work, rest periods and shift arrangements “should be discussed and resolved through social dialogue and collective bargaining”. Although Zenshokyo claims binding hours should be considered as working hours, all these principles are unilaterally set by the employer without consultation with firefighters. Given the fact that Zenshokyo is not a recognized union allowed to exercise a right to bargain collectively, firefighters' working hours under the tight night shift should be re-examined.

Police services

Just like the fire services, police are required to be on 24-hour alert so that they can provide services throughout the year. In Japan, more than 40 per cent of police personnel are on shift work and are required to work in three shifts in which they work every three or four days. Even those who are normally on day duty are required to take night duty about once a week. And in case of emergency, any of them may be called on duty unexpectedly.⁵¹

Given these constraints, the National Police Agency has been implementing various policies in order to promote better working conditions, and they include (1) increasing staffing levels; (2) placing at least two police personnel in every police station;

⁴⁹ Koubankinmukeikan case, Nagoya chisai, 1998.

⁵⁰ Araki Takashi, pp. 89-90.

⁵¹ ILO, *Public emergency services: Social dialogue in a changing environment* (Geneva, 2003) p. 39.

(3) improving the work environment in police stations; (4) promoting the consumption of scheduled annual leave; (5) improving overtime pay.⁵²

4.2. Holidays and annual paid leave

Firefighters are entitled to have two weekly rest days, national holidays including the New Year holiday, and 20 days' annual paid leave. Most local fire departments adopt the duty rosters for firefighters without consideration of their annual paid leave. Therefore, although annual leave is a worker's individual right, it can be difficult for the worker to take it depending on how the work schedule is organized and staffing levels. When the work schedule is not well organized, the worker may not be able to take leave when he/she wishes because of staffing level on that day.

4.3. Remuneration

Salary setting for national public employees

The National Public Service Law provides that the salary schedule shall be determined after taking into consideration the cost of living, prevailing salary rates and other pertinent factors as determined by the NPA. The NPA shall also conduct necessary investigations and studies and develop a remuneration plan and submit it to the Diet and the Cabinet. In addition to an annual fact-finding survey of the remuneration of national public employees, the NPA conducts an annual fact-finding survey of job-by-job pay rates in the private sector. Based on these surveys, a detailed chart is drawn up to compare the monthly remuneration rates of equivalent positions in the private and public sectors. From the results of these surveys, the NPA submits a recommendation to the Diet and Cabinet for a revision in remuneration, to ensure that salary rates in the public service remain in balance with those in the private sector.

A fact-finding survey on the remuneration of private-sector employees showed that the monthly salary of public employees in April 2003 was better than that of private employees by 4,054 yen (1.07 per cent). The bonus for employees in the private sector was the equivalent of 4.4 months of annual pay, which was lower than the rate of the end-of-term allowance of public employees (equivalent to the so-called "bonus" for employees in the private sector). The NPA remuneration recommendation reflected these survey results and proposed that it would be appropriate to reduce the monthly salary for regular public service employees by 1.07 per cent. There was a further recommendation that the end-of-term allowance should be reduced by 0.25 month to keep balance with the bonus in the private sector. This is clearly a tough recommendation for public employees whose average annual remuneration rate is to be reduced over five consecutive years (by a total of 163,000 yen, or 2.6 per cent, for administrative service employees). This reduction has been the most significant.⁵³ These recommendations are applied to all national public officials, including national police officers and national fire officials.

Salary setting for local public employees

The Local Public Service Law (art. 24.3) provides that the salary of local public employees shall be determined in consideration of the cost of living, salary rates of national and other local public employees, salary rates of employees in the private sector,

⁵² <http://www.pdc.npa.go.jp/hakusho/h13/h130903.html> .

⁵³ http://www.jinji.go.jp/top_e.htm .

and other factors. Working hours and other terms of employment other than salary shall be balanced with those of national and other local public employees (art. 24.5). The working conditions including salary are mostly set by local ordinances on the basis of the NPA recommendations (art. 24.6).

Although fire personnel committees are established in order for firefighters to give their views to the authority about working conditions, they are not provided with the right to bargain collectively or any decision-making power.

Fire services⁵⁴

There are two kinds of salary scales for fire officials: fire prevention and public security salary scales, and administrative job salary scales. When the latter scales are applied, fire officials' initial salary is ranked higher than that of other administrative employees, given the nature of shift work. In 2001, the monthly salary for local fire officials was ¥345,556, their average age being 40.8, while other local administrative public employees earned ¥356,360, their average age being 42.1. The average monthly fringe benefit for fire officials was ¥106,918 while for administrative officials it was ¥84,543. This is because fringe benefits for fire officials include on-duty allowances and night work special allowances on top of general fringe benefits.⁵⁵

However, these salary scale rankings can be reversed after a certain number of years of service. While public administrative employees are promoted on a seniority basis, firefighters are promoted to higher positions only on passing a promotion examination at each level. This is because local public fire and police departments operate a military-style hierarchical system. As a result, the rate at which police officers and firefighters gain promotion can often be slower than that of public administrative employees. With the passage of time, the salary gap created by the different promotion systems is first reversed and then continues to grow, also affecting the rates of retirement and pension allowances.⁵⁶

Efforts need to be made to fill in this gap so as to maintain the initial purpose of providing PES workers with a higher salary ranking. There are some local governments or municipalities where firefighters' salary scales were reviewed and improvements were made at fire personnel committees' initiative. In Hokkaido, for example, the promotion examination was abolished up to certain grade levels and promotion was made seniority-based. Other local governments in prefectures such as Kagawa, Kouchi, Tokushima and Hiroshima undertook some salary reforms to readjust promotion schemes.⁵⁷

Police services

As is done for fire officers, the public security salary scales are applied to police officers and their initial salary is ranked higher than that of other administrative employees. Detailed salary information is not available for police officers.

⁵⁴ Because there is no data available to provide an accurate picture of the salary situation of national fire personnel, the information provided here is limited to local fire officials. Most national fire officials are recruited as national government officials of the Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT) and dispatched to the FDMA because the FDMA is an extra-ministerial agency affiliated with the MPHPT. Their number is not easy to grasp for the same reason. Information provided by the FDMA.

⁵⁵ FDMA, *Shoubouhakusho*, p. 254.

⁵⁶ Zenshokyo, *Shoubou Shokuba no Q & A-Chingin kinmu jikan hen* (Tokyo, 2001) p. 5.

⁵⁷ http://www.jichiro.gr.jp/zensyokyo/improve/improve_1-2.html .

5. Occupational safety and health (OSH)

5.1. OSH records of fire and police workers

As a result of the most hazardous, strenuous and stressful workplace conditions, a number of firefighters, police officers and EMS workers die or are injured every year. Effective OSH measures, together with decent working conditions covering working hours, rest days and rest periods, can prevent workers from accumulating excess fatigue and stress which can be harmful to their body and health. Social dialogue in this area also contributes indirectly to the maintenance and improvement of workers' health as it can reflect their views. In particular, management of health conditions of firefighters, police officers and EMS workers is important to prevent the occurrence of fatal or near-fatal accidents.

In 2001, 14 firefighters including fire brigade members died and 2,692 were injured. The major occasions during which accidents occurred include exercise and training (37.0 per cent), fire (27.5 per cent) and rescue (10.2 per cent).⁵⁸ According to the statistics, 28,223 occupational accidents were sustained by public servants in 1998. Incidence per 1,000 people by occupation was 39.29 cases for public sanitation officials, 19.13 cases for police officers and 10.59 cases for fire officials.⁵⁹

5.2. Application of OSH Law and the Fire and Disaster Management Agency's OSH measures

The Occupational Safety and Health Law (OSHL) in Japan aims at securing the safety and health of workers in workplaces by, among other things, establishing standards for the prevention of injury due to preventable industrial accidents, strengthening the safety management system, and adopting measures to promote independent initiatives (art. 1). The Law also aims at facilitating the establishment of comfortable working environments. According to the LPSL (art. 58), the OSHL is applied to firefighters except for certain provisions such as arts. 6 to 9, on the Minister's obligation with regard to the occupational accident prevention programme, and art. 92, on the authority of labour standards inspectors. Where there is violation of the Law, one can report it to personnel committees or the chief of the local government (art. 97.1) with a view to improvement, or one can file a lawsuit for penal sanctions.

One of the important objectives of the OSHL is the establishment and maintenance of a safety and health management system in the workplace. To this end, the Law requires the employer to appoint a general safety and health director for each workplace of a certain size and type who is mainly responsible for safety and health in the workplace. The Law also requires the employer to appoint safety supervisors and health supervisors to assist the general safety and health director and deal with technical matters in the workplace (arts. 10, 11, 12). At workplaces employing more than 50 persons in cleaning jobs, or employing more than ten persons in the construction and manufacturing industry, there is a duty to establish a safety committee to discuss safety-related matters (art. 17). At workplaces employing more than 50 persons regardless of the type of business, there is a duty to establish a health committee to discuss health-related matters (art. 18).⁶⁰

⁵⁸ FDMA, *Shoubouhakusho*, p. 251.

⁵⁹ http://www.jichiro.gr.jp/tsuushin/back/677/677_3.htm and <http://www.chikousaikikin.jp/>.

⁶⁰ Zenshokyo, *Shoubou Shokuba no Q & A-Anzen eisei hen* (Tokyo, 2003), pp. 5-8.

Accordingly, at firefighting workplaces, there is a duty only to establish a health committee. But in consideration of the nature of fire services, it would be desirable to establish a safety committee as well. The Law does not deny voluntary initiatives to this end.

Aiming at preventing the occurrence of accidents as much as possible and delivering quality services effectively and properly, the FDMA reinforces its safety and health management through safety management manuals on training as well as operations. It also drafted its own provisions on safety management in fire services and an outline for safety management in training. The provisions under the Law regarding health management are applied to fire services. All these rules are decided by the Agency.⁶¹

In order to improve firefighters' health and safety conditions, reflecting their views is absolutely imperative as they are the front-line workers who risk their lives. In Japan, under the system of fire defence personnel committees, firefighters are allowed to submit views regarding working conditions and social welfare, equipment and clothes which they use for their duties, and facilities and machines for firefighting and fire prevention. Their views submitted are discussed at a committee meeting which is organized every year and categorized into four results: (1) an opinion should be implemented; (2) it needs to be considered; (3) it is difficult to implement; or (4) no change will be required. As committees do not have decision-making power but solely consultative power, the result is to be submitted to the fire chief,⁶² who makes a decision if it is implementable. Zenshokyo plays the role of capacity building for firefighters to effectively participate in the committees.⁶³ For example, on its website, Zenshokyo features examples of best practice and fire workplaces where safety and health conditions were improved, establishes a safety and health check list, and publishes model safety and health provisions.⁶⁴

5.3. Workers' accident compensation

Public officials suffering death, injury or illness at work or while travelling to or from work are entitled to compensation under the public employees' accident compensation system, which aims at providing stability of life and improving the welfare of public officials or their survivors. The kinds of compensation include medical compensation, compensation for lost time (salary compensation), compensation for disabilities, injury and illness compensation pension, survivors' compensation, nursing compensation and funeral expenses. Employers are liable for compensation without fault. Additionally, with regard to firefighters and police officers, different amounts of compensation for disability, injury, illness and death suffered under high risk conditions are 1.5 times as much as the normal amounts.⁶⁵

5.4. Work stress and Emergency Mental Support Team

During emergencies, firefighters and police officers often carry out their duties under the most hazardous, strenuous and stressful conditions. Firefighters, for example, as a result of undergoing tragic and horrific experiences at disaster sites, can suffer severe

⁶¹ FDMA, *Shoubouhakusho*, pp. 252-253.

⁶² Shobocho, *Shobo shokuin iinkai un-ei jirei shu* (Tokyo, 2003), pp. 5-6.

⁶³ http://www.jichiro.gr.jp/zensyokyo/commit/commit_01.html .

⁶⁴ Zenshokyo, *Shobo Shokuba no Q & A- Rodo anzen eisei hen* (Tokyo, 2003), p. 6.

⁶⁵ *ibid*, pp. 16-18.

mental shock or stress. These critical incidents may have a lasting impact on their psychological well-being. In some cases, they may feel guilt at being unable to save victims, or intense empathy when required to deal with the death of children whose ages are the same as their own children. The stress induced can cause physical, mental, emotional or behavioural disorders, or even post-traumatic stress disorder (PTSD). It may be aggravated because they have to keep their negative thoughts to themselves and suppress their distress for the sake of their jobs as firefighters.⁶⁶

In light of these circumstances, an investigation was carried out by a study group on occupational stress among firefighters from 2001 to 2002. It released a report on how to prevent and relieve firefighters' stress.⁶⁷ According to the report, 58 per cent of firefighters had faced disasters in which they had suffered from critical-incident stress (CIS) during the previous ten years. Major disasters cited were building fires (13.9 per cent), rescue in motor vehicle accidents (13.7 per cent), and earthquakes (6.8 per cent). Major factors cited as giving rise to CIS were touching or encountering dead bodies (52 per cent), death of persons of a similar age to themselves (23 per cent), and burnout or exhaustion (33 per cent). The symptoms cited as being associated with CIS were flashbacks, feelings of unreality, and palpitations. Of those reporting CIS, 26 per cent had suffered flashbacks even two to three months after the disaster. Although more than 70 per cent of those who had been on duty at disaster sites reported suffering some CIS-related symptoms affecting their services negatively, only 3 per cent of fire headquarters implemented measures against CIS; another 13 per cent said they were considering implementation. More than 80 per cent of fire headquarters replied that the measures were necessary but they were not considering implementation. The reasons given for non-implementation were lack of information (73 per cent), difficulty in selecting appropriate experts (30 per cent) or lack of available experts (34 per cent).

Those affected by PTSD or CIS should be properly treated through appropriate stress management programmes. What is called for in fire headquarters is CIS education, briefing, and management to enable firefighters to accept that it is not exceptional for even them to be affected by CIS. The measures the report proposed for fire headquarters were (1) support for individual firefighters' efforts at daily stress release and prevention; (2) CIS-reducing measures at disaster sites such as improved on-site supervision schemes, or thorough implementation of well-organized shift work; (3) establishing and implementing effective group meetings in order to release CIS; (4) monitoring those affected by CIS, e.g. self-diagnostic stress checklist; (5) consultation and counselling; and (6) awareness-raising for firefighters and family members.

In 2003, the Fire and Disaster Management Agency distributed this report to 900 fire headquarters and 5,000 fire stations with a view to managing CIS caused by tragic incidents. The Agency is preparing to launch the Emergency Mental Support Team in April 2004 and is in the process of selecting expert members whose role will be to attend the large-scale disaster sites.

Stress among firefighters stems not only from the dangerous disaster-oriented work they do, but also from organizational aspects of the agency they work for, such as its human resources scheme, staff shortages, inadequate resources, lack of communication within the organization and time pressure. Accumulated stress can lead to emotional exhaustion or burnout, resulting in deterioration in both performance and job satisfaction – in the worst case, even death.

⁶⁶ FDMA, "Report on current situations of critical incident stress in firefighters and the measures against it" (Tokyo, 2000).

⁶⁷ FDMA, "Report on current situations of critical incident stress in firefighters and the measures against it" (Tokyo, 2000).

5.5. Communicable disease prevention

The Fire Defence Agency issued a document ⁶⁸ on preventing contraction of communicable disease while on first-aid emergency duty. The proposals made in the document include (1) providing education about communicable diseases through lectures by doctors; (2) prompt reporting and proper sterilization of medical equipment and ambulance where there is contact with emergency patients who are potentially infected; (3) taking precautions on first-aid duties; (4) HIV/AIDS and hepatitis B prevention. Such precautions include avoiding touching blood and other body fluids; use of protective equipment such as disposable latex gloves and surgical masks; washing the hands after handling blood and body fluids; safe disposal of waste contaminated with blood and body fluids; washing and proper sterilization of non-disposable equipment and instruments; and removing and washing work clothes touched by blood and body fluids. Where firefighters are infected with a communicable disease while on duty, workplace compensation is to be provided.

⁶⁸ <http://aseml.umin.ac.jp/hou/0621.html> .

6. Social dialogue and rights at work

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), enshrine the basic rights of workers to organize and bargain collectively, including those in public services. Public employees are also covered by the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). All these conventions permit the exclusion of the armed forces and the police from their scope, and the extent to which these provisions are applied to the police shall be determined by national laws or regulations. Convention No. 151 also allows national laws to exclude from their protection high-level employees whose functions are normally considered as policy-making or managerial, or whose duties are of a highly confidential nature. However, firefighters' rights are fully protected under these conventions.

6.1. Freedom of association in Japan

Firefighters in Japan do not enjoy the right to organize, although Japan has already ratified Convention No. 87. As of 2002, 184 organizations representing 11,600 firefighters were voluntarily united in Zenshokyo (the National Firefighters' Association: NFA). It was formed in August 1977 as a consultative body, although the NFA has been denied the right to organize due to legislative obstacles and interference from the authorities.⁶⁹

It is considered appropriate in the government view to include the function of fire defence in the same category as the police function because historically the two developed together and this is reflected in the existing legal system. A Japanese fire defence service was established 300 years ago and has always since been considered part of the police, though organizationally separated in 1948. Both fire defence services and police services operate a hierarchical system. Firefighters not only have such organizational positions as deputy directors and managers for everyday administrative operations, they also have status equivalent to that in a military unit, examples being company commanders and platoon commanders for emergency activities. Moreover, under the Fire Defence Organization Law (article 24.1.), the police and the fire defence services are required to work in mutual cooperation for the purpose of protecting the public. To achieve this goal, they cooperate in sharing information, providing technical skills, coordinating implementation of operations, and providing secondary assistance. Thus, fire services might be more accurately described as fire forces, in the sense that they provide a uniformed and disciplined service.

Denial to Japanese firefighters of the right to organize has been the subject of discussion between the ILO supervisory bodies and the Government for some decades. In 1993 ILO representatives examined the situation and searched for solutions. Based on the consultations that followed, fire defence personnel committees were established in 1996 to guarantee the participation of fire personnel in the process of deciding and improving their working conditions. The Committee on the Application of Standards of the International Labour Conference welcomed this with satisfaction as an important step towards the application of Convention No. 87.⁷⁰

The Fire Defence Organization Law in Japan was amended subsequently to provide that fire defence personnel committees be established in each firefighting headquarters in

⁶⁹ <http://www.jichiro.gr.jp/zensyokyo/outline/index.html> .

⁷⁰ ILO, *Public emergency services: Social dialogue in a changing environment* (Geneva, 2003) p. 95.

order to allow the participation of staff in the discussions regarding their remuneration, working hours and other aspects of working conditions, welfare, equipment and facilities. While many firefighters agree that progress has been made, these committees are not equivalent to unions which are organized with the right to collective bargaining. They assert that this issue will not be solved unless the Local Public Service Law is amended to provide them with that right. In addition, they point out many structural problems associated with the fire defence personnel committees, including lack of representativeness, limitation to only one meeting a year and lack of freedom about what can be proposed for discussion.⁷¹

Fire defence personnel committees

The system of fire defence personnel committees guarantees the participation of employees in communication among staff and submission of views regarding working conditions. It had been established in all fire defence headquarters by 1 April 1997. In 2001, meetings were held in 664 fire stations (71.4 per cent) and 4,912 opinions were examined; in most other locations the need was not felt to hold a meeting. Since the system began its implementation, almost 5,000 items regarding working conditions have been examined each year. About 40 per cent of the items examined were found appropriate for implementation (41.8 per cent in 2001). For example, in Kuwana City, the committee, with 14 members, had a meeting three times in 2002 and 27 views were presented, 12 of which were found appropriate for implementation. In Shiraoi Town, the committee, with six members, had a meeting twice in 2000 and 12 views were presented, all of which were found appropriate for implementation. In order to promote this mechanism effectively, the Government distributed information brochures on the system to all firefighters (160,000 copies) and provided advice in training courses on smooth application of the system at each fire headquarters.⁷²

6.2. The right to bargain collectively in Japan

With regard to limits on the right to bargain collectively, the Government declares that national and local public employees in the non-operational sector are allowed to negotiate but that they do not have the right to conclude collective agreements. Matters of “operation or management” are not negotiable (art. 108.5.3 of the National Public Service Law; art. 55.3 of the Local Public Service Law) but “working conditions which may be affected by the handling of matters of operation or management” are subject to negotiation. With regard to public employees in the operational sector, the Government states that under article 8 of the National Enterprises and Specified Independent Administrative Institutions Labour Relations Law, matters of “operation or management” are not negotiable but if a specific matter of operation or management affects working conditions, it may be subject to negotiation.⁷³ Police and firefighters are not guaranteed negotiation rights, as described under **General considerations** in Chapter 1 above.

Most of the management decisions concerning civil servants are established through the political process in which budgetary matters relating to their conditions of employment are decided by the Diet, although various interest groups may influence the outcome. It is also difficult to draw a distinction between issues of working conditions and policy matters.⁷⁴ However, this does not deny the possibility of public employees being involved

⁷¹ *ibid.*, p. 95.

⁷² GB.285-9 (Part II)-2002-11-0152-1-EN.Doc. pp. 175-176.

⁷³ *ibid.*, pp. 176-177.

⁷⁴ ILO, *Public emergency services: Social dialogue in a changing environment* (Geneva, 2003) p. 98.

in negotiating their working conditions during that process. Moreover, it should be re-examined whether their enjoying the right to organize and bargain collectively would endanger the lives or interests of the public. Rather, abolishing the restrictions on negotiation rights might result in motivating police and firefighters to respond to public needs because they would be able to participate actively in the efforts to improve their working conditions as well as to build up strong ties with the community through the delivery of quality services.

6.3. The right to strike and dispute settlement

Since the exercise of the right to strike can be costly and cause inconvenience as well as economic and social instability, it is desirable that strikes be undertaken only as a last resort, when a dispute has not been solved through a bargaining, mediation and conciliation process. In the public services, a flexible approach to dispute settlement is particularly desirable in view of the public interest. Thus, the principles of freedom of association allow the right to strike or take collective action to be restricted in those services whose interruption or failure would threaten the life, personal safety or health of some people or all the population, or where public servants are engaged in administration of the State, or in a national emergency. But what is important here is that denial of the right to strike should be compensated by alternative measures.⁷⁵

In Japan, public employees' right to strike is prohibited in light of the distinctive status and public nature of the duties performed, and this was also confirmed by a Supreme Court judgement. For this restriction, there are compensatory measures available for public employees,⁷⁶ including the NPA Recommendation System. Other such measures include a system of appeals where an adverse action has been taken against the will of public personnel and against the recommendation made by the NPA. When a public employee files an appeal to the NPA, a board of equity is set up to examine the case through hearings and to carry out an investigation. The NPA shall either approve, reverse or reject the original action. There is also a grievance mechanism in which NPA's consultants provide employees with advice followed by an investigation.⁷⁷

Although militant labour movements existed after WWII, Japanese corporate culture has long preferred cooperation between labour and management rather than conflictual relations. With regard to dispute settlement, the number of strikes is very small because both parties prefer a flexible approach such as mediation or conciliation. As we have seen, it is understandable that strikes are restricted under certain conditions for police and firefighters because of the public and urgent nature of the services they provide. However, whether a total prohibition is necessary is debatable in light of current international standards.

⁷⁵ ILO, *Your voice at work* (Geneva, 2000), p. 37.

⁷⁶ The compensatory measures for the prohibition of the right to strike were considered acceptable by the ILO in the Dreyer Report, paras. 2144, 2145.

⁷⁷ <http://www.jinji.go.jp/english/inpa/index.htm> .

7. Coordination in PESs

Effective coordination is best achieved by clearly defining the roles and responsibilities of each agency within a clearly defined responsibility, command order, authority, and accountability structure. Good coordination among fire, police and emergency medical services is essential for effective emergency operations in a community, particularly in cases of large-scale disasters.

7.1. Coordination among PESs

Coordination among fire, rescue and ambulance services is ensured in Japan by the fact that all these services are provided by fire departments. They have set up a standardized emergency access number – 119 – for anyone requiring urgent assistance. In 2001, 73.5 per cent of fires were notified to fire departments in this way.⁷⁸ Other fires were notified by ordinary phone calls, police calls, fire alarms, in-person emergency reports, or notices after the fact. This shows how effective the emergency number is.

The Fire Defence Organization Law provides that the police and the fire defence force are obliged to collaborate for the purpose of protecting the life, body, and property of the public. In principle, the scope of collaboration is defined within their own capacity, without exceeding each other's authority or interfering each other's operations. Kinds of collaboration include information sharing; assistance with professional and technical skills; collaboration and coordination of duties; and secondary assistance and aid. The police's collaboration and coordination include traffic control on the way to disaster sites; removing obstacles to firefighting on disaster sites; fire cause investigation and criminal investigation; and mutual collaboration in both man-made and natural disasters.

Lack of coordination and collaboration can affect the quality of services delivered. In Japan, the national police officers are appointed to positions in the local police departments. This can be a useful tool for building up good coordination between the national and local police departments with improved understanding of local needs, provided that there is no rivalry or confrontation between the parties. Successful coordination depends on overcoming these, as well as removing any sense of sectionalism.

7.2. Coordination between PESs and other services

Effective coordination requires the involvement of all parties concerned, including the private sector, community groups and civic-minded citizens. Voluntary initiatives for fire prevention measures play a significant role in cases where fire services cannot be provided urgently due to certain constraints. Community-based networks of information sharing and reliable communications also help the delivery of quality public emergency services.

Community-based voluntary fire prevention groups based on collaboration between neighbours are responsible for fire prevention training, awareness raising, equipment purchase, initial extinction measures, evacuation assistance, rescue, information sharing, food and water for victims, etc. In 2002, 104,539 voluntary fire prevention clubs existed in 2,525 out of a total of 3,241 municipalities. They generally comprise women, students, young people, and children (box 2).⁷⁹

⁷⁸ FDMA, *Shoubouhakusho*, p. 58.

⁷⁹ *ibid.*, p. 357.

The PES workers also coordinate with the Weather Bureau concerning approaching typhoons and imminent severe weather conditions, as well as with the agencies that monitor volcanic activity and signs of earthquakes so as to prepare for major disasters. Manufacturers of stoves and heaters have also contributed to disaster prevention by developing models that extinguish themselves automatically when an earthquake hits.⁸⁰

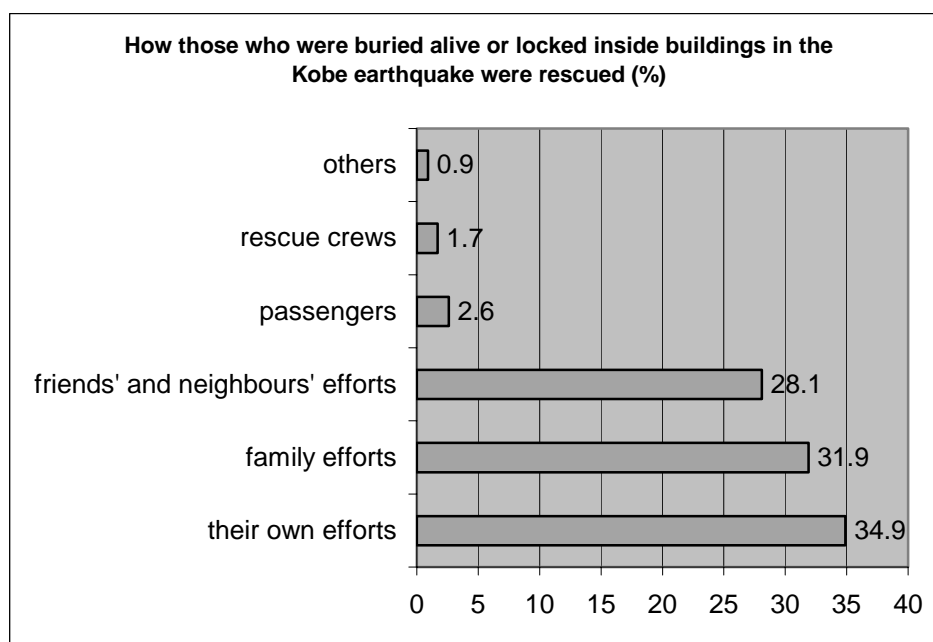
**Box 2. Community-based voluntary initiatives for fire prevention:
Lessons learned in the Kobe earthquake**

The studies done by the Japan Association for Fire Science and Engineering show that 95 per cent of people who were rescued after being buried alive or locked inside buildings in the Kobe earthquake were saved by their own efforts or those of family or neighbours rather than by public rescue services, as shown in the table below. When a large-scale disaster occurs, community-based voluntary support and aid can play an important role because available public rescue and support services can be limited.

Coordination among community-based voluntary fire prevention groups, non-profit organizations, NGOs, civil society groups, schools, enterprises and fire brigades is a key to putting in place effective disaster prevention measures and minimizing damage. Community-based fire brigades together with voluntary fire prevention groups can take a lead in providing community residents with training, advocacy, and knowledge accumulation. A major constraint now is the ageing of fire brigade members. They used to be mainly young people, but unfortunately today there are fewer members in their 30s and more in their 40s and 50s. To reactivate fire brigades and realize large-scale community initiatives, a sense of belonging to the community needs to be stimulated among young people.

After the earthquake in Kobe, the Emergency Firefighting Support Team was newly established for the purpose of promoting and strengthening the fire services through collaboration and coordination with the local community and enterprises.

Source: Shobocho, *Shobohakusho*, pp. 38-52.



Source: Japan Association for Fire Science and Engineering, Study report regarding fires in the Kobe earthquake.

⁸⁰ ILO, *Public emergency services: Social dialogue in a changing environment* (Geneva, 2003) p. 90.

8. Conclusion

Restrictions on public employees' basic labour rights and the public service reforms

“Lifetime employment security”, “high salary and generous fringe benefits”, “golden parachute”, “scandals”... These are some of the impressions that Japanese people have of public officials. It is true that lifetime employment is guaranteed for public officials while those in the private sector face more restructuring, higher unemployment, increased pension contributions, etc. On the other hand, there is a gap between Japanese public opinion and international standards in terms of how much public officials should enjoy workers' rights. Pressure from the declining economy on government spending coupled with huge fiscal deficits impacts more on the Japanese public who see their social protection diminishing than on public officials who enjoy employment security. Therefore, a series of ongoing and upcoming administrative reforms are being or will be introduced to respond to the demands of the times. However, popular opinion should not be the justification for restricting basic labour rights which are guaranteed under democracy. The proposed GPR is to introduce more elements from private-sector management, and expand the power of the Cabinet and each Minister while reducing that of the NPA, which has existed as an alternative to restrictions on public employees' basic labour rights. These drastic changes, however, should not be made without establishing a necessary framework for ensuring public employees' basic labour rights.

The nation's social partners should take the opportunity provided by the ongoing reforms in the public sector to endeavour to fill in the gaps between internationally recognized labour standards proclaimed by the ILO and **current** national legislation or practices in Japan. The Japanese industrial world is going through a critical transition period and traditional labour relations are facing a new challenge; it is high time for a thorough debate be held on basic labour rights issues in the public sector in Japan. Social partners should hold full, frank and meaningful consultations on the rationale and substance of the GPR to obtain a wider consensus on the subject, and with a view to amending the legislation and bringing it into conformity with freedom of association principles as recommended by the ILO's Committee on Freedom of Association. In so doing, the subsequent public reforms will surely be drafted and implemented following the same principles.

It might be worth undertaking comparative studies to examine the legal theories underpinning the separation of public-sector workers from those in the private sector, together with the grounds for restrictions on their basic labour rights, including the historical background and changes made recently. The European Union countries in general and the United Kingdom in particular might provide useful information because of administrative reforms in these countries in the 1980s. There are some indications in their experiences that the division between public and private in the area of labour law has become too inflexible to be adapted to a changing socio-economic environment. Industrialized society is becoming more and more service-oriented; services provided by the private sector are sometimes as important as those of the public sector, and can often affect the public in just as many ways. In this regard, a new labour law approach could be to look into the content or nature of the service or job rather than the status of the worker (i.e. whether he or she is a public-sector or a private-sector worker). Accordingly, the restrictions on basic labour rights could be considered in light of the degree of damage to

the public interest that strike or collective action can cause.⁸¹ The ILO Conventions, Nos. 87, 97 and 154 apply, in principle, to those who work in both public and private sectors, and there is basically no distinction of treatment between the two. In light of the ILO principles as well, the question of whom the restrictions on basic labour rights may be applied to should be determined by the nature and the content of services and not by whether it is a public or private service.

Currently, no EU member country restricts public employees' right to organize with the exceptions concerning the armed forces and the police. Nowhere in the EU has a complete prohibition been adopted on public employees' right to negotiate their terms of employment, even with a proviso that preferential power be reserved for the national Parliament. The way their conditions of employment are determined has evolved from a unilateral to a more participatory and collective form, such as through joint consultation or workers' participation. It would be desirable that public employees in Japan be able to participate in decision-making, at least through such flexible means of negotiation.

The issue of public employees' participation in decision-making as well as fundamental labour rights should be discussed together with the ways the roles of the NPA, the LPCs and Equity Commissions should be changed. If these rights were to be guaranteed, an alternative public service reform plan would need to be prepared and the social partners together with academics could work toward this goal. The issues include (1) minimum restrictions on the right to strike for reasons of public security; (2) collective bargaining scheme; (3) necessary amendments to the current legal provisions, including labour laws, NPSL, LPSL, NPA rules, etc., in order to guarantee basic labour rights; (4) the role of the NPA or the LPC after the reform; (5) introduction of public labour commissions; (6) public employees' political activities; (7) other rights, including economic rights such as remuneration and pension benefits, as well as judicial rights. These issues should be separately discussed in concrete terms.

Employment trends

Due to financial constraints, many local governments in Japan have been forced to cut down their authorized number of personnel. However, underfunding and understaffing can affect the quality of public emergency services, so police and fire personnel should be excluded from such retrenchment because of increasing demands for their services. Indeed, some local governments have even increased their numbers. However, when cutbacks are necessary, they should only be implemented through consultations with employees, citizens and the Government. In the police services in Japan, despite an increase in the number of crimes, staffing levels have not been increased to meet the demand, resulting in decreasing numbers of crimes solved and criminals caught in the act. Priority attention should be given to the local police departments in large cities where the crime rate is high and staffing levels are not satisfactory.

Volunteer-based fire brigades are allotted special status as special public employees in Japan. This treatment is considered positive in safety terms because they are motivated to be devoted to delivering quality services. The social partners together with the local community should make efforts to increase their numbers, including foreign residents, so that each community can build up strong ties in cases of emergency. In order to activate fire brigades and realize large-scale community initiatives, generational and ethnic diversity should be reflected in their activities.

⁸¹ See for example Shimizu, "Roudouhou ni okeru koushi bunkatsu ron no minaoshi" (Re-examination of separation of public sector and private sector in the area of labour laws) in ILO Association of Japan, *Future of the public service* (Tokyo, 2003), pp. 70-80.

Although the number of women in the police and fire defence services has been increasing, it is still small. Gender equality in the public sector is generally more advanced than in the private sector, but the public emergency services have remained male-dominated, mostly due to prejudice against the recruitment of women. Police and firefighting services may be considered too dangerous for women or requiring the physical strength of men but, unless there is scientific proof to the contrary, equal opportunity should be provided both men and women. In Japan, the procedures for recruiting police officers and firefighters by local governments are often separated by gender. Vocational training in the public emergency services for both men and women could be helpful in eliminating prejudice. The national and local governments should pay due attention to establishing a work environment which is friendly to women, including the introduction of anti-sexual-harassment measures, childcare and nursing-care leave, and so on. Obstacles to women getting involved in nightshift work should be removed by such measures as adopting three-shift work patterns and increasing staffing levels.

Foreigners are, to all intents and purposes, excluded from these services because Japanese nationality is generally a requirement for recruitment and employment in national and public government offices. Although some local municipalities do not restrict recruitment of foreigners in certain job categories, they are excluded from fire and police services because these services are considered to involve command of authority and participation in decision-making. In the FDMA's view, foreigners are even excluded from being fire brigade members. However, given growing populations of foreign residents in some communities, foreigners should be encouraged to be at least fire brigade members to better reflect community diversity. There is also a need to implement proactive measures for recruiting foreign residents in those communities where their number is significant.

Working conditions

Most firefighters in Japan work in a two shift system in which one group works for 24 hours every other day, while most police officers work in a three shift system in which workers have a shorter work week than in a two shift arrangement. Firefighters claim that the time they are not allowed to leave the premises should be considered as actual working hours and that they are at work for an average of 60 hours a week. However, there are certain provisions under the LSL which allow overtime and rest-day work in an emergency and separate rest period rules for public employees for the convenience of the public. Given the public nature of fire services and the justification supplied by the above provisions, it might be difficult under the LSL to conclude objectively that nap breaks for firefighter be considered as working hours and that they thus work 60 hours a week. But during these breaks, firefighters take a nap with their firefighting clothes on in case of emergency, and they are bound to their work premises. Despite firefighters' contention that their breaks should not be considered guaranteed breaks from work, all these principles are unilaterally set by the employer without consultation with firefighters. As provided in the Guidelines, as long as they are on duty, the rest periods of firefighters should be counted as working hours.

Although fire officials' initial salary scale is higher than that of other administrative employees, it can be reversed after a certain number of years of service. Efforts should be made to adjust the gap caused by this reversal of salary scale so as to maintain the initial purpose of providing them with higher salaries in view of the nature of their work.

Occupational safety and health (OSH)

PESs are by nature stressful and hazardous. Incidence rates of occupational accidents for fire and police officials are higher than for any other category of public employees apart from sanitation workers. All available preventive measures regarding safety and

health matters are essential for police officers and firefighters. Workers' participation in discussing safety and health issues is a key to minimizing accidents. Yet the OSHL does not require firefighting workplaces to establish safety committees. In consideration of the nature of fire services, however, it would be desirable to establish such committees through which fire officials can participate in discussions on safety-related matters. At present, fire defence personnel committees provide opportunities for firefighters to give their views regarding OSH issues, but the committees have much to be improved.

So far only 3 per cent of fire headquarters have implemented measures against CIS, although 70 per cent of firefighters who are on duty in disaster sites are known to suffer from CIS symptoms which affect their performance negatively. Active promotion efforts should be undertaken to encourage each fire department to establish stress management programmes. In order to effectively deal with CIS caused by tragic disasters, the Fire Defence Agency is preparing to launch the Emergency Mental Support Team in 2004 based on the results of an investigation made in 2001-2002. Adequate stress management and counselling programmes should be established on a comprehensive scale to protect firefighters.

Human resources

The public's respect for and trust in the police has fallen in recent years due to a series of scandals and cases of misconduct in the workforce, believed to have arisen partly from unequal treatment between national and local police. National police officers on a career track are appointed to the top positions in local police departments, often without having knowledge of local situations. In order to link between the police force and the community, those national officers should obtain more on-the-job training locally before being promoted to higher posts, while local police officers with an excellent performance record and local experience should be offered opportunities for promotion to the executive positions in the local police departments. In order to achieve a community-based police service, it is absolutely imperative today to recover public trust and respect. Some efforts have already been implemented, including the establishment of local police department committees, promotion of information disclosure, and introduction of a grievance mechanism for the public. All these efforts aim at rebuilding ties between the community and the police by better reflecting the voice of the community and responding to public needs. But even after some reforms were undertaken, cases of police misconduct have still been reported.

Lower staffing levels are also pointed out as another constraint on the maintenance of decent police services. Due to an increase in crime, some of the local police departments have been facing serious staffing problems. Delayed response to crimes results in loss of public trust, despite police officers' excessive workload. The police reforms should be implemented together with provision of sufficient numbers of staff to enable police officers to respond quickly to the public need.

Social dialogue and rights at work

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), enshrine the basic rights of workers to organize and bargain collectively, including those in public services. These fundamental workers' rights are not enjoyed by public emergency workers in Japan, however. Zenshokyo, an independent consultative association, exists to represent firefighters' views, but negotiation rights are restricted. In compensation for restrictions on fundamental labour rights, fire defence personnel committees have been established, and firefighters give views on their working conditions or other relevant matters at committee meetings. Although some progress has been made,

firefighters' participation in them is limited. One of Zenshokyo's goals is therefore to obtain the right to organize and to bargain collectively.

Because of the essential nature of public emergency services, it is understandable that strikes are prohibited or restricted for PES workers, provided that compensation is offered for these denied rights through alternative measures. However, it should be re-examined whether granting them the basic worker rights would endanger the lives or the interests of the public. Rather, providing them with these rights, and so allowing them to participate actively in efforts to improve their working conditions as well as their work environment, could motivate them to deliver better services. Given their extraordinary services to the public, it is ironic that they are deprived of the most basic labour rights, especially when a common accusation against public officials is that of incompetence or inefficiency. In order to revive the public employee ethic in the public emergency services, therefore, their participation in decision-making is essential. Social dialogue is also indispensable in responding quickly to the needs of PESs in a changing environment in which the demands made on them are increasing and diversified. To this end, the rights of freedom of association and collective bargaining are fundamental.

A comparative study is recommended covering the countries where these basic labour rights are guaranteed to see how effectively public security and PES workers' fundamental rights are balanced. Such a study would help the Japanese social partners to improve the existing social dialogue mechanism.

Coordination

Lack of coordination and collaboration can affect the quality of PESs. In Japan, national police officers are appointed to positions in local police departments. This can be a good tool for building up improved coordination between the national and local police departments leading to better understanding of local needs, provided that there is no rivalry or confrontation between the parties. The key to successful coordination lies in overcoming and removing any problems between the two parties. To this end, the roles and responsibilities of both parties should be well defined and the mechanism for coordination be well structured.

The Kobe earthquake showed how community-based voluntary support and aid could play a significant role when available public rescue and support services are limited. Community-based networks of information sharing and reliable communications, especially on crisis management and dangerous substances, will help deliver quality public emergency services. The involvement of all parties concerned, including the private sector, community groups, civic-minded citizens, neighbours, etc., together with good coordination among PESs, will ensure effective emergency service delivery.

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Annex I

[Extracts; unofficial translation]

Source: GB.285-9(Part II)-2002-11-0152-1-EN.Doc

General principles for public service reform

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Annex II

General principles for public service system reform (Adopted by the Cabinet on 25 December 2001)

Tentatively translated into English by International Policy Division, JTUC-RENGO
Source: GB.285-9(Part II)-2002-11-0152-1-EN.Doc

Japan is currently under severe conditions, as its continuous economic growth came to an end, and it is now forced to find diverse national values within constrictions of available resources.

We are faced with many difficult challenges related to problems such as an accumulation of large fiscal deficits and social security problems. We cannot spare even a moment before embarking on exploring the right direction to our future. Under such circumstances, the total quality of government's policies as they are planned and executed is under strict scrutiny.

In recent years, the central government has placed a new priority on administrative reforms and promoted them actively by implementing a new set up in the Ministries of the central government as well as enhancing the Cabinet functions.

However, public workers who support the organization and operation of public administration are stringently criticized for having become less reliable on policy planning capability, sticking to precedent-based practices, and lacking in cost consciousness and service-oriented attitude.

In order to realize public administration which truly caters to the needs of the people, it is essential to radically reform the attitude and behavior of public employees and it is important to review the public service system which largely influences the attitude and behavior of public employees.

In reviewing the public service system, it is necessary to aim to greatly improve the government's performance, while striving to ensure the expertise, neutrality, efficiency, continuity and stability required for public services. It is also essential to secure the personnel who can immediately respond to administrative needs, to create an environment where public workers can demonstrate their full abilities while competing with each other, and to allow organizational structures to be flexibly and quickly restructured to become optimum for current needs. Further, it is important for public employees, who are the foundation of public administration, to be able to perform their jobs with a high sense of mission and fulfillment, by trying to improve their capabilities and choosing from diverse career paths, while securing the trust of the people.

Thus, it is now required to design the system from the standpoint of "What is the public administration expected by the people and truly essential to the people?" On the basis of such a perspective, the proposed public service system reform holds as its basic concept the realization of public administration geared to the needs of the people and aims to reform the very basis of administration by drastically reforming the public service system from the standpoint of the people.

At the same time, comprehensively taking into consideration how to assure stable and continuous public services and how reforms are to affect the life of Japanese people, the current restrictions placed on the fundamental labor rights of public workers shall be maintained, while ensuring adequate compensatory measures.

I. Realization of adequate personnel and organizational management in the entire government

1. Basic concept

In order to meet the needs of the times, to formulate comprehensive and strategic policies from the national perspective and to provide administrative services responsively and efficiently, it is essential that the Cabinet and the Ministries responsible for administrative management should adequately manage personnel and organizational matters. The government is now faced with problems: inflexible policies are unable to meet administrative requirements which have become complex and sophisticated and the administrative system now suffers from institutional fatigue causing inefficient work performance. These problems are partly due to the fact that the

government's ministries have failed to manage personnel and organizational matters actively and responsibly because they are short of clear sense of personnel management.

In an environment where administrative requirements have become complex and sophisticated, calling for mobility in administrative operations, the government has introduced new mechanisms for information disclosure and policy assessment, etc. to shift the direction of public administration towards performing administrative operations transparent and clearly accountable to the people, so that correct policy judgment can be maintained without deferring problems.

However, the current personnel and organizational management framework which requires prior and detailed checks for individual cases partly restricts the mobility with which each competent Minister performs administrative tasks utilizing human resources, etc. Furthermore, the Cabinet must formulate adequate policies in order for each competent Minister to be able to manage personnel matters in a way meeting the practical needs of administrative tasks. In actuality, however, it is difficult to say that the Cabinet has fully performed this responsibility, as it is largely dependent on the independent organ.

Therefore, it is required that the framework of personnel and organizational management for the entire government be reorganized so that, under a system open to the people, the Cabinet responsible to the Diet, which represents the people, and the competent Ministers, who comprise the Cabinet, can actively and responsibly perform tasks involving personnel management of public employees, who support public administration, while securing the neutrality and equity of personnel administration. It is also necessary that the prior and detailed institutional restrictions placed by the central personnel administrative bodies must be reviewed and that the Cabinet and competent Ministers will manage personnel and organizational affairs with mobility and flexibility.

On the other hand, under the present circumstances where the fundamental labor rights are restricted for public employees, it is necessary to provide for a framework to assure proper treatment of public employees.

With an awareness described above and from the standpoint of drastically reforming the public service system, a new framework shall be constructed to realize adequate personnel and organizational management for the entire government.

2. Direction for new personnel and organizational management for the entire government

(1) Law stipulating clearer rules concerning personnel and organizational management

With a grand principle of having public workers placed under democratic control, the framework of the new public service system must be legally stipulated. Therefore, how public workers should be, the purpose of personnel system, the framework and other important standards shall be clearly stipulated by law.

(2) Realigning the functions of the Cabinet and the independent organ

1. Clarifying the active responsibility and authority of each competent Minister who will be designated as the person competent for Personnel Management. Each competent Minister shall realize mobile and efficient operations of administrative tasks through adequate and flexible personnel and organizational management, fully and fairly utilizing the human resources in the administrative organizations within his or her jurisdiction. In order to realize this, each competent Minister shall be clearly designated as the Person Competent for Personnel Management, who, with his or her own judgment and responsibility, shall design and operate personnel and organizational affairs within his or her jurisdiction. The Person Competent for Personnel Management shall actively and responsibly be in charge of personnel management in general as provided by law, and shall perform flexible organizational management through managing the matters concerning the organization and staff size to be made elastic by the proposed reform as well as through active position management. Each Ministry shall strengthen the bureau in charge of personnel and organizational matters in order to implement adequate and flexible personnel and organizational management.
2. Strengthening the Cabinet's function of policy planning and comprehensive coordination of personnel administration

From the standpoint of being jointly accountable to the Diet which represents the people, the Cabinet shall, under democratic control, deal responsibly with designing and planning policies regarding the public service system. The Cabinet shall actively perform its function to formulate policies regarding

personnel administration by drafting bills and enacting ordinances as delegated by law and shall lay rules necessary for the Person Competent for Personnel Management to manage personnel and organizational matters appropriately and flexibly. Secondly, the Cabinet shall be able to request the National Personnel Authority to act concretely to review the matters as delegated to the National Personnel Authority regulations by law, with a view to securing appropriate administrative management. Due consideration shall be paid to the relationship between the Cabinet and the National Personnel Authority in designing the new system. Thirdly, the Cabinet shall have a strengthened function to coordinate in a comprehensive manner the personnel management conducted by the Person Competent for Personnel Management, so as to maintain integral personnel administration.

3. Protecting the interests of personnel and ensuring the neutrality and equity of personnel administration by the independent organ

The National Personnel Authority, from the standpoint of protecting personnel's interests and

ensuring the neutrality and equity of personnel administration, shall state its opinions as required to the Diet and the Cabinet, and stipulate the National Personnel Authority Rules as delegated by law. Further, the National Personnel Authority shall continue to be involved in setting working conditions such as salary.

4. Relief system

In order to deal properly with cases where public employees suffer from disadvantages regarding personnel management, proper grievance measures to be taken by the Person Competent for Personnel Management shall be studied and the relief measures by the National Personnel Authority shall be improved and reinforced, so that public service employees suffering from disadvantages shall be entitled to fair and adequate relief measures to be taken by the National Personnel Authority.

3. Realigning the Cabinet's functions and those of the independent organ in the concrete system

According to (2) above, the functions of the Cabinet and those of the independent organ in the concrete system shall be realigned.

(1) Recruitment of employees

In order to secure employees who meet the practical needs of administration, the Person Competent for Personnel Management shall play a central role in recruitment. The Cabinet shall plan and formulate policies regarding the recruitment system and ensure smooth recruitment of human resources required by each Ministry.

(2) Allocation of staff, human resource development and codes of conduct

In order for the Person Competent for Personnel Management to perform swift and efficient management of administration in matters within his or her jurisdiction, he or she shall appoint personnel to appropriate positions, foster human resources by training and other means, adequately manage employees' observance of service regulations including their observance at the time of retirement. The Cabinet shall plan and formulate policies regarding the personnel management system required for personnel allocation, human resource development and service regulation management conducted by the Person Competent for Personnel Management and perform necessary coordination in order to assure standardized personnel management.

From the point of view of protecting employees' interests and securing the neutrality and equity of personnel administration, the National Personnel Authority shall carry out, according to a predetermined clear standard, ex post checks such as issuing recommendations for improving personnel administration practices to the Person Competent for Personnel Management.

(3) Matters relating to working conditions

Under the principle of democratic fiscal system and statutory working conditions, the National Personnel Authority shall be involved in matters relating to working conditions. The National Personnel Authority shall design the salary standard, make recommendations to the Diet and the Cabinet and express opinions to the Diet and the Cabinet on the number of employees for each competence grade which will determine the staff size. In addition, the National Personnel Authority shall be able to make each Ministry act flexibly through standardization of working conditions and ex post checks.

Annex III

Source: GB.287-8(Part II)-2003-06-0045-1-EN.Doc 211

Competence grade system

1. Gist of competence grade system

- Under the competence grade system introduced in this reform, official positions are to be classified to competence grades according to the kind of duties and by the degrees of complexity and difficulty of duties and responsibilities involved. In addition to this, the public employees are also to be appropriately evaluated in respect of their competence currently being demonstrated in performing their duties. Based on these evaluations, competence grades of public employees are determined so that the competence required by the official positions and demonstrated by the public employees are to be grasped precisely at all times as a system.
- With regard to salary, public employees are paid on the basis of their competence grades, which is determined in accordance with their competence to perform their duties. Payment shall therefore be made not just by the public employees' occupation of their official positions but based on the consideration of their competence demonstrated in performing the duties of their official positions.

2. Purpose of the introduction of competence

grade system

(a) Establishment of the new system more suitable for the principle of personnel management under the law for the national public employees

- The purpose of this reform is to describe by law the standard duties for classifying job positions and the competencies to perform those duties as much as possible, which changes the current framework where personnel management is entrusted with the rules and ordinances, not law. Thus this reform aims to realize the national civil service system where civil service is administered more democratically with the reflection of the Diet's intentions.
- Further, following the idea of the Constitution that the personnel management of the public employees shall be made according to the standards provided for under the law, the Government proposes to provide under the law for evaluation of public employees' competence according to the criterion of competence to perform duties with a view to utilizing the evaluation for determining the competence grades of the public employees. Thus a base for the administration of personnel management based upon the law shall be provided.

(b) Realization of the personnel management system which contributes to a more efficient public service by utilizing the competence grade system to appointment

- By classifying the official positions as well as the public employees into the competence grades, the Government precisely grasps at all times not only the competence required by the official positions but also public employees' competence demonstrated in performing the duties. And this system provides the foundation for appointment of the public employees to the official positions most suitable to reflecting their competence to perform the duties. Through the above, the Government aims to base personnel management on competence, and to contribute to a more efficient civil service by putting the right person in the right place in the whole system.

(c) Others

- In order that the respective administrative institutions flexibly cope with the rapidly changing administrative issues and that the Government realize a proper administration of the civil service as a whole, it is essential to have the competence grade system designed and administered as a system to contribute to a more efficient civil service from the aspect of personnel management. Thus, the Prime

Minister, as the Central Personnel Agency responsible for the democratic operation of the system and more efficient civil service, shall administer the competence grade system. The National Personnel Authority, in view of its functions, shall participate properly.

3. Matters to be noted in the transfer to the competence grade system

(a) Establishment of a competence evaluation system to realize the meritocracy

- Introduction of the competence grade system in this reform will set up the institutional foundation necessary for the meritocracy. In addition, it will be necessary that the actual operation should be made precisely suitable to the principle of meritocracy.
- After amending the National Public Service Law, fixing of the details of the criteria to determine the competence grades of the public employees will be determined. At the same time it will become important to establish competence evaluation system, which will support the competence grade system in the actual operation.
- Accordingly, the Government, in order to realize a proper competence evaluation system, will continue to consult with employers' organizations and the relevant institutions, etc. until fiscal year 2006, when the competence grade system will start.

(b) Measures necessary for the smooth introduction

- By repealing the rank system, a base for personnel management under the National Public Service Law, and the provisional system, and by introducing the competence grade system, the appointment system and the basic concept for salary system are altered in this reform. This may cause some impact on the public employees if the new system is constructed without paying due consideration to the continuity of the present system.
- Under the circumstances, it is considered necessary, among other things, to firmly establish the meritocracy based on competence evaluation in the civil service. With regard to the number of the grades which is the framework of classifying the official positions as well as the number of pay steps which forms the base for specific amount of remuneration, it is considered necessary to pay due consideration to the continuity with the present system and not to cause unnecessary confusion at the time of system transfer.