



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination Seventy-sixth session

Summary record of the 1987th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 24 February 2010, at 3 p.m.

Chairperson: Mr. Kemal

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Third to sixth periodic reports of Japan

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The meeting was called to order at 3 p.m.

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

Third to sixth periodic reports of Japan (CERD/C/JPN/6; CERD/C/JPN/Q/6; CERD/C/JPN/Q/3-6/Add.1/Rev.1; HRI/CORE/1/Add.111)

1. *At the invitation of the Chairperson, the members of the delegation of Japan took places at the Committee table.*
2. **Mr. Ueda** (Japan), introducing the consolidated third to sixth periodic reports of Japan (CERD/C/JPN/6), said that, in accordance with its new principle of “fraternity” in dealing with domestic and diplomatic issues, his Government was working actively to establish comprehensive policies promoting respect for the Ainu people’s human rights. The Government had recognized the Ainu as an indigenous people and had established the Advisory Panel of Eminent Persons on Policies for the Ainu People, which included one Ainu representative. In 2009, the panel had compiled a report which recommended policy measures to promote education and public awareness about Ainu history and culture, construct parks as a symbolic space for ethnic harmony, and promote Ainu culture and language. The report advised the Government to conduct research on the living conditions of the Ainu and implement measures to improve their living conditions throughout Japan. In response, in August 2009 the Government had established the Comprehensive Ainu Policy Department and the Meeting for Promotion of Ainu Policy, the first session of which had been held in January 2010.
3. In December 2000, his Government had adopted the Human Rights Education and Promotion Act, which had led to the formation of the Basic Plan for Human Rights Education and Promotion in March 2002. In accordance with that plan, the human rights bodies within the Ministry of Justice were conducting various activities to foster human rights awareness, eliminate prejudice and discrimination against foreigners, and promote tolerance and respect for diverse cultures, religions, lifestyles and customs.
4. Those bodies also carried out human rights counselling and investigations of human rights infringements, and ordered appropriate action. In April 2004, his Government had thoroughly revised the regulations for dealing with cases of human rights infringements to ensure prompt, flexible and appropriate investigation and remedial measures.
5. Japan was currently working on studies geared to the establishment of a national human rights institution. The Human Rights Protection Bill, which provided for the establishment of a human rights commission, had not been passed owing to the dissolution of the House of Representatives in October 2003. A new bill which proposed a human rights remedial system was currently under consideration by the new Government.
6. His Government had started a pilot resettlement programme to admit refugees from Myanmar currently living in the Mae La camp in Thailand. Under that programme, approximately 90 people would be admitted to Japan over a period of three years. Substantial resettlement support would be provided for them, including Japanese-language training, employment counselling, job referral and guidance on adjusting to Japanese society.
7. **Mr. Thornberry**, Country Rapporteur, noted that Japan had not yet made the optional declaration provided for in article 14 of the Convention, nor had it ratified the amendments to article 8. He wondered if the Government would consider taking those steps, as well as ratifying other instruments relevant to the Convention, such as the ILO Convention concerning Discrimination in respect of Employment and Occupation (No. 111), the ILO Convention concerning Indigenous and Tribal Peoples in Independent

Countries (No. 169), the UNESCO Convention against Discrimination in Education (1960), and the Convention on the Prevention and Punishment of the Crime of Genocide (1948). He commended Japan's pioneering effort during the League of Nations era to include a provision in the Covenant of the League of Nations on the equality of nations and races.

8. While the report included statistics on foreigners in Japan disaggregated by nationality, it did not provide an ethnic breakdown of Japanese citizens. That made it difficult to fully understand the situation. He suggested ways in which the Government could gather that information without infringing the privacy of its citizens.

9. He noted that while article 14 of the Japanese Constitution did prohibit racial discrimination, it did not cover all five grounds for discrimination listed in the Convention. Comprehensive anti-discrimination legislation was therefore needed, as required by articles 2, 4 and 6 of the Convention. There was some doubt as to whether the Convention was being systematically applied in Japan to private conduct by persons, groups or organizations. It was unclear whether Japanese law expressly prohibited indirect discrimination. He would welcome the passing of a bill similar to the failed Human Rights Protection Bill of 2002.

10. Regarding the delegation's reply to question 4 of the list of issues (CERD/C/JPN/Q/6), he said that "descent" as a ground for discrimination carried its own meaning, which was distinct from the other grounds set forth in the Convention. With regard to the debate recorded in the *travaux préparatoires* for the Convention on the use of "descent" as opposed to "national origin", he pointed out that there were many references to caste and descent-based systems in the *travaux*. In any case, the *travaux* were supplementary; the text of the Convention and subsequent practice should be used as the primary means of interpretation.

11. He noted that the special measures for the Buraku people had been terminated in 2002 and hoped that genuine support for them would not cease. Questions still existed concerning marriage, "Buraku lists" and derogatory comments in the media. He wondered whether there was a government department or ministry dealing with the Buraku issue and what general, if not special, measures were being taken to safeguard their rights.

12. Japan's reservation to article 4 (a) and 4 (b) of the Convention was potentially broad in scope since it referred to specified but also unspecified rights under the Japanese Constitution, ultimately tying the reservation to the text of the Constitution. That raised the question whether an amendment to the Constitution would affect Japan's international obligations under the Convention. That was a pertinent question since it was preferable for the reverse to be true, i.e. for domestic law to be brought into line with international law. The Committee often recommended that States parties should review the reservations they had made to the Convention with a view to either withdrawing them or reducing their scope.

13. Japan appeared to have a relatively tolerant approach to hate speech, and most of the legal actions brought for that offence were in the area of defamation of private individuals. He invited the Government to consider strengthening Japan's current system for the prosecution of defamation of a group of persons, in an effort to give full effect to article 4 (a) of the Convention. The Committee had always regarded article 4 as being of considerable importance, in particular as support for educational programmes and legal provisions aimed at countering racial discrimination. He stressed that, under international law, freedom of expression was not unlimited.

14. He welcomed Japan's recognition of the Ainu as an indigenous people, its establishment of the Advisory Panel of Eminent Persons on Policies for the Ainu people and its support for the United Nations Declaration on the Rights of Indigenous Peoples. A legislative programme regarding the Ainu, based on current standards relating to

indigenous rights, would be extensive and would have to cover such issues as identity, culture, language, land rights and sacred sites. He would be interested in knowing more about the next steps the Government planned to take in conjunction with the Ainu representatives in order to develop that programme.

15. He took note of the State party's reluctance to designate the native people of Okinawa as an indigenous people. It should be noted, however, that the Okinawans had a distinct language, culture and history, and had constituted a significant political presence in Japan prior to 1879. The Okinawan language had been recognized by UNESCO as being distinct from Japanese but was not taught in Japanese State schools. Such a situation would have been enough to prompt many countries to accept a people such as the Okinawans as an ethnic minority or indigenous people. It would be interesting to have additional information on the visit to Okinawa by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

16. Concerning foreigners in Japan, he wished to know exactly what was conferred by the status of "special permanent resident". There appeared to be significant differences between special permanent residents of Korean or Chinese descent and Japanese citizens. He asked whether there was a distinct set of rules that applied to such residents that differed from the rules applicable to Japanese citizens but also from those applicable to other foreigners.

17. On the question of discrimination against non-citizens in general, the Committee had issued general recommendation No. 30. On the whole, the Committee did not consider that any distinction should be made between nationals and foreigners in the field of human rights. The most appropriate policy when dealing with non-citizens was always to ensure as broad a human rights framework as possible. Although there was room in the sphere of political rights to make a distinction between nationals and foreigners, many countries gave non-citizens the right to vote in local elections. He wondered whether such rights had been granted to special permanent residents or to other non-citizens in Japan.

18. There were a number of special permanent residents who opted not to apply for naturalization. Special permanent residents opened themselves up to a programme of effective assimilation in, inter alia, the Japanese education system since there did not appear to be much recognition of ethnic minority rights in the areas of language, identity or culture. A more open approach to the issue of ethnic minorities might perhaps encourage those who wished to conserve their identity to opt for Japanese citizenship.

19. With regard to education, he would be interested to know how the standard State school curriculum accommodated minorities — whether citizens or non-citizens — in terms of history, culture and language. He asked whether any emphasis was placed in history classes on the contribution of the various ethnic groups to the construction of Japan. The State had to strike a delicate balance between its duty to equip schoolchildren to succeed in Japanese society and its duty to give due recognition to the history, culture and language of its ethnic minorities. He would welcome the delegation's comments on the reported disadvantages, in terms of funding and taxation, faced by non-accredited schools in Japan, particularly schools attended by students of Japanese descent from Brazil and Peru. It had been difficult for the Committee to consider many other issues relating to minorities in Japan in the areas of identity, language and participation in national life, owing to the unavailability of data in the State party.

20. He requested information on the particular situation of migrant women in Japan in the light of reports of the existence of hostile attitudes towards such women and the difficulties they experienced in accessing public services. There appeared to be few statistics on those matters. A particular criticism had been referred to the Committee concerning the revised Immigration Control Act and its requirement that women —

including women who had been subjected to domestic violence — must remain with their spouse for a predetermined period or face the loss of their resident status. The Committee dealt with gender issues only when it considered that they comprised an ethnic dimension.

21. With regard to the recognition of refugee status, there appeared to be a number of problems, including cultural misunderstanding, a lack of information in non-Japanese languages about the relevant procedures and difficult access to public services. The new refugee recognition system was therefore a welcome development.

22. He was gratified to learn of the Government's plan to develop a national human rights institution, particularly since the range of problems it would address included the very issues he had just highlighted. He expressed the hope that that institution would enable Japan to broaden the scope of its efforts to protect the rights of the groups concerned. He would welcome information on any plans to give effect to the Durban Declaration and Programme of Action.

23. Regarding general social conditions, there was evidence of widespread social difficulty in relations between Japanese and non-Japanese people, from the standpoints of both ethnicity and citizenship. For example, there had been a number of reports of denial of the right of access to public places, which was referred to explicitly in article 5 (f) of the Convention. In the experience of many countries, that kind of general attitude could be curbed through the enactment of legislation which specifically prohibited certain kinds of refusal of admission, prescribed punishment for offenders and provided compensation for victims.

24. It might also be that Japan's approach to hate speech respected the right to freedom of expression but failed to fulfil the State party's obligations. He suggested that the State party's human rights obligations could be complemented by recognizing the competence of the Committee to receive and consider communications from individuals, as provided for in article 14 of the Convention.

25. Japan was a world-class economy and cultural leader, much admired for its accomplishments. It was important to match that prestige with progress in the human rights field, which in turn required a deepened commitment on the part of the Government.

26. **Mr. Amir** said that Japan was at the forefront of technical, scientific and academic progress. It also had a number of achievements to its credit on the human level. An example was the nationalization of rural land in order to turn it over to poor peasant farmers who depended on it for their subsistence.

27. As indicated in the periodic report and the NGO shadow reports, there were a number of problems in Japan that related to discrimination against both indigenous minority groups and foreigners. He requested additional information on the content of the basic academic curricula in Japan. He asked whether it reflected the history of Japan's relationships with indigenous minorities and with its neighbours. The action taken by Australia and New Zealand in apologizing to their indigenous populations for the transgressions of the past was exemplary.

28. Social and economic unity based on equal rights for all would give Japan the resources it needed for further modernization. Such unity would enable it to make the same kind of progress as it had made in science and technology. Research into human and social sciences would, in turn, ensure the gradual elimination of discrimination so that Japan could become a multicultural, economic and humanitarian model.

29. **Mr. Avtonomov** expressed gratitude for the information provided in Japan's report concerning court decisions on racial discrimination cases. Such details were particularly useful to the Committee. He welcomed the many new initiatives proposed by the Government in order to address racial discrimination, including the new refugee

recognition system. Those initiatives formed part of Japan's new approach to dealing with the contemporary global situation.

30. The bill currently before parliament on ensuring education for children, irrespective of their ethnic origin, was a praiseworthy initiative. However, some ministers had apparently suggested that certain Koreans should be excluded from its coverage owing to the state of diplomatic relations with the Democratic People's Republic of Korea. He asked for assurances from the delegation that no such discriminatory amendments to the bill would be accepted. He also expressed concern about the fact that some Koreans who were resident in Japan had been barred from acquiring citizenship and enquired about the specific legislative provisions applicable in such cases.

31. Although there were many Chinese nationals living in Japan, they were not mentioned in the report. Was there any particular policy applicable to them?

32. He asked whether there were any plans to recognize the people of Okinawa as an ethnic group with a distinctive linguistic and cultural identity.

33. He was aware of the State party's position on the Buraku people, but article 1 of the Convention mentioned descent as a prohibited ground of discrimination, and the Buraku were defined in terms of their membership of a specific family and not just in terms of their social origin. He asked whether there were any plans to replace the family registration system, which rendered members of the Buraku community vulnerable when the information it contained was accessed by third parties. Had the special affirmative measures which had been implemented for 33 years achieved their goals?

34. **Mr. Murillo Martínez** welcomed the current Government's new vision of the way forward for Japanese society. He would be interested in hearing about its possible impact on racism and racial discrimination — terms that the State party seemed reluctant to use — and on the daily lives of foreigners, such as the Korean community, living in Japan. He also wished to know more about the new education policy aimed at integrating children from all ethnic groups into the education system.

35. He asked whether there was any mechanism for monitoring acts of racism and xenophobia, including on the Internet, and any statistics concerning the victims of such acts.

36. What steps were being taken to ensure that the proposed human rights institution was in conformity with the Paris Principles?

37. **Mr. Cali Tzay** asked how many members served on the Advisory Panel of Eminent Persons on Policies for the Ainu People. According to the delegation, the Government intended to create an environment that would enable the Ainu people to be proud of their identity and to inherit their culture. The implication seemed to be that they were not proud of their identity at present.

38. The Committee had been informed by a number of NGOs that a high-level official had made racist statements concerning immigrants and encouraged discriminatory stereotyping of certain members of the population. What action was the State party taking under article 2 (1) (a) and article 4 of the Convention to deal with such conduct?

39. He joined Mr. Avtonomov in condemning the ministers who wished to exclude Korean children from coverage by the education bill before parliament.

40. He also urged the State party to recognize the inhabitants of Okinawa, who had suffered persecution in the past on account of their separate history, culture and language, as an indigenous people.

41. **Ms. Dah** said that she had noted, on rereading the State party's initial and second periodic reports (CERD/C.350/Add.2), that the situation regarding many technical points remained unchanged. One impediment to rapid change was the failure to withdraw reservations to substantive provisions of the Convention. She sincerely hoped that they would be withdrawn in the near future.

42. The Ainu had been recognized as an indigenous people and measures were being taken to further improve their situation. However, she agreed with the Country Rapporteur that more vigorous action was required to ensure that Japan was complying with all its obligations under international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169. While the municipalities clearly enjoyed considerable autonomy, she felt that on such an important issue the central authorities were under an obligation to lay down carefully targeted guidelines.

43. It was essential to end the stigmatization of the Buraku people. The Government must be prepared to invest time and energy in mounting the requisite awareness-raising campaigns.

44. The State party should also ensure that immigrants who chose to remain in the country were integrated but could also preserve their identities. In particular, they should not be required to change their family names.

45. Noting with concern that Japan had not yet accepted the amendment to article 8 of the Convention, she asked whether it had any objection in principle to the amendment.

46. **Mr. de Gouttes** said he warmly welcomed the recognition of the Ainu as an indigenous people. However, the status of other minorities was an issue that had been raised in 2008 by the Human Rights Council Working Group on the Universal Periodic Review (A/HRC/WG.6/2/JPN/2). Moreover, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had highlighted the situation of the Ainu, the Buraku and the inhabitants of Okinawa in 2005 (E/CN.4/2006/16/Add.2) and had drawn attention to the situation of descendants of former Japanese colonies, particularly Koreans and Chinese, and of migrants from other Asian countries and elsewhere. The Committee wished to know what measures were being taken to protect the language and culture of those groups and to provide appropriate schooling for their children.

47. The OHCHR summary of stakeholder submissions to the Working Group on the Universal Periodic Review (A/HRC/WG.6/2/JPN/3) had highlighted the need to protect the Burakumin community, describing them as descendants of outcast communities of the feudal era, whose occupations had been deemed to be "tainted" with death or ritual impurity. Although the Burakumin had been liberated in legal terms when the feudal caste system had been abolished in 1871, their long history of taboos and myths had left a continuous legacy of social exclusion. Article 1 of the Convention referred to descent-based discrimination and the Committee's general recommendation No. 29 addressed the issue. What definition of the Buraku people did the Government intend to adopt and how did it propose to end the discrimination against them? The same question might be asked about the people of Okinawa.

48. Not much progress had been made since 2001 in the implementation of article 4 of the Convention, which required the criminalization of acts of racism. No new laws had been enacted, even though the Convention was not directly applicable under the Japanese dualist system. The State party's reservation to article 4 (a) and (b) had not been withdrawn. It invoked in that connection the idea of freedom of expression, but the Committee had stated clearly in its previous concluding observations and in general recommendation No. 15 that the provisions of article 4 were mandatory and that the prohibition of the

dissemination of all ideas based upon racial superiority or hatred was compatible with the right to freedom of expression.

49. Paragraphs 66 and 68 of the report provided information on court decisions concerning racial discrimination, and paragraph 71 mentioned complaints investigated by the human rights organ of the Ministry of Justice. However, most of the judgements and rulings had dismissed the complaints filed, a fact that, in his view, illustrated the need for greater awareness of racism and racial discrimination on the part of the law enforcement agencies and the judiciary.

50. According to information received from NGOs, the Supreme Court had refused to allow experts in the settlement of family and other disputes to act as mediators on behalf of foreigners. He enquired about the reasoning which had led to that decision.

51. **Mr. Huang Yong'an** said that although Japan was an industrialized country and an economic Power, its people had preserved their way of life. The main minority groups were immigrants, especially from neighbouring Asian countries, and racial discrimination undoubtedly existed in Japanese society, for instance against persons from the country's former colonies. For historical reasons, Koreans and people from Taiwan and other Asian countries had settled in Japan in the first half of the twentieth century. Although most of them had now become Japanese citizens, many were still finding it difficult to integrate into Japanese society. There was a tendency, especially among the older generation of Japanese, to look down on persons belonging to that category. Although they had made a valuable contribution to the industrialization of the country and were entitled to the same rights as other Japanese nationals, they were discriminated against in employment, education and social life. Citing article 4 of the Convention, he urged the State party to enact a comprehensive law aimed at eliminating administrative and legal discrimination against them. Although Japan had entered reservations to article 4 (a) and (b), he assumed that it subscribed to the basic principles enshrined in these provisions.

52. The Committee had received reports of discriminatory incitement by Japanese politicians and public officials. Advocates of extreme right-wing policies had stigmatized immigrants in such terms as "a bunch of thieves or troublemakers". He suggested that the Government should organize a human rights seminar for such politicians and public officials and take measures to eradicate their deep-rooted colonial attitudes.

53. Otherwise, he warmly commended the Government for its efforts to promote human rights, especially the new measures to eliminate racial discrimination mentioned by the delegation.

54. **Mr. Diaconu** said that while the Ainu people were recognized as an indigenous community, they had reportedly been prevented from fishing in coastal waters; that had not previously been the case and other people had been allowed to continue fishing in those areas. He would welcome an explanation from the delegation. Since it would appear that the Ryūkyūan people of Okinawa spoke a distinct dialect or language, he failed to understand why they were not regarded as indigenous people.

55. While the Committee noted that the issue of the Buraku people was not one of race, he found the State party's position untenable, given that it had not made a reservation to article 1 of the Convention, which made clear reference to descent. He requested clarification whether a system of registering Buraku family members was still in existence, as such systems had been used in the past to justify refusing individuals' access to jobs and public places. He asked why the measures introduced to improve the situation of the Buraku had not been implemented since 2002. It would be interesting to know the State party's position on the United Nations Declaration on the Rights of Indigenous Peoples and whether it intended to ratify ILO Convention No. 169.

56. He asked whether the Government planned to enable Korean residents, who had been stripped of Japanese nationality under the terms of the 1952 San Francisco Peace Treaty, to reacquire Japanese nationality, particularly as many of them had lived in Japan since the end of the Second World War. It would be interesting to learn whether any Korean residents had applied for Japanese nationality. He asked whether graduates of South and North Korean schools other than the Tokyo Korean School could qualify for university entrance. The State party should ensure that effective educational and awareness-raising measures were taken in order to avoid any repetition of situations such as the harassment and abuse suffered by Korean students in the wake of the 2006 reports of North Korean missile launches. He wished to know why North Korean schools in the State party were not eligible for the special tax breaks enjoyed by other schools, including international schools.

57. It would be useful to learn why the State party accepted only refugees from Cambodia, Laos, Myanmar and Viet Nam, particularly since the State party had ratified the 1951 Convention relating to the Status of Refugees.

58. Given that the State party's reservation to the Convention stated that it would fulfil its obligations under article 4 (a) and (b) to the extent that fulfilment of the obligations was compatible with the rights under the Constitution, he asked to what extent article 4 was indeed implemented. It was clear from the State party's reports that all the elements of article 4 were already enshrined in domestic legislation, apart from racial motivation. He asked whether the Government wished to exclude all racial motivation from the criminal justice system. If so, that was difficult to understand, particularly in the light of the judgements handed down in the cases detailed in paragraph 66 of the report.

59. He asked if there were any Chinese schools in the State party, and if so, whether they were divided into Taiwanese and mainland Chinese schools. It would be useful to learn about their status.

60. **Mr. Peter** said that, since the State party was often taken as an example of good practice, it was disappointing that no national human rights institution had been set up. Given the fundamental changes that appeared to take place whenever there was a change of government, he asked whether the current Government had set a time frame for establishing such an institution.

61. It would be interesting to learn whether the reason why the State party had signed and ratified so few international human rights instruments was its desire to discourage interaction with the international community. That would appear incongruous, given the State party's enthusiastic approach to international trade.

62. Since international legal instruments automatically became part of domestic law once the State party had ratified them, he asked why individuals could not invoke those instruments before domestic courts.

63. He wished to know whether there were any political initiatives in the State party to make the declaration under article 14 of the Convention recognizing the Committee's competence to receive and consider communications from individuals or groups of individuals within its jurisdiction.

64. **Mr. Ewomsan** said that, while admiring the State party's ability to combine economic development with a strong sense of culture and tradition, he was nonetheless surprised at the consequences of social stratification for the Buraku people. He asked what measures the State party planned to take to improve the situation of those people and eliminate the discrimination from which they suffered.

65. **Mr. Lindgren Alves** requested additional information on the Buraku people, in particular why they continued to be subjected to certain types of racial discrimination.

66. **Ms. Shino** (Japan) said that her Government had requested that the question of the declaration under article 14 of the Convention should be given priority consideration. A study was currently being conducted on the question.

The meeting rose at 6 p.m.