

NGO Report
to be submitted to the Committee on the Elimination
of Racial Discrimination (CERD)

in relation to its consideration of 7th to 9th periodic reports of Japan
(CERD/C/JPN/7-9) during its 85th session

The issue of Hate Speech in relation to Article 4 (a) and (b)
of ICERD

&

Indications of Systematic and Massive Racial Discrimination
in Japan that may lead to Conflict and Genocide

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Comments on the 7th – 9th periodic report of the State party / government of Japan

1) In the periodic reports of Japan, it is stated that *“The Government of Japan does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited, to the extent that the withdrawal of its reservations or legislation to impose punishment against dissemination of racist thoughts and other acts should be considered even at the risk of unduly stifling legitimate speech.”*¹ However, the reality of the issue of hate speech is so serious and prevalent in Japan, as documented in this report, that it is obvious that the understanding of the government of Japan of the issue is simply wrong and such wrong belief without any evidence cannot be a reason for maintaining its reservation on Article 4 (a) and (b) of the Convention. Although the Prime Minister as well as the Minister of Justice and the Chief Cabinet Secretary have expressed their concerns at the Diet in May 2013², nothing as such is reflected in any public documents including the periodic reports to the Committee.

2) Furthermore, the concern about the *“risk of unduly stifling legitimate speech”* cannot be regarded as sufficient or appropriate reasoning for its reservation on Article 4 (a) and (b), since the article concerned does not require criminalisation of all types of hate speech, as in more detail clarified through the General Recommendation No. 35 of the Committee.

3) At the same time, the reservation of Japan on Article 4 (a) and (b) says *“In applying the provisions of paragraphs (a) and (b) of article 4 of the [said Convention] Japan fulfills the obligations under those provisions to the extent that fulfillment of the obligations is compatible with the guarantee of the rights to freedom of assembly, association and expression and other rights under the Constitution of Japan, noting the phrase ‘with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention’ referred to in article 4.”* However, the government of Japan has taken no measures to prohibit or address even hate crimes based on racist intention or ideology that in no way can be considered as freedom of expression. At the same time, no measure or effort is taken to clarify to what extent the government of Japan sees the fulfilment of the obligation under Article 4 is compatible with the guarantee of freedom of expression. Against this backdrop, it can be concluded that, the government of Japan is not even fulfilling its obligation under Article 4 (a) and (b) that still exists with the reservation.

4) The Article 2 1. of ICERD requires States to *“prohibit and bring to an end”* racial

¹ CERD/C/JPN/7-9, para 84

² Ref. the Asahi newspaper (“Asahi shimbun”), 10 May 2013:

http://ajw.asahi.com/article/behind_news/social_affairs/AJ201305100069 (last accessed on 2 June 2014), the article can also be found in the Annex

discrimination by any persons, group or organisation, and Japan has not placed any reservation on the Article 20 of ICCPR, to which Japan is also a State party. Thus, Japan has the obligation to at least make the act of hate speech illegal. However, that obligation is not fulfilled at all by Japan.

5) The government of Japan appears to argue that current domestic legislation is sufficient to deal with discrimination. However, there is no law prohibiting any kind of discrimination. Therefore, an act of discrimination itself is not illegal in Japan, but cases of discrimination can only be (indirectly) addressed, if it includes acts of tort or contempt that are made illegal in the current Civil or Penal Code.

6) Existing legislation is not sufficiently applied either. For example, almost all the local and municipal governments provide permission to racist groups to use public facilities even in case where the intention to carry out hate speech is obvious. However, if Article 2 of ICERD is directly applied, or each municipal and prefectural ordinance is interpreted in full accordance of Article 2 of ICERD, usage of public facilities by racist should be rejected. The police as well as the public prosecutors are usually reluctant in arresting or prosecuting the perpetrators of hate speech, even if acts of intimidation or contempt are included, as there is no law prohibiting the act of hate speech as such but there are only laws protecting freedom of expression.

In particular, if the target of hate speech is ethnic Koreans who are regarded as being associated with Democratic Peoples' Republic of Korea (hereafter DPRK or North Korea), incidents tend to be ignored against the backdrop that the government of Japan has been taking rather hostile policy towards DPRK due to the issue of abduction (as referred to in the other part of this report) as well as the police has also the policy of pressuring those who are regarded as being close to DPRK. At the same time, the government of Japan has stated in its periodic reports, para 93 *"Government of Japan recognizes that racially discriminatory motive is proven as vicious motive accordingly in the criminal trials in Japan and that the court takes it into consideration in sentencing."* However, no research was done by the government at all on the criminal cases, in which discriminatory motive is considered in sentencing and no reasonable ground can be found for how such recognition can be done by the government. According to research by the civil society actors by themselves, who have joined in this report, there is only one case where discriminatory motive can be regarded as being reflected in sentencing.

7) The lack of such laws becomes highly problematic in cases of hate speech targeting a group as a whole, e.g. Koreans, without specifying certain individuals, as provisions in the Penal Code or Civil Code, if any, can only be applied to the cases of individuals or specific organizations. In a contradictive way, such act of hate speech is even protected as the freedom of expression. For

example, approvals are even given to demonstrations in the residential areas of Koreans, whereby perpetrators of hate speech shout “Kill all the Koreans!!!” Under such circumstance, the police is rather protecting those who conduct racist and discriminatory demonstrations from those who protest against such acts of racial discrimination and hate speech. By April 2014, there have been about 20 arrests on charges of assault, intimidation and/or bodily injury during racist and xenophobic demonstrations, whereby more arrests were made among those who protested against discriminatory demonstration than those who demonstrated.

8) Furthermore, nothing is written in the government report regarding the implementation of recommendation No. 13 of CERD, which was issued in the previous review of the State party in 2010. It even appears that the government of Japan is ignoring the recommendation.

1. Background and current situation of the issue

1.1 Discriminatory policy of the government in the background of hate speech

The main target of the hate speech currently occurring in Japan is the ethnic Koreans, who were originally brought to/came to Japan during the time when Japan has colonised Korea. After the end of the World War II, the government of Japan has completely failed (or intentionally neglected) to apologize and compensate for its acts of colonialism in the Korean peninsula, but took discriminatory policy towards ethnic Koreans in Japan as foreign nationals without any recognition of rights and putting them under special surveillance. A high rank officer of the Immigration Bureau under the Ministry of Justice has stated in his publication “200 Questions about Legal Status” in 1965 “We can treat foreigners³ as we want to, even grill and eat them”. Such discriminatory approach of the government has influenced the mind-set of the general public and created the ground for discrimination against ethnic Koreans in the private sector. In the 60s and 70s, there were at least 231 cases of violence against ethnic Koreans in Japan including a murder of a Korean high school student by Japanese high school students.⁴ Since the 80s, every time when relations with DPRK, the only one country with which Japan has no official diplomatic relationship, became problematic to Japan, hundreds of incidents of verbal abuses, harassment and violence against Korean schools as well as their students, including the one where female students of Korean schools were attacked and their ethnic school uniform cut by a box-cutter, have occurred all over Japan.

1.2 Korean Bashing since 2002

Given the development and spread of the internet, online anonymous discriminatory remarks have significantly increased since the beginning of the 21st century. In particular in 2002, when

³ At that time, 90 % of foreigners in Japan were Koreans

⁴ Based on the survey of the Human Rights Association of Korean Residents in Japan

some ten cases of abduction of Japanese citizens were recognised and apologised at the meeting of State heads of Japan and North Korea, the mass media has started massive bashing against North Korea. Such approach of the mass media has also influenced the public opinion positioning North Korea as perpetrator and Japan as victim, while the positioning was, if any, previously rather Japan as perpetrator and North Korea as victim concerning the history of colonisation of Korean peninsula by Japan. Within a half year after the meeting of both State heads, more than 1000 cases of harassment and violence against students of Korean schools were reported from all over Japan.

At that time, groups of lawyers have conducted interviews and survey among the students of Korean schools in the Tokyo metropolitan region, Osaka, Aichi and Fukuoka prefectures in order to grasp the reality and impact of those incidents. Of all the incidents researched, three quarters of them can be identified as hate speech, whereby students were verbally abused with statements such as “Die!”, “Go out!” or “We should have massacred you all during the colonial time.”, and a quarter was physical violence including kicking down from the stairs at the station, punching, and spitting, which can be clearly seen as hate crimes. There were more victims among lower grade than higher, and more female than male students. In Osaka, half of the Korean junior high school female students have become victims of such acts. The fact of the incidents of hate crimes and hate speech against students of Korean schools were partially recognised by the government of Japan in its periodic report submitted to CERD in 2000 (para 81 and 84). After the consideration of the government’s reports in 2001 and 2010, CERD has already issued recommendations to take decisive measures and to fully implement the provisions of the ICERD especially prohibition of discrimination based on the ICERD Article 4⁵. However, the government of Japan has never taken any concrete measures or conducted any research or investigation on the cases.

1.3 Racism in the internet, emergence of racist groups and increasing xenophobic demonstrations

At the same time, joint organisation of the football World Cup in 2002 in Japan and South Korea as well as economic development of South Korea and China has created negative reaction from those with colonial mind-set and strengthened their discriminatory attitude towards people of China and South Korea.

In January 2007, a racist group named “Citizens’ group not allowing the privileges of Korean residents in Japan” (so called “ZAITOKUKAI” in Japanese) has been established with the initial member of about 500 persons, who mainly joined it through the internet. Zaitokukai, since its establishment, has been organising demonstrations and hate speeches with some ten to

⁵ CERD/C/304/Add.114, para 14 and CERD/C/JPN/CO/3-6, para 13

hundred participants throughout Japan, whereby statements such as “kick out the scum Koreans!”, “kill 50,000 Korean prostitutes!” or “Murderer, Rapist, that’s Koreans!” were shouted out.⁶ Zaitokukai has video recorded its demonstrations, uploaded them in the internet, continuously inciting discrimination through cyber-space and gaining more supporters. As of April 2014, it is shown on its website that Zaitokukai has about 14,000 members, while there are other similar racist groups such as “Citizens’ group for the restoration of sovereignty”.

Around 2012, territorial dispute has emerged between Japan and South Korea as well as Japan and China. Since then, the government of Japan as well as mass media have started and strengthened criticising the two countries, which resulted in an increase of anti-Korea and anti-China sentiment among the general public. Moreover, the current cabinet of Prime Minister Shinzo Abe was formed in December 2012, which immediately after its start decided to exclude Korean schools i.e. their students from the tuition-waiver programme for high school education and took the position to obscure the Japan’s responsibility of colonialism and wars of aggression. Since then, the number of xenophobic demonstration organised by racist groups including Zaitokukai has rapidly increased taking place in various cities including Tokyo, Osaka, Kobe, Kyoto, Kawasaki and Sapporo. According to the online survey conducted by the International Network to overcome Hate Speech and Racism (so-called “NORIKOE NET” in Japanese)⁷, there were more than 360 cases of racist demonstrations and speeches in 2013.

In addition to Koreans, racist groups also target Chinese, Burakumin, migrant workers and their families, victims of “comfort women” by Japanese military, as well as companies, unions, organisations and individuals that support these targeted groups and minorities. Japanese national flags, the flags of the rising sun that were used by former Japanese military and currently by the Japanese Defence Force, and even the flags of Hakenkreuz of Nazis⁸ are used in the demonstrations⁹.

⁶ Please refer to the attached DVD for the actual circumstances of these demonstrations and hate speeches

⁷ Norikoe Net was established in September 2013 having co-representatives of Korean human rights activists, former prime minister, lawyers, researchers etc. with its office in Tokyo:
<http://www.norikoenet.org/declaration.html>

⁸ Also ref. the Asahi newspaper (“Asahi Shimbun”), 1 May 2014:
http://ajw.asahi.com/article/behind_news/social_affairs/AJ201405010052 (last accessed on 2 June 2014), the article can also be found in the Annex

⁹ Please also refer to the attached DVD for the actual circumstances of these demonstrations and hate speeches

Pictures: Xenophobic demonstrations by racist groups



“Good or bad, kill all Koreans”



“The huge lie of Korean comfort women. It's massive human rights violation against Japanese.”



1.4 Increasing hate crimes and hate speech: court cases and recent incidents

There have been several court cases of hate speech and hate crime by these racist groups e.g. the civil and criminal trials on the attack against a Korean school in Kyoto as well as against Teachers' association in Tokushima, both in 2010, the civil trial on the hate speech against Suiheisha Museum in Nara in 2011, the criminal trial on the intimidation against Rohto Pharmaceutical Co. in 2011, the criminal trial on the intimidation against city museum in Kobe in 2013 and the criminal trial on the attack with an imitation sword at Kawasaki station in 2014. Among those, the case against the Korean school in Kyoto is highlighted below as an example.

On 4 December 2009, about 1 pm, eleven people, consisting of members of Zaitokukai as well as those of the Citizens' group for the restoration of sovereignty, showed up in front of the gate of Daiichi Kyoto Korean primary school and shouted out statements such as "Korean schools, they aren't school at all", "You are North Korean institute for building spies", "Promises are only made between humans, so nothing can be made between humans and Koreans", or "Eat shit" for about an hour using microphone¹⁰. In addition, those persons have moved the platform of the school placed in the park in front of the school and put it against the school gate, push down the soccer goal in the park and demanded the school to take these into the school. The cable connecting speakers and other facilities of the school in the park was cut by them and damaged. All the facilities moved and damaged by the group were owned by the school and placed in the park with legal permission of the city that is the owner of the park. There were about 150 pupils in the school at the time of the attack and more and more children started crying out of fear, whereby all the classes had to be stopped. Zaitokukai with about 30 participants have again gathered in the park in front of the school on 14 January 2010, carried out demonstration around the school and shouted loudly with microphone making statements such as "Koreans must be disposed at public health centre". As it was informed in advance, the school evacuated children before these acts of Zaitokukai took place. Moreover, end March 2010, Zaitokukai has organised another demonstration near the school shouting "Cockroach Koreans, Scum Koreans, go back to Korean peninsula". Although the police was actually present all the three times of the appearance watching criminal acts of Zaitokukai in front of the school gate, nothing was done but a silent observation.

¹⁰ Please refer to the attached DVD for the actual circumstances of these demonstrations and hate speeches

The school has filed a complaint and four perpetrators were arrested and prosecuted with the crimes of obstruction of business by force, contempt and property damage. They were convicted at the Kyoto district court, but discriminatory intention was not considered or reflected at all in the judgement whereby the perpetrators were sentenced to one to two years imprisonment with suspension as usually practiced in criminal cases which do not involve racism. The convicted four have been continuing their discriminatory actions even after the judgement. At the same time, the case was also tried in the civil court and the Kyoto district court in October 2013 has recognised the hate speech of the perpetrators as an act of racial discrimination

Pictures: Attacks on the Korean school in Kyoto by racist groups



prohibited by ICERD. It is the very first judgement by a Japanese court in which an act of hate speech was recognised as racial discrimination. The case was appealed by the defendants and the trial is still going on at the Osaka High court.¹¹ The judgement of the district court has also pointed out that acts of hate speech targeting unspecified number of persons or groups cannot be addressed under current legal framework of Japan, unless a new law is enacted.

The case of the Suiheisha museum, a museum commemorating the origin of the Buraku liberation movement, whereby then Vice chair of Zaitokukai has carried out hate speech in front of the museum with statements such as “you guys are really really dirty and vulgar” or “Come out Etta¹²”, was brought to Nara district court and sued in a civil trial. It was recognised as an act of tort and compensation of 1.5 million JPY was ordered¹³.

In January 2014, a man has entered the Kobe Korean school and attacked the teachers with an iron pipe by shouting “Are you Korean?”, although his relationship to racist groups was not clear. In February 2014, pages of more than 300 copies of Anne Frank’s diary were torn in libraries in Tokyo as well as in some bookstores. In May 2014, the memorial tree, which was planted in 2011 by Japanese and Korean university students with the support of the consulate of South Korea in Hiroshima near the memorial monument for the Korean victims of the atom bomb in Hiroshima Peace Park, was uprooted by somebody.

¹¹ There was also a demonstration against the court ruling, ref. the Asahi newspaper (“Asahi Shimbun”), 22 November 2013: http://ajw.asahi.com/article/behind_news/social_affairs/AJ201311220082 (last accessed on 2 June 2014), the article can also be found in the Annex

¹² “Etta” is one of the discriminatory terms used against Burakumin

¹³ Please refer to the attached DVD for the actual circumstances of the incident

1.5 Hate speech in printed media and the internet

A daily evening paper of Japan, "Yukan Fuji", which publishes about a million copies, carries almost always headlines inciting hatred towards South and North Korea. In 2005 and 2006, in total about a million copies of comics inciting hatred towards South and North Korea as well as Korean residents in Japan were sold in Japan. Since autumn 2013, there have been more than 20 books bashing South and North Korea were published, of those some became best-sellers, whereby the amount and sales of anti-Korea and anti-China books are making it almost a genre in book business.¹⁴ As an example, the book named "Bokanron" (meaning "theory of stupid Korea") was published in December 2013. Written by a former newspaper correspondent who was stationed in Seoul, in a discrimination and hatred inciting manner and having slanderous phrases such as "the root causes and responsibility of all the problems lie with the sickness of South Korea" or "shamelessness of the huge export country of prostitutes", Bokanron has sold more than 200,000 copies by March 2014. Widely read weekly magazines such as "Shukan Bunshun" (about 700,000 copies) and "Shukan Shincho" (about 600,000 copies) have been publishing articles inciting hatred towards South and North Korea as well as China almost every time.

Moreover, discriminatory remarks and statements against South and North Korea, Koreans as well as Burakumin are becoming more and more prevalent in the internet. Then Member of the House of Councillors, Mr. Hiroshi SUZUKI, has conducted an online research between 31 December 2012 (after the start of the second Abe cabinet) and 1 April 2013 using the analysis tool for social media and online communication "boom research" with the key words that are often used in xenophobic demonstrations such as "Zainichi" (term used towards ethnic Koreans in Japan), "Kankokujin" (term used towards South Koreans) and "Chousenjin" (term used towards North Koreans). As a result, it was found out that the online usage of those terms, among others in the website, blogs and other online communication platforms have significantly increased ("Zainichi" from 7,500 to about 25,000, "Kankokujin" from 6,000 to more than 20,000 and "Chousenjin" from 5,000 to 13,000). At the same time, a large number of discriminatory comments are posted / sent to websites, blogs and twitter accounts that obviously have Korean names and many of the owners of those website, blogs and twitter accounts are forced to shut them down. For example, the former boxing world champion and third generation ethnic Koreans in Japan, Mr. Hon Chonse also had to shut down his official website due to the too large number of discriminatory comments and remarks posted / sent to it, especially since the news about the abduction of Japanese citizens by North Korea was published in 2002. To the website

¹⁴ E.g. ref. Japan Times on 8 March 2014, <http://www.japantimes.co.jp/news/2014/03/08/national/media-national/media-complicit-in-normalizing-xenophobia/#.U4PoJ14xEIj> (last accessed on 2 June 2014)

of the NORIKOE Net¹⁵, more than 200,000 harassment mails were sent within a month after its establishment in September 2013.

The heading of
“Shukan Bunshun”



“Revernge against South Korea!”



The heading of
“Shukan Shincho”



“There is criminals in the family of Park Geun-hye.”



1.6 “Japanese Only” display and racist expressions by private actors

In March 2014, a “Japanese Only” banner was hung out in the home stadium of a popular professional football team in the top Japanese league, Urawa Red Diamonds, by a group of its supporters. As it turned out that the team was aware of the hanging of such banner, but did not take any measures, leaving the banner hung out till the end of the match, the Japanese League (J-League), which belongs to the International Federation of Football Association (FIFA), has taken disciplinary measures against the team including playing the following home-game in an empty stadium.¹⁶ At the same time, the “Japanese Only” designation can be found in a number of cities and various places i.e. shops and stores including restaurants, public baths, bars, discos, ballet schools, internet cafes, pool bars, or newspaper retailers.¹⁷ At the same time, “Foreigners OK” signs can sometimes be found in real estate advertisement. However, it rather shows the reality that basically real estate properties are not offered to foreigners. According to the survey of individual local governments such as Kyoto city or Kobe city, it was found out that almost half of the residents with foreign nationality have experienced discrimination in the search for real estate properties and renting rooms.

¹⁵ Ref. above part of the report

¹⁶ Also ref. the Asahi newspaper (“Asahi Shimbun”), 28 April 2014: http://ajw.asahi.com/article/behind_news/social_affairs/AJ201404280062 (last accessed on 2 June 2014), the article can also be found in the Annex

¹⁷ E.g. ref. <http://www.debito.org/roguesgallery.html>

“Japanese Only” and “Japanese” banners hung out in the stadium



In April 2014, it was reported that at least 38 posters saying e.g. “Protect precious pilgrimage route from the Koreans¹⁸” or “Recently, shameless Koreans are affixing gross seals all over Shikoku region” were found out by the local governments in 25 areas throughout the pilgrimage route spread in three prefectures of Shikoku region.¹⁹ These posters were apparently put up against the backdrop that a Korean women, who was selected as an official guide of the pilgrimage route²⁰, has added trail marker stickers in Korean language to trail marker displays in Japanese with the permission of houses and shops where those markers were displayed.

In 2010, concerns were expressed by CERD regarding the “cases of difficulty in relations between Japanese and non-Japanese and, in particular, cases of race and nationality-based refusals of the right of access to places and services intended for use by the general public, such as restaurants, family public bathhouses, stores and hotels, in violation of article 5 (f) of the Convention (arts. 2 and 5)” and it was recommended that “the State party counter this generalized attitude through educational activities directed to the population as a whole and that it adopt a national law making illegal the refusal of entry to places open to the public”.²¹ However, no such law or even any law prohibiting discrimination is adopted in Japan, while all these discriminatory or racist expressions as well as race and nationality-based refusal of the right of access to place and services for the general public are legal under current legal framework, and thus, cases are still continuing and being reported.

1.7 Widespread harassment against minority individuals

There are endless reports of harassment against individuals of ethnic minority by those who

¹⁸ The term used in the poster is “Chousenjin”

¹⁹ The Sankei newspaper Kansai (Western Japan) version (“Sankei Shimbun Kansaiban), 24 April 2014

²⁰ Official guides are selected and appointed among those who have the experience of at least four times of pilgrimage and recommended by the temple where the candidate concerned does the main training, by the Official Guide Examination Committee of the Association of 88 Shikoku pilgrimage temples’ association. The Korean woman concerned is the first foreign person who has been appointed as the official guide.

²¹ CERD/C/JPN/CO/3-6, para 24

found out the individual's minority identity. For example, letters stating discriminatory words such as "Die, Eta²²" were continuously sent to the apartment of a man of Buraku origin for about 1 and a half-year since 2003. The landlord of his apartment had also received letters requesting to kick out the person of Buraku origin from the apartment. The perpetrator was eventually found, arrested and sentenced to 2-year imprisonment. However, the sentence was given based on the crimes of contempt and intimidation as defined under the Penal Code, but not the acts of discrimination.

In 2007, a 20-year old Indian student was continuously bullied by others at the university with e.g. comments like "Hey you, Osama Bin Laden" and eventually committed suicide. A year after his suicide, the father of the Indian student has also committed suicide. The university concerned has taken no measure until 2010, when the family of the deceased appealed to it and the university eventually started investigation, found out and recognised the fact of bullying, and apologised.

In 2010, a 12-year old half-Filipino girl had been persistently bullied and molested by others at school, who continually hurled words such as "dirty" or "stinking" at her for one year, and the girl committed suicide. The parents of the girl has brought the case to the civil court and, in 2014, the Maebashi district court has recognised the responsibility of the school.

On 25 May 2014, three teenagers (16 – 19 years old) were arrested in Saga prefecture on the suspicion of violence that these persons have thrown raw eggs several times from a car to a Nepalese student, who was on his way on the street by bicycle. According to the language school, where the Nepalese student is presently learning Japanese, in total 19 foreign students have been attacked with raw eggs and air guns since December 2013. The case is currently being investigated by the police.²³

At the same time, 80 to 90 % of Korean students going to Japanese schools are using Japanese names, instead of their original / real Korean name, because of the fear of discrimination and harassment based on their Korean identity²⁴. For example, Tokyo University has consulted a number of its Korean students who have their names stated on the door of their residence and concerned that anonymous letters have been repeatedly sent to them with articles attacking Korea.²⁵

²² One of the discriminatory terms used against Burakumin

²³ The Mainichi newspaper ("Mainichi shimbun"), 27 May 2014

²⁴ According to the research of local governments such as Osaka Prefecture and Kyoto city

²⁵ Based on the research of the Japan Network towards Human Rights Legislation for Non-Japanese Nationals and Ethnic Minorities conducted individually with the Korean students and relevant researchers

1.8 Cover-up and neglect by the government of Japan

In the periodic report of Japan submitted to CERD on 14 January 2013, it is even stated, without any reasonable grounds, data or research being conducted, *“The Government of Japan does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited, to the extent that the withdrawal of its reservations or legislation to impose punishment against dissemination of racist thoughts and other acts should be considered even at the risk of unduly stifling legitimate speech.”*²⁶ Furthermore, the Ministry of Foreign Affairs was asked a question whether the xenophobic demonstrations and activities of Zaitokukai are regarded as acts of discrimination being prohibited by ICERD, but the Ministry has not provided any answer at all. Concerning all the behaviour and approach of the government of Japan towards the issue of hate speech²⁷ as well as ethnic discrimination, it appears that the government is avoiding facing the reality of discrimination in Japan and trying to hide the facts of existing issues, while ignoring its obligation under international human rights treaties. At the same time, the current Abe cabinet has even adopted a cabinet decision on 18 June 2013, regarding the recommendations issued by the Committee Against Torture in June 2013 concerning the discriminatory and humiliating remarks against “comfort women” victims made by high rank officers²⁸ (see the above iii)), that the Treaty Body recommendations are not legally binding and is taking rather aggressive approach to ignore it.²⁹ Indeed, the government has not taken any measures or shown any intention of implementing the recommendations.

Suggestions to recommendations

The State party i.e. government of Japan should:

- Withdraw its reservation on the Article 4 (a) and (b) of ICERD;
- Bearing in mind that the obligation of the State party under the Convention is carried by the State as a whole, while the government of Japan has particular responsibility, but also all the other public authorities and organs including local governments have important role to play to comprehensively and effectively implement the Convention as well as the recommendations of the Committee, take all appropriate means to prohibit and bring to an end racial discrimination by any persons, group or organization. In this context, the State party should take all appropriate measures to effectively address the incidents of hate speech and hate crime including through legislation as well as interpretation and application of existing laws, policies and ordinances in full

²⁶ CERD/C/JPN/7-9, para 84

²⁷ Also ref. Japan Times, 10 July 2013:

<http://www.japantimes.co.jp/news/2013/07/10/national/social-issues/politicians-silent-on-curbing-hate-speech/#.U4XfwF4xGJI> (last accessed on 2 June 2014), the article can also be found in the Annex

²⁸ CAT/C/JPN/CO/2, para 19

²⁹ The Asahi newspaper (“Asahi shimbun”), 18 June 2013

accordance with ICERD (Art. 2). Furthermore, such measures should include:

- Direct application of the Convention as well as appropriate interpretation and application of existing domestic laws, in full accordance with ICERD, especially by the court, whereby racial motivations be properly reflected in heavier sentences or civil liabilities;
 - Rejection or restriction, especially by the central and local governments, on the usage of public facilities and roads by racist groups in case it is used with intention or impact of racial discrimination.
- Take legislative measures including adoption of new law and revision of existing ones, taking account of the General Recommendation No. 35 of the Committee as well as the Rabat Action Plan, in order to effectively deal with serious cases of hate speech, especially those targeting groups of people as a whole;
 - Take concrete measures to stop xenophobic demonstrations, discriminatory speeches and expression of discriminatory intention such as “Japanese only” designations;
 - Enact laws prohibiting discrimination in order to effectively address the issue of hate speech as well as establishing and ensuring comprehensive provision of remedies to the victims;
 - Develop concrete plan and carry out comprehensive education programme for the elimination of discrimination that includes modules on the international human rights standards in order to eradicate the acts of hate speech. Such programme should contain subjects and apply methodology that will eliminate discrimination in all spheres of the society. Furthermore, such programme should be conducted not only in public education, but also in central and local governments, public and private institutions, law enforcement bodies, companies, universities, media etc. and collect views from relevant stakeholders including victims, lawyers and experts in human rights education when developing such education plan for the elimination of discrimination.



<Indications of the systematic and massive racial discrimination follows next page>

Indications of systematic and massive racial discrimination in Japan that may lead to conflict and genocide

In relation to the Preamble, Articles 2, 4 and 7 of ICERD

1. Main issue

- In accordance with the indicators identified by the Committee in its “Decision on follow-up to the declaration on the prevention of genocide: indicators of systematic and massive racial discrimination” (CERD/C/67/1), the current situation in Japan shows indications that may lead to conflict and genocide.
- During and after the great earthquake in Tokyo region (“Kanto Daishinsai” in Japanese) in September 1923, thousands of Koreans and hundreds of Chinese, who were living in Japan as ethnic minority, were massacred by military and police personnel as well as some ten thousands of vigilante groups. However, the government of Japan has taken no measures for research or investigation, accountability, much less apology or compensation to the victims. Little is explained about the incident in the school textbooks and majority of Japanese do not even know it. Without genuinely reflecting upon the past history, re-occurrence of such incident cannot be avoided.

2. Grounds

1) Current situation of Japan as compared to the indicators identified by CERD

- a. Indicator 1 “Lack of a legislative framework and institutions to prevent racial discrimination and provide recourse to victims of discrimination”: Japan does not have any law prohibiting discrimination, National Human Rights Institute or any procedure of individual complaint. System or legislative framework to provide remedies or access there to for the victims are completely lacking.
- b. Indicator 2 “Systematic official denial of the existence of particular distinct groups”: Japan colonized Korea for 35 years from 1910 to 1945 until the war-end. In colonial days, the Japanese government forced Koreans to use Japanese language and Japanese name under its assimilation policies. Under the colonial rule, a large number of Koreans were brought to Japan or obliged to come to Japan, many of who remained in Japan after the war-end. In 1952 after Japan signed the San Francisco Peace Treaty, the government arbitrarily deprived of their Japanese nationality. Those 600,000 Koreans then remained in Japan suddenly became foreigners without being guaranteed for compensation for the damage they had suffered under the colonization or protection of their rights. Moreover, the Government has adopted the principle of bloodline to define nationality, *jus sanguinis* and set severe conditions for

naturalization in the Nationality Law. These historical developments have generated the so-called “resident Koreans”. To date, a half of resident Koreans do not have Japanese nationality and live in Japan as foreigners. The government has not treated resident Koreans as an ethnic minority. Or, it has never admitted those resident Koreans who have Japanese nationality as Koreans, but simply Japanese because of its continued assimilation policies.

It is estimated that there are about 500,000 ethnic Koreans in Japan, who have obtained Japanese nationality. While there are those who try to assimilate to Japan by hiding their ethnicity and changing their names to Japanese ones after having obtained Japanese nationality, the number of those who keep their original Korean names is also increasing. At the same time, many of them who have obtained Japanese nationality send their children to Korean schools to maintain their ethnic identity and stay close to the Korean community.

In any case, whether they have obtained Japanese nationality or not, Koreans are still subject to deep-rooted discrimination based on their ethnicity, as can be seen in the statement of Shintaro ISHIHARA, former co-representatives of Japan Restoration Party (“Nihon Ishin no Kai” in Japanese, please refer to the section on the hate speech by public figures) in 2010. However, the government of Japan has not recognized ethnic Koreans who have obtained Japanese nationality as ethnic minority. The government has not even conducted any research on the number of those ethnic Koreans who have Japanese nationality, or their living situation.

According to the survey conducted by Osaka city in 2009, about 85 percent of resident Koreans in Osaka who do not have Japanese nationality daily use their Japanese names mainly out of fear of being discriminated against. Most of resident Koreans with Japanese nationality have adopted Japanese names at the time of naturalization also mainly out of fear of discrimination (CERD/C/JPN/CO/3-6, para. 16). Additionally, the government has hardly taught the presence and the meaning of resident Koreans in the compulsory education. This has made resident Koreans invisible in Japanese society.

- c. Indicator 3 “The systematic exclusion - in law or in fact - of groups from positions of power, employment in State institutions and key professions such as teaching, the judiciary and the police”: Most of resident Koreans who maintain Korean nationality have obtained special permanent resident status as persons from

former colonies. However, those people with foreign nationality, even if they have permanent resident status, are not eligible to become national public servants, but only limited positions of local public servants. At the same time, they can work as schoolteacher, but only in the position of “full-time lecturer”, which is a secondary position and never be promoted to the administrator positions. No suffrage at national or local level is given to them.

- d. Indicator 4 “Compulsory identification against the will of members of particular groups, including the use of identity cards indicating ethnicity”: Under the Immigration Control Act, all the foreigners are legally obliged to always carry ID that can show their nationality and resident status and to show it to law enforcement officers upon request. After the revision of the Immigration Control Act, ethnic Koreans who have special permanent resident status are excluded from the legal obligation to carry their ID, but they still have the obligation to show them upon request.
- e. Indicator 5 “Grossly biased versions of historical events in school textbooks and other educational materials as well as celebration of historical events that exacerbate tensions between groups and peoples”: School textbooks are not directly made by the State in Japan, but they are made and published by private publishers. However, all the textbooks must pass the screening by the State to be used in the school education system. Each local authority is eventually able to choose, which ones should be used in the schools in their administration, from those textbooks that passed the national examination. After the World War II, modern history has not been put much weight in the State curriculum on history. At the same time, concrete facts of offences and reflection on those acts during the war of aggression and colonialism by Japan including the Japanese military “comfort women” system, Nanking Massacre, or massacre of resident Koreans and Chinese at the time of the great earthquake in Tokyo region in 1923, are not included in the compulsory subjects. Accordingly, less description on these subjects are traditionally included in the textbooks published by private publishers. At times, the way of screening and authorization of history textbooks have become problematic as the authority tried to influence it in order to show Japan as being less responsible to what happened and caused during the war of aggression. In 1982, usage of the term “invaded” China in the textbooks was changed to “advanced to” China in the process of authorization, which even escalated into a dispute between China and Japan. In late 90ies, some groups including the “group to create new history textbooks” (“*Atarashii Rekishi Kyokasho wo Tsukuru Kai*” in Japanese), which was established in 1996, have started to loudly advocate that teaching the history of wars of aggression and

colonialism is a “masochistic view of history”. As a result, it has increasingly become difficult to find descriptions of the history of war of aggression and colonialism in textbooks. In November 2013, the Ministry of Education, Culture, Sports, Science and Technology has decided to review the criteria of textbook authorization to rectify those problematic descriptions about the history issues in an attempt to get out of such unfavourable descriptions from all the textbooks.

- f. Indicators 6 and 7: NA
- g. Indicator 8 “Systematic and widespread use and acceptance of speech or propaganda promoting hatred and/or inciting violence against minority groups, particularly in the media”: Please refer to the ERD Net report on the issue of hate speech in relation to Article 4 of ICERD.
- h. Indicator 9 “Grave statements by political leaders/prominent people that express support for affirmation of superiority of a race or an ethnic group, dehumanize and demonize minorities, or condone or justify violence against a minority”: Please refer to the ERD Net report on the hate speech by public figures.
- i. Indicator 10 “Violence or severe restrictions targeting minority groups perceived to have traditionally maintained a prominent position, for example as business elites or in political life and State institutions”: NA. There are no ethnic minority groups or groups of foreigners in Japan who are perceived to have traditionally maintained a socially prominent position.
- j. Indicator 11 “Serious patterns of individual attacks on members of minorities by private citizens which appear to be principally motivated by the victims’ membership of that group”: Please refer to the ERD Net report on the issue of hate speech in relation to Article 4 of ICERD.
- k. Indicator 12 “Development and organization of militia groups and/or extreme political groups based on a racist platform”: Please refer to the ERD Net report on the issue of hate speech in relation to Article 4 of ICERD.
- l. Indicator 13 “Significant flows of refugees and internally displaced persons, especially when those concerned belong to specific ethnic or religious groups”: NA. Japan is accepting only an extremely limited number of refugees from the beginning. The number of refugees accepted in 2012 is 18.
- m. Indicator 14 “Significant disparities in socio-economic indicators evidencing a pattern of serious racial discrimination”: With regard to ethnic/resident Koreans in Japan, especially those who do not have Japanese nationality, there is not only restriction on the employment opportunities or job assignments in the public sector, but also exclusion from the employment in the private sector. For example, according to the survey of Kyoto city regarding the awareness and living situation of residents with foreign nationality published in 2008, a quarter of the

respondents answered that they have experience of being rejected employment on the basis of their nationality. According to the national census of 2010, the unemployment rate among persons between 25 and 44 years of age were 6.5 % among Japanese nationals and 10.47 % among ethnic Koreans without Japanese nationality. Regarding the types of employment status among all those employed, irregular employment accounted for 34.24% among Japanese and for 45.03% among ethnic Koreans without Japanese nationality.

n. Indicator 15: NA

Current situation in Japan as compared to the supplementing subset of general indicators identified by CERD is as follows:

- o. General indicator 1 “Prior history of genocide or violence against a group”: Japan has colonized the Korean peninsula from 1910 to 1945 and Taiwan from 1895 to 1945. Japan has also invaded and occupied China in 1931 and established “Manchukuo”. It has also invaded and occupied other Asian and Pacific countries during the World War II. It is estimated that some millions were killed in the course of the war of aggression staged by Japan. The massacre of ethnic Koreans at the time of the great Kanto earthquake in 1923 is further described in the latter part of this report. Violence against ethnic Koreans and Chinese has been continuing to date after the World War II, please also refer to the ERD Net report on the issue of hate speech in relation to Article 4 of ICERD.
- p. General indicator 2 “Policy or practice of impunity”: The government of Japan has never conducted any research concerning the history of war of aggression and colonialism. As a result, nobody knows what the actual damages have been caused, while no perpetrators found or punished, and no compensations or remedies provided to the victims. The emperor as the highest authority of the pre-war Japan has never been asked any war responsibility, but remained in the position as the symbol of Japanese nationals.

Treaty on Basic Relations between Japan and Republic of Korea was concluded in 1965, whereby Japan paid 500 million USD as economic cooperation. However, no apology or compensation was made concerning the colonial occupation by Japan. Later on, Korean war victims residing in South Korea as well as in Japan have filed a suit against the government of Japan demanding for official apology and damages. More than 100 cases have been brought into the court, but the government has insisted that it had already been solved through the conclusion of the Treaty and failed to fulfil its war responsibilities.

Concerning the issue of the “comfort women”, the Kono statement in 1993 has recognized the involvement of the military and forcibility of the practice and apology was expressed by the then Prime Minister, Tomiichi MURAYAMA in August 1994. However, comprehensive investigation is yet to be conducted, the government of Japan has not accepted any legal responsibility, no perpetrators have been punished, no victims given compensation. The fact is not even sufficiently taught in school education. Furthermore, several public figures have been repeatedly making defaming statements towards the victims and rejecting any responsibility of Japan (Please refer to the ERD Net s report on the hate speech by public figures). At the same time, several recommendations have been issued by UN Treaty Bodies to resolve the issue.³⁰ However, the government of Japan appears to ignore all these recommendations.

q. General indicators 3 and 4: NA

2) Massacre at the time of the great earthquake in 1923

a. Overview of the incident

Immediately after the great earthquake in the Tokyo metropolitan region (“Kanto” region in Japanese) on 1 September 1923, false rumour was spread around by individuals and the authority that Koreans were attacking Japanese. As a result, more than 6000 Koreans and 600 Chinese were massacred by personnel of the Japanese military, police and more than 10,000 vigilantes between 1 and 6 September 1923. At that time, about 200 individual citizens were tried in criminal court, but the maximum sentence given was about 5 years of imprisonment, while more than half were even granted a stay of execution. Nothing was done to clarify or try the involvement and responsibility of the military and the police. The government of Japan, to date, has taken no official investigation, punishment of perpetrators, apology or compensation on the incident.

b. Investigation and recommendations by the Japan Federation of Bar Association (JFBA) in July 2003

JFBA has recognized the incident of massacre by establishing facts based on the court records and governmental documents and recommended the government of Japan in July 2003 that it should apologize to the victims and their families and conduct further investigations. However, the government has not responded to the recommendations, nothing implemented. Following facts were established by JFBA in its recommendation

³⁰ E.g. CCPR/C/JPN/CO/6, E/C.12/JPN/CO/3, CEDAW/C/JPN/CO/6, and CAT/C/JPN/CO/2

report to the government in July 2003.

- Some thousands of Koreans were killed in the massacre
- Most of the killings were done by members of vigilante groups
- Based on the still existing court records and newspaper reports at that time, at least 41 cases were tried in the criminal court. However, the number of both the victims and the accused were around 200 respectively and only light sentences were given to the convicted.
- In one of the criminal trial conducted at the Urawa district court established following facts in its judgment on 26 November 1923:
 - About 3000 extremely agitated crowds gathered at the *Honjo* Police station in the night of 4 September 1923 and attacked Koreans in riot till the morning of 5 September 1923;
 - The accused A, on 4 September, has murdered three Koreans using a sword cane in cooperation with others on the premises of the *Honjo* police station;
 - The defendant B, on 4 September, has shouted around “kill Koreans!” on the premises of the *Honjo* police station and murdered four to five Koreans with a sphere in cooperation with others;
 - The defendant C, on 5 September, has murdered 1 Korean with a metal rake in cooperation with others on the premises of the *Honjo* police station;
 - The defendant D, on 4 September, has murdered three Koreans with a wooden sword in the gymnastic hall of the police station, taken out one Korean, who was in the office room of the police station, thrown the one Korean into the crowds and let the crowds murder the Korean.
- The ethnic Koreans were also murdered by the Japanese military. According to the governmental document such as the volume three of the “Kanto” Martial Headquarters full report of the Japanese military, there were at least 12 cases of murder of ethnic Koreans by the military and at least several tens were murdered in those cases from 1 to 4 September 1923. These cases have not been tried in any court, criminal or military ones.
- The government of Japan spread around wrong information and incited the massacre of ethnic Koreans by the civilians. For example, the Funabashi communication centre of the then Ministry of Navy of the government has, in the morning of 3 September 1923, sent a message in the name of the Chief of the Police and Security Bureau of the Interior Ministry to each of the district directors, the Police Director to the Office of Korean Governor-General, and the governor of Yamaguchi prefecture saying “using the occurrence of the

earthquake in Tokyo region, Koreans are setting fire all over for the purpose of venting their discontents. Actually there were those already in the city of Tokyo, who are carrying bombs and setting fire with petroleum. As the martial law is already in place in a part of Tokyo prefecture, conduct careful observations everywhere and strictly control the Koreans. However, in reality, none of ethnic Koreans took such actions and the information sent around by the government was simply wrong.

- In Saitama prefecture, the government of Japan (the Police and Security Bureau of the Interior Ministry) sent out information, to each of municipalities through the district director (prefectural interior department) that Koreans were conducting illegal and violent acts including ransom, throwing bombs and poisoning water sources, and ordered to get ready for any security measures (formation of vigilante groups) to tackle against those in the name of the security authority, the Interior Ministry.

c. Interview research by civil society group

In the 1980ies, about 60 years after the massacre, a civil society group (“Group for the commemoration of the victims of the massacre at the time of great earthquake in Tokyo region”) has conducted a research by interviewing more than 100 witnesses at *Yotsugi Bridge* (a bridge between current *Sumida* district and *Katsushika* district in Tokyo), one of the places where massacre happened. Followings are some of the testimonies taken through the research:

- *“It was I think on 3 September. People of the vigilante groups tied up Koreans, brought them under the Yotsugi Bridge and killed. They were killed in a really cruel manner. Cut with Japanese sword, pierced with bamboo sphere or stabbed with iron stick. Women, including those pregnant, were also stabbed and killed. As long as I could see, they killed about 30.”*
- *“They looked like a platoon, so about 20 to 30 persons. Koreans were forced to stand in two rows and shot from behind by the infantrymen. 12 Koreans in a row, so 24 in total at one time. Such massacre continued for two, three days. The local residents didn’t have anything to do with it. Not involved at all. Dead bodies of the Koreans were burnt on the riverside. With the presence of the military police, they were burnt with petroleum and woods.”*
- *“Under the Yotsugi Bridge, on the riverside on the side of Sumida district, about 10 Koreans were tied and put in a row each time, then the military shot them. Those who were still alive were put on the trolley railway, poured with petroleum and burnt.”*

- *“On 5 September, together with my big brother who was 18, we were heading to other place ruined by the fire, we came across the Yotsugi Bridge, then a lot of people were looking down from the bridge, so we also looked down, then there were more than 10 Koreans including one woman. We were astonished to see those Koreans were shot dead by the military.”*

d. Background of the massacre of Koreans

Strong resistance movements were organized and continued in Korean peninsula since its colonization by Japan in 1910. About 2 million Koreans joined the 3.1 independence movement started on 1 March 1919. The movement was ended with more than 7,500 causality and more than 15,000 injured. The movement had left strong impact of the “non-obedience of Koreans” on not only the Japanese policy-makers, but also Japanese general public. At the same time, around the colonization of Korean peninsula in 1910, public figures and mass media had started incitement to discrimination against Koreans saying that Koreans were inferior, scary or incomprehensible.

e. List of the victims and moves in South Korea

In June 2013, a list of about 300 Korean victims who were murdered at the time of the great earthquake was found in the Korean embassy in Tokyo, which was made by the Korean government in 1952.³¹

In April 2014, 103 parliamentarians in South Korea have suggested adoption of the “Special Law on the clarification of the massacre of Koreans at the time of Kanto great earthquake and the restoration of the dignity of the victims”, and in May, eight NGOs have established a Committee for the development of the above-mentioned Law.³²

In June 2014, the government of South Korea has announced that it started publishing information based on the above mentioned list of the victims stating the name, address and circumstances of their killing.³³

f. Recent moves of rejection and trivialising of the fact

There was from the beginning less stated on this incident in the textbooks used in the education in Japan. Recently, there have been several moves to reject or trivialise the fact of the massacre. For example, in January 2013, the Board of Education of Tokyo has deleted the description “Koreans were massacred at the time of the great earthquake in

³¹ The Korea Herald, 24 November 2013:

<http://www.koreaherald.com/view.php?ud=20131124000175> (last accessed on 16 June 2014)

³² The Yonhap News, 26 May 2014

³³ The Yonhap News, 2 June 2014:

<http://english.yonhapnews.co.kr/national/2014/06/02/86/0301000000AEN20140602002200315F.html?01712f48?74954ad0> (last accessed on 16 June 2014)

Tokyo (“Kanto”) region” from its own publication “from Edo to Tokyo” used in high school education as sub-textbook. The book formerly described, regarding the commemoration monument of the Korean victims of the Kanto great earthquake, that this monument states a number of Koreans were massacred in the chaos of the great earthquake (in 1923). However, in its revised version of 2013, it is described “this monument states that respectful lives of Koreans were taken in the chaos of the great earthquake”.³⁴

3. Suggestions for the recommendations

- In accordance with the indicators developed by the Committee, the State party is alarmed that the current situation in Japan may lead to genocide.
- In order to prevent the occurrence of genocide, the State party should implement all the recommendations related to the Article 4 of ICERD and report back to the Committee under its follow-up procedure.
- The State party should conduct investigation into the massacre of ethnic Koreans and Chinese at the time of Kanto great earthquake in cooperation with the countries of origin of the victims, clarify the whole circumstances, punish perpetrators, and apologize as well as provide compensation to the victims and their families. In addition, in order to prevent the re-occurrence of such incident, the State party should take all possible measures including the teaching of concrete facts in school education, establishment of memorial day and monuments as well as museums.

³⁴ The Asahi Newspaper (“Asahi Shimbun”), 25 January 2013