

ADVANCE UNEDITED VERSION

Distr.: General
29 August 2014

Original: English

Committee on the Elimination of Racial Discrimination**Concluding observations on the combined seventh to ninth periodic reports of Japan***

1. The Committee considered the combined seventh to ninth periodic reports of Japan (CERD/C/JPN/7-9), at its 2309th and 2310th meetings (CERD/C/SR.2309 and 2310), held on 20 and 21 August 2014. At its 2320th and 2321st meetings, held on 28 August 2014, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission, in a single document, of the State party's seventh to ninth periodic reports drafted in conformity with the treaty-specific reporting guidelines. The Committee notes the oral presentation and the responses provided by the large delegation during the consideration of the report as well as additional information provided in written form.

B. Positive aspects

3. The Committee notes with interest some administrative and political measures taken by the State party since its last periodic report, which should contribute to combating racial discrimination, particularly the adoption of Japan's Action Plan to Combat Trafficking in Persons, in December 2009.

4. The Committee also notes with interest that, since it last considered the periodic report from the State party, Japan has ratified the following international instruments:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance, on 23 July 2009; and

(b) The Convention on the Rights of Persons with Disabilities, on 20 January 2014.

* Adopted by the Committee at its eighty-fifth session (11-29 August 2014).

C. Concerns and recommendations

5. The Committee recalls that in its concluding observations of 2010, it had requested the State Party “to address all the points raised in the present concluding observations”. Other than responses to the three concerns expressed in paragraphs 12, 20 and 21, as found in the State Party’s follow-up document in 2011, there was no reference to the 2010 concluding observations in its report.

The Committee strongly recommends that the State party address all the recommendations contained in this document in its next periodic report.

Ethnic composition of the population

6. The Committee, while taking note of data on the ethnic composition of its population provided by the State in its report as well as in its core document, regrets that such data are not comprehensive, in particular with regard to vulnerable groups, including non-citizens, so that the Committee is unable to properly evaluate the situation of such groups in the State party (art. 1).

In accordance with paragraphs 10 to 12 of its revised treaty-specific reporting guidelines (CERD/C/2007/1) and taking into account its general recommendation No. 24 (1999) concerning article 1 of the Convention and general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:

(a) **Conduct research into the commonly spoken languages, mother tongues and other indicators of diversity and collect information from social surveys on vulnerable groups; and**

(b) **Collect comprehensive, reliable and up-to-date statistical data on socioeconomic indicators, disaggregated by nationality and ethnic origin, including on immigrants and refugees, in order to define policies taking into account the specific needs of all segments of its society and to allow the Committee to better assess how the rights enshrined in the Convention are protected in Japan.**

Definition of racial discrimination

7. The Committee is concerned that the definition of racial discrimination in paragraph 1 of article 14 of the Constitution of Japan, which prescribes the principles of equality and non-discrimination does not include the grounds of national or ethnic origin, colour or descent, and therefore does not fully meet the requirements of article 1 of the Convention. Similarly, there is no adequate definition of racial discrimination in domestic legislation (arts 1 and 2).

The Committee recommends that the State party adopt in its legislation a comprehensive definition of racial discrimination which integrates the grounds of national or ethnic origin, colour and descent, in full compliance with article 1, paragraph 1, of the Convention.

Absence of a specific and comprehensive law prohibiting racial discrimination

8. While noting that some laws include provisions against racial discrimination, the Committee is concerned that acts and incidents of racial discrimination continue to occur in the State party and that the State party has not yet enacted a specific and comprehensive law on the prohibition of racial discrimination which will enable victims to seek appropriate legal redress for racial discrimination (art. 2).

The Committee urges the State party to adopt specific and comprehensive legislation prohibiting racial discrimination, both direct and indirect, in compliance with articles 1 and 2 of the Convention, which will enable victims of racial discrimination to seek appropriate legal redress.

National Human Rights Institution

9. The Committee is concerned that the State party has not yet established a national human rights institution in full compliance with the Paris principles. In this context, the Committee notes that the examination of the Human Rights Commission Bill was scrapped in 2012 following the dissolution of the House of Representatives and that the progress made to establish a national human rights institution has been very slow (art. 2).

Bearing in mind its general recommendation No. 17 (1994) on the establishment of national institutions to facilitate implementation of the Convention, the Committee recommends that the State party promptly resume the consideration of the Human Rights Commission Bill and expedite its adoption with a view to establishing an independent national human rights institution, providing it with adequate human and financial resources as well as with a mandate to address complaints of racial discrimination, in full compliance with the Paris principles (General Assembly resolution 48/134).

Compliance of the legislation with article 4

10. While noting the position of, and the reasons provided by the State party with regard to the Committee's recommendation to withdraw or reduce the scope of the State's party reservations on sub-paragraphs (a) and (b) of article 4 of the Convention, the Committee regrets the decision of the State party to maintain its reservations. While noting that the dissemination or expression of racist ideas can constitute defamation and other crimes under the Penal Code, the Committee is concerned that the legislation of the State party does not fully comply with all provisions of article 4 of the Convention (art.4).

The Committee encourages the State party to review its position and again consider withdrawing its reservation to sub-paragraphs (a) and (b) of article 4. Recalling its general recommendations No. 15 (1993) and No. 35 (2013) on combatting racist hate speech, the Committee recommends that the State party take appropriate steps to revise its legislation, in particular its Penal Code, in order to give effect to the provisions of article 4.

Hate speech and hate crimes

11. The Committee is concerned about reports of the spread of hate speech including incitement to imminent violence in the State party by right-wing movements or groups which organize racist demonstrations and rallies against foreigners and minorities, in particular Koreans. The Committee is also concerned by reports of statements made by public officials and politicians amounting to hate speech and incitement to hatred. The Committee is further concerned by the propagation of hate speech and incitement to racist violence and hatred during rallies and in the media, including the Internet. Furthermore, the Committee is concerned that such acts are not always properly investigated and prosecuted by the State party (art. 4).

Recalling its general recommendations No. 35 (2013) on combating racist hate speech, the Committee recalls that measures to monitor and combat racist speech should not be used as a pretext to curtail expression of protest. However, the Committee reminds the State party of the importance of safeguarding the rights of vulnerable groups in

need of protection against racist hate speech and hate crimes. The Committee recommends, therefore that the State party take appropriate measures to:

- (a) Firmly address manifestations of hate and racism as well as incitement to racist violence and hatred during rallies;
- (b) Take appropriate steps to combat hate speech in media including the Internet;
- (c) Investigate and, where appropriate, prosecute private individuals as well as organizations responsible for such acts;
- (d) Pursue appropriate sanctions against public officials and politicians who disseminate hate speech and incitement to hatred; and
- (e) Address the root causes of racist hate speech and strengthen measures of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and among racial or ethnic groups.

Migrant workers

12. The Committee is concerned about reports of unequal treatment of migrants in employment and in access to housing. The Committee is also concerned about reports that the rights of foreign technical interns are violated through the non-payment of proper wages, subjection to inordinately long working hours, and other forms of exploitation and abuses (art. 5).

The Committee recommends that the State party reinforce its legislation in order to firmly combat racial discrimination against migrants in employment and access to housing and improve migrants' employment status, bearing in mind the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens. The Committee also recommends that the State party take appropriate steps to reform the technical intern training program in order to protect the working rights of technical interns.

Access by non-citizens to public service jobs

13. While noting the explanation provided by the delegation of the State party, the Committee is concerned about restrictions and difficulties faced by non-citizens in accessing some public service jobs which do not require the exercise of the State authority. The Committee is particularly concerned about the position and the continued practice of the State party to exclude competent non-citizens to act as mediators in family dispute settlement courts (art. 5).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party review its position so as to allow competent non-citizens to act as mediators in family dispute settlement courts. The Committee also recommends that the State party remove the legal and administrative restrictions in order to promote more participation by non-citizens in public life including access to public jobs which do not require the exercise of the State authority, paying due attention to non-citizens who have been living in the State party for a long period of time. The Committee further recommends that the State party provide in its next periodic report comprehensive and disaggregated data on the participation of non-citizens in public life.

Access by non-citizens to the National Pension Scheme

14. While noting that the National Pension Act covers all peoples residing in Japan irrespective of their nationality, the Committee is concerned that upon the removal of the nationality clause from the National Pension Law in 1982, combined with the age and the residence requirements introduced by the amendment of 1986, a number of non-citizens, including Koreans who lost their Japanese nationality in 1952, may have been left out and remain ineligible for pension benefits under the national pension scheme. The Committee is also concerned that despite the removal in 1982 of the nationality clause from the Basic Disability Pension of the National Pension Law, non-citizens who lost eligibility to receive benefits before 1 January 1982 due to the nationality clause and other non-citizens with disabilities who were over the age of 20 as of the same date, remain excluded from receiving the Basic Disability Pension (art. 5).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take measures to allow non-citizens, in particular Koreans, who may have been left out and remain excluded from the National Pension Act due to the age requirement, to be eligible for the national pension scheme. The Committee also recommends that the State party amend its legislation in order to allow non-citizens who are currently ineligible to apply for the Basic Disability Pension.

Access by non-citizens to public places and facilities

15. The Committee is concerned about the continued exclusion of non-citizens on the basis of race or nationality from accessing some public places and facilities of general use, such as restaurants, hotels, family public bathhouses and stores, in violation of articles 2 and 5 of the Convention (arts. 2 and 5).

The Committee recommends that the State party take appropriate measures to protect non-citizens from discrimination in access to public places, in particular by ensuring effective application of its legislation. The Committee also recommends that the State party investigate and sanction such acts of discrimination and enhance public awareness-raising campaigns on the requirements of the relevant legislation.

Trafficking in persons

16. While noting information provided by the delegation of the State party on measures taken to prevent and combat trafficking in persons, the Committee is concerned about the persistence of trafficking in minority women in the State party, in particular for purposes of sexual exploitation. The Committee is also concerned about the lack of data which would enable an assessment of the extent of the phenomenon of trafficking in the State party. The Committee is further concerned about the absence of information on specific legislative provisions against trafficking as well as on cases related to investigations, prosecutions and sanctions imposed on those responsible (art. 5).

The Committee recommends that the State party:

- (a) **Adopt specific legislation against trafficking in persons;**
- (b) **Intensify its efforts to combat trafficking in persons, including of migrant women, and take preventive measures to address its root causes in the context of the Japan's Action Plan to Combat Trafficking in Persons ;**
- (c) **Provide assistance, protection, temporary residence status, rehabilitation and shelters as well as psychological and medical services and other assistance to victims;**

(d) Promptly and thoroughly investigate, prosecute and punish those responsible;

(e) Provide specialized training to all law enforcement officials, including police officers, border guards and immigration officers in the identification of, assistance to, and protection of victims of trafficking; and

(f) Inform the Committee of the situation on trafficking in the State party, especially of people from minority groups.

Violence against foreign and minority women

17. The Committee is concerned about information of persistent violence against foreign, minority and indigenous women. The Committee is particularly concerned that under the provisions of the revised Immigration Control and Refugee Recognition Act of 2012, authorities may revoke the residence status of foreign women who have been married to a Japanese national or a foreigner with a permanent residency status in case such foreign women “fail to continue to engage in activities as spouse while residing in Japan for more than six months”, as provided under Section I, Article 22-4 of the Immigration Control Act. These provisions may prevent foreign women who are victims of domestic violence from their husbands from leaving abusive relationships and from seeking assistance. (art. 2, 5).

In light with its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take adequate measures to effectively address the issue of violence against migrant, minority and indigenous women, by prosecuting and sanctioning all forms of violence against them, as well as to ensure that victims have access to immediate means of redress and protection. It should also review its legislation on residence status to ensure that foreign women married to Japanese citizens or to non-citizens with permanent residence status will not be expelled upon divorce or repudiation, and that the application of the law does not have the effect, in practice, of forcing women to remain in abusive relationships.

Comfort women

18. The Committee notes information provided by the delegation of the State party about efforts made to solve the issue of foreign “comfort women” who were sexually exploited by the Japanese military during the World War II. The Committee also notes information on compensation provided through the Asian Women Fund established by the State party in 1995 and Government expressions of apology, including the apology of the Japanese Prime Minister in 2001. Bearing in mind that human rights violations against surviving “comfort women” persist as long as their rights to justice and reparation are not fully realized, the Committee is concerned at reports that most of “comfort women” have never received recognition, apologies or any kind of compensation (art. 2, 5).

The Committee urges that the State party take immediate action to:

(a) Conclude investigations on violations of the rights of comfort women by the Japanese military, and bring to justice those responsible for human rights violations;

(b) Pursue a comprehensive, impartial and lasting resolution of the issue of comfort women including expressions of sincere apology and the provision of adequate reparation to all surviving comfort women or to their families; and

(c) Condemn any attempts at defamation or denial of such events.

Korean schools

19. The Committee is concerned about the legislative provisions and government's actions that hinder the right to education of children of Korean origin, including: (a) the exclusion of Korean schools from the High School Tuition Support Fund; and (b) the suspension or continued decrease of funding allocated by local governments to Korean schools (art. 2, 5).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee reiterates its recommendation included in paragraph 22 of its previous concluding observations that the State party ensure that there is no discrimination in the provision of educational opportunities and that no child residing in its territory faces obstacles to school enrolment. The Committee encourages the State party to revise its position and to allow Korean schools to benefit, as appropriate, from the High School Tuition Support Fund, as well as to invite local governments to resume or maintain the provision of subsidies to Korean schools. The Committee recommends that the State party consider acceding to the UNESCO Convention against Discrimination in Education of 1960.

Situation of Ainu people

20. While noting efforts by the State party to promote and protect the rights of the Ainu people, the Committee is concerned at shortcomings in measures developed by the State party, including: (a) the low/insufficient number of Ainu representatives in the Council of the Ainu Promotion Policy and in other consultative bodies; (b) persistent gaps between Ainu people, including those living outside Hokkaido, and the rest of the population in many areas of life, in particular in education, employment and living conditions; and (c) insufficient measures taken to protect the rights of Ainu people to land and natural resources and the slow progress made towards the realization of their right to their own culture and language (art. 5).

In light of its general recommendation No. 23 (1997) on the rights of Indigenous peoples and taking into account the United Nations Declaration on the Rights of Indigenous Peoples, the Committee recommends that the State party:

- (a) Consider increasing the number of Ainu representatives in the Council of the Ainu Promotion Policy and in other consultative bodies;**
- (b) Enhance and speed up the implementation of measures taken to reduce the gaps that still exist between the Ainu people and the rest of the population with regard to employment, education and living conditions;**
- (c) Adopt appropriate measures to protect the rights of Ainu people to land and natural resources, and foster the implementation of measures aimed at the realization of their rights to their culture and language;**
- (d) Regularly conduct comprehensive surveys on the situation of Ainu people in order to adjust its programmes and policies; and**
- (e) As already recommended in paragraph 20 of the Committee's previous concluding observations, consider ratifying the International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.**

Situation of Ryukyu/Okinawa

21. The Committee regrets the position of the State party not to recognise the Ryukyu/Okinawa as indigenous peoples, despite recognition by UNESCO of their unique

ethnicity, history, culture and traditions. While noting measures taken and implemented by the State party concerning Ryukyu based on the Act on Special Measures for the Promotion and Development of Okinawa and Okinawa Promotion Plan, the Committee is concerned that sufficient measures have not been taken to consult Ryukyu representatives regarding the protection of their rights. The Committee is also concerned by information that not enough has been done to promote and protect Ryukyu languages, which are at risk of disappearance, and that education textbooks do not adequately reflect the history and culture of Ryukyu people (art. 5).

The Committee recommends that the State party review its position and consider recognising the Ryukyu as indigenous peoples and take concrete steps to protect their rights. The Committee also recommends that the State party enhance its consultations with Ryukyu representatives on matters related to the promotion and protection of their rights. The Committee further recommends that the State party speed up the implementation of measures adopted to protect the Ryukyu language from risk of disappearance, facilitate education of Ryukyu people in their own language and include their history and culture in textbooks used in school curricula.

Situation of Burakumin

22. The Committee regrets the position of the State party which excludes the Burakumin from the application of the Convention on the grounds of descent. It is concerned that the State party has not yet adopted a uniform definition of Burakumin, as raised by the Committee in its previous concluding observations. The Committee is concerned about the lack of information and indicators to assess the impact of concrete measures implemented by the State party upon the termination of the Dowa Special Measures in 2002, including measures to counter discrimination against the Burakumin. The Committee is also concerned about the persistent socio-economic gaps between the Burakumin and the rest of the population. The Committee is further concerned at reported abuses of the illegal access to the family registration system, which may be used for discriminatory purposes against Burakumin (art. 5).

Bearing in mind its general recommendation No. 29 (2002) on descent, the Committee recalls that discrimination on the ground of descent is fully covered by the Convention. The Committee recommends that the State revise its position and adopt a clear definition of Burakumin in consultation with Buraku people. The Committee also recommends that the State party provide information and indicators on concrete measures taken upon the termination of the Dowa Special Measures in 2002, in particular on living conditions of Burakumin. The Committee further recommends that the State party effectively apply its legislation to protect Burakumin against illegal access to their family data which may expose them to discriminatory acts, investigate all incidents relating to illegal abuses of the family registration and punish those responsible.

Refugees and asylum seekers

23. The Committee is concerned about reports of racial discrimination faced by some refugees and asylum seekers, in particular non-Asians and Africans, at work, school and in interactions with public institutions and local communities. The Committee is also concerned about the detention of asylum seekers for long periods of time and inadequate conditions in detention facilities. While noting that the Japanese Nationality Act has a provision for the prevention and the reduction of statelessness, the Committee is concerned that the State party has not yet developed a statelessness determination procedure. It is also concerned that some stateless persons without residence permits have faced indefinite pre-deportation detention and some have been at risk of human rights abuses (art. 5).

In light of its general recommendation No. 22 (1996) on refugees and displaced persons and bearing in mind its general recommendation No. 34 (2011) on the discrimination against people of African descent, the Committee recommends that the State party take measures to:

- (a) Promote non-discrimination and understanding among its local authorities and communities with regard to refugees and asylum seekers;
- (b) Guarantee that detention of asylum seekers is used only as a measure of last resort and for a shortest period of time as possible. The State party should give priority to alternative measures to detention, as provided in its legislation; and
- (c) Develop a statelessness determination procedure to adequately ensure the identification and the protection of stateless persons.

The State party should also consider acceding to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.

Minority languages and textbooks

24. While noting information provided by the State party, the Committee regrets that the State party has not taken adequate measures to promote education in and of minority languages for children belonging to minorities or indigenous peoples. The Committee is concerned about the lack of information on steps taken to revise the existing textbooks in order to adequately reflect the history, culture, and contributions of Japanese groups protected by the Convention (art. 5).

The Committee recommends that the State party facilitate education in and of minority languages for children belonging to minorities and indigenous peoples, including the Ainu and Ryukyu peoples. The Committee recommends that the State party revise those textbooks that do not reflect the history, culture, and contributions of Japanese groups protected by the Convention.

Ethno-religious profiling of members of Muslim communities

25. The Committee is concerned about reports of surveillance activities of Muslims of foreign origin, by law enforcement officials of the State party which may amount to ethnic profiling. The Committee considers systematic collection of security information about individuals, solely on the basis of their belonging to an ethnic or ethno-religious group, a serious form of discrimination (art. 2 and 5).

The Committee urges the State party to ensure that its law enforcement officials do not rely on ethnic or ethno-religious profiling of Muslims.

Promotion of tolerance and mutual understanding

26. While noting efforts by the State party to combat racial prejudices and stereotypes including human rights education and awareness-raising activities based on the concept of mutual understanding, such as the Basic Plan for the Promotion of Human Rights Education and Encouragement of 2002, the Committee is concerned about reports on the increase of xenophobic and discriminatory attitudes against non-citizens and indigenous peoples, including through mass media (art. 2 and 7).

The Committee recommends that the State party:

- (a) Redouble its efforts of public education and awareness-raising campaigns;

- (b) Continue to integrate human rights education in school curricula;
- (c) Promote racial harmony and tolerance in mass media and train media and journalists on human rights; and
- (d) Enhance its activities related to the promotion of mutual understanding and tolerance among different ethnic groups living in its territory.

D. Other recommendations

Ratification of other instruments

27. Bearing in mind the indivisible nature of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments to which it is not already a party, especially those that relate directly to racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Labour Organization Domestic Workers Convention, 2011 (No. 189).

Follow-up to the Durban Declaration and Programme of Action

28. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action of 2001, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009 at the national level.

Dialogue with civil society

29. The Committee recommends that the State party consult and expand its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, when preparing its next periodic report.

Amendment to article 8 of the Convention

30. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992.

Declaration under article 14

31. The Committee encourages the State party to make the optional declaration provided for under article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

Follow-up to concluding observations

32. 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 these concluding observations, on its follow-up to the recommendations contained in paragraphs 17, 18 and 22 above.

Recommendations of particular importance

33. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11, 19, 21 and 23 above, and

requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination

34. The Committee recommends that the State party's periodic reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

35. The Committee recommends that the State party submit its tenth to eleventh periodic reports in a single document by 14 January 2017, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see the harmonized reporting guidelines in HRI/GEN/2/Rev.6, chapter I, paragraph 19).
