

**NGO Joint Submission
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prepared by
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<Secretariat>
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National Human Rights Institution and Anti-Discrimination Law

by Joint Movement for National Human Rights Institution and Optional Protocols

Issues

The Ministry of Justice published the outline of the draft legislation on the establishment of a human rights commission in December 2011. There are several problems regarding the envisaged commission. The expected commission will not provide remedies in cases that currently lack remedies and it will not be an institution that the human rights victims long for. In particular, the human rights violations occurred under the existing laws and systems are considered “legal” which are the very cases that the new commission must be able to handle. Many of the abuses are committed by public organs and the existing Human Rights Protection System is unable to respond to them. Nevertheless, the draft commission expects to utilize such System as its regional contacts.

The outline is only on a draft law to establish a human rights commission, and the commission will not function effectively without an anti-discrimination law. Since the Government has not accepted the recommendation regarding such legislation in the follow-up of the last UPR, it is highly questionable whether a human rights commission based on the outline would be effective.

Backgrounds

The Government has agreed to continue consideration of the possibility of creation of a national human rights institution based on the Paris Principles after the last UPR. The project team set up in the Democratic Party began to consider it, during which they heard the voices of the Japan Federation of Bar Associations, academic experts and civil society organizations. The party’s interim report was submitted to the government. The Ministry of Justice published its basic policy in August and the outline of the draft in December.

The main problems are as follows:

* The purpose of the commission is to comprehensively promote human rights protection policies and to contribute the realization of a society that respects human rights. Also, according to the definitions of human rights violations and acts promoting discrimination in the “reference” section, the problematic issues are not covered by the new commission, including harassment against Korean schools, discriminatory speech against women or sexual minorities, human rights violation caused by the legal systems, or cases that are found to be “reasonable” discrimination. These issues are one of the problems that have not been solved under the current system. If the new commission is unable to respond to these issues, it will be a major defect in its functions.

* The Ministry of Justice argues that since the commission would be established under Article 3 of the National Government Organization Act, it should be compatible with the Paris Principles, even if the institution is an external organ of the Ministry. Under such conditions, the commission is not financially nor functionally independent from the MOJ and would be difficult to respond to cases which are under the competencies of other ministries due to the bureaucratic red tape practices.

* The commissioners are required to be knowledgeable, but the participation of neither the expertise in human rights field nor the victims are ensured. Considering the deeply rooted discrimination towards

foreigners in Japan including resident Koreans who have been living in Japan since before the Second World War, the explicit nationality requirement of the commissioners or Human Rights Remedy Volunteers is a big problem.

* In order for the commission to function effectively, an anti-discrimination law should be laid down. Japan has not accepted the recommendation regarding an anti-discrimination law, therefore, the effectiveness of the commission cannot be ensured.

Recommendations

- (a) The purpose and functions of the commission should include the domestic implementation of recommendations and proposals by UN organs and treaty bodies, cooperation with relevant international organs, human rights education, and human rights remedies, in line with the Paris Principles.
- (b) The international human rights treaties that Japan has ratified should be made as one of the standards to be applied.
- (c) The human rights violations within the scope of the commission should not be limited to unlawful acts, but should be based on the international human rights treaties that Japan has ratified.
- (d) The commission should be organizationally, financially and functionally independent in line with the Paris Principles. In particular, the interventions by the Ministry of Justice and other ministries should be prohibited.
- (e) The requirement of the commissioners should include the expertise in human rights activities and remedies. Participation of the minorities should also be ensured.
- (f) An anti-discrimination law should be adopted along with the law on the commission.

Acceptance of Optional Protocols

by Joint Movement for National Human Rights Institution and Optional Protocols

Issues

Though Japan is a state party of major human rights treaties, it has never ratified nor accepted any of individual complaint procedures defined under treaties or their optional protocols. The Democratic Party of Japan, the ruling party, had stated in its official document that Japan should step into the individual complaint system, but this commitment has not yet been implemented even after the party took the power and its former Justice Ministers repeatedly mentioned such desire in their official statements. So far, no progress has been made by now.

Backgrounds

International bodies such as the Human Rights Council in its first round of the Universal Periodic Review in 2008, and various treaty bodies in their concluding observations during examinations of Japan's country reports, recommended Japan to accede or accept the Optional Protocol of the International Covenant on Civil and Political Rights and other individual complaint procedures. No bill has submitted to the Diet so far seeking to realise such recommendations. The civil society is raising their voices to put it forward, but it is said that there are some political obstacles.

Recently, Japan has supported an adoption of the Third Optional Protocol to the Convention for the Rights of a Child which provides individual complaint procedure of the Committee for the Rights of a Child, but ironically there is no motion for its ratification yet.

On 30 August 2011, the Ministry of Justice and the Ministry of Foreign Affairs made an agreement stipulating that the Ministry of Foreign Affairs will be the contact point for communication between UN committees on this matter and, if acceded, it is the Ministry of Foreign Affairs responsibility to refer the case to all relevant ministries, including the Ministry of Justice. This shows, however, regrettably there is no specific authority who is responsible for implementing views from the international bodies, and the government involvement is just limited to communicating with such bodies. Such attitude, avoiding actual substantive implementation of views from international bodies, is a great concern of civil society, as it symbolises that Japan is likely to ignore critical human rights arguments from the international society.

Further, it is also feared that newly drafted national human rights institution (NHRI) may not have a power connected to international bodies. This new draft NHRI bill does not qualify the independency requirements of Paris Principle as it is designed to be affiliated under the Ministry of Justice and restrained making intervention to governmental systems. It is needed that the newly drafted national human rights institution to be fully independent and have substantive relationship with the international human rights bodies, including but not limited, in terms of individual communication procedure if introduced.

Recommendations

1. Japan should introduce international individual complaint procedure as soon as possible. Especially, it should accede the optional protocol to the International Covenant on Civil and Political Rights as the first step.
2. Fully independent National Human Rights Institution should be substantively responsible for implementing the procedure while designing the way to handle the view recommended by the procedure.
3. To ensure the independency of the National Human Rights Institution as the implementing body of Views drawn by the individual complaint procedure, Japan should set up such body out of ministerial system to guarantee independency equal to audit agencies, such as Board of Audit and National Personnel Authority.

Ainu Indigenous People

by Shimin Gaikou Centre (Citizens' Diplomatic Center)

Issues

The domestic implementation of the United Nations Declaration on the Rights of Indigenous Peoples in relation to the people of Ainu

Backgrounds

The Ainu people were recognized as “indigenous people” in the Diet resolution in June 2008 and as a result of the report of the Final Report of the Advisory Council for Future Ainu Policy submitted in July 2009, the Council for Ainu Policy Promotion was created within the Cabinet Secretariat. This organization, however, is expected to discuss only the awareness-raising among the people of Japan as well as the promotion of Ainu culture. There have been no efforts to realize the various rights in the Declaration on the Rights of Indigenous Peoples, including the right to self-determination or the right to land and resources that are important for restoring the rights of Ainu people.

The Council for Ainu Policy Promotion conducted a survey on the situation of Ainu people living outside Hokkaido, the traditional territory of the Ainu people, but it was an incomplete survey covering less than 400 people constituting probably only a few percent of the total. Although the survey revealed the plight of the Ainu people living outside of Hokkaido, no radical measures have been adopted to solve the problems.

Recommendations

(a) The purpose of the establishment of the Council for Ainu Policy Promotion should explicitly include the implementation of the UN Declaration on the Rights of Indigenous Peoples. The Council should not just rely on the Working Group, but should urgently undergo an organizational reform so that it can realize the rights as an indigenous people in diverse areas from the human rights perspective. When a clear human rights violation of Ainu people is found, prompt legal and administrative measures should be taken to restore those rights.

(b) The Advisory Council for Future of Ainu Policy report (July 2009) recognized to a certain degree, that since 1869 from the time of the development of Hokkaido the Ainu people had been deprived of their rights and unjustly discriminated in many aspects such as in their treatment under the land policy. The Japanese Government should urgently establish a special committee to conduct impartial investigations into direct or indirect discriminatory policies or human rights violation against the Ainu people by the Government.

(c) The Government should ensure equality within the ethnic policy, by implementing welfare, education and employment policies (Measures on the Improvement of Living Standards of Ainu People) introduced in Hokkaido since the 1970s to Ainu people living outside of Hokkaido. It should implement further special policies for Ainu people living outside of Hokkaido.

Buraku Problem

by Buraku Liberation League

Issues

1. In 1996, the Council on Regional Improvement Measures presented its opinions for future measures to be taken by the government for the solution of Dowa problem after the termination of Law on Dowa Special Measures in 2002. Now, after 10 year from the termination, the measures have hardly been implemented. There is no coordinating function in the government to see to it that a comprehensive and effective implementation of measures on Dowa problem is proceeding. As General Recommendation No.32 of the CERD indicates, before the termination of Dowa special measures, the Government should have proven the realization of equality by indicating statistical figures attained through a survey.
2. The government has been stucked in its interpretation of the term “descent” in the article 1 of ICERD. The government is urged to accept the General Recommendation No. 29 of CERD specifying that “descent” includes Buraku.
3. Family Register System supports discrimination based on “descent,” and in fact, it has induced Buraku discrimination over years. In accordance to the principles of personal information protection, provision of one’s data on family registration upon a request of a third party should require a permission of the principal.

Backgrounds

1. The opinions presented by the Council have been used as guidelines of the government in seeking for solutions of Buraku problem. It stated, “While Dowa problem should be considered to be the most important human rights issue of Japan, it is recommended to proactively promote human rights education according to an expected new national plan of action for human rights education, and to make efforts to resolve discriminatory attitude towards Dowa problem,” and showed the direction of the post-special-measures-law policies by stating, “The government should consider the creation of a liaison and coordination structure which comprehensively and effectively promotes educational policies toward the eradication of discrimination.” Nevertheless, the government abolished the responsible section after the termination of the special measures law.

Also, the definition of Buraku problem was articulated in the 1965 reports prepared by the Dowa Measure Council, but there was no definition regarding Buraku and Buraku people. While the government has affirmed its intention to solve Buraku problem, it has never defined “what the solution of Buraku problem means.” At the time of ending the special measures after 33 years of implementation, the government did not show any index based on findings of a survey, regardless of the CERD General Recommendation No. 32 that recommends the indication of the realization of equality with “statistical figures.” It is only the lip service of the government saying that the solution of Buraku problem is the center of human rights issues of Japan. The government’s failure should be subject to harsh criticism.

2. Japan has acceded to the ICERD in 1995. Since then, the government has maintained its interpretation of “descent” in such a way that, “it indicates the concept focusing on the race or color, or national or ethnic origin in past generations, and not a concept focusing on social origin,” and “Descent does not include Buraku problem as social discrimination.” What is behind the assertion of the government? Descent originally comes

from the family register system. The old imperial line tree uses the word “descent” indicating the number of generations of successive emperors. Ordinary dictionary indicates it as “ancient line of blood tree,” or “family line/family tree.” It is obvious that the imperial line and family register system is to prove an ancestral blood lineage. “Descent” in the Japanese constitution represents the family register, while the social status comes from the classification of groups of people by nobility, warrior, lowly servant, commoner, and new commoner. Descent in the ICERD includes discrimination originated from the family register system, and thus including Buraku as social origin. The government strongly argues that “Descent does not include Buraku problem,” because it does not want to see that the family register is included in the descent. The government should accept the General Recommendation No. 29.

3. Computerized personal information should be handled cautiously under the philosophy of respecting the personalities of individuals. When providing personal information, it is strictly essential to identify a purpose of use, to get a permission of the principal (meaning the person whose data is on the family register), not to use improperly, and not to share the information with a third party without a consent of the principal. Information on the family register is all about one’s social status and privacy information from the birth to death. It allows to trace back the one’s family origin as Buraku. As it possibly induces discrimination, Buraku Liberation League has opposed to the publicity rule of information on family register from the view point of protection of privacy. The government, nevertheless, has allowed third parties to access to one’s personal information on the family register without a consent of the principal.

Personal information protection law should be applied to information on family register. However, the government has exempted its application to family register. Consequently, those professions who are qualified to have access to one’s family register can easily get one’s personal information abusing their office power.

Recommendations

1. The government should create a section responsible to the solution of Buraku problem, while establishing a council to have a clear definition of Buraku problem. Such a council should have representatives from Buraku community and experts.
2. The government should accept the CERD General Recommendation No. 29 specifying the inclusion of Buraku problem in the “descent” in Article 1.
3. The government should rectify the family register system according to the UN ten principles for Personal Information Protection. Especially, it should set new requirements of prohibition of information collection resulting into discrimination and acquisition of a consent of the principal when providing the information to a third party.

Education of Minority Children

by **The Association of Korean Human Rights in Japan*

**Japan Network for the Institutionalization of Schools for Non-Japanese Nationals and Ethnic Minorities*

Issues

We consider the current situation in Japan where the Japanese central government continues to neglect to provide financial support to “schools for non-Japanese and ethnic minority children” (hereafter: minority schools from the National Treasury and is excluding Korean schools from the system of making high school education tuition free and five prefectural governments have stopped or been reducing the subsidies to Korean schools amounts to the violation of several international human rights Treaties which guarantee the right to education for all and prohibit discrimination, such as ICCPR, ICESCR, ICERD and CRC,

Backgrounds

Resident Koreans in Japan are ethnic minority who were forced to come to Japan under the Japanese colonial rule of Korea and settle Japan after the WWII while facing severe discrimination. After the liberation from the Japanese colonial rule, they have established their own ethnic schools (Korean schools) in various places in Japan in order to inherit their own language and culture that were deprived under the Japanese colonial rule.

However, the Japanese government has not recognized Korean schools as regular schools and has been imposing institutional discrimination upon them such as exclusion from financial support scheme of the central government.

After the first cycle of Universal Periodic Review of Japan, in April 2010, the central government of Japan introduced the law of so-called “Free High School Tuition” system in order to help all students living in Japan having will of learning, regardless of their nationality to attend high school stage education. Under this law, the Japanese government has decided to supply not only students of Japanese high schools but also minority schools accredited as “miscellaneous school”¹. Since the introduction of this law, students of 37 minority schools in Japan have received subsidies from this system. Korean school students, however, have been completely excluded, so there is a gap between them and other school students of subsidies that amount to the two years’ tuition fees.

In CERD’s Concluding Observations to Japan following the consideration of Japan’s periodic report in February 2010, the Committee expressed concern about the approach of some politicians suggesting the exclusion of Korean schools from the “Free High School Tuition” system and recommended “that the State party ensure that there is no discrimination in the provision of educational opportunities and that no child residing in the territory of the State party faces obstacles in connection with school enrolment and the achievement of compulsory education” (CERD/C/JPN/CO/ 3-6,para22(e)). Contrary to this recommendation, the Government has been excluding the students of Korean schools due to diplomatic issues between Japan and the Democratic People’s Republic of Korea. Against this backdrop, many children have been forced not to go to Korean schools with economic difficulties. This is obvious violation of the right to education of minorities.

Although the subsidies from local governments to Korean schools are not enough that amounts to

¹ Japanese school system is divided into three kinds of schools, which are regular school for children, technical school, and “miscellaneous school” or such as driving school. Minority schools in Japan could be accredited only as “miscellaneous school”.

approximately one-fifth of Japanese private schools² on average, these subsidies has been essential financial resources for administration of these schools. The approach of the central government excluding Korean schools from “Free High School Tuition” system, however, has resulted in the rise of racism against Koreans in Japan in general and has led to the new discriminatory situation that five prefectural governments and several municipalities have stopped or been reducing their subsidies to Korean schools.

In addition to the aforementioned discriminatory policy by the Japanese government, the situation of abusive words and assaults on Korean school students has been deteriorating. For example, in December 2009, 11 people assaulted on a Korean school in Kyoto and they said abusive words such as “Get out of Japan”, ”Let’s destroy Korean schools” to Korean school students³. Four of them were charged and found guilty for the crime of defamation and the crime of forcible obstruction of business in April 2011 at Kyoto district court.

On the other hand, many parents of Brazilian schools have not been able to pay school fees of their children because of dismissal at the global financial crisis after the last UPR of Japan in 2008. So many Brazilian schools were forced to close their schools and the number of Brazilian schools decreased from 110 in 2008 to approximately 70. Some of children who attended these closed still do not go to any schools. There are over 10,000 migrant workers’ children who have not been able to receive any education and have been neglected in Japan today.

Recommendations

- a) The central government of Japan should stop the exclusion of students of Korean schools from “Free High School Tuition” system.
- b) Some local governments of Japan should cancel the stopping or reducing of subsidies to Korean schools and provide them with the subsidy which was ensured to them. The central and local government of Japan should provide them with the financial support which is ensured to Japanese schools from the point of view of non-discrimination.
- c) The Japanese government should review institutional discrimination against minority schools and to legislate for the equal support of them with Japanese ones, in order to ensure the right to education of minorities.
- d) The Japanese government should give urgent financial support for Brazilian schools facing a crisis of closedown.
- e) The Japanese government should conduct a nationwide survey of incidents of abusive words and violence on the children going to Korean schools.

² In December 2008, the Human Rights Committee (CCPR) has expressed concern that subsidies for Korean schools are significantly lower than those for ordinary schools and recommended that Japanese government should increase its subsidies to Korean language schools (CCPR/C/JPN/CO/5, para31). The Committee on the Rights of the Child (CRC) also encouraged the Japanese government to increase subsidies to non-Japanese schools after the consideration of the third periodic report of Japan, in June 2010(CRC/C/JPN/CO/3, para73).

³ See the video of their assault. <http://www.youtube.com/watch?v=2szx-WWR0rw>

Legal Status of Migrant Women in Japan

by Solidarity Network with Migrants Japan

Issues

Under the Revised Immigration Control and Refugee Recognition Act to be implemented in July 2012, the reporting procedures will be stricter and the new rule with the grounds for revocation of resident status will be established. It causes the grave concern about possible impairment of rights of migrant women under international marriage and encouragement of domestic violence by their Japanese partners.

It is afraid that the new residence management system would be used as a means of using violence against migrant women by their Japanese spouses, and that many married migrant women would be hesitant to officially report the damage they are given or run away from their Japanese spouses in fear of losing their resident status under the new revocation system, thus aggravating their situation. In addition to their unstable relationship with their Japanese spouses, unstabilized resident status of these migrant women would lead to various forms of infringement of their rights.

The Third Basic Plan for Gender Equality approved in 2010 contains clear indication of the concern over the minority women including migrant women, and under this basic plan, the government has launched the new telephone consultation program to help solve human rights violation problems suffered by women including the battered migrant women. While the support system has been improved, the restoration of once infringed human rights of battered migrant women is hardly expected without the legal foundation to guarantee their stable residence in Japan.

Backgrounds

According to the 2009 Revised Immigration Control and Refugee Status Act, which is to be effective in July 2012, it is specified that foreign residents have to report a change of their residential place or a change of their legal status caused by divorce or bereavement to the nearby immigration office within 14 days after it occurs, and that violation of the law is subject to criminal punishment. Grounds of the newly established revocation of resident status include; i) “a spouse of Japanese” or “a spouse of permanent resident” fail to engage in activities as a spouse for a consecutive 6 months; and ii) those who reside in Japan in a mid-and-long term fail to register a place of residence within 90 days after newly entering or leaving a former place of residence. These provisions have the exemption for cases with justifiable reasons, but without any clear specification of administration standards.

Recommendations

From the viewpoint of eradication of domestic violence against and protection of human rights of women, it is needed to review the new requirement to report a change of residential place or legal status and the new system to revoke visa status, and to revise the Act accordingly. In order to at least minimize occurrence of human rights violation under the current Act, it is recommended to clearly state administration standards of the revocataion system by specifying exemptions of application including, for instance, victims of domestic violence or cases in court dispute.

The residence status system facilitates the aggravation of the problem of domestic violence against married migrant women as the system itself reinforces the nature of dependence of foreign spouses on their Japanese spouses. In other countries, the legal system has been improved to facilitate battered migrant women to independently apply for their visa status. Japan is also required a drastic review over the residence status of

foreign spouses from the perspective of the prevention of domestic violence. Under the current Act, at least, it is recommended to clearly indicate administration standards when considering a residence status in the case of separation or violence (such as a change from a Japanese spouse to a permanent resident), and the management of the resident status system as to guarantee a safe sheltering from the damage for victims of domestic violence.

Foreign Residents Affected by the Earthquake

by Solidarity Network with Migrants Japan

Issues

In the earth-quake affected area, about 75,281 foreigners lived. Right after the disaster, the embassies of China, Korea and the Philippines in Tokyo checked the safety of their people and started to help those who wished to return home. Meanwhile, the Japanese government just made an emergency treatment by extending their visa. Today, after one year from the disaster, the Japanese government has not done any to find the actual conditions of affected foreign residents and to provide some supports to them.

Backgrounds

At the time of the earthquake, about 90,000 foreign residents stayed in the five affected prefectures, namely, Aomori, Iwate, Miyagi, Fukushima and Ibaraki. Among 90,000, 75,281 were covered in the Disaster Relief Act. Those foreigners who were killed amounted to 14 Koreans, 10 Chinese, four Philippine, two American, one Pakistani, and one Canadian. As the Japanese police does not collect the data of missing foreigners, their number is unknown.

Although it has been one year after the disaster, information about the situation of affected foreign residents is very much limited. It is because of no official survey has been done by the national and local governments; their residential area is widely spread covering 154 municipalities in five prefectures, and they have been isolated in their neighborhood without forming any groups or communities of the same national origin.

Since 1990, many migrant women from the neighboring countries started to come to the north-eastern part of Japan to marry Japanese men working in the agriculture or fishing industry. Most of them are from Korea, China, and the Philippines.

Among 12,199 Korean residents who were affected by the earthquake, 6,500 are those who have lived in Japan before the war or who were born in Japan as their second, third or fourth generation, under the visa status of "special permanent resident." Most of them concentrate in the urban areas, but are scattered in many different places in a small number. This indicates that they live in isolation. Furthermore, nearly 15% of Korean residents in the area are above 65 years old, and most of them have no pension benefits due to the no interim measures were taken for those no-pension covered foreign residents at the time of the abolishment of the national clause in the National Pension Act in 1982.

Recommendations

Japanese government is urged to take the following measures for the disaster-affected foreign residents, in cooperation with local governments and civil society organizations:

- (a) Multi language translation service when providing them with support programs including housing support, employment support and educational support.
- (b) Survey to find the actual conditions of foreign afflicted people. Among others, it is very much needed to conduct interviews with the elderly Korean residents, and to have survey with migrant women in their own languages.

- (c) Mental care service and living support to the elderly Korean women and migrant women. For the migrant women, to provide them with the Japanese language lessons and vocational training programs for assisting them to find jobs.
- (d) For those foreign children going to Japanese schools or foreigners schools, provide some financial assistance or scholarship programs to help them go to school.
- (e) For migrant women and their children whose mother tongues are not Japanese, to provide free health consultation and regular health check.
- (f) For those Korean or other national elderly people or disabled people who are not covered by the pension scheme, to revise the present Act so that they become eligible to receive pension.
- (g) To enact a “law to prohibit discrimination at the time of disaster and emergency” and to create a council to have consultation with foreign residents in every municipality.