

Follow-up Information from the Japan NGO Network for the Elimination of Racial Discrimination in relation to the CERD recommendations included in paragraphs 12, 20 and 21 of its Concluding Observations on Japan (CERD/JPN/CO/3-6).

Prepared by

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16th May 2011

I. Recommendations in the para 12
regarding the establishment of a national human rights institution

We find that “Comments” of the Japanese Government presented to CERD in March 2011 do not contain any information that we expect to find in “follow-up information.” Its comments do not refer to “Paris Principles” nor questions pointed out in the CERD recommendation. The Government should have indicated a specific road map toward the establishment of a national human rights institution including a specific time limit. Below, please find challenges that we would like to raise in regard to this urgent matter.

1) Independence:

As the Government refers to the term “independence” three times in its Comments, it seems that the Government understands the importance. We should remember that “independence” in the Paris Principles is required in three areas of finance, organization and human resources. It is not clear that “independence” in the Comments covers all these three areas. In our dialogues with Diet members, several MPs showed their opinions by saying, “It is not realistic to set up a human rights institution under the Cabinet Office due to some limits in financial and human resources. Rather, an affiliated agency should be set up under the Ministry of Justice, and it should be reviewed in three years after the creation.” In fact, the ruling party appears to be moving in this direction. However, it is almost impossible to transfer once established extra-ministerial bureau to a jurisdiction of other ministry. It is also quite questionable if a human rights organ under the Ministry of Justice can adequately deal human rights infringements occurred in an immigration detention center or a correctional institution. If it is set up under the Cabinet Office, the question still remains if the law enforcement agency (the police) under the Cabinet Office can do the same. In addition, the government’s comments submitted to the CERD frequently referred to the legal affairs bureau of the Ministry of Justice, and in fact, some of MPs expressed their opinion that it could be difficult to abolish the present framework (the legal affairs bureau of the Ministry).

From the above, it is our observation that the ruling party may be considering the establishment

of a national human rights institution under the Ministry of Justice while reserving the existing legal affairs bureau. If this is the case, how can the independence as per Paris Principles be guaranteed?

2) A Broad Human Rights Mandate and a Specific Mandate to Address Contemporary Forms of Discrimination:

Comments of the government do not touch upon at all what CERD urges in the para 12, to establish a human rights institution “with a broad human rights mandate and a specific mandate to address contemporary forms of discrimination.” The former is an important mandate that is contained in the Paris Principles, and the one in the government conception only focuses on the relief of human rights violations. The latter mandate relates to what Doudou Diène as the Special Rapporteur on Contemporary Forms of Racism has pointed out in his report of the official visit to Japan when he was in the office. Both mandates should be carried out by the future national human rights institution.

We ask the government if it intends to give these two mandates to the future national human rights institution, and if it does not, the government is urged to show its clear position as to Paris Principles and the recommendations given by CERD.

3) Substantial Cooperation with Human Rights Civil Organizations:

April, 2011, a project team (PT) working towards the establishment of a national human rights institution was formed within the ruling party. This initiative formally indicates its intention to work on this challenge. It has been said that the PT will have the space in which it listens to voices of civil organizations. This arrangement must be effective and substantial.

In regard to the structure of a national human rights institution, Paris Principles prescribe that it should collaborate with NGOs working for human rights and against racial discrimination. Comments of the government, however, do not refer to such a collaboration nor Paris Principles. As clearly stated in the “Interim Report on the Establishment of New Human Rights Remedial Institution” by the three ministerial aids of the Ministry of Justice in June 2010, the government should declare that the establishment of the institution is based on Paris Principles, and indicate that the institution will have a collaborative relationship with human rights NGOs and individuals affected by human rights violations and/or discrimination.

Prepared by Human Rights Joint Action

II. Recommendations in the para 20 regarding the Ainu as Indigenous People

★**CERD recommendation:** “Further steps be taken in conjunction with Ainu representatives to translate consultations into policies and programmes with clear and targeted action plans that address Ainu rights and that the participation of Ainu representatives in consultations be increased.”

Present situation: While the Meeting for the Promotion of Ainu Policies makes a stress that it refers to the UN Declaration on the Rights of Indigenous Peoples, it has not clearly indicated which paragraphs of the Declaration are taken into its considerations, and how these are reflected in their work. By looking into the substantial work of the Meeting, we do not find any essential parts of the Declaration that have been reflected in its work. Now, the two working groups are almost reaching their own conclusion, however, it is hard to say that the Meeting takes different voices of the Ainu living in and out of Hokkaido into their promotion work, and its transparency and representation is still questionable.

We recommend that the Meeting for the Promotion of Ainu Policies or a future successive agency of the Meeting have the structure which reflects various voices of the Ainu and allows the Ainu to take their own initiatives in the work of the Meeting.

★**CERD recommendation:** The State party, in consultation with Ainu representatives, consider the establishment of a third working group with the purpose of examining and implementing international commitments such as the United Nations Declaration on the Rights of Indigenous Peoples.

Present situation: The Japanese Government has concentrated on the implementation of the work assigned to the two working groups, and not given any single attention to set up a third working group.

We recommend that the Meeting for the Promotion of Ainu Policies examine the establishment of the third working group or its future successive agency establish a working group with the purpose of examining and implementing the international commitments that the Government has made.

★**CERD recommendation:** It urges the State party to carry out a national survey of living conditions of Ainu in Hokkaido and recommends that the State party take into account the Committee’s general recommendation No. 23 (1997).

Present situation: Survey on Ainu peoples in Hokkaido has been made only by the local government of Hokkaido and the University of Hokkaido. The survey under the working group limits its scope only on those who live outside Hokkaido. Also, the 2010 national census did not have any question regarding the indigenous peoples or ethnic minorities.

We recommend that the Government include questions regarding indigenous peoples or ethnic minorities in the national census, and conduct a national survey regarding the Ainu peoples living in and out of Hokkaido in a systematic way.

★ CERD recommendation: the State party consider ratifying the International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

Present situation: The government answers in its comments that it is not in a position to ratify the Convention for the reasons that the provisions in Article 9 and 10 need to be examined from the viewpoint of consistency with the penal system of Japan.

We recommend that the Government list up all those provisions contained in the Constitution, laws and systems that are not consistent with the provisions contained in ILO No. 169, and study how those provisions could be revised so that Japan ratifies the ILO Convention No. 169. In doing so, it is recommended that the government has a consultation with the Ainu Peoples and Ryukyu/Okinawa Peoples to examine which provisions of the ILO Convention need to be implemented. It is very unrealistic that the Ainu and Ryukyu/Okinawa Peoples request the implementation of Article 9 and 10.

prepared by the Shimin Gaikou Centre (Citizens Diplomacy Centre)

III. Recommendations in the para 21 regarding the Okinawans as Indigenous People

★**CERD's concern:** While highlighting that UNESCO has recognized a number of Ryukyu languages (2009), as well as the Okinawans' unique ethnicity, history, culture and traditions, the Committee regrets the approach of the State party to accord due recognition to the distinctness of Okinawa and expresses its concern about the persistent discrimination suffered by the people of Okinawa.

Present situation: Japanese Government has kept disregarding the assertion that Okinawan people are indigenous peoples. This has caused the continuing violation of their rights up until now. Among others, the construction projects for the new military base in Henoko Coast and Oura Bay areas as well as the one for the helipad in Takae are intensifying the imbalanced concentration of US military facilities in Okinawa, while reinforcing the contemporary form of discriminatory structure. Yet, the government has taken no specific and effective measure to implement the CERD recommendation to recognize Okinawa having its inherent rights and unique ethnicity based on the recognition of the historical discrimination that Okinawa has kept been subjected to.

We recommend that the Japanese Government recognize Okinawans as indigenous peoples having its unique history, culture and language.

★**CERD recommendation:** The Committee encourages the State party to engage in wide consultations with Okinawan representatives with a view to monitoring discrimination suffered by Okinawans, in order to promote their rights and establish appropriate protection measures and policies.

Present Situation: In its follow-up information submitted to CERD, the government limited itself to explaining only about its Okinawa promotion measures in the legal and institutional framework which, according to their explanation, are based on intentions and interests of Okinawa prefectural government. Meanwhile, CERD encourages to have a wide range of consultation with Okinawan representatives. It is inadequate and insufficient to guarantee human rights of Okinawan people only by responding to what Okinawa prefectural and municipal governments have requested.

We recommend that in addressing the structural discrimination against people of Okinawa the Japanese Government guarantee the rights of Okinawan people in the context of the ICERD.

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