

Distr.: General
16 March 2010

Original: English

**ADVANCE UNEDITED
VERSION**

Committee on the Elimination of Racial Discrimination

Seventy-sixth session

15 February- 12 March 2010

Consideration of reports submitted by states parties under article 9 of the Convention

Concluding observations of the Committee on the Elimination of Racial Discrimination

Japan

1. The Committee considered the combined third to sixth reports of Japan (CERD/C/JPN/3-6) at its 1987th and 1988th meetings (CERD/C/SR.1987 and CERD/C/SR.1988), held on 24th and 25th February 2010. At its 2004th and 2005th meetings (CERD/C/SR.2004 and CERD/C/SR.2005), held on 9 March 2010, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third to sixth periodic reports by the State party. It expresses its appreciation for the constructive dialogue held with the large delegation, the written replies provided to the list of issues and the oral replies to the questions posed by Committee members, which together provided further insights into the implementation of the rights in the Convention. Noting that the State party report was considerably overdue, the Committee requests the State party to be mindful of the deadline set for the submission of future reports in order to meet its obligations under the Convention.

B. Positive aspects

3. The Committee notes with interest the State party's pilot resettlement program for Myanmar refugees (2010).

4. The Committee welcomes the support of the State Party to the United Nations Declaration on the Rights of Indigenous Peoples (September 2007).

5. The Committee congratulates the State party for the recognition of the Ainu people as an indigenous people (2008) and notes with interest the creation of the Council for Ainu Policy (2009).

6. The Committee notes with appreciation the adoption of regulations against illegal and harmful information on the Internet, including the revised Guidelines for Defamation and Privacy (2004), the Provider Liability Limitation Law (2002) and the Model Provision for Contracts related to Actions against Illegal and Harmful Information (2006).

C. Concerns and recommendations

7. The Committee notes with concern that insufficient information regarding the concrete measures for the implementation of its previous concluding observations (2001) was provided by the State Party and regrets their overall limited implementation as well as that of the Convention as a whole.

The State Party is encouraged to comply with all recommendations and decisions addressed to it by the Committee and to take all necessary steps to ensure that national legal provisions further the effective implementation of the Convention.

8. While noting existing national and local provisions guaranteeing equality before the law, including article 14 of the Constitution, the Committee highlights that the grounds of discrimination in article 1 of the Convention are not fully covered. Further, while the Committee regrets the State party's interpretation of racial discrimination based on descent, it is encouraged by information on steps taken by the State party in the spirit of the Convention to prevent and eliminate discrimination against Burakumin (art. 1).

The Committee maintains its position expressed in general recommendation No. 29 (2002) "that discrimination based on 'descent' has a meaning and application which complement the other prohibited grounds of discrimination and includes discrimination against members of communities based on forms of social stratification and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights." Moreover, the Committee reaffirms that the term "descent" in article 1, paragraph 1, the Convention does not solely refer to "race" and that discrimination on the ground of descent is fully covered by article 1 of the Convention. The Committee, therefore, urges the State party to adopt a comprehensive definition of racial discrimination in conformity with the Convention.

9. The Committee notes the State party's view that a national anti-discrimination law is not necessary and is concerned about the consequent inability of individuals or groups to seek legal redress for discrimination (art. 2).

The Committee reiterates its recommendation from previous concluding observations (2001) and urges the State party to consider adopting specific legislation to outlaw direct and indirect racial discrimination, in accordance with article 1 of the Convention, and to cover all rights protected by the Convention. It also encourages the State party to ensure that law enforcement officials approached with complaints of racial discrimination have adequate expertise and authority to deal with offenders and to protect victims of discrimination.

10. While noting with interest that the State party held consultations and informal hearings with non-governmental organizations and other groups in the drafting of the report, the Committee regrets the limited opportunities for collection and exchange of information with such organizations and groups.

The Committee notes the positive contributions made in the field of human rights and the role played by non-governmental organizations (NGOs) in Japan and

encourages the State party to ensure the effective participation of NGOs in the consultation process during the preparation of the next periodic report.

11. The Committee notes the information provided by the State party on the composition of the population but regrets that the available body of data does not allow for an adequate understanding and assessment of the situation of vulnerable groups in the State party.

The Committee, in accordance with paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1) as well as its general recommendations No. 8 (1990) on the interpretation of article 1 of the Convention and No. 30 (2004) on discrimination against non-citizens, recommends that the State party conduct research into languages commonly spoken, mother tongue or other indicators of diversity of the population together with information from social surveys, on the basis of voluntary self-identification, with full respect for the privacy and anonymity of the individuals concerned, in order to evaluate the composition and situation of groups within the definition of article 1 of the Convention. The Committee further encourages the State party to provide updated disaggregated data on the non-citizen population in its next periodic report.

12. While taking account of the State party's commitment to consider the establishment of a national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134), the Committee regrets the repeal of the proposed Human Rights Protection Bill, which included provisions for the establishment of a human rights commission, as well as the delays and overall absence of concrete actions and time frame for the establishment of an independent national human rights institution. The Committee also notes with concern the lack of a comprehensive and effective complaints mechanism (art. 2).

The Committee encourages the State party to draft and adopt a human rights protection bill and promptly establish a legal complaints mechanism. It also urges the establishment of a well-financed and adequately staffed independent human rights institution, in compliance with the Paris Principles, with a broad human rights mandate and a specific mandate to address contemporary forms of discrimination.

13. While noting the explanations provided by the State party, the Committee is concerned by the reservations to articles 4 (a) and (b) of the Convention. The Committee also notes with concern the continued incidence of explicit and crude statements and actions directed at groups including children attending Korean schools as well as harmful, racist expressions and attacks via the Internet aimed, in particular, against Burakumin (arts. 4a, 4b).

The Committee reiterates its view that the prohibition of the dissemination of ideas based upon racial superiority or hatred is compatible with freedom of opinion and expression and in this respect, encourages the State party to examine the need to maintain its reservations to article 4 (a) and (b) of the Convention with a view to reducing their scope and preferably their withdrawal. The Committee recalls that the exercise of the right to freedom of expression carries with it special duties and responsibilities, in particular the obligation not to disseminate racist ideas and calls upon the State party once again to take into account the Committee's general recommendations No. 7 (1985) and No. 15 (1993), according to which article 4 is of mandatory nature, given the non-self-executing character of its provisions. It recommends that the State party:

(a) Remedy the absence of legislation to give full effect to the provisions against discrimination under article 4;

(b) ensure that relevant constitutional, civil and criminal law provisions are effectively implemented, including through additional steps to address hateful and racist manifestations by, inter alia, enhancing efforts to investigate them and punish those involved; and

(c) increase sensitization and awareness-raising campaigns against the dissemination of racist ideas and to prevent racially motivated offences including hate speech and racist propaganda on the Internet.

14. While noting the measures being taken by the State party to provide human rights education to public officials, the Committee reiterates its concern from previous concluding observations (2001) that discriminatory statements by public officials persist and regrets the absence of administrative or legal action taken by the authorities in this regard, in violation of article 4 (c) of the Convention. It is further concerned that the existing laws on defamation, insult and intimidation making statements punishable are not specific to racial discrimination and only apply in case of injury to specific individuals (art. 4c, 6).

The Committee reiterates its recommendation that the State party strongly condemn and oppose any statement by public officials, national or local, which tolerates or incites racial discrimination and that it intensify its efforts to promote human rights awareness among politicians and public officials. It also recommends with urgency that the State party enact a law that directly prohibits racist and xenophobic statements, and guarantees access to effective protection and remedies against racial discrimination through competent national courts. The Committee also recommends that the State party undertake the necessary measures to prevent such incidents in the future and to provide relevant human rights education, including specifically on racial discrimination to all civil servants, law enforcement officers and administrators as well as the general population.

15. Noting that family court mediators do not have any public decision making powers, the Committee expresses concern over the fact that qualified non-nationals are not able to participate as mediators in dispute settlement. It also notes that no data was provided regarding the participation of non-nationals in public life (art. 5).

The Committee recommends that the State party review its position so as to allow competent non-nationals recommended as candidates for mediation to work in family courts. It also recommends that it provide information on the right to participation of non-nationals in public life in its next report.

16. While noting with interest the increasing number of non-Japanese residents in the State party, including those applying for naturalization, the Committee reiterates the view expressed in its previous concluding observations (2001) that the name of an individual is a fundamental aspect of cultural and ethnic identity that must be respected. In this regard, the Committee expresses its concern that for naturalization purposes, applicants continue to change their names out of fear of discrimination rather than as acts of free choice (art. 5).

The Committee recommends that the State party develop an approach where the identity of non-Japanese nationals seeking naturalization is respected and that officials, application forms and publications dealing with the naturalization process refrain from using language that persuades applicants to adopt Japanese names and characters for fear of disadvantages or discrimination.

17. While noting the revised Act for the Prevention of Spousal Violence and Protection of Victims (2007) to extend protection to victims regardless of nationality and strengthen the role of local governments, the Committee notes with concern the obstacles to access complaints mechanisms and protection services faced by women victims of domestic and sexual violence. It notes with particular concern that changes to the Immigration Control

Act (2009) pose difficulties for foreign women suffering domestic violence. It also regrets the lack of information and data provided about the incidence of violence against women (Art 5).

In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party adopt all necessary measures to address phenomena of double discrimination, in particular regarding women and children from vulnerable groups. It also reiterates its previous recommendation (2001) that the State party collect data and conduct research on the measures to prevent gender-related racial discrimination, including exposure to violence.

18. While acknowledging the State party's position on the family registration system, and noting the legislative changes made to protect personal information (2008), the Committee reiterates its concern about the difficulties in the system and that invasion of privacy, mainly of Burakumin, continues (art. 2, 5).

The Committee recommends the enacting of a stricter law, with punitive measures, prohibiting use of the family registration system for discriminatory purposes, particularly in the fields of employment, marriage and housing, and to effectively protect privacy of individuals.

19. Noting with interest the State party's recognition of discrimination against Burakumin as a social problem as well as the achievements of the Dowa Special Measures Law, the Committee is concerned that the conditions agreed between the State party and Buraku organizations upon termination in 2002 regarding full implementation of the Convention, the enactment of a law on human rights protection and a law on the promotion of human rights education, have not been fulfilled to date. The Committee regrets that there is no public authority specifically mandated to deal with Burakumin discrimination cases and notes the absence of a uniform concept used by the State party when dealing with or referring to Burakumin and policies. Further, the Committee notes with concern that although socio-economic gaps between Burakumin and others have narrowed for some Burakumin, e.g., in the physical living environment and education, they remain in areas of public life such as employment and marriage discrimination, housing and land values. It further regrets the lack of indicators to measure progress in the situation of Burakumin (art. 2, 5).

The Committee recommends that the State party:

- (a) Assign a specific government agency or committee mandated to deal with Buraku issues;**
- (b) fulfil the commitments made upon the termination of the Special Measures Law;**
- (c) engage in consultation with relevant persons to adopt a clear and uniform definition of Burakumin;**
- (d) supplement programmes for the improvement of living conditions of Buraku with human rights education and awareness-raising efforts engaging the general public, particularly in areas housing Buraku communities;**
- (e) provide statistical indicators reflecting the situation and progress of the above-mentioned measures; and**
- (f) take into account general recommendation No. 32 (2009) on special measures, including the recommendation that special measures are to be terminated when equality between the beneficiary groups and others has been sustainably achieved.**

20. While welcoming the recognition of the Ainu as an indigenous people and noting with interest measures reflecting the State party's commitment including a working group to set up a symbolic public facility and another to conduct a survey on the status of Ainu outside of Hokkaido, the Committee expresses its concern about:

- (a) the insufficient representation of Ainu people in consultation fora and in the Advisory Panel of Eminent Persons;
- (b) the absence of any national survey on the development of the rights of Ainu people and improvement of their social position in Hokkaido;
- (c) The limited progress so far towards implementing the UN Declaration on the Rights of Indigenous Peoples (art. 2, 5).

The Committee recommends that further steps be taken in conjunction with Ainu representatives to translate consultations into policies and programmes with clear and targeted action plans that address Ainu rights and recommends that the participation of Ainu representatives in consultations be increased. It also recommends that the State party, in consultation with Ainu representatives, consider the establishment of a third working group with the purpose of examining and implementing international commitments such as the UN Declaration on the Rights of Indigenous Peoples. It urges the State party to carry out a national survey of living conditions of Ainu in Hokkaido and recommends that the State party take into account the Committee's general recommendation No. 23 (1997). The Committee further recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

21. While highlighting that UNESCO has recognized a number of Ryukyu languages (2009), as well as the Okinawans' unique ethnicity, history, culture and traditions, the Committee regrets the approach of the State party to accord due recognition to Okinawa's distinctness and expresses its concern about the persistent discrimination suffered by the people of Okinawa. It further reiterates the analysis of the Special rapporteur on contemporary forms of racism that the disproportionate concentration of military bases on Okinawa has a negative impact on residents' enjoyment of economic, social and cultural rights (art. 2, 5).

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

22. The Committee notes with appreciation the efforts taken by the State party to facilitate education for minority groups, including bilingual counsellors and enrolment guidebooks in seven languages, but regrets the lack of information on the implementation of concrete programmes to overcome racism in the education system. Moreover, the Committee expresses concern about acts that have discriminatory effects on children's education including:

- (a) the lack of adequate opportunities for Ainu children or children of other national groups to receive instruction in or of their language;
- (b) the fact that the principle of compulsory education is not fully applied to children of foreigners in the State party in conformity with articles 5 (e.v) of the Convention; 28 of the Convention on the Rights of the Child; and 13 (2) of the Convention on Economic, Social and Cultural Rights, all of which Japan is a party;
- (c) obstacles in connection with school accreditation and curricular equivalencies and entry into higher education;

(d) the differential treatment of schools for foreigners and descendants of Korean and Chinese residing in the State party, with regard to public assistance, subsidies and tax exemptions; and

(e) the approach of some politicians suggesting the exclusion of North 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 (art. 2, 5).

The Committee, in light of its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party ensure that there is no discrimination in the provision of educational opportunities and that no child residing in the territory of the State party faces obstacles in connection with school enrolment and the achievement of compulsory education. In this regard, it further recommends that a study on the multitude of school systems for foreigners and the preference for alternative regimes set up outside of the national public school system be carried out by the State party. The Committee encourages the State party to consider providing adequate opportunities for minority groups to receive instruction in or of their language and invites the State party to consider acceding to the UNESCO Convention against Discrimination in Education.

23. The Committee notes with appreciation progress on the process of refugee status determination, but reiterates its concern that, according to some reports, different, preferential standards apply to asylum seekers from certain countries and that asylum seekers with different origins and in need of international protection have been forcibly returned to situations of risk. The Committee also expresses its concern over the problems recognized by refugees themselves including lack of proper access to asylum information, understanding about procedures, language/communication questions, and cultural disjunctions, including a lack of understanding by the public of refugee issues (art. 2, 5).

The Committee reiterates its recommendation that the State party take the necessary measures to ensure standardized asylum procedures and equal entitlement to public services by all refugees. In this context, it also recommends that the State party ensure that all asylum-seekers have the right, inter alia, to an adequate standard of living and medical care. The Committee also urges the State party to ensure, in accordance with article 5 (b), that no person will be forcibly returned to a country where there are substantial grounds for believing that his/her life or health may be put at risk. The Committee recommends that the State party seek cooperation with UNHCR in this regard.

24. The Committee expresses its concern about 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 (art. 2, 5).

The Committee recommends 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.

25. The Committee is concerned that insufficient steps have been taken by the State party to revise textbooks with a view to conveying an accurate message regarding the contribution of groups protected under the Convention to Japanese society (art. 5).

The Committee recommends that the State party carry out a revision of existing textbooks to better reflect the culture and history of minorities and that it encourage books and other publications about the history and culture of minorities,

including in the languages spoken by them. It particularly encourages the State party to support teaching in and of the Ainu and Ryukyu languages in compulsory education.

26. While noting the measures to combat racial prejudices taken by the State party, such as setting up human rights counselling offices and human rights education and promotion, the Committee remains concerned at the lack of concrete information about the media and the integration of human rights in broadcasting of television and radio programmes (art. 7).

The Committee recommends that the State party intensify public education and awareness-raising campaigns, incorporating educational objectives of tolerance and respect, and ensuring adequate media representation of issues concerning vulnerable groups, both national and non-national, with a view to eliminating racial discrimination. The Committee also recommends that the State party pay particular attention to the role of the media in improving human rights education and that it strengthen measures to combat racial prejudice that leads to racial discrimination in the media and in the press. In addition, it recommends education and training for journalists and people working in the media sector to increase awareness of racial discrimination.

27. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), ILO Convention No. 111 on Discrimination in Employment and Occupation (1958), the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the Convention on Prevention and Punishment of Crime of Genocide (1948).

28. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

29. The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

30. While noting the position of the State party, the Committee recommends that the State Party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the 14th Meeting of States Parties and approved by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolutions 61/148 of 19 December 2006, and 62/243 of 24 December 2008, in which the Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

31. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

32. Noting that the State Party submitted its Core Document in 2000, the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12, 20 and 21 above.

34. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 19, 22 and 24 and requests that the State party provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

35. The Committee recommends that the State party submit its seventh, eighth and ninth periodic reports, due on 14 January 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.
