

NGO Network for the Elimination of Racial Discrimination Japan (ERD Net)

Civil Society Report on the Implementation of the ICCPR

(Replies to the List of Issues CCPR/C/JPN/Q/6)

**To be submitted
for the Consideration of the Sixth Periodic Report of Japan (CCPR/C/JPN/6)
At the 111th session of the Human Rights Committee (Geneva – July 2014)**

June 2, 2014

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**NGO Network for the Elimination of Racial Discrimination Japan (ERD Net)
c/o The International Movement Against All Forms of Discrimination and Racism
(IMADR)**

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Due representation of minority women in political functions and policy making positions

List of Issues Para 6 (b) and (f)

(b) measures taken, including temporary measures, to guarantee the equal representation of women and men and due representation of minority women in political functions and policy making positions;

(f) statistical data, disaggregated on the basis of ethnicity and gender, on women representation in political functions and policy making positions

Government information: the 6th Periodic Report CCPR/C/JPN/6, paras. 54 and 59.

NGO replies

No statistical data concerning the participation of minority women (Buraku women) was included in the government replies to the above question of the List of Issues. The government has never done a survey to find actual conditions of minority women, much less, it has taken measures to encourage the participation of Buraku women.

Background information

While the government, the Ministry of Justice, has given a special emphasis to the solution of prejudice and discrimination against minority groups including Buraku with the slogan to “eliminate prejudice and discrimination in relation to *Dowa* (Buraku) problem” among its annual human rights awareness-raising activities, it has made no attempts to find out the reality of prejudice and discrimination against Buraku women. When special measures for the solution of *Dowa* problem were terminated in 2002, the government did not show any information that could indicate how far Buraku women had made a progress in participating in the political functions and policy making process.

Suggestions to recommendations

1. The government is urged to conduct a survey to find actual conditions of Buraku women including the general situation of their participation in political functions and policy making positions.
2. The government is urged to develop a plan to promote the participation of Buraku women in political functions and policy making positions based on the findings of the survey.

Prepared by Buraku Liberation League (BLL)

Establishment of complaint mechanisms for Buraku woman victims

List of Issues Para 7

Please provide further information on measures taken to improve access to complaint mechanisms and rehabilitation for victims of sexual and domestic violence, including for immigrant and minority women, and homosexual couples.

Government information: the 6th Periodic Report CCPR/C/JPN/6 paras 93 and 100

NGO replies

When Buraku women suffer discrimination or domestic violence because of her being a member of Buraku, there are very limited number of specialists who can provide specialist service based on good understanding of Buraku discrimination available at public services for complaint or counseling.

Background information

While the government, the Ministry of Justice, promotes its human rights awareness-raising activities calling for “the elimination of prejudice and discrimination in relation to Dowa issues,” it has never conducted a survey to find how these activities have been effective or how public officers have raised their awareness concerning Buraku problem. Whereas human rights training workshops or seminars for public officials as well as employees in the private sector are often conducted, such training rarely focuses on human rights of women from Buraku and other minority groups.

When a Buraku woman seeks for advice or rehabilitation service for discrimination that she may have suffered at the time of marriage because of Buraku origin or domestic violence particularly in connection with her Buraku origin, she can hardly expect to be given advice or rehabilitation by a specialist who might be well trained specifically for Buraku problem.

Statistical data on victims of human rights abuses publicized by the Ministry of Justice do not include any data specific to Buraku woman victims. The survey conducted with 11,265 Buraku women by Buraku Liberation League (BLL) in Saitama, Aichi, Kyoto, Osaka, Hyogo and Nara Prefectures (for the period from 2006 to 2010) revealed that 20.4% of women had been victims of domestic violence. The other survey conducted by BLL Osaka in 2012 to find out the living conditions of Buraku single parent families (with 472 single parents) revealed that 321 out of 472, accounting for 68.0%, had been victims of domestic violence. Some of them were battered by their non-Buraku husbands despite the fact that they have married against strong opposition of their relatives.

Suggestions to recommendations

1. The Ministry of Justice should include information about Buraku women when it prepares the annual report on cases of human rights abuses.
2. The government is urged to set up a complaint mechanism which is specifically designed for victims from minority communities, especially Buraku women.

Prepared by Buraku Liberation League (BLL)

The non-eligibility for pensions for resident Koreans (Article 2, Article 26)

List of Issues Para 9

Non citizens affected by the age requirements stipulated in the National Pension Law

Government replies to the question and the problems thereof

The 6th periodic report of the government (paragraph 320) has some obvious errors. The Employees' Pension Insurance Law was enacted in 1941, and at the time of the legislation, foreign nationals were not covered. This discriminatory clause based on nationality was removed from the Law in 1946, with the Order for the Prohibition of Discrimination based on Nationality under the occupation authorities after World War II.

Although it is not mentioned in the Government replies, the Act on Special Disability Payment for Specified Persons with Disabilities was adopted in 2004 to provide remedies for people with disabilities, who were ineligible for disability pension payments. However, foreign nationals with disabilities were excluded from the scope of the Act. Article 2 of the supplementary rules of the Act lists the issue of foreign nationals as one of the matters to be considered, but so far nothing has been undertaken.

The government also introduces in its 6th periodic report (para 324) court cases on the exclusion of resident Koreans from the pension scheme. The Fukuoka case, which was pending at the time of the Government report, was dismissed by the First Petty Chamber of the Supreme Court on February 6, 2014. This court decision indicates that there is no access to judicial remedies within the country.

Background information

As mentioned above, the nationality requirement in the 1941 Employees' Pension Insurance Law was removed under the occupation. But after regaining sovereignty with the end of occupation by the allied forces in 1952, the requirement reappeared in the 1959 National Pension Act. The subsequent Child Rearing Allowance Act and other related laws (1961-1971) also included nationality clauses. Most of the foreign nationals excluded by these provisions were resident Koreans. All these provisions were deleted with the ratification of the Convention relating to the Status of Refugees in 1981.

Japan is a country with a strong sense of national particularism. Unlike child allowance payments, pension payments can be received only after having contributed the fee for 25 years, and simply removing the nationality requirement would create people who would not be eligible for the payments. At the time of the reversion of Okinawa to Japan in 1972, transitional arrangements were made so that no one would be left ineligible. However, when the nationality clause was deleted, no such measures were taken, and there were people who were excluded from the pension scheme.

Meanwhile, foreign nationals with disabilities, who came to Japan since then receive basic disability pensions (as a matter of course, as the nationality clause was removed). This means that

there is a huge gap between these people and the resident Koreans, who have lived in Japan for a long time, and who are ineligible for pension payments.

Resident Koreans had placed their hopes on judicial remedies in Japan after its ratification of the Covenant. But their hopes were dashed in the end on February 6, 2014. As Japan has not ratified the First Optional Protocol of the Covenant, resident Koreans, who cannot receive pension, are not able to invoke the individual complaint to the Committee.

Suggestions to recommendations

1. The “transitional arrangements” recommended in the previous Concluding Observations (CCPR/C.JPN/CO/5, para. 30) should be made promptly for foreign nationals who are excluded from the pension scheme.
2. The Act on Special Disability Payment for Specified Persons with Disabilities should be amended so that it applies to foreign nationals with disabilities, who are currently ineligible.
3. The First Optional Protocol to the Covenant should be ratified without delay.

prepared by National Network for the Total Abolition of the Pension Citizenship Clause

Measures to wipe out the negative image of Buraku people

List of Issues Para 10

Information on efforts taken to address the negative stereotyping of the Burakumin

NGO replies

Negative stereotyped image of Buraku has not yet been wiped out even after the 33 years' of special measures under the special law

Background information

Inasmuch as the special measures for the solution of Buraku problem were implemented by the government for 33 years from 1969 to 2002, the negative image of Buraku people has not been wiped out. It is attested by the fact that the government still has to continue the awareness-raising activities giving an emphasis to "the eradication of prejudice and discrimination in terms of Dowa problem." The disclosure of "Buraku List Scandal"*** in 1975 revealed that the negative image of Buraku was rigid and deeply-embedded in society and that exclusion of Buraku people was unquestionably practiced. To address Buraku discrimination especially in employment, in 1977 the government started a program called "in-house promoter system for the promotion of Dowa training" recommending every business entity having over 100 employees to appoint a promoter for training. After the 33 years' Dowa measures ended in 2002, the program has continued with a renewed name "human rights training promoter for fair recruitment practices," without achieving the objective of wiping out of the negative image of Buraku.

Prevalence of the negative stereotyping image of Buraku is demonstrated by the 2010 survey done by Osaka Prefectural Government to find out the attitude of citizens toward Buraku problem. To the question, "Would you avoid a house located in a Dowa district when you are to buy or rent it?," 55.0% of the respondents answered "yes." Being anxious to avoid Buraku, some people who are going to buy a house would call a relevant city hall to ask if the address of their purchase is part of Buraku, or use a private investigative agency to find out if their purchase is part of or close to Buraku.

Real estate agencies, housing developers or land buyers in public auctions would also seek to find out if their housing development projects or purchase is not in or close to Buraku using investigative agencies, so that they can avoid Buraku in their business transactions (which are not popular and attractive on the market). This has been a serious problem reflecting the negative image of Buraku embedded in the public consciousness and attitude.

As demonstrated by the recent scandal of the weekly magazine's article featuring personal backgrounds of a prominent political leader, discriminatory scandals occur one after another. These are perpetrated by those who attempt to give damage to certain prominent figures or to gain more business benefits by taking advantage of the widespread negative image of Buraku.

According to the Law for the Promotion of Human Rights Education and Awareness-Raising, the government has adopted the basic plan for the implementation of human rights education. As stipulated by the law, the government has published a regular report on the implementation of the

plan (under the title of “Human Rights White Paper”) to be submitted to the Diet. Human Rights White Paper includes the report about Dowa problem, however, it has never shown any statistical data indicating if the negative image of Buraku was wiped out. With the slogan “Eliminate prejudice and discrimination in relation to Dowa issues” in promoting human rights education and awareness-raising, the government might have made some efforts, however, we do not know what it has done.

Suggestions to recommendations

1. The government should indicate statistical data about the negative stereotyped image of Buraku based on a survey.
2. The government should disclose contents, basic information, budget and responsible department for its efforts to eliminate prejudice and discrimination against Buraku.

Prepared by Buraku Liberation League (BLL)

****Buraku List:**

(1) Buraku Lists Scandals (from the website of Buraku Liberation and Human Rights Research Institute)

What is called “Buraku Lists Scandals” were revealed in November 1975. Through the inquiries thereafter by the Buraku Liberation League and concerned public authorities, it was found out that: (a) at least eight different types of Buraku Lists, containing information on the names and locations, the number of households and major occupations of Buraku communities, had been published; (b) they were prepared and distributed by private investigative and detective agencies, and; (c) there had been as many as 220 purchasers, most of which were private companies whose primary purpose was to conduct discriminatory screening of job applicants.

Trying to hold the concerned parties in these scandals accountable, the Buraku liberation movement had clearly pointed out the necessity to prohibit preparation and sale of Buraku Lists, personal background investigations for discriminatory purposes against Buraku people, as well as discrimination in employment itself. As a result, Osaka Prefecture and some other municipalities enacted local ordinances to regulate personal background investigations conducted by private agencies, which lead to discrimination against Buraku people. However, no legislative measures have been taken at the national level in this regard.

also see: http://blhrri.org/blhrri_e/other/008_e.html

State redress for the unlawful arrest and detention

List of Issues Para 15(i)

The existence of an effective and independent mechanism, with authority to promptly, impartially and effectively investigate all reported allegations of and complaints about acts of torture and ill-treatment of persons deprived of their liberty, including during interrogation (CCPR/C/JPN/6, paras. 132-134).

Relevant ICCPR Articles: Article 9 paragraph 5, and Article 14

Government replies to the question of LoI 15 (i) and the problems thereof (also see the 3rd Periodic Report of Japan**)

The Government reply to Question 15 (i) introduces the Committee for Inquest Prosecution, the Examination Committee on Review of Complaints from Inmates of Penal Institutions and the Penal Institution Visiting Committee and concludes in the final paragraph, that “any persons whose rights have been illegally violated may file a suit in the court.”

Regarding compensation for victims of unlawful arrest or detention, the 3rd Periodic Report (paras. 138-140)* explains that redress stipulated in Article 9 paragraph 5 may be provided under Criminal Compensation Law or the State Redress Law. The explanation has not been changed in subsequent Periodic Reports.

It is true that there are institutions such as the Committee for Inquest Prosecution as well as laws such as the Criminal Compensation Law or the State Redress Law to cover compensation claims for unlawful arrests and detentions. But in practice, there are many problems as shown below, and compensation remains insufficient.

Background information

First, it is true that when a defendant, who was prosecuted, is acquitted and the decision becomes final, he/she would be paid compensation under the Criminal Compensation Law from the national or local government based on the number of days in detention. But the compensation amount is 12,500 yen a day at maximum, and is not sufficient to compensate for the damages and mental pain suffered by the defendant.

Secondly, when the suspect, who is arrested and detained, is not prosecuted, compensation under the Regulation for Compensation for Suspects is left to the discretion of the Public Prosecutor. When the Public Prosecutor decides not to compensate, the suspect cannot appeal the decision. Also, neither the Criminal Compensation Law nor the Regulation provide for redress such as apologies for the wrongful detention, or measures to fully restore the harmed social reputation.

Thirdly, there are no ways of claiming compensation for detention that do not fall under the criminal justice procedures (for example, detention under the immigration control procedures, or

detention of people with mental disabilities), even when it is subsequently found out that the detention was unlawful, except for the procedures under the State Redress Law explained below.

Because of these reasons, people who have been unlawfully detained would take legal action claiming compensation from the national or local government under the State Redress Law. The Law has the following problems.

First, in order to seek compensation for the arrest and detention, a person, who had been acquitted in a criminal case, would have to prove that the prosecution by the Public Prosecutor was unlawful under the State Redress Law. On June 29, 1989, the Supreme Court quashed the decision by the Tokyo Appeals Court, which allowed the compensation and dismissed the claims for compensation (case under the State Redress Law related to the death of a police officer during a general strike in Okinawa). It held that the prosecution was not unlawful, if the Public Prosecutor had found suspicions of guilt through reasonable decision-making process, based on the overall consideration of evidence materials. In many other judgments involving the State Redress Law, claims have been dismissed with similar reasoning. But since the finalization of the acquittal shows that the Public Prosecutor erred in prosecuting the person in question, the prosecution should be determined unlawful, unless the state sufficiently proves otherwise. The above Supreme Court case continues to prevent compensation for unlawful detention. Similar problems arise when claiming for compensation for unlawful arrests by the police.

Secondly, according to the above Supreme Court case, “evidence material” is limited to those, which the Public Prosecutor has obtained or could have obtained at the time of prosecution. However, the only materials held by the Public Prosecutor that is available to the former defendant or suspect (the plaintiff in a State Redress Law case) is those that were disclosed during the criminal justice procedures. (Most of those materials are evidence presented to prove conviction. Under the Code of Criminal Procedures, the Public Prosecutor is not required to disclose all evidence, which in itself is a violation of Article 14 paragraph 1 of the Covenant.) The reason is because there is no procedure for disclosure of other evidence held by the Public Prosecutors under the State Redress Law. It is therefore extremely difficult for the plaintiff to prove that the prosecution by the Public Prosecutor was unlawful.

Thirdly, there is the problem of the State Redress Law, when the suspect, who is arrested and detained, is not prosecuted. In December 2003, a person, who sustained a fracture in the right leg below the knee when he was unlawfully attacked by the police at the time of arrest, was detained at a detention facility, and was interrogated. He was released 10 days after the arrest without being prosecuted. The person, who was arrested and seriously injured was of Nigerian origin. He had an emergency operation 3 days after his release, and although he was able to walk, his motor functions did not fully recover due to the aftereffects. He started legal action to claim compensation for the unlawful injury and damages for the detention under the State Redress Law. The First Petty Bench of the Supreme Court dismissed the appeals in March 2011. The ratification of the First Optional Protocol establishing an individual communication system has not progressed much, and the unjust situation is continuing.

There are only a few successful cases for compensation from the national or local governments for unlawful arrests or detentions in the 20 years from 1992 to 2012. The Supreme Court has yet to

order compensation, including in cases in which it quashed the lower court's decision to recognize responsibility to compensate.

Miscarriages of justice continue to occur in Japan due to the frequent use of the "substitute detention system" (*Daiyo Kangoku*), the defect in the criminal procedures that became apparent in the limitations placed on contacts between the detained and their lawyers, or the overdependence on confessions by the courts. The State Redress Law in fact rarely functions in cases of unlawful detentions under the criminal procedures. Police or Public Prosecutors are never held responsible for unlawful arrests or prosecutions, and it is one of the reasons why miscarriages of justice continue.

The procedures under the State Redress Law follow those of the civil procedures. Many of the evidence materials are in possession of the Public Prosecutors, and access to evidence is not guaranteed for those who have been arrested or detained as suspects or defendants. The Public Prosecutors are not even required to disclose a list of evidence.

Contrary to what was written in the 3rd Periodic Report of Japan, unlawful detentions are rarely compensated. With the above background, the problem of suspects being detained for long periods and being forced to confess continues. The problem, which is referred to as "hostage-taking justice," is one of the major factors leading to unjust criminal trials.

In conclusion, unlawful detention is not sufficiently compensated in Japan. It is also a cause of unjust trials. The situation is also a violation of Article 9 paragraph 5, Article 14 paragraphs 1 and 6 of the Covenant.

Suggestions to recommendations

- 1) The State party should revise the laws to ensure compensation according to Article 9 paragraph 5 for those who have been unlawfully detained.
- 2) The laws should be amended to realize compensation for the unlawful arrest and detention of not just those who were acquitted by the court but also for those who were not prosecuted.
- 3) The State party should amend the laws to require disclosure of all evidence, or at least the full list of evidence to ensure the transparency in the justice system, in order to wipe out unlawful detention and eliminate miscarriages of justice.

prepared by Support Network for State Redress Lawsuits in Japan

** The Third Periodic Report of the government states as follows in the section on Article 9, paragraph 138-140:

138. Regarding article 9, paragraph 5, of the Covenant, article 17 of the Constitution provides that "Every person may sue for redress as provided for by law from the State or a public entity, in case he has suffered damage through illegal act of any public official", and the State Redress Law was enacted according to this provision. In its article 1, paragraph 1, the State Redress Law provides that "If a public official authorized

to exercise the power of the State or of a local public entity has inflicted, intentionally or through negligence, any damage on any person through an illegal act, in the conduct of his official duties, the State or the local public entity concerned shall be under obligation to make compensation for it." Any person who is unlawfully arrested or detained by the intention or negligence of a public official in charge of the exercise of public power in the performance of his duty may demand compensation for damage from the State or a public entity in accordance with the provision.

139. Even in a case where the arrest or detention is not illegal, article 40 of the Constitution provides that "Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law." Thus, the range of compensation has been expanded. In line with this provision the Criminal Compensation Law was enacted. The Law establishes compensation for damage caused by arrest or detention pending trial (Article 1, paragraph. 1) and for damage caused by execution of penalty and confinement (Article 1, paragraph. 2) for a crime of which the person concerned has been acquitted. The amount of compensation to be paid shall be determined by the court within the limits determined by the law (Article 4).

140. Also, as mentioned in the second periodic report, in the light of the seriousness of the economic, physical and mental disadvantages that an innocent person suffers as a result of arrest or detention even though he is not ultimately indicted, it is considered to meet the purport of article 40 of the Constitution and to agree with the idea of justice and equality that such person is compensated for his damage. It is for that reason that the Regulations for Suspect's Compensation (Instructions No. 1 of the Ministry of Justice dated 12 April 1957) were established. According to these regulations, compensation for damage caused by arrest or detention shall be made to the person who has not been prosecuted if there is a sufficient ground to recognize that he has not committed the crime. (CCPR/C/70/Add.1, paragraph. 138-140)

Thus, the Japanese government has been reporting consistently in its Second and Third Reports that article 9-5 has been complied with. Furthermore, there is no reference to this issue in the Fourth or Fifth Report because of the fact that no comments were made in your reviewing of the Second and Third Reports.

Ainu People as indigenous peoples

List of Issues Para 20

Rights of Peoples belonging to Minorities – ICCPR Art 26 and 27

NGO replies

1. The government does not recognize the rights of the Ainu people as an indigenous people. Consequently Ainu people have faced very difficult situations.
2. There are no governmental policies or measures in Japan to guarantee the rights of indigenous peoples as prescribed in the international law system.
3. Schools do not teach the Japan's unjust and unlawful historical control over the Ainu people. Consequently, the government has made no apology and reparation and has not even recognized the right to land of the Ainu people.

Background Information

1. Japanese Government argues that the UNDRIP has no clause on the definition of indigenous peoples nor is there a definition within the Japanese legal system, and has not recognized any individual or collective rights of the Ainu people. Only the development and promotion of Ainu culture is legally recognized under the 1997 Law for the Promotion of Ainu Culture, that largely conflicts with the framework of the “Measures Relating to the Improvement of Living of the Hokkaido Ainu” of the Hokkaido Prefectural Government. At least, these measures of Hokkaido recognize the support/aid to individual Ainu in the fields of education, health and economy, albeit insufficiently. Naturally, these measures are local welfare programs for the socially vulnerable and are limited in its geographical scope to the Hokkaido region, despite the fact that Ainu people live in many other regions in the country. These measures are not measures specifically for the Ainu as an ethnic group, and do not recognize the rights of the Ainu as an indigenous people.

Difficult living conditions of the Ainu people have been demonstrated in the periodic survey conducted by Hokkaido University. The 2006 survey showed that 38.3 per mil of the Ainu in Hokkaido (population: about 24,000 as of 2006) receive public assistance, while 30% of them found their daily living very difficult. The 2008 survey indicated that 53.2% of them belonged to the low income group with the individual annual income below two million yen.¹

2. In 2009, the government has set up the “Ainu Policy Promotion Council” which functions to promote a comprehensive and effective Ainu policy chaired by the Chief Cabinet Secretary. Nevertheless, it has not implemented any “comprehensive and effective” measure. For instance, the Council consists of 14 members, of which only four are Ainu. It is only convened once a year, and it has so far met only four times for the past five years since its formation. Also, it has not taken any measures to address the problems in the fields of education, employment, housing, daily living, health and economy, which the Ainu people have kept calling for. In addition, the Council has never made any discussion regarding the guarantee of their rights. What it has discussed and decided on in its working groups are; the designing and construction of the so-called “Symbolic Space for Ethnic Harmony” where visitors will learn the Ainu culture, and the proposal to include a

¹ <http://www.cais.hokudai.ac.jp/english/report/>
<http://www.ainu-assn.or.jp/english/eabout03.html>

scholarship program for the Ainu children into the scheme of the Japan Student Services Organization. The Ainu Culture Promotion Act is exclusively for the promotion of Ainu culture, and not for the Ainu people themselves. Subsidies provided to the implementing body of the Act, namely “Foundation for Research and Promotion of Ainu Culture”, have been reduced from 360 million yen per annum in 1997 to 250 million in 2013. Furthermore, the subsidies that the national government has given to the Hokkaido autonomous government under the title of “measures concerning the improvement of living of the Hokkaido Ainu” have been cut to 1.4 billion yen in 2013 from about 3.4 billion in 1998. These setbacks indeed contradict the fact that in 2008 the Diet adopted the resolution on “Request to recognize the Ainu as indigenous peoples” which clearly stated that “the government shall continuously help the Hokkaido local government implement its measures for the Ainu, and make efforts to secure related budgets necessary for its smooth promotion.” It is also due to the fact that the Ainu people do not have the right to build their own financial basis.

3. Today, the existence of the Ainu people is mentioned in the school education of Japan. Nevertheless, it has never taught the colonial domination over the Ainu people that the government of modern state Japan has done since 1869 when it started the “Hokkaido development.” Among others, the Japanese population do not learn that the one fourth of the Japanese territory is from the arbitrary confiscation of the Ainu’s traditional land (Ainu *mosiri*) by Japan claiming it as state-owned land; that the Ainu people were forcibly assimilated as Japanese while being deprived of their language, religious, culture and livelihood; and that the strong discriminatory structure has been built on these historical events.

While the Diet has recognized the historical fact in its resolution to a certain extent, it has not been reflected in the revision of the discriminatory policy toward the Ainu people and destitution that they have had to live with, nor it has made any apology and reparation. Thus, their rights to land and natural resources are totally denied.

Suggestions to recommendations

1. Bearing in mind that it has recognized the Ainu as indigenous peoples, the Japanese government should guarantee the rights of indigenous peoples for the Ainu people in accordance with the UN Declaration on the Rights of Indigenous Peoples.
2. The Japanese government should officially admit the colonial domination over the Ainu it has committed, make an official apology and compensation, and guarantee their rights to land and to natural resources.
3. The Japanese government should review and change institutions and acts, which have been set up by the government under the name of the Ainu policy, and build a system which recognizes a wide range of claims raised by the Ainu people and facilitate comprehensive and effective discussion about them.

Prepared by the Ainu Association of Hokkaido/Shimin Gaikou Centre

Discrimination against children attending Korean schools

List of Issues Para 21

- 1) Please clarify what progress has been made in ensuring adequate education for minority children.*
- 2) Please provide information on whether the State party is considering applying its tuition-waiver programme for high school education to children attending Korean schools?*
- 3) Does the State party recognize the Korean school leaving certificates as direct university entrance qualification?*

References:

Recommendations in the previous Concluding Observations (CCPR/C/JPN/CO/5 paragraph 31)

31. The Committee is concerned that State subsidies for schools that teach in the Korean language are significantly lower than those for ordinary schools, making them heavily dependent on private donations, which are not exempted or deductible from taxes, unlike donations to private Japanese schools or international schools, and that diplomas from Korean schools do not automatically qualify students to enter university (art. 26 and 27).

The State party should ensure the adequate funding of Korean language schools by increasing State subsidies and applying the same fiscal benefits to donors of Korean schools as to donors of other private schools, and recognize diplomas from Korean schools as direct university entrance qualifications.

NGO replies

1) Discrimination against minority children attending schools for foreign children, including Korean schools, that are approved as “miscellaneous schools” under the School Education Act.

Since the previous consideration of the Periodic Report in 2008, there has hardly been any progress in ensuring education for minority children. The discriminatory treatment of schools remains unchanged, in which donations to the international schools for mainly European or American children, which are also “miscellaneous schools,” are tax-exempt, or tax-deductible as it has been noted in paragraph 31 of the previous Concluding Observations (CCPR/C/JPN/CO/5, para 31), while donations to Korean, Chinese or Brazilian schools are not. Schools for foreign children and ethnic schools including Korean schools are classified as “miscellaneous schools” under the School Education Act, and are not eligible for funding from the national government. They must heavily rely on donations from the parents and supporters for their management, and therefore, financial condition of the schools is not secured constantly. The financial burden on the parents is also increasing. Because of this, there are many minority children, who have to give up learning their own language, culture and history in ethnic schools for economic reasons.

2) Exclusion from the tuition-waiver program

In April 2010, the then Government under the Democratic Party introduced the system of exemption of high school tuition fees and high school enrolment subsidies (hereafter, tuition waiver program). The program was ground breaking, in that subsidies equivalent to the tuition fees of public high schools would be paid to students of schools for foreign children that are classified as “miscellaneous schools” under the School Education Act. In February 2010, just before the

program was launched, some politicians argued that Korean schools should not be eligible for the waiver program, and the Government decided to carry out the program without including Korean schools. The Committee on the Elimination of Racial Discrimination, which was in session at the time, issued its Concluding Observations to the Third to Sixth Periodic Report of Japan, expressing concern on the “(t)he approach of some politicians suggesting the exclusion of Korean schools from current proposals for legislative change in the State party to make high school education tuition free of charge in public and private high schools, technical colleges and various institutions with comparable high school curricula (CERD/C/JPN/CO/3-6, para 22 (e)). Despite this, the Government went ahead to launch the program without applying it to Korean schools, as if ignoring the concern of the Committee. For two and a half years, the Government under the Democratic Party declared its official position that the matter should be determined objectively from an educational perspective and not by diplomatic considerations, while it continued to postpone reaching a decision on the application of the tuition waiver to Korean schools.

The Liberal Democratic Party-led government, which started in December 2012, declared immediately after coming in power that it would exclude Korean schools from the tuition waiver program. The Ministry of Education, Culture, Sports, Science and Technology amended the Ministerial Ordinance in February 20, 2013, just for the purpose of excluding Korean schools from the tuition waiver program, citing as one of the reasons the lack of progress in the issue of abduction of Japanese nationals, which is incompatible with the earlier official position. With the amendment, the ten Korean senior high schools in Japan were completely excluded from the tuition waiver.

In its replies to the Committee’s question in the List of Issues, the government noted that as “a result of an examination as to whether Korean schools satisfy the requirements for eligibility for the tuition-waiver program (high school tuition support fund), it became clear that those schools are closely related to the Chongryon (chosen-soren)” so it decided not to include the Korean schools (CCPR/C/JPN/QAdd.1/16663, paragraph 225). There are other schools in Japan that are organized or supported by particular religious or ethnic organizations, and singling out Korean schools to exclude them from the program is arbitrary. The lack of progress in the “abduction” issue, which is raised as one of the reasons for the exclusion, also has nothing to do with the children attending Korean schools, who are third or fourth generation Koreans and were born in Japan. It is tantamount to taking the children of Korean schools as political hostage, and it cannot be tolerated. Even without going that far, the exclusion of Korean schools from the tuition waiver program can be seen as a discriminatory measure, rendering the Act on the Free Tuition Fee at Public High Schools and High School Enrolment Support Fund, which initially was supposed to apply to foreign schools registered as “miscellaneous schools” ineffective.

On this issue, the Committee on Economic, Social and Cultural Rights has also issued recommendations in its Concluding Observations in May 2013, that “(t)he Committee is concerned at the exclusion of Korean schools from the State party’s tuition fee waiver programme for high school education, which constitutes discrimination (arts. 13 and 14)...the Committee calls on the State party to ensure that the tuition fee waiver programme for high school education is extended to children attending Korean schools.” (E/C.12/JPN/CO/3, para. 27)

The Report prepared by the Japan Federation of Bar Associations for the Pre-sessional Working Group of the Human Rights Committee, has also pointed out that, “(t)he Korean senior high

schools satisfy the criteria for ‘curriculum equivalent to the Japanese high school curriculum’ set by the Ministry of Education, Culture, Sports, Science and Technology and the non-application of the enrolment subsidies to Korean senior high school students is discriminatory treatment on grounds of political and diplomatic issues between the North Korean and Japanese Governments.” (http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/JPN/INT_CCPR_NGO_JPN_14827_E.pdf)

Since the launch of the tuition waiver program in 2010, which discriminatorily exclude Korean schools, by the Japanese Government,, several prefectural governments, such as Tokyo, Osaka and Miyagi, have also decided to refuse or cut down subsidies that have been granted to Korean schools until then.. In 2013, subsidies have been halted in Hiroshima, Niigata, Yamaguchi and Kanagawa Prefectures. Hiroshima city (of Hiroshima Prefecture) and Kawasaki city (of Kanagawa Prefecture) have also followed the decisions of the prefectural authorities, and withheld payments of the subsidies. Following the Kanagawa Prefectural Government decision to freeze grants after the nuclear test by DPRK in February 2013, Yokohama city suspended the grants procedures for the fiscal year 2013, and on October 10, revised the guidelines on subsidies for municipal and private schools for foreign children, so that the city could withhold payment based on the international situation. The Yokohama city’s decision to refuse the eligibility of Korean schools to receive municipal subsidies follows the example of the Ministry’s methods explained above. It shows that similar cases may occur, as long as the exclusion from the tuition waiver program continues.

Furthermore, Machida city in Tokyo Metropolitan Area, which distributed personal safety alarms since 2004 to children who are attending public elementary schools, has provided Korean schools with alarms for their pupils since 2010 at the school’s request. But on March 28, 2013, the City education board informed the school that it would no longer provide the alarms. (See the following article**) After numerous criticisms, the decision not to provide the alarms was withdrawn, however, the discrimination against Korean schools led by the Japanese Government has spread in other areas, increasing the violation of human rights of children attending Korean schools.

3) Access to higher education for Korean school graduates

In its reply to the List of Issues, the government explains that, “university entrance qualification has come to be granted to anyone, including graduates from Korean schools (chosen-gakko/choson-hakkyo) and other foreign schools, who has been recognized to have academic ability equal to or higher than those who have graduated from a high school through a proper examination of their learning history carried out by each university on an individual basis” (CCPR_C_JPN_Q_6_Add-1_16663, paragraph 231). However, a graduate diploma from Korean schools is not recognized as direct qualifications for university enrolment even with the reform in 2003 to increase flexibility in the qualification criteria. The access to institutions of higher education for Korean school graduates remain restricted. In fact, a Korean school student who applied to the general entrance examination for Tamagawa University was refused in January 2007.

Suggestions to recommendations

1. The exclusion of Korean schools from the tuition waiver program must be withdrawn and they should be made eligible for the waiver.
2. Local governments that have suspended subsidies to Korean schools must be urged to withdraw their suspension.

3. The institutional discrimination against minority schools must be reviewed and the Japanese Government must revise its laws to support these schools on the same footing as other private schools in Japan.
4. The tax exemptions on donations to schools for foreign children, which are applied to some international schools should be applied to Korean and Chinese schools, to eliminate discrimination among schools for foreign children.
5. Certificates of graduation from Korean schools should be recognized as qualifications for university entrance examination.

prepared by Human Rights Association for Korean Residents in Japan (HURAK)

Achievements and challenges of Dowa education

List of Issues Para 21

Please show progress made in ensuring adequate education for minority children.

NGO replies

The report and replies of the government do not include any information about achievements and challenges of the programs for Dowa education** aimed at ensuring the right to education of Buraku children under the Special Measures Law. After the Law, the educational gap between Buraku children and non-Buraku children has kept getting wider, even though once reduced. There is no administrative program that should have taken over the initiatives done under Dowa education.

Background information

To ensure that all the Buraku children went to school without dropping-out, the government developed the basic educational guidelines and carried out measures according to the Special Measures Law from 1969 till the termination of the law. For the school education, different initiatives were taken under the Special Measures Law including the additional positioning of teachers in charge of the promotion of Dowa education, scholarship programs for high schools and universities for Buraku children, and setting up Dowa education houses where the program for academic progress for Buraku children was provided.

After the law, these educational initiatives have continually been carried out with necessary changes or adjustments to the programs. At the same time, new problems are arising including the sharp decrease in the number of Buraku children who get benefits from these programs or the failure of payback to the loan under the scholarship program.

The Osaka Prefectural Association for the Research of Human Rights Education (previously “Dowa education”) has regularly conducted a survey to find changes in academic performance of Buraku children. Its survey for 2006 showed the widening gap in academic performance between Buraku and non-Buraku children from 2003, indicating a need for government measures for education of Buraku children.

Suggestions to recommendations

The government should disclose statistical data on achievements and challenges that Dowa education had gained as of the end of Dowa Measures Law.

prepared by Buraku Liberation League (BLL)

** Dowa education: refer to: http://blhrrri.org/blhrrri_e/dowaeducation/dowa_education.pdf

Problems pertinent to the newly introduced residence management system

Problem of mandatory presentation of the “special permanent resident certificate”

The 6th Periodic Report of Japan (CCPR/C/JPN/6, paras 26 and 27) states that:

“26. On July 15, 2009, the “The Law for Partial Amendment to the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, those who have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan” was promulgated (scheduled to be enforced in July 2012). In line with such revisions, the alien registration system will be abolished and replaced by the new system of residence management. Under this new system, the Minister of Justice will be able to ascertain the status of foreigners resident in Japan for the medium to long term accurately on an ongoing basis. Information about the status of foreigners residing in Japan to be accurately determined under the new system of residence management will be reflected in the basic resident registers to be newly created by each municipality under the “Law for Partial Amendment of the Basic Residents’ Registration Act”. This approach is expected to enable respective municipalities to provide enhanced administrative services to foreigners.”; and

“27. Under the new system of residence management, each special permanent resident will be given a special permanent resident certificate to be issued by the Minister of Justice. This is equivalent to an alien registration certificate issued under the prevailing system, which plays an important role of certifying one’s legal status. With a view to simplifying the special permanent resident certificate to the minimum content necessary, the matters stated on the same will be drastically reduced, compared with an alien registration certificate. The procedures relating to the special permanent resident certificate such as a change in its contents or its reissuance will be processed at the relevant municipal office, as is currently done. The new system will not require that special permanent resident certificates be carried at all times.”

Under the new system of residence management introduced in 2012, a (alien) residence card is to be issued to a foreign national **except** for those who are from the former colonies of Japan and their descendants and live in Japan with the legal status as special permanent residents, to whom the Minister of Justice issues a “special permanent resident certificate” instead. While the special permanent resident certificate does not have to be always carried by a holder unlike the former alien registration card which a holder had to carry all the time, it is required for special permanent residents to receive and keep the issued certificate, and present it whenever asked by the police or other law enforcement officers. Violation of or failure to comply with this requirement shall be subject to penalty. While the government stated in its 6th periodic report to ICCPR that, *“this (a special permanent resident certificate) is equivalent to an alien registration certificate issued under the prevailing system, which plays an important role of certifying one’s legal status,”* a legal status of a special permanent resident can sufficiently be verified with a resident register alone, thus making it unreasonable to require special permanent residents to present their special permanent resident certificate whenever required. While declaring the abolishment of the mandatory carrying of the special permanent resident certificate at all times on one hand, the government imposes the mandatory presentation of the certificate on the other. In effect, this does not make any difference to the permanent resident.

Problem of the “re-entry permit system”

References:

1) Concluding Observations to the fourth periodic report of Japan (CCPR/C/79/Add.102) 19 Nov 1998

18. Article 26 of the Immigration Control and Refugee Recognition Act provides that only those foreigners who leave the country with a permit to re-enter are allowed to return to Japan without losing their residents status and that the granting of such permits is entirely within the discretion of the Minister of Justice. Under this law, foreigners who are second- or third-generation permanent residents in Japan and whose life activities are based in Japan may be deprived of their right to leave and re-enter the country. The Committee is of the view that this provision is incompatible with article 12, paragraphs 2 and 4, of the Covenant. The Committee reminds the State party that the words "one's own country" are not synonymous with "country of one's own nationality". The Committee therefore strongly urges the State party to remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents like persons of Korean origin born in Japan.

2) The sixth periodic report of Japan (CCPR/C/JPN/6, paras 230, 231, 232)

230. In order to make more stable the legal status of special permanent residents in Japan, in light of their historical backgrounds, the Special Act on Immigration Control stipulates some special provisions for special permanent residents. In addition, pursuant to article 10, paragraph 2 of the Special Act on Immigration Control (or pursuant to article 23, paragraph 2 of the same Act after the amended Immigration Control Act enters into force), the Minister of Justice is required to respect the purport of the Special Act on Immigration Control to the effect that due regard must be paid to stabilizing the lives of special permanent residents in Japan.

231. Under the Immigration Control Act amended in 2009, a new system of residence management is scheduled to be launched in July 2012. As a measure to enhance convenience of foreign nationals residing in Japan, a special re-entry permit system will start. If a foreign national having a valid passport and a valid residence card (or special permanent resident certificate, in the case of a special permanent resident) re-enters Japan within one year (or two years, in the case of a special permanent resident), a re-entry permit will not be required in principle.

232. Under the new system of residence management to be launched, if a foreign national leaves Japan with a re-entry permit, as in the past, the maximum validity of the re-entry permit is five years, extended from three years under the prevailing rule (extended from four years to six years, in case of a special permanent resident).

Under the re-entry system put into practice in 2012, special permanent residents are required to get a re-entry permission before departing Japan in case that he/she will be out of the country for more than two years. Despite the recommendation made by the Committee (para 18, CCPR/C/79/Add.102) in 1998, special permanent residents are not yet guaranteed their right to “return to their own country.” Also, among those Korean residents (both Republic of Korea and Democratic People’s Republic of Korea) having a special permanent resident certificate, those who do not have a passport issued by his/her home country or do own a passport of DPRK are considered not to have a “valid passport”, thus being ineligible to apply for the re-entry permit. Because of this, they still have to get a re-entry permit even for a short term business trip or travel abroad (under the article 26-2 of the Immigration Control Act, and the article 23-2 of the Special Act on Immigration Control).

Suggestions to recommendations

1. The government should waive the application of re-entry permit system for all special permanent residents, and revise the Immigration Control Act as to admit the re-entry as the right of special permanent residents.
2. As a provisional measure until the above recommendation is completely implemented, the government should rectify its imbalanced treatment toward special permanent residents who have different passports, and apply a “re-entry permit” for all special permanent residents.

Prepared by Human Rights Association for Korean Residents (HURAK)

Editorial, The Japan Times Apr 12, 2013

<http://www.japantimes.co.jp/opinion/2013/04/12/editorials/students-are-not-political-pawns/#.UWeFnqJUF6J>

Students are not political pawns

Because of North Korea's provocations following its third nuclear test on Feb. 12, the general affairs section of the board of education of Tokyo's Machida City on March 27 made a unilateral decision — unknown to board members or the city assembly — to not provide personal safety alarms to students at a pro-North Korean school in the city.

After reports of the decision surfaced April 4, the board of education was inundated with protest telephone calls and emails, prompting it to reverse the decision. On Monday, the first day of the new school year, the board sent alarms to the Nishi-Tokyo Korean Second Elementary and Junior High School, where 68 students study.

Even if the decision was made without the knowledge of the city government and the members of the board of education, they must accept responsibility for the poor judgment shown by the general affairs section, which smacked of discrimination against students of the Korean school. The head and workers of the general affairs section should be disciplined for their actions.

According to the school, the general affairs section's chief and other employees visited the school on March 28 and cited the current political situation and citizens' feelings stemming from North Korea's provocations as the reason for not providing alarms to its students. In doing so they demonstrated their complete failure to understand the principle that all students must be treated equally regardless of their nationality or ethnicity.

It should have been clear to them that punishing children in Japan for the provocative actions of Pyongyang is both utterly ludicrous and ethically repugnant.

In 2004, the board started providing safety alarms, each costing around ¥300, to first-year students of municipally run elementary schools. In a threatening situation, children activate the alarm, which sets off a loud noise to attract help.

The board has been giving out the alarms to students of private schools and the Korean school upon request. In February, the Korean school asked the board for 45 alarms.

After the board received more than 1,300 protest telephone calls and email messages, the board members held an emergency meeting and reversed the original decision by the general affairs section. They should be praised for their quick action to uphold the principle that it is the board of education's responsibility to ensure the safety of all children living in Machida City. They also agreed that the general affairs section should have consulted with them before making its original decision.

What happened in Machida is part of a bigger, very disturbing trend that is sweeping the country. Several prefectural governments have stopped subsidizing pro-North Korean schools. On Feb. 20, the Abe administration excluded pro-North Korean high schools from the government's tuition-waiver program. These decisions should be reversed. It is wrong to use children as political pawns, and doing so will only fan anti-Korean discrimination in Japan. ■