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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

Note verbale dated 30 May 2006 from the Permanent Mission of Japan to the United Nations Office at Geneva addressed to the Secretariat of the Commission on Human Rights

The Permanent Mission of Japan to the United Nations Office and other International Organizations in Geneva presents its compliments to the secretariat of the Commission on Human Rights, and has the honour to transmit herewith the comments of the Government of Japan* concerning the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène, on his mission to the country in July 2005, which was submitted to the Commission at its sixty-second session (E/CN.4/2006/16/Add.2).

The Permanent Mission of Japan requests the secretariat of the Commission on Human Rights to have this document circulated as an official document of the first session of the Human Rights Council.

* Reproduced in the annex as received, in the language of submission only.

Annex

Comments

on the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène

(Summary)

The Government of Japan welcomed the visit to Japan in July 2005 by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (hereinafter referred to as “the Special Rapporteur”). The Government of Japan also expresses its respect for the Special Rapporteur’s effort in making a detailed report on his visit (E/CN.4/2006/16/Add.2, hereinafter referred to as “the report”).

Japan has taken all measures to combat racial discrimination. Japan acceded to the International Convention on the Elimination of All Forms of Racial Discrimination. The Constitution of Japan, the supreme law in Japan’s legal system, provides that “All of people are equal under the law and there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin”, and guarantees equality before the law without any discrimination. Based on the above principles of the Constitution, Japan has been striving to realize a society without any form of racial or ethnic discrimination.

As part of this, Japan has been active towards eliminating racial discrimination in United Nations fora as well as in our own country and has cooperated fully with the Special Rapporteur’s activities. When the Special Rapporteur visited Japan, the Government of Japan, including the local governments, arranged venues as much as possible, exchanged views with him, and has contributed by providing information in response to his requests after his return home.

However, the Government of Japan would like to express some concerns about the report as follows:

First, there are many statements in the report which are beyond the Special Rapporteur’s mandate. The mandate of the Special Rapporteur is “to examine ... incidents of contemporary forms of racism, racial discrimination, any form of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-Semitism, and related intolerance, as well as governmental measures to overcome them”(E/CN.4/RES/1994/164). However, for example, the Special Rapporteur reports on the issue of the military bases in Okinawa (paragraphs 6, 51, 52, 88), which has no relation to the issue of racial discrimination. Also he reports on past issues which have no relation to the issue of “contemporary forms of” discrimination: “forced labor” (paragraph 8) and “comfort women” (paragraph 59, 82) during World War II. The Special Rapporteur’s mandate given by the Commission on Human Rights was carefully decided in order to resolve the various human rights issues confronted all over the world. Japan believes that the Special Rapporteur should follow his mandate and act within it. Japan considers his comments beyond his mandate to be inappropriate.

Second, there are many incorrect facts in the report, and many of the recommendations are based on those incorrect facts. For example, the Special Rapporteur reports that Article 14 of the Constitution, the only provision in the national legislation which prohibits racial discrimination is not considered by courts to be self-executing, and that there is no provision in the national legislation that provides a judicial remedy for the victims (paragraph 11), and based on this, he recommends that “the Government and the parliament should as a matter of urgency proceed to the adoption of a national law against racism, discrimination and xenophobia” (paragraph 76). However, the purpose of Article 14 of the Constitution is interpreted as extending to the relations among private citizens through the provisions of the Civil Code. In fact, there are cases in which the courts judged that acts of private citizens were invalid because of discrimination. Also, a victim who suffers damage because of racial discrimination can claim damages in accordance with the provisions of the Civil Code and other laws. Therefore, the Special Rapporteur’s statements regarding this point are incorrect.

The Special Rapporteur reports that “some of the people of Okinawa want it to become an independent territory” (paragraph 53). However, the Government of Japan did not have information that the Special Rapporteur had visited Okinawa before writing his report, and furthermore Okinawa Prefecture as a local authority does not take such a view. Thus, such an opinion cannot be considered as representing the view of the people of Okinawa.

Moreover, the Special Rapporteur indicates that there is discrimination against foreigners in the tax system (paragraph 57) and the labor laws (paragraph 67), but these indications are incorrect. Also, there are many incorrect facts regarding the content of history textbooks and their authorization system in Japan. For example, the Special Rapporteur recommends that history textbooks should “include explanations of the crimes linked to the colonial era and wartime committed by Japan” (paragraph 82). However, there is no Japanese history textbook that does not describe the considerable harm Japan caused to people in many countries—particularly in Asia—during a certain period in its past. Similarly, the Special Rapporteur indicates that “decisions on the content of the school textbooks can be taken locally without any capacity of control at the national level” and recommends the adoption of a legal provision at the national level (paragraph 82). However, this recommendation seems to be made without accurately understanding Japan’s system for screening and authorizing textbooks in which private textbook publishers and their writers compile and edit their draft textbooks. The government undertakes its authorization and then the local governing body selects the textbooks to use from among those that have been approved.

What are mentioned above are only some examples. Following this summary, the Government of Japan would like to comment in detail on each paragraph. To conclude this summary, Japan will continue to make efforts to achieve a society in which each person is respected as an individual and can fully develop his or her own character.

Comments on the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène

1. Paragraph 3

In paragraph 3, the Special Rapporteur states that “(he) regrets however that he could not meet with a number of hi-level authorities, in particular the Governor of Tokyo.”

However, the fact is that he could not meet with Governor Shintaro Ishihara because he sought an appointment on a specific date and time and was inflexible, regardless of the governor's hectic schedule. The above statement is inappropriate and misleading in that it may give the wrong impression that the governor had refused to meet with the Special Rapporteur.

2. Paragraph 8

Taking into account the Special Rapporteur's mandate, this paragraph regarding "the colonial past" is beyond his mandate. Therefore, it is not necessary to comment on the content of this paragraph, but the Government of Japan will point out the following problems for reference.

The number of people from the Korean Peninsula in Japan was about 1 million at the end of 1939 and reached 2 million at the end of the Second World War in 1945. The report says that during the Second World War, the Koreans were obliged to participate in the efforts of war and that in 1945, 2 million Koreans in Japan were subjected to forced labour. However, an increase of about 700 thousand out of the 1 million during 1939 to 1945 was due to voluntary immigrants seeking jobs in Japan and natural increase by birth. Most of the remaining 300 thousand were those who applied for recruitment in mining and construction companies based on voluntary contracts. Few of them were enlisted through the National Enlistment Law and the reference in the report to the effect that a total of 6 million Koreans were subjected to forced labour lacks ground. Designated payments were duly made.

The National Enlistment Law was basically intended to apply to all Japanese nationals as well as to people on the Korean Peninsula, who were Japanese nationals at the time. Although the Law was put into effect in Japan in July 1939, its application on the Korean Peninsula was postponed as late as possible and it was in September 1944 that the Law came into force for the first time on the Korean Peninsula. The so-called "workers from the Korean Peninsula" were sent to Japan only from September 1944 to March 1945. In this connection, it should be noted that it was practically impossible to continue applying the Law after March 1945, due to the termination of traffic between Shimonoseki (Japan) and Pusan (Korea).

3. Paragraph 20

With regard to the rate of children going to high school and the employment of Dowa (Buraku) people, both figures mentioned in his report came from the data of the Dowa Policy Committee held in 1965. Although we cannot conclude that the gap in the rate of children going to high school between Dowa communities and the rest of the population of Kyoto Prefecture has been resolved, it has been shrinking at present.

4. Paragraph 33

The report mentions that Kyoto Prefecture indicated that the most serious problem of discrimination in the region is discrimination against Koreans and there is a risk of xenophobia in this regard. But Kyoto Prefecture didn't explain this as mentioned above. Kyoto Prefecture told the Special Rapporteur that it is very regrettable that human rights issues, especially against Koreans, still remain in Kyoto Prefecture, and there is a concern that widespread news reported through the mass media covering crimes committed by foreigners might lead to the rejection of foreigners among Japanese people.

5. Paragraphs 51-53

The report on Okinawa is written from a one-sided perspective. The report does not explain sufficient grounds for the alleged presence of “racial discrimination” against Okinawa. Moreover it is not appropriate to regard the matters pointed out in the report as those of “racial discrimination” and therefore, they are beyond the mandate of the Special Rapporteur. Although it is not necessary to comment on matters beyond the mandate of the Special Rapporteur, the Government of Japan would like to point out the following factual errors for reference.

- Although the first and second sentences of paragraph 51 describe an alleged discriminatory policy toward Okinawa and the government’s rare consultation with Okinawa, the government has taken a set of actions toward Okinawa, including formulating the “Okinawa Promotion and Development Plan” (with a view to closing the economic gap with the mainland), establishing the Okinawa Policy Council (consisting all of the Cabinet ministers and the Governor of Okinawa as a member, so as to deliberate on basic policies regarding Okinawa), and passing the Law on Special Measures for the Promotion and Development of Okinawa (promoting an independent economy).

- With regard to the third sentence of the same paragraph on the discriminatory concentration of US bases in Okinawa, while 75% of the US bases in Japan are located in Okinawa, it is because of geopolitical and military reasons and not because of discriminatory intentions on the part of the Japanese government. Furthermore, the government has steadily lessened the burden on people of Okinawa arising from the US bases. Examples of such efforts include the SACO (Special Action Committee on Okinawa) Final Report in 1995 and the Force Posture Realignment which is currently taking place.

- Concerning the second last sentence of the same paragraph on lawsuits arising from airplane and helicopter noise, all such lawsuits have actually resulted in judgments in favor of plaintiffs to recover damages incurred in the past. In this regard, it should be noted that the government has taken noise abatement measures at houses and schools in the vicinity of air bases and agreed with the US government on Aircraft Noise Abatement Countermeasures.

- Concerning the second sentence of paragraph 52 on the helicopter crash, the police have not been driven out as the report suggests, and control over the incident site and the investigations as to the cause of the incident were duly conducted by both the government of Japan and the US government in accordance with the Status of US Forces Agreement and as the Japan-US Joint Committee deemed appropriate pursuant to the Agreement; the damages were rewarded to the plaintiffs flexibly and expeditiously. The number of airplane crashes in Okinawa between 1972 and 2005 is 25 and not 338 as indicated in the report.

- As for the last sentence of the same paragraph on US military-personnel related incidents, regular meetings are held among the government, the Okinawa prefecture and the US for the prevention of such incidents, and the US has taken measures such as curfew and off-site patrol. Indeed, according to the local police, the number of such incidents since 2004 has been on a declining trend.

- Concerning paragraph 53 stating that some of the people of Okinawa want it to become an independent territory, the Okinawa Prefecture has not taken such a view, which therefore cannot be considered to represent the people of Okinawa.

6. Paragraphs 54, 55

Nihon Kokusai Koku Kogyo Corporation acquired a piece of land, presently called Utoro district, in order to build a military airport in accordance with the national policy of that time. Utoro was a living quarter for Korean construction workers hired by the company. Therefore, the statement in the report “a Korean community which was placed by the Japanese Government” is incorrect. Furthermore, the statement “after the war the land continued to be owned by the contractor (the present Nissan Shatai Corporation)” does not properly state the facts since it might mislead people to believe that the land was first owned by the Japanese Government during the pre-war era, then after the war the contractor acquired the land.

The report states that the “public authorities never came to Utoro.” We understand that “public authorities” mean all Japanese administrative bodies. The intention of the Special Rapporteur by this statement is not clear, but local authorities (those of Uji City and others) are tied to Utoro through the water-supply services and as such this statement is incorrect.

Regarding the issue of removal of the buildings and vacating of the land, the Supreme Court judged in favor of the land owner in November 2000. The Government must respect the judgment of the Judiciary.

7. Paragraph 57

The report says “A major concern of Korean schools is the lack of recognition by the Japanese authorities: students have no automatic eligibility to take the university entrance examination, as is the case for students with a diploma issued by Japanese schools and by the majority of the international and foreign schools.” But eligibility to take the university entrance examination is stipulated in Article 56 of the School Education Law and in Article 69 of the Regulations of the Law, which give eligibility to those who have the same or greater scholastic ability than graduates from Japanese high schools. Therefore, Korean schools aren’t subject to discriminatory treatment as distinct from other foreign schools. The international schools whose graduates are given eligibility to take Japanese university entrance examinations are limited to those that have been certified by international accreditation organizations or whose education is recognized by the home country as legally equivalent, in terms of the school education system, to the education provided by schools in the home country.

The report also says “Finally, parents cannot benefit from tax exemption on their donations to Korean schools, while donations to other foreign schools are tax-exempt.” But this is clearly a misunderstanding of facts, as at present the Japanese taxation system neither distinguishes Korean schools from other foreign schools in Japan nor treats them discriminatorily. However, tax exemptions can be received on donations to those foreign schools that have fulfilled certain requisites.

8. Paragraph 59

The remarks in this paragraph have no relation to the Special Rapporteur’s mandate. Therefore it is not necessary to comment on the report’s content in this paragraph, but commenting for reference, it is inappropriate to regard “comfort women” as “the system of sexual slavery.” In addition, other remarks contain factual errors and they are also inappropriate.

The Government of Japan has extended its sincere apologies and remorse to all those who suffered immeasurable pain and incurable physical and psychological wounds as “comfort women” on many occasions, such as the Statement by the Chief Cabinet Secretary Yohei Kono on August 4, 1993.

The Government of Japan addressed in good faith the issues of reparations, property and claims arising from the Second World War, according to the provisions of the San Francisco Peace Treaty and other related treaties, agreements and instruments. The issues, including the so-called “comfort women” issue, have been legally settled by these treaties, agreements and instruments.

However, to fulfill its moral responsibility, the Government of Japan, together with the people of Japan, seriously discussed what could be done for expressing their sincere apologies and remorse to the former “wartime comfort women,” and the Asian Women's Fund (AWF) was established in 1995 to extend atonement from Japanese people to the former “wartime comfort women.”

The AWF has provided 2 million yen (atonement money) from contributions of the people of Japan to over 285 former “wartime comfort women” and also carried out medical and welfare support projects with the financial support of the Government of Japan. At the time when the atonement money was provided and medical and welfare support projects were being implemented, the Prime Minister, on behalf of the Government of Japan, sent a letter expressing apologies and remorse directly to each former “wartime comfort woman.”

The report says “Starting from next year, school textbooks will not include any reference to the comfort women.” But this is a misunderstanding of the facts, as some of the history textbooks to be used in middle schools and high schools in 2006 mention “comfort women.”

9. Paragraph 60

The report says “The police disseminate posters and flyers in which foreigners are assimilated to thieves.” But there is no fact that the police have disseminated posters and flyers in which foreigners are assimilated to thieves. Therefore, the alleged statement is wrong.

The report also says the “National Police Agency’s press releases exaggerate the role of foreigners in criminal offences by mentioning that crimes by foreigners were worsening, or widespread, spreading thus the wrong impression that foreigners are responsible for the country’s security problems, when in reality in 2003 the proportion of criminal offences committed by foreigners was only 2.3 per cent.” Although the proportion of criminal offences committed by foreign visitors to Japan (i.e. foreigners in Japan except permanent residents, U.S. military personnel stationed in Japan, and people whose residential status is unclear) in all criminal offences was 2.3 per cent, the number of criminal cases committed by foreigners was 27,258 and that the number of foreigners arrested was 8,725. The above-mentioned numbers increased by about ten percent from the previous year and registered a record high. The number of cases doubled and the number of those arrested is about 1.2 times that of 1993. The police recognize that criminal offences committed by foreign visitors to Japan are becoming worse. The police also recognize that some foreign criminals visiting Japan and criminal organizations that have Japanese members who commit crimes in cooperation with them are one of the factors of worsening public security, but they do not intimate that many good foreigners are responsible for the country’s public security problems. The police release the analysis based on the objective

data for deterrence of crime. The description of “spreading thus the wrong impression” is clearly wrong.

10. Paragraph 62

Paragraph 62 refers to two quotations of remarks by Governor Shintaro Ishihara as the alleged examples that “elected public officials make xenophobic and racial statements against foreigners in total impunity....”

However, regarding the first quotation of remarks, the governor’s remark was made out of concern over deteriorating public safety and security in Tokyo, given the high incidence of crimes committed by those illegally entering or staying in Japan. By inaccurately citing the governor’s words, the Special Rapporteur has distorted the true intention of those remarks.

And regarding the second one, the governor first points out the actual state of crimes committed by illegal immigrants, and based on this awareness, asserts that “in order to address the declining population, the imbalance among age groups...as well as the problem of illegal immigrants, the time has come for us to dispel our odd illusion of ethnic consciousness that has no historical grounds, and to carry out positive immigration policies to achieve a new national prosperity.” The Special Rapporteur doesn’t understand the governor’s real meaning in the whole context of his statement.

Additionally, as freedom of speech and expression is fully guaranteed in Japan, it is perfectly possible for any organization to publicly express its views concerning the governor’s remark. The statement that “affected groups cannot denounce such statements” does not reflect the fact.

The Special Rapporteur also cites quotations of the governor’s remarks using information provided by the NGO, “Solidarity Network with Migrants Japan.” We believe it is inappropriate and unfair to include the governor’s alleged remarks as quoted by only one specific NGO in a report to the UN Commission on Human Rights.

11. Paragraph 67

The health insurance system in Japan is applied on the principle of equality regardless of the nationality of patients. With regard to the Employee’s Health Insurance which employees join in, any person employed at a workplace covered by the Employee’s Health Insurance is eligible, regardless of their nationality. Concerning the National Health Insurance which people who do not belong to the Employee’s Health Insurance may join in, any person who has a domicile in Japan is eligible for it, without racial or ethnic discrimination, such as nationality requirements.

Labour laws aim at protecting workers, without distinguishing between Japanese people and foreign nationals.

12. Paragraph 68

Industrial associations in Japan made up of telecommunications carriers, etc. have established guidelines which stipulate that their telecommunications carriers should prescribe, in their conditions, measures on illegal or harmful information including discriminatory contents that would violate a person’s rights. They also make the guidelines widely known and provide support for Internet Service Providers and people using these guidelines.

In addition to such measures, on the provider's side, appropriate measures such as deletion based on their conditions are taken by telecommunications service providers in cases such as distribution of discriminatory information violating a person's rights.

"Law on Restrictions on the Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identity Information of the Sender" (Law No. 137 of 2001, hereinafter referred to as "Providers Liability Restriction Law") which came to force in March 2001 stipulates that, when distribution of information violates another person's rights, i) there are restrictions on the liability of telecommunications service providers who delete or neglect the information concerned, and ii) the person whose rights have been violated by the information concerned can request the provider to disclose the sender's identity information. The law thus encourages telecommunications service providers to take voluntary measures in such cases.

Upon legislation of the Providers Liability Restriction Law, at a conference consisting of telecommunications industry associations, etc. held in May 2002, the "Guidelines concerning defamation or privacy violation under the Providers Liability Restriction Law" were established. In the guidelines, action standards for telecommunications service providers were clarified in cases where telecommunications service providers are requested to block the transmission of the information concerned by a person claiming to have had his/her reputation slandered or his/her privacy infringed because of information distribution by specified telecommunications. In October 2004, the guidelines were revised to prepare more effective remedy frameworks by specifying procedures for human rights organs of the Ministry of Justice to request deletion of such information concerning libel and violation of privacy posted on the Internet.

13. Paragraph 72

The report says "For example, concerning the Buraku people, the historical origin of their discrimination, linked to the division of labour in the feudal era, is not at present an important element of the teaching and education of the young generations." But, in 2002, Japan drew up its "Basic Plan of Human Rights Education and Encouragement" based on the "Law for Development of Human Rights Education and Encouragement." And the Buraku/Dowa issue has also been taken up as a distinctive human rights issue under this plan. With this basic plan in mind, human rights education is being advanced in Japan. The sentence "not an important element of the teaching and education of the younger generations" of Buraku is not correct, as it is not a fact.

14. Paragraph 74

Japan concluded the International Convention on the Elimination of All Forms of Racial Discrimination on 15 December 1995, which provides in its preamble that the States Parties to this Convention resolved "to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination." In this regard, Japan has already expressed its will to combat discrimination and has been striving to eliminate all forms of racial discrimination.

The Japanese Government formulated the Basic Plan of Human Rights Education and Encouragement through a Cabinet decision in March 2002 based on Article 7 of the Law for the

Development of Human Rights Education and Encouragement. The Basic Plan lists the specific human rights problems which need to be addressed, such as the issues of Dowa, the Ainu people and foreign nationals, and provides that measures to eliminate prejudice and discrimination against such persons should be promoted. The measures for human rights education and encouragement under the Basic Plan are reported to the Diet as an annual report in accordance with the provision of Article 8 of the law.

In addition, the human rights organs of the Ministry of Justice have carried out various activities to promote human rights on a nationwide basis throughout the year. In particular, during Human Rights Week (December 4 - 10), the human rights organs have conducted promotion activities, setting priority targets such as “Eliminate Dowa discrimination,” “Improve understanding of the Ainu people” and “Respect the human rights of foreign nationals.”

15. Paragraph 75

Article 4, paragraph (c) of the International Convention on the Elimination of All Forms of Racial Discrimination requests State Parties to ensure that exercise of public power by public authorities, national or local, shall not permit the measure to promote or incite discrimination since, when public authorities promote or incite discrimination as exercise of public power or as part of measure, it cannot be expected to be subject to the punishment. In Japan, when public authorities or public institutions, national or local make laws or undertake measures to “promote or incite racial discrimination” based on the power, those measures are invalid and not permitted, since equality under the law is guaranteed in the Constitution, and the laws, the instructions and exercise of public power against the Constitution are invalid. Japan continues to observe Article 4, paragraph (c) of this Convention.

16. Paragraph 76

Article 14 of the Constitution prohibits racial discrimination and xenophobia. The article is not directly applicable to the relations among private citizens, but the purpose of the article is interpreted as extending to the relations among private citizens through the provisions for torts and other matters of the Civil Code. A victim who suffers loss or injury through racial discrimination can claim damages in accordance with the provisions regarding torts under the Civil Code.

The Human Rights Protection Bill, abolished due to the dissolution of the House of Representatives in October 2003, aimed to explicitly prohibit discrimination and behavior that promotes discrimination on the basis of race, ethnicity, creed, gender, social position, family origin, disability, disorder, and sexual orientation. Further, the bill would have established a Human Rights Committee as an independent administrative committee in order to afford remedy easily, promptly and flexibly thereby creating a system more effective than the present system.

The Japanese Government is now reviewing the bill in order to re-submit it to the Diet as soon as possible.

An act that may be construed as racism, xenophobia, and other forms of discrimination can be committed in various settings and take various forms. To penalize “racial discrimination in all its forms,” as is recommended by the report, would likely lead to a violation of constitutional guarantees such as that of freedom of speech and expression. Moreover, such criminal legislation would be extremely unclear as to its scope of application, and there is a likelihood

that it would violate the principle of the legality of crimes and punishment that is derived from Article 31 of the Constitution.

Since discrimination, including that on the basis of race or nationality, is prohibited by Article 14 of the Constitution, the government should (and does) endeavor to abolish and prevent any such practices. At the same time, it has to be borne in mind that the use of criminal penalty for that purpose would pose serious constitutional concerns as mentioned above. Since criminal penalty would impose strong restrictions on human rights, it should only be legislated sparingly.

17. Paragraph 77

The Government of Japan ratifies an ILO convention after confirming its consistency with relevant national laws and regulations. In examining the possibility of ratification of a convention, the Government of Japan takes into consideration the objective, contents, and significance of the Convention.

ILO convention No. 111 (the Discrimination (Employment and Occupation) convention) targets a wide range of discrimination regarding employment and occupation. In Japan, the Government of Japan takes basic measures against discrimination regarding employment and occupation through provisions of related labor laws and regulations. However, the Government of Japan would like to consider carefully ratification of the convention because further study is needed in view of the consistency of the provisions of the convention with related national laws and regulations.

18. Paragraph 78

The Japanese Government is now reviewing the bill in order to re-submit it to the Diet as soon as possible.

19. Paragraph 79

The Human Rights Protection Bill, which was abolished in October 2003 due to the dissolution of the House of Representatives, aimed to establish a Human Rights Committee as an independent administrative committee in accordance with Article 3.2 of the National Government Organization Law. The committee would have been ensured a high degree of independence in conformity with the Paris Principles to prevent the influence of the Cabinet or the Minister of Justice, through being granted independence regarding the appointment method of the chairperson and committee members, and guarantee of their status and the independent nature of their official authority.

The Human Rights Committee was to be established as an extra-ministerial bureau of the Ministry of Justice, composed of staff with expert knowledge and experience in human rights relief, with the primary duty of protecting human rights, and as explained above there would have been no conflict in terms of independence since the bill ensured a high degree of independence.

Further, the bill would have established regional offices and the Committee would also have been able to appoint foreign nationals as human rights volunteers in charge of the investigation of designated cases. Moreover, the Committee would have dealt with problems of discrimination.

The Japanese Government is now reviewing the bill in order to re-submit it to the Diet as soon as possible.

20. Paragraph 80

The Human Rights Protection Bill would have established a Human Rights Committee which would be able to submit opinions to the Prime Minister and other ministers on necessary matters in order to achieve the purpose of this bill.

The Japanese Government is now reviewing the bill in order to re-submit it to the Diet as soon as possible.

21. Paragraph 81

The Immigration Bureau had received information on foreign nationals who might be staying illegally via telephone or post under Article 62, Paragraph 1 of the Immigration Control and Refugee Recognition Act (hereinafter referred to as “Immigration Control Act”). To receive information via e-mail was newly added as one of the ways of receiving such information, and there is no intention or fact to the claim that this invites or promotes racism, racial discrimination and xenophobia.

The Immigration Bureau clearly disseminates the intent of receiving information at the top of its website, and warns that slander of foreign nationals who are staying legally is strictly forbidden and that the IP addresses of those who send e-mails are automatically obtained to prevent such slander. The Bureau also carefully operates the system so that it does not deviate from the purposes provided for in Article 62, Paragraph 1 of the Immigration Control Act, and prevents the system from being misused, abused or from inviting slander.

Information received via e-mail is not disclosed, is carefully examined and fully investigated as is information received via telephone or post. Then, such information is utilized with thorough consideration being given so as not to cause problems of exclusion of foreign nationals or human rights issues.

The immigration control administration of Japan aims, as part of its immigration policies, not only to restore public security through the promotion of strong measures to halve the number of illegal foreign residents, but also aims to openly accept foreign nationals, by developing an environment where foreign nationals are easily accepted through the reduction of the number of illegal foreign residents who exert negative influence on Japanese society for the acceptance of all foreign nationals.

The information received via e-mail is based on the intent of the above-mentioned immigration policies and does not promote racism, racial discrimination and xenophobia. It is not necessary for the Immigration Bureau to abolish this system.

22. Paragraph 82

The report states that “Textbooks should also include explanations of the crimes linked to the colonial era and wartime committed by Japan.” This request is based on a misunderstanding of reality, as there is no history textbook in our country that does not describe the considerable harm Japan caused to people in many countries—particularly in Asia—during a certain period in its past.

Furthermore, the report says in concern with the Dowa (Buraku) people, Ainu, people of Okinawa, Koreans, and Chinese, that “the Japanese government ought to be requested to promote revisions of textbooks in order to include details concerning the history and culture of these groups from the perspective of the origins of and reasons for the discrimination they have received.” Despite the fact that the mention of the problem of discrimination against minorities is included in civics textbooks, this request ignores such reality.

In addition, the report states, “decisions about the contents of the textbooks are made in other quarters without any regulation at the governmental level.” However, this is a misunderstanding concerning Japan’s system for sanctioning and adopting textbooks whereby private textbook publishing companies edit textbooks, the government (Ministry of Education, Culture, Sports, Science and Technology) undertakes their approval, and then the local governing body selects the textbooks to use from among those that have been approved.

This paragraph, along with paragraphs 59 and 72, misunderstands and misrepresents the circumstances concerning the aforementioned textbook approval system and textbook notations in Japan.

23. Paragraph 84

With the aim of resolving the problem of discrimination against the Dowa (Buraku) people through improvement of the low economic level, living environment, etc., of Dowa communities, the government enacted three special measures laws, which are the Law on Special Measures for Dowa Projects, the Law on Special Measures for Regional Improvement and the Law Concerning Special Government Financial Measures for Regional Improvement Special Projects, and has been actively promoting various measures for more than 30 years.

We believe that as a result of long-standing activities to resolve the problem of discrimination against the Dowa people by both the government and local public entities, including the establishment of infrastructure to improve the living conditions of the Dowa people, gaps in various aspects have been largely reduced. 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.

24. Paragraph 85

The Government of Japan recognizes that the Ainu, who have developed a unique culture including the Ainu language as well as original manners and customs, lived in the north of Japan, especially in Hokkaido before the arrival of so-called “Wajin” as a historical fact.

ILO convention No. 169 provides for respect for indigenous and tribal peoples’ social and cultural identity. Since the convention includes many provisions other than the protection of workers beyond the mandate of the ILO, and also still includes provisions that conflict with Japan’s legislation, the convention is considered to include too many difficulties for Japan to ratify it immediately.

Since this is a situation in which the Government of Japan cannot ratify the convention immediately and finds it necessary to consider it carefully, the present situation is not one in which the Government of Japan expresses clearly whether the Ainu fall under “indigenous people” as defined in this convention or whether “indigenous people” as defined in this convention exist in Japan.

25. Paragraph 89

The Special Rapporteur says “In particular, Korean schools should be allowed to receive subsidies and other financial assistance, as well as the recognition of their certificates as university entrance examination qualifications, on the same footing as other foreign schools, and even more so taking into account the special historical circumstances of the Korean presence in Japan.” But this is a clear misunderstanding of the facts, as the university entrance qualifications in Japan, as mentioned paragraph 8 of this document, neither distinguish Korean schools from other foreign schools in Japan nor treat them discriminatorily.

Moreover, with regard to financial aid for Korean schools, some of these schools have been recognized as schools in the “miscellaneous” category by prefectural governors, and there are examples of aid granted to such schools at the discretion of the local governing body.

26. Paragraph 90

Racially motivated violence is penalized under the Penal Code. The government has been taking appropriate measures under the Penal Code and other criminal laws against such cases and has been implementing educational measures in order to prevent them in advance.

In order to prevent violent actions and harassment against Korean children and students in Japan, the human rights organs of the Ministry of Justice promptly gathered information on these incidents of violence, and aggressively conducted awareness raising activities 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 to conduct investigations and implement appropriate measures regarding the cases that are suspected of infringing human rights and make efforts to raise awareness of respect for human rights among those concerned.

27. Paragraph 91

The National Pension System in Japan is a social insurance system, from which benefits are paid for a person who has paid contributions and meets prescribed conditions. Therefore, if he/she has not joined in and not contributed to the System, any benefit cannot be paid to him/her as a rule.

It is also impossible to make special rules granting foreign nationals some benefits from the System when they cannot receive any pension because:

- when foreign nationals came to be compulsorily covered due to the Convention Relating to the Status of Refugees, concluded in 1982, the Convention requested State Parties to give equal treatment to foreign nationals as is accorded to nationals in respect of social security in the future, but did not require State Parties to take into account events prior to its ratification.

- it is not fair to Japanese people at the same age who have contributed to the System for a long time.

Moreover, the Employees' Pension System of Japan covers and treats equally all employees, including foreign nationals, since the system was established in 1942.

28. Paragraph 92

All issues relating to property and claims have been completely and finally settled by the Agreement on the Settlement of Problem Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea of 1965.

Regarding this case, as is mentioned in paragraph 7 of this document, the land owner claimed the residents should remove their buildings and vacate the land, and the Supreme Court judged in favor of the land owner in November 2000. The Government must respect the judgment of the Judiciary.

The Government understands that this case is basically a civil case to be resolved between the residents and the land owner. The Government expects this case to be resolved as soon as possible in a mutually satisfactory manner, and intends to keep close eye on it.

In addition, the reports and recommendations concerning Utoro are likely to have been drawn up without visits to the local government of Uji or research through direct consultation and as such, some aspects of the report may not be fully accurate.

29. Paragraph 94

The description of this paragraph can give a false impression that the Government treats foreign nationals discriminatorily. In the field of employment, discriminatory treatment in labour conditions on the grounds of race and nationality, as well as in job placement service, is prohibited.

With regard to the social security system, state parties are internationally requested to apply the same system to foreign nationals as they do to nationals and guarantee the necessary security benefits. Therefore, in Japan, we apply the same social security system to foreign nationals who meet the purpose and requirements of the system as the Japanese people.

With regard to housing, the Public Housing Law, the Residential Area Improvement Law, Incorporated Administrative Agency Urban Renaissance Agency Act, the Local Housing Supply Corporation Law, and the Housing Loan Corporation Law provide fair procedures and requirements for recruiting tenants, qualifications and selection for public housing.

The Government has notified public housing authorities that the same qualifications for tenant applications as those for local Japanese residents should apply to foreigners who have registered domicile and status at their residing municipalities, according to Article 4, Paragraph 1 of the Alien Registration Law. In practice, treatment of foreigners is in full compliance with the said notice.

As to private housing, the Government gives guidance to lessors through lessor organizations, such as the National Rental Housing Management Association, to prevent them from carrying out any discriminatory conduct, including selectivity of tenants on the basis of race or ethnicity.

30. Paragraph 95

First of all, dialogue among civilizations and cultures is one of the priorities in Japanese cultural diplomacy. The Government of Japan has taken a variety of initiatives to overcome

differences in culture, introducing Japanese experiences in maintaining traditional values while accepting foreign cultures and mutually respecting other cultures.

The relevant projects that the Government of Japan organized or supported include:

- the World Civilization Forum 2005
- the International Culture Forum
- the Middle East Cultural Exchange and Dialogue Mission
- the Japan – Arab Dialogue Forum
- the Seminar on the Dialogue among Civilizations: the Islamic World and Japan

Second, as mutual understanding is one of the most important factors in promoting cultural exchange, the Government of Japan has organized various events introducing foreign cultures to Japanese society. Some examples of these events are:

- the Lecture Series on Middle Eastern Culture and Society
- the Lecture Series on Asian Culture and Society
- the African Festival
- the European Autumn Festival in Hibiya

Third, Japan Culture and Information Centers, created at numerous overseas establishments of the Government of Japan, and the Japan Foundation's overseas offices actively engage in promoting understanding of Japan's culture, society and history.

Japan has taken various cultural initiatives to tackle prejudices against foreigners and intercultural communications will continue to be one of the priorities in Japanese cultural diplomacy.

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