

The Implementation of the ICESCR in Japan and the Problems of the Japan's Third Periodic Report

*For the Preparation of the List of Issues
by the Pre-Sessional Working Group*

Revised Version

NGO Committee for the Reporting on the ICESCR

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INTRODUCTION

Purpose of the present report and the NGO Committee

The present report was prepared to contribute to the preparation of the list of issues concerning the third periodic report of Japan on the International Covenant on Economic, Social and Cultural Rights (ICESCR), by pointing out problems of the Government report and challenges in the implementation of the ICESCR in Japan. In view of the workload of the Committee on Economic, Social and Cultural Rights (CESCR), the present report mainly proposes the issues that should be taken up by the Committee in the form of “questions” in order to make it as short as possible.

The present report was prepared by the NGO Committee for the Reporting on the ICESCR. The members of the NGO Committee, coming from non-governmental, academic and legal communities, have been involved in the implementation and monitoring of the ICESCR as well as in the reporting processes to the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination, among others.

The NGO Committee provided information to the CESCR for the previous consideration in 2001, submitting the NGO report and observing the relevant meetings, and has been involved in the follow-up to the previous concluding observations.

Main problems of the third periodic report of Japan

It is noted as positive that the Government report adopts the formalities based on the reporting process, describing the “Responses to the previous concluding observations” in the chapter I. With regard to what is written in the chapter I as well as the following descriptions on the implementation of the ICESCR, however, we must regrettably repeat what was pointed out in our previous NGO report on the second periodic report more than a decade ago.

Namely, the Government report is formalistic, only containing descriptions on the relevant legislation and institutions as well as some statistical data, without making it visible how and to what extent economic, social and cultural rights are protected as well as what challenges remain in this regard in Japanese society, where poverty and economic disparities are getting wider. The biggest reason is that the Government does not recognize these rights as legal ones and that even policy considerations are not given to the implementation of these rights. Similarly, since courts have considered that the ICESCR is not justiciable, it has hardly been used effectively in lawsuits. The public has little awareness of the ICESCR, too. On the other hand, it should be acknowledged that NGOs have not been very active in the implementation of the ICESCR compared to the cases of other human rights treaties.

The Government explains, “In the process of preparing the third periodic report, a wide range of opinions from the general public was collected through the website, and meetings with NGO members and the general public were organized for consultations to take place”. Those opportunities were one-sided, however, far from being “constructive dialogue”. NGOs do not

consider that our views are reflected in the Government report. The attitude of the Government toward the implementation of the ICESCR is questioned in this regard as well.

Toward the effective implementation of the ICESCR

Since the third periodic report has those fundamental problems, additional information should be provided, generally and at the minimum, on the following issues.

- (a) The implementation of the ICESCR and challenges in the process in the aftermath of the Great East Japan Earthquake and the Fukushima Nuclear Power Plant disaster in March 2011, in particular concerning how the ICESCR has been referred to in the reconstruction processes, which should be pursued in accordance with a human rights-based approach. Particular reference should be made on the issue of exposure to radiation as well as assistance and support for especially vulnerable groups, including foreigners.
- (b) Policy changes under the new government, as is noted in the Government report itself (p.4).
- (c) Governmental institutions for and challenges in the effective and comprehensive promotion of the relevant policies.
- (d) Prospects for the establishment of structures and systems for the effective promotion and monitoring of the implementation of the ICESCR and in particular the relevant concluding observations. In this regard, specific reasons and challenges should be indicated for non-acceptance of the individual communication procedures under the main human rights treaties.

The additional information should be prepared on the basis of “constructive dialogue” with the relevant NGOs, which should be held between the preliminary consideration in May 2012 and the plenary session with the delegation. It should be substantial and brief so that the problems of the Government report would be redressed to the maximum extent possible.

I GENERAL ISSUES

1 Implementation of the ICESCR and mechanisms for the provision of remedies

- Please provide information on specific measures and developments, if any, with regard to the concerns expressed in the previous concluding observations (para.10).
- With regard to the recommendations in the previous concluding observations (para.33), please explain why courts are reluctant to apply the provisions of the Covenant and why no considerations have been given to the introduction of “human rights impact assessments”.
- Please indicate specific position of the Government with regard to the creation of national human rights institutions and the acceptance of individual communication procedures.

2 Ratification of other treaties concerned with the realization of human rights

- Does the State Party intend to sign the Optional Protocol to the ICESCR? Does it plan to ratify optional protocols under other human rights treaties without delay with a view to promoting economic, social and cultural rights in the country?
- Does the State Party intend to sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Their Families?
- Does the State Party plan to ratify the UN Convention against Transnational Organized Crime as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention (the Palermo Protocol)?
- Does the State Party intend to ratify main ILO conventions at an early stage, namely No.111 (non-discrimination in employment and occupation), No.171 (night work), No.175 (part-time work) and No.183 (maternity protection)?

II GREAT EAST JAPAN EARTHQUAKE, NUCLEAR POWER PLANT DISASTER AND ICESCR

Recovery/reconstruction, measures to deal with natural disasters and the administration of nuclear power plants on the basis of human rights

- In the disaster prevention measures before the Great East Japan Earthquake, the administration of nuclear power plants as well as the current efforts for recover and reconstruction and for the management of the nuclear power plant disaster, how has the Government considered and applied the applicable international standards, including, for example, the Guiding Principles on Internal Displacement (1998), the IASC Operational Guidelines on Protecting Persons in Situations of Natural Disasters (2008), the ICESCR and other human rights treaties?
- With regard to “human rights impact assessments” recommended in the previous concluding observations (para.33), does the Government intend to reconsider its position not to introduce such procedures and to set up mechanisms to review the impact of and responses to the earthquake and the nuclear power plant disaster from the perspectives of international human rights?
- What measures have been taken to protect the rights of those affected by the earthquake and the tsunami, especially with regard to housing for the internally displaced people, physical and mental health services, poverty and employment as well as education?

Nuclear power plant disaster and ICESCR

- The nuclear power plant disaster illustrated the fact that the responses of the Government to paras.22 and 49 were not adequate. What were the problems?
- What measures have been taken to protect the rights of those affected by the nuclear power plant disaster, especially with regard to the internally displaced people, livelihoods of those involved in agriculture and fishery, external and internal exposure to radiation as well as health and safety of those working at the plant?
- What measures have been taken to protect those who live or had lived in Fukushima from discrimination, including bullying and harassment among children against peers who had evacuated from Fukushima?
- How does the Government deal with the effects of radiation on schooling in Fukushima, including restrictions on children’s play?

Rights of minorities and socially vulnerable people, including foreigners affected by the disaster

- What measures have been taken to protect and promote the rights of socially vulnerable people affected by the disaster, including children, women, persons with disabilities, those in need of medical treatment or care, elderly people, refugees and other foreigners as well as detainees in juvenile centers or prisons?
- Have multilingual information and services been provided for foreigners, including refugees, affected by the disaster?

III DISADVANTAGED GROUPS

1 Elderly persons

- How does the Government understand and plan to respond to the situation of elderly persons, whose lives are very precarious in terms of livelihoods and housing?
- How does the Government understand the right of elderly persons to survival (minimum guarantee for livelihoods), inadequate protection of which has led to the high incidence of crimes, death from hunger, death in isolation and other problems among the elderly? What is envisaged to respond to these problems?
- How does the Government understand the incidence of elder abuse and neglect as well as the shortage and high rate of labour turnover of care workers? What is envisaged to respond to these problems?

2 Discrimination against Buraku people

- Does Japan have legal provisions to prohibit discriminatory treatment at the time of recruitment, personal background investigation at the time of marriage or recruitment, and investigation into the location of Buraku districts for land appraisal? (Arts 2, 6, 10 and 11 of the Covenant; paras 13, 39 and 40 of the 2001 Concluding Observations of CESCR; and the General Clause Comment 4 “Discriminatory Treatment Prohibition Clauses” of the Third Periodic Report of Japan)
- Do the government’s measures for the minority groups take the issue of Buraku discrimination into consideration? (Art 2 of the Covenant; paras 13 and 40 of the Concluding Observations; General Comment 7 “minority groups” in the Part 2 of the Third Periodic Report)
- Present actual labor conditions of Buraku are not shown. (Art 6 of the Covenant; paras 13 and 24 of Concluding Observations; and Art 6 of the Third Periodic Report)
- In order to combat marriage discrimination based on Buraku discrimination, it is needed to implement drastic measures including legal restrictions to eradicate the possession of Buraku List and the illegal acquisition of a copy of one’s family registration. The government is required to reveal actual situations of these practices and show measures it has taken to eradicate. (Art 10-1 of the Covenant)
- The government is required to reveal the practice of avoiding Buraku in the transaction of real estate, and show its strategies to eradicate it. (Art 11-3 of the Covenant)
- The government is required to reveal how the public understands Buraku problem, and show strategies it takes to eliminate discrimination. (Art 13-1 of the Covenant; para 40 of

the Third Periodic Report with the title “human rights awareness building”)

- The government is required to reveal the situation of illiteracy in Buraku and the situation of children going to high schools and colleges, and show what measures it has taken to improve these situations. (Art 13 of the Covenant; paras 13 and 50 of Concluding Observations; Art 13 of the Third Periodic Report)

3 Rights of Foreigners

General observations: Foreigners in Japan and their right to survival

Article 2 (2) of the ICESCR confirms the principle of non-discrimination in the application of economic, social and cultural rights (General Comment 20 of the Committee). In Japan, however, “the natural principle of law”, which tolerates discrimination without legal basis, is applied in various systems concerning foreigners and has led to easy determination that different forms of discrimination against foreigners are lawful.

The ratification of the International Covenants in 1979 and of the Refugee Convention in 1981 resulted in the removal of nationality requirements in legislation concerning public housing, national pension, child allowance and other schemes, leading to partial acceptance of the principle of equality between nationals and foreigners. The recent Act on Compensation for Detainees in Siberia of 2010, however, introduced the nationality requirement again.

Although many lawsuits have been filed against discrimination on the ground of nationality in social security schemes, arguing that it is contrary to the constitutional principle of “equality under law”, the Supreme Court has dismissed all the claims. The institutional discrimination on the ground of nationality has never been remedied by the judiciary in accordance with the principle of non-discrimination.

Poverty among migrants

- Please indicate how the State Party considers about the need to consolidate statistics and to conduct baseline surveys for the purposes of understating the actual situation of poverty among migrants and their need for support.
- Please indicate long-term perspectives with regard to employment of foreigners and measures concerning their unemployment.
- Please provide information on measures to ensure access to employment support schemes for migrants.

Since the change of government in September 2009, the awareness of the problem of poverty has rapidly increased within the Government, which has led to the establishment of a council or the adoption of measures dealing with migrants’ hardships by the Ministry of Health, Labour and Welfare or the Ministry of Education.

Nevertheless, surveys on poverty among migrants, essential for the formulation of effective anti-poverty measures, have not been conducted so far, in spite of the fact that the high unemployment rate and the serious level of poverty among migrants can be inferred from surveys done by some municipalities or NGOs. Lack of official surveys makes the situation of poverty among migrants invisible. While migrants are at high risk of being affected by poverty, no measures have been taken to recognize them as groups in need of special consideration and to provide targeted assistance, making them vulnerable to the risk of poverty reproduction.

Since the existing schemes for employment support, including self-sufficiency programmes and job applicant assistance schemes, do not cover training of Japanese language, migrants who do not understand Japanese are excluded from the schemes. (No reference in the Government report)

Discrimination and violence against migrant women

Please provide information on difficulties and human rights violations faced by migrant (foreign) women living in Japan. Please indicate measures that have been taken for migrant women, a minority in Japan, as well as challenges, if any, in the implementation of such measures.

The number of migrant women in Japan has increased since 1980s, due to transnational marriage and other factors, and an increasing number of them have settled in Japan since 1990s. While they are likely to face multiple discrimination, violence and exploitation because of their status as women and foreigners, the Government has not even tried to understand their actual situation.

Japan has no measures to protect transnational families, and migrant women have been neglected in gender equality policies due to their minority status. Although the rate of victimization through violence is very higher among migrant women than among Japanese, support for them in this regard is extremely insufficient. Concerns have been expressed and recommendations made in this regard by the CEDAW (August 2009) and the CERD (March 2010).

Furthermore, the amendments to the Immigration Control Act and the Residential Basic Book Act (which will come into force in July 2012) provide for the revocation of spousal status of residence. This raises concern about the aggravation of the situation of migrant women who have settled in Japan as a result of transnational marriage or other reasons, such as less enjoyment of rights as well as more discrimination and victimization through violence.

Human rights of stateless children

- Please indicate the position of the Government on the ratification of the Convention on the Status of Stateless Persons.
- Please provide data on the number of stateless children and of such children who had been deported, including on their age, living history in Japan, place of birth and their parents' nationality (place of origin). Please also explain about the environment in which these children have been born and brought up and about how their human rights are protected.
- Please indicate the status of reproductive health/rights of stateless mothers and their children, including to what extent they enjoy maternal health services.

Children born to undocumented mothers suffer from extreme restrictions on their human rights because of their status of being “in breach of the Immigration Control Act”. Mothers who are “illegal migrants” hardly visit public facilities, being afraid of detection that would lead to deportation to their countries of origin.

Many of those mothers do not report pregnancy and thus do not have maternal and child health handbooks. Consequently they face high-risk deliveries without receiving maternal medical check-ups. Since birth of their children is reported to nowhere, those children remain stateless, being virtually unable to be immunized or to go to hospital when they get sick or injured. These problems get worse as they grow up, undermining the environment of their development and education. The inter-generational cycle, in which stateless children grew up and gave birth themselves, is also occurring. (No reference in the Government report)

Lack of pensions for certain Koreans and other permanent residents

Please explain the reasons for non-reporting of the existence of foreigners who are elders or with disabilities and who cannot receive pensions because of the past requirement for nationality in the National Pension Act. Please also indicate when and how the Government intends to provide remedies for those foreigners.

The third periodic report of Japan (para.112) only states, “Foreigners who reside legally in Japan are afforded the same social security as Japanese people in accordance with the principle of equality for nationals and foreigners” and conceals the existence of foreigners who are elders or with disabilities and who cannot receive pensions. (Refer to the previous concluding observations, para.61.)

At the Budget Committee during the 94th Diet session, held on 28 February 1981, Mr. Sunao SONODA, then Minister of Health and Welfare, promised to take transitional measures to provide remedies for them as soon as possible. The promise has not been fulfilled until today, however. Those foreigners are now very old and face extreme hardships in their lives, contrary to Article 2 (2) of the ICESCR (the principle of non-discrimination).

Return of foreigners of Japanese origin

Please clarify the intention of the Assistance Project for the Return of Foreigners of Japanese Origin who Have Left Their Job (April 2009 – March 2010) and the official position on the human rights implications of the project.

During the global recession after the Lehman Shock in the autumn of 2008, termination of employment contract of irregular workers became a social issue in Japan as well. Many foreign workers of Japanese origin, who had been concentrated in the labour market of irregular employment, lost their job in this context.

In order to avoid having the unemployed within the country, the Government provided assistance to foreign workers of Japanese origin and their families for their return. 21,675 persons received the assistance and returned to their countries of origin. Together with other returnees who do not receive the assistance, the number of Japanese-Brazilians decreased to 215,000 and that of Japanese-Peruvians to 53,000 at the end of September 2011.

Inquiries about criminal records and discrimination on the ground of nationality

Please indicate why it is necessary to inquire into criminal records of the applicants only when foreigners of Japanese origin apply for the status of long-term residents.

According to the Revised Notification on Long-Term Residents, which came into effect in April 2006, foreigners of Japanese origin are now required to submit certificates of their criminal records in the countries of origin and in Japan in order to obtain or renew the status of residence as “long-term residents”, whose “behavior and conduct must be good” as a new requirement. The status of “long-term residents” is granted to foreigners who are deemed to be descendants of Japanese immigrants in accordance with the prescribed definitions. It is not clear, however, why it is necessary to inquire into criminal records only when they are concerned.

Employment of foreigners as local civil servants and “full-time lectures”

Please provide data on local civil servants of foreign nationality, disaggregated by municipalities, nationalities, positions and types of work, and on teachers of foreign nationality. Please explain the reasons if such data are not available.

Initiatives for employment of foreigners as local civil servants or teachers have been undertaken since mid-1970s, primarily in the Kansai (southern-central) region, with a view to

securing freedom to choose one's occupation for Korean residents in Japan. Consequently a number of municipalities have employed foreigners as civil servants.

The second periodic report of Japan (para.8) only states, however, "Japanese nationality is required for civil servants who participate in the exercise of public power or in public decision-making; however, it is understood that Japanese nationality is not necessarily required for civil servants who do not engage in such mentioned work". With regard to employment of foreigners as teachers in public schools, it states, on the basis of the Memorandum between Japan and the Republic of Korea, "[I]n March 1991, it became possible for individuals not possessing Japanese nationality, including Korean residents in Japan, to be employed as teachers.... Those who pass the same examinations as Japanese nationals are employed as full-time instructors, without a limited period of appointment. The Government pays attention to their stability and conditions of employment".

However, such discriminatory treatment in employment and appointment on the ground of nationality has greatly influenced employment of foreigners as local civil servants or teachers, contributing to manifestly discriminatory treatment of foreigners. Even today, there are cases in which foreigners are prevented from taking examinations for civil servants; are imposed restrictions on their appointment even if they have been employed; or, in case of teachers, are not promoted as Japanese colleagues are.

In line with the increase in the number of foreign residents, municipalities are required to adopt up-to-date personal management systems tailored to the need to create the environment where Japanese and foreigners can live together. The Ministry of Internal Affairs and Communications, however, has not attempted to collect data in this regard.

Human rights violations of foreign trainees/technical intern trainees

Please indicate what kind of human rights violations and other problems have been identified in the former scheme for foreign trainees. Please also provide information on the practical improvements and remaining challenges under the new scheme for foreign technical intern trainees.

After having been criticized for different forms of human rights violations, including trafficking in person, the scheme for foreign trainees was replaced by the new scheme, focusing on practical technical training, in July 2010. The scheme continues to have grave inconsistencies, however, with large gaps between the official objective of "international contribution" (cooperation for the development of human resources that can contribute to economic development of developing countries) and the actual situation in which they are used as "extremely inexpensive manpower" by tiny, small and medium enterprises in Japan suffering from a shortage of workers.

Therefore a number of human rights violations continue to occur under the scheme, including the imposition of unskilled labour that does not contribute to the development of human resources; confiscation of passports; rake-offs under different pretexts; forced savings; the reinforcement of restrictions by way of deposits or penalties for contract breach; involuntary return

of those who claim their rights; and sexual harassment and sexual violence. (Previous concluding observations, para.61; the Government report, para.114)

Medical services for foreigners

Please provide information about the measures taken, including budget allocations, with regard to medical interpretation services for foreigners. In addition, please indicate the measures take to ensure that emergency medical services are provided to all persons, including undocumented foreigners.

Lack of the established medical interpretation services, which are essential to provide appropriate medical care for foreigners, creates a number of problems, including that foreigners are prevented from accessing medical services or obtaining appropriate treatment. In addition, although medical care is guaranteed to some extent for undocumented foreigners as well, it is not necessarily well-established; therefore adequate safeguards do not exist with regard to emergency medical services, which should be applied to all persons irrespective of their status of residence. (No reference in the Government report)

Koreans living in the Utoro district

While the Koreans living in the Utoro district are likely to be able to remain there thanks to the official project for the improvement of the housing environment in the district, the issue of eviction seems to be unresolved. What does the Government intend to do in this regard?

Detainees in immigration facilities

- What safeguards exist in legal and institutional terms to keep the duration and scope of detention of foreigners to the minimum, with a view to prevent human rights violations?
- What measures have been taken to achieve the full realization of the right of detainees to physical and mental health? What measures and arrangements are put in place to ensure and monitor the implementation of such measures?

4 The Ainu people

- Please explain the reason why the rights of the Ainu are not recognized at all in the relevant policies, which are limited to awareness-raising and the promotion of the Ainu culture.
- Please also explain the reason why the Government has not conducted official inquiries into and adopted appropriate policies on the colonization of the Ainu people and discriminatory policies against them.
- Why does the Government not permit traditional whaling by the Ainu people, while permitting it for the Yamato-Japanese?
- Why are the relevant welfare and educational measures limited to the Ainu people living in Hokkaido, excluding the Ainu people in other areas?

5 The Ryukyuan/Okinawan people

- Why have the Ryukyuan people continued to be denied the rights as an indigenous people in spite of the colonization and discriminatory policies since the annexation of the Ryukyu Kingdom in 1879? Why does the Government guarantee their rights to confirm and pass on their culture, tradition and language?
- Why are the US bases planned to be expanded at Henoko and Takae in Okinawa, which has already suffered from the excessive existence of the US bases, violating a wide range of the rights of the indigenous Ryukyuan people?
- Please explain the reason why the Government has not set up a committee to monitor and redress human rights violations against the Ryukyuan people.

6 Sexual minorities

- How does the Government understand the difficulties faced by children who are sexual minorities? What measures are envisaged to address their problems, including in terms of sexuality education and suicide prevention?
- What measures are envisaged to ensure that sexual minorities can receive appropriate medical services without being fearful of discrimination and prejudice on the grounds of sexual orientation and sexual identity?
- How does the Government understand the difficulties faced by sexual minorities at workplace, including lay-offs and other disadvantageous treatment as well as sexual harassment? What measures are envisaged to protect them from such discrimination and abuse and to ensure that couples of sexual minorities can equally benefit from corporate welfare schemes?
- How does the Government understand the situation of couples of sexual minorities, who are completely excluded from legal and social welfare schemes for families and are subject to social exclusion, discrimination and violence based on social stigma, prejudices and stereotypes? What measures are envisaged to address the situation?

7 Women

Remedies for women in relation to social, cultural and economic rights

- Please provide the number and summaries of cases, if any, in which courts admitted plaintiffs' claims on the basis of the ICESCR.
- How will the independence of a national human rights institution, which is now planned to be created, ensured? Will the national human rights institution deal with discrimination against women and, if so, under what definitions?
- Are there plans to adopt legislation that prohibits discrimination against women and provides remedies for such discrimination as well as gender-based violations of human rights?
- How does the State Party organize training for judicial personnel, administrative officials and law-enforcement officers on the elimination of discrimination against women in the field of economic, social and cultural rights?

Discrimination against minority women

- What surveys have been done by the Government on the situation of discrimination against and needs of minority women, including the indigenous Ainu population, Buraku people, Korean residents and the Okinawan population, in the field of economic, social and cultural rights?
- What kind of effective measures are taken to eliminate discrimination against minority women and obstacles to the enjoyment of their economic, social and cultural rights? What is the impact of such measures?
- How do minority women participate in decision-making process in practice? What measures have been taken to ensure meaningful participation by minority women?

Discrimination against vulnerable women

- Please explain how information and statistical data are collected with regard to women in socially vulnerable situations, who are likely to be subjected to multiple forms of discrimination in relation to, *inter alia*, access to employment, health care, education and social welfare, including rural women, single mothers, women with disabilities, refugee women and migrant women. What kind of specific programmes are provided for those women and what are the achievements of such programmes?
- Please indicate whether gender-sensitive policies and programmes have been introduced in order to respond to specific needs of women in socially vulnerable situations. What is the impact of such measures?

Implementation of gender equality policies

- What measures have been taken to respond to the concern expressed by the CEDAW (2009, para.25) that the Gender Equality Bureau of the Cabinet Office, which serves as the secretariat for the national machinery for gender equality, lacks the mandate and appropriate financial resources to perform its functions?
- Was the Convention used as a legal framework for the formulation of the third Basic Plan for Gender Equality? Is the Basic Plan in conformity with the Convention?
- How do the central and local governments and other authorities specifically implement the third Basic Plan for Gender Equality, adopted by the Cabinet in December 2010? Are

there any ways for effective implementation of the Basic Plan? Please also provide information on the organization and practical functions of monitoring mechanisms for the purpose of regular evaluation of the progress toward the achievement of targets in the Basic Plan.

- Please explain the roles played by the Government in the formulation and implementation of prefectural and municipal plans for gender equality, along with the present situation of local plans for gender equality.

Discriminatory legislation

- Is there any plan to abolish the offence of illegal abortion, which makes abortion punishable, from the Criminal Code?
- Please explain on the planned process of adopting a set of amendments to the Civil Code concerning setting the minimum age of marriage at 18 for both men and women; abolishing the period of prohibition of remarriage (six months) only for women; and allowing couples to retain their own surnames if they so wish.
- Is there any plan to amend the Prostitution Prevention Act that punishes only solicitors and not customers?
- Does the Government have the policy of proactively amending discriminatory legal provisions, with a view to fulfilling its immediate obligations to eliminate discrimination, instead of taking reactive attitudes in view of public and national opinions?

Remedial measures against de fact discrimination based on gender

- The third Basic Plan for Gender Equality establishes targets on the proportion of women in fifteen areas, to be achieved by 2015 or 2020. Specifically how will they be implemented? What specific measures will be taken to achieve the targets in political spheres and private sectors, where the participation of women lags behind in particular, with the Basic Plan having no legally-binding force?

Violence against women: Domestic violence

- Is there any plan to vigorously punish perpetrators of domestic violence?
- Please provide data on the actual management of criminal and protection order cases involving domestic violence, with a view to finding out whether these cases are dealt with by the judiciary and other authorities in a speedy, appropriate and strict manner.
- Is there any plan to expand the scope of protection orders in order to cover all victims of domestic violence, including victims of violence by dating partners or among sexual minorities?
- Since adequate consideration is not given to domestic violence in family procedures, it is reported that courts are used by perpetrators as a means of control with negative consequences on female victims and their children. What measures are planned to be taken to prevent this phenomenon?
- With regard to the protection of and assistance to victims, what measures are planned to establish 24-hour hotlines, to increase shelters and to provide mid- and long-term support to such facilities?

Violence against women: Sexual violence

- From the perspective of the physical integrity and sexual autonomy of the victim, is there any plan to review the elements of crimes of sexual violence, with a view to, *inter alia*, removing the requirement of the victim's complaint for initiating criminal procedures, mitigating the requirement of the existence of assault and intimidation, criminalizing incest and spousal rape, raising the age of sexual consent and increasing statutory penalties?
- What is planned for the protection of and support for victims of sexual violence, including through the establishment of permanent 24-hour hotlines and one-stop centers? What measures are envisaged to expand support for victims, in particular those who have not filed complaints to the police?
- What measures have been taken to prevent secondary victimization of victims in criminal and judicial procedures? What kind of education and training is provided for the concerned officials?

Violence against women: Sexual harassment

- Does the Government intend to criminalize sexual harassment or to make it one of the aggravating circumstances to abuse one's authority or position in education or at workplace for the purpose of sexual violence? Is there any plan to explicitly prohibit sexual harassment in the Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment?
- How does the Government provide effective remedies for victims of sexual harassment so that they can continue education/work and maintain their previous position, including through securing their right to return to school/workplace after temporary absence and subsidizing the costs for physical and psychological recovery?
- Does the Government intend to oblige schools and other educational institutions to prevent sexual harassment? What measures are planned or envisaged for effective prevention of sexual harassment in the field of education?
- Has the Government confirmed whether or not sexual harassment at workplace is dealt with in an appropriate and prompt manner? What measures have been taken to ensure prompt remedies and resolutions with regard to sexual harassment at workplace?
- The criteria for the recognition of sexual harassment as workers' accidents are reportedly being revised. Even then, it is pointed out, it will take long for cases of sexual harassment to be recognized as workers' accidents due to the burden of alleged victims and the complexities of the procedures. Specifically how and to what extent are cases of sexual harassment recognized as workers' accidents?
- Is there any plan to improve judicial remedies in this regard, including prolonged proceedings and low amounts of compensations?

Violence against women: Violence against girls, including sexual abuse

- Does the Government intend to raise the age of sexual consent from the current level (13 years of age), with a view to protecting healthy development of children and to preventing child abuse?
- Is there any plan to abolish the statute of limitations concerning crimes against minors?
- In order to ensure that children are not traumatized further by being asked to make testimony repeatedly, is the Government reviewing the procedures to provide support and assistance to child witnesses, in consultation with experts in this field? Is the Government considering the introduction of testimony through video-recording instead of oral hearings?
- Is there any plan to introduce specific criminal provisions against sale of children and incest?
- What measures have been taken to ensure physical and psychological recovery and social integration for crime victims?
- Are effective regulations put in place to prohibit child prostitution through the Internet?

Violence against women: Sex industry

- Is there any plan to amend the Prostitution Prevention Act that punishes only solicitors and not customers?
- What has been undertaken to understand the actual situation of victimization of those who work in the sex industry and violation of their human rights, including violence, forced debt, unpaid wages and health problems, which is unlikely to be reported for appropriate remedies due to fear of stigma or punishment under the Immigration Control Act or the Prostitution Prevention Act? What measures have been taken to prevent such victimization and human rights violation effectively?
- What measures are planned to change official and social discriminatory attitude toward female prostitutes, who are likely to be regarded as corrupted women?
- What specific measures are planned by the Government to suppress demand for the sex industry?

Violence against women: Trafficking in person

- Does the Government intend to ratify the Palermo Protocol?
- What measures are planned to improve the procedures for victim identification in order to prevent trafficking victims from being recognized as criminals under the Immigration Control Act and other laws?
- How does the Government envisage the expansion of the protection of trafficking victims?
- Is there any plan to abolish the status of residence under “Technical Inter Trainee” that is likely to be used for the purpose of labour exploitation?
- How is training organized on support for trafficking victims in order to sensitize law enforcement officers and judicial personnel about the rights and needs of victims?
- Please explain on the development of bilateral agreements with countries of origin of trafficking victims with a view to addressing the problem and causes of trafficking in person.

Violence against women: Pornography

- Does the Government intend to prohibit the sale of video games or comic books depicting rape and other sexual violence against women?
- Does the Government intend to prohibit possession of child pornography without exceptions?
- Please provide data on the incidence of sale of children, child prostitution and child pornography, disaggregated by victims' age, sex, ethnic groups and geographical locations.
- What measures are taken to provide effective remedies for victims of pornography production, including severe sexual violence, forced filming and distribution of sexual images against their will? Is there any plan to improve the protection of such victims?

Stereotypes

- What measures are being taken in a proactive and sustained manner specifically to eliminate attitudes on the basis of stereotypical awareness about gender roles and responsibilities?
- What kind of education and in-service training is provided to teachers and counseling staff of all educational institutions at all levels with regard to the issues of gender equality?
- Are textbooks and teaching materials being reviewed with a view to eliminating attitudes on the basis of stereotypical awareness about gender roles?
- What measures have been taken to prevent Diet members, mayors and government officials from making slighting remarks that are degrading for women and foster discriminatory patriarchal systems?
- Please indicate the position of the Government on the criminalization of verbal violence (hate speech).
- What specific measures have been taken against indecent materials in the media and advertisements?
- What measures has the Government taken to eliminate discrimination in the media reporting and other materials?

Employment: Discrimination against women in employment

- What specific and effective measures are planned to remedy wage differences between men and women?
- What measures have been taken to change marked occupational segregation in both vertical and horizontal terms?

Employment: Irregular workers

Please provide information on specific legislative amendments and other measures envisaged to ensure equal and equitable treatment of part-time workers, workers with terminable contract and other irregular workers and to improve their working conditions.

Employment: Harmonization between family and occupational life

- What effective measures are envisaged to prevent women from being overburdened with child-rearing and other care work, being unable to continue their career and facing difficulties in re-entering the workforce?
- What measures are taken to deal with the situation of women who are forced to choose irregular employment, which is precarious and without guarantees of equal treatment, due to inadequate consideration given to family responsibilities and work-life balance at workplace?

Taxation and social welfare from gender perspectives

- Does the Government intend to change the existing schemes of social welfare and taxation, which are not neutral in terms of gender and lifestyles, being economically disadvantageous to dual income households and single persons? Is there any plan to replace the existing household-based schemes by individual-based schemes?
- Is there any plan to abolish discrimination in terms of the exemption for widows, which is not applied to non-married mothers and their children?

Decentralization and the national minimum standards

Please indicate how the national minimum standards are secured in terms day-care, gender equality policies, support for victims of domestic violence and other issues in the context of decentralization.

Economic impact of divorce

- Does the Government understand the actual living conditions of divorced couples and their children through surveys?
- What measures have been undertaken to secure agreement on and payment of maintenance after divorce, which is adequate in terms of amount for children's survival and development?
- Have measures been taken to redress unequal economic consequences of divorce, including compensatory distribution of property?

Women and poverty

- Have effective measures been taken to eliminate poverty among women and to prevent the perpetuation and prolongation of poverty? What are the impacts of such measures?
- What measures have been taken to redress gender disparities in the amount of pension, reflecting income disparities during the working age, which are among the contributing factors in poverty among elder women?

Sexuality education

- In the context of some interference into effective sexuality education, labeling it as “excessive” or “extreme” according to specific values, what specific measures have been taken to provide comprehensive reproductive health education for adolescent boys and girls and to promote sexuality education on the basis of reproductive rights? What is being taught in such education and what is its coverage?
- What specific measures have been taken to guarantee access to reproductive health information and services for all women and girls, including by removing obstacles to such access, and to allocate resources for programmes for adolescents for the prevention and treatment of HIV/AIDS and other sexually transmitted infections?

Contraception and abortion

- Is there any plan to abolish the offence of illegal abortion from the Criminal Code, as is generally recommended by the Special Rapporteur on the right of everyone to enjoy the highest attainable standard of physical and mental health (A/66/254)?
- What measures are envisaged to improve access to safe and lawful abortion in terms of legal aspects (by removing the requirement of spousal consent), costs (very expensive), methods (virtually limited to curettage, which puts physical, mental and financial burdens on women) and social stigma?
- While forced sterilization of persons with disabilities was abolished, does the Government intend to take necessary legislative steps to provide for the right of victims of forced sterilization to compensation?
- Has the Government taken effective measures to expand the coverage of modern methods of contraception?

Access to reproductive health services

- Is there any plan to adopt comprehensive legislation on reproductive rights?
- What is planned to improve the arrangements for medical services and social welfare in relation to birth, with a view to preventing disparities in this regard according to financial situations and geographical locations of women?
- What effective measures have been taken to prevent illegal lay-off or termination of employment of women who are pregnant or gave birth? Has research been conducted on consequences of long working hours and night work on maternity?

International cooperation

- How does the Government intend to effectively implement the GAD Initiative and the gender mainstreaming in official development assistance?
- What is being planned to contribute to the achievement of MDGs Target 5.B (Achieve universal access to reproductive health by 2015), which is not indicated in the Kan Commitment? Does the fact that the contributions to the UNFPA and the IPPF have been reduced by larger rates than those to other UN bodies, both in the fiscal years 2011 and 2012, indicate that not only the Government neglects reproductive health but also intends to reduce assistance to multilateral organizations?
- What are the policies and measures envisaged by the Government for the most effective realization of the Kan Commitment?
- How does the Government intend to implement the agreements on gender equality and the realization of human rights contained in the outcome document adopted at the fourth High Level Forum on Aid Effectiveness?
- What safeguards and remedies are put in place by the Government to protect human rights of women from operations by Japanese corporation abroad?

8 Children born out of wedlock

- Does the Government have a specific roadmap for the elimination of discrimination against children born out of wedlock with regard to inheritance?
- Is the Government ready to grant Japanese nationality to children born out of wedlock through transnational relationship, simply when their mothers or fathers submit the notification of acquisition of Japanese nationality?
- In what process does the Government plan to remove the concept of illegitimacy from legislation and practice?
- What is envisaged to ensure that children born out of wedlock cannot be identified as such in the family register through making complete reform of the entry formalities?
- Does the Government intend to adopt legislation explicitly prohibiting discrimination against children born out of wedlock?
- Does the Government intend to conduct extensive education and awareness-raising campaigns for public officials and the wider public, with a view to eliminating discrimination against children born out of wedlock?

9 The problem of “comfort women”

What measures are planned to provide remedies for victims of the military “comfort women” system in order to fulfill the obligations of the State Party under the ICESCR?

IV PROBLEMATIC AREAS

1 Articles 7 and 8: Right to Work

Please provide detailed and specific information on the actual status of working hours, the usage of annual paid holidays and the status of death from overwork, along with the indication of policy frameworks for the reduction of working hours.

Long working hours are still prevalent in Japan (more than 2,000 hours per year for general workers), showing little improvement since the consideration of the previous report. The usage of annual paid holidays has continued to decrease, being below 50% every year for the last decade. In this context, the incidence of death from overwork, primarily due to long working hours, remains to be high. This indicates that the existing regulations of working hours are not effective at all. (Previous concluding observations, paras.19 and 46; the Government report, paras.70-71 and 187-188)

Please report on the status of and problems faced by irregular workers (including part-time workers, dispatched workers, workers with terminable contract and sub-contractors' workers), along with the measures taken by the Government for improvement.

The proportion of irregular workers in the workforce has increased to more than 35% (over 17 million). Consequently an increasing number of workers are forced to work in poor conditions, facing not only lower wages but also very precarious situations, in which they cannot join social insurance schemes and are very likely to lose their jobs. The very high rate of relative poverty (16% in 2010) reflects this situation. (Virtually no reference in the Government report)

Please provide information on the situation of irregular foreign workers and their working conditions. In particular, please explain how workers' accident compensation insurance has been applied to them for the last decade.

Labour legislation applies, as a rule, to irregular foreign workers as well. These workers are vulnerable to violation of their rights, however, due to their status making it difficult for them to claim their rights. Consequently 65.4% of such workers are paid less than JPY 7,000 per day. (No reference in the Government report)

Please indicate what arrangements have been made to ensure safety and health of workers in nuclear power plants, in particular those working for responding to the accidents at the Fukushima Dai-ichi (No.1) Nuclear Power Plant. Please provide information on workers' accidents involving those working in nuclear power plants.

Many workers are involved in the construction, operation, management and maintenance of nuclear power plants. Since they work under hazardous conditions with the risk of exposure to radiation, high-level arrangements must be made to ensure their safety and health. The nuclear power plant industry consists of layers of subcontracts, however, and the involvement of crime syndicates in recruitment has been reported at lower levels. Therefore there are cases where workers are involved in hazardous work without being fully informed or where some workers cannot be traced after leaving the job, leading to the situation in which their safety and health is not thoroughly secured. (No reference in the Government report)

2 Article 9 : Social Security

How does the Government plan to develop social welfare policies and schemes in a consistent and sustained manner, avoiding repeated modifications?

3 Article 10 : Protection of families and children

What measures have been taken to mitigate financial and other burdens of child-rearing?

4 Article 12: Right to Health Availability of healthcare services

Please provide information on the number of health professionals per population divided into different regions and departments. If there is a dearth of health professionals and uneven distribution in different regions and department, please explain this cause and the measures which the Government takes and the effectiveness of the measures.

Although the Government's report indicates the data of the WHO Regional Office for the Western Pacific (P.57, para.303.) and outline of the healthcare Services in Japan (PP.58-59, paras.314-319), there is no mention of the measures which the Government has taken in order to ensure the availability of health care.

Accessibility of healthcare services

Please provide information on the number of population who are not covered by National health insurance and who cannot access medical treatment under insurance sufficiently. Also please explain the measures which the Government will take in order to ensure to provide basic health care for such people.

Although the Government's report gives an outline of the National health insurance system (PP.40-42), there is no mention on the actual application of this system.

5 Article 2, 13 & 14 : Right to education for Non-Japanese nationals

The general

- i) Please provide the number of non-Japanese national children of compulsory school age who attend Japanese schools, those who attend "schools for non-Japanese nationals and ethnic minorities" (hereinafter "minority schools") and those who do not go to any school with data disaggregated by prefecture, grade in school or age, sex, nationality and ethnicity.
- ii) Why does the central government exclude non-Japanese national children from annual "Survey on Children of School Age Who Do Not Attend School"? Please give the view on the information that there are over 10,000 non-Japanese children of compulsory school age who do not go to any school, which is said to be arisen from non-recognition of non-Japanese children's right to education by the Japanese central government and absence of legal responsibility that Japanese schools and local governments have to accept these children.

The central government has never conducted a nationwide survey on non-Japanese national and ethnic minority children in Japan. All the non-Japanese children of compulsory school age are supposed to 110,000. According to surveys by some local governments and NGOs, 60% of children of new comers: migrant workers such as Brazilians, Peruvians and Filipinos, attend Japanese schools, while 20% of them go to minority schools, and the rest of them are estimated not to be attending any school at all.

The Japanese government explains that "in cases where children of foreign residents in Japan wish to enroll in public schools for compulsory schooling, public schools accept them free-of-charge, just as they do for Japanese schoolchildren" (para. 20 in Third periodic reports to CESCR). This simply means that "permission" will be given if the non-Japanese national "wishes" to enroll. In other words, the school administration does not have the legal obligation to accept such students, and for non-Japanese nationals, education is not "secured" as a legal "right." A former high official of the Ministry of Education, Culture, Sports, Science & Technology of Japan (MEXT) writes that "with regard to the implementation of compulsory education for foreigners, no such imperative exists in the Constitution and Basic Education Law. [...] As long as the individual is a foreigner, no obligation arises to send the child to elementary or junior high school." (Suzuki, Isao, Chikujyou

Gakkou Kyouiku Hou (Clause-by-Clause Review of the School Education Act), 2009, Tokyo: Gakuyoshobo).

This opinion leads neglect of non-Japanese national children. For example, the annual “Survey on Children of School Age Who Do Not Attend School” carried out by the MEXT, clearly states that “foreigners are excluded from the survey.” In addition, in The Annual Report of the School Basic Survey by the MEXT, there are only total number of non-Japanese national children who attend to Japanese schools: primary schools, junior high school and high schools and those children who go to minority schools accredited as “miscellaneous schools” without data disaggregated by prefecture, grade in school or age, sex, nationality and ethnicity.

Problems in Japanese Public Schools

- i) Please explain how the Japanese government has considered and implemented the Committee’s strong recommendation in 2001 to introduce “mother-tongue instruction in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities” (E/C.12/1/Add.67, para. 60).
- ii) Please explain the reason why the Japanese Government limits mother tongue education as extracurricular classes.
- iii) Please explain the Government of Japan’s policies, laws and budgets on minority’s mother tongue education.

In Japanese schools, foreign children are receiving assimilation education. They are forced in effect to use *Tsu-me* (Japanese name; literary, “commonly used name”) and are not allowed to have their heritage language and culture education in the official curricula..

Due to the absence of state subsidies, extracurricular classes for their heritage language and culture education are taken place in only few schools in limited areas. Foreign children, in particular those of new comers, are placed in a disadvantageous situation to improve scholastic ability because Japanese language instruction is also insufficient for them.

In addition, due to the lack of human rights education on minority issues for Japanese students as a whole in Japanese schools, bullying and discrimination against foreign children are often rampant.

[relevant paragraphs in concluding observation by the last Committee]

*The Committee expresses its concern about the fact that there are very limited possibilities for children of minorities to enjoy education in their own language and about their own culture in public schools. (E/C.12/1/Add.67,para32)

*The Committee strongly recommends that mother-tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities. (E/C.12/1/Add.67,para60)

[relevant part in the 3rd periodic report to the CESCR by Japan]

*E/C.12/JPN/3,I,para20,para108,para109 and E/C.12/JPN/3,III,p356—p359

The issues of minority schools in Japan

i) Is it possible that a minority school to be accredited as a regular school even if that school gives lesson using minority language or teaches minority language in regular classes, or does not mainly use official textbooks approved by the MEXT written in Japanese? If it is not possible, how does the Japanese government consider legislation to authorize minority school as a regular school, with keeping identities of minorities?

ii) The Committee was informed that students of minority schools which are accredited as “miscellaneous schools” became to receive financial assistance from the central government by the system of making high school education tuition free at the first time in 2010. However, what is the reason that students of Korean schools are only excluded from that system?

iii) The Committee was also informed that financial assistance from some local governments to Korean schools was stopped, which would signify the retreat of the policy to give opportunities to maintain contact with native language and culture to ensure adequate opportunities for minority children to receive instruction in or of their language and about their culture. What is the central government’s countermeasure for such retreat?

iv) The Committee was informed that there used to be more than 110 Brazilian schools in Japan before the financial crisis in 2008, but the current number of those schools decreased to less than 70 because many parents of Brazilian students dismissed from work and could not pay school fees of their children. What was the policy of the Japanese government to support these schools which guaranteed the education of minorities? If no policy has been taken, what policy does Government plan to take?

Some minority schools such as Korean schools and Chinese schools are accredited as “miscellaneous schools” like driving schools, not regular schools for children. These schools are given no financial assistance by the central government.

In particular, Korean schools are seriously discriminated. Korean schools are only excluded from the system of so-called “Free High School Tuition” which was introduced in April 2010, although other minority schools with accreditation of “miscellaneous school” were applied to this system. In addition, this discrimination by the central government has led to the new discriminative situation that some local governments which have provided Korean schools with their subsidies for a long time have stopped or been reducing their subsidies to Korean schools. The number of such governments has been increasing.

Since most of newcomer schools have been having difficulty to even get accreditation of “miscellaneous school”, they are not be able to receive any financial assistance from local governments. After the financial crisis in September 2008, many parents of those schools have been dismissed from work and have not been able to pay school fees. As a result, in case of Brazilian

schools, almost half numbers of them were forced to close their schools and a lot of students were forced to leave their schools.

[E/C.12/1/Add.67 (24 September 2001)]

60. The Committee strongly recommends that mother-tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities. The Committee further recommends that the State party officially recognize minority schools, in particular Korean schools, when they comply with the national education curriculum, and consequently make available to them subsidies and other financial assistance, and also recognize their school leaving certificates as university entrance examination qualifications.

[Third Periodic Report by Japan, paragraph 60 (in English, paragraph 110,111), Article 13-1 (in English, paragraph 361)]

Low rates of immigrant children advancing to senior high school education

Please clarify the rates of non-Japanese children advancing to senior high school education.

The central government has not conducted a survey concerning the rates of non-Japanese children advancing to senior high school education.

According to a survey by the Solidarity Network with Migrants Japan (<http://www.jca.apc.org/migrant-net/English/English.html>), the rate of Brazilian children advancing to senior high school education in 2000 is only 30%, while the its rate of Japanese children is over 90%.

Education and gender

- Does the Government intend to re-introduce the concept of gender equality in the Basic Act on Education?
- Does the Government intend to encourage girls, as part of educational policies, to be educated and trained in the areas where girls and women have traditionally not participated in?
- Is there any plan to make the gender balance of teaching staff at the tertiary level completely equitable? What measures are envisaged specifically for this purpose?
- What measures are being planned to guarantee access to higher education for children who are forced to give up upper secondary education due to financial or cultural reasons?

ANNEX

Right to education for Non-Japanese nationals (Article 2, 13 & 14)

I. The general

(a) Proposals for list of issues

i) Please provide the number of non-Japanese national children of compulsory school age who attend Japanese schools, those who attend “schools for non-Japanese nationals and ethnic minorities” (hereinafter “minority schools”) and those who do not go to any school with data disaggregated by prefecture, grade in school or age, sex, nationality and ethnicity.

ii) Why does the central government exclude non-Japanese national children from annual “Survey on Children of School Age Who Do Not Attend School”? Please give the view on the information that there are over 10,000 non-Japanese children of compulsory school age who do not go to any school, which is said to be arisen from non-recognition of non-Japanese children’s right to education by the Japanese central government and absence of legal responsibility that Japanese schools and local governments have to accept these children.

(b) Situation

. The central government has never conducted a nationwide survey on non-Japanese national and ethnic minority children in Japan. All the non-Japanese children of compulsory school age are supposed to 110,000. According to surveys by some local governments and NGOs, 60% of children of new comers: migrant workers such as Brazilians, Peruvians and Filipinos, attend Japanese schools, while 20% of them go to minority schools, and the rest of them are estimated not to be attending any school at all.

2. THE JAPANESE GOVERNMENT EXPLAINS THAT “IN CASES WHERE CHILDREN OF FOREIGN RESIDENTS IN JAPAN WISH TO ENROLL IN PUBLIC SCHOOLS FOR COMPULSORY SCHOOLING, PUBLIC SCHOOLS ACCEPT THEM FREE-OF-CHARGE, JUST AS THEY DO FOR JAPANESE SCHOOLCHILDREN” (PARA. 20 IN THIRD PERIODIC REPORTS TO CESCRR). THIS SIMPLY MEANS THAT “PERMISSION” WILL BE GIVEN IF THE NON-JAPANESE NATIONAL “WISHES” TO ENROLL. IN OTHER WORDS, THE SCHOOL ADMINISTRATION DOES NOT HAVE THE LEGAL OBLIGATION TO ACCEPT SUCH STUDENTS, AND FOR NON-JAPANESE NATIONALS, EDUCATION IS NOT “SECURED” AS A LEGAL “RIGHT.” A FORMER HIGH OFFICIAL OF THE MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCE & TECHNOLOGY OF JAPAN (MEXT) WRITES THAT “WITH REGARD TO THE IMPLEMENTATION OF COMPULSORY EDUCATION FOR FOREIGNERS, NO SUCH IMPERATIVE EXISTS IN THE CONSTITUTION AND BASIC EDUCATION LAW. [...] AS LONG AS THE INDIVIDUAL IS A FOREIGNER, NO OBLIGATION ARISES TO SEND THE CHILD TO ELEMENTARY OR JUNIOR HIGH SCHOOL.” (SUZUKI, ISAO, CHIKUJYOU GAKKOU KYOUIKU HOU (CLAUSE-BY-CLAUSE REVIEW OF THE SCHOOL EDUCATION ACT), 2009, TOKYO: GAKUYOSHOB).

3. THIS OPINION LEADS NEGLECT OF NON-JAPANESE NATIONAL CHILDREN. FOR EXAMPLE, THE ANNUAL “SURVEY ON CHILDREN OF SCHOOL AGE WHO DO NOT ATTEND SCHOOL” CARRIED OUT BY THE MEXT, CLEARLY STATES THAT “FOREIGNERS ARE EXCLUDED FROM THE SURVEY.” IN ADDITION, IN THE ANNUAL REPORT OF THE SCHOOL BASIC SURVEY BY THE MEXT, THERE ARE ONLY TOTAL NUMBER OF NON-JAPANESE NATIONAL CHILDREN WHO ATTEND TO JAPANESE SCHOOLS: PRIMARY SCHOOLS, JUNIOR HIGH SCHOOL AND HIGH SCHOOLS AND THOSE CHILDREN WHO GO TO MINORITY

SCHOOLS ACCREDITED AS “MISCELLANEOUS SCHOOLS” WITHOUT DATA DISAGGREGATED BY PREFECTURE, GRADE IN SCHOOL OR AGE, SEX, NATIONALITY AND ETHNICITY.

(c) Background

4. Although ICESCR requests that primary education shall be compulsory and available free to “all” (Article 13-2(a)), the Japanese government still has persisted in education for only “Japanese nationals”.

5. CERD notes in 2001 that elementary and lower secondary education is not compulsory and the Japanese government stated that “the purpose of the primary education in Japan is to educate the Japanese people to be members of the community (CERD/C/304/Add.114, para. 15). Moreover, the Committee, in the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends in 2010 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 (CERD/C/JPN/CO/3-6, para. 22).

6. The report of the Special Rapporteur on the human rights of migrants reports in 2011 as follows; According to the School Education Act, elementary and middle education is compulsory for Japanese children, but not for foreign children, since the law obliges only Japanese nationals to send their children to an elementary school and junior high school. According to the MEXT, Japanese elementary and secondary schools may accept foreign children of school age “if they wish to enter” schools. Schools and municipalities have no legal obligation to accept migrant children and education is not secured for those children as a legal right (HRC/17/33/Add.3, para. 62). Then, the Rapporteur recommends that the right to education for migrant children should be recognized and guaranteed by law (para. 82 (c)).

II. Problems in Japanese Public Schools

(a) Proposals to the list of issues

i) Please explain how the Japanese government has considered and implemented the Committee’s strong recommendation in 2001 to introduce “mother-tongue instruction in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities” (E/C.12/1/Add.67, para. 60).

ii) Please explain the reason why the Japanese Government limits mother tongue education as extracurricular classes.

iii) Please explain the Government of Japan’s policies, laws and budgets on minority’s mother tongue education.

(b) Situation

1. In Japanese schools, foreign children are receiving assimilation education. They are forced in effect to use *Tsu-meï* (Japanese name; literary, “commonly used name”) and are not allowed to have their heritage language and culture education in the official curricula..

2. Due to the absence of state subsidies, extracurricular classes for their heritage language and culture education are taken place in only few schools in limited areas. Foreign children, in particular those of new comers, are placed in a disadvantageous situation to improve scholastic ability because Japanese language instruction is also insufficient for them.

3. In addition, due to the lack of human rights education on minority issues for Japanese students as a whole in Japanese schools, bullying and discrimination against foreign children are often rampant.

[relevant paragraphs in concluding observation by the last Committee]

*The Committee expresses its concern about the fact that there are very limited possibilities for children of minorities to enjoy education in their own language and about their own culture in public schools. (E/C.12/1/Add.67,para32)

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[relevant part in the 3rd periodic report to the CESCR by Japan]

*E/C.12/JPN/3,I,para20,para108,para109

*E/C.12/JPN/3,III,p356—p359)

(c) Background

4. Historically, education provided by the Government of Japan is not directed for non-Japanese nationals and ignored education respecting to ethnicity, national character and identity other than Japanese ones. Because of that, 80% of children originated from former Japanese colonies in Japanese schools are still forced to use Japanese name according to recent surveys by some local governments including Kyoto city and Osaka city.

5. Such severe situation in Japanese schools is expanded to children of new comers. Significant number of them leaves Japanese schools and some of them changes to minority schools. According to investigation of actual situation by Kani city in Gifu prefecture, there are about 30-40% students in Brazilian school, which changed school from Japanese schools.

6. The central government of Japan explained that “children that go to compulsory education schools can be given opportunities to maintain contact with their native language and culture on extra-curricular activities”(CCPR/C/JPN/Q/5/Add.1, reply28).

In fact, some schools in Osaka where many Koreans originated from former Japanese colonies reside offer opportunity of ethnic education using extracurricular classes, but the point is that such education activities are organized by the cooperation of local governments, schools and NGOs. It is the truth that the Japanese central government has not given them legal force, nor provided financial support for such activities. Hence ,teachers of those ethnic minority education activities are not regular full-time employees and their pay is very low.

7. CRC concerned in 2004 (CRC/C/15/Add.231) that “Children of minorities have very limited opportunities for education in their own language” (para40(f))and recommended the Japanese Government to “expand opportunities for children from minority groups to enjoy their own culture, profess or practise their own religion and use their own language (para50(d)).”

8. CERD also recommended in 2001 that the Japanese government “ensure access to education in minority languages in public Japanese schools (CERD/C/304/Add.114,para. 16) and encouraged in 2010 “the State party to consider providing adequate opportunities for minority groups to receive instruction in or of their language and invites” (CERD/C/JPN/CO/3-6 5,para 22).

9. The Committee “reiterates the view expressed in its previous concluding observations (para. 18) that the name of an individual is a fundamental aspect of cultural and ethnic identity that must be respected” (CERD/C/JPN/CO/3-6 5,para 16).

10. The Committee also recommended 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 (CERD/C/JPN/CO/3-6 5,para 25)”, the Japanese government should “intensify public education and awareness-raising campaigns, incorporating educational objectives of tolerance and respect”(CERD/C/JPN/CO/3-6 5,para 26).

11. Report by the Special Rapporteur of Human Rights of the migrants (HRC/17/33/Add.3,para63) pointed out that there are “number of obstacles for migrant children to completing their education in Japanese schools”, “the majority of migrant children do not receive necessary assistance to develop appropriate language skills and tend to find themselves lost in Japanese schools” and “discrimination against them is still common”.

III The issues of minority schools in Japan

(a) Proposals for list of issues

i) Is it possible that a minority school to be accredited as a regular school even if that school gives lesson using minority language or teaches minority language in regular classes, or does not mainly use official textbooks approved by the MEXT written in Japanese? If it is not possible, how does the Japanese government consider legislation to authorize minority school as a regular school, with keeping identities of minorities?

ii) The Committee was informed that students of minority schools which are accredited as “miscellaneous schools” became to receive financial assistance from the central government by the system of making high school education tuition free at the first time in 2010. However, what is the reason that students of Korean schools are only excluded from that system?

iii)The Committee was also informed that financial assistance from some local governments to Korean schools was stopped, which would signify the retreat of the policy to give opportunities to maintain contact with native language and culture to ensure adequate opportunities for minority children to receive instruction in or of their language and about their culture. What is the central government’s countermeasure for such retreat?

iv) The Committee was informed that there used to be more than 110 Brazilian schools in Japan before the financial crisis in 2008, but the current number of those schools decreased to less than 70 because many parents of Brazilian students dismissed from work and could not pay school fees of their children. What was the policy of the Japanese government to support these schools which guaranteed the education of minorities? If no policy has been taken, what policy does Government plan to take?

(b) Situation

1. Some minority schools such as Korean schools and Chinese schools are accredited as “miscellaneous schools” like driving schools, not regular schools for children. These schools are given no financial assistance by the central government.

2. In particular, Korean schools are seriously discriminated. Korean schools are only excluded from the system of so-called “Free High School Tuition” which was introduced in April 2010, although other

minority schools with accreditation of “miscellaneous school” were applied to this system. In addition, this discrimination by the central government has led to the new discriminative situation that some local governments which have provided Korean schools with their subsidies for a long time have stopped or been reducing their subsidies to Korean schools. The number of such governments has been increasing.

3. Since most of newcomer schools have been having difficulty to even get accreditation of “miscellaneous school”, they are not be able to receive any financial assistance from local governments. After the financial crisis in September 2008, many parents of those schools have been dismissed from work and have not been able to pay school fees. As a result, in case of Brazilian schools, almost half numbers of them were forced to close their schools and a lot of students were forced to leave their schools.

[E/C.12/1/Add.67 (24 September 2001)]

60. The Committee strongly recommends that mother-tongue instruction be introduced in the official curricula of public schools enrolling a significant number of pupils belonging to linguistic minorities. The Committee further recommends that the State party officially recognize minority schools, in particular Korean schools, when they comply with the national education curriculum, and consequently make available to them subsidies and other financial assistance, and also recognize their school leaving certificates as university entrance examination qualifications.

[Third Periodic Report by Japan, paragraph 60 (in English, paragraph 110,111), Article 13-1 (in English, paragraph 361)]

(c) Background

Foreign Schools as “miscellaneous schools”

4. There are approximately 200 foreign schools in Japan including approximately 70 Korean schools, 70 Brazilian schools, tens of national schools which are Chinese, Peruvian and Indian etc., and tens of international schools. About 30,000 children¹ are learning in those schools including kindergarten, primary to high schools, universities and graduate schools today.

5. Japanese school system is divided into three kinds of schools, which are regular school defined in article 1 of School Education Act (so-called “School of Article 1”), technical school defined in article 12 of the Act, and “miscellaneous school” defined in article 134 of the Act.

6. The Japanese government has insisted that “miscellaneous school” can be accredited as “School of Article 1” if the school has fulfilled the accreditation criteria and such schools have existed (Third Periodic Report by Japan in English, paragraph 111).

7. In order to be accredited as “School of Article 1”, however, the school has to fulfill the accreditation criteria determined by the MEXT, such as the implementation of Japanese school curricula for Japanese children with Japanese textbooks in Japanese approved by the MEXT and the qualifications of teachers approved by the Japanese government. Therefore, it is almost impossible practically to be accredited as “School of Article 1” for minority schools if minority community wants to give education using their own language and textbooks written in their own language. Three minority schools

¹ According to “School Data Survey” conducted by Ministry of Education in 2010, there are 26,253 children who are on the register in foreign schools accredited as “miscellaneous schools”. Besides, there are thousands of students who are on the register in foreign schools not accredited as “miscellaneous schools”.

accredited as “School of Article 1” in the past have difficulties. For example, they cannot teach their own language in curriculum so the students cannot master their language completely until graduation.

Discriminatory treatment against Korean schools

8 In March 2010, CERD expressed concern about “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 tuition free of charge in public and private high schools, technical colleges and various institutions with comparable high school curricula” because it has “discriminatory effects on children’s education” (CERD/C/JPN/CO/3-6. para. 22 (e)).

9. This concern has been realized when Korean schools were only excluded from the “Free High School Tuition”, though other 31 minority schools were included in it by Notification of the MEXT in April 2010.

10. This discriminatory treatment by the central government has affected some local government including Tokyo, Miyagi and Osaka as of March 2012.

11. The Japanese government replied to the question by the Human Rights Committee asking to “provide detailed information on measures taken to ensure adequate opportunities for minority children to receive instruction in or of their language and about their culture, in particular as regards the Korean and Ainu minorities” (CCPR/C/JPN/Q/5,para28) as follows; People of Korean residents in Japan have opportunities to learn the distinct Korean culture at many schools for people of Korean residents. Almost all of these schools are sanctioned by the competent authorities (the prefectural authorities), with the competent authorities providing subsidies for these schools.”(CCPR/C/JPN/Q/5/Add.1,reply28). This reply means that the Japanese government has recognized Korean schools as the institution where Korean people learn their own culture and provision of subsidies for Korean schools by local governments as the measure to give adequate opportunities for minority children to receive instruction in or of their language and about their culture. Therefore, the central government should take measures for such retreat of local governments.

Financial suffering of newcomer schools

12. Brazilian schools have increased rapidly since 1995 as Japanese Brazilians have increased after 1990. There used to be approximately 110 Brazilian schools in Japan and 10,000 students were on the register in those schools just before the financial crisis in fall 2008 when Brazilian population ran up to over 300,000. According to some surveys of students and parents of Brazilian schools in Japan, the reasons why they go to Brazilian school with school fees instead of Japanese school with no school fees are that they cannot learn Portuguese nor also Japanese adequately in Japanese school, that it is not easy to keep up with lessons and that they face bullying or discrimination against them in Japanese school. Those reasons indicate that Brazilian schools are not only the place for the right to education to protect identity of minorities but also a necessary haven for them, due to the problems of Japanese school education.

13. The Government has been trying to let the Brazilian students move into Japanese schools who are not on the register in the schools due to the integration and abolition of Brazilian schools, by giving them Japanese lessons (Niji-no-Kakehashi-Kyoushitsu) after Lehman's fall. However, there will be many minority students continuously who do not want to move into Japanese schools as long as the problems of Japanese school education do not improve. .

14. The accreditation of “miscellaneous school” is granted by local governments and the accreditation criteria are severe such as possession of school land and school building. It is too difficult to fulfill such

criteria for most of South American schools because those schools are operated by the school fees paid by immigrants and the private property of a founder, who has been in Japan for at most only 20 years.

15. Some local governments have made effort to improve treatment of minority schools and alleviated the conventional accreditation criteria of “miscellaneous school” in March 2004. So, 14 South American schools have been accredited as “miscellaneous schools” as of February 2012, but the number of those schools is only a few compared to whole number of South American schools in Japan which is approximately 70.

16. The Special Rapporteur on the human rights of migrants pointed out that “foreign schools must rely exclusively on financial contributions by parents, which amount to approximately 45,000 yen per month” [A/HRC/.17/33/Add.3, paragraph 65] and recommended that “Central and prefectural governments should also increase their financial support to foreign schools. Moreover, in order not to discriminate among foreign schools, the Government should increase its subsidies to Korean, Brazilian, Peruvian, Filipino and other foreign schools and apply tax benefits, in order for them to receive the same support as other private international and Japanese schools” in March 2011. [A/HRC/.17/33/Add.3, paragraph 81 (e)]

IV. Low rates of immigrant children advancing to senior high school education

(a) Proposals for list of issues

Please clarify the rates of non-Japanese children advancing to senior high school education.

(b) Summaries

The central government has not conducted a survey concerning the rates of non-Japanese children advancing to senior high school education.

According to a survey by the Solidarity Network with Migrants Japan (<http://www.jca.apc.org/migrant-net/English/English.html>), the rate of Brazilian children advancing to senior high school education in 2000 is only 30%, while the its rate of Japanese children is over 90%.