

## JAPAN

### **Follow-up State Reporting - Action by State Party**

**CERD/C/SR.1483. (2001)**

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION  
Fifty-ninth session  
SUMMARY RECORD OF THE 1483rd MEETING  
Friday, 10 August 2001, at 10 a.m.

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ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

#### Comments of Japan on the Committee's concluding observations

82. The CHAIRMAN recalled that the Committee had requested the Permanent Mission of Japan to summarize the Japanese Government's lengthy comments on the Committee's concluding observations, with a view to the inclusion of those comments in the Committee's report to the General Assembly. The Permanent Mission had forwarded a seven-page abbreviated version of the comments. The Committee's decision on the matter would set a precedent. The options before it were to include the seven-page version as it stood in its report, or to request the Permanent Mission to condense the comments still further.

83. Mr. ABOUL-NASR drew attention to the fact that, under article 9 of the Convention, the Japanese Government was entitled to have its comments included in the report, no matter how long those comments were.

84. In reply to a question by Mr. PILLAI about practice in other treaty bodies, the CHAIRMAN stated that other treaty bodies considered fewer reports and therefore their own reports to the General Assembly were generally shorter, whereas the Committee's report was already voluminous even before the Government's comments were incorporated.

85. Mr. DIACONU, supported by Mr. SHAHI, said that, as there was little time to ask for further summarization of the Japanese Government's comments, he advocated the inclusion of the abbreviated version thereof in the report.

86. It was so decided.

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## CERD A/56/18 (2001)

### ANNEX VII

#### Comments of States Parties on the concluding observations adopted by the Committee

##### A. The initial and second periodic reports of Japan\*

The Government of Japan submitted the following comments:

1. With regard to “the population in Okinawa seeks to be recognized as a specific ethnic group and claims that the existing situation on the island leads to acts of discrimination against it” in the seventh paragraph:

(a) We know that some people claim that the population of 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. Those who live in Okinawa prefecture or are natives of Okinawa are of the Japanese race, and they are not generally considered to be a group of people who have biological or cultural characteristics different from those of the Japanese race;

(b) It is not clear what the statement “the existing situation on the island leads to acts of discrimination against” the population on Okinawa specifically means. However, concerning United States military facilities and areas in Okinawa, in order to relieve the burden on the residents of Okinawa owing to the concentration on the island of 75 per cent of all United States military facilities and areas in Japan, the Japanese Government has been working on steady implementation, with full force, of the final report of the Special Action Committee on Okinawa, which aims at the arrangement, integration and reduction of the United States military facilities and areas, in cooperation with the United States Government.

2. With regard to the meaning of “descent” in article 1 (1) of the Convention, mentioned in paragraph [106], the Government does not share the Committee’s interpretation of “descent”.

3. With the aim of resolving the problem of discrimination against the Burakumin through improvement of the low economic level, living environment, etc. of Burakumin communities, the Government has enacted three special measures, i.e. the Law on Special Measures for Dowa Projects, the Law on Special Measures for Regional Improvement and the Law Concerning Special

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\* See paragraphs 159 to 185 of the present report.

Government Financial Measures for Special Regional Improvement Projects, and has been actively promoting various other measures for more than 30 years. We believe that as a result of long-standing activities to resolve the problem of discrimination against the Burakumin by both the Government and local public entities, gaps in various areas have been greatly reduced, including through completion of the establishment of a physical foundation for the improvement of the living

environment in Burakumin. We also believe that education and enlightenment for relieving the sense of discrimination have been promoted based on various plans, and the sense of discrimination among the people has certainly been lessened.

4. Concerning paragraph [167] of the concluding observations, the Government is not in a position to make comments on the ideal way of applying the provisions of the Convention related to individual cases at the courts. In general it is not concluded that the courts are reluctant to apply the Convention immediately because there are few cases referring to provisions of the Convention in opinions, in view of the following:

(a) There is the constraint that the application of law by the court is premised on a fact authorized by the court on the basis of facts claimed or evidence submitted by the parties concerned;

(b) Since the purport of the Convention has already been reflected in the provisions of domestic law, there are a considerable number of cases in which the conclusion would be the same even if the provisions of the Convention itself are not applied.

5. Concerning paragraph [168] of the concluding observations:

(a) As it is obvious from the provision “by all appropriate means” in article 2 (1) of the Convention legislative measures are as required by circumstances and are requested to be taken when the States parties consider legislation appropriate. We do not recognize that the present situation of Japan is one in which discriminatory acts cannot be effectively restrained by the existing legal system and in which explicit acts of racial discrimination, which cannot be restrained by measures other than legislation are committed. Therefore, penalization of these acts is not considered necessary;

(b) Furthermore, with regard to dissemination and expression of ideas of racial discrimination, if the ideas include content which damages the honour or credit of a certain individual or group, it is possible to penalize them under the crime of defamation, insult, or damage of credit/obstruction of business under the Penal Code. In addition, it is possible to penalize them under the crime of intimidation under the Penal Code if the ideas contain intimidatory content aimed at a certain individual. Also, violent actions with a motivation or background of a racially discriminatory idea can be penalized under the crime of inflicting injury, crime of violence, etc. under the Penal Code.

6. Concerning the Committee’s recommendation in paragraph [170] to ensure both penalization of racial discrimination and effective protection from and remedies for racially discriminatory acts, Japan has placed a reservation on implementing the obligations of article 4 (a) and (b) stating that Japan fulfils the obligations under those provisions to the extent compatible with the right to freedom of expression, etc. guaranteed under the Constitution. However, the legislative obligation for punishment within the scope is sufficiently secured, as described above, by the existing penal statute, such as for defamation, and claim for damages is also possible through civil procedures; therefore, there are sufficient domestic laws to secure fulfilment of the obligations under the Convention with the above reservation.

7. In addition, the human rights organs of the Ministry of Justice actively conduct promotional activities concerning all forms of discrimination, including racial discrimination, with the aim of

disseminating and enhancing respect for human rights. Human rights counselling rooms have been set up to accept inquiries from those who have suffered discrimination. In addition, when specifically recognizing incidents of alleged infringement of fundamental human rights, the organs promptly investigate the incidents as human rights infringement cases, find out the facts of the infringement and, based on the results, take proper measures for the case.

8. The Council for Human Rights Promotion established in the Ministry of Justice considered remedy measures for racial discrimination based on the purport of the International Convention on the Elimination of All Forms of Racial Discrimination. It submitted a report on the ideal framework of the human rights remedy system in May 2001. The report proposes that a new human rights remedy system, the central core of which is the Human Rights Committee (tentative name), independent of the Government, should be created, and that the said committee should provide active relief measures with more effective investigatory procedures and remedial measures for the victims of certain human rights infringements, including discriminatory treatment based on race, colour, or national or ethnic origin, etc. in social life. The Government, having the utmost regard for the recommendations of the Council, will make every endeavour to establish the proposed new human rights relief mechanism so that it can provide effective remedies for victims of discriminatory treatment based on race, etc.

9. With regard to “the Committee notes with concern statements of a discriminatory character made by high-level public officials and, in particular, the lack of administrative or legal action taken by the authorities as a consequence in violation of article 4 (c) of the Convention and the interpretation that such acts can be punishable only if there is an intention to promote and incite racial discrimination” in paragraph [171]:

(a) The main paragraph of article 4 limits the subjects to be condemned by the States parties to all propaganda, etc. which is based on ideas or theories of superiority of one race, etc., or which attempt to justify or promote racial hatred and discrimination. As it is clear from the limitation, the article places an obligation on the States parties of taking certain measures against acts that have the intention of promoting racial discrimination. Therefore, it is considered that acts without such intention are not the subject of the article;

(b) Japan is not the only country which makes such an interpretation. For example, article 18, paragraph 5, of the Public Order Act of 1986 of the United Kingdom provides that “a person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not intend his words, or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting”;

(c) Furthermore, the Joint Statement on Racism and the Media (a joint statement by the United Nations Special Rapporteur on freedom of opinion and expression, the Representative on freedom of the media of the Organization for Security and Co-operation in Europe and the Special Rapporteur on freedom of expression of the Organization of American States) defines laws for discriminatory statements as follows: “No one should be penalized for the dissemination of hate speech unless it has been shown that they did so with the intention of inciting discrimination, hostility or violence”.

10. In relation to “the Committee is concerned about reports of violent actions against Koreans, mainly children and students, and about the inadequate reaction of the authorities in this regard and recommends that the Government take more resolute measures to prevent and counter such acts”, in paragraph [172]:

(a) The police have already taken measures to prevent further occurrence of such violent actions by keeping stricter watch at places where such actions are likely to take place and during the times in which students go to and leave school, as well as by collaborating with related organizations and cooperating with schools. In addition, article 189 (2) of the Code of Criminal Procedure provides that police officers shall, when they consider that there exists an offence, investigate the offender and evidence. Accordingly, active investigations have been made to resolve cases, irrespective of whether the injured party was Japanese or non-Japanese, by observing the equality under the law stipulated in article 14 (1) of the Constitution of Japan. Therefore, “inadequate reaction” pointed out in the concluding observations is not true;

(b) Furthermore, the human rights organs of the Ministry of Justice promptly gathered information on these incidents of violence and aggressively conducted awareness-raising activities in order to prevent such violent actions by calling public attention to the prevention of discrimination on the streets, distributing information booklets and putting up posters in school-commuting roads and public transport that are used by many Korean children and students residing in Japan. The Government will continue conducting positive investigations and implementing measures appropriate for each case regarding the cases that are suspected of infringing human rights, and making efforts to raise awareness of respect for human rights among those concerned.

11. In relation to paragraph [173]:

(a) In cases where children of foreign nationality residing in Japan did not choose to receive Japanese education, it is undeniable that they might find some kind of difference in subsequent education, training and employment compared with those who received Japanese school education;

(b) It goes without saying that such difference must not lead to an infringement of the economic, social and cultural rights contained in article 5 of the Convention. Under the Japanese system, these rights are guaranteed without distinction as to race, colour, or national or ethnic origin.

12. In relation to “the Committee is particularly concerned that studies in Korean are not recognized and that resident Korean students receive unequal treatment with regard to access to higher education”, in paragraph [174]:

(a) In Japan, regulations were amended in September 1999 to enable graduates from foreign schools, including Korean schools in Japan, to acquire the qualification for entering a college or university by taking the University Entrance Qualification Examination. In addition, since 1979, the qualification for entering a college or university has also been recognized for international school graduates who have acquired the International Baccalaureate (IB) diploma provided by the International Baccalaureate Organization, a non-profit educational organization in Switzerland;

(b) As mentioned above, the Japanese Government recognizes the qualification for entering a

college or university of graduates of foreign schools that do not meet the standards of public education on condition that they satisfy certain academic requirements, and our understanding is that such a practice is common throughout the world. Therefore, the insistence on “unequal treatment” in the concluding observations is inadequate;

(c) In fact, even schools in which most of the students are Korean can be authorized as regular schools if they meet the public education standards. As a matter of fact, the qualification for entering a college or university is recognized for graduates of such authorized schools. Each school can decide whether or not to apply for that authorization.

13. In relation to “it is recommended that ... the State party ensure access to education in minority languages in public Japanese schools”, in the same paragraph:

(a) It is not clear what kind of education is specifically intended by “education in minority languages” mentioned in the Committee’s recommendation. While we believe that there exist linguistic minorities in the respective States parties to the Convention, the Japanese Government is not aware that many of these countries provide public education using only a minority language. Therefore, it is considered inadequate to state that Japanese public education is discriminatory merely for the reason that the Government does not provide the entire public education only in a minority language;

(b) Secondly, with respect to guaranteeing the right to education stipulated in the Convention without distinction as to race, colour, or national or ethnic origin, the Japanese Government provides the children who use minority languages with the opportunity to enter public elementary and lower secondary schools to receive the same education as Japanese children, if they so desire. Also, in such cases, best efforts are made so that the children who use minority languages can receive Japanese education smoothly by offering Japanese language lessons, support by teachers, and even support by staff members who can speak their native language (minority language). For instance, staff members who speak the Korean language collaborate with teachers to provide Japanese language lessons and other supports to Korean children and students who do not have sufficient Japanese language skills in order to help them receive Japanese education smoothly;

(c) The Japanese Government recognizes that the right to education stipulated in the Convention is already guaranteed in Japan through the efforts described above.

14. In relation to “the Committee expresses its concern that authorities reportedly continue to urge applicants to make such changes [of name] and that Koreans feel obliged to do so for fear of discrimination”, paragraph [176]:

(a) The Japanese Government is aware that there is discrimination against Koreans residing in Japan, but it has been making continuous efforts to create a society free of discrimination through school education programmes and various awareness-raising activities;

(b) In the meantime, there is no fact that the authorities are urging Koreans applying for Japanese nationality to change their names to Japanese names, but instead, the authorities are extensively informing applicants that they can determine their names freely after naturalization.

