



The Japan Society for History Textbook (JSHT)

NGO in special consultative status with the Economic and Social Council since 2019.

Address: Suido 2-6-3 -203, Bunkyo-ku, Tokyo 112-0005 Japan

TEL: +81 3-6912-0047 FAX: +81 3-6912-0048

<http://www.tsukurukai.com/e>

CCPR-International Covenant on Civil and Political Rights

136 Session (10 Oct 2022 – 04 Nov 2022)

Japan

NGO Report

11th May 2022

Issue related to Article 20 of the International Covenant on Civil and Political Rights
Request for enactment of a law to prevent hate speech against the Japanese people

1. Relevant ICCPR Article and paragraph of the Government Report (CCPR/C/JPN/7)

- Article 20-2

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

- Government Report (CCPR/C/JPN/7)

Paragraph 16, 20, 22, 27 and 28

2. Abstract

In 2016, “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” was enacted

in Japan. The act aims to eliminate hate crimes, but it has a serious flaw because it restricts the target for protection only to “persons originating from outside Japan.” In this context, “persons originating from outside Japan” are considered minorities and victims, while the Japanese as a majority are seen as perpetrators. Here, any possibility for the Japanese (majority) to become victims of hate crimes is not at all considered. However, hate crimes derive from prejudice and hatred toward individuals or groups with certain characteristics, whether minority or majority. There is no guarantee that minorities will never have prejudice or hatred toward the majority. When it comes to hate crimes, they should not be seen solely as confrontation between minorities and the majority.

It is necessary to correct the flaw ensconced in this act as soon as possible. We strongly request the United Nations Human Rights Committee (CCPR) to recommend that the Japanese Government correct the act in question.

3. Background and current situation of the issue

Hate crimes refer to criminal acts of harassment, threat, violence and others caused by prejudice or hatred toward individuals or groups with certain characteristics related to racial, ethnic or religious matters or sexual preferences. As a means to cope legally with such hate crimes, the “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” (hereinafter, Hate Speech Elimination Act) was enacted in 2016 in Japan.

However, this Hate Speech Elimination Act has a serious flaw. That is, the Act applies only to persons originating from outside Japan, which means that those who are not “persons originating from outside Japan,” namely, the Japanese people, are not at all protected against hate crimes. Any hate crime against Japanese is neither prohibited by law nor punished legally. Due to this flaw, when hate crimes are committed against Japanese, there are no legal consequences. In other words, perpetrators of hate crimes against Japanese are given a free hand.

In the justification for enactment of this flawed law lies the preconception that there is conflict between those originating from outside Japan, who are minorities and victims, and the Japanese who are the majority and perpetrators. Owing to this premise, any possibility for the Japanese majority to fall prey to hate crimes is not

at all taken into consideration.

However, hate crimes are committed out of prejudice and hatred against individuals or groups with certain characteristics. No one can say for certain that minorities never embrace prejudice or hatred against the majority. Naturally, the majority (Japanese) are very likely to become victims of hate crimes. The very idea that “persons originating from outside Japan” (regarded as minorities) are the only ones that need to be protected is based on prejudice. In the first place, it is wrong to put the issue in the perspective of minorities versus the majority when dealing with hate crimes.

Article 20-2 of the International Covenant on Civil and Political Rights states: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” In this article, there is no distinction between minorities and the majority. On the other hand, Japan’s Hate Speech Elimination Act strictly limits the legal protection from hate speech to “persons originating from outside Japan.” This clearly breaches the ICCPR Article 20-2.

To remedy this flaw, supplementary resolutions had been adopted:

[Supplementary resolution by the House of Representatives]

In the light of this Act’s principle, the Japanese Constitution and the International Convention on the Elimination of All Forms of Racial Discrimination and on the basis of fundamental understanding that it is wrong to assume any unfair discriminatory speech or behavior is permissible so long as it is committed against those other than “persons originating from outside Japan” as stated in the Act, the Act should be properly implemented.

[Supplementary resolution by the House of Councilors]

It is wrong to regard any unfair discriminatory speech or behavior as permissible so long as it is other than “unfair, discriminatory speech or behavior against persons originating from outside Japan, as stated in the Article 2 of the Act. In the light of this Act, the Japanese Constitution and the International Convention of the Elimination of All Forms of Racial Discrimination, the Act should be properly implemented.

These supplementary resolutions by both Houses of the Japanese Diet are extremely ambiguous. Why is it not simply stated that the protection provided by the Hate Speech Elimination Act is provided to all people?

Moreover, people generally do not know that there are such supplementary resolutions attached to the Hate Speech Elimination Act. So, it is not clear to what extent these resolutions are respected and taken account of by the courts. Being “supplementary”, there is a high probability that the resolutions could be regarded as insignificant and remain mere reference or in the worst case may be completely ignored.

The issue cannot be solved by supplementary resolutions, it should be clearly stated in the Hate Speech Elimination Act that the Act protects “all people.” In concrete terms, the words “persons originating from outside Japan” should be deleted and replaced with the words “all people”, instead.

4. Conclusion

(1) We request that the Japanese Government:

Crack down on hate crimes against Japanese people and enact a law to strictly punish perpetrators. Specifically, change the phrase “persons originating from outside Japan” to “all persons” and some others, if necessary, to make the law consistent.

(2) We request that the Human Rights Committee (ICCPR):

Recommend the Japanese Government to completely rewrite the phrase “persons originating from outside Japan” to cover all persons for protection from hate crimes in the Hate Speech Elimination Act.

END