



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Eighty-fifth session

Summary record of the 2310th meeting

Held at the Palais Wilson, Geneva, on Thursday, 21 August 2014, at 10 a.m.

Chairperson: Mr. Cali Tzay

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The meeting was called to order at 10.05 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Seventh to ninth periodic reports of Japan (CERD/C/JPN/7-9; CERD/C/JPN/Q/7-9; HRI/CORE/JPN/2012) (continued)

1. *At the invitation of the Chairperson, the delegation of Japan took places at the Committee table.*
2. **Mr. Kono** (Japan), replying to questions posed on the previous day concerning hate speech, said that the definition to be found in articles 4 (a) and (b) of the Convention was open to broad interpretation and its incorporation into penal law could lead it into conflict with the Japanese Constitution, which guaranteed freedom of expression. It was for those reasons that Japan had issued reservations when acceding to the Convention. Nevertheless, the subject of hate speech had been included in leaflets promoting respect for human rights and in workshops and training on human rights delivered to civil servants.
3. Concerning the incident involving the Korean school in Kyoto in 2009, four people had been prosecuted and convicted of obstruction of business and defamation. Racist insults and defamation were punishable under criminal law. The police presence at the time of the incident, as shown on the video, was to ensure the safety of the public and not to protect the demonstrators. Prime Minister Abe had stated that speeches that sought to exclude certain nationals or groups were unacceptable and damaging to Japan's relations with the international community. The Government intended to deal firmly with the issue of hate speech.
4. People born or residing in Okinawa were not perceived to be racially different from those on the Japanese mainland and therefore their treatment was not subject to consideration under the Convention; they were nevertheless free to practice their own religion and language and Japan recognized and promoted their rich traditions and culture. The social and industrial development gap between Okinawa and the mainland had steadily improved, while ownership of the Okinawa Promotion and Development Plan was gradually being handed over to the Okinawa Prefecture.
5. Japan had taken a number of measures to combat human trafficking, including implementation of an action plan, while support for victims was provided by the police, the immigration bureau and women's, children's and employment services. Technical training and internships had been provided to persons in developing countries. There had been evidence of misconduct by the receiving organizations, including failure to pay wages; the Japanese cabinet had reviewed the system in order to optimize international cooperation. Monitoring and control systems would be introduced, including external auditing and appointment of executive board members to oversee operations.
6. The Government of Japan did not believe that it was acceptable to use the term "sexual slavery" in connection with comfort women. The issue was not covered by the Convention and, in addition, the events relating to comfort women preceded Japan's accession to the Convention. Japan had expressed deep remorse and a heartfelt apology for the very great suffering it had caused to the peoples of many countries, in particular in Asia. It had also expressed a sense of mourning for all the victims of the Second World War, both at home and abroad. Prime Minister Abe and many Japanese prime ministers before him had expressed regret for the immeasurable suffering caused to the comfort women. Following the San Francisco Peace Treaty of 1951, Japan had paid compensation through bilateral treaties with individual countries, which had included payment to individual comfort women. There had been a "complete and final settlement of all property rights and claims" between Japan and the Republic of Korea. Recognizing that the issue of comfort

women had been a grave affront to the dignity and honour of a large number of women, Japan had established the Asian Women's Fund, which had provided atonement money to former comfort women in the Republic of Korea, the Philippines and Taiwan, and supported social welfare programmes in those countries. In addition, successive Japanese Prime Ministers had sent individual letters of apology and remorse to all the comfort women who had been identified. Although the Fund had been wound down in 2007, the Government of Japan continued to implement follow-up activities. It had conducted investigations in 1991 and had found no evidence indicating that the Japanese military or Japanese officials had been involved in the forced removal of comfort women.

7. Japan acknowledged that it had yet to ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; ILO Conventions No. 111 on discrimination (employment and occupation) and No. 169 concerning indigenous and tribal peoples; the Convention on the Status of Stateless Persons; the Convention on Reduction of Statelessness; and the Convention on the Prevention and Punishment of the Crime of Genocide: while it recognized the ideals on which the conventions were based, careful examination was required in order to ensure consistency with Japanese domestic laws and regulations and the introduction of any necessary adjustments in legislation.

8. Article 14 of the Constitution of Japan guaranteed the equality of all people under the law and it stated that "there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin": that wide definition was not exhaustive however and could be taken to cover any unreasonable treatment, including treatment relating to race, colour or ethnic descent, even if it was not explicitly mentioned in the article.

9. **Mr. Yoshida** (Japan), responding to the question concerning discrimination against Muslims, said that, in order protect public safety and maintain order, the police found it necessary to collect certain information in a fair and impartial manner and in accordance with the law. It did not however engage in excessive monitoring of the Muslim community.

10. **Mr. Ishikawa** (Japan), responding to the questions on double discrimination, said that the Human Rights Organs of the Ministry of Justice and the Legal Affairs Bureaus had established Human Rights Counseling Offices to provide counselling for women, children and socially vulnerable people. The Offices investigated human rights issues. A hotline, staffed by volunteers and by members of the Human Rights Counseling Office, had been set up in order to provide advice by telephone on women's and children's rights. An SOS contact card, with information on children's rights, had been distributed to secondary schools. Human rights education was provided in secondary schools. Preferential use of day nurseries was granted to single mothers and widows with dependents, who were provided with financial support and counselling. New gender equality initiatives for disadvantaged women were under consideration by the Government.

11. In 1982, the Government had removed the requirement that Japanese nationality was necessary in order to have access to social welfare and the national pension system was currently available to all Japanese residents. Legislation was in place which prohibited hotels and inns from denying accommodation to persons based on their race or ethnicity. A separate act, aimed at promoting international tourism, protected the rights of inbound tourists who sought accommodation at registered hotels and inns. Hotels, restaurants, coffee shops and cinemas were obliged to provide equal treatment for all users, while consumer complaints could be forwarded to a guidance centre for investigation.

12. **Mr. Saita** (Japan) said that it was felt that Conciliation Commissioners, as public servants with responsibility for decisions that were as binding as court decisions and with authority to investigate evidence, should have Japanese nationality. The information included in family registrations in Japan was private and personal and those responsible for

its administration received necessary training. The act regulating family registration had been revised in 2008, with more rigorous checking of the identity of applicants and increased penalties for illegal requests. Disciplinary measures were applied where government officials were found to be involved in the illegal retrieval of information.

13. Foreign nationals with legal residence status who were divorced or widowed from a Japanese spouse were obliged to apply to remain in Japan. Checks were conducted on their background and family life and a decision made on whether they could remain. Where the foreign national was the parent of or had legal custody of a Japanese child, long-term resident status was granted following background checks. Any child with a Japanese father or mother at the time of birth automatically acquired Japanese nationality. On naturalization, foreign nationals were allocated a name written in Japanese characters but they were not encouraged to use Japanese-sounding names or coerced into using Japanese script. Support was provided to victims of hate speech and other victims of human rights abuses through support centres set up throughout Japan and, subject to certain income requirements, legal aid, including payment of legal fees, was given.

14. **Mr. Tanaka** (Japan), responding to the question raised concerning the founding of a national Human Rights Commission in compliance with the Paris Principles, recalled that the bill intended to establish that institution had not been adopted due to the dissolution of parliament in 2012. The Government was currently considering how to set up the commission. With respect to the questions raised regarding the Baraku, human rights issues were investigated by the Human Rights Organs, and the Ministry of Justice conducted various awareness-raising seminars and activities, such as the initiative on eliminating discrimination on Dowa issues. The Ministry of Health, Welfare and Labour had established open community centres to improve welfare and human rights. Discrimination in employment was prohibited during the recruitment and selection process and relevant information was provided to employers. The Ministry of Education promoted human rights research as well as human rights education in schools. In 2013, social education programmes encompassing human rights had been delivered in public halls and other community facilities.

15. **Mr. Arima** (Japan) said that in Japan, all asylum seekers were treated equally. Preferential treatment was not given to those from any particular countries. Asylum seekers would not be returned to countries in which they would be at risk: the principle of non-refoulement was applied in accordance with article 33 of the Convention Relating to the Status of Refugees, article 3, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or article 16, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance. The application for special permanent residence could only be filed after a deportation order had been issued, in accordance with the relevant legislation. Special residence status was granted in exceptional circumstances by the Minister of Justice, and constituted a decision to rescind the deportation order.

16. **Mr. Mori** (Japan), referring to the Committee's questions on tuition fee waivers for Korean schools, explained that the regulations on eligibility for funding from the public school tuition support fund stipulated that schools must have a particular administrative system in place in order to receive funding support. Korean schools did not meet those administrative criteria as they had close relations with an organization linked to the Government of the Democratic People's Republic of Korea, which was influencing the content of their curricula, administrative affairs and finances. Funding would be granted to those schools if they adapted their administration and management to meet the criteria defined in national law, and when diplomatic relations with the Democratic People's Republic of Korea had been restored.

17. That situation did not constitute discrimination on grounds of nationality: many Korean students attended other foreign schools that benefited from tuition fee waivers. There had been no change in the policy for applying the school tuition support fund system. The decision to fund Korean schools at the local level lay at the discretion of local governments. Those decisions were legitimate, but the national government was not expected to support them financially. There was no distinction between the treatment of Korean schools and that of other schools for foreign nationals: all schools were subject to the same funding criteria.

18. Regarding education for Brazilian children, he said that they could attend Japanese public schools with free tuition, or they could choose to attend schools for foreign nationals. All foreigners resident in Japan were informed about their schooling options and the admissions and enrolment procedures for public education. Guidance on the education system was provided in several languages and distributed by district-level immigration control offices.

19. Preschool education for foreign children was conducted in Japanese, in order to ensure that they could enrol in public primary schools without any language difficulties. The provision of extracurricular education for non-Japanese students to learn about their culture and language varied according to local circumstances. Regarding the possible extinction of eight languages in Japan, as reported by the United Nations Educational, Scientific and Cultural Organization (UNESCO), a study had been undertaken on how to preserve those languages. Financial support was also being provided for the conservation and repair of Okinawan cultural heritage.

20. **Mr. Kono** (Japan) said that the Advisory Council for Future Ainu Policy had reported to the Government in July 2009 to recommend the policy actions that should be taken with respect to the promotion of Ainu culture and, referring to the relevant provisions of the United Nations Declaration on the Rights of Indigenous Peoples, had recognized the Ainu as an indigenous people. As a consequence of the work of the Advisory Council, a Council for Ainu Policy Promotion had been established with input from the Ainu people themselves. Upon signing the Declaration, Japan had stated that it recognized that indigenous peoples' rights to land and natural resources should be governed by the relevant national legislation in each country. Restrictions on the exercise of those rights would only be admissible if they were deemed to establish balance with the rights of third parties or public interests. That notwithstanding, the Government of Japan was committed to the restoration of Ainu culture, and to that end had established the Foundation for Research and Promotion of Ainu Culture.

21. In 2008, the Ainu had been recognized as an indigenous people with their own unique language, religion and culture, who lived predominantly on the island of Hokkaido, but also in other parts of Japan. In 2013, the Hokkaido Prefecture had conducted a survey of living conditions for Ainu people living outside Hokkaido. The new survey results had not been included in the report currently before the Committee, since they had not been available at the time of drafting. The results of that survey, which could be made available to the Committee, had shown that although the proportion of Ainu high school students who went on to higher education had increased to 25.8 per cent, that percentage was still considerably behind that of the total population in the municipalities concerned. With regard to inhabitants' tax, which was charged according to household income, the number of Ainu households with sufficient income to be required to pay that tax had increased by 2.2 per cent. The average income of the Ainu, however, remained below average.

22. In order to redress those imbalances, the Japanese Government provided funding for higher education scholarships to the regional authorities in Hokkaido, to be distributed to Ainu students to increase their educational opportunities. Efforts were being made to preserve Ainu culture and language in educational institutions, and the Foundation for

Research and Promotion of Ainu Culture conducted a variety of programmes, including comprehensive practical research for the promotion of Ainu language and culture. Those programmes had yielded positive results. The language of State education was, however, Japanese, since that was the official language used in all aspects of economic and political life. Other languages were used only in the classroom for foreign language learning. Lessons in Ainu language and culture were provided in schools with large proportions of Ainu students.

23. On the question of the protection of Ainu cultural heritage, several elements of Ainu culture had been identified as requiring protection under national law on the protection of cultural property. Furthermore, the Government had taken the initiative to establish a symbolic space for ethnic harmony in Hokkaido, which would be opened to the public in 2020 and would include museums and exhibits of traditional Ainu houses and handicraft studios. The space would serve as a national centre for the restoration of Ainu culture.

24. **Mr. Avtonomov**, on the court case concerning hate speech against Korean residents, said that while the High Court of Osaka had upheld the decision of the Kyoto district court, which had directly invoked the Convention and ruled hate speech not to be permissible, Japanese law did not consider hate speech to be a punishable offence when directed at a group of people, but only when directed against individuals. He would appreciate further information on Japanese legislation in that regard. He also requested more information on the standard of living of the Chinese population.

25. **Mr. Amir** asked whether it was indeed the case that Muslims in Japan were subject to police surveillance, and if so, why, since personal freedoms were valued especially highly in Japan. He asked whether that practice would be stopped and whether any apology would be issued to those concerned, as had been the case in the United States.

26. **Mr. Kono** (Japan) said that with regard to the case concerning hate speech against the students at a Korean school, the defendants had published a video of the event in question on the Internet. The court ruling had ordered the payment of compensation for damages, and had ordered an injunction against the defendants with regard to a similar demonstration at another school. The appeal had been dismissed in the high court, which had upheld the first instance ruling. The case was currently pending before the Supreme Court.

27. **Mr. Yamanaka** (Japan) said that although Japan's police force conducted information-gathering activities, surveillance or monitoring activities were not conducted against individuals on the sole grounds of their religion. The only reason to conduct surveillance was for the maintenance of public order and security.

28. **Mr. Huang** Yong'an said that the Japanese Government did not acknowledge the existence of an indigenous population in Okinawa. He wished to point out that the Ryukyu Islands had been populated for over 1,000 years, while mainland Japanese had only begun to settle there since 1879. The Kingdom of Ryukyu, which had been closely linked to the Ming and Xing dynasties of China, had existed for around 450 years, with its own culture, language, social systems and customs. More than 20,000 inhabitants of Okinawa were of Chinese origin. In 1879 the Ryukyu Islands had been annexed by Japan, after which an assimilation campaign had been launched to encourage settlement by mainland Japanese and change the names of the original inhabitants. The denial of the existence of the indigenous population was therefore historically incorrect. He urged the State party to recognize the indigenous population and to take effective measures to protect their legitimate rights.

29. **Mr. Kemal** (Country Rapporteur) said, with regard to the issue of "comfort women", that the Committee was legally within its mandate to take matters into account that had taken place before a State party's accession to the Convention, provided those matters still

had relevance. He welcomed the unequivocal expression of remorse from the delegation, particularly since he had understood that the Government currently in office had retracted a previously issued apology.

30. On the situation for Korean schools, he said that States parties to the Convention were expected to make an effort to preserve the culture and language of immigrants. While private foreign schools, such as the International School, collected hefty fees from their students, Korean schools were trying to preserve their culture. It would be in the interests of justice and to the State party's credit to find a means by which to promote Korean language and culture in Japan.

31. **Mr. Yamanaka** (Japan) said that throughout Japan's many islands, many unique cultures and traditions had been developed. The people from Okinawa, like all people in Japan, had the right to enjoy their own culture, practise their own religion and use their own language. No person was deprived of those rights. The rich tradition and culture of Okinawa was recognized and efforts were being made to promote local communities. In that regard, a plan of action for the promotion of Okinawa had been established.

32. Turning to the issue of "comfort women", he said that a letter of apology had been issued by the Prime Minister, copies of which were available for the Committee's reference.

33. **Mr. Mori** (Japan) said that high school tuition funding was granted for schools that met funding allocation criteria as set out in law. Korean schools had not met those criteria, not as a result of the nationality of the students, but rather as a result of their administration. Korean schools were recognized as miscellaneous schools, which were not eligible for public school funding.

34. **Mr. Diaconu** said that he failed to understand how the prohibition of acts such as dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and assistance to racist activities, impeded the right to freedom of speech. The State party had been studying the possibility of lifting the reservation placed on articles 4 (a) and (b) of the Convention for many years. It was time to withdraw that reservation, and to adopt legislation prohibiting the acts described in article 4. The legal vacuum created by the absence of anti-discrimination legislation opened the door to discretionary interpretation by officials who were often unaware of the provisions of the Convention. According to the State party, the list of discriminatory acts contained in the Constitution was indicative, not exhaustive. In order to prevent arbitrary interpretation, it was crucial to spell out precisely which acts constituted discrimination under the law. He lastly requested detailed information on the socio-economic situation of the Buraku communities, and on their participation in public life.

35. **Ms. Crickley** asked what was being done to end the blanket surveillance of Muslims in Japan. She also wished to know the reasons for the undue delay in establishing an independent national human rights institution. She further enquired whether civil society organizations would be involved in the implementation of the Committee's concluding observations.

36. She encouraged the State party to re-examine the position and conduct of its police force in regard to hate speech, and consider stepping up efforts to identify and assist migrant women trapped in human trafficking. Further information would be useful on targeted, time-bound measures contained in the Third Basic Plan for Gender Equality to address the inequalities faced by migrant women, women from minorities and indigenous women. The State party's commendable plan to enhance women's participation in the workplace was likely to generate, as experience had shown, a greater need for domestic workers. It would therefore be useful to know whether the State party planned to ratify the

International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) or take any other measure to protect the rights of domestic workers.

37. The Prime Minister's letter of apology to wartime "comfort women" that had been circulated to the Committee was not dated. Could the delegation provide that information? While she acknowledged the right of the State party to use any terminology it saw fit, the term sexual slavery best described the type of treatment to which those women had been subjected. She asked what measures would be taken to compensate them or their families.

38. Additional information would be useful on the legal and policy framework providing for fair treatment of migrants, and on the situation of divorced foreign spouses of Japanese nationals, including the requirements for obtaining a residence permit after divorce.

39. **Mr. Yoshida** (Japan), replying to a question regarding the surveillance of Muslims, said that information on police information gathering activities was confidential. However, the Committee could rest assured that those activities were conducted in strict compliance with the law.

40. **Mr. Yamanaka** (Japan), speaking with regard to civil society participation, said that in May 2012 the Government had met with non-governmental organizations to exchange views on the situation of the Dowa, the establishment of a national human rights institution, the adoption of anti-discrimination legislation, adherence to the individual communications procedure as provided for in article 14 of the Convention, and the exclusion of Korean schools from the tuition-waiver programme. In addition, the public had been invited to provide information and share its views through the government website.

41. The Prime Minister's letter of apology dated back to the time when the Asian Women's Fund still existed; the Fund had been dissolved in 2007.

42. **Mr. Kitajima** (Japan) said that insults, defamation, intimidation and obstruction of justice were punishable offences that could be invoked by victims. Perpetrators of such crimes were prosecuted under the Criminal Code.

43. **Mr. Arima** (Japan) said that by the end of 2013, 11,542 foreigners from Africa had taken residence in Japan. Permanent Korean residents who had come to Japan prior to the Second World War and their descendants numbered close to 370,000. Nearly 65,000 Koreans had taken residence in Japan after the war. Most Brazilian residents of Japan were spouses of Japanese nationals, long-term residents, permanent residents or spouses of long-term residents. Of the 28,070 Brazilians who had entered Japan in 2013, 3,349 held one of the above permits. By the end of 2013, more than 180,000 Brazilians had taken up residence in Japan; nearly all of them fell under one of the above categories.

44. After a divorce, foreign spouses of Japanese nationals lost their residence status, but were free to apply for a change of status. The Immigration Control Act had been amended in 2009, establishing the category of "spouse or child of Japanese national", as well as and the grounds for revoking that status. Applications for change of residence status following divorce were dealt with on a case-by-case basis, and circumstances such as divorce on grounds of domestic violence were taken into consideration.

45. **Mr. Tanaka** (Japan) said that he was unable to provide a timeline for the establishment of a national human rights institution.

46. **Mr. Ishikawa** (Japan), referring to the Action Plan of Measures to Combat Trafficking in Persons, said that, by the end of March 2013, 256 victims of trafficking had received assistance. Government shelters (Women's Consulting Centres) provided free medical and psychological care and interpretation services for victims of human trafficking. Additional services were available at non-governmental shelters.

47. **Mr. Yeung Sik Yuen** said that the criteria used for justifying the withdrawal of government subsidies from Korean schools, namely their alleged support for the Democratic People's Republic of Korea, were of a political nature. The Committee was concerned with rights-holders within the meaning of the Convention. The exclusion of those schools from the tuition-waiver programme undermined children's right to education on grounds of their ethnic origin and thus constituted an act of discrimination.

48. **Ms. January-Bardill**, reiterating her concern over the exclusion of foreign nationals from civil service employment, requested clarification of the expression "exercise of public power or public decision-making". She asked whether that terminology was embedded in legislation. Otherwise, it was open to arbitrary interpretation by officials conducting civil service recruitment.

49. In regard to foreign nationals' pension and welfare entitlements, she asked whether the State party intended to implement interim measures to ensure that those who were not covered by the Public Assistance Act or the National Pension Act, especially elderly residents, had access to some form of assistance.

50. **Mr. Khalaf** reiterated his appeal to the State party to lift the reservation placed on article 4 and to adhere to article 14 of the Convention.

51. **Mr. Huang** Yong'an requested further clarification on the date of the Prime Minister's letter of apology circulated to the Committee. An outdated letter of apology was of little use, since the Committee needed to learn of the current Governments' views on the issue of "comfort women" and on measures taken on their behalf.

52. **Mr. Kemal**, summing up as Country Rapporteur, said that the adoption of specific anti-discrimination legislation was crucial in order to close existing legal gaps. The State party should give serious consideration to lifting the reservation placed on articles 4 (a) and (b) of the Convention. None of the provisions contained therein were inconsistent with Japan's Constitution. By maintaining the reservation, the State party gave a misleading picture of its laudable intentions as reflected in domestic legislation. Such unnecessary baggage could be shed easily, without detriment to the right to freedom of speech. National human rights institutions, established in accordance with the Paris Principles, were another essential element of human rights infrastructure and the State party should set up such an institution at the earliest possible opportunity. Efforts to promote and protect the rights of the Ainu, Baraku and Ryukyuan must be intensified and more must be done to protect the rights of Korean, Chinese and Muslim communities in Japan.

53. In future reports, the Committee would welcome more specific responses to its concluding observations, as well as additional information on reported difficulties in the registration of interracial marriages, and in obtaining Japanese nationality for children born of such unions abroad.

The meeting rose at 6 p.m.