

# Joint Civil Society Report

on

## Racial Discrimination in Japan

to the Committee on the Elimination of Racial Discrimination (CERD) for its  
Consideration of the Tenth and Eleventh Combined Periodic Report of Japan  
(CERD/C/JPN/10-11), August 2018

submitted by ERD Net  
(Japan NGO Network for the Elimination of Racial Discrimination)



ERD Net is a network of NGOs working for the elimination of racial discrimination in Japan. Since the launch of networking in 2007, it has continually intervened the review of human rights situations of Japan by the CERD and other UN human rights mechanisms.

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## Introduction

Since the previous examination of the periodic reports of the Government of Japan by the UN Committee on the Elimination of Racial Discrimination (CERD) in 2014, few positive steps have been taken to combat racial discrimination in the country. In 2016, the legislature adopted two new acts including the 'Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan (Hate Speech Elimination Act)' and the 'Act on the Promotion of the Elimination of Buraku Discrimination'. While those measures are welcoming, the gap between the national human rights framework and international human rights law, in particular the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), remains wide.

Despite the repeated requests from Japanese civil society including ERD Net and the UN human rights mechanisms, the Government has been unwilling to enact a comprehensive anti-discrimination law which includes discrimination based on race, colour, descent, national or ethnic origin. In the latest outcome of the Universal Periodic Review (UPR) in March 2018, the Government failed to support the recommendations on adopting a comprehensive anti-discrimination law.<sup>1</sup> Moreover, the Government has not established an independent national human rights institution (NHRI) in line with the Paris Principles, nor it has accepted the individual communications procedure under any human rights treaties it has ratified. As a result, victims of racial discrimination are left with limited, often not at all, resources to exercise their access to justice.

While the enactment of the Hate Speech Elimination Act was a certain step forward towards the elimination of racial discrimination, racist hate speech and hate crimes remain widespread in Japan, both offline and online. Yet, the Government has not withdrawn its reservation under Article 4 of the ICERD, and its measures to address the issues of manifestations of racism and racial discrimination continue to be insufficient.

ERD Net has been engaging constructively with the Government of Japan to implement the Committee's recommendations, but the Government's 10<sup>th</sup>-11<sup>th</sup> combined periodic report does not provide a clear picture with regard to concrete steps taken to implement the recommendations contained in the 2014 concluding observations (CERD/C/JPN/CO/7-9). For example, the Government's report fails to provide sufficient up-to-date statistical data disaggregated by nationality and ethnic origin, in spite of the recommendation from the Committee.

In the aim of full implementation of ICERD, this joint report provides the Committee information on the situation and concerns of indigenous peoples, minorities, migrants and refugees in Japan including indigenous Ainu, people of Ryukyu/ Okinawa, Burakumin, resident Koreans, and technical interns.

July, 2018

Japan NGO Network for the Elimination of Racial Discrimination (ERD Net)

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<sup>1</sup> A/HRC/37/15/Add.1

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\*\*\* ( ) Number in the bracket indicates the paragraph number in the Concluding Observations of the previous cycle

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Paras	Issues	Recommendations	Implementation as of July 2018			assessment		NGO Report Page No.
			done	partial	none	insufficient	inappropriate	
4	Information of implementation	Include information of implementation of recommendations of the previous cycle		●		●	●	○
6	Ethnic composition	collect disaggregated data by nationality and ethnic origin			●			○
7	Definition	adoption of a definition of racial discrimination as per art 1, para 1			●			52, 58-67
8	Law prohibiting racial discrimination	adoption of a comprehensive law prohibiting racial discrimination			●			6
9	National human rights institution	adoption of a law to establish an independent NHRI			●			8
10	Reservation to Art 4 (a) (b)	review its position in regard to Art 4 (a) (b), revise law accordingly			●			10~20
11(a)	Hate Speech and hate crimes	firmly address manifestation of hate and racism		●		●	●	10-20  21
(b)		Combat hate speech in the media including the Internet			●			
(c)		Investigate hate speech/crimes and take criminal procedures			●			
(d)		Pursue sanctions against public officials disseminating hate speech			●			
(e)		Address the root causes of hate speech and strengthen measures		●		●		
12	Migrant workers	Reinforce legislation to combat racist discrimination against migrants			●			35
		Reform the technical intern training program to protect rights of interns		●		●		
13	Access by non-citizens to public-service jobs	Allow competent non-citizens to act as mediators in family court			●			26
		Promote participation of non-citizens in public life			●			28
		Submission of comprehensive and disagreed data on their participation			●			
14	Access by non-citizens to the national pension scheme	Allow non-citizens to be eligible to join the national pension scheme			●			30
		Allow non-citizens to apply for the Basic Disability Pension			●			
15	Access by non-citizens to public places and facilities	Take measures to protect non-citizens from discrimination in access to			●			32, 33
		Sanction such acts and enhance public-awareness raising			●			
16(a)	Trafficking in persons	Adopt legislation against trafficking in persons			●			46
(b)		Intensify efforts to combat trafficking in persons including migrant women			●			
(c)		Provide assistance and protection to victims			●			
(d)		Investigate, prosecute and punish those responsible			●			
(e)		Provide specialized training to law-enforcement officials			●			
(f)		Inform the situation of trafficking of migrant women to the Committee			●			

17	Violence against foreign and minority women	Take measures to address the issue of DV against migrant women			●			39
		Ensure victims of domestic violence with permanent visas not to be expelled			●			
18(a) (b) (c)	Comfort women	Conclude investigations on violation of human rights of comfort women			●			
		Pursue comprehensive, impartial and lasting resolution of the issue			●			
		Condemn any attempts at defamation or denial of the events			●			
19	Korean schools	Ensure no discrimination in providing educational opportunities			●			23
		Allow Korean schools to benefit the High School Tuition Support Fund			●			
		Accede to the UNESCO Convention against Discrimination in Education			●			
20(a) (b)(c) (d) (e)	Situation of the Ainu people	Increase the number of Ainu representatives in the policy Council						68
		Take measures to reduce the gaps in the living conditions			●			
		Protect the rights of the Ainu people to land and resources		●				
		Ratify the ILO 169 Convention			●			
21	Situation of the Ryukyu/Okinawa	Recognize Ryukyu as indigenous peoples and protect their rights			●			58-67
		Enhance the consultation with Ryukyu representatives on their rights			●			
		Protect Ryukyuan languages and facilitate education in their languages			●			
22	Situation of the Burakumin	Change the position on the interpretation of descent			●			52
		Provide information on living conditions of Buraku people at the time of termination of special measures			●			
		Protect Buraku people from the illegal access to their family data		●		●		
23(a) (b) (c)	Refugees and asylum seekers	Promote non-discrimination and understanding among the local authorities			●			48
		Guarantee detention as a measure of the last resort			●			
		Develop a stateless determination procedure, and accede to the conventions			●			
24	Minority languages and textbooks	Facilitate education in minority languages for minority children			●			69
		Revise textbooks so as to reflect the history and culture of minorities			●			63
25	Profiling of Muslim communities	Ensure law-enforcement officials not rely on ethno-religious profiling			●			50
26	Tolerance and mutual-understanding	Redouble efforts to promote human rights education		●		●	●	11
		Train media and journalists on human rights			●			○
27	Ratification of other instruments	Ratify the Convention on the Rights of Migrant Workers and others			●			○
31	Declaration under Article 14	Introduce the individual complaints system			●			

○: referred to in different pages

■ Issues and relevant recommendations in the previous cycle

Absence of anti-discrimination legislation  
CERD/C/JPN/CO/7-9 paragraphs 7 and 8

■ Relevant paragraphs in the State party's report

CERD/C/JPN/10-11 paragraphs 101 and 104

■ Implementation of the recommendations

Not implemented

■ Problems

In Japan, serious human rights violations motivated by racial discrimination are being committed. While the attack against the Kyoto Korean school in 2009 is a leading example for such human rights violations, the hate crime against the Headquarters of General Association of Korean Residents in February 2018 was another recent shocking example. Despite the serious scale of racist hate speech and hate crimes against minorities and indigenous peoples, there is no law in Japan to prohibit racial discrimination.

The Government of Japan has not enacted a law which prohibits direct and indirect discrimination in accordance with article 1 of the ICERD, in spite of the recommendations from the previous cycles: paragraph 9 (2001); paragraph 9 (2010) and the paragraph 8 (2014). Although the "Act on the Promotion of Efforts to Eliminated Unfair Discriminatory Speech and Behaviour Against Persons Originating from Outside Japan" was enacted in 2016, the Act is only philosophical as it does not contain any provision to prohibit hate speech.

The Government reports that *"the Government of Japan regulates racial discrimination as follows, and therefore does not recognize that it must adopt comprehensive legislation prohibiting racial discrimination as the concluding observation urges"* in the paragraph 101 of the 2017 State party's report, and it refers to article 4 of the Constitution in the paragraphs 102 and 104. However, according to the *Analytical Report of the Foreign Residents Survey* published by the Ministry of Justice in March 2017, approx. 40% of respondents experienced discrimination in housing, approx. 25% experienced discrimination in employment, and approx. 30% received insult in the last 5 years. It revealed the situation of serious discrimination. It indicated that the Constitution alone cannot combat such serious discrimination, and the existing laws and regulations are not sufficient to address the situation. The Government's position, which *"does not recognize that it must adopt comprehensive legislation prohibiting racial discrimination"*, is not based on the actual situation of serious discrimination revealed by the survey. There is no rational explanation on why the Government holds the view that anti-discrimination law is not necessary.

Furthermore, the 2014 recommendation (paragraph 7) urged the Government to adopt a comprehensive definition of racial discrimination in line with the definition in article 1 (1) of the Convention. But, the Government has not adopted such definition in its legislation. The definition of racial discrimination in article 14 (1) of the Constitution does not include race, colour, descent, nor national or ethnic origin. The definition in the Constitution is insufficient to provide protection for minorities and indigenous peoples from discrimination which makes it difficult to assess whether proper protection in compliance with the Convention is provided or not.

Moreover, comprehensive, reliable and up-to-date statistical data on socioeconomic indicators on the situation of all groups covered by the Convention have been requested in the 2001 recommendation (paragraph 7), the 2010 recommendation (paragraph 11) and the 2014 recommendation (paragraph 6). While the Government has not collected such statistics, it conducted the abovementioned survey on foreign residents in March 2017. Yet, it is not clear when a next survey will be conducted, in spite of the situation of serious discrimination revealed by the survey. Up-to-date disaggregated data are essential to design concrete policies to combat racial discrimination. Such statistics need to be collected on a regular basis. Therefore, a provision to mandate such data collection should be included in a comprehensive anti-discrimination law when enacting.

■ **Suggested recommendations**

- a. Enact comprehensive anti-racial discrimination law.
- b. Adopt a comprehensive definition of racial discrimination in line with article 1 of the Convention.
- c. Collect comprehensive, reliable and up-to-date statistical data on socioeconomic indicators on the situation of all groups covered by the Convention.

■ Prepared by the International Movement Against All Forms of Discrimination and Racism (IMADR)

■ Issues and relevant recommendations in the previous cycle

**Establishment of a national human rights institution (NHRI)**

CERD/C/JPN/CO/7-9 paragraph 9

■ Relevant paragraphs in the State party's report

CERD/C/JPN/10-11 paragraphs 108 and 109

■ Implementation of the recommendations

Not implemented

■ Problems

In its concluding observations on the 4<sup>th</sup> periodic report in 1998, the Human Rights Committee recommended the Government of Japan to “*set up an independent mechanism for investigating complaints of violations of human rights*”. CERD has recommended the Government to set up an independent national human rights institution (NHRI) in its concluding observations in 2001 (paragraph 12), 2010 (paragraph 12) and 2014 (paragraph 9). Despite the repeated recommendations from the UN human rights bodies since 1998 to establish a NHRI, the Government has not set up such institution as of 2018.

In 2002, the Government submitted the Human Rights Protection Bill to the Diet. However the Bill was not passed due to the dissolution of the House of Representatives in 2003. As reported in the paragraph 109 of the 2017 State party's report, “*the Government of Japan submitted the Human Rights Commission Bill to establish a new human rights institution to the 181st session of the Diet in November 2012, but the bill was scrapped due to the dissolution of the House of Representatives that same month*”.

Nevertheless, such bill has not been submitted nor any new initiative to establish a NHRI has been taken since November 2012. While the Government reports in the abovementioned paragraph that “[a] *desirable framework of the human rights remedy system is being appropriately discussed based on the past progress of discussions as well*”, progress and content of those discussions are not made public. It has been 20 years since the Government was first recommended to establish a NHRI. Also, it has been 6 years since the Human Rights Commission Bill was considered last time. The absence of a new initiative regardless of the long-standing recommendations is nothing but the legislature's negligence. There has been no rational explanation to understand how long the Government needs to make consideration on this matter.

Furthermore, the Government reports in the same paragraph that “*the Ministry of Justice has the Human Rights Bureau which acts as an administrative organ engaging in human rights protection and promotion. As its subordinate organs, the Human Rights Departments of the Legal Affairs*

*Bureaus (eight locations nationwide), the Human Rights Divisions of the District Legal Affairs Bureaus (42 locations nationwide), and their branches (261 locations (as of October 1, 2016)) have been established*”.

However, CERD requests for an independent NHRI in compliance with the Paris Principle. The administrative organ cannot guarantee its independence. Although the Act on the Promotion of the Elimination of Buraku Discrimination and the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour Against Persons Originating from Outside Japan



were enacted in 2016, the effects of these Acts are not guaranteed in the absence of a NHRI.

■ **Suggested recommendations**

Immediately submit a bill to establish a national human rights institution which should have, among others, the following functions and status.

- a) To assume a role in implementing the international human rights standards at the domestic level.
- b) To have roles of 1) making human rights recommendations to the Government and its institutions; and 2) cooperating with the United Nations, UN human rights mechanisms and national human rights institutions of other countries.
- c) To be separated from any governmental agencies in order to ensure its independence in line with the Paris Principle.
- d) To be empowered to address human rights violations committed by the government and its ministries, public institutions, local municipalities and politicians.

■ Prepared by the International Movement Against All Forms of Discrimination and Racism (IMADR)

## Hate Speech and Hate Crimes

### 1. Issues and relevant recommendations in the previous cycle

Reservation on the Article 4 (a) (b), and hate speech and hate crimes  
Paragraphs 10 and 11 (CERD/JPN/CO/7- 9) 2014,  
Paragraph 13 (CERD/JPN/CO/3-6) 2010  
Paragraph 14 (CERD/C/304/Add.114) 2001  
ICERD Articles 4 and 2

### 2. Relevant paragraphs in the State party's report (CERD/C/JPN/10-11)

Paragraphs 105-107, and 124-139

### 3. History and Present Situation of Hate Speech and Hate Crimes

#### (1) Background - discriminatory policy of the government.

The major targets of the hate speech in Japan are those from Japan's former colonies including Korea and China, and their descendants born in Japan. After the World War II, the Government of Japan has failed to take responsibilities to what it had done on the former colonial countries. On the contrary, it has been treating those citizens as aliens without any rights and applying discriminatory policies against them including surveillance on a daily basis. Against this backdrop, there have been continuous incidents of hate speech and hate crimes, until today, committed by both public and private figures against Korean residents in Japan.

At the summit meeting between Japan and North Korea on 17th September 2002, the North Korean leader acknowledged more than ten cases of kidnapping of Japanese citizens committed in the 1970s and 1980s and apologized. It led to severe Korean bashing by the government as well as by the mass media which continues until today. As a result, it created a general atmosphere allowing people to say whatever they want to Koreans, and deteriorated the situation with the increasing number of hate speech and hate crimes against them. In just half a year after the 2002 summit, more than 1,000 incidents of hate speech and hate crimes against Korean school students were reported nationwide, and the Korean schools in Japan were forced to instruct the students not to wear uniforms of ethnic style outside the school for the protection and safety of children.

#### (2) Increase and daily occurrence of hate demonstration

Since the 2000s the widespread use of the Internet led to increase in anonymous online hate speech. In January 2007, a racist group named "The Citizens Group That Will Not Forgive Special Privileges for Koreans in Japan" (Zaitoku-kai) was formed by recruiting members through the Internet. They have increased its popularity by repeatedly organising hate demonstrations, propaganda speeches and events posting videos of these activities on the internet.

As an example, racist groups including Zaitoku-kai attacked Kyoto Korean School (primary school), three times in 2009 and 2010. In the first incident, 11 members of them gathered in front of the school gate and yelled "North Korea's spy training institution", "You eat shit" and other insults for an hour. Also, they cut the wiring cords with a nipper that were connected to the park across the school to use the speaker in the park. There were about 150 children in the school then, and they were so scared that they started crying, which made it impossible to continue their classes. In the second incident, about 30 members of them gathered in the park across the school, marched around the school while crying out with loud speakers "Koreans must be executed at the public health center"

and other insults. In the third incident, dozens of members demonstrated in the vicinity of the school, shouting "Koreans are cockroaches, Koreans are maggots, go back to the Korean Peninsula" and so on. As for these cases, Civil Liability (See the State party's report CERD/C/JPN/10-11 para. 138) and Criminal Liability (the same, para 130) of the Zaitoku-kai were confirmed in courts.

In December 2012, the Abe administration of Liberal Democratic Party (LDP) was formed, and it did not wait long to exclude Korean schools from the High School Tuition Support Fund Program. In addition, it also took the position making the Japan's accountability to the colonialization and war of aggression vague. Since then, the frequency, number and size of xenophobic demonstrations have increased, organized in various cities nationwide almost every weekend. According to the survey conducted by the Ministry of Justice at the end of 2015 for the first time, there were in total 1152 hate demonstrations and propaganda speeches organized from April 2012 to September 2015, one case a day on average.<sup>1</sup>

(3) The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan (or "Hate Speech Elimination Act", in short)

In the middle of the strong criticism by anti-racist protesters and human rights groups, victims and affected groups, media and others about the lack of effective actions from the authority, seven members of opposition parties submitted the "Bill for the promotion of measures to eliminate racial discrimination" in May 2015, which prohibits racial discrimination including hate speech. In reaction, the coalition ruling parties, LDP and Komei Party, submitted the "Bill on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan" in April 2016. It was enacted in May and enforced in June 2016. The outline of the Act is as explained in the State party's report paras. 105-107 (CERD/C/JPN/10-11). The English translation of all 7 articles of the Act can be found on the website of the Ministry of Justice.

(<http://www.moj.go.jp/content/001199550.pdf>).

(4) Hate demonstration after enforcement of the Hate Speech Elimination Act

After the enforcement of the Hate Speech Elimination Act, the number of hate demonstrations has nearly halved, while the number of their participants decreased. Although there were less hateful speeches and messages that directly threat, extremely insult or incite exclusion of target groups in demonstrations organized immediately after the enactment of the Act, such expressions seem to be increasing again as time goes by. The Act itself does not prohibit, nor punish, any speech, acts or behaviour. There are no changes in the number of hate propaganda speeches on the street, which is over 200 times a year.

(5) Establishment of a political party by racist group after the enforcement of the Hate Speech Elimination Act<sup>2</sup>

The founder of Zaitoku-kai ran for the election of the Governor of Tokyo in July 2016 with a manifesto including elimination of social welfare to foreigners. Although he was defeated, he won 113,000 votes (1.7% share of votes). In October the same year, he formed "Japan First Party". In November 2017, a candidate favored by this party won a seat in Katsushika Ward in Tokyo for the

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<sup>1</sup> **Hundreds of hate speech rallies held across Japan annually: Justice Ministry report (Mainichi Japan, March 31, 2016)** <https://mainichi.jp/english/articles/20160331/p2a/00m/0na/003000c>

<sup>2</sup> **How should hate-filled statements from candidates on the campaign trail be handled? (Mainichi Japan, October 2, 2016)** <https://mainichi.jp/english/articles/20161002/p2a/00m/0na/011000c>

first time. The party announced that 15 candidates from the party would run in the unified local election in 2019. The party is registered as a political organization as defined in the political organization regulation law with the Ministry of Internal Affairs and Communications in 2016.

In addition, the former vice representative of the Zaitoku-kai applied for the registration of a political organization named "Association for Japan without Koreans" to the Ministry of Internal Affairs and Communications, which was approved and registered in 2016. The Ministry of Internal Affairs and Communications does not have the legal authority to examine activities of the registered organization, but it has a policy not to approve registration, if the name or purpose of the applying organization is against public order and morals. In June 2018 at the national assembly, the opposition lawmaker argued that the name of the organization itself fell under the definition of Article 2 of the Hate Speech Elimination Act and that it was against public order and moral, but the Minister for Internal Affairs and Communications replied that it was not clear whether the name of the organization is discriminatory.

#### (6) Online hate speech after the enforcement of the Hate Speech Elimination Act

Even after the enforcement of the Act, hate speech, mostly by anonymous people, is overflowing in the internet. In Japan, the number of twitter users reached 45 million in 2017, and such large amount of anonymous hate speech against minority groups and individuals on a daily basis has extremely damaging impact.

In July 2015, a discriminatory hoax was circulated on SNS including twitter, which said Korean residents in Japan lost their residential status and were subject to deportation. As a result, a large number of anonymous reports were made to the immigration office about whereabouts of Korean residents, which led to a crash of the immigration office server.

Discriminatory hoax is always being circulated on SNS including twitter, whenever there is natural disaster, accident or criminal incident, claiming that Korean or Chinese are culprits or that they take advantage of such disaster to commit crimes. After an earthquake in Osaka on 18 June 2018, there were numerous tweets claiming that foreign residents are carrying out terrorist attacks or committing crimes.<sup>3</sup> When the Great East Japan Earthquake occurred in 2011, discriminatory hoax was circulated on SNS and other social media claiming that Chinese theft group were rampaging in the affected areas. According to a survey by private researchers, it was found that nearly 90% of those who received such hoax information believed it to be true.<sup>4</sup>

According to the survey on the foreign residents in Japan conducted by the Ministry of Justice in autumn 2016, 40% of foreign residents in Japan who are users of internet have seen hate speech against foreigners on the internet. 20% of the total respondents answered that they refrained from using the internet to avoid seeing such posts, whereby same answer was given by 47.8% of the persons having Choson\* nationality and 37% of those having South Korean nationality. (See page 49 of the Analytical Report of the Foreign Residents Survey-Revised Edition-submitted by the State party. [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INTCERD\\_AIS\\_JPN\\_30363\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INTCERD_AIS_JPN_30363_E.pdf) ). (\*Choson refers to the Korean Peninsula as a whole, and does not necessarily denote Democratic People's Republic of Korea citizenship.)

#### (7) Hate crimes after the enforcement of the Hate Speech Elimination Act

The situation of hate crimes is worsening both in terms of quality and quantity. Violence by hate

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<sup>3</sup> Japan must root out all false racist rumors during disasters (The Asahi Shimbun, June 21, 2018), <http://www.asahi.com/ajw/articles/AJ201806210026.html>

<sup>4</sup> Rumours after 2011 Japan earthquake pinned blame on Chinese, Koreans for crimes that didn't happen (The South China Morning Post, March 17, 2017), <http://www.scmp.com/print/news/asia/east-asia/article/2079137/rumours-after-2011-japan-earthquake-pinned-blame-chinese-koreans>

demonstration participants against the counter-protesters had been taking place even before the Act. For instance, in August 2014, dozens of members of Zaitoku-kai assaulted a few participants of counter-demonstration, saying "Die Koreans!". One of the victims suffered severe injuries such as rib fractures, which took about two months to make full recovery. Five were arrested for assault and sentenced for fines.

In March 2015, the wall of the Korean Cultural Center was set on fire, and the perpetrator was convicted for the damage to the building.

In May 2015, participants in the hate demonstrations were arrested for assaulting the counter-protesters.

In July 2016, discriminatory flyers against Korean residents in Japan were put on the wall of washrooms of department store and other places in Fukuoka prefecture, whereby the perpetrator was found guilty for penetrating the buildings.

In May 2017, there was an arson attack against a credit union in Nagoya, which had Korean executives, and the perpetrator, who was dissatisfied with the position of the South Korean government regarding the Japanese military "comfort woman" issue, was convicted.

Since 2017, there have been increasing requests for disciplinary action against executive members and dozens of Korean lawyers of bar association, because they published a written opinion advocating for restoration of the subsidies to Korean schools. It was triggered by a discriminatory hoax blog post by a far right group, and number of such request went up to total of 130,000 cases nationwide within a year, according to the JFBA.<sup>5</sup>

In February 2018, two right-wing activists, one of whom have repeatedly carried out hate demonstrations and street campaign against Korean residents in Japan, appeared in front of the main entrance of the Headquarter of General Association of Korean Residents in Japan, and fired five bullets from inside the vehicle, which hit the gate. Perpetrators were arrested and indicted for damaging the property and for bearing firearms. However, right after the incident, there were many posts on the internet to support this "act of justice", and street campaigns calling for shooting at same place have been taking place till today.<sup>6</sup>

As for Korean residents in Japan who criticize hate speech with their real name published, especially women, countless acts of threats, defamation, insults and harassment have been inflicted upon them, both on the internet and in real life.<sup>7</sup>

(8) Involvement of public institutions in hate speech after the enforcement of the Hate Speech Elimination Act

The Cabinet Office had kept the discriminatory post against Korean residents on its public policy monitoring page until the media pointed it out in May 2018. Such posts included "We have to deport them to avoid situation where the opposition movement against the construction of US military bases

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<sup>5</sup> **Lawyers flooded with complaints in row over Korean schools** (The Asahi Shimbun, May 18, 2018), <http://www.asahi.com/ajw/articles/AJ201805180042.html>

<sup>6</sup> **Chongryon calls shooting an act of 'inhumane terrorism'** (The Asahi Shimbun, March 1, 2018), <http://www.asahi.com/ajw/articles/AJ201803010039.html>

<sup>7</sup> **Korean resident of Japan's legal battle for dignity ends in her favor but problems remain**(Mainichi Japan , March 20, 2018), <https://mainichi.jp/english/articles/20180320/p2a/00m/0na/003000c>

**Online hate speech case sent to prosecutors for the first time** (THE ASAHI SHIMBUN, May 25, 2018), <http://www.asahi.com/ajw/articles/AJ201805250047.htm>

in Okinawa is made up by Koreans and Chinese", Also similar incidents happened, whereby discriminatory opinions were posted on the citizen opinion page of websites managed by local public institutions in Nagano prefecture and Mie prefecture.<sup>8</sup>

Some local public bodies such as Kawasaki City and Kyoto Prefecture have developed and published guidelines restricting the use of public facilities for hate speech purposes, but most municipalities allow hate gatherings at public facilities.<sup>9</sup>

For hate speech by public officials, see page 24 of this report.

#### 4. Implementation of the Recommendations of the Committee and Our Comments on the Related Parts of the State Party's Report of Japan

##### (1) Withdrawal of reservation under article 4 (a) (b) (para 10 CERD/JPN/CO/7-9 )

a) Paragraphs. 124 – 126 of the State party's report of Japan (CERD/C/JPN/10-11) are complete copy of paragraphs 72 - 74 of the 1st and 2nd combined State party's report (CERD/C/350/Add.2) submitted in 2000. There has been no consideration of the withdrawal of the reservations on article 4, and in an extremely insincere way, any action or measures were not taken at all in this regard. In the paragraph. 126 of the current State party's report of Japan (CERD/C/JPN/10-11), the Government argues that certain acts punishable as long as compatible with the Constitution, but relevant provisions of the current criminal code were created before the ratification of the Convention by Japan, and nothing has been done to clarify the compatibility of the provision of the Convention with the Constitution.

General Recommendation 35 of CERD made it clear that ICERD Article 4 requests criminal regulation only for hate speech of significant and grave degree. However, the position of the government as stated in its report is based on false assumption that criminal regulation is necessary in all cases and therefore it requires a careful consideration.

In the last review by CERD in 2014, the Committee asked, referring to para. 23 of CERD General Recommendation 35, what kind of regulation of expression stipulated by article 4 conflicted with the Constitution, in particular whether the regulating incitement of violence against particular ethnic groups such as "kill the Koreans" was against the Constitution, but the current State party's report does not give any answer.

b) In the para 89 of the national report of Japan submitted for the 3<sup>rd</sup> cycle Universal Periodic Review (UPR) in August 2017 (A/HRC/WG.6/28/JPN/1), the government argued "The government does not recognize that there is not any prevalent racial discrimination or incitement thereto in Japan currently." Although this is not written in the current State party's report to CERD, this view was re-confirmed at the meeting between the NGO(ERD Net)and the Ministry of Foreign Affairs in December 2017.

However, as mentioned above, the situation of hate speech in Japan is still quite concerning even after the enforcement of the Hate Speech Elimination Act, and the understanding of the government in this regard is simply wrong. According to the survey on the foreign residents in Japan conducted by the Ministry of Justice in autumn 2016, 30 % of respondents said that they were directly thrown

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<sup>8</sup> Commenting on the debate over hate speech on government websites(The Japantimes, MAY 26, 2018), <https://www.japantimes.co.jp/news/2018/05/26/national/media-national/commenting-debate-hate-speech-government-websites/#.WzytntX7Tcs>

<sup>9</sup> Kawasaki issues Japan's 1st guidelines on public facility use based on risk of hate speech

(Mainichi Japan, November 10, 2017), <https://mainichi.jp/english/articles/20171110/p2a/00m/0na/001000c>

at discriminatory remarks (page 37 para 2.4.4 of Analytical Report of the Foreign Residents Survey - Revised Edition" submitted to CERD by the Government as additional information). It implicates that the view of the government is in contradiction with the findings of the Ministry of Justice. Although the report of the survey was published in March 2017, there was no reference thereto in the current State party's report, which was finalised in July 2017. This Report was provided to CERD only after strong request from the civil society and it could be even seen as attempt of Japanese government to conceal important facts.

(2) Amendment of laws for the implementation of Article 4 (par. 10, verse 2 of CERD/JPN/CO/7- 9)

a) The Hate Speech Elimination Act is the first anti-racial discrimination legislation in Japan, and can be seen as a progress. However, its effectiveness and impact is extremely limited, as described above, and has following problems.

i) It does not have any provision to prohibit racial discrimination or punish such acts, and thus cannot prevent any acts of discrimination with such intention.

ii) The protection is provided to only those foreign residents and their descendants in Japan with legitimate residential status, and thus, does not comply with General Recommendation 30 of CERD. Other grounds of discrimination as well as various acts of discrimination defined under Article 1 of the Convention are not included in the Act. In any case, the Act on the Promotion of the Elimination of Buraku Discrimination was enacted to address Buraku discrimination. See Page 52 of this report for reference.

iii) It does not stipulate any obligation of the government to adopt specific policy, action plan, or concrete measures or allocate any specific budget for the purpose of eliminating hate speech. It does not stipulate any obligation either to investigate the actual situation of hate speech or listen to the views of the victims, or to establish a third party mechanism to investigate, study effective measures or relieve the victims.

b) The current State party's report maintains the government's assertion that the existing law can cope with racial discrimination, but as the discrimination itself is not illegal or criminal act, hate speech is only illegal when it meets with the related stipulation of existing laws such as unlawful acts under civil code or intimidation under criminal code. Moreover, most victims do not file the suit in fear of reprisals by racists, on top of the cost as well as time ( for several years) required for filing a case in court.

c) The biggest deficiency in the current legislation is that there is no provision addressing hate speech against an unspecified group, and such acts are left alone to take their course. For example, under current legislation, putting placards at a restaurant saying "Reject entrance of Chinese" is legal and even law enforcement bodies cannot remove such materials.

d) Before the enforcement of the Hate Speech Elimination Act, the action of the police towards counter-protesters had been quite hostile, engaging in direct and open repressive acts and arresting them with minor offences. After the enforcement of the Act, there have been some improvements, but its excessive protection of the hate demonstrators remains including enclosure of the counter-protesters with a fence, preventing them from approaching the hate demonstration, and taking pictures and videos of them.

After the enforcement of the Hate Speech Elimination Act, there were some cases where the

police made speeches calling for the elimination of hate speech on site, but there is no unified national standard in this regard and the number of such speeches by the police is gradually decreasing.

The police officers are not receiving enough training, and some of them even do not know the existence of the Hate Speech Elimination Act.

Even today, organizing hate demonstration and making hate speech against unspecified groups are legal and the practice of the police protecting a small number of hate demonstrators by a large number of officers almost every time, restricting counter-protests and protecting discriminatory demonstrations continues.



(The picture shows a row of hundreds of police officers who surround and protect about 30 participants of hate demonstration who holds "recapture the abduction victims" in Kobe City, Hyogo Prefecture on June 3, 2018. Credit: Rio Akiyama.)

e) The State party's report states that "racially discriminatory motive is proven as vicious motive accordingly in the criminal trials in Japan and that the court takes it into consideration in sentencing" (para 136 CERD/C/JPN/10-11, which refers to para. 93 of CERD/C/JPN/7-9). However, the government has not carried out any study or taken any other measures to confirm whether racially discriminatory motive is actually taken into consideration by the court, thus, there is no factual basis of the government's view. On the contrary, as far as the civil society is aware, there has not been any case, in which discriminatory motivation was taken into account concerning hate crimes against foreign residents in Japan.



In para. 130 of the State party's report (CERD/C/JPN/10-11), the government refers to the case of the attack against Kyoto Korean School (please refer to above chapter 3 (2) ) as "one example of a successfully prosecuted case. However, at each of the three attacks, no arrests were made on site by the police officers present, who came to the scene upon the report from the school. Moreover, the police was so reluctant to properly investigate the incident, while it also took a long time before they accepted the criminal complaint submitted by the school. In the sentencing by the court, no racist motivation was taken into consideration, nothing was treated as hate crime, and all were given suspended sentences. Perpetrators including those convicted, are continuing hate crimes and hate speech even after the sentence. On the other hand, in civil trial, the case was recognised and treated as an intentional act of racial discrimination, which was also confirmed by the Supreme Court.

Therefore, this case is rather an example, where the police, prosecutors, and court have not recognised any elements of hate crimes or treated it as hate crime, and as such, shows strong necessity for clear regulation of hate crimes by law.

(3) Efforts to eradicate hate demonstration and hate crimes (para 11 (a) CERD/JPN/CO/7- 9)<sup>10</sup>

a) The Ministry of Justice conducted a study on the situation of hate demonstrations and propaganda speeches against foreign residents in Japan in 2015 and on the situation of discrimination against foreign residents in Japan in 2016. However, despite requests from the civil society, it does not have any plan to regularly and continuously carry out such researches / studies.

b) The Hate Speech Elimination Act contains a provision with some definition (Article 2), but the Ministry of Justice is yet to develop guidelines for proper identification of hate speech cases. The Ministry of Justice itself has been avoiding taking any position or expressing clear views as to what kind of expression is regarded as hate speech. It does not take any such action unless the victim applies for legal remedies for the violation of human rights, and even if it happens, it recognizes only crystal-clear case as hate speech. Hate speech against unspecified group is excluded from the process.

c) The Ministry of Justice invited relevant government agencies in September 2016 to a meeting on hate speech countermeasures (para. 133 CERD/C/JPN/10-11). However, it was only exchange of information, while there have been no meetings for nearly two years since then and there is currently no plan to hold such meetings in the future. We have been requesting the government to establish head quarter within the government with authority to work across ministries and agencies in order to take countermeasures and to eliminate racial discrimination including hate speech, or at the very least to set up meeting bodies across agencies. There has been no answer from the government in this regard.

d) The Ministry of Justice also invited to the abovementioned meeting representatives from local

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<sup>10</sup> **Lacking direction from Tokyo, Japan's municipalities struggle to implement anti-hate speech**

law(The Japantimes, MAY 24, 2018),

<https://www.japantimes.co.jp/news/2018/05/24/national/lacking-direction-tokyo-japans-municipalities-struggle-implement-anti-hate-speech-law/#.WzyvcNX7TcsDifferent>

governments in areas where serious hate demonstrations were taking place. At the meeting, these representatives made several requests to the Ministry to realize effective implementation of the Hate Speech Elimination Act including "to develop overall framework of countermeasures against hate speech, and implement various measures in a unified way with the leadership of the national government and also share its concrete content and schedule with local governments", "to suggest clear division of tasks between the national and local governments" and "to identify and suggest what kind of concrete countermeasures should and can be taken by local governments". There has been almost no proper reaction from the Ministry in this regard. There is no future plan for another meeting of this kind either.

e) More than 2 years have past since the enforcement of the Hate Speech Elimination Act. However, its implementation is not properly done. There is also delay in development and enactment of local ordinances to prohibit hate speech or prohibit racial discrimination including hate speech. Only example is the case of Setagaya Ward in Tokyo, which enacted a local ordinance on 1 April 2018 that includes provisions prohibiting discrimination based on nationality and ethnicity. The city of Tokyo, which hosts Olympic games in 2020, announced its intention to enact human rights ordinance by March 2019 and published its framework in June 2018. However, it does not include any provisions prohibiting racial discrimination or setting punishment thereto.

#### (4) Measures against hate speech in media including the Internet (para. 11 (b) CERD/JPN/CO/7- 9)

a) Despite the request from the civil society, the government has not been taking any measures to find out actual situation of hate speech in the internet.

b) In case of anonymous hate speech against specific individuals, the victim can request the service provider to disclose information as to who has made such speech online according to the basis law on the responsibility of providers. However, even if this law is applied, it usually requires at least two civil trials, costs hundreds of thousands of Japanese Yen and takes about a year till the requested information is disclosed. As such, almost all the victims are forced to give up.

c) As for local governments, Osaka City enacted a hate speech prevention regulation in January 2016. If a case is determined as hate speech, it will publish the outline of the speech and the name of the person who made such speech. However, many incidents are perpetrated anonymously on the internet, and there is no provision under existing laws under which public institutions, instead of the victim, can request disclosure of information from the service provider concerning who have posted those hate speeches. Since it cannot identify the perpetrator of anonymous online posting, the effectiveness of the regulation is extremely low.

d) The Human Rights Defense Bureau of the Ministry of Justice began requesting service provider to remove hate speech contents from the Internet, but only in case there is such request from the victim and it recognize clear illegal conducts. However, it is merely a request to the provider, which does not have any legally binding effect. On the other hand, there is no system or procedure available for victims in case of online hate speech against unspecified groups.

We have been requesting the government of Japan to consult with social media service providers including those abroad including Twitter and Facebook, and to request quick removal of hate speech, but the government of Japan has not taken any action.

e) Some local governments conduct online monitoring of the hate speech incidents in the area, and actually requested providers to remove hate speech contents. However, the national government has not made any such efforts and there is no plan to do so.

(5) Investigation and indictment of perpetrators (para 11 (c) CERD/JPN/CO/7- 9)

After the enforcement of the Hate Speech Elimination Act, a small part of the police has started accepting complaints from the victims of hate speech, however, there is no overall initiatives, systems or measures in place making the judiciary or law enforcement as a whole to actively investigate cases and prosecute perpetrators of hate speech or to eradicate hate speech. There is no specific department which deals with hate speech and hate crimes.

(6) Sanctions against public figures and politicians (para 11 (d) CERD/JPN/CO/7- 9)

Nothing has been done or planned. Refer to Page 24 of this report.

(7) Dealing with prejudice and educational measures. (para 11 (e) CERD/JPN/CO/7- 9)

a) The government started more general campaign (para 133 CERD/C/JPN/10-11), such as creating posters saying "Hate speech not allowed" (para. 133), but despite the request from the civil society, it has not made any public condemnation of serious hate speech, discriminatory and damaging hoax and hate crimes. For example, concerning the shootings of the Headquarter of General Association of Korean Residents described above, the government has not given any public comment to condemn it even though it is a hate crime and a terrorist attack. As the government continues public bashing on North Korea, it seems that the government is intentionally and silently allowing hate crime to happen.

b) The Ministry of Education, Culture, Sports, Science and Technology has no designated section to take measures to eradicate hate speech. Even after the enactment of the Hate Speech Elimination Act, it does not have any concrete plan or programme for school education and social awareness raising aimed at elimination of hate speech.

## **5. Suggested Recommendations**

(1) Reservation of Article 4 (a) (b), and legislation

- a. Withdraw its reservation of Article 4 (a)(b) of the International Convention on the Elimination of All Forms of Racial Discrimination.
- b. For the state and local governments, enact a comprehensive law/ordinance to prohibit racial discrimination including hate speech and discriminatory treatments, for the purposes of effectively combating hate speech and providing effective remedies to victims.
- c. Explicitly prohibit hate speech in legislation including the one against unspecified groups.
- d. Provide criminal regulations on such hate speech including incitement to genocide or hate speech by public figures that would give a serious and large-scale damaging impact.
- e. Revise the legislation so as to deal racially motivated crimes as hate crime.

(2) Measures against hate speech in the Internet

- a. For the state and local governments, conduct a fact-finding survey on hate speech in the internet

including monitoring, in collaboration with the civil society, and request a provider for a deletion of hate speech whenever it is found.

- b. Consult with internet providers including large multinational companies on counter measures including making a request for quick deletion of hate speech.
- c. For the state and local governments, develop a legislation to authorize public agencies to demand providers a disclosure of identification information on the sender of a hate speech.
- d. For the state and local governments, respond quickly to discriminatory post on the website it manages.

### (3) Other counter-measures

- a. Create a cross-agency task force on hate speech and hate crimes, conduct a fact-finding survey on regular basis, and develop and implement comprehensive policy and program for the elimination.
- b. Develop specific regulations on hate speech by public figures, and create a review system to be conducted by an independent body.
- c. For the state and local governments, refrain themselves from authorizing those groups that publicly and openly hold racist objectives in their names, objectives or activities, as a political body or endorsing such groups in whatever form.
- d. For the state and local governments, make guidelines to restrict the use of public facilities including a setting-up of a review system by an independent body, in order not to permit the use of public facilities for hate speech purposes on one hand, and to avoid an excessive control on the freedom of speech on the other.
- e. For the state and local governments, condemn immediately and publicly any incident of hate speech or hate crime that would have serious damaging impacts.
- f. Develop counter-measures against hate speech during an election campaign.

### (4) Improvement of Education and Training

- a. Set up a nationally uniform hate speech response team in the police, and give training on hate speech to all law-enforcement officers uniformly for the purposes of stopping excessive protection of participants of hate demonstrations and excessive guarding the counter
- b. Require all civil servants including judges, prosecutors and immigration officers to take a human rights training program focusing on racial discrimination including hate speech and relevant international human rights standards.
- c. Develop and implement an education program for the elimination of racial discrimination including the learning of history and actual conditions of racial discrimination existed and practiced in Japan and the international human rights standards. Such a program should be implemented not only in schools, but also in public institutes, private companies, universities, media and social welfare facilities, so that the idea of no tolerance to racial discrimination will be permeated in all sectors of society. In developing the education program for the elimination of racial discrimination, representatives of minority communities, bar associations and human rights experts should be consulted.

■ Prepared by Japan Network towards Human Rights Legislation for Non Japanese Nationals & Ethnic Minorities

<p>■ Issues and relevant recommendations in the previous cycle</p> <p>Racist Statements by Politicians and Public Officials CERD/C/JPN/CO/7-9, para. 11</p>
<p>■ Relevant paragraphs in the State party's report</p> <p>N/A</p>
<p>■ Implementation of the recommendations</p> <p>The recommendation has not been implemented. Racist statements by politicians and public officials have continued, but appropriate measures have not been taken against them.</p>
<p>■ Problems</p> <p>1. Government's failure to acknowledge derogatory remarks regarding Okinawa people made by riot police officers of Osaka Prefectural Police Headquarters as discriminatory expression</p> <p>According to reports, on October 18, 2016, two riot police officers from the Osaka Prefectural Police who were keeping guard over the relocation work of the helicopter landing zone (helipad) of the U.S. Forces' Northern Training Area said "Where do you think you are grabbing, idiot. You <i>Dojin</i>" and "Shut up, hey, you <i>Shinajin</i>" to individuals protesting the relocation work. Osaka Prefectural Police reprimanded the police officers who made these remarks on the grounds that the remarks were inappropriate, as they were highly offensive and would likely harm the public's trust in the police. Ichiro Matsui, Governor of Osaka Prefecture, wrote on Twitter on October 19 that he had seen the remarks in a video on the Internet and "Although the expression may be inappropriate, I understood that the officers of Osaka Prefectural Police were earnestly performing their duties as instructed. Thank you for the work away from home."</p> <p>The remarks revealed a discriminatory mindset against the people of Okinawa. Protests arose from within and outside Okinawa against Mr. Matsui's tweet which seemed to defend the remarks. In the Diet, members of the opposition parties asked the government whether "<i>dojin</i>" was a discriminatory expression, but Yousuke Tsuruho, Minister for Okinawa and Northern Territories Affairs, stated that "it can hardly be concluded that saying '<i>dojin</i>' is discriminatory."<sup>1</sup></p> <p>Multiple Diet members from opposition parties sought to confirm the government's position that "<i>dojin</i>" was a discriminatory expression, and if so, to revise Mr. Tsuruho's answer. The government denied that it was a discriminatory statement, by adopting Written Answers by a Cabinet decision which stated that the remarks made by the policemen were truly regrettable, and appropriate measures were taken by subjecting them to discipline, but it was difficult to say unequivocally whether the term "<i>dojin</i>" was discriminatory; Mr. Tsuruho had stated that he could not conclude whether it was discrimination, which view was shared with the government, and the government had no intention to request Mr. Tsuruho to withdraw his statement or offer an apology, or to remove him from office<sup>2</sup>.</p> <p>"<i>Dojin</i>" is defined in the dictionary as "(1) A person who was born and lives on the land. A native. <i>Domin</i>. (2) Uncivilized native. Used with contemptuous intent." (<i>Kojien</i>); it is considered inappropriate and not used in mass media.</p>

<sup>1</sup> Answer to question from Tomoko Tamura, Diet member, at the Cabinet Committee of the House of Councilors on November 8, 2017.

<sup>2</sup> Written Answers, dated November 18, 2017, to Written Questions from Diet members Kensuke Onishi, Akihiro Hatsushika and Toshinobu Nakazato (*Naikaku shushitu* 192 Nos. 130, 131 and 132).

## 2. Mr. Taro Aso's remarks on "armed refugees"

According to reports, on September 23, 2017, Taro Aso, Deputy Prime Minister and Minister of Finance, mentioned the possibility of a large number of refugees flooding into Japan from the Korean Peninsula while giving a lecture, and stated that "They may be armed refugees. Will the police cope with them? Will the Self-Defense Forces be called in? Will we shoot them to death? We must seriously think about this." These remarks led to concerns and protests from organizations that support refugees and others as indicating the Japanese government's lack of willingness to fulfill its obligation to protect refugees, and describing refugees as though they are a threatening existence, needlessly inflaming anxiety.

The government adopted a Written Answer by a Cabinet decision stating that the remark was made by Mr. Aso as a politician and the government was not in a position to respond, and the government "had understood that the statement was intended to evoke the audience's awareness of various situations that may occur in an emergency."<sup>3</sup>

## 3. Mr. Kozo Yamamoto's derogatory remark regarding Africa

According to reports, on November 23, 2017, Kozo Yamamoto, member of the House of Representatives (former Minister for Promotion of Overcoming Population Decline and Vitalizing Local Economy) mentioned, while giving a speech at a seminar held by a fellow member, that the fellow member had a long history of exchanges with Africa, and stated "Why does he like such black ones?" When asked what he intended by this remark, Mr. Yamamoto explained that "It was a comment I made on the spur of the moment, having in mind the fact that Africa used to be called the 'Dark Continent.' I had no discriminatory intent, but would like to withdraw the expression." Written protests asking for Mr. Yamamoto's introspection and apology were submitted by children having parents of African origin and groups of scholars, pointing out that the "Dark Continent" itself was a discriminatory term.

The government adopted a Written Answer by a Cabinet decision stating that this remark was the individual opinion of a politician, and thus the government would refrain from responding<sup>4</sup>.

### ■ Suggested recommendations

- a. When a racist statement is made by a politician or public official, properly acknowledge the statement as racist, and criticize strongly and oppose to the same, while taking appropriate measures to prevent it from occurring again.
- b. Strengthen efforts to promote human rights training for all public officials, including education on racial discrimination.

■ Prepared by The Japan Civil Liberties Union (JCLU)

<sup>3</sup> Written Answer, dated November 14, 2017, to Written Question from Diet member Akihiro Hatsushika (*Naikaku shushitsu* 195, No. 19).

<sup>4</sup> Written Answer, dated December 5, 2017, to Written Question from Diet member Seiji Ohsaka (*Naikaku shushitsu* 195, No. 61).

■ Issues and relevant recommendations in the previous cycle

**The right to education for Korean school children**

CERD/C/JPN/CO/7-9 paragraph 19

■ Relevant paragraphs in the State party's report

CERD/C/JPN/10-11 paragraphs 169-175

■ Implementation of the recommendations: Not implemented

■ Problems

**A. Exclusion of Korean schools from the High School Tuition Support Fund Program and the suspension of subsidies by local governments**

a) Exclusion of Korean schools from the High School Tuition Support Fund Program

1. Despite the previous recommendation by the CERD, the Government of Japan has failed to apply the High School Tuition Support Fund Program to 10 Korean high schools. However, as of March 2018, it subsidizes 42 other foreign high schools. Approximately 5,000 Korean high school students were excluded from the Program and the total financial loss is estimated at over 1.7 billion yen (16 million dollars).
2. The Japanese Government argues that it excluded Korean schools from the Program because they were unable to confirm the schools meet the criteria for the Program (CERD/C/JPN/10-11, para 169-172). Despite this assertion on criteria it excluded the Korean schools due to political and diplomatic tensions between Japan and the Democratic People's Republic of Korea (DPRK). In December 2012, the Minister for Education, declared that the Government would legally remove the screening standard of Korean schools for the Program and immediately excluded the schools due to a lack of progress in the abduction issue. It is incorrect for the Government not to state the true reason of exclusion in its report.
3. Although the Government report states that the exclusion was not discrimination, the CESCR stipulated in the Concluding Observation of Japan in 2013 that it is discrimination (E/C.12/JPN/CO/3, para27). It also seems that the Government has intentionally erased the political and diplomatic reasons from exclusion on its report. This matter was also pointed out as inappropriate by the members of the CESCR and the CERD in the previous sessions.
4. At the 3<sup>rd</sup> cycle of the Universal Periodic Review of Japan, Portugal and the DPRK recommended that the Government extend the High School Tuition Support Fund Program to Korean schools (A/HRC/37/15, para161.145, para161.151). However, the Government has failed to accept both recommendations.

b) The suspension of subsidies by local governments to Korean schools

5. Despite the previous recommendation by the CERD, the Government has failed to request local governments resume or maintain the provision of subsidies to Korean schools. Contrary to the CERD recommendation, the Government issued a notice to local governments, which seemingly encouraged them to suspend the subsidies in March 2016. Consequently five more prefectural governments have suspended the subsidies since the previous session of Japan by the CERD.

**B. No adequate funding by the central government**

6. Despite several concerns and recommendations expressed by treaty bodies and the Special Rapporteur (CERD/C/JPN/CO/3-6, para22(c), CCPR/C/79/Add.102, para13, E/C.12/1/Add.67, para 60, E/CN.4/2006/16/Add.2, para56, A/HRC/17/33/Add.3, para 64), the Government still fails to ensure the adequate funding of Korean schools. National subsidies are not allocated to Korean schools and although donors to other private schools and western international schools

receive tax benefits on school donations, donors to Korean schools do not qualify for the same tax benefits. Furthermore, the Government also excludes Korean school children from national scholarship programs.

7. In order to implement these changes, the Government should accredit Korean schools as schools equivalent to “regular schools” as stipulated in the School Education Act. Korean schools are recognized for education standard equivalent to Japanese schools which are classified as “regular schools”.

Although the Government stipulates that the Korean schools can only be accredited as “regular schools” if they meet the criteria, it is impossible for Korean schools to meet these conditions if they want to continue to offer an ethnic education in the Korean language. The criteria for “regular school” classification require the implementation of national guidelines, which would not provide Korean children with adequate time to teach the Korean language and would also require the use of textbooks written in Japanese language.

### **C. Discrimination in access to higher education**

8. The 2003 reform by the Ministry of Education granted access to university entrance examinations to graduates of foreign schools, and only graduates of Korean schools were excluded from the applying due to a lack of diplomatic ties with the DPRK. Consequently, only graduates of Korean schools do not have automatic access to Japanese universities. Instead, Korean school students are required to sit for special qualification examinations set by universities, and some universities still refuse to allow them to take the entrance examination.

Although the CERD, other treaty bodies and the Special Rapporteur have expressed concerns and issued recommendations (CERD/C/304/Add.114, para 16, E/C.12/1/Add.67, para 60, CRC/C/15/Add.231, para49(d), CCPR/C/JPN/CO/5, para 31, E/CN.4/2006/16/Add.2, para 89, A/HRC/17/33/Add.3, para 81(e)), the Japanese government still fails to grant graduates of Korean schools equal access to higher education.

### **D. Non-ratification of the UNESCO Convention against Discrimination in Education of 1960**

9. Despite the two recommendations by the CERD (CERD/C/JPN/CO/3-6, para22, CERD/C/JPN/CO/7-9, para19), the Japanese government is not considering ratifying the UNESCO Convention against Discrimination in Education.

#### **■ Suggested recommendations**

- A. The exclusion of Korean schools from the High School Tuition Support Fund constitutes discrimination. The Committee reiterates its recommendation included in paragraph 19 of its previous concluding observations that the State party revise its position and allow Korean schools to benefit from the High School Tuition Support Fund, and invite local governments to resume or maintain the provision of subsidies to Korean schools.
- B. The Committee recommends that the State party accredit Korean schools as schools equivalent to “regular schools” as stipulated in the School Education Act. In addition, ensure there is adequate funding for Korean schools by granting State funding equivalent to funding for other private schools, applying the national scholarship programs and the same fiscal benefits to donors of Korean schools as to donors of other western international schools.
- C. The Committee recommends that the State party recognize diplomas from Korean schools as direct university entrance qualifications.
- D. The Committee recommends that the State party accede to the UNESCO Convention against Discrimination in Education of 1960.

**■ Prepared by Human Rights Association for Korean Residents in Japan**



<p>■ <b>Issues and relevant recommendations in the previous cycle :</b></p> <p><b>The right to leave and return to one's country of permanent residents</b> - Article 5 (d) (ii)</p>
<p>■ <b>Relevant paragraphs in the State party's report:</b> No</p>
<p>■ <b>Implementation of the recommendations. If not, a relevant article of the Convention violated</b></p> <p>Violation of the Article 5 (d) (ii)</p>
<p>■ <b>Problems</b></p> <ol style="list-style-type: none"> <li>1. At the discretion of the Minister of Justice, Article 26 of the Immigration Control and Refugee Recognition Act stipulates that only resident foreigners who have a re-entry permit may be allowed to re-enter Japan. Those who fail to leave on a re-entry permit will forfeit their right to permanent residence. Under the current "Re-entry Permission System", the Korean minority who are second and third generation permanent residents may be deprived of their right to leave and re-enter Japan.</li> <li>2. Although the Human Rights Committee strongly urged Japan in 1998 to "remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents like persons of Korean origin born in Japan" (CCPR/C/79/Add.102, para 18), the Japanese government continues to enforce the "Re-entry Permission System" on Koreans born in Japan.</li> <li>3. Furthermore, in the past the Government has been discriminatory in refusing to issue the "Re-entry Permission" to Koreans whom refused to be fingerprinted for their Alien Registration Card. Furthermore, as a result of the Government of Japan's unilateral sanctions against the Democratic People's Republic of Korea (DPRK), certain people have been denied a re-entry permit.</li> <li>4. The Government has also discriminated against more than 30,000 Koreans in excluding them from the "Special Re-entry Permission System" (*1), which was introduced in July 2012. This new system permits foreign residents to leave Japan and return within one year without a re-entry permit.</li> <li>5. The term "one's own country" in the Article 5 (d) (ii) of ICERD should include the country where the person resides permanently, as well as the country of one's own nationality. The Government therefore should guarantee the right to all permanent foreign residents including the Korean minority born in Japan to leave and re-enter and not be dependent on the Government's discretion.</li> </ol> <p>(*1) "Special Re-entry Permission System" – The system exempts a foreign resident from the requiring a formal re-entry permit prior to departure, if he/she possesses a residence certificate and a valid passport when he/she departs. The Japanese government does not recognize DPRK passports as valid, thus under the "Special Re-entry Permission System" DPRK holders cannot access this system. On the other hand, Japan does not have diplomatic ties with Taiwan or Palestine but allows these passport holders to access the "Special Re-entry Permission System."</p>
<p>■ <b>Suggested recommendations:</b></p> <ol style="list-style-type: none"> <li>a. In respect of permanent residents such as Koreans born in Japan, the Committee recommends that the State party remove from the law the requirement to obtain a permit to re-enter prior to departure.</li> <li>b. The Committee recommends that the State party apply "Special Re-entry Permission System" to all permanent foreign residents including Koreans born in Japan.</li> </ol>
<p>■ <b>Prepared by Human Rights Association for Korean Residents in Japan</b></p>

<p>■ Issues and relevant recommendations in the previous cycle</p> <p>Limits on appointment and on promotion of foreign residents in public service CERD/C/JPN/CO/7-9 paragraph 13</p>
<p>■ Relevant paragraphs in the State party's report</p> <p>CERD/C/JPN/10-11 paragraphs 148, 149</p>
<p>■ Implementation of the recommendations</p> <p>Not implemented</p>
<p>■ Problems</p> <ol style="list-style-type: none"> <li>1. The initial and second periodic report states in para. 32 (50) that "Japanese nationality is required for civil servants who participate in the exercise of public power or in public decision-making, but it is understood that Japanese nationality is not necessarily required for civil servants who do not engage in the above-mentioned work." The government continues to repeat this phrase in response to the Committee's recommendation.</li> <li>2. In Japan, there is no nationality requirement in either the National Public Service Act (1947/11) or the Local Public Service Act (1951/2), except in the Diplomats Act (1952/3).</li> <li>3. But in 1953, the government excluded foreign nationals from public service employment stating that, "although there may be no existing explicit provisions in law, but it should be understood as an obvious legal principle, that to be a civil servant who exercises public authority or who participates in formation of the intent of the state, Japanese nationality is necessary."</li> <li>4. The government calls this view the "obvious legal principle." This principle allows the exclusion of foreign nationals without express legal provisions and is a denial of the rule of law. It also clearly violates international human rights treaties.</li> <li>5. The government expanded on its views regarding the "obvious legal principle" in 1973 to cover local public service. The limitation, "participation in the formation of the intent of the state," for national public service, was reinterpreted to cover "local civil servant who exercises public authority or who participates in formation of the intent of the local government." Such local public servants would require Japanese nationality.</li> <li>6. This criterion, however, is extremely vague. Although there are no limitations placed on appointment of foreign residents in local public service and the jobs and positions are not affected by their nationalities, the "obvious legal principle" provides the grounds for limiting appointment and promotion of foreign residents in local public service. At some local governments, nationality requirements are placed on some jobs, and there are even some where foreign nationals are ineligible to take the employment examination itself, due to nationality requirement.</li> <li>7. Yokohama City for example, restricts appointment of foreign nationals. The City formulated a guideline in which it stated that it would not appoint foreign nationals in work involving unilateral restrictions of the rights and freedoms or placing obligations or burdens on citizens, or compulsory execution on the basis of exercise of "public authority," in positions of managers or higher positions,</li> </ol>

which require participation in planning and decision making, or in positions of section head or higher positions, which require involvement in decisions on the City's basic policies, on the basis of "participation in the formation of intent." This means that foreign civil servants are excluded from many areas that involve close contact with citizens, including tax affairs, welfare, social insurance and pensions. There is a nationality requirement for sanitation inspectors and firefighters.

8. A foreign public health nurse of the Tokyo Metropolitan Government sued the local government for not being allowed to take the exam for promotion, but the Supreme Court in 2005 dismissed her claim supporting the views of the "obvious legal principle." Since Japan has not acceded to the individual communication procedures, she has no access to redress through the UN treaty bodies.

9. Because of the impact of the "obvious legal principle" as well as the Supreme Court decision, according to a survey of local governments on foreign residents in 2016 conducted by Kyodo Tsushin, only 23.4% of prefectural governments and 32.2% of municipalities allowed foreign nationals to apply for administrative jobs. The universality of the right is being denied, as foreign nationals can apply for local public service in some local governments, while they are unable to apply in others because of the nationality requirement.

■ **Suggested recommendation**

a. Abolish the previous official views (obvious legal principle) and remove all restrictions on appointment and promotion of foreign nationals in public service, on the basis of CERD General Recommendation No. 30 on discrimination against non-citizens.

■ Prepared by Hyogo Association for Human Rights of Foreign Residents and Kanagawa Mintoren

<p>■Issues and relevant recommendations in the previous cycle Discriminatory treatment in appointment of foreign teachers CERD/C/JPN/CO/7-9 paragraph 13</p>
<p>■Relevant paragraphs in the State party's report CERD/C/JPN/10-11 paragraphs 148, 149</p>
<p>■Implementation of the recommendation Not implemented</p>
<p>■Problems</p> <p>1. Of the 903,569 full-time teachers in Japanese elementary schools (6 years), junior high schools (3 years) and senior high schools (3 years), 881,080 are public school teachers, comprising 90.5% (as of May 2016). Public school teachers are local civil servants, and although there are no provisions excluding appointment on grounds of nationality in the Local Public Service Act, such discrimination exists. Currently there are estimated 300 foreign teachers (the government does not publicize the number). From a demographic perspective, there should have been around 15,000 foreign teachers in public schools.</p> <p>2. The reason for the discrimination against foreign teachers is because it is considered that “Japanese nationality is required for civil servants who participate in the exercise of public power or in public decision-making” (paragraph 149 of the government report). Public school teachers are appointed by the education board of the 47 prefectures and 20 government ordinance-designated cities. Earlier, some local governments allowed foreign applicants to take the employment examination, while others did not. In March 1991, the then Ministry of Education, Science and Culture issued a notice to all local governments that foreign applicants are allowed to take the examination, and successful applicants should be appointed full-time lecturers for indefinite periods. There is a clear “distinction,” as successful Japanese applicants are appointed as “teachers.”</p> <p>3. Foreign “full-time lecturers” have the same teaching certificate as Japanese “teachers” and have successfully passed the same employment examination, yet are ineligible for promotion regardless of how long they are in service (and are not appointed to curriculum coordinators or head teachers of a grade, let alone to management positions), and are not allowed to participate in school affairs other than teaching children. Further, with the 2007 amendment of the School Education Act, positions in schools were further divided into vice principals (vice directors), senior management teachers, and senior advising teachers, and the pay scales were amended accordingly. As a result, foreign teaching staff will remain “full-time lecturers” until retirement, and are excluded from these posts. The lifetime pay difference with Japanese teachers who retire as principals will amount to 18 million yen including various benefits (estimate in Yokohama City, a government ordinance-designated city).</p> <p>4. Apart from public schools, there are private schools that are operated by approved incorporated legal institutions in Japan. Teachers in these schools are not “civil servants” and are not treated differently on grounds of nationality. There are no conceivable differences in the teaching jobs in</p>

public and private schools. Therefore, the difference in treatment on grounds of nationality is unreasonable.

5. Article 3 of the Labor Standards Act stipulates explicitly that “(e)mployers shall not use the nationality,... of any workers as a basis for engaging in discriminatory treatment with respect to wages, working hours or other working conditions.”(Article 119 provides for punishments.) The Japan Federation of Bar Association has examined an application for remedies from foreign teaching staff, and concluded in March 2012, that the situation “amounted to unreasonable discriminatory treatment in violation of Article 14 of the Constitution and violates the freedom of the foreign residents who want to become teachers to choose their occupation.” The Association sent its recommendation to Minister of Education, but the government has ignored the matter.

■Suggested recommendation

Recalling the General Recommendation No. 30 on discrimination against non-citizens (2004), eliminate all discriminatory treatment of foreign teachers.

■Prepared by Hyogo Association for Human Rights of Foreign Residents, and Kanagawa Mintoren.

<p>■ <b>Issues and relevant recommendations in the previous cycle</b>  Access by foreign nationals to the national pension scheme.  CERD/C/JPN/CO/7-9 paragraph 14</p>
<p>■ <b>Relevant paragraphs in the State party's report</b>  CERD/C/JPN/10-11 paragraph 165</p>
<p>■ <b>Implementation of the recommendations</b>  Not implemented</p>
<p>■ <b>Problems</b></p> <ol style="list-style-type: none"> <li>1. The Employees' Pension Act of 1941 (applicable to working persons) contained a "nationality clause" that excluded foreign nationals from coverage. However, this clause was removed in 1946 with the Order for the Prohibition of Discrimination based on Nationality by the occupation authorities, and coverage was extended to foreign nationals. This remains the case until today.</li> <li>2. A "nationality clause" reappeared in the National Pension Act of 1959 (applicable to non-working persons), thereby excluding foreign nationals from coverage once again. At that time, the majority of foreign nationals living in Japan were Koreans in Japan (approx.650,000), who lost their "Japanese citizenship" when the 1952 Treaty of Peace with Japan came into effect.</li> <li>3. In 1981, upon Japan's ratification of the Convention relating to the Status of Refugees, the "nationality clause" was removed from the National Pension Act and coverage was extended to foreign nationals. However, no transitional measures were taken to prevent the exclusion of some foreign nationals.</li> <li>4. The National Pension Act is a system under which a person pays insurance dues for a certain period, then receives pension payments upon reaching a designated age. Therefore, when the previous system was initiated and at times when eligibility was expanded (for example when Okinawa returned to Japan, or when Japanese in China returned to Japan), transitional (relief) measures were taken. But no such transitional (relief) measures were taken when Japan ratified the Convention relating to the Status of Refugees. As a result, Koreans and other foreign nationals in Japan with disabilities, who were aged 20 or older on January 1, 1982, were left excluded from the pension system.</li> <li>5. The National Pension Act was revised in 1986, but, again, no relief measures were taken for un-pensioned foreign nationals. Therefore elderly Korean and other foreign nationals born in 1926 or earlier were left without pension coverage.</li> <li>6. Un-pensioned Koreans in Japan who are disabled, or elderly, have initiated multiple legal actions in Japanese courts to demand rectification of the "discrimination based on nationality." But the courts, recognizing the state's wide-ranging power of discretion and stating that the various international conventions on human rights hold no direct binding force, have ruled against every one of these claims and sealed those verdicts. Because the government of Japan has not accepted the right of an individual to appeal to the United Nations, un-pensioned foreign nationals in Japan are unable to appeal their plight to UN human rights institutions.</li> <li>7. The Japanese government adopted the "Act on Special Disability Payment for Specified Persons with Disabilities" in 2004, which provided relief measures for Japanese nationals who acquired disabilities while being students, before entering the pension system. This law was adopted in response to a trial verdict that ruled in favor of an un-pensioned disabled student seeking relief. The un-pensioned student became an un-pensioned disabled person by chance, due to having not yet entered the pension system when the disability developed, but such Japanese nationals received relief through special legislation.</li> </ol> <p>The judiciary gave no relief to un-pensioned Koreans in Japan with disabilities, despite the fact</p>

that they became un-pensioned because they were unable to enter the pension system due to the “nationality clause.” Furthermore, un-pensioned Koreans in Japan with disabilities were again excluded under the special legislation of 2004. A supplement to this law stated that “Measures will be considered for un-pensioned foreign nationals,” but the problem remains neglected 14 years later.

8. This problem has been previously noted in the HRCttee “Concluding Observations, Paragraph 30” (CCPR/C/JPN/CO/5) and, in the “Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diene, on his mission to Japan” (E/CN.4/2006/16/Add.2, para 95). Also, Article 28 of the Convention on the Rights of Persons with Disabilities, which Japan ratified in 2014, stipulates that “States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.”

The Government of Japan has received numerous recommendations to promptly remedy the situation of foreign nationals living in Japan who are left without pension, but no measures have been taken until now.

The basic financial source of the pension system is, one half is covered by insurance dues and the other half by taxes. All foreign nationals residing in Japan are required to pay taxes, and there exists no “nationality clause” or “discrimination according to nationality” in the sphere of taxation.

9. As explained above, in order to realize “equality in dignity and rights” (Universal Declaration of Human Rights, Article 1) for un-pensioned Korean and other foreign nationals in Japan who are elderly, or have disabilities, it is necessary for the government of Japan to expeditiously and promptly take corrective measures against discrimination.

■ **Suggested recommendations**

- a. Expeditiously and promptly provide relief measures, including revision of legislation, to enable persons who became un-pensioned foreign nationals with disabilities because they were age 20 or older on Jan.1, 1980, as well as those who became un-pensioned aged persons of foreign nationality because they were age 60 or older on Apr.1, 1986.

■ Prepared by the National Network for the Total Abolition of the Pension Citizenship Clause

<p>■ <b>Issues and relevant recommendations in the previous cycle</b></p> <p>Access to Public Places and Facility  CERD/C/JPN/CO/7-9 paragraph 15  Article 2 and 5</p>
<p>■ <b>Relevant paragraphs in the State party's report</b></p> <p>CERD/C/JPN/10-11 paragraphs 177~179</p>
<p>■ <b>Implementation of the recommendations</b></p> <p>Not implemented</p>
<p>■ <b>Problems</b></p> <p>In Japan, there is no law which prohibits the denial of access to public places and facility based on nationality or race in general. As explained by the Japanese government report, in the field of transportation or hotels, business owners are prohibited from denying the offer of service without reasonable reasons. However, in other areas, no law or regulation clearly prohibits the denial of access to public places and facility.</p> <p>According to the Analytical Report of the Foreign Residents Survey commissioned by the Ministry of Justice, 6.2% of respondents, have been refused entry or service at a store or a restaurant etc. because they are foreign nationals in the past five years in Japan.</p> <p>There are number of reported cases recently. For example, in a franchise store of POLA cosmetics, a paper including a message “No Chinese Allowed” was pasted in the entrance door of the store.</p> <p>Also, a Sushi-shop in Osaka was reported to add a large amount of Wasabi for customers from Korea as a measure of harassment.</p>
<p>■ <b>Suggested recommendations</b></p> <p>a. Take appropriate measures to protect non-citizens from discrimination in access to public places, in particular by enacting a law prohibiting such discrimination, and ensuring effective application of such las.</p> <p>b. Investigate and sanction such acts of discrimination, and enhance public awareness-raising campaigns on the requirements of the relevant legislation .</p>
<p>■ <b>Prepared by Kim Changho, Attorney at Law</b></p>



■ Issues and relevant recommendations in the previous cycle

Discrimination against Koreans and other immigrants in Japan when seeking tenancy

Article 5 (e) (iii)

Recommendations of the Special Rapporteur on Human Rights of Migrants (2011.3.21 “Report on Fact-finding Mission to Japan”: Paragraph 83) A/HRC/17/33/Add.3

■ Relevant paragraphs in the State party’s report

CERD/C/JPN/10-11 paragraph 160

■ Implementation of the recommendations: no recommendations

■ Problems

For foreigners, the “freedom to choose residence” is one of the most basic rights necessary to live in Japan. However, there is no law in Japan that clearly prohibits tenancy discrimination, or guarantees the right to residence “for all people.”

According to the Japan Ministry of Justice “Analytical Report of the Foreign Residents Survey” (March [English=June], 2017), of 2,044 non-Japanese respondents who had searched for residence in the previous 5 years, 42.8% “① Got refused tenancy because I was a foreigner”, and 46.0% “Got refused tenancy because I didn’t have a Japanese guarantor.” When we look at respondents by “Nationality and Region”, especially those who come from the Asia region—51.0% of Chinese, 50.0% of Korean, 46.4% of Vietnamese, 43.8% of Taiwanese, 53.1% of Thai, 46.7% of Indian, 41.7% of people from Myanmar—have met with tenancy discrimination.

When we further consider the Japanese language abilities of those who experienced tenancy discrimination, fully 90.9% of these responded that “I can speak well enough for work or study”, or “I can speak well enough to have no trouble in everyday life”, or “I can speak on the same level as Japanese people”. In other words, they met with tenancy discrimination simply “because they are foreigners”, not according to whether or not they can speak Japanese.

Even among Koreans in Japan, who are primarily 3<sup>rd</sup>- and 4<sup>th</sup>-generation and born in Japan, 27.2% have received tenancy discrimination. Also, among non-Japanese who have a Japanese partner, 31.5% of them have been refused tenancy “Because I had no Japanese guarantor.”

Since the 1970s, there has been a struggle, primarily by Koreans in Japan, against tenancy discrimination, and the citizenship requirement for public housing was eliminated. Litigation was also initiated, and won, against tenancy discrimination in private rental housing.

Meanwhile, the government (Ministry of Land, Infrastructure, Transport and Tourism) created in 2009 “guidelines” to facilitate smooth acceptance of non-Japanese as tenants in private rental housing, has provided instruction to regional and municipal governments, as well as the real estate sector, and further issued a notice demanding correction of tenancy discrimination.

Despite these measures, the terrible situation of tenancy discrimination toward Koreans in Japan and immigrants has not been corrected, and continues in an unbroken line.

Non-Japanese who have met with tenancy discrimination in the last 5 years

Country of Origin	Overall	China	Republic of Korea	Choson <sup>i</sup>	Philippines
① Refused tenancy for being a foreigner	42.8%	51.0%	29.8%	50.0%	36.5%
② Refused tenancy for having no Japanese guarantor	46.0%	57.4%	31.5%	42.9%	35.0%

[Source] Table created based on information in Excel table within the Japan Ministry of Justice “Analytical Report of the Foreign Residents Survey.” (Percentages computed by subtracting non-respondents from the total, and using this as the denominator.)

■ Suggested recommendations

- a. Institute a legal framework to prohibit tenancy discrimination against foreigners according to the recommendations of the Special Rapporteur on the Human Rights of Migrants (para 83, A/HRC/17/33/Add.3).
- b. Survey current residency situations and housing environments among foreigners, and institute a comprehensive housing policy.

■ Prepared by Center for Minority Issues and Mission

<sup>i</sup> “Choson” refers to the Korean Peninsula as a whole, and does not denote Democratic People’s Republic of Korea citizenship.

■ Issues and relevant recommendations in the previous cycle

Migrant Workers and the Technical Intern Training Program  
CERD/C/JPN/CO/7-9 paragraph 12

■ Relevant paragraphs in the State party's report

CERD/C/JPN/10-11 paragraphs 46-48

■ Implementation of the recommendations

1. Regarding “reinforc[ing] its legislation in order to firmly combat racial discrimination against migrants in employment and access to housing and improve migrants’ employment status” (CERD/C/JPN/CO/7-9, para 12), no particular strengthening of legal measures was implemented.
2. Regarding “tak[ing] appropriate steps to reform the technical intern training program in order to protect the working rights of technical intern trainees” (CERD/C/JPN/CO/7-9, para 12), the “Act on Proper Technical Intern Training and Protection of Technical Intern Trainees” was enacted.

Results of the implementation:

Although a law was enacted (2. above), there has been no change in the discrepancy between the official aim to provide international assistance through the transfer of skills through the Technical Intern Training Program, and the reality that small- and medium-sized companies experiencing labor shortages use of the Program as a means to secure labor.

Although punishments for human rights violations have been stipulated, and the Organization for Technical Intern Training was newly established to oversee on-site examinations and consultations and reporting, there’s nothing stipulated concerning punishments for the forced repatriation of technical intern trainees, as well as punishments for the sending organizations and their affiliates. Furthermore, the Organization for Technical Intern Training has 13 regional offices throughout the nation and 346 personnel, but these resources are far from adequate to oversee the over 2000 supervising organizations, and close to 40,000 implementing organizations (receiving companies).

Additionally, there is no change in the overall structure of the Program in which technical intern trainees must shoulder large loans before coming to Japan, and the debt servitude-like situation has not been improved.

■ Problems

1. Overview of foreign workers in the country

As of October 2017, the number of registered foreign workers in Japan, excluding special permanent residents (persons from the former colonies and their descendants), is approximately 1,280,000, and this figure is a 195,000 (18%) increase from the previous year. In terms of non-permanent residents, part-time work by international students (permission to engage in activity other than that permitted under the status of residence previously granted) and technical intern trainees both compose over 20% each, thereby making up a large portion of the labor force.

If we take the number of technical intern trainees, there were 167,626 in 2014; but by 2017, this number had increased by 63.6% to 274,233 in three years. In terms of new entrants, in 2014 there were 82,533, but by 2017, this figure was 127,688 – a 54.7% increase. This increase in foreign workers is a reflection of Japanese society's declining population and labor shortages, and it is expected that this trend will continue into the future.

2. The realities of Technical Internships

The human rights violations against technical intern trainees do not cease to exist, and many serious concerns have been voiced to migrant workers support groups.

### (1) Low Wages, Unpaid Wages, and Long Working Hours

In addition to low wages set at the minimum wage level or below, the withholding of wages is also widespread. Additionally, although there is a system for unpaid wages reimbursement in situations in which the receiving company goes out of business, only 6 months are covered, and the provisions remain inadequate.

Even the Ministry of Health, Labour and Welfare's study found that "8 technical intern trainees were hired for ¥65,000 a month, and were only paid wages below the minimum wage," "regarding overtime work, the hourly wage for first-year interns was ¥300, ¥400 for second-year interns, and ¥450 yen for third-year interns," "there was 5.2 million yen of unpaid overtime wages and wages below the minimum wage for 4 technical intern trainees," and "11 technical intern trainees worked for up to 130 hours of illegal overtime work (per month) during peak periods in which their company encountered labor shortages."

### (2) Forced Repatriation and Debt Servitude

Recently, there have been a noticeably large number of cases in which technical intern trainees who assert their rights or complain about their working conditions or living environment are forced against their will to return home. Such forced repatriation, not only forfeits their right to receive technical training, but also puts many technical intern trainees, who often shoulder large amounts of loans to pay for the expenses to come to Japan (for example, in Vietnam from which the largest numbers of technical intern trainees come, it costs about ¥1 million yen – about 4 to 5 years' salary in Vietnam), in debt if they return before completing their contract. In this way, threats of "returning you to your country" by receiving companies and supervising organizations, instill great fear in the technical intern trainees, and prevent them from justly asserting their rights, thereby serving as central means by which the various problems of the technical intern program are made "invisible." In this way, technical intern trainees are placed in debt-servitude-like situations.

### (3) Deposits, Verbal and Physical Abuse, and Decontamination Work

Since around in 2017, the deposits that were often problematized in the past have decreased, at least on the surface; however, the amount of debt that technical intern trainees accrue in order to come to Japan has not decreased, as these deposits have simply changed in name and shape to predeparture and processing fees.

Instances of verbal and physical abuse against technical intern trainees are numerous, and the Ministry of Justice has also reported a case in which there was "a worker at a construction company participating in the Technical Intern Program that regularly hit, punched, kicked, etc. a technical intern for 'not understanding Japanese.'" In 2017 a Cambodian technical intern trainee who suffered depression after being verbally and physically abused, was approved for as industrial accidents. Furthermore, it surfaced in 2018 that technical intern trainees were involved in decontamination work to remove the large amounts of radioactive contamination that had widely dispersed across large areas from a nuclear power plant following the 2011 Great East Japan Earthquake. Not only were they not informed of this task before coming to Japan, but they were also not informed of the dangers of such decontamination work and the measures to protect them from radiation were not sufficient. Decontamination work is completely unrelated to the transfer of technical skills that technical intern trainees are supposed to acquire.

## 3. Effects of the Newly Implemented Law

With the "Act on Proper Technical Intern Training and Protection of Technical Intern Trainees" (hereafter, Technical Intern Training Act) implemented on November 1, 2017, punishments for human rights violations, approval procedures for supervising organizations, recognition procedures for technical intern training plans, on-site examinations and responses to concerns carried out by the newly-established Organization for Technical Intern Training, and provisions to help technical intern trainees change their receiving company, were laid out. Additionally, large expansionary

revisions were made on the receiving end involving the extension of the length of work for technical intern trainees from a 3-to a 5-year maximum. Even receiving companies with 6 full-time employees, could now receive up to 36 technical intern trainees.

#### (1) The Viability of the Regulation

As of May 25, 2018, there are 783 organizations classified as excellent supervising organizations that are allowed to receive technical intern trainees for 5-year, and 1,361 other supervising organizations that are allowed for terms up to 3 years; in total, there are 2,144 organizations that have received approval. These figures point to the fact that almost all supervising organization applications were approved. This reflects the reality that the “checks” of the approval procedures are not functioning.

As for the on-site inspections, these are only carried out on supervising organizations once a year, and on the receiving companies once every 3 years; as such, viable regulatory oversight is not possible.

Regarding the low-wage labor of the technical intern trainees, it is now required for the receiving companies to prove that their wages should be “no less than a Japanese would receive for the same kind of work,” but as the criterion for deciding what is “no less than” is relative and vague, so any improvements will not be realistic.

#### (2) Responses to Forced Repatriation

Punishments for the aforementioned forced repatriations are not stipulated in the punishments for human rights violations, and the punishments for sending organizations and their affiliates are also not stipulated. Therefore, it is difficult to expect decreases in the number of cases of forced repatriation, and the large amount of debt accrued by technical intern trainees through what could be called exploitation at the hands of sending organizations, has not decreased.

In order to prevent forced repatriation before the passage of legislation, from September 2016, the Japanese government began issuing “intent confirmation forms” at embarkation counters to technical intern trainees returning home before the end of their contract to check their intentions to return. However, up until December 2017, there were only a total of 26 instances of early return requests, and none of the cases were classified as forced repatriations. Given that there are well over 10,000 technical intern trainees who return home early, from these figures, it is clear that this countermeasure is not effective.

#### (3) Changing One's Training Site

The Technical Intern Training Act allows for changes to one's training site right before the fourth year but changing one's training site at any other time is in principle, not permitted. However, the prohibition of changing one's training site makes a technical intern's position vis-à-vis that of the receiving company, extremely vulnerable, and creates conditions that make human rights violations more likely. Therefore, it is paramount that revisions be made to the Program so that technical intern trainees can flexibly change their training site when one encounters trouble at that site.

#### (4) The Efficacy of Memorandums of Cooperation

With the implementation of the Technical Intern Training Act, Memorandums of Cooperation were concluded. The aim of these Memorandums is to regulate sending organizations through the cooperation of sending countries. However, these Memorandums are not legally binding, and even without the concluding of such an agreement, inflows of technical intern trainees would still continue from that country; as such, whether to regulate sending organizations is up to the discretion of the sending country, thereby throwing into question the viability of these agreements.

As the aforementioned circumstances illustrate, the new law's effect on the improvement of the Program is extremely weak, and because of this, it is difficult to observe any improvements to the extant conditions of the slave-like conditions of technical intern trainees.

■ Suggested recommendations

- a. As it is observed that no improvements have been achieved for the reduction of human rights violations against technical intern trainees since the enactment of the new law, abolish the Technical Intern Training Program, which serves as a breeding ground for human rights violations, and shift towards a new policy that allows the acceptance of foreign workers.
- b. Revise the present law with the following changes as long as the Technical Intern Program is in place; a new sanction clause on forcible deportation of trainees, acceptance of a change of company for a trainee to have a training, legally binding a bilateral agreement with a sending country, and reinforcement of the structure of the Organization for Technical Intern Training.
- c. Take measures to minimize violation of human rights of technical intern trainees by curbing the ongoing expansion of the Program as no improvements have been observed in the present program.

■ Prepared by Solidarity Network with Migrants Japan (SMJ)

Web news reference:

<https://www.japantimes.co.jp/news/2018/07/13/national/least-four-firms-used-foreign-trainees-clean-radioactive-contamination-fukushima-nuclear-plant-ministry/>

■Issues and relevant recommendations in the previous cycle :

Violence against foreign and minority women

CERD/C/JPN/CO/7-9 Paragraph 17 as a follow-up recommendation

■Relevant paragraphs in the State party's report

To the follow-up report of August 2016 submitted by the government, the Committee replied with the same recommendations as per in the Concluding Observations of 2014, and requested the state party to include additional information in its next periodic report to the Committee. However, the report does not contain any additional information pertaining to paragraph 17.

■Implementation of the recommendations

Not implemented

■Problems

Despite the recommendations made in the 2014 Concluding Observations by CERD, no new measures have been taken regarding violence against migrant women. The Government has not even conducted a survey on the situation that is necessary to design policies addressing violence against migrant women and domestic violence. The Japanese Government has not made any progress in making concrete efforts regarding prosecuting those responsible for the violence or providing remedies and protection for the victims.

In regard to domestic violence against migrant women, it has become apparent from the data on the number of people receiving temporary protection published by the Ministry of Health, Labor and Welfare, and the population ratio of foreign women and Japanese women, that migrant women are given protection at a rate close to five times higher than Japanese women. The Act on the Prevention of Spousal Violence and the Protection of Victims states that their human rights will be respected, "regardless of their nationality," but a national minimum standard on specific policy measures has not been established. Support measures for migrant women who are victims of violence are left to the efforts of local Government s. Apart from a few progressive areas, these efforts have been lagging.

Furthermore, there are no police figures available to indicate the number of arrests of perpetrators, or the number of complaints/accusations made by victims according to their Japanese/foreign nationality, so it is impossible to deduce the prosecution cases in which migrant women are the victims of violence.

With regard to the guarantee of status of residence for migrant women DV victims, since 2014, in addition to CERD, there have also been recommendations by the United Nations Human Rights Committee (Jul. 2014) and the Committee on the Elimination of Discrimination against Women (CEDAW) (Feb. 2016).

It was emphasized in the CERD general findings that the revocation of spouse status of residence in the revision of the Immigration Law (Article 22.4.1) was of particular concern for its impact on victims of DV, and it was recommended that this system be reviewed.

The problem with the procedures of residence status revocation is that, regardless of the number of actual cases of revocation (31 cases in 2014, 30 cases in 2015, 32 cases in 2016, 23 cases in 2017), the mere existence of the procedures threatens many migrant women, who reside with the status of spouses of Japanese nationals and permanent residents, which causes hesitation to

escape from the harms of domestic violence. The procedures have become factors in making the situation more serious for the victims.

The Japanese Government explains that victims of domestic violence are excluded from the revocation procedures, but migrant women are not informed of the exclusion provisions, and it is difficult for the affected women to explain their circumstances to the immigration authorities. Because of this, NGOs report of cases in which women had had their resident status revoked, even though they were married, had suffered violence, and had been abandoned. Although the revocation procedures require that the authorities hear the views of the affected women prior to revocation, there has been no information on how these hearings are conducted. On the residence status of victims of domestic violence, the Japanese Government explains that it has formulated an Outline of Measures Related to Cases of Domestic Violence within the Immigration Bureau, and when a victim of domestic violence is identified, it gives special consideration in renewing and changing residence status, giving priority to the protection of victims. Yet the number of victims of domestic violence identified by the Immigration Bureau around the country, 75 in 2014, 95 in 2015, 64 in 2016, is only the tip of the iceberg compared with the number of potential victims. This is against the backdrop of the lack of an environment enabling migrant women to bring forward their claims of domestic violence to the Immigration Bureau, as well as the lack of adequate training on domestic violence for immigration officials, and that these officials are not well informed about the Outline. As a consequence, there is a concern that only limited cases, such as those in which lawyers are able to explain the circumstances and provide documents, are identified as domestic violence cases. Therefore, there are a great number of cases in which victims can not renew or change their status and have no choice but to return home.

#### ■ Suggested recommendations

- a. Collect data from the police detailing the numbers of consultations and claims according to Japanese or foreign nationality, so that the numbers of migrant women victim to violence, and the number of prosecutions taken against the perpetrators in these cases will be available.
- b. Review Article 22.4.1 of the Immigration Law which outlines the annulment of spouse visas, from the perspective of protection for victims of DV
- c. In order to make consideration towards the residence status of DV victims, take measures to promote greater recognition of DV victims within the immigration bureau

■ Prepared by Solidarity Network with Migrants Japan (SMJ)



<p>■Issues and relevant recommendations in the previous cycle</p> <p>Long term detention of asylum seekers and undocumented migrants at the discretion of the Immigration Bureau.</p> <p>CERD/C/JPN/CO/7-9 paragraph 23 (a)(b)</p>
<p>■Relevant paragraphs in the State party's report    No</p>
<p>■Implementation of the recommendations    Not implemented</p>
<p>■Problems</p> <p>Since the revision by the Immigration Bureau of various procedures in the process of Application for Refugee Status from 2015 onwards there has been a significant increase in the numbers of refugee applicants (applicants for asylum) being detained due to visa status restrictions. As a result of this the problem has also developed of detained refugee applicants being held for long periods of time.</p> <p>In addition to this there is also the problem of long term detention of undocumented migrants who have been issued with a deportation order. Those who are detained often resist deportation as it would separate them from their families and in many cases a return to their country would mean suffering persecution from their government or other organizations/individuals, placing them at physical risk. There are even those who are stateless or whose countries refuse their extradition as seen in cases of Vietnamese refugees who came to Japan after the Vietnam War for example.</p> <p>The problem of long term detention of refugee applicants and undocumented migrants came to the fore in the 2000s, and as a result of criticism from civil pressure groups the Immigration Bureau has made some changes to its response to this situation. As of 2010 onwards, all detention centers have been required to report the situation of detainees held over 6 months to the Immigration Bureau/Ministry of Justice and as a result the number of long term detainees was reduced. (27<sup>th</sup> July 2010, Ministry of Justice Ordinance 172 issued by the Director of the Immigration Bureau)</p> <p>However, in November 2015 the issue of provisional release permits was largely frozen which led to an increase in long term detainees. Provisional release allows someone who has been issued with a deportation order to remain at home until they are prepared for departure. However due to the impossibility of deportation, fears of persecution on return to their country or family ties in Japan etc, there are more and more people who have been on provisional release for over 10 years. There are even some who have been on provisional release for 17 years. Currently there are 3194 people on provisional release as of September 2017.</p> <p>On 18<sup>th</sup> September 2015 an order was issued by the Director of the Immigration Bureau “Ministry of Justice Ordinance 263” and since then applications for provisional release have rarely been recognized. The Ordinance was entitled “The Issue and Monitoring of Provisional Release Permit for Detainees Issued with a Deportation Order” and as a result of this ordinance the numbers of detainees being held over 6 months rapidly rose. October 2014 recorded 301 detainees held over 6 months which in October 2017 rose to 474. Then the longest detention went over 5 years, while in other detention centers there were several people being detained over 3-4 years. The order stated that anyone who it seemed “inappropriate” to recognize, including those who were refused refugee status or were undocumented and with no foreseeable chance of deportation should be refused provisional release by the Immigration Bureau.</p>

Under Immigration Control and Refugee Recognition Law then those who have been issued with a deportation order can be detained for an indefinite (infinite) amount of time based on the judgement of the Immigration Bureau. But in other cases outside Immigration Law it cannot be allowed for authorities to make on their own arbitrary decisions to put someone into such long term detention or not. It is not acceptable to detain someone without the judgement of a court.

Detainees have stated "It is a great mental strain to be in detention with no idea when you will be coming out". On 13<sup>th</sup> April 2018 an individual of Indian nationality who had applied for refugee status, committed suicide at the East Japan Immigration Detention Center. One month before his death he had been denied provisional release. After this case there were 3 further suicide attempts in the same facility.

Many detainees have also complained about the problem of medical services. On 29<sup>th</sup> March 2014 an Iranian man and the on 30<sup>th</sup> March a Cameroonian man were withheld appropriate medical support and died. On 22<sup>nd</sup> November a man of Sri Lankan nationality also died due to lack of appropriate medical attention. On 25<sup>th</sup> March 2017 at the same East Japan Immigration Detention Center a Vietnamese man also died due to subarachnoid bleeding. He had complained of feeling unwell 1 week prior to his death but as he was not provided with appropriate treatment he died. It is very difficult to make clear the truth of deaths in the immigration detention centers. Currently there is no third party investigation into the situation, not even an investigation by the independent Immigration Detention Facilities Visiting Committee, merely a report filed by the immigration bureau. In Oomura Detention Center there is a man of Chinese nationality who is unable to move due to a hernia who is merely being treated with pain killers. He continues to be detained without any other treatment. If he continues in this way he fears that he may be disabled from this illness. In all the response of the immigration officers to those who are unable to endure detention is to continue to pressurize detainees by saying they have the choice to leave detention through returning to their home countries. It can be said that this detention which has no restriction in length and is decided purely at the discretion of the Immigration Bureau continues to place physical and psychological torture on detainees.

■ Suggested recommendations

- a. Ensure that detention of asylum seekers and undocumented migrants be the very last resort, and make a detention as shortest as possible.
- b. Establish a check system into a long-term detention, and give a priority to alternatives to detention.
- c. Guarantee the investigation and follow up by the Immigration Detention Facilities Visiting Committee
- d. Improve medical access in detention facilities of the Immigration Bureau

Prepared by Solidarity Network with Migrants Japan (SMJ)

Web news references:

<https://english.kyodonews.net/news/2018/04/f6336dc157d0-dozens-of-detainees-go-on-hunger-strike-at-japanese-immigration-center.html>

The Detention of Foreigners-Calling for the improvement of the system and its application/the continuous reports of death in the facilities/Lawyer Komai Chie

An Indian male was confirmed dead after being found in the shower room of the Higashi Nihon Immigration Center in April. He was discovered in a shower room unconscious with a towel around his neck. It is believed that he committed suicide due to the intensified hopelessness arising from the never-ending detention. Ever since the incident, there are continuous reports of attempted suicide in detention facilities of the Ministry of Justice, including at the same center as mentioned above, and as well as of the Tokyo Regional Immigration Bureau. These are not just suicide incidents, as the death of repeat detainees raises serious human rights issues.

There are around 1,500 detainees who have overstayed their permitted residence lengths and are held in detention facilities in Japan. Since there is no limit regarding the maximum number of days that one can stay for detention from the deportation order, there is a trend of prolonged stays. As the number of detainees, including the applicants applying for refugee status, is rapidly increasing, 13 cases of death have been reported since 2007.

In 2014, a Cameroonian male died at the same center (Higashi Nihon Immigration Center). He was suffering and struggling in his bed, writhing in pain on the floor, and fell down from his bed numerous times. However, he was not sent to the hospital for over 7 hours.

In 2017 a Vietnamese male died from subarachnoid bleeding at the same center. He vomited blood and fell down around one week before his death. Why was he not being sent to the hospital at the time?

There is also a report about a detainee from Turkey who was not sent to the hospital at the Tokyo Regional Immigration Bureau. The male suffered from appendicitis and peritonitis and was not heard, despite his continued reporting of pain for over 20 hours. According to the staff, they chose not to send the detainee to the hospital since there was nothing clearly abnormal from his outward appearance.

The above incidents are considered only the tip of the iceberg. There are many detainees who are suffering from serious diseases. Nevertheless, it is said that it is time consuming to get the request form for medical treatment at some detention facilities. For those not fully recovered after receiving treatment at these facilities, it is not unusual to see patients keep waiting to receive treatment from outside hospitals.

In addition to medicine, the living conditions of detainees are also extremely harsh. At the same center, the usage of air conditioners is limited. At the same time, hot showers are limited to only a few hours each day. Last month a lawsuit regarding a Turkey male hurt by staff worker at the Osaka Regional Immigration Bureau was filed. The male's right arm was broken in the incident.

Many of the detainees who are facing this harsh detention are asylum seekers. The long period of detention blocks them from connection to the outside world. Obviously, this severely hurts the chance of asylum seekers collecting evidence. Instead of concentrating on claims for reviews, asylum seekers are forced to concentrate on surviving. For those who come to Japan and seek for asylum status because they were tortured or persecuted in their home county, it is certain that the indefinite detention in Japan hurts them further, both physically and mentally.

The incidents have also been reported by international media. The system is also being questioned due to the extremely low asylum acceptance rates (lower than 0.2%). Organizing the Olympic Games, the focus of the world towards Japan is not limited to "Japanese omotenashi" (hospitality) in the performances and games. It is urgent to improve the detention system and its use.

The government should abolish this unnecessary and inappropriate "Detain All Principle" and establish an appropriate time limit for the detention. Japan should approve applicants for provisional release in a timely and flexible way. The system should also ensure that detainees can follow all necessary application procedures while maintaining their health.

A society which cannot protect the rights of the most vulnerable people is cannot guarantee the human rights of anyone. Those in Japan will realize this situation when they are driven into a disadvantaged position.

■ Issues and relevant recommendations in the previous cycle  
Rights of foreigners to receive public assistance and to appeal  
No recommendations in the previous concluding observations  
In violation of Articles 5 (a), 5 (e)-(iv) and 6 of the CERD Convention

■ Relevant paragraphs in the State party's report  
CERD/C/JPN/10-11, paragraphs 140 and 163

■ Implementation of the recommendations

■ Problems

Paragraph 140 of the above State party's report quotes Paragraph 135 of its report (CERD/C/350/Add.2) which states, "with regard to public assistance, that "as an administrative measure, identical protection ... is given, under the same conditions as for Japanese nationals, to [foreigners]".

Article 1 of the Public Assistance Act, however, restricts the application of the scheme to "citizens" and excludes foreigners who do not have Japanese nationality. The Government has maintained the position that foreigners do not have the right to claim public assistance, which is only a favor rather than an entitlement for them.

In addition, the Government does not recognize the right of foreigners to appeal against administrative decisions concerning public assistance, which is recognized for Japanese nationals, on the ground that public assistance is granted to them without legal basis; thus foreigners cannot seek for remedies when they are not satisfied with the decisions, including in court. While foreigners are legally entitled to make appeals under other social security schemes, only the public assistance scheme excludes them from the complaint system. (Question 6 of *Concerning the provision of public assistance to foreigners in need*, Notification issued by the Chief of the Social Welfare Bureau, the Ministry of Health, Labour and Welfare on 8 May 1954 [revised on 30 June 2014]; *Concerning the treatment of appeals from foreigners in relation to public assistance*, Notification issued by the head of the Protection Section, Social Welfare and War Victims' Relief Bureau, the Ministry of Health, Labour and Welfare on 15 October 2001)

The rights to appeal and to challenge decisions in court are indispensable from the right to receive public assistance. When foreigners are not allowed to appeal, being left without the means to remedy illegal and/or unreasonable decisions, it cannot be regarded at all that "identical protection ... is given" to them.

In the case lodged by a permanent resident in Oita Prefecture who had been rejected her application for public assistance, the Supreme Court dismissed the plaintiff's claim on the ground that the Public Assistance Act has the nationality clause, stating that "the Court does not find the grounds for interpreting that the Public Assistance Act currently in force applies directly or *mutatis mutandis* to certain categories of foreigners" and that "foreigners are not entitled to the protection under the Public Assistance Act and does not have the right to receive assistance under the Act".

The public assistance scheme is regarded as the last safety net in social security (the guarantee of the right to survive) in Japanese society. The exclusion from the scheme means that, in principle, foreigners do not have the right to survive in Japan.

Article 2 of the Public Assistance Act states, "All citizens may receive public assistance under this Act ... in a non-discriminatory and equal manner as long as they satisfy the requirements prescribed by this Act. The Government changed its previous position concerning the Act in 1990 and started to apply the Act *mutatis mutandis* only to foreigners who special permanent residents, who are listed in the Schedule

2 of the Immigration Act (permanent residents, long-term residents etc.) and who are refugees under the Act. Foreigners with other statuses of residence are virtually unable to receive public assistance even when they are in need, which represents discriminatory treatment contrary to the principle of equality between nationals and foreigners.

Although the former Public Assistance Act of January 1946 did not have nationality clauses, the Public Assistance Act of 1950, which is currently in force, provides that the Act applies to “citizens” and not to foreigners. One of the drafters explained that this was because “the scheme originates from Article 25 of the Constitution” and stated that “perhaps this issue should be explored in the light of the United Nations Charter and the Universal Declaration of Human Rights”. He went on to state that the nationality clause was introduced because the Immigration Control Ordinance, which was in force at the time, provided that “foreigners who are poor, vagrant, physically disabled, etc. and who may be burdens on the state or municipalities for their livelihood” shall be denied permission for landing in Japan and that such foreigners may be deported (KOYAMA Shinjiro, *Interpretation and Application of the Public Assistance Act* [commentary published in Japanese]).

The circumstances have changed, however, illustrated by the ratification of a number of international human rights treaties by Japan and the deletion of poverty and other factors from the grounds of deportation. It should be understood that the exclusion of foreigners from the scheme can be no longer justified.

With a view to making it possible for Japan to ratify the Convention on the Status of Refugees, legislative amendments were made in 1981 to remove the nationality requirements from the welfare and social security schemes. Consequently the nationality clauses were removed from the National Pension Act, the Child Allowance Act, the Child Rearing Allowance Act, the Special Child Rearing Allowance Act, etc. The nationality clause was not removed, however, from the Public Assistance Act. At the Diet, the Government explained why it did not amend the particular Act by stating: “Since the establishment of the scheme in 1950, public assistance has been granted in the same manner in effect to nationals and foreigners alike. With regard to the International Covenants on Human Rights, which was discussed previously, and the Refugee Convention currently under consideration, we consider that there are no barriers to the ratification of these treaties, because we treat foreigners in the same manner with nationals through administrative and budgetary measures” (the replies by a government delegate at the joint meeting of the Committees on Judicial Affairs, Foreign Affairs and Social and Labour Affairs of the House of Representatives, 27 May 1981). As a result, the Public Assistance Act is the only piece of legislation with the nationality clause in the social security and social welfare schemes, demonstrating that the Government does not treat foreigners in the same manner with nationals”.

In addition, the Immigration Bureau of the Ministry of Justice does not grant permanent resident status to foreigners who receive public assistance through “administrative measures”. The negative impact of the non-recognition of a right to receive public assistance thus contributes to discriminatory treatment.

■ Suggested recommendations

- a. Remove the nationality clauses in Articles 1 and 2 of the Public Assistance Act, with a view to recognizing the right of foreigners to receive public assistance.
- b. Grant public assistance to foreigners in need, regardless of their statuses of residence.
- c. Abolish the practice of refusing permanent resident status to foreigners who receive public assistance.

■ Prepared by Solidarity Network with Migrants Japan (SMJ)

■ Issues and relevant recommendations in the previous cycle

Trafficking in persons  
CERD/C/JPN/CO/7-9 paragraph 16

■ Relevant paragraphs in the State party's report

CERD/C/JPN/10-11 paragraphs through 55 to 71

■ Implementation of the recommendations

Not implemented

■ Problems

(a) In July 2017, the government accepted the Protocol to Prevent Trafficking in Persons, supplementing the UN Convention against Transnational Organized Crime. However, it claims that by the revision of Penal Code in 2005, criminalization of human trafficking has been completed, therefore it states that adopting specific legislation against trafficking in persons is not necessary. However, NGOs find legal flaws in regard to protection and restoration of rights of victims and prevention (cf. there is no legal platform for protection of male victims and preventive education at school, etc.). Therefore, they think that specific legislation including creating a specialized agency for trafficking in persons is necessary, so have been requesting the government to consider it.

The government has not ratified ILO Protocol of 2014 to the Forced Labour Convention, 1930.

(b) Human trafficking of foreign women still continues. Out of the 42 trafficking victims that the police agency identified in 2017, 14 were foreign women; 21 out of 46 in 2016, and 36 out of 49 in 2015. All of them were forced to work either as hostesses or as prostitutes in sex entertainment facilities. There are cases such as: (1) Seven women in Cambodia were tricked by sweet talk such as, "You can earn a lot if you work in Japan as hostesses," but upon arrival, were forced to prostitute in bars and the money they earned was confiscated. (2) Four Thai women were tricked by sweet talk such as, "You can go sightseeing in Japan for free," but upon arrival, a debt was imposed on them in the name of travel expenses, thus were forced to prostitute in "delivery health" (escort prostitution) to "pay back the debt" and the money they earned was confiscated. (3) Three Filipino women were fraudulently married to Japanese men and came to Japan, but upon arrival, their passports were taken away, they were forced to work as hostesses, and the money they earned was confiscated. As the 2020 Tokyo Olympic and Paralympic Games are approaching, there is a concern that human trafficking will increase as the purchase and sale of women will increase.

Preventive measures to address the root causes of trafficking are insufficient. When the victim is a child (under 18), the following acts are prohibited in the Anti-Child Pornography/Child Prostitution Law and the Child Welfare Act and are subject to punishment: prostitution; trafficking for the purpose of prostitution or production of child pornography; supply of child pornography; production, possession, and transportation of it in order to supply it; and simple possession, etc. However, when the victim is 18 years or older, perpetrators are in reality left unregulated. Sexual exploitation or human trafficking are rarely the subject of social education or school education.

(c) The government does provide support for acknowledged trafficking victims such as provision of shelters, granting status of residence including special permission for residence, support for returning to home country, etc. However, individual support for each victim such as economic support, extension of the period of stay, and change of residence status is insufficient. Also, establishing shelters for male victims has been on the agenda for a long time. Financial support for non-governmental support organizations is meager.

In the first place, victims are not provided with support unless they are properly identified as “victims,” however the government only acknowledges a very small portion of the actual victims. (Some NGO estimates there are 54,000 victims currently in Japan.) NGOs are excluded from the victim identification process, and although NGOs have repeatedly asked the government to include them in the process, the government does not intend to do so.

(d) Because penalties for perpetrators are generally light, they do not provide enough restraint or curtailment. Although most suspects of trafficking cases that the police arrest are indicted by the prosecutors, the punishment that the court hands out is rather light; most receive either jail time with suspended execution or only fines. For example, out of 20 perpetrators indicted in 2017, only 2 received actual jail time, while 9 received jail time with suspended execution and 6 only received fines (as of March 31, 2018, three are still in the trial process).

(e) Police Agency, Immigration Bureau, and Public Prosecutors Office provide training for their respective officials. However, the program is not provided for all the officials that may potentially deal with trafficking cases, and the training time is very limited. For the judges, there is barely some mention in the lectures provided by international law researchers who deal with various problems in regard to international laws. Therefore, foreigners who have violated immigration law, such as those who have overstayed, entered irregularly, etc., , even though they might be potential victims of trafficking, were sometimes treated as suspects and arrested for violation of the immigration law.

(f) JFC (Japanese-Filipino Children, mainly children born between Japanese men and Filipino women) are taken advantage of due to their eligibility to apply for the status of residence in Japan or Japanese nationality, and cases to recruit them and bring them to Japan are occurring. The government, during the period of 2013 through 2017, identified 28 JFC and mothers as trafficking victims. Also, there are cases to exploit foreigners with "student" visas by having them obtain the Certificate of Authorized Employment and making them work as a cheap laborer. One such laborer was identified as a trafficking victim.

Further, regarding the acceptance of foreign domestic workers that are being permitted only inside National Strategic Special Zones, caution should be taken due to the following risks that might lead to labor exploitation: possible harassment in the closed space of houses; possible inappropriate control of work hours and wages by the employer; workers being compelled to obey employers' orders because they could become illegal residents once dismissed.

■ Suggested recommendations

a Enact the “Act on Support for Victims and Prevention of Trafficking in Persons” (tentative name) that comprehensively prescribes support for trafficking victims and prevention of trafficking including eradication of the demand.

b Allow civil society organizations to take part in the identification process of the trafficking victims.

■ Prepared by Japan Network Against Trafficking In Persons (JNATIP)

■ Issues and relevant recommendations in the previous cycle

Refugee Applicants, further from protection of their human rights  
CERD/C/JPN/CO/7-9 paragraph. 23

■ Relevant paragraphs in the state party's report

CERD/C/JPN/10-11 paragraphs through 82 to 100

■ Implementation of the recommendations

Para.23 (a): Yes, but no improvement since the previous concluding-observation.

Para.23 (b): Yes, but no improvement.

Para.23 (c): Not implemented.

■ Effects of the implementation

Para. 23 (a): The Foundation for the Welfare and Education of the Asian People annually holds a Festival for Resettled Refugees in Japan.

Para.23 (b): The implementation of provisional stay permission introduced by the 2005 amendment has been limited, which only one-tenth undocumented refugee applicants were given this permission. Only limited number of refugee applicants have been benefited from MOJ-NGO cooperation in housing for refugee applicants at ports. As a result, almost all refugee applicants at ports found themselves in prolonged immigration detention.

■ Problems

**1. Destabilization of stay and detention of asylum seekers**

All irregular migrants including refugee applicants are in severe situations. Refugee applicants without residence status at the time of refugee application shall remain irregular throughout the refugee application procedures. Although granting a temporary stay permission suspends deportation procedures, less than 10 percent of the relevant refugee applicants were able to receive the permission. Now many refugee applicants are forbidden to work, despite limited public support for refugee applicants. Some refugee applicants reportedly face immigration detention before receiving a decision at the first instance.

Restrictions on residence status and work permit, which applied to only refugee applicants without residence status at the time of refugee applications, have extended to refugee applicants with regular migrant status since September 2015. Lives of an increasing number of refugee applicants become unstable during the refugee procedures.

In March 2017, trials to promote the return of asylum seekers to their home countries were launched, in which subsequent refugee applicants are basically not permitted for provisional release.

Even if a provisional release were permitted, strict surveillance on movement of those with provisional release permission including cases suspected of infringement of privacy rights, is carried out. A number of migrants were reportedly re-detained for breaching provisional release conditions. For example, not a few cases were reported that migrants were raided on house, were investigated receipts and interrogated on their illegal work. One migrant with provisional release permission was reportedly re-detained after he made ex-post report of the address change to the immigration authorities. His detention continued over 2 years. He remained in detention at the time of this report.

Furthermore, refugee applicants are forced to make a choice if he/she is certainly detained in Japan



or return to his/her home country where he might have a small chance to avoid persecution, and he/she choose to return to a country of persecution.

## **2. Discrimination on the basis of country of origin**

Refugee applications are reportedly dealt in discriminatory manner based on his/her country of origin at application reception of local immigration services. If a refugee applicant is found to be from such countries as the Philippines, Nepal or Indonesia, he/she are advised that he/she would not be given an update for any current residence status during the refugee recognition procedures and be strongly encouraged not to apply for refugee status.

It is suspicious that refugee status recognition is also implemented in discriminatory manner based on country of origin, whether from a friendly country of the Government of Japan or not. While there have been over 6,000 refugee applications made by persons from Turkey including Turkish Kurds, not a single person has yet been given refugee status.

## **3. Stateless**

Regarding the accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and introduction of a stateless determination procedure, no progress has been seen since the previous recommendation.

### **■ Suggested recommendations**

- a. Stop detention of refugee applicants that suspected of indirectly violating the principle of non-refoulement.
- b. Ensure that detention of asylum seekers is used only as a measure of last resort and for the shortest possible period.
- c. Facilitate alternative measures to detention for refugee applicants.
- d. Develop a statelessness determination procedure to adequately ensure the identification and protection of stateless persons.
- e. Accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.

**■ Prepared by Japan Lawyers Network for Refugees**

<ul style="list-style-type: none"> <li>■ Issues and relevant recommendations in the previous cycle <ul style="list-style-type: none"> <li>Ethno-religious profiling of members of Muslim communities</li> <li>CERD/C/JPN/CO/7-9 paragraph 25</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>■ Relevant paragraphs in the state party's report <ul style="list-style-type: none"> <li>CERD/C/JPN/10-11 paragraph 142</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>■ Implementation of recommendations <ul style="list-style-type: none"> <li>Not implemented</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>■ Problems</li> </ul> <p>In 2010, documents regarding investigations into terrorism, believed to have been produced by the third foreign affairs division of the Metropolitan Police Department's public security bureau, were released on the internet. It became clear from the leaked documents that Japanese police had been performing surveillance on every Muslim in Japan and those from Muslim majority countries who reside in Japan. The surveillance involved the MPD systematically collecting private and confidential information.</p> <p>The MPD admitted the leaked documents "contained information highly likely to have been handled by out staff" and practically admitted that they were internal documents on December 24th, 2010. Concerning the 2014 judgment of the lawsuit against the national and Tokyo prefectural government in regards to the illegality of profiling, its investigations and leakage of said documents; the court admitted to the fact that the documents were of the MPD and that the Japanese police had been surveilling all Muslims as well as all those from Muslim countries who lived in Japan. The High Court upheld this admission, and the Supreme Court also did not overturn it.</p> <p>However, the Japanese government has denied the fact that any surveillance had taken place, on the 10th and 11th combined periodic reports by the government, stating that the police "in fact, do not perform surveillance on Muslims of foreign origin, which may constitute as ethnic or ethno-religious profiling"(para142). Apparently, the government does not have any countermeasures against activities that it "does not do", so it hasn't done anything to ensure that its law enforcement officials do not rely on the ethnic or ethno-religious profiling of Muslims.</p> <p>As judicial decisions in regards to the aforementioned lawsuit, the court issued their first and second instances of the judgement which stated that surveilling all Muslims as well as all those who are from Muslim countries who lived in Japan and systematically collecting confidential private information is necessary in order to prevent the occurrence of international terrorism. The supreme court upheld this ruling in 2016.</p> <p>In addition, it is apparent that Japanese police have been continuing their surveillance of Muslims from the fact that there have been many witnesses of the policemen who revealed their identity in many places such as mosques.</p>

■Suggested recommendations

- a. Facilitate guidelines which prohibit surveillance using ethnic or ethno-religious profiling and collection of confidential private information of Muslims.
- b. Make all law-enforcement officials know that it is unacceptable to use ethnic or ethnographic-religious profiling.
- c. Observe the Convention as judicial standard in court.

■Prepared byJunko Hayashi, Attorney at Law

Web news article:

<https://www.aljazeera.com/news/2016/06/top-court-green-lights-surveillance-japan-muslims-160629040956466.html>

<p>■ <b>Issues and relevant recommendations in the previous cycle</b>          Buraku discrimination          CERD/C/JPN/CO/7-9 paragraph 22</p>
<p>■ <b>Relevant paragraphs in the State party's report</b>          D/C/JPN/CO/7-9/Add.1, paragraph 22 (Situation of the Burakumin)</p>
<p>■ <b>Implementation of the recommendations</b>          While the following two of the four recommendations have been partly implemented, the others have not been implemented.</p> <p>■ <b>Impact of the implementation</b>          Since the expiration of the Act on the Dowa Special Measures in 2002, certain administrative measures have been taken to resolve the socio-economic problems faced by the Burakumin within the general administrative framework. In addition, the Act on the Promotion of the Elimination of Buraku Discrimination was adopted in December 2016, which has led to the issuance of the circulars by several central ministries concerning the measures conducive to the elimination of Buraku discrimination. The Social Welfare Act was amended to integrate discrimination issues into local welfare plans, giving <i>Rimpokan</i> (settlement houses) more active roles in the elimination of discrimination. Debates are currently underway concerning surveys on the actual situation of Buraku discrimination.</p> <p>With regard to the issue of illegal access to family registries, criminal administrative sanctions have been imposed on the concerned research agencies as well as administrative scriveners and other legal professionals who have been involved in such cases.</p>
<p>■ <b>Problems</b></p> <ol style="list-style-type: none"> <li>1. Since the Government has not changed its official position that Buraku discrimination is not covered by the ICERD, the State Party's report itself has no reference to Buraku discrimination.</li> <li>2. The relevant administrative measures have been taken separately by several ministries, including the Ministry of Justice, the Ministry of Education and the Ministry of Health, Labour and Welfare, which means that consistent development and implementation of the policies has not been necessarily ensured.</li> <li>3. There has been no discussion concerning the definition of the Burakumin. Due to its nature as an act listing the relevant principles, the Act on the Promotion of the Elimination of Buraku Discrimination does not define the Burakumin, either.</li> <li>4. Those who are affected by discrimination has not been given effective opportunities to participate in the debates concerning how the surveys on the actual situation of Buraku discrimination under the Act on the Promotion of the Elimination of Buraku Discrimination should be conducted. Although such surveys are to be conducted concerning the public attitude on discrimination issues, discriminatory information on the Internet and concrete cases of Buraku discrimination, the current prevailing view is that the relevant socio-economic indicators are not to be covered in such surveys in spite of the reference in in the previous concluding observations of the CERD Committee, which is a problem.</li> <li>5. In spite of the amendment to the Social Welfare Act, requiring that the role of <i>Rimpokan</i> (settlement houses) in dealing with discrimination issues should be mentioned in local welfare plans, some municipalities have failed to do so, neglecting their duties to take measures</li> </ol>

conducive to the elimination of discrimination.

6. Buraku discrimination has an aspect of the exclusion of the Burakumin from employment and marriage, resulting from discriminatory attitudes and prejudice; for this purpose, individuals are sometimes subjected to personal background inquiries to know whether they are Burakumin or not. In recent years, it has been observed that the location of Buraku districts or the addresses and contact numbers of individual Burakumin are publicized on the Internet. One of the main perpetrators has taken moving images of Buraku images and uploaded them on a video hosting website. While civil proceedings are underway against him, he has not obeyed the court orders that these kinds of information and images should be removed because they constitute the acts of promoting discrimination.

#### ■ Suggested recommendations

- a. Modify its interpretation of the concept of “decent”, with a view to apply the ICERD to the issues of Buraku discrimination.
- b. Establish a comprehensive coordinating body on the Buraku issues within the Cabinet Office.
- c. include surveys to collect disaggregated data on the socio-economic conditions of living among the Burakumin when conducting surveys on the actual situation of Buraku discrimination as per stipulated in the Act on the Promotion of the Elimination of Buraku Discrimination.
- d. Promote the effective implementation of the Social Welfare Act at the municipal level, so that *Rimpokan* (settlement houses) can play their roles in the elimination of Buraku discrimination
- e. Take more effective measures, including legislative ones, to curtail the act of making the location of Buraku districts public.

■ Prepared by Buraku Liberation League

\*\* Act on the Promotion of the Elimination of Buraku Discrimination follows in the next page.

## **Act on the Promotion of the Elimination of Buraku Discrimination**

Adopted by the Diet on 9 December 2016

### (Purposes)

Article 1 In the light of the fact that Buraku discrimination still exists even today and that the situation of Buraku discrimination has been changed along with the increased use of information technologies, and given the importance of the challenge to eliminate Buraku discrimination on the basis of the recognition that such discrimination is not acceptable in line with the principles of the Constitution of Japan, which guarantees the enjoyment of fundamental human rights for all citizens, the present Act aims at promoting the elimination of Buraku discrimination, by establishing the basic principle and defining the responsibilities of the State and local governments in relation to the elimination of Buraku discrimination as well as by providing for the consolidation of advisory mechanisms and other measures, thereby realizing a society free from Buraku discrimination.

### (Basic principle)

Article 2 The measures concerning the elimination of Buraku discrimination shall be taken with a view to realizing a society free from Buraku discrimination, by seeking to improve the understanding of each and every citizen on the need to eliminate Buraku discrimination, in accordance with the principle that all citizens shall be respected as unique individuals who enjoy fundamental human rights on an equal basis.

### (Responsibilities of the State and local governments)

Article 3 (1) In accordance with the basic principle set out in the preceding Article, the State shall be responsible for taking measures concerning the elimination of Buraku discrimination as well as for providing necessary information, guidance and advice for the promotion of such measures by local governments.

(2) In accordance with the basic principle set out in the preceding Article, local governments shall seek to take measures, consistent with their local conditions, concerning the elimination of Buraku discrimination on the basis of appropriate division of roles with the State and in collaboration with the State and other local governments.

(Consolidation of advisory mechanisms)

Article 4 (1) The State shall take measures to consolidate mechanisms to respond to requests for advice and support concerning Buraku discrimination in appropriate ways.

(2) Local governments shall seek to take measures, consistent with their local conditions, to consolidate mechanisms to respond to requests for advice and support concerning Buraku discrimination in appropriate ways, on the basis of appropriate division of roles with the State.

(Education and awareness-raising)

Article 5 (1) The State shall conduct necessary education and awareness-raising in order to eliminate Buraku discrimination.

(2) Local governments shall seek to conduct necessary education and awareness-raising, consistent with their local conditions, in order to eliminate Buraku discrimination, on the basis of appropriate division of roles with the State.

(Surveys on the actual situation of Buraku discrimination)

Article 6 With a view to contributing to the implementation of the measures concerning the elimination of Buraku discrimination, the State shall conduct surveys on the actual situation of Buraku discrimination in collaboration with local governments.

<Supplementary provision>

The present Act shall come into force as from the day of promulgation.

<Supplementary Resolution>

The Government should pay attention to see to it that measures for the elimination of Buraku discrimination under the present Act widely reflect various understanding of the issue existing among different generations and actual conditions of each local community, while making efforts at appropriate and careful operation of the present Act towards the realization of society free from Buraku discrimination to be achieved through the promotion of the elimination of Buraku discrimination as the purpose of the present Act.

<unofficial translation by IMADR>

<p>■ <b>Issues and relevant recommendations in the previous cycle</b>  Surveys to understand the actual situation of Buraku women  CERD/C/JPN/CO/7-9 paragraph 22  CERD/C/PER/CO/18-21 paragraphs 6 (b) and 22 of</p>
<p>■ <b>Relevant paragraphs in the State party's report</b>  D/C/JPN/CO/7-9/Add.1, paragraph 22 (Situation of the Burakumin)</p>
<p>■ <b>Implementation of the recommendations</b>  Not implemented. See CERD/91st/FU/GH/SK/ks, paragraph 22.</p>
<p>■ <b>Problems</b></p> <p>Buraku women have suffered from different forms of disadvantages because of belonging to the Buraku community and of being women.</p> <ol style="list-style-type: none"> <li>1. Surveys to understand the actual situation of Buraku women had not been conducted under the Act on the Dowa Special Measures, which had been in force for 33 years. In order to make themselves visible, Buraku women conducted their own questionnaire survey in 2005 and found out their status in the fields of literacy, employment, discrimination and domestic violence. 1,405 women from the Buraku community took part in the survey.</li> <li>2. Similar surveys were conducted by the Ainu women and Korean women residents. These surveys, conducted by the women belonging to minority and indigenous communities who had been invisible for long years, as well as the efforts to lobby on the Diet members and the Government on the basis of the findings, made the existence and status of minority women in Japan visible, albeit to a limited degree.</li> <li>3. Before these surveys were conducted, the CERD Committee had adopted its General Recommendation 25 on Gender Related Dimensions of Racial Discrimination, recommending the States Parties to understand the actual situation of the exercise by women of their civil, political, social, economic and cultural rights, with a view to dealing with the special situation of the women belonging to disadvantaged communities in appropriate ways.</li> <li>4. When the CEDAW Committee considered the State Party's reports of Japan in 2003 and 2009, it recommended Japan to conduct a comprehensive study on the situation of minority women. Nevertheless the Government has never conducted such surveys. When Japan's report was considered by the CEDAW Committee in 2016, the Government did not submit the relevant data in this regard; at present, it has no plans to conduct such surveys.</li> <li>5. As a result of the lobbying efforts by minority women, the Government confirmed, for the first time, the needs to recognize the difficult situation of minority women and to create an environment for them to live with a sense of safety and security, in the Third Basic Plan for Gender Equality (Priority field 8) in 2010. Thereafter, however, specific measures have not been taken to fulfill the needs, including surveys to understand their actual situation; there are no plans to do so, either.</li> <li>6. In December 2016, the Act on the Promotion of the Elimination of Buraku Discrimination was adopted and came into force. The Act is a piece of legislation listing relevant principles, consisting of three pillars (human rights education, advisory services and surveys on the actual situation). The Government has not indicated specific plans for surveys on the actual situation,</li> </ol>



which is one of the three pillars of the Act. The Foreign Resident Survey, published by the Ministry of Justice in March 2017, was based on the findings from the questionnaire survey of the foreigners living in 47 municipalities across the country; gender-specific figures are not provided under any of the survey items, however. Given this, gender-specific statistics and analysis should be provided under all the survey items in official surveys on the Buraku community in the future, as is explicitly indicated in the above-mentioned General Recommendation 25.

7. According to a survey conducted by Buraku women and researchers in 2010-2012, 68% of single mothers from the Buraku community had experienced domestic violence during marriage. The survey also found that the rate of low-level education is higher among the single mothers from the Buraku community than the national average among single mothers, while their annual household income is less than the national average among single mothers. According to the calculation by the Osaka Prefectural Office in 2011, undertaken on the basis of the administrative data, the proportion of the single mother households on public assistance in the total number of households was higher in the Buraku community. Since the Dowa Policy Council Report was issued in 1965, measures have been taken in the fields of welfare, health, medical services and protection for “mothers and children”, including the establishment of social welfare facilities and the measures to improve public health, in response to the demands from Buraku women. After the termination of the Dowa Special Measures in 2002, however, the measures to support persons in need within the general policy framework have not reached Buraku women; efforts have not been made to involve them in the implementation of these measures.
8. Buraku women have been involved in the development of the relevant local ordinances and in the relevant councils, proposing that specific measures for Buraku women should be integrated in general administrative measures. This has been limited to some municipalities, however; there are few opportunities for minority women to be involved at the national level.

■ Suggested recommendations

- a. Acknowledge that the intersection of racial discrimination and gender discrimination brings about multiple forms of discrimination and difficulties among Buraku women, Korean women residents, indigenous women and migrant women, in reference to the CERD GR 25..
- b. Collect data on social and economic indicators, disaggregated by gender and other factors.
- c. Conduct surveys on the actual situation of the Buraku community promptly and publish gender-specific findings in accordance with the provision of the Act on the Promotion of the Elimination of Buraku Discrimination.
- d. Develop and implement measures to remedy the disadvantages suffered by Buraku women and indigenous minority women as a result of discrimination, ensuring that the views of minority women are reflected in the development of such measures.

■ Prepared by IMADR (International Movement Against All Forms of Discrimination and Racism)

<p>■Issues and relevant recommendations in the previous cycle</p> <p>Recognition of the people of Ryukyu/Okinawa as indigenous peoples  CERD/C/JPN/CO/7-9 paragraph 21  Article 29, Declaration on the Rights of Indigenous Peoples</p>
<p>■Relevant paragraphs in the State party's report</p>
<p>■Implementation of the recommendations: not implemented</p>
<p>■Problems</p> <p>Upon the return of facilities/land areas where U.S military exclusively uses in Japan, the Government of Japan exempts the U.S. military from the responsibility of returning the area to its original state<sup>1</sup>. The U.S military does not provide all record regarding the use of the lands, including possible contamination that they returned to the Government of Japan. Therefore, the people of the Ryukyu/Okinawa know about serious contamination of their lands only after the lands are returned from the U.S military and they start to develop those lands. Under the circumstance, the people of the Ryukyu/Okinawa who use those lands are revealed to risks of their health without knowing serious contamination.</p> <p>One of the examples is that 108 discarded drums with the logo of an herbicide manufacturer, thought to be abandoned by the U.S. military were discovered until today from June 2013, at a soccer field that was returned to Japan by the Kadena Air Base in 1987. The Government of Japan conducted an onsite inspection and it was found out that the soccer field was seriously contaminated by various toxic substances, such as dioxin, PCB and PCB. Also, concentrated dioxin, 2,4,5-T which is highly toxic and one of the two elements to consist defoliant and the most toxic dioxin, 2,3,7,8-TCDD were found from the drums. It was confirmed by environmental experts that the highly dioxin had been continuously leaking from the drums to the soccer field for a long time.</p> <p>Although the Government of Japan removed contaminated soil after an inspection, any examination on influence of the contamination to the local citizens has not been conducted. Also, participation by the local citizens in Okinawa in all the land recovery processes has been eliminated.</p> <p>Moreover, In August 2013, a U.S. Air Force rescue helicopter from Kadena Air Base crashed in Camp Hansen near a dam in Ginoza which is a source of drinking water for the people living in Ginoza. However, onsite investigation request by the Okinawa Prefecture nor Ginoza City a to check water safety in the Dam by the crash was not allowed. As a result, it took more than a year to restore the water intake from the Dam. As this case demonstrates, a water source that is essential to the Okinawan people faces a constant risk of contamination caused by U.S. military activities.</p> <p>In addition, in 2016, it was revealed that perfluorooctanesulfonate (PFOS) was discovered in rivers near U.S Kadena Air Base that feed water to the Chatan Water Treatment Plant and a well within the Base<sup>2</sup>. Even though Kadena Air Base was urged to stop using PFOS-tainted products, the ingredient is still being recorded, and no on-site investigations have been conducted to date. In response to this, the Okinawa Prefectural Government had to put a halt to the water intake from</p>

<sup>1</sup> U.S.-Japan Status of Forces Agreement Article 4 Item 1

<sup>2</sup> <http://english.ryukyushimpo.jp/2016/02/02/24468/>

one of the rivers. The Okinawa Prefectural Government requested an onsite investigation of the airbase however, their request has not been approved. The Okinawa Prefectural Government conducted a survey throughout in 2016 on PFOS contamination of water sources around the U.S military bases in Okinawa. According to the mid-term report, PFOS contamination was found around a spring near U.S Marine Corps Futenma Air Station.

Furthermore, DDT which is highly toxic and banned in Japan, was detected recently from the soil of the Northern Training Area of U.S military which was returned to the Government of Japan in December 2016. The Government of Japan conducted an examination of the contaminated soil and said that the soil and the water environment are relatively good, according to the examination. However, the Government of Japan has failed to take any effective measures to ensure the people of Ryukyu/Okinawa of their right to know about any possible contamination information on their land and participate in decision making process of them.

In order to protect the right to life and health of the people of Ryukyu/Okinawa and ensure them of their right to participate in decision making processes of their land, the principle of Free, Prior, and Informed Consent (FPIC) is an indispensable component.

■Suggested recommendations

- a. Ensure that the people of the Ryukyu/Okinawa hold the right to access information regarding the contamination of the land and the environment, in accordance with the Article 29, Declaration on the Rights of Indigenous Peoples.
- b. Ensure the right to health, as well as the right to the safe and sustainable environment of people of Okinawa thoroughly through the prior consultation and agreement through the principle of Free, Prior and Informed Consent (FPIC).

■prepared by All Okinawa Council for Human Rights

■Issues and relevant recommendations in the previous cycle

Violation of Ryukyuan/Okinawan People's Right to Self-determination.  
CERD/C/JPN/CO/7-9 paragraph 21

■Relevant paragraphs in the State party's report

CERD/C/JPN/10-11 paragraphs 34, 35 and 36

■ Implementation of the recommendations

Not implemented

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1. The Government of Japan has had the authority to formulate the budget for the Promotion and Development of Okinawa. Yosuke Tsuruho, Minister of State for Okinawa and Northern Territories Affairs, said that progression in the construction work of a U.S. marine base at Henoko will be influencing the amount of the Okinawa development budget. In fact, the government budget plan for Fiscal Year 2017 had a substantial reduction of 20 billion yen (approximately 180,000,000 US dollars), about 6% compared with the initial budget for Fiscal Year 2016. The misuse or abuse of budget formulation authority has become a problem.

2. Currently the Government of Japan refuses to recognize the people of Ryukyu/Okinawa as indigenous people, and the government insist that Ryukyuan/Okinawan People have enjoyed the right as same as other Japanese People, and no special protection to them are necessary.

■Problems

1. Violations of the economic, social and cultural rights including the right to development.

Since 1972, the Government of Japan has had the authority to formulate the budget for the Promotion and Development of Okinawa in order to realize the Plan for the Promotion and Development of Okinawa. In this formulation of the budget, structurally, a large weight is placed on public work projects for a long time.

First, Priority on public work projects made big amount of public sector oriented construction industries in Okinawa, But those are so dependent and weak to promote Okinawan economic development.

Second, budgets for education and welfare of prefecture and municipal governments are not enough. The result of lack of budgets, relative poverty rate in Ryukyu/Okinawa is 34.8%, almost twice as high as Japanese average, 18.3%.(1)

Particularly in recent years, the misuse or abuse of budget formulation authority has become a problem. He has threatened to reduce the policy budget for Ryukyu/Okinawa's development if there is continued opposition to the U.S. military base. This clearly violates the right to self-determination of the people of Ryukyu/Okinawa.

2. Refusal to recognize the people of Ryukyu/Okinawa as indigenous people.

Currently the Government of Japan refuses to recognize the people of Ryukyu/Okinawa as indigenous people, and does not acknowledge their rights to land and natural resources which constitute the "ancestral territories". Nor does it give special protection to them.

### 3. Non-respect to the Free Prior Informed Consent (FPIC) principles

In November 2014, the current governor who was elected based on his electoral pledge to oppose the Henoko base construction, has cancelled the approval of the previous governor. Then a lawsuit was brought by the Government of Japan to invalidate this cancellation, and the Supreme Court has ruled for the claims of the Government of Japan, deciding that the cancellation was invalid. The Japanese Supreme Court completely failed to consider the right to ancestral territories recognized in international human rights law, and also failed to acknowledge the need to form consensus based on the FPIC principle. No Judicial remedy are possible in this case.

### 4. Human rights violation by disrespecting the FPIC principles regarding the Ryukyuan/Okinawan people's ancestral territories

- i) The construction of the U.S. Marine Corps Osprey's landing site in Kunigami village of Takae ward.
- ii) The construction of base for the Japanese Self Defense Force (SDF) in Yonaguni island.
- iii) The plan to build a SDF base in Ishigaki island and Miyako islands.

### ■ Suggested recommendations

1. Improve the decision-making process to be more inclusive concerning the people of Ryukyu/Okinawa's economic, social and cultural development. move the authority of formulation national budgets for Okinawa Promotion from central government to Okinawa Prefecural Government.
2. Recognize the rights of the people of Ryukyu/ Okinawa to ancestral territories, and fully comply with the Free, Prior and Informed Consent (FPIC) principles.

### ■ Prepared by All Okinawa Council for Human Rights

(1) Kensaku Tomuro, "poverty rate, working poor rate, children's poverty rate, capture rate in each prefecture in Japan". Yamagataigaiku Jinbunkenkyunempo, No13, Mach2016, pp33-53.

■Issues and relevant recommendations in the previous cycle

Human rights/rights of children in Ryukyu/ Okinawa are not guaranteed equally as in other areas in Japan

CERD/C/JPN/CO/7-9 paragraphs 6, 11 (e), 17, 21, 24, 26 (a) (b)

■Relevant paragraphs in the State party's report

Problems of sexual violence to young women →9 to 16

Problems of education →34 to 36, 122, 126, 157, 198 to 200, 202 to 210

■Implementation of the recommendations

Paragraph 17: Partially implemented.

Paragraph 21: Not implemented.

■Problems

A. Discrimination against Okinawa under presence of the U.S. military bases is reflected on the fact that the protest of the parents against the flight of the U.S. military aircrafts is totally ignored. They are demanding discontinuation of the flights because of sequential occurrences of part falling from the U.S. military aircraft in 2017 in Ginowan City. The signatures to a written request exceeded 130,000 but the flight of the U.S. military aircrafts has continued even after the series of accidents. It will not be surprising if another accident occurs at any time. The clear zones defined by the U.S. safety criteria is being observed in the U.S. or other countries, but to surprise, the clear zone of Marine Corps Air Station (MCAS) Futenma is densely populated with the buildings including educational facilities (See Reference 1 to 8). Robert B. Nellar, Commandment of the Marine Corps, said decisively that nobody had resided near Futenma, which was against the fact that the U.S. military had seized Okinawans' traditional ancestral land since 1945. The MCAS Futenma should be immediately and unconditionally closed so that it will never cause any more casualties in the future.

A problem on the poverty of children in Ryukyu/ Okinawa has remained unresolved after the Battle of Okinawa due to a 27-year absence of child welfare, along with the harmful effects of the U.S. military bases. Since the Government, relying on private sectors, has not taken fundamental measures against the poverty of children, even now, many children cannot take enough foods or appropriate medical care in Okinawa. The efforts to support places protecting children after school have not been made sufficiently. In addition, child abuse and neglect occur due to economic difficulties. The survey performed at a juvenile detention center showed 34.8% of the detainees who had grown under the condition of "neglect" and "letting alone" by their parents (2014). In 2013, child abuse occurred in 348 cases, including 143 (41.4%), 24 (6.9%), 59 (17.0%) and 122 (35.0%) of physical, sexual, psychological abuses and neglect (negligence/refusal of childcare), respectively.

B. The Government should conduct a detailed survey on actual situation of sexual violence that has frequently occurred in Okinawa since the end of the war, and should take measures against the situation. The voices of the victims have not been sufficiently heard. In Okinawa, the age of women who work in the sex industry has been remarkably lowered, and the early childbearing rate has been elevated. 22 of 159 female high school students found to be pregnant or have given birth left voluntarily their school (14%). The pregnancy rate of the teenagers was 2.6% (2014) in Okinawa, twice the national average (1.3%). The Cabinet Office has started to discuss establishment of places specific for young pregnant women. It is required to monitor the above activity so that the funding is provided to persons concerned with administrative responsibilities.

Schools can play a uniquely important role for every child, but in fact, have a tendency to remove a certain type of children.

- C. Okinawan children have the right to receive education of Ryukyuan languages, history of the Ryukyu Islands etc., which respects for the life and peace, but the Government has not yet guaranteed their rights as indigenous people. Ryukyuan languages have been disparaged as dialects, using “a dialect tag” effectively before/after the war, but now, approved by two international organizations, UNESCO and SIL International, as independent languages. In spite of that, Ryukyuan languages are not still taught at school. Quite the contrary, lately, the ruling party proposed English education at school by the U.S. military. The Government should take historical responsibility for the critical situation of Ryukyuan languages.

■Suggested recommendations

- a. Initiate negotiation on flights of the U.S. military aircrafts over educational facilities including nurseries and schools including strict observance of the clear zones defined by the AICUZ program.
- b. Promote establishment of places for protecting young women exposed to sexual violence and perform surveys such as detailed hearing.
- c. Promote school education emphasizing on the human rights/rights of the Okinawan children, including those as indigenous people.

■Prepared by All Okinawa Council for Human Rights

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<ul style="list-style-type: none"> <li>■ Issues and relevant recommendations in the previous cycle Rights of the people of Ryukyu/ Okinawa as indigenous people CERD/C/JPN/CO/7-9 paragraph 21</li> </ul>
<ul style="list-style-type: none"> <li>■ Relevant paragraphs in the State party's report: CERD/C/JPN/10-11 paragraphs 34, 35 and 36</li> </ul>
<ul style="list-style-type: none"> <li>■ Implementation of the recommendations The Government of Japan refuses to recognize the people of Ryukyu/ Okinawa as indigenous people. Prime Minister Shinzo Abe does not accept that Ryukyu was an independent kingdom.</li> </ul>
<ul style="list-style-type: none"> <li>■ Problems Although the Government of Japan expressed the view that “[t]hose who live in Okinawa prefecture or natives of Okinawa are of the Japanese race, and generally, in the same way as natives of other prefectures, they are not considered to be a group of people who share biological or cultural characteristics under social convention, and therefore, we do not consider them to be covered by the Convention”<sup>1</sup>, it has not provided objective grounds for its view. While the Government recognized the Ainu as indigenous people, a unique ethnic group different from ethnic Japanese, it has not provided any explanation regarding the different position towards the people of Ryukyu nor any standards to recognize indigenous people.</li> </ul> <p>Ryukyu had been an independent kingdom until the Government of Japan annexed it by force in 1879. The Ryukyu Kingdom had concluded treaties with the Governments of U.S., France and the Netherlands. When it annexed the Ryukyu Kingdom, the Government of Japan held a view that the people of Ryukyu belonged to a different race from Japanese. In protest to the annexation by Japan, the people of Ryukyu called for help by sending a letter of appeal to Western States and China. Later Japan planned to split and govern Ryukyu together with China, but the plan aborted due to the objection of China. After the annexation, the Government of Japan implemented the assimilation policy in order to eliminate the identity of the people of Ryukyu, by wiping out their languages, history, culture and belief. While the Japanese government and society demanded Ryukyu to assimilate, the people of Ryukyu have not been treated equally, but rather discriminated against in society as an inferior group.</p> <p>In the final stage of the Pacific War, Japan had the ground battle against the Allied Forces in Ryukyu. Consequently, over 25% of the population of Ryukyu died. Cultural heritages, historical cities and villages, landscapes, historic documents, which Ryukyu had developed over hundreds of years, were lost. During the Battle of Okinawa (Ryukyu), the Imperial Japanese Army banned the use of the Ryukyu languages and killed those who violated this rule. A great number of the people of Ryukyu lost their lives during the War, when the Army killed them for suspecting them as spies, subjected them to forced labor, seized their food, and forced them out of shelters. The Army took the land that belonged to the people of Ryukyu to build military bases, many of which have not been returned yet. Those areas became U.S. military bases and facilities as well as the</p>

<sup>1</sup> Comments of the Japanese Government on the Concluding Observations adopted by the Committee on the Elimination of Racial Discrimination on March 20, 2000, regarding initial and second periodic report of the Japanese Government, Paragraph 1.(2).a, <https://www.mofa.go.jp/policy/human/comment0110.html>

bases of the Japan Self-Defense Forces. After the War, Japan gained its independence by placing Ryukyu under the U.S. military's control.

Currently, the Government of Japan is constructing a new U.S. military base in Henoko in the Nago city. During the Battle of Okinawa, the U.S. military put the people of Ryukyu to the Ourasaki camp, where hundreds of the people of Ryukyu lost their lives, but there has been no investigation or burial as of today. The U.S. military constructed the Camp Schwab on the site after the War. The Government of Japan is constructing a new base there, which is built on the remains of the people of Ryukyu who were killed in the War. While in the Iwo Island, the Prime Minister Abe declared that the Government will recover the remains of those killed in the War by removing the base's runway. The differentiated treatment of the remains of the dead clearly demonstrates discrimination against the people of Ryukyu.

Despite the opposition from the people of Ryukyu to the decision to deploy Ospreys to the U.S. Marine Corps Futenma airbase, the Government of Japan went ahead with the decision in 2012. In the press conference for his resignation, the then-Minister of Defense, Satoshi Morimoto said, “[w]hile there is no military reason to put U.S. military bases in Okinawa (Ryukyu), they are stationed due to a political reason”. Since then, there have been incidents caused by the U.S. military such as crashes of Osprey and U.S. military aircrafts, fallings of U.S. military helicopter's parts, including a window frame which fell over an elementary school and a nursery near U.S. military base. Yet, there has been no proper investigation to determine the cause and accountability. U.S. military aircrafts, including those which dangle goods for training purposes, fly over civilian residences on a daily basis, exposing the residences to the constant risk of being destroyed by dropped goods.

Japanese police officers made hateful remarks against the people of Ryukyu protesting for the construction of U.S. military helipads in Takae in 2016, where they called the protesters “*Dojin*” and “*Shinajin*”<sup>2</sup>. However, the Government of Japan failed to recognize those terms as discriminatory, and even some politicians defended the police officers in question. This kind of deliberate omission to such discriminatory practice is unthinkable in other parts of Japan. The document “*A Master Narratives Approach to Understanding Base Politics in Okinawa*” prepared by the U.S. Central Intelligence Agency (CIA) also describes discrimination against Okinawa by the Government of Japan.<sup>3</sup>

The people of Ryukyu have been discriminated against as described above. The United Nations Educational, Scientific and Cultural Organization (UNESCO) recognized Ryukyu as a group with unique languages and culture. The Japanese government's claim, that “*they are not considered to be a group of people who share biological or cultural characteristics under social convention*”, cannot be accepted.

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<sup>2</sup> “Dojin” is a discriminatory word which means “primitive people” with highly negative implications such as “backwards” and “uncivilized”. “Shinajin” is a derogatory term to call Chinese people.

<sup>3</sup> <http://app.okinawatimes.co.jp/documents/cia20180528.pdf>

Moreover, the Government expressed the view that “[w]e know that some people claim that the population in Okinawa is a different race from the Japanese race; however, we do not believe that this claim represents the will of the majority of the people in Okinawa”<sup>4</sup>. However, the loss of identity is a result of the assimilation policy by the Government of Japan in the annexation in 1879. At the same time, the Government divided the Ryukyu society by creating conflicts of interest through influence-peddling. The assimilation policy, politics of influence-peddling and measures to divide the society are the reasons why some people in Ryukyu/ Okinawa cannot have their identity as the people of Ryukyu and be supportive to the Government’s policy.

■ Suggested recommendation

- a. Recognize the people of Ryukyu as indigenous people, and respect, protect and promote their human rights in accordance with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

■ Prepared by the Association of Indigenous Peoples in the Ryukyus (AIPR)

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<sup>4</sup> Comments of the Japanese Government on the Concluding Observations adopted by the Committee on the Elimination of Racial Discrimination on March 20, 2000, regarding initial and second periodic report of the Japanese Government, Paragraph 2.(1), <https://www.mofa.go.jp/policy/human/comment0110.html>

<p>■ Issues and relevant recommendations in the previous cycle</p> <p>Rights of the Ainu as indigenous peoples CERD/C/JPN/CO/7-9 paragraph 20</p>
<p>■ Relevant paragraphs in the State party's report</p> <p>CERD/C/JPN/10-11 paragraphs through 18 to 33</p>
<p>■ Implementation of the recommendations</p> <p>Not implemented</p>
<p>■ Problems</p> <p>Currently, the Government of Japan plans to open the Symbolic Space for Ethnic Harmony in Hokkaido on April 24, 2020, which will accommodate the National Ainu Museum and a memorial facility for the dead. The government aims to develop a new policy on indigenous peoples for the Ainu including an enactment of law to define “Who are the Ainu” before the opening in 2020.</p> <p>With the forthcoming Tokyo Olympic and Paralympic in 2020, the Ainu Association of Hokkaido has worked on different programs relating to the rights of the Ainu peoples including the procedures of FPIC (free and prior informed consent) in the use of lumbers with international forest endorsement, promotion of SDGs (sustainable development goals), and the promotion of the revision of domestication of two international FSCs and PEFC/SGEC (Program for the Endorsement of Forest Certification Scheme/Sustainable Green System Council). It is important to have solid foundations on which we continue our efforts to achieve a mutually complementary and socially inclusive agendas.</p> <p>Legal definition of who the Ainu are is expected to help improve living conditions and human rights situations of the Ainu.</p>
<p>■ Suggested recommendations</p> <p>a. Realize the rights of Ainu people to land and resources based on the revised international forest endorsement system taking into the CERD General Recommendation 23 of 1997 as well as the ILO Convention 169 Indigenous and Tribal Peoples Convention, and through sufficient dialogues with Ainu Peoples.</p> <p>b. Ratify the ILO Convention 169.</p> <p>c. Protect the rights of the Ainu Peoples as prescribed in the article 5 of the ICERD as per recommended in Paragraph 20 of CERD/JPN/CO/7- 9 of 2014. .</p>
<p>■ Prepared by the Ainu Association of Hokkaido</p>

<p>■ Issues and relevant recommendations in the previous cycle Minority languages and text books CERD/C/JPN/CO/7-9 paragraph 24</p>																
<p>■ Relevant paragraphs in the State party's report CERD/C/JPN/10-11 paragraph 166 (<a href="#">CERD/C/JPN/3-6</a> paragraphs 124-132)</p>																
<p>■ Implementation of the recommendations Not implemented</p>																
<p>■ Problem</p> <p>1. Concerns of foreign parents about their children's education</p> <p>The `Analytical Report of the Foreign Residents Survey (Revised Edition)` was published in March 2017. According to it, the Ministry of Justice commissioned a public interest incorporated foundation called the `Center for Human Rights Education and Training` to grasp the human rights situation of foreigners. The Report was submitted to CERD. In response to the question - <i>"Is there anything that you desire or worry about in relation to your children's education?"</i>(2.6.2), those living with children answered the followings<sup>1</sup>.</p> <p>Extracted number from respondents who are living with their children n=1551 (multiple answers allowed)</p> <table border="1"> <tr> <td>1. I am worried if they will be able to keep up in class because their Japanese ability is insufficient.</td> <td>272 (17.5%)</td> </tr> <tr> <td>2. They only use Japanese at school, and can no longer use their native tongue/language. I want facilities where they can learn their native tongue/language.</td> <td>517 (33.3%)</td> </tr> <tr> <td>3. I am worried because I don't know how to get my children into school. I need guidance to learn more about the Japanese school system.</td> <td>189 (12.2%)</td> </tr> <tr> <td>4. I want my children to go to or beyond high school in Japan.</td> <td>500 (32.2%)</td> </tr> <tr> <td>5. I am worried that my children will be bullied or teased at school because of their name (real name) or nationality etc.</td> <td>630 (40.6%)</td> </tr> <tr> <td>6. I want the government to set specialists in multicultural education and human rights education in schools.</td> <td>549 (35.4%)</td> </tr> <tr> <td>7. Nothing special.</td> <td>302 (19.5%)</td> </tr> <tr> <td>8. Other</td> <td>92 (5.9%)</td> </tr> </table> <p>The above table shows that foreign parents have various serious concerns regarding their children's education. In particular, over 30% of the respondents expressed concerns on the mother tongue education in their answers (answer 2), and over 40% of them expressed worries about bullying in their</p>	1. I am worried if they will be able to keep up in class because their Japanese ability is insufficient.	272 (17.5%)	2. They only use Japanese at school, and can no longer use their native tongue/language. I want facilities where they can learn their native tongue/language.	517 (33.3%)	3. I am worried because I don't know how to get my children into school. I need guidance to learn more about the Japanese school system.	189 (12.2%)	4. I want my children to go to or beyond high school in Japan.	500 (32.2%)	5. I am worried that my children will be bullied or teased at school because of their name (real name) or nationality etc.	630 (40.6%)	6. I want the government to set specialists in multicultural education and human rights education in schools.	549 (35.4%)	7. Nothing special.	302 (19.5%)	8. Other	92 (5.9%)
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<sup>1</sup> Ministry of Justice, *Spreadsheet for the Foreign Residents Survey*, <http://www.moj.go.jp/content/001221783.xlsx> (available in Japanese)

answers (answer 5).

## 2. The absence of State policy on education of mother tongues

In the paragraph 128 of the 7th to 9th periodic reports, the Government reported that “[i]ncidentally, learning about native languages, native cultures, etc. can also be included in extracurricular activities. Several local governments are implementing such activities in practice”. In fact, only a few local governments implement such activities. Moreover, many of the implementing local governments do not have sufficient financial support, therefore the management of mother tongue education is unstable. For example, the Osaka prefecture and the Osaka city provide “ethnic classes” in public schools for children with foreign roots including Zainichi Koreans where they can study their mother tongues and cultures after school. However, in recent years those classes have been under pressure to close down or downsize. A number of legislators who deny the education of mother tongues, have also contributed to such pressure. The Government needs to guarantee the education of mother tongues as a right of children of foreign roots.

## 3. Shortfalls in the State policy on the bullying issues

In the ‘Basic Policy for the Prevention of Bullying’ (Revised in March 2017), the Government (Ministry of Education, Culture, Sports, Science and Technology (MEXT)) states, “taking account that children with foreign backgrounds such as those returned from abroad, foreign children, and children of international marriage often face difficulties in school education due to linguistic and cultural gaps, (the Government) promotes understanding about those children among teachers, school children and guardians, and a school as a whole pays close attention and provides necessary support to them, in order to prevent bullying due to those differences”. Yet, it does not address the differences in those children’s country of origin or ethnicity. Moreover, concrete measures such as the ‘Emergency Survey on the Situation of Addressing the Bullying Issues (2011)’ and the ‘Guideline on Investigating Grave Cases of Bullying (2017)’ do not refer to children with foreign backgrounds.

Such absence of measures have profound impacts in schools. For example, in 2010, a girl in the 6<sup>th</sup> grade of elementary school with a Filipina mother and a Japanese father in the Gunma prefecture committed suicide due to bullying. Newspapers reported that she was told by other children that “[y]our mother is like a gorilla”, “(you are) gross”, “(you) stink” etc. Her mother also spoke that the cause of the bullying was “because I am gajjin (foreigner)”. However, since her school and the city took a position that the bullying cannot be identified as a direct cause for the suicide, the deceased's family brought a lawsuit against the city, the prefecture and the families of perpetrators. 6 years later, it reached a settlement in 2017 for the deceased's family to receive a consolation payment. During the trial, the deceased's family was subject to online abuses. Supporters of this lawsuit pointed out that the refusal of the school and the public administration to recognize discrimination against foreigners is a cause for this incident.

## 4. Weak systematic support for schools for foreign children

National schools and international schools (hereafter schools for foreign children) are important options

for foreign children and their guardians, due to aforementioned concerns. However, the systematic support for schools for foreign children is weaker in comparison to private Japanese schools which are recognized under Article 1 of the Basic Act on Education. In the paragraph 132 of the 7th to 9th periodic reports, the Government claims that it respects the autonomy of schools for foreign children, which are categorized as “miscellaneous schools”. In other words, the Government’s position is that “you can found a school, but the Government will not offer its support”. The operation of schools for foreign children is undergoing difficulties which negatively impact the children’s right to education.

\*Additional resources for the issue of schools for foreign children:

- Solidarity Network with Migrants Japan (2017), *NGO Information on Migrants and Asylum Seekers for the UN Human Rights Committee, 121st session: List of Issues Prior to Reporting, Japan*, page 25-27,  
[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fLCS%2fJPN%2f28279&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fLCS%2fJPN%2f28279&Lang=en)
- NGO Network for the Elimination of Racial Discrimination Japan (ERD Net, 2014) , *Civil Society Report on the Implementation of the ICERD*, page 36-39 (‘*Education of Minority Children – legal status of schools for foreign children*’),  
[http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT\\_CERD\\_NGO\\_JPN\\_17538\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_NGO_JPN_17538_E.pdf)

■ Suggested recommendations

- a. Conduct a regular survey on the status of education for foreign children
- b. Adopt a national policy measure on mother tongue education
- c. Include racial and ethnic discrimination in the measures against bullying issues
- d. Strengthen the institutional support for schools for foreign children, at least to the same level of Japanese public schools

■ Prepared by Solidarity Network with Migrants Japan (SMJ)/ Korea NGO Center)

■ Issues and relevant recommendations in the previous cycle

The right to education for children of foreign nationalities and those with foreign backgrounds

■ Relevant paragraphs in the State party's report : N/A

■ Problems

**1. The non-inclusion of foreigners in compulsory education leading to possible deprivation of the right to education**

The Ministry of Education, Culture, Sports, Science and Technology (MEXT) declares that “*Japanese public elementary and secondary schools accept foreign children free of charge if they wish to enter them, and the opportunity of receiving the same education as Japanese students is guaranteed to foreign children, while compulsory education is not imposed on foreigners*”. In effect, children with foreign nationalities are excluded from the scope of compulsory education, and therefore their right to education as rights-holders is not guaranteed.

According to an article in Nihon Keizai Shimbun dated March 13, 2016, the school enrolment status of 16% of foreign children aged 7 to 14, or 13,000 children was found to be “unknown” in the 2010 national census. This proportion is considerably higher than the 0.01% of Japanese children with an ‘unknown’ status. About 430 of the foreign children, or 0.55 % of the total group, responded that they were not enrolled in schools. In addition, within the unknown category, there may have been many children who were not enrolled in school despite being school age. It is usually up to the local governments to check the enrolment of all children of compulsory education age. However, since children of a foreign nationality are considered not to be within the scope of compulsory education, many local governments fail to check the status of their school enrolment.

As evidence, “*Foreigners are excluded from the survey*” is written in the footnotes of a survey sheet for unenrolled school age students as part of the ‘School Basic Survey’, conducted every year by MEXT.

**2. Lack of support for children of foreign nationalities and foreign backgrounds to receive sufficient education**

The number of children who need additional Japanese language lessons has been increasing since the start of the MEXT survey in 1991. In 2016, 60% of children with foreign nationalities, whose age corresponded to the age for compulsory education, were enrolled in public schools in Japan. Among them, approximately 35,000 children needed additional Japanese language lessons, amounting to 40% of foreign children enrolled in Japanese public schools. After more than 25 years since the survey started, there is still a considerable number of foreign children who are fluent in conversational Japanese but have difficulties in learning activities. They are often thought to have a limited learning ability. This indicates that the large majority of schools, which “*treat foreign children in the same way as Japanese children*” are not being able to take into account foreign children’s language and learning abilities, in order to guarantee their right to education. In addition, the number of Japanese children with foreign backgrounds who need Japanese coaching is increasing in recent years.

While MEXT has developed the curriculum to overcome this situation, it is difficult to state that such curriculum is widely used, except in cities with research institutions including universities, areas with a large population of foreigners, or a “special area” where education for foreigners has long existed. The current educational support by the Government and local municipalities can significantly differ depending on where children live.

In 2014, a “special education course” that provides special support services, when necessary, was created, but over 80% of municipal education boards have responded that preparation is necessary to introduce the course in practice. This means that the MEXT’s policy is not sufficient for foreign



children, and consideration is not given to their linguistic, cultural or ethnic particularities when they are learning in Japanese schools. Also, because of the absence of the idea that these children have the right to education, incidents such as the following have been happening since the 1990s.

Furthermore, children of foreign nationalities and those with foreign backgrounds who may have disadvantages in learning skills including Japanese language are usually considered ineligible for enrolment in senior high schools for not being able to complete the courses.

### **3. Deportation of migrant children who were born, brought up and educated in Japan**

There have been deportation orders given to migrant children born and/ or raised in Japan who desire to receive education in Japan. The Immigration Bureau's measures to strip the children's right to education based on immigration status are concerning. For example, currently a Peruvian woman and her two teenage children are appealing against the deportation order which has been issued by the Osaka Regional Immigration Bureau. The mother and children are hoping to be granted special residence permission on humanitarian grounds.

The parents entered Japan with fake passports bearing another person's name, and they married in Japan. Their two children were born and raised in Japan (15 years-old and 14 years-old when the family brought a case). The children are attending a high school and a junior high school.

In 2011, the husband was arrested under suspicion of violating the Immigrant Law. In 2012, all family members were ordered to leave the country by the Osaka Regional Immigration Bureau. The family tried to get the deportation order overturned but they lost their case at the Supreme Court in 2015. The following year the father was deported to Peru.

The children have never visited Peru, and they have received education only in Japan. While they consider continuing their education in Japan, their case is pending in the court. Their lives are unstable due to the deportation of the father. Given their age, it is nearly impossible for them to receive education in Peru, as it is unknown to them. Such situation would cause them immeasurable despair.

#### **■Suggested recommendations**

- a. Prevent the non-enrolment of children of foreign nationalities at the compulsory education stage, take legislative measures, such as including foreign children in the survey form for non-enrolled school age children, and provide for a system in which education boards around the country and each school can accept foreign children under the same conditions as Japanese children, thereby guaranteeing the children's right to education.
- b. Guarantee the right to education for children of foreign nationalities and those with foreign backgrounds, by developing curricula that address language abilities and learning skills such as Japanese language teaching and retention of native languages. For this purpose the Government should train and assign experts to implement the curricula in every school in Japan.
- c. Take measures that prioritize the best interests of the child, such as regarding treatment of families in cases of undocumented migrant children.
- d. Take measures to guarantee that children of foreign nationalities and those with foreign backgrounds are not excluded in their access to the secondary education due to their disadvantages in Japanese language and other learning skills.

**■Prepared by Yukari Enoi, Osaka University**

## **16% of foreigners' school enrolment is "Unknown". Many not responded to the 2010 national census**

The Nikkei Newspaper, 21:26 13 March 2016

The analysis of the Kyodo News revealed on 13<sup>th</sup> March that 16% of foreign children aged between 7 to 14 years old, approximately 13,000 children, were put in the category of "unknown" for their status of school enrolment in the 2010 national census. While this was due to their non-response to the census, the difference from 0.01% for Japanese children under the category "unknown" is significant. It highlighted the difficulties for a survey targeting foreigners.

Outcomes related to foreigners from the 2010 census, the most up-to-date statistics, were extracted and analyzed by the Kyodo News.

The census asked respondents to choose from "enrolled in school", "graduated" or "not enrolled in school" regarding education. It asked whether a child was attending a kindergarten or a nursery if she/he was not enrolled in school. Those who left this question unanswered were recorded as "unknown", according to the Statistics Bureau's Population Census Division in the Ministry of Internal Affairs and Communications.

Nationalities which had a high rate of "unknown" were Peru (15.91%), Vietnam (14.93%) and China (14.63%). About 430 people (0.55%) responded that their child aged between 7 to 14 years old was "not enrolled in school" nor attending a kindergarten or an equivalent institution.

Experts on the education issues for foreign residents in Japan consider that the reasons for not-responding to the census included that some could not understand the meaning of the census or they were concerned about facing disadvantages. The experts also believe that there is a high possibility that those respondents did not answer about school enrolment, since their school age children were not attending an elementary school or junior high school.

Normally, local municipalities inquire about all school age children's status of school enrollment in their area. However, many local municipalities do not inquire about foreign children's school enrollment status as they are exempt from the obligation to enroll in school. Therefore over 10,000 foreign children's status of school enrollment is unknown throughout Japan. [Kyodo]

■ Issues and relevant recommendations in the previous cycle

Korean women residents and multiple forms of discrimination

CERD/C/JPN/CO/7-9 paragraphs 6 (b) and 17

CERD General Recommendation No. 30 on discrimination against non-citizens

■ Relevant paragraphs in the State party's report: N/A

■ Implementation of the recommendations: Not implemented.

■ Problems

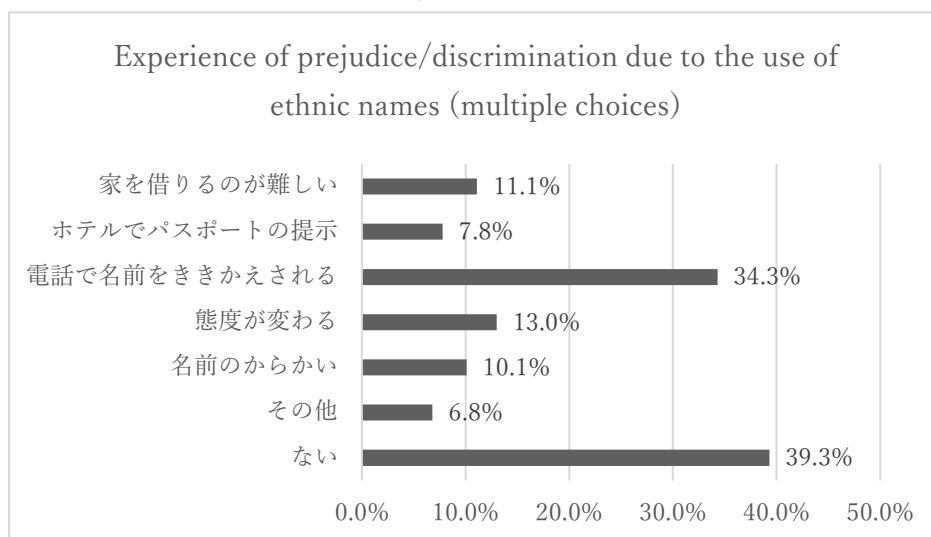
Korean women residents, a minority group in Japan, are subject to multiple forms of discrimination in their lives, namely discrimination on the grounds of their ethnicity and gender. The Government has never conducted surveys on the actual situation of Korean women in Japan, and their voices have hardly been reflected in official policies. The Government has not paid attention to the challenges faced by Korean women nor adopted targeted measures to solve their problems, stating that their situation can be assessed through the national census and that their issues are covered by the Basic Plan for Gender Equality. While APRO has organized biennial negotiations with the relevant ministries, in cooperation with other minority and indigenous women, the government officials have not listened to the demands of the minority women at all therefore no improvements have been achieved.

With a view to make the actual situation of Korean women in Japan visible, which has been made invisible within the general policy framework due to the lack of seriousness on the part of the Government of Japan with regard to racial discrimination, APRO conducted a survey in 2016, the second survey conducted by the affected community themselves, and published a report of the findings. 888 questionnaires were returned from Korean women in 22 prefectures. The age groups of the respondents ranged from teens (1.9%), twenties (15.9%), thirties (12.8%), forties (17.9%), fifties (24.9%), sixties (14.9%) to over seventies (6.6%). Their nationalities were divided into the Republic of Korea (71.7%), "Korea" (17.3%; indicating that they or their ancestries were from the Korean Peninsula and not necessarily means that they are nationals of the Democratic People's Republic of Korea) and Japan (10.1%). The main findings are as follows:

1. Names (both family names and given names) are linked to discrimination on the ground of ethnicity.
  - Since it is difficult in Japanese society to identify themselves with their ethnic names, which reveal their origin, approximately 80% of the respondents use Japanese-style names in their daily lives.
  - In response to the question asking whether or not they "realize that there is discrimination against Korean residents in Japan" when they identify themselves with their ethnic names, the respondents replied as follows: "I think so" (38.3%), "I think so a bit" (26.7%), "I don't think so very much" (18.5%) and "I don't think so" (5.3%).
  - This means that 65% of the respondents recognized that the use of ethnic names is linked to discrimination on the ground of ethnicity. It is because the use of ethnic names continues to lead to discrimination and disadvantages up until today. The followings are some examples of such forms of discrimination:
    - "I was told that Koreans cannot become tenants" (respondent in forties)
    - "When I identified myself with my real (ethnic) name [at an interview for a job], they got very inquisitive and, eventually, made sarcastic and abusive remarks and physical expressions

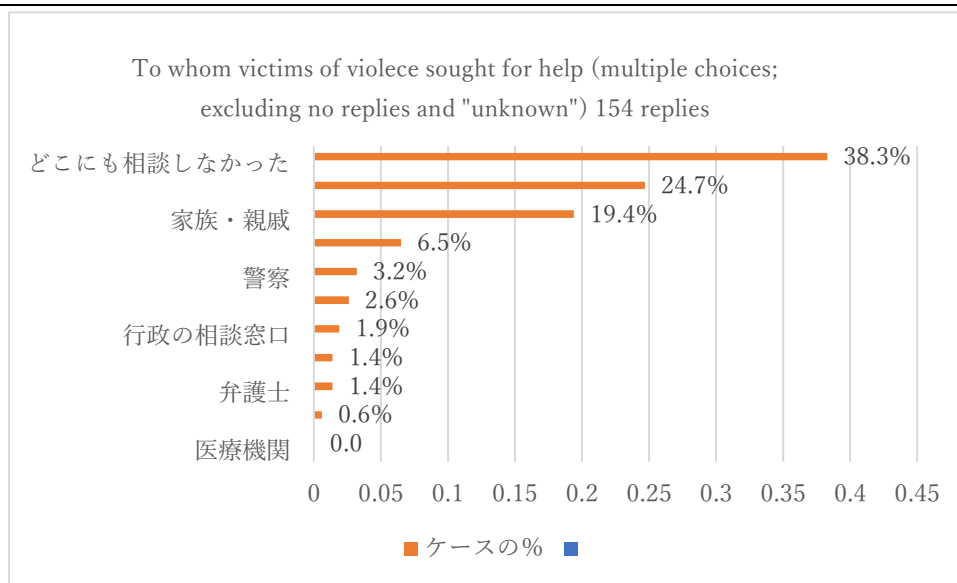
explicitly and without disguise” (respondent in fifties)

- “When [a Japanese neighbor] asked me, ‘What is your Japanese name?’ and I answered, ‘I don’t have that’, the neighbor blamed me, saying, ‘It’s strange, you usually have Japanese names. Korean names are hard to pronounce. You should use Japanese names’” (respondent in fifties)
- As these examples show, they have experienced discrimination because of the use of their ethnic names. Korean residents often start to use Japanese-style names instead of their ethnic names when they seek for employment and work, which indicates difficulties for them to use their ethnic names in public life. Even those with Japanese nationality are subject to discrimination as foreigners if they identify themselves with ethnic names that reveal their origin. Many Korean residents in Japan have led their lives under Japanese-style names instead of their ethnic names because they do not want to be subject to prejudice and discrimination against them, which has continued since the colonial period. The Government of Japan has not taken any measures to address this issue.



(from the top to down) Difficult to become tenants / Need to show passports at hotels / Asked to repeat the name on the phone / Change of attitudes / Teasing about the name / Others / No experience

2. About 40% of the respondents who had experienced violence “did not seek for help to anyone”. In response to the question about second victimization (N=370), 4.1% of the respondents answered that they had experienced it. They are deterred from using the relevant services because they had experienced offensive responses from counselors or were not able to obtain useful information and advice when they sought for help before. In addition to the isolation caused by violence, Korean women in Japan face lack of effective services to which they can seek for help with security; even if there are public services for providing advice and help, it is very difficult for them to make use of.



<from the top to down> Did not seek for help to anyone / Friends and acquaintances / Families and relatives / Others / Police / Women's centers / Administrative advisory services / Privately-run advisory services / Attorneys-at-law / Toll-free helpline / Medical institutions  
Proportion (%) of the victims

3. Korean women suffering from the mental anguish and disadvantages brought on by the multiple effects of discrimination on grounds of ethnicity and gender in the workplace. Around 40% of them had experienced some form of discrimination because of their ethnic origin or nationality. Korean women, who decided to live using their real (ethnic) names to fight back against racial discrimination that is prevalent in Japan, were faced with near coercion to use Japanese-style names. They were asked whether they used Japanese names, or whether it would be better if they did. A teacher was criticized by her colleague when she changed her Japanese-style name to her ethnic name. The survey revealed other concrete cases of discrimination based on nationality or for having graduated from ethnic (Korean) schools. For example, a home-visit care staff heard unpleasant comments about her nationality at the homes she visited. A sales staff was asked by a client if she was a North Korean spy. There were other cases of women unable to take exams, because they only had Korean school diplomas. Another was asked repeatedly which country she was from, although her application form did not inquire about her nationality. The massive distribution and prevalence of discriminatory texts such as anti-Korean or anti-Chinese publications was also pointed out. Some had heard humiliating comments from their clients discriminating them on the ground of their ethnicity.

4. The Government of Japan, faced with a labor shortage due to decreasing birthrate and ageing population in the society, became interested in using women as labor force, and created the "the Headquarters for Creating a Society in which All Women Shine" in 2014 under the policy of promoting women's participation in the labor market. In 2016, the Act on Promotion of Women's Participation and Advancement in the Workplace was enacted. This Act, however, has no policy addressing the multiple forms of discrimination in the labor market mentioned above. The Government is completely indifferent to the situation of minority women including Korean women in general, and repeats the view that there are no problems, since minority women are included in

the Act, as well as the Basic Plans for Gender Equality. Yet these have been formulated with the majority women in mind. It has been repeatedly pointed out by CERD, that the problems particular to minority women cannot be resolved or improved in this way.

■ Suggested recommendations

- a. Conduct surveys on the actual situation of the living conditions including work conditions and human rights status among women belonging to Korean and other minority groups. Prompt measures should also be taken to consolidate and publish the information that can be obtained by processing the already available statistics and data.
- b. Human rights education and training should be provided for the staff of the relevant public services to provide advice and help, particularly in terms of multiple forms of discrimination against minority women, so that these women can seek for help at ease when they face difficulties in life and human rights violations (including, among others, verbal abuse and other forms of multiple discrimination). Minority women should be heard in this process.

■ Prepared by APRO Korean Women's Network in Japan

<p>■Issues and relevant recommendations in the previous cycle</p> <p>Returnees from China      relevant articles of the Convention: art. 1 art 5 (d) ii, art 2 (c)</p>
<p>■Relevant paragraphs in the State party's report      None</p>
<p>■Implementation of the recommendations      None</p>
<p>■Problems</p> <p>1, "Returnees from China" means former War-displaced Japanese in the North West part of China (Manchuria) around joining of former Soviet Union Army to the war against Japan, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> generations of the displaced Japanese who returned to Japan, their spouses and the children by them of previous marriages. "War-displaced orphans in China" and "War-displaced women in China, etc." are the 1<sup>st</sup> generation of returnees from China after they returned to Japan. The number of the 1<sup>st</sup> generation who returned by Japanese national expense is approximately 6700, calculated by the Japanese Ministry of Social Welfare. The total number of returnees from China and the families is about seventy thousand, calculated from the result of research of actual condition of War-Displaced Japanese in China, etc. by the Japanese Ministry of Social Welfare. However, the Association for War-displace Japanese in China, Returnees from China and the Families (hereafter, the Association) can estimate one hundred and twenty thousand people from the experience of the Association's assistance for the returnees' procedure of immigration and learning of Japanese language.</p> <p>2, In September 1931, the Army of Japan made the Manchurian Incident and the Army established a puppet administration "Manchuria" in the North Western China in March 1932. Japanese immigration to Manchuria was done along formal decision of Cabinet of Japan in 1936. The government of Japan promised with Japanese immigrants that Army of Kanton, a part of army of Japan will protect the Japanese immigrants when the army of the Soviet Union, the China National Party, or the China Communist Party would attack Japanese immigrants in China. Nonetheless, the Army of Kanton in Manchuria withdrew from there to Korea without protecting of Japanese immigrants in May 1945. Therefore, when the Former Soviet Union declared war against Japan, the Japanese immigrants in China must to begin to go back to the big cities of China and Japan by themselves, and the elders dropped off from the Japanese immigrants groups. Many Japanese children at that time were sold to Chinese residents or left the children with Chinese residents.</p> <p>3, The government of Japan after April 1952, occupation by the United Nations, made diplomatic relation between China National Party in Taiwan and China Communist Party was thought as enemy of Japan. Therefore, displaced Japanese were deserted by Japan. Diplomatic relations between Japan and Mainland China was restored in 1972. Research visit to Japan of "War-displaced orphans" by the government of Japan began in 1981 from pressured by assistance groups for displaced Japanese and the former immigrants big scaled return to Japan was delayed. The government of Japan has called Japanese who were not sure their identities and were under 13 years old in 1945 as "Displaced Orphans". They were treated as objects of return project to Japan. On the other hand, the government has called Japanese who were more than 13 years old in 1945 as 'Displaced Women, etc.'" and the government thought displaced women has stayed in China because of their will to stay in China. Displaced women were not recognized as objects of return project by the government.</p>

In 1993, 12 “displaced women” enforced return to the Narita Airport, Japan and asked for abolishment of condition that a guarantee is necessary for residing in Japan and consent by a blood relation on return to Japan. This incident led to the legislation of “Act to promote smooth return of War-displaced Japanese in China, etc., and to assist self-help living after return to reside in Japan permanently (hereafter, the Assistance Act)” in 1994. However, this condition of guarantees for the 1<sup>st</sup> generation of returnees continues to be obligated for return to Japan for residing in Japan permanently as of July, 2018.

4, Concepts of descent and lineage in the International Convention of Elimination of Racism and Discrimination (hereafter, the Convention) also means language of the group of persons. Discrimination to Returnees from China by general Japanese is same as that to the other linguistic minorities in Japan. Index of discrimination to returnees from China is their language; Chinese. It is common that Japanese residents recognize a person’s nationality in front of the Japanese from the person’s language. The Japanese people can recognize the true nationality of persons in front of them only when the foreign nationals show their passports or residents cards. The government research of returnees’ real condition had been practiced 11 times and the result shows nationalities of returnees are 4 patterns, Japanese nationality, Chinese nationality, Non-nationality, and double nationalities of Japan and China.

5, Approximately 60% of 1<sup>st</sup> generation of returnees from China are on social security reportedly by real condition research by Government of Japan. Moreover, life assistance pay is paid to the 1<sup>st</sup> generation by the Government along the amended assistance act, 2007. Amendment in 2007 was led by national compensation suits of the 1<sup>st</sup> generation of returnees. Apprehension of the 1<sup>st</sup> generation was not their life after retirement but lives of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> generations. The amended assistance act describes necessity of assistance for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> generations. However, an officer of Ministry of Social Welfare pointed out that Assistance for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> generations is obliged by local municipalities, at the time of the 2007 amendment. There are scattering among local governments’ assistances for the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> generation of returnees and many of the 1<sup>st</sup> generations are on social security as of July 2018.

There is property gap between returnees and general Japanese and assistance groups receives information that immigration bureaus in Japan tend to set the term of resident qualification only 1 year for poor returnees. This practice seems de facto racial discrimination and violation of the Convention.

■Suggested recommendations

- a. Protect returnees from China as a descent in the Article 1 of the Convention from the discrimination by majority in Japan.
- b. Abolish the condition that requires guarantees when the 1<sup>st</sup> generation of war-displaced Japanese intend to permanently return to Japan.
- c. Guarantee a more stable resident qualification for returnees from China more stable resident qualification, which is distinct from general control of foreigners.

■Prepared by the Association for War-displaced Japanese in China, Returnees from China to Japan and the Families.



## List of Participant Groups in the NGO Report

Japan NGO Network for the Elimination of Racial Discrimination, ERD Net

The International Movement Against All Forms of Discrimination and Racism (IMADR)

Japan Network towards Human Rights Legislation for Non-Japanese Nationals & Ethnic Minorities

Solidarity Network with Migrants Japan (SMJ)

The Japan Civil Liberties Union (JCLU)

Human Rights Association for Korean Residents in Japan

Korea NGO Center

Center for Minority Issues and Mission

Buraku Liberation League (BLL)

The Ainu Association of Hokkaido

Association of Indigenous Peoples in the Ryukyus (AIPR)

National Network for the Total Abolition of the Pension Citizenship Clause

Japan Network Against Trafficking In Persons (JNATIP)

Japan Lawyers Network for Refugees

Asia-Pacific Human Rights Information Center

Hyogo Association for Human Rights of Foreign Residents

Kanagawa MINTOREN

All Okinawa Council for Human Right (AOCHR)

APRO Korean Women's Network in Japan

Association for War-displaced Japanese in China, Returnees from China to Japan and the Families

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