



# **Joint NGO Report**

## **for the Human Rights Committee**

**in response to the List of Issues  
Prior to Reporting  
CCPR/C/JP/QPR/7**

**<PART 1>**

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

**November 2020**

**Japan NGO Network for the Elimination of Racial Discrimination** (ERD Net) is a network of NGOs working for the elimination of racial discrimination in Japan. Since the launch of networking in 2007, it has continually intervened the review of human rights situations of Japan by the HR Committee, CERD and other UN human rights mechanisms.

Contact: International Movement Against All Forms of Discrimination and Racism (IMADR)  
imadrjc@imadr.org

### **NGOs contributing to the Report**

The International Movement Against All Forms of Discrimination and Racism (IMADR)  
Japan Network towards Human Rights Legislation for Non-Japanese Nationals & Ethnic Minorities  
Solidarity Network with Migrants Japan (SMJ)  
Human Rights Association for Korean Residents in Japan  
Research-Action Institute for Ethnic Korean Residents (RAIK)  
Korea NGO Center  
Center for Minority Issues and Mission  
Buraku Liberation League (BLL)  
Association of Indigenous Peoples in the Ryukyus (AIPR)  
All Okinawa Council for Human Right (AOCHR)  
JNATIP Japan Network Against Trafficking In Persons  
Japan Lawyers Network for Refugees  
Kanagawa MINTOREN  
Yokohama City Liaison Committee for Abolition of the Nationality Clause  
Hyogo Association for Human Rights of Foreign Residents  
National Network for the Total Abolition of the Pension Citizenship Clause

(in random order)

# Joint NGO Report of ERD Net <PART 1>

## Table of CONTENTS

<u>reference</u>	<u>issue</u>	<u>page</u>
LOIPR para 2	Ratification of the 1 <sup>st</sup> Optional Protocol	3
LOIPR para 4	Establishment of national human rights institution	4
LOIPR para 5	Comprehensive law on anti-racial discrimination	6
LOIPR para 6	Hate speech	8
LOIPR para 6	Buraku discrimination	16
LOIPR para 10	Gender-based violence against migrant women	18
LOIPR para 19	Trafficking in persons	20
LOIPR para 20	Technical intern training	24
LOIPR para 21	Treatment of aliens, including refugees and asylum seekers	27
LOIPR para 27	Arbitrary deprivation of liberty of a human rights defender in Okinawa	32

**1. Related paras and articles:** LOIPR para 2, constitutional and legal frameworks within which the Covenant is implemented. (Article 2)

**2. Issues:** The government's reluctance to ratify the First Optional Protocol to the Covenant for the individual communication procedure

**3. Suggested recommendations:**

- 1) State party is recommended to immediately ratify the First Optional Protocol.
- 2) State party is recommended to identify obstacles that have stood in the course towards the ratification and indicate possible solutions for the challenges.

**4. Background:**

- 3) In February 1919, when the Covenant of the League of Nations was written in Versailles, the Government of Japan proposed the addition of a "clause on the elimination of racial discrimination" to the draft Covenant without success. This attempt was made in the hope that discrimination suffered by Japanese immigrants abroad would be eliminated.
- 4) After World War II, the United Nations adopted the Universal Declaration of Human Rights (UDHR) in 1948, and it was followed by the adoption of a series of human rights treaties, introducing the monitoring system including the periodic reporting, review and individual communication procedures. The Government of Japan, in response to the arrival of "Vietnamese Refugees" in 1975, began ratifying a series of human rights treaties. It has so far ratified major eight human rights treaties except the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- 5) The Government of Japan has ignored the repeated recommendations by treaty bodies to correct the issue of the exclusion of Korean schools from the High School Tuition Support Fund Program.<sup>1</sup> There have been five court cases brought by local Korean high school authorities. Three out of five have so far been dismissed by the Supreme Court. With no individual communication procedures accepted by the State party, victims have lost means of bringing the case before justice. *\*\* See the report page about the exclusion of Korean High School from the Tuition Support Fund Program.*
- 6) It has been more than 40 years since the Government of Japan ratified the ICCPR in 1979. As of March 2020, 116 countries have ratified the First Optional Protocol. Since the Government replied to the Committee that it was holding a "Study Group of Ministries and Agencies Related to the Individual Communication Procedures", on July 10th, 2020, we requested for the disclosure of all minutes of the study group's proceedings since the last review by the Committee in August 2014. Initially, the Government answered that it would disclose the information by August 11th. However, it was partially postponed until September 8th while the rest was postponed until March 31st, 2021, making it impossible for civil society to comment on the Government's course of consideration.

**5. Prepared by:** Hiroshi Tanaka

---

<sup>1</sup> CERD/C/JPN/CO/3-6, para 22(e), CERD/C/JPN/CO/7-9, para 19, CERD/C/JPN/CO/10-11, para 22, CRC/C/JPN/CO/4-5 para 39

1. **Related paras and articles:** LOIPR para 4, legal frameworks for the implementation of the Convention, Art 2

2. **Issues:** Reluctancy of the Government of Japan to establish a national human rights institution

**3. Suggested recommendations:**

1) State party is recommended to establish an independent national human rights institution (NHRI) in the full conformity with the Paris Principles. In designing of an NHRI, it should be taken into consideration that it is responsible to deal with human rights abuses committed by public figures including government officials and politicians.

2) Noting its acceptance of the recommendations to accelerate its efforts toward the establishment of an independent national human rights institution in the 2017 Universal Periodic Review, the State party is urged to clarify the present situation and challenges it faces in regard to the establishment, address such challenges to accelerate its efforts and make the information on such a process available to the public.

**4. Background:**

The Human Rights Committee has repeatedly recommended the State party to establish an independent national human rights institution (NHRI) in its concluding observations in 1998 (CCPR/C/79/Add.102, para 9), in 2008 (CCPR/C/JPN/5, para 9) and in 2014 (CCPR/C/JPN/6, para 7). Nevertheless, the State party has not made any significant progress toward the establishment since November 2012 when the bill to establish a NHRI was scrapped due to the dissolution of the Lower House. The Committee on the Elimination of Racial Discrimination (CERD) also recommended the same in its 2018 concluding observations (CERD/C/JPN/10-11, para 12) and designated the paragraph 12 as a one-year follow-up recommendation. During its 101<sup>st</sup> session in August 2020, the CERD considered the follow-up report of Japan and concluded its evaluation by stating, “an appropriate action has not been taken to implement its recommendation, and (it) considers that the response of the State party is not satisfactory.”

In its report to the Human Rights Committee under the LOIPR (CCPR/C/JPN/7), the State party explains, “the Government continues to conduct an appropriate review of the framework for a human rights remedy system, while bearing in mind the discussions conducted thus far.” However, no information about the discussions have been made public, nor any specific reply has been made to inquiries about the progress from civil society organizations.

In 2016, Japan enacted the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan (Act for the Elimination of Hate Speech) and the Act on the Promotion of Elimination of Buraku Discrimination. Both Acts do not contain a sanction clause but place educational efforts at the center of the Acts. Essentially, these educational efforts should have been assumed by a NHRI.

The COVID-19 pandemic has impacted minority communities as well as the general public causing a certain degree of constraint in their practice of the rights concerning travel, freedom of assembly or freedom of expression. Under a pandemic-like situation, a NHRI is expected to perform important functions including monitoring impact on human rights, reporting and advice to the government accordingly and making a necessary intervention. Without a NHRI, no adequate monitoring and evaluation of an impact of the pandemic on human rights have been made, thus failing to share it with the Committee.

**5. Prepared by:** International Movement Against All Forms of Discrimination and Racism (IMADR)

1. **Related paras and articles:** LOIPR para 5, Non-Discrimination, COs para 11 (CCPR /C/JPN/CO/6) and Articles 2 and 26

2. **Issues:** No comprehensive anti-discrimination legislation and comprehensive policy to eliminate racial discrimination

1) Facts about discrimination against foreigners in Japan

The Government of Japan (hereafter the Government) stated in its periodic report to the Committee on the Elimination of Racial Discrimination (CERD) of 2017 (para 101, CERD/C/JPN/10-11) that “Japan regulates racial discrimination, and we do not recognize that it must adopt a comprehensive legislation prohibiting racial discrimination as the concluding observations urge.”

Meanwhile, the Analytical Report of Foreign Residents Survey, the first official survey done in 2016 in the country, indicates that for the past five years 40 percent of respondents had experienced discrimination when seeking to rent housing, 25 percent had experienced discrimination in employment and 30 percent had experienced personal contempt. The survey conducted by the Government clearly demonstrates the prevalence of serious discrimination against foreigners threatening their life and safety and the disfunction of existing regulations on discrimination.

Besides discrimination in the private sphere, it also exists in the public sphere. Foreign nationals are not eligible to be public officials at the national level. At the local level, many local governments have a nationality clause to exclude foreign nationals in their employment practices. If not, those local governments that employ foreign nationals still do not permit them to be promoted to managerial positions. In the education sector, foreign schools or ethnic schools are not recognized as regular schools, and among them, the Government strictly keeps its position to exclude Korean schools from any public assistance. In addition, a similar exclusive attitude is present in the national pension scheme, medical care system, and life assistance system, showing grave discrimination by the State and in society.

2) Absence of a comprehensive anti-discrimination legislation, in particular anti-racial discrimination legislation  
Despite the recommendation made by the Human Rights Committee under the para 11 of its concluding observations of 2014, Japan has still failed to adopt a comprehensive anti-discrimination legislation that prohibits direct, indirect and intersectional discrimination including in the private sector.

The State party has been slow in addressing discrimination based on nationality or ethnicity. While it acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1995, it has not yet developed a policy or plan to eliminate discrimination, neither comprehensive nor basic. It does not have any bureau or section that is specifically responsible to work for the elimination of discrimination. It has no specific legislation to prohibit discrimination.

In response to the paragraph 5 of LOIPR, the Government referred to several laws that aim to eliminate discrimination under the Constitution. However, the Constitution is an abstract norm to bind the State, and not applicable to discrimination in the private sector. While Article 3 of the Labor Standard Act prohibits discriminatory treatment in working conditions on the grounds of nationality, belief or social status, its grounds and applicable areas are very limited, thus this particular article has rarely been used with few judicial precedents.

The Basic Act on Education stipulates the basic national policies, and it includes no clause to prohibit discrimination.

At the national level, the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (or “Hate Speech Elimination Act”) was adopted in 2016. However, with no clause to prohibit hate speech, the Act just remains as a basic law to declare its commitment to work for the elimination of hate speech both at the national and local levels. It is hard to consider it as a law to ban discrimination.

Japan has repeatedly been recommended to adopt a comprehensive anti-discrimination legislation by UN treaty bodies including CEDAW in 2016 (CEDAW/C/JPN/O/7-8, paras 12 and 13), CERD in 2018 (CERD/C/JPN/ CO10-11, paras 7 and 8) , and CRC in 2019 (CRC/C/JPN/CO/4-5, paras 17 and 18(a)). At the Universal Periodic Review of Japan in 2017, 9 Member States recommended for the adoption of a comprehensive anti-discrimination legislation (A/HRC/37/15).

### **3. Suggested recommendations:**

State party is recommended to immediately adopt a comprehensive anti-discrimination legislature that defines direct, indirect and multiple forms of discrimination, and establishes an independent institution to provide an accessible remedy to victims of discrimination.

### **4. Backgrounds:**

Japan has failed to properly make apology and compensation for what it has done during the colonial rule and occupation of Korea which were ended by the defeat of Japan in the Second World War in 1945. Rather, it took away the Japanese nationality without any choice from those Korean people who had resided in Japan till the war-end. Korean people were then imposed to carry an alien registration document with them all the time to enable the authorities to easily monitor them. They were also excluded from public programs such as medical insurance, pension scheme, public housing, education and employment in government offices. Through the continued struggle by Korean residents, they have partially won their rights step by step, but discrimination still remains in the public sphere.

In 2002, Japan and the DPRK had the summit meeting. The state head of DPRK officially admitted the kidnapping of Japanese and made an apology. Since then, the Government and mass media started the extensive Korean bushing, contributing to create the general atmosphere that Koreans were not trustable or they had to accept anything said against them. This still continues today.

The Second Abe Administration formed in December 2012 declared the exclusion of Korean high school students from the tuition waiver program two days after its cabinet was created. This constitutes a systemic discrimination. Taking advantage of the Government attitude and discriminatory policies, racist groups have been activated in the private sphere.

### **5. Prepared by:** Japan Network towards Human Rights Legislation for Non-Japanese Nationals & Ethnic Minorities



**1. Related paras and articles:** LOIPR para 6 on the hate speech, para 12 of CCPR/C/JPN/CO/6 and ICCPR articles 2, 20 and 26

**2. Issues:** “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan” (so-called “Hate Speech Elimination Act”) is not effective in addressing hate speech and hate crimes in Japan

**3. Suggested recommendations:**

- State party should prohibit hate speech by law including those against unspecified groups. Serious and grave cases of hate speech such as inciting genocide should be prohibited with criminal sanctions.
- State party should develop legislation to address hate crimes, to set up a specific body dealing with the issue, to carry out comprehensive survey and research, and to reform legislation so that crimes committed with racially discriminatory motives are dealt with as hate crimes.
- State party should promptly conduct a study to grasp an actual situation of hate speech in the internet and adopt a comprehensive legislation to deal with the hate speech in the internet including the speedy provision of remedies to the victims.
- State party should consult representatives of the media, publishers and internet providers, and encourage them to take concrete and effective measures against hate speech including self-regulation.
- State party, as well as local authorities, should promptly and publicly condemn serious cases of hate speech and hate crimes as soon as they occur.
- The police should set up a specific team dealing with hate speech, conduct thorough and comprehensive training among all officers on how to address hate speech, stop excessive protection of hate demonstration participants and excessive guard against counter demonstration participants, provide remedial measures for victims of hate speech and hate crimes, and rigorously deal with the perpetrators of hate speech if any criminal acts are involved.
- State party should, in order to eliminate hate speech, and based on the views of minority representatives and experts dealing with the issue of discrimination, develop and implement a concrete plan of education for the elimination of racial discrimination, including the history and actual situation of racial discrimination as well as related international standards.
- State party should, instead of general human rights training, conduct more specific and comprehensive training for all public servants, including judges, public prosecutors, and officers at the immigration bureau, in order to appropriately understand the issue of racial discrimination including hate speech and hate crime as well as the international human rights standards addressing them, and to effectively deal with actual cases of discrimination.

**4. The current situation of hate speech (paragraph 6 first question):**

**1) Hate demonstration / street propaganda**

From 2000s, with the development of the Internet, anonymous hate speech in Japan has significantly increased. In January 2007, a racist group named “Citizens’ group not allowing the privileges of ethnic Korean residents in Japan (so called “ZAITOKUKAI” in Japanese)” was formed by several individuals gathered through the Internet. They have increased their supporters mainly through repeated hate

demonstrations, street propaganda and meetings as well as uploading the videos of these activities on the Internet. According to the first survey on hate speech carried out by the Government of Japan in autumn 2015, there were in total 1152 hate demonstrations and street propaganda activities in the period of three and a half years from April 2012 to September 2015 (among which the number of hate demonstration was around 100), one case per day on average.<sup>1</sup>

In June 2016, “The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” (hereafter the Hate Speech Elimination Act)<sup>2</sup>, was enacted and the number of hate demonstrations decreased to 21 in 2019. However, there were still 211 cases of street hate propaganda which has not decreased much. As to the character of the speech and behaviour of the perpetrators, the clear case of such acts as defined by the Hate Speech Elimination Act (1. Threat, 2. Salient insult, 3. Exclusion) has decreased but is still continuing.

For example, below are some cases of hate speech in 2019 in Tokyo officially registered as such in accordance with Article 12 of the “Ordinance of Tokyo for the realization of the principle of respect for human rights in line with the Olympic Charter” (enacted in April 2019)<sup>3</sup>:

- 20 May 2019: Street propaganda activity using loudspeakers in Nerima ward, containing phrases such as “Throw Koreans into Tokyo Bay” and “Kick out Koreans from Japan, beat them to death”
- 16 June 2019: A demonstration in Taito ward, using phrases such as “Kick out Koreans”
- 15 September 2019: A demonstration in Sumida ward, using phrases such as “No benefit but harm having anti-Japan ethnic Korean residents, go back to Korea”, “Criminal Koreans go out from Japan”, and “Kick out Koreans from Japan who continue limitless harassment to Japan”
- 27 October 2019: A demonstration over Chiyoda, Bunkyo and Taito wards, using phrases such as “Kick out Koreans” and “Cockroach Koreans, go back to Korea”
- 3 November 2019: Street propaganda using phrases such as “garbage, cockroach, fake human being Koreans are staying, it must be prohibited” and “Want to massacre all ethnic Korean residents in Japan with gas chamber”

## 2) Racist groups becoming a political party

The founder of the “Zaitokukai” has stood as a candidate for the election of the governor of Tokyo in July 2016. Although his candidacy failed, he has obtained around 113,000 votes (1.7% of votes). In October in the same year, he founded “The Japan First Party”. In July 2020, he stood again as a candidate from this party for the election of the governor of Tokyo and obtained 178,000 votes.

Not only “Zaitokukai”, but also other racist groups have carried out hate speech activities in the name of “election campaign” and some of their members became members of a ward assembly such as in Katsushika ward, Tokyo.

## 3) Hate speech by public figures

---

<sup>1</sup> Japan's first-ever hate speech probe finds rallies are fewer but still a problem (the Japan Times, MAR 30, 2016), <https://www.japantimes.co.jp/news/2016/03/30/national/japans-first-ever-hate-speech-probe-finds-rallies-are-fewer-but-still-a-problem/>

<sup>2</sup> <http://www.moj.go.jp/content/001199550.pdf>

<sup>3</sup> 2 anti-Korean rallies 1st to run afoul of Tokyo hate speech rule (The Asahi Shimbun, October 18, 2019) <http://www.asahi.com/ajw/articles/13059690>

Hate speech by public figures are also continuing. For example, Taro Aso, the Deputy Prime Minister of Japan, has made comments such as: “Results matters (in politics). So it was failure of Hitler to kill millions, although his motive was right” in August 2017;<sup>4</sup> “it might be armed refugees. Deploy police force, or self-defence force. Shoot them dead. We have to seriously think about it” regarding the possibility that refugees from Korean Peninsula might come to Japan in September 2017;<sup>5</sup> “it is only this country, where for two thousand years, only one place, one language, one ethnicity, one dynasty of the emperor continues. It’s such a good country” in January 2020; and calling the novel coronavirus as “Wuhan virus” in March 2020. However, despite these public comments made by him, no action was taken by the then Prime Minister, Shinzo Abe, or the Justice Minister, and he remains as the Deputy Prime Minister until today under new Suga administration.

#### 4) Hate speech in the media/publications

Incitement to discrimination against Koreans, ethnic Korean residents and Chinese in TV, newspapers and publications has become more common. A number of anti-Korean and anti-Chinese books are sold at bookstores and the advertisement of weekly tabloid magazines in trains are flooded with headings inciting discrimination. For example, a book named “The tragedy of Chinese and Koreans controlled by Confucianism” written by Kent Gilbert and produced by a major publisher sold more than 400,000 copies, despite its discriminatory content saying “Chinese and Koreans are liar and selfish”. In September 2019, a weekly magazine called “Weekly Post” (major publisher, a circulation of around 400,000 copies) made a special feature titled “We don’t need Korea” which contained several articles such as the one named “Pathology of Koreans who cannot control their anger”.<sup>6</sup>

#### 5) Hate speech on the Internet

The Internet is flooded by anonymous hate speech. In 2017, there were more than 45 million twitter users in Japan, where the daily and massive amount of anonymous hate speech against minority groups and individuals is affluent which is causing a quite serious impact.<sup>7</sup>

In July 2015, the server of the Immigration Bureau of Japan went down due to the large number of anonymous reports through emails that informed about whereabouts of ethnic Korean residents. Senders were urged by a fake news that ethnic Korean residents would be deprived of their residential status and deported.

When a disaster, accident or other incident occurs, discriminatory false rumour is almost always circulated via twitter that Koreans or Chinese are the perpetrators, or they are committing crimes taking advantage of those incidents.

At the time of the Great East Japan earthquake in 2011, discriminatory rumours such as the one that affected places were infested with gangs of Chinese thieves were circulated in the social media. It was

---

<sup>4</sup> Japanese minister Taro Aso praises Hitler, saying he had 'right motives' (the Guardian, 30 August, 2017) <https://www.theguardian.com/world/2017/aug/30/japan-minister-tara-aso-praises-hitler-right-motives>

<sup>5</sup> Aso asks whether SDF should shoot North Korean refugees fleeing hypothetical Korean contingency (the Japan Times, 24 September 2017), <https://www.japantimes.co.jp/news/2017/09/24/national/politics-diplomacy/asos-asks-whether-sdf-shoot-north-korean-refugees-fleeing-hypothetical-korean-contingency/>

<sup>6</sup> Editorial: Japanese weekly magazine's anti-S. Korea feature totally out of order (The Mainichi, September 4, 2019) <https://mainichi.jp/english/articles/20190904/p2a/00m/0na/010000c>

<sup>7</sup> Twitter Japan is Not a Safe Space for Minority Users (Adbox, 15 December 2017) <https://advox.globalvoices.org/2017/12/15/twitter-japan-is-not-a-safe-space-for-minority-users/>

reported by some researchers that about 90% of the people who obtained that information actually believed it.<sup>8</sup>

The survey on foreign residents in Japan carried out by the Ministry of Justice in 2016 revealed that 40% of foreign residents, who regularly use the internet, have seen cases of hate speech there, and that among them, 19.8% have reduced the internet usage due to the widespread hate speech. Of them, 47.8% were Korean, and 38.8% were R.O. Korean.<sup>9</sup>

#### 6) Posters on the street

Following the outbreak of the novel coronavirus, it was reported that posters were hung by restaurants, barbers, souvenir shops or other shops saying “No Chinese Allowed”.<sup>10</sup>

### **Shortcomings of the “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan” (Hate Speech Elimination Act) (para 6 second question)**

The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Outside Japan” (Hate Speech Elimination Act) does not have any provision to prohibit or punish acts of hate speech. As such, the Act is totally ineffective to stop acts of hate speech, including the cases that clearly fall within the acts listed in article 2 of the Act.

Moreover, the Act only targets “persons originating from outside Japan” who have valid residential status. The Act does not set out any policy direction and plan or framework for concrete actions to be taken to eliminate hate speech. No reference is made with regard to a regular survey, appointment of a department in charge, training of public servants, setting up of expert bodies, budget framework etc.

In August 2018, the delegation of Japan before the Committee on the Elimination of Racial Discrimination (CERD) stated that effectiveness of the Act, with only two years’ implementation, could not be measured then. Now with more than 4 years passed since the enactment, the Act has made only quite limited impact on the situation indicating an absolute necessity to revise or replace with a new legislation.

#### 1) Current status of “Hate Speech Prohibition Act”

At the national level, there is still no law that prohibits incitement to discrimination. Several local authorities adopted ordinances that prohibit discriminatory behaviour, but until recently no ordinances had a criminal sanction.

After the enactment of the “Hate Speech Elimination Act”, Kawasaki city, Kanagawa prefecture, has strengthened educational and awareness raising measures for the purpose of elimination of discrimination including hate speech. However, as hate propaganda activities did not stop, in December 2019, the city adopted an ordinance named “Kawasaki City Ordinance for development of human rights based city without

---

<sup>8</sup> Rumours after 2011 Japan earthquake pinned blame on Chinese, Koreans for crimes that didn’t happen (The South China Morning Post, March 17, 2017) <http://www.scmp.com/print/news/asia/east-asia/article/2079137/rumours-after-2011-japan-earthquake-pinned-blame-chinese-koreans>

<sup>9</sup> Ref. [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT\\_CERD\\_AIS\\_JPN\\_30363\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_AIS_JPN_30363_E.pdf), p.49, 2.5.2 Use of the Internet (Survey Question 3-2)

<sup>10</sup> ‘No Chinese allowed’: Japanese shop criticised for coronavirus sign (the Week in Asia, 22 Jan, 2020) <https://www.scmp.com/week-asia/health-environment/article/3047144/no-chinese-allowed-japanese-shop-criticised>

discrimination” that for the first time in Japan, had criminal sanctions (up to 500,000 JPY fine) on malicious cases of hate speech in public space<sup>11</sup>.

In the 7<sup>th</sup> periodic report of Japan (CCPR/C/JPN/7), para 23, it was argued as if current law is sufficient to deal with acts of racial discrimination, but this is misleading. Some discriminatory treatment of specific individuals or groups, such as rejecting to provide services or employment, or to rent rooms based on ethnicity or nationality, are deemed illegal under the general provision of the civil law and compensation for damage can be claimed. However, even in such cases, civil court case is the only option, due to the lack of specific legislation prohibiting discrimination, and the victim carries the burden of proof with regard to the violation of their rights. In such a case, it usually takes 2 years for the first hearing and 3 to 4 years for the second and final hearing, with costs of several hundred thousand yen including the fee for the lawyer. Such trials are public and the victims usually have to face further attacks by the perpetrators. Because of all these factors, many victims do not dare to bring the case to the court and are left without any remedies. For example, although almost half of the foreign nationals in Japan are experiencing discrimination when renting rooms, only few cases were actually brought to the court in the last 70 years.

If acts of discrimination include cases of criminal intimidation or forcible obstruction of business, the victim can use the penal code to lodge a complaint, but only the public prosecutors can indict the perpetrator and the prosecutors are usually quite reluctant to take up cases of discrimination.

There is no law that prohibits or illegalises discrimination against a group of unidentified individuals, and therefore, currently no legal responsibility is carried by those who organise or participate in hate demonstrations calling for massacre of a certain ethnic group. As such, shop owners putting posters saying “no foreigners allowed” are not treated as violators of rights, thus regarded as legal as there is no law that illegalises this kind of act.

## 2) Restriction on Hate Demonstrations

Currently there is no law that directly restricts hate demonstrations, nor that illegalises or criminalises hate speech.

Previously, the police were rather protecting the organisers and participants of hate demonstrations, whereby arresting more participants in the counter demonstrations than the ones in hate demonstrations. After the enactment of the Hate Speech Elimination Act, the police have started giving instructions not to engage in acts of hate speech, when notification of a demonstration is submitted, or on site of the demonstration. However, hate demonstration itself is still legal, and every time it happens, the police deploy a large number of officers, several times more than those participating in hate demonstrations, who accompany the hate demonstration and protect the participants from the participants in counter demonstrations.

At the same time, as referred in above, Kawasaki City has, for the first time as a local authority, made an ordinance that prohibits hate speech with punishment. The target of prohibition is limited to three types of most serious and obvious expression among others that are included in the Hate Speech Elimination Act, and if these types of hate speech are carried out three times, even after warning orders by the mayor, the mayor will lodge a criminal complaint.

---

<sup>11</sup> EDITORIAL: Ordinance on hate speech welcome but needs monitoring (Asahi Shimbun, December 13, 2019) <http://www.asahi.com/ajw/articles/13055700>

### 3) Survey by the national authority

After the enactment of the Hate Speech Elimination Act, several civil society organisations have repeatedly requested the Government of Japan to conduct a new survey on the actual situation, but so far the Government rejected for the reasons of the lack of budget. It is absolutely needed to examine the exact impact of the Hate Speech Elimination Act while cases of hate speech continue even after more than four years since its enactment.

### 4) Education / Awareness raising

The national education curriculum does not have any item on the elimination of racial discrimination. Currently, nothing is taught at school about minorities in Japan, their history, language or culture, or cases of discrimination against them (CCPR/C/JPN/7, para 29).

The awareness raising campaign of the Ministry of Justice is nothing more than merely conveying a message “Don’t allow hate speech” in general. Civil society organisations have requested the Ministry that such message should be sent out to specific cases, for example, when groundless discriminatory accusations are made after a disaster saying that “Koreans are the perpetrator”. However, the Ministry remains silent, whereby avoiding to specify cases, and therefore the impact of the campaign remains quite minimum (CCPR/C/JPN/7, para 30).

No specific training is carried out for public prosecutors, judges or police officers regarding racial discrimination in Japan including hate speech in general, or training to increase their capacity to identify cases of discrimination. There are still many police officers who are deployed at the site of hate demonstrations but do not know anything about the Hate Speech Elimination Act.

Civil society organisations have been asking the government about what kind of trainings are carried out with regard to hate speech, and what kind of programme, materials and trainers are provided. However, no answer has been given so far (CCPR/C/JPN/7, paras. 31-32).

### 5) Hate crime

Current law in Japan does not have any concept or system addressing hate crimes. There is no specific body, no survey or research conducted, and no measures are taken for education and awareness raising, thus the issue of hate crimes is completely unaddressed.

The Government of Japan is arguing (CCPR/C/JPN/7, para 33) that racially discriminatory motives can be considered as an aggravative factor when assessing the case and it is “given due consideration”, but this argument is almost equal to a deception. As actually explained by the Government of Japan itself (CCPR/C/JPN/7, para 34), the concept of hate crime is not established and “the government does not have any statistics on the number of hate crimes or the subsequent investigations and convictions”, therefore there is no ground at all for the argument that racially discriminatory motives are actually given due consideration. Even the cases, in which racially discriminatory motivation is recognised by civil courts, are rarely given due consideration to such motivation in the criminal trials, not resulting in the increase of sentences.

The situation of hate crimes, concerning its content as well as the number, has been deteriorating. Below are cases reported after the last review of Japan by the Human Rights Committee in 2014.

In March 2015, an arsonist, who set fire on the Korean Cultural Center in Tokyo and other three locations<sup>12</sup>, was sentenced to 2 year imprisonment by the Tokyo district court in November same year for the crimes of causing damages to buildings, destruction of properties, and intrusion into buildings. The court stated that “any negative feelings towards specific country or nationals of that country cannot be expressed in a form of indiscriminate arson”.

In July 2016, a person, who put fliers with discriminatory content against ethnic Korean residents in Japan in several locations such as toilets in department stores in Fukuoka prefecture, was sentenced to 1 year imprisonment with suspended sentence of 3 years for the crime of intrusion into buildings by the Fukuoka district court.

In May 2017, an arsonist, who put fire on a credit union of Korean origin in Nagoya, Aichi prefecture because of his frustration over the attitude of the South Korean government towards the issue of “comfort women”, was convicted.

In February 2018, two right wing activists, who have been carrying out numbers of hate demonstrations and street propaganda activities against ethnic Korean residents in Japan, drove to the headquarters of the General Association of Korean Residents and shot five bullets into its front gate<sup>13</sup>. The two men were arrested and in August same year, sentenced to 8 to 7 years imprisonment respectively for the crime of a violation of the Firearms and Sword Possession Law.

In May 2018, a man, who has been harassing an ethnic Korean woman, whose name was reported by the media as one of the persons protesting against hate demonstrations against ethnic Korean residents, for 21 months through discriminatory tweets every week, was turned over to the office of Yokohama district public prosecutor’s office in Kawasaki city, charged with the crime of intimidation. However, in February 2019, the prosecution decided not to indict him. The victim has lodged another complaint for the violation of Kanagawa prefectural ordinance for the Prevention of Nuisance. In December 2019, the perpetrator was indicted and the summary court ordered him to pay the fine of 300,000 JPY<sup>14</sup>.

In June 2018, more than 50 properties owned by Kawasaki city such as benches were covered by discriminatory graffiti against ethnic Korean residents. It was investigated as a crime of damage to properties, but no one is arrested.

In December 2018, the perpetrator of discriminatory blog posts against an ethnic Korean junior high school student in Kawasaki city was indicted for the crime of contempt and fined with 9,000 JPY (summary order).

In January 2019, two perpetrators of discriminatory posting against an ethnic Korean company in Okinawa were fined with 100,000 JPY (summary order) for defamation.

In July 2019, a letter saying “go out from Japan” with bullets were posted to the embassy of South Korea in Tokyo, but no perpetrator is identified.

---

<sup>12</sup> Arson attempted at Tokyo Korea Cultural Center (the Korean Herald, Mar 26, 2015)  
<http://www.koreaherald.com/view.php?ud=20150326001044>

<sup>13</sup> Japanese police arrest 2 men suspected of shooting up a pro-North Korean compound (BUSINESS INSIDER, 23 FEBRUARY 2018) <https://www.businessinsider.com/japanese-police-arrest-2-suspected-of-shooting-pro-north-korean-compound-2018-2>

<sup>14</sup> Man, 51, fined for racist tweets against ethnic Korean woman(The Asahi Shimbun, December 28, 2019, <http://www.asahi.com/ajw/articles/13056030>)



In November 2019, the former senior member of “Zaitokukai” was fined 500,000 JPY for the crime of defamation concerning a discriminatory street propaganda activity in front of a Korean school in Kyoto<sup>15</sup>.

In January 2020, several threats such as “massacre of ethnic Korean residents” and “explosion of the facility” were sent to a public facility in Kawasaki city aimed for cultural exchanges between Japanese and foreign residents<sup>16</sup>. The perpetrator was arrested in July 2020.

In February 2020, a person, who put a number of fliers on electric polls in Kyoto saying “infected Chinese, don’t come to Japan”, was arrested for the violation of Kyoto City Ordinance on Public Space Advertisement.

In March 2020, letters saying “Chinese are germs, garbage, devil” were sent to several shops in China Town in Yokohama. Perpetrator is not identified<sup>17</sup>.

There are a number of cases of hate crimes that do not result in arrest of perpetrators or trials. For example, since 2002, students of Korean schools have increasingly stopped wearing their ethnic school uniforms outside the school from the fear of being a target of hate speech and hate crimes. Cases of physical assault or bodily injury were reported by Korean students to the police, but few resulted in arrest of perpetrators.

Ethnic Korean residents, especially women, who protest against hate speech are often facing a large number of intimidations, defamation and contempt, in both online and offline. However, even when complaints are lodged on those cases, the police are reluctant to take any action and almost all victims have to drop the matter after all. Many have stopped using the internet.

##### **5. Prepared by Japan Network towards Human Rights Legislation for Non-Japanese Nationals & Ethnic Minorities**

---

<sup>15</sup> Former senior member of Zaitokukai fined ¥500,000, but escapes prison term over anti-Korean hate speech (the Japan Times, November 30, 2019) <https://www.japantimes.co.jp/news/2019/11/30/national/crime-legal/zaitokukai-fine-prison-anti-korea-hate-speech/>

<sup>16</sup> New Year's card threatening to 'massacre' Korean residents sent to Kawasaki facility (the Mainichi, January 24, 2020), <https://mainichi.jp/english/articles/20200124/p2a/00m/0na/011000c>

<sup>17</sup> Racist letters sent to Yokohama Chinatown restaurants amid Japan coronavirus fears (the Mainichi, March 7, 2020), <https://mainichi.jp/english/articles/20200307/p2a/00m/0na/004000c>



**1. Related paras and articles:** LOIPR para 6, Non-discrimination and prohibition of advocacy of national, racial or religious hatred (arts. 2, 20 and 26)

**2. Issues:** Elimination of Buraku discrimination

**3. Suggested recommendations:**

- 1) State party is recommended to revise the Act on the Promotion of the Elimination of Buraku Discrimination to include provisions that prohibit discrimination and provide punishment for the act of discrimination
- 2) State party is recommended to recognise that Buraku discrimination is based on descent.
- 3) State party is recommended to take all measures to solve the Buraku problem including through provision of sufficient budget, improvement of consultation service at local authorities, and increasing the quality of education and awareness raising measures.

**4. Background:**

1) Based on the Act on the Promotion of the Elimination of Buraku Discrimination, article 6, the Government of Japan has carried out a study on the actual situation of Buraku discrimination, for which an outcome report was published in 2020. The report in its conclusion points out that “[a]lthough certain progress is made in the promotion of correct understanding among population about Buraku discrimination, prejudice and discriminatory attitude still remains. There is a possibility that these prejudice and attitude are contributing to the discrimination in marriage and relationship. Furthermore, one of the characteristics of the increasing discrimination in the Internet is that certain websites are focusing on the provision of information that assist identification of Buraku people, including location of Buraku districts, as well as slanders and libels against them.” Perpetrators are knowingly committing these acts of discrimination and ignoring the government’s request for the deletion of such information from the websites, and therefore any educational or awareness raising measures are ineffective against them. The only way that is currently available and possible for the victims to address the issue is to file a case and go through court procedure. However, it requires a lot of time and costs, whereby the victims have to bear heavy burden and psychological suffering. Therefore, provisions that prohibit discrimination and set out punishment are necessary.

2) It is the first time that the Government of Japan officially used the term “the Dowa Issue (discrimination against the Burakumin)” (CCPR/C/JPN/7, para 19). So far, the government has failed to clearly define who the Burakumin is. However, in the outcome report of the abovementioned study provides a definition of Buraku discrimination as “Dowa issue is a human rights problem particular in our country, whereby a particular group of Japanese nationals have been, for a long time, forced to be in a economically and socially inferior position due to the class discrimination system established in the historical process in Japanese society and discriminated against in daily life, e.g. at the time of employment or marriage, because of the fact that they are from Dowa districts, where Buraku people were forced to reside”. Therefore, it is clearly a form of discrimination based on descent and should be properly and officially recognised as such by the Government of Japan.

3) Articles 4 and 5 of the Act on the Promotion of the Elimination of Buraku Discrimination deals with consulting services, education and awareness raising. The report of the abovementioned study made it clear that consulting services provided by the national government are not really functioning but majority of the services are provided by local authorities/ municipalities. Similarly, with regard to the educational and awareness raising measures, much more efforts are made by local authorities/ municipalities than the national government. Provision of specific budget to local authorities/ municipalities was stopped after the completion of the special measures act in 2002, and the municipalities are facing financial difficulties. Therefore, the Government of Japan should provide sufficient budget, build capacity of officers of the local authorities who provide consulting services, and increase the quality of education and awareness raising measures in order to comprehensively eliminate Buraku discrimination.

**5. Prepared by:** Buraku Liberation League

1. **Related paras and articles:** LOIPR para 10, gender-based violence and domestic violence Articles 2, 3, 24, and 26
2. **Issues:** The absence of protective/assistive measures for minority women (including migrant women) domestic violence victims and residence status (visa) guarantees

### 3. Suggested Recommendations:

- The State party is recommended to conduct national-level research/investigations into the current realities of domestic violence against minority women including migrant women, and implement protective and assistive measures based on those results.
- The State party is recommended to revise the system that gives rise to the precarious residence status (visa) standings of migrant women (including the procedures to revoke a spouse's [e.g., a victim of domestic violence] residence status stipulated in Section I, Article 22-4 of the Immigration Control Act) so that migrant women domestic violence victims can escape and receive public protection and assistance.

### 4. The Current Situation (after the previous concluding observations (CCPR/C/JPN/CO/6) in August 2014)

In the previous concluding observations, regarding violence and domestic violence against minorities such as migrant women and same-sex couples, it was recommended that the realities-on-the-ground be fully investigated, and that there be improved access to necessary protections for victims including the guarantee of residence status to migrant women victims (Para. 10 CCPR/C/JPN/CO/6).

However, since August 2014, such investigations necessary for drafting measures for domestic violence and violence against minority women including migrant women, have not even been conducted/publicized, and no new measures have been taken to address violence against migrant women.

It is known that due to their vulnerabilities, minority women including migrant women are subject to high risks of violence. Even in Japan, when looking at data on the number of people receiving temporary protection from domestic violence as well as the population ratio of foreign national women to Japanese national women, it has become clear that migrant women are given protection at close to five times the rate of Japanese national women. Although the Act on the Prevention of Spousal Violence and the Protection of Victims claims to “respect their [victims'] human rights regardless of their nationality” (Article 23[1]), no national minimum standard exists on concrete policy measures to realize this. Even funding for the provision of basic assistance such as language interpretation is not guaranteed by the national government and is left up to the efforts of individual local governments, and with the exception of a portion of progressive localities, the implementation of assistive measures for migrant women victims has been lagging.

Following the concluding observations (CCPR/C/JPN/CO/6) of 2014 regarding the guarantee of residence status to migrant women domestic violence victims, the same recommendation has been echoed by CEDAW (CEDAW/C/JPN/CO/7-8) and CERD (CERD/C/JPN/CO/7-9 and CERD/C/JPN/CO/10-11).

In particular, in its 2014 Concluding Observations (CERD/C/JPN/CO/7-9), CERD specifically noted its concern over the impact that the procedures allowed under the revised Immigration Control Act to revoke a spouse's residence status would have on women who are subject to domestic violence, and issued a recommendation for improvement, stating that it “is particularly concerned that, under the provisions of the revised Immigration Control and Refugee Recognition Act of 2012, the authorities may revoke the residence status of foreign women who have been married to a Japanese national or a foreigner with a permanent residency status if such foreign women ‘fail to continue to engage in activities as spouse while residing in Japan for more than six months’, as provided under Section I, Article 22-4 of the Immigration Control Act” (para. 17).

The problem with procedures allowing for the revocation of a spouse's residence status is that – despite the limited actual cases of such revocations (19 cases in 2017; 24 cases in 2018) – the mere

possibility itself places fear in the hearts of the many migrant women who reside with a residence status for a spouse of a Japanese national or a permanent resident and are at risk of being subject to such revocations, and gives rise to hesitation to escape from the harms of domestic violence, thereby further compounding their suffering.

Moreover, the Japanese government has stated that domestic violence victims are exempt from this residence status revocation procedure, but notices about this exemption have not been circulated among those who need this information. In addition, it is difficult for these individuals to explain their situations to immigration authorities. Therefore, NGOs report cases in which a victim's residence status was revoked even though the individual was married, had suffered domestic violence, and was abandoned. Although this revocation procedure requires that authorities conduct hearings on the affected individual's views prior to revocation, information on how these hearings are conducted has not been disclosed at all.

Additionally, in recent years, there has been a rapid increase in reports concerning cases in which the spouses and children of migrants who enter Japan with work-related residence statuses (i.e., visas), enter Japan with a "dependent" residence status, and while living in Japan, are subject to domestic violence by their spouses (number of registered foreign nationals with the "dependent" residence status: 201,423 [December 2019, Ministry of Justice figures]). However, even if one is subject to domestic violence because of the precarious nature of one's "dependent" residence status which entails dependence on one's spouse, there are many instances in which access to mid- to long-term social welfare assistance after temporary protection is not available, resulting in the non-receipt of public protections or assistance. Because of the precarious nature of their residence status, these individuals fall completely outside of the framework of public assistance for victims, just like in cases of domestic violence among couples awaiting refugee recognition application results. In this way, to improve this situation in which migrant women fall through the cracks of public protection and assistance because of their precarious residence status, revisions to residence status and relevant welfare provisions are necessary so that residence status is guaranteed to women subject to domestic violence and public assistance and protections for domestic violence are obtainable regardless of residence status.

**5. Prepared by:** Solidarity Network with Migrants Japan (SMJ)

**1. Related paras and articles:** LOIPR para 19, Trafficking in Persons (Article 8, Prohibition of slavery, Forced Labour, Trafficking in Persons)

**<Para 19 (a) Enhance victim identification procedures, particularly with regard to victims of forced labour >**

**2. Issues:**

Failure to enhance identification procedures of victims of labour exploitation  
Failure to identify victims of labour exploitation

**3. Suggested recommendations:**

- 1) State party is recommended to establish a division in the Ministry of Health, Labour, and Welfare that deals with human trafficking. Deploy officials to deal with human trafficking in every Labour Standards Inspection Office.
- 2) State party is recommended to provide training – specifically on human trafficking – to all labour standards inspectors.
- 3) State party is recommended to develop and implement measures to protect and support human trafficking victims of labour exploitation.

**4. Background:**

Paragraph 157 of the Government Report mentions its Action Plan and its Council for the Promotion of Measures to Combat Trafficking in Persons; however, it does not answer the question in the LOI.

Paragraph 158 of the Government Report does not mention any enhancements in victim identification procedures.

Paragraph 158 of the Government Report mentions “Methods to Deal with Trafficking in Persons (Measures for Identification of Victims)” in which points for the identification of victims are listed regarding actions, means, and purposes of human trafficking. However, they are merely terminological explanations of the Human Trafficking Protocol in Article 3, and do not offer concrete measures. These “Methods” mention the responses to human trafficking cases that “labour-related administrative agencies” should take, and regarding victim identification, it states: “(a) Response at each contact point: If a Labor Standards Inspection Office or other labor-related administrative agency receives a request for consultation or protection from a trafficking victim or a related person, it should positively and appropriately respond to the request. (b) Discovery of a victim during the control process: Efforts should be made to discover trafficking in persons during the process of controlling foreigners’ violation of the Labor Standards Act.” However, no further direction is provided, so it lacks specificity.

Although Annex 7 (1) (ii) in the government’s report states that adequate training is provided to labour standards inspectors, the actual extent to which such training is provided is questionable as there is no division or officer established in the Ministry of Health, Labour, and Welfare or Labour Standards Inspection Office that specifically deals with human trafficking.

There have been no trafficking victims identified by the Labour Standards Inspection Office. There are some trafficking victims of labour exploitation identified by the Police and Immigration agencies, but very few. (There were zero in 2019, 2 in 2018 [a host and a worker in a massage parlour], 3 in 2017 [a street vendor, a restaurant worker, and a guest house worker], 4 in 2016 [2 utility workers, 1 construction worker, and 1 unknown], and 7 in 2015)

Thus, it is certain that the identification procedures for victims of labour exploitation have not been enhanced.

Incidentally, the aforementioned “Methods to Deal with Trafficking in Persons” states that labour related administrative agencies should respond in the following way: “(c) Protection of victims: When a labor-related administrative agency identifies a trafficking victim, because the victim is highly likely to be harmed by a violent employer, broker, et al., the agency should notify

the police and the Immigration Bureau and cooperate with relevant administrative agencies to take appropriate measures for protecting the victim, if needed.” However, the Japanese Government does not provide any specific measures for protection or support for trafficking victims of labour exploitation.

**“(b) Provide specialized training to relevant officials”**

**2. Issues:**

- Non-disclosure of the number of participants in, and the contents of such specialized training
- Failure to execute specialized training for prosecutors, judges, and officials of women’s consultation centers and child consultation centers

**3. Suggested recommendations:**

- 1) State party is recommended to provide specialized training to a larger number of officials including prosecutors, judges, and officials of women’s consultation centers and child consultation centers.
- 2) State party is recommended to publicize the details of specialized training (hours, number of sessions, details on the lecturers, handouts, method of implementation) and require the invitation of NGO personnel as lecturers.

**4. Background:**

Paragraph 159 of the Government Report asserts that they provide training to officials of 5 ministries/agencies. However, only 23 participated in specialized training at the Immigration Services Agency, and the numbers are not disclosed for the other ministries and agencies. Detailed information on specialized training (hours, number of sessions, details on the lecturers, handouts, method of implementation) is not disclosed, and it is unknown whether or not the training is effective for the identification and protection of trafficking victims. As for specialized training for labour standards inspectors, a frontline inspector could not confirm its implementation.

Moreover, there is no specialized training provided for prosecutors, judges, and officials of women’s consultation centers and child consultation centers. These service providers should be trained, not only to realize adequate protection and support for victims, but also to punish perpetrators with penalties commensurate with the seriousness of the acts committed.

**“(c) Investigate, prosecute and punish perpetrators with penalties commensurate with the seriousness of the acts committed (please provide relevant statistics on investigations, prosecutions, convictions and sanctions imposed since July 2014)”**

**2. Issues:**

- Unsatisfactory provision of legislation in accordance with the definition of trafficking in the Trafficking Protocol
- Non-disclosure and underutilization of the “Handbook on Measures against Trafficking in Persons”
- Failure to punish perpetrators with penalties commensurate with the seriousness of the acts committed and failure to report sufficient statistics on sentences and penalties

**3. Suggested recommendations:**

- 1) State party is recommended to provide a law that ensures a crackdown on all cases involving “the abuse of power or of a position of vulnerability” as defined in the Trafficking Protocol.
- 2) State party is recommended to utilize sufficiently the government-produced handbook when investigating and arresting perpetrators of human trafficking cases. Disclose the contents of the

handbook as much as possible.

3) State party is recommended to make the penalties for trafficking perpetrators commensurate with the seriousness of the acts committed, and to abolish sentences with suspended terms or fines only, and impose actual prison sentences.

#### **4. Background:**

1) Although paragraph 160 of the Government Report claims that “all of the acts that constitute trafficking in persons as defined in the Protocol are considered crimes in Japan”, there is ample evidence that suggests otherwise. For example, in the Protocol, the means of trafficking include “the abuse of power or of a position of vulnerability,” but in Japan, it is unclear which penal statute criminalizes such abuse. Although there is no indication that this ambiguity was addressed and discussed in detail when revisions were made to the Penal Code in 2005, such abuse seems to fall under the category of “intimidation” – which already existed in the Penal Code prior to the amendment, hence suggesting that the new provision is unnecessary. “Intimidation” is defined in Article 222 of the Penal Code as “a threat of harm to one’s own life, body, liberty, reputation or property or the same for one’s relatives.” Foreign workers in Japan suffer from slave-like exploitation due to the double bind of “debt borne in the home country” and “threat of forced repatriation.” Is this considered “intimidation”? Under the legality principle, the elements of a crime should be strictly interpreted, so this remains an open question. The reason why there are few arrests for labour trafficking in Japan may lie in the fact that “abuse of power or of a position of vulnerability” is actually not criminalized.

2) Paragraph 161 of the Government Report says that they “produced the “Handbook on Measures against Trafficking in Persons,” which summarizes information such as the laws applicable to trafficking in persons and specific examples of the application of these laws and that “it is actively utilized by the police, the ISA, the Public Prosecutor’s Office, the Labour Standards Inspection Offices, and the JCG in conducting investigations and other activities.” However, the content of the Handbook is unknown. The government (police), in response to NGOs’ questions regarding how they identify human trafficking victims, have always said that they “judge individually and comprehensively in accordance with the definition by the Protocol Article 3, and based on the subject person’s nationality, reason of entry in Japan, status of residence, working situation, age, debt in the home country, living condition, etc.” (Oct. 21, 2016) and have never clearly stated that they refer to the Handbook. If this Handbook contains the applicable laws and examples of application, they should disclose the contents of the Handbook as much as possible and explain what laws can be applied and what examples there are, especially to answer the question raised in 1) above.

3) Although being asked to provide relevant statistics “since July 2014”, paragraph 163 of the Government Report provides statistics only for 2018. Furthermore, the number of actual prison sentences is cleverly obscured. In reality, in 2018, of the 29 suspects found guilty, only 10 were sentenced to actual prison terms, 17 were sentenced to suspended terms, and 2 were only fined. By way of comparison, in 2019, there were 32 indictments, 23 of which were confirmed guilty (only 5 in prison, 17 with suspended terms, and 1 who only received a fine) with 9 pending trial.

In addition, there is the question of whether the lengths of prison terms are “commensurate with the seriousness of the acts committed.” (According to the US Department of State’s “Trafficking in Persons Report”, a prison term of at least 4 years is recommended.)

In 2018, as reported by the government, the average of the 10 prison sentences was 2 years and 9 months. As for the 17 suspended sentences – of which very few were revoked and changed to imprisonment – perpetrators served approximately 18-month sentences in most cases. In 2019, because the 5 cases of actual prison sentences included 2 individuals who were sentenced to 10 and 8 years, the average increased to 4 years and 7 months. The suspended sentences ranged from 1 to

3 years in prison. Furthermore, perpetrators usually do not serve full terms and are released from prison earlier. Therefore, it is questionable that the extent of punishment for perpetrators is commensurate.

**“(d) Ensure effective victim protection and support measures, including adequate interpretation services and legal support for claiming compensation”**

## **2. Issues:**

- Non-implementation of training for interpreters to further understand human trafficking
- Lack of quality interpretation services that governmental bodies (other than the police and immigration offices) and private support organizations can use
- Lack of public dissemination of available legal support services
- Lack of any merit for the victims who utilize the legal (financial) aid system and restitution order system (because of the inability to accurately ascertain the situation of the perpetrators' assets)
- Lack of support measures for victims who hope to live and work in Japan

## **3. Suggested recommendations:**

- 1) State party is recommended to implement training for interpreters to further understand human trafficking. Set up quality interpretation services that the governmental bodies (other than the police and immigration offices) and private support organizations can use.
- 2) State party is recommended to publicly disseminate information about available legal support services. Establish a system that allows victims to easily and accurately collect information on perpetrators' assets or confiscate the proceeds from their crimes and use them to fund restorations for victims' damages.
- 3) State party is recommended to establish a support system for victims who hope to live and work in Japan.

## **4. Background:**

The “Methods to Deal with Trafficking in Persons (Measures for Protection of Victims)” that are referred to in paragraph 164 of the Government Report mentions to a certain extent the points of attention and measures for protecting victims. However, regarding “assistance with multiple languages”, although the immigration and police agencies secure interpreters, their quality is not necessarily guaranteed. Furthermore, there is no system for other governmental agencies and private support organizations to secure and use quality interpreters.

Victims are not even adequately informed of the available “legal aid” that is mentioned in Annex 7 (2) (i) and (iv) of the Government Report. In addition, the situation of the actual usage of the “civil legal aid system” (Annex 7(2)(i)) is unknown. Because it is difficult for victims to both go to lawyers and ascertain the perpetrators' assets, it appears that this system is rarely used in practice. Furthermore, the “restitution order system” (Annex 7 (2)(iv)) is limited in terms of the crimes for which it can be used, and is not available when the perpetrator is charged with violating the Anti-Prostitution Act, the Child Prostitution and Child Pornography Prohibition Act, the Child Welfare Act, the Immigration Control Act, the Employment Security Act, or the Labour Standards Act. Even if the court issues a restitution order, there is no special system to ensure its execution. It is impossible to ensure the execution of the order without grasping the situation of a perpetrator's assets, even through general compulsory execution. NGOs argue that the government should establish a system in which the proceeds obtained through a crime are confiscated from the perpetrator and used to compensate the victim, but the government has not considered this.

Even though there are support measures for victims who want to return home, there are no support measures available for victims who hope to stay and work in Japan.

## **5. Prepared by: JNATIP, Japan Network Against Trafficking In Persons**



- 1. Related paras and articles:** LOIPR para. 20 - Technical Intern Training (Article 8)
- 2. Issues:** Effective Improvement Measures for the Technical Intern Training Program (TITP)
- 3. Suggested Recommendations:**

Despite the 2009 revision to the Immigration Control Act and the establishment of the Technical Intern Training Act in 2016, there have not been fundamental improvements to human rights violations in the Technical Intern Training Program (TITP). Given the fact that it has evolved into a system to address labor shortages instead of “international cooperation through the transfer of technical knowledge and skills,” it is imperative that serious consideration is given to establish a new foreign worker admission system that ensures that foreign workers are not subject to heavy debt burdens and the threat of forced return against their will, and are fully guaranteed all their rights as workers, including the freedom to change jobs.

#### **4. Background:**

##### **1) The Current Situation of the Technical Intern Training Program (TITP)**

According to the Statistics on Foreign National Residents, there were 2,933,137 foreign nationals (2.3% of the total population) living in Japan at the end of 2019, with permanent residents composing the largest group at 793,000, followed by technical intern trainees at 411,000. Although in 2019, the number of technical intern trainees increased by 83,000, by the end of March 2020, there were only 3,987 foreign nationals with the “Specialized Skills” residence status which was newly established in April of the same year to alleviate labor shortages. Furthermore, of the foreign nationals with this “Specialized Skills” residence status, 90% are former technical intern trainees who transferred from that Program, indicating that the “Specialized Skills” residence status is largely dependent on the Technical Intern and Training Program (TITP). On the other hand, since July 2010, the “Trainee” residence status has continued to be used specifically for official (i.e., government-sponsored) training and training that is strictly off-the-job, so the transfer of technical skills, etc. should be fulfilled through this “Trainee” residence status.

##### **2) Fundamental Problems with the Technical Intern and Training Program (TITP)**

There are three fundamental problems with the Technical Intern Training Program (TITP): no freedom to change jobs, exorbitant debt, and forced return.

In other words, because the TITP’s objective is the transfer of technical skills, etc., technical intern trainees do not have the freedom to change jobs, and are required to continue and complete their on-the-job training at the same company. Additionally, before coming to Japan, many have taken out loans amounting to several years’ worth of salary to pay for exorbitant fees that they are told are necessary for processing, training, and traveling fees. Because of this, if they were to return to their home countries before completing their technical intern training contract, they would be left with exorbitant debt. In order to avoid this, they have no other choice but to continue working even if there are problems with their working conditions, living environments, etc. within Japan. It is not uncommon for technical intern trainees to endure debt servitude-like conditions. Furthermore, when technical intern trainees muster up the courage to assert their rights against illegal working conditions and poor living environments, forced return – or the repatriation of technical intern trainees to their home countries in mid-contract against their will – is often used as an everyday deterrent by personnel in the supervising and sending organizations.

These are the fundamental reasons underpinning the poor working conditions and human rights violations in this Program. As a result, low pay, unpaid wages, unjust deductions for rent and utilities, and the prohibition of pregnancies, are among the various instances of restrictions, physical and verbal abuse, power harassment, sexual harassment and sexual violence, etc. that technical intern trainees experience in their daily private lives.

Furthermore, while the Technical Intern Training Act stipulates that supervising organizations – who supervise the technical training and are at the core of the TITP – cannot collect fees and earnings from technical intern trainees or implementing organizations, supervising fees to cover expenses can be collected from those implementing organizations. It is common for these supervising fees to amount to

¥30,000 to ¥50,000 per technical intern trainee, and because this poses increased financial burdens on these implementing organizations, there have been cases in which these costs have been “passed on” to technical intern trainees through low pay and unpaid wages, unjust deductions for rent and utilities, etc. As a result of this, in practice, it is the supervising organizations – which are technically nonprofit corporations – that benefit the most from the TITP.

Furthermore, in recent years, even large enterprises have come to utilize the TITP and have caused problems. In January 2019, Mitsubishi Motors Corporation was issued an order for improvement as well as an accreditation revocation of its technical intern training plan, and in September of the same year, Hitachi, Ltd. was also issued an order for improvement. Both cases involved the engagement of technical intern trainees in activities outside of the occupations approved for technical training, indicating that abuse of the Program has extended to large enterprises.

Moreover, it has also become clear that the main reason behind the disappearances (i.e., “running away”) of technical intern trainees is poor working conditions. Even in the report released in March 2019 by the Ministry of Justice’s “Technical Intern Training Program Operation Project Team,” “violations in overtime work hours, etc.,” “unpaid overtime wages,” “excess deductions from wages,” “minimum wage violations,” etc. are raised as the main reasons for disappearances.

However, the various regulatory measures implemented in line with the Technical Intern Training Act, only go as far as to address issues that surface and become visible but cannot address the problem at the core. It has been close to three years since the implementation of the Technical Intern Training Act, but there are absolutely no signs that there will be any improvements to the Program.

### **3) Fact Checking of the Japanese Government’s Report (LOI para. 20)**

#### **(a) On Forced Return**

In the Government’s report, regarding forced returns, it is asserted that “it is possible to know of these acts beforehand.” However, in Article 19 and Article 33 of the Technical Intern Training Act, it is stipulated that “when it becomes difficult to carry on technical intern training [a notice should be given] without delay,” but nowhere is it stipulated that this must be done “beforehand.” Additionally, these stipulations are simply about reporting difficulties in carrying out technical intern training and are not about forced return. Furthermore, because it is the supervising organizations who are not only the entities who report such violations, but also often the entities involved in forced return, it is unthinkable that any of these organizations would list “forced return” as the reason for return to one’s home country. Therefore, the assertion that it is possible to become aware of forced returns beforehand, is simply a false claim.

Although, to check for forced returns, a “Verification of Will” government form is issued at air and seaports to technical intern trainees returning home in mid-contract, of the over 20,000 individuals who returned home in mid-contract during the two years since this check began in September 2016, there have only been 36 technical intern trainees who have claimed forced return, and there has not been a single case in which forced return was recognized. This check carried out through the “Verification of Will” form has not been an effective measure. Moreover, the disclosure of such data has ceased since 2019.

Incidentally, the supervising organizations, the resident staff of sending organizations in Japan, etc. possess various means of preventing technical intern trainees returning home in mid-contract from claiming that they are being forcefully returned. These include convincing technical intern trainees not to object to forced return by agreeing to waive much of the exorbitant debt accrued from fees; making them sign forms that state they are returning by their own volition; trying to make it difficult for them to return to Japan by telling them to do things like temporarily return to their home country to discuss matters with their families; etc.

#### **(b) Regarding Low Wages**

In the Japanese government’s report, it is stipulated that technical intern trainees are to receive wages that are equal to or above those of Japanese nationals, and this is also explicated in the Technical Intern Training Act. This was also stipulated in the ministerial ordinance for landings, even before the promulgation and implementation of the Technical Intern Training Act, but these guidelines have not been effective at all, and the realities in which technical intern trainees were being paid less than their Japanese counterparts, have not seen improvements even after the implementation of the Technical Intern Training Act.

The first study into the wages of foreign workers was conducted in fiscal year 2019, and found that while the average monthly wage for foreign workers (overall) was ¥223,100, for technical intern trainees

it was much lower at ¥156,900; and looking at their hourly wages, the amount was lower than that of the part-time wages of international students. The government's judgment in recognizing this as "equal to or above the wages of Japanese nationals" should be questioned.

**(c) (d) The Number of Inspections**

In fiscal year 2018, the Organization for Technical Intern Training (OTIT) conducted 7,886 inspections on implementing organizations and 2,483 inspections on supervising organizations. At the end of the same fiscal year, the number of implementing organizations was close to 50,000; so at this rate, it is hard to imagine that the OTIT will be able to fulfill its goal of conducting inspections once every three years. On the other hand, during the same period, the number of supervising organizations was close to 2,500, and the goal of conducting inspections once every year has almost been reached. Moreover, by June 2020, the number of cases involving permission revocations against supervising organizations was 8, and there was 1 case involving an order for improvement. By the same month, permission revocations against implementing organizations totaled 42 companies (585 cases), and there were 3 cases involving orders for improvement. Many of the legal violations pointed out are done so in the form of "directives," and administrative punishments such as revocations and orders are still not sufficient.

**(e) Complaints Filed by Technical Intern Trainees**

The number of complaints by technical intern trainees submitted to the OTIT in fiscal year 2018 was 90. Given that there were over 320,000 technical intern trainees at the end of 2018, the number of filed complaints is markedly small, and it is difficult to conclude that the complaint filing procedures are functioning as sufficient checks on the TITP.

**5. Prepared by: Solidarity Network with Migrants Japan (SMJ)**

**1. Related paras and articles:** LOIPR para 21, Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 10 and 13)

Government's report: Paragraphs 178 to 180, and 183, detention of asylum seekers

Paragraph 189, deportation of asylum seekers

Paragraph 194, prolonged periods of immigration detention

Paragraph 195, proper recognition of refugee status for a person eligible for refugee status

**2. Issues:**

- Government's reluctance on refugee recognition
- Government's move for law reform against the principle of non-refoulement
- Detention of a person with procedures for refugee protection pending
- Arbitrary immigration detention of undocumented immigrants

**3. Suggested Recommendations:**

- No asylum seeker shall be deported without due process and consideration by an independent body that upholds fair standards consistent with the opinions of the UN High Commissioner for Refugees (UNHCR).
- Ill-treatment of detainees during deportation procedures shall be prohibited; the Immigration Facilities Visiting Committee should be empowered and its independence should be ensured.
- Examination of permission to stay for undocumented immigrants should be performed with due considerations of human rights and humanitarian grounds and with due process including the notification of reasonings for rejection.
- Undocumented immigrants shall not be treated as criminals or anti-social entities nor be seen as targets of sequestering for security purposes.

**4. The Current Situation** (after the previous concluding observations in August 2014) :

- While Paragraph 195 states that, "... the Government...properly identify people who should be recognized as refugees", the Immigration Control Agency in charge of refugee status determination (RSD), however, is reluctant on refugee protection; the refugee recognition rate is unreasonably low, compared to most of the Treaty countries. (Exhibit 1)
- While Paragraph 189 states that, "Under the Immigration Control Act, deportation is suspended even for persons to whom a written deportation order has been issued during the process of an application for recognition of refugee status or of a request for review", in several cases, the refugee division of the Immigration Control agency coordinated with the division in charge of deportation on the notification date of the rejection of refugee status, and enforced their deportations on the same day.

Moreover, since September 2015, the Ministry of Justice has been trying to create exceptions for the suspension of deportation while one's RSD process is pending, and has convened a non-statutory, non-independent "Expert Group" in September 2019. The Minister of Justice will consider detainees and parolees (including many refugee status applicants) who have been issued a deportation order and have not returned on their own accord. The Minister of Justice labeled the detainees and persons under the provisional release (including many applicants for refugee status) who had been issued a writ of deportation order and refused to return to their country of origin as "deportation evaders", and explained that "deportation evaders in immigration detention should not be released for the sake of security", and distributed documents containing statistics on the

arrest records of persons under provisional release to the committee members while further making this information available on the website (without mentioning whether the individual had actually been prosecuted). In June 2020, the members of the Expert Committee formulated a set of recommendations, including the creation of an offence to punish deportation evaders and a policy to partially lift the suspension of deportation while the RSD process is pending (hereinafter, the "Recommendations"). The Ministry of Justice intends to amend the law on the basis of these Recommendations.

- Paragraphs 178-180 state that " Applicants for recognition of refugee status staying legally in Japan at the time of application are not detained. An applicant for recognition of refugee status without status of residence is granted permission for provisional stay and not detained unless he/she is recognized as falling under certain grounds such as a case where he/she is likely to flee". The Ministry of Justice, however, has overextended the scope of the "likely to flee". Of the 133 people who applied for refugee status at a port of entry in 2017, none were granted provisional permission to stay. 115 persons were rejected provisional stay, of which 100 cases were rejected on the ground of "likely to flee".

Additionally, although the government report does not mention it, when a person without legal residence status applies for refugee status before the issuance of a written deportation order and is not granted permission for provisional stay, he or she is issued a tentative written deportation order (with his/her country of origin as the designated country of deportation), but the execution of his or her deportation is automatically suspended, and his or her RSD process continues, during which the Immigration Control authorities put him or her in immigration detention as a matter of principle. Therefore, a large number of persons whose RSD procedures are pending are being detained indefinitely.

- Paragraphs 180 and 194 state that "to people for whom particular humanitarian considerations are needed," or "(w)hen there are unavoidable circumstances such as a detainee getting sick," "maximum consideration is given" "by flexible implementation of provisional release".

There is, however, no judicial involvement in the disposition regarding immigration detention and provisional release, and the immigration control authorities do not give reasons for the disposition. Furthermore, since around 2018, the system has been rigidly operating with no provisional release except for those with serious illnesses that could not withstand the detention. The period of immigration detention rapidly lengthened; for example, of the 316 detainees in the detention center in Ibaraki Prefecture, at the end of June 2019, 180 had been detained for more than two years (about half were subsequently released due to the novel coronavirus). The Ministry of Justice has no intention of legally codifying a time limit for immigration detention, which is also denied in the aforementioned "Recommendations" of the Expert Committee.

In addition, since 2015, the Immigration Control authorities have specified a condition prohibiting "occupation, activities with remuneration" when granting provisional release, and detained those who breached the condition. Those under provisional release are also excluded from social security benefits. In particular, as for the novel coronavirus (COVID-19), except for medical expenses for infected persons, public assistance to deal with the novel coronavirus excludes those under provisional release, and as a result, they are in a dire situation.

- While Paragraph 183 states that the Government is making its utmost efforts to thoroughly ascertain the health conditions of the detainees in immigration detention facilities, the Immigration Facilities Visiting Committee has repeatedly requested, for example, the detention center in Ibaraki, to reduce the time between a request for medical attention and the receipt of medical treatment, but no improvement has been confirmed. Other serious cases of unfair treatment have continued, as shown in Exhibit 2.

- The Japanese government has never implemented a collective regularization of undocumented migrants and has no intention to do so.
- As for the "special permission to stay" system, which allows regularization of individual undocumented migrants, no reasons for rejections are given, despite the fact that laws and regulations require transparency in its implementation. In addition, the Ministry of Justice has published guidelines on the implementation of the system, encouraging those who are married to a Japanese person and those who have extended their stay to voluntarily declare their marital status, but not only are the considerations listed in the guidelines not sufficient from the standpoint of human rights and humanitarian treatment, the guidelines are also not even fully complied with, and this has led to a decline in the approval rate for special permission to stay (Exhibit 3). In some cases, the fact that a person is married to a Japanese national but has no children was considered to be a negating factor, and special permission to stay was rejected.

**5. Prepared by:** Japan Lawyers Network for Refugees

**Exhibit 1**

RSD decisions in 2019

First Instance (FI)- 4,979 persons (among them 43 persons were given refugee status.)

Administrative Review (AR) - 6,022 persons (among them 1 person was given refugee status.)

Decisions at FI by country of origin

	2019		Sum of 2006 to 2018	
	Rejected	Recognized	Rejected	Recognized
Sri Lanka	1,006	1 (after judicial review)	3,585	4
Philippines	846	0	5,414	0
Nepal	761	0	6,966	2
Turkey	436	0	4,774	0
Myanmar	382	0	5,331	214

**Exhibit 2**

Case 1. At the detention center in Ibaraki Prefecture, a male detainee, who had been held for five months, had been complaining of chest pains and other symptoms since February 2014, and received a medical examination on March 27. The detainee was then moved to a solitary confinement cell to be observed by guard(s) who were outsourced by the immigration authorities. The detainee was suffering since the night of March 29th, rolling around on the floor and repeatedly saying "I'm dying", but the guard(s) did not contact the doctor, and as a result, he was confirmed dead (from illness) the next morning.

Case 2. At the detention center located in Tokyo, on 3 June 2017, a male detainee, who was an applicant for refugee protection and had been detained for one year and two months by that time, complained of stomach pain, but was only moved to a solitary confinement cell without medical examination; and when he complained loudly about his pain late at night the same day, he was only reprimanded by a staff member for his bad attitude and was not taken to seek a medical examination. The next afternoon he was rushed to the hospital and diagnosed with peritonitis and underwent emergency surgery.

Case 3. In July 2017 at the detention center located in Osaka Prefecture, a male detainee, who was an applicant for refugee protection, became frustrated with the attitude of the guards and threw a book against the wall after which he was taken away to isolation where he was knocked down on his back by seven or eight guards, held down to the floor by his head, torso, and legs, handcuffed behind his back, held down for approximately one and a half minutes, and, as a result, suffered a broken right arm.

Case 4. On 26 April 2019, a male detainee, who was an applicant for refugee protection, complained of testicular pain in the detention center located in Ibaraki Prefecture. A physician at the detention center presumed a testicular tumor and ordered medical treatment by a specialist, but three months and 20 days passed without a specialist's consultation. The detainee in question was permitted provisional release after going on a hunger strike, during which time he was found to have testicular cancer that had metastasized and underwent quasi-urgent surgery. He had been detained for three years and three months.

Case 5. On 19 January 2019, at the detention center located in Ibaraki Prefecture, a male detainee, who was an applicant for refugee protection and had been held for two years and eight months by that time, had his hands cuffed behind his back, the painful points at the base of his neck pressed, and arms forced upward by immigration officers. Upon the detainee's complaint, the director of the detention center acknowledged the unfair treatment of the detainee, but no action was taken against the guards and no compensation was given to the detainee, and the guards continued to be in charge of the detainee. Soon after, the detainee made repeated suicide attempts.

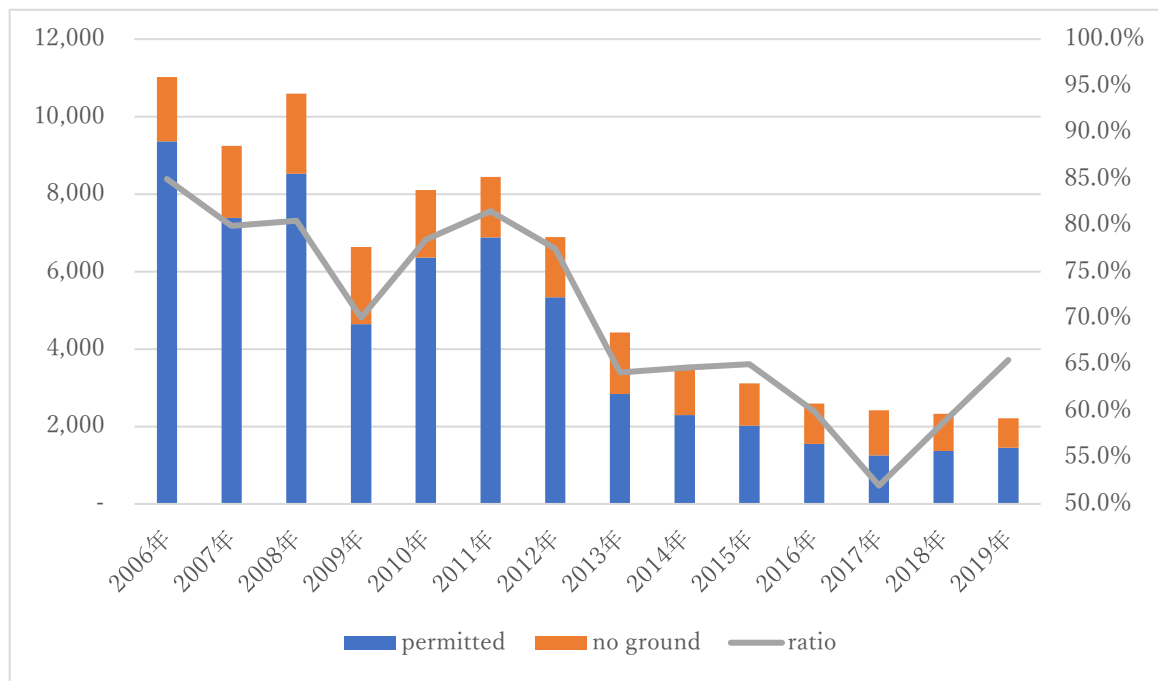
Case 6. On 25 June 2019, a male detainee who had been held for approximately two years and seven months in the detention center located in Nagasaki Prefecture died of starvation after a hunger strike, with the country of nationality and Japan unable to execute repatriation due to the inability to reach an agreement on a repatriation method. Neither medical examination nor assessment on his condition had been made by a doctor during the seven days before he starved to death. Staff at the center did not notice the imminent danger of death. In October of the same year, the Immigration and Naturalization Service (ICNES) indicated its stance that hunger strikers would be subject to compulsory medical treatment in the future.

Case 7. On 25 April 2020, at the detention center in Tokyo, dozens of security officers, including men, suppressed and segregated several female detainees (one of whom was an applicant for refugee protection who had been detained for two years and three months by that time) after they protested that the issuance of provisional release permission to combat the novel coronavirus was arbitrary. The detainees claimed that they were subjected to excessive violence and sexual insults.

Case 8. A transgender detainee at the Tokyo-based detention center, who had been held since September 2019, from the beginning of their detention to August 2020, was kept in a solitary cell for 22 hours a day, and although they were able to leave the cell for two hours to go to the common area, their free time was staggered relative to the other detainees' free time, and because of this, they could not meet with other detainees and the individual has therefore been kept in solitary confinement-like conditions. The detainee was not allowed to receive hormones from the beginning of their detention until approximately April 2020. The detainee was diagnosed with depression while in custody.

### Exhibit 3

#### Trends: Special Permission to Stay





1 **Related paras and articles:** LOIPR para 27, Article 21 (Freedom of association)

2 **Issues:**

2.1 Arbitrary deprivation of liberty of a human rights defender in Okinawa

2.2 Excessive surveillance of the protest in Okinawa

2.3 Restriction on Press

3 **Suggested recommendations:**

3.1 State party shall respect and implement the Opinion 55/2018<sup>i</sup> adopted by the United Nations Working Group on Arbitrary Detention. State Party shall conduct the independent investigation on the arbitrary deprivation of liberty of Mr. Yamashiro Hiroji, the leader of peaceful protest movement in Okinawa, and provide Mr. Yamashiro with compensations and reparations in conformity with international human rights standards without delay.

3.2 State party shall comply with Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies<sup>ii</sup> and the General Comment No. 37 on the right to peaceful assembly<sup>iii</sup>, and ensure that the private security companies do not violate the freedom of association and expression of citizens through surveillance and investigation on protesting citizens.

3.3 State party shall respect and ensure freedom of press including drone reporting and ensure citizens' access to information.

4 **Background:**

4.1 Arbitrary deprivation of liberty of a human rights defender in Okinawa

Mr. Yamashiro, the Chairperson of the Okinawa Peace Movement Center, was arrested on October 17<sup>th</sup>, 2016 for allegedly cutting two strands of barbed wire from a fence during his protest against the construction of U.S. military facility in Higashi village, Okinawa. He was then detained for five months without trial during which he was not allowed to see anyone including his family but his lawyers.

He was found guilty and sentenced to two years in prison with hard labour suspended for three years by the Naha District Court on 14 March 2018. He then appealed to the Fukuoka High Court Naha Branch, but the court upheld the verdict of the first trial and dismissed Mr. Yamashiro's appeal on 13 December 2018. He made an appeal to the Supreme Court on 19 December 2018, but his appeal was dismissed, making his sentence confirmed.

Concerning the case of Mr. Yamashiro, the UN working Group on Arbitrary Detention adopted the Opinion No.55/2018<sup>15</sup> on 27 December 2018. In its Opinion, the UN Working Group on Arbitrary Detention concluded that the deprivation of liberty of Mr. Yamashiro was arbitrary and discriminatory based on his political opinion. The Working Group also urged the Government of Japan to conduct a full and independent investigation on this case and to remedy the situation by according him an enforceable right to compensation and reparations. It has been more than a year since the Opinion was adopted, but it has not been implemented.

The arrest and prolonged detention of Mr. Yamashiro, the leader of peaceful protest movement of Okinawa, not only violates his right to peaceful assembly and freedom of expression, but also threatens the right to peaceful assembly of citizens by spreading chilling effect among them.

#### 4.2 Excessive surveillance of protests in Okinawa

In 2016, more than 500 riot police were dispatched to the Takae district of Higashi village, Okinawa Prefecture, with a population of merely 140 people, and violently remove protesting citizens from the area to proceed the construction of a U.S. military facility.<sup>iv</sup> Since then, the physical removal of protesters by the police has continued, but recently there has been a marked increase in surveillance of protesters via private security companies.

The Mainichi Shimbun Newspaper reported on 28 January 2019 that a private security company had made a list of 60 protesters in Okinawa with photos and personal information, on the request by the Okinawa Defense Bureau of the Ministry of Defense.<sup>v</sup> The existence of such a list had been known since the Okinawa Times, a local newspaper, reported it in 2016,<sup>vi</sup> but the Government had denied its involvement in its Cabinet decision in 2016. The Mainichi Shimbun obtained internal documents of the private security company and its report confirmed the Japanese government's involvement in the surveillance of the protesters. Following the coverage, the Defense Ministry conducted an internal investigation and announced on its website that "no evidence was found which indicated that the Okinawa Defense Bureau officials instructed the company to create a list or delete personal information,"<sup>vii</sup> but the details of the investigation have not been made public, nor have the security companies been interviewed.

In addition, from July 17 this year, security guards at the new Henoko base construction site began to wear small cameras on their chests, strengthening the surveillance of citizens.<sup>viii</sup>

As stated in the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, the practice of law enforcement officers recording participants has the chilling effect on the exercise of various rights, including freedom of assembly, association and expression, and needs to be regulated by law, bearing in mind the legality, necessity and proportionality.<sup>ix</sup> In Okinawa, private security companies are performing police duties and intelligence gathering, but private security companies should not be tasked with police duties at rallies in the first place. Furthermore, the Japanese government is not exempted from responsibility for the violations of human rights by non-state actors, as "[a] State can incur responsibility for violations of human rights by non-State actors if it: approves, supports or acquiesces in those acts"<sup>x</sup> and it was a private security company with a contractual relationship with the Okinawa Defense Bureau of the Ministry of Defense that collected the protesters' personal information and compiled the list in this case.

#### 4.3 Restrictions on the press

Regarding the restrictions on the press, restrictions by laws have been added to the physical interference.<sup>xi</sup> One example of them is the revision of the drone regulations law which came into effect in June 2019.

The legislative intent of the law was originally explained that the law would be for counter-terrorism measures in preparation for the Tokyo Olympics and the Rugby World Cup. However, in fact, the restrictions include the airspace over the military bases of the Japan Self Defense Forces and the U.S. Forces designated by the Ministry of Defense of Japan.

At Henoko where the land reclamation of Oura Bay has continued for constructing the new base, media outlets and civilian groups often used drone flights over the base as effective ways to monitor the progress of the construction. However, now that shooting aerial photos by drone flights over the base without the consent of the U.S. military is considered illegal by the law, it places significant limitations on monitoring by the press. Furthermore, there have been some cases where two local Okinawan newspapers are excluded from some of the media coverage opportunities by the U.S. military, but the Government of Japan has left the situation as it is.

The two Okinawa-based local newspapers have harshly criticized the U.S. military for their repeated criminal cases, aircraft and other accidents, as well as environmental issues, including noise and land pollution. The U.S. military gives a wide berth to these two newspapers and sometimes makes obvious choices reflecting the attitude in offering media coverage opportunities to media outlets. For example, the two Okinawan newspapers were also excluded from both opportunities, when the U.S. Air Force opened its aerial refueling training to five media outlets headquartered in Tokyo and Okinawa in November 2019, and also when the U.S. Marine Corps invited Tokyo-based media outlets to a meeting in July 2020 to exchange views on the COVID-19 countermeasures.

## 5 Prepared by: All Okinawa Council for Human Rights

---

<sup>i</sup> A/HRC/WGAD/2018/55

<sup>ii</sup> A/HRC/31/66

<sup>iii</sup> CCPR/C/GC/37

<sup>iv</sup> [https://imadr.org/wordpress/wp-content/uploads/2017/05/Joint-report-Targeted-attack-on-freedom-of-expression-in-Okinawa\\_27SEP2016.pdf](https://imadr.org/wordpress/wp-content/uploads/2017/05/Joint-report-Targeted-attack-on-freedom-of-expression-in-Okinawa_27SEP2016.pdf)

<sup>v</sup> The Mainichi (28 Jan 2019), Japan gov't ordered security firm to list Okinawa base demonstrators: records, available at:

<https://mainichi.jp/english/articles/20190128/p2a/00m/0na/003000c>

<sup>vi</sup> (Original source in Japanese) Okinawa Times (30 June 2016), "Purchase of the security company's list of protesters in Henoko. Citizens allege "Government's involvement", last accessed on 5 August 2016 at: <http://www.okinawatimes.co.jp/articles/-/34252>

<sup>vii</sup> <https://www.mod.go.jp/j/press/news/2019/08/09c.html>

<sup>viii</sup> (Original source in Japanese) Ryukyu Shimpo (18 July 2020) "Security guard wearing small-sized camera. Filming civilians?" last accessed on 29 July, 2020 at: <https://ryukyushimpo.jp/news/entry-1158458.html>

<sup>ix</sup> A/HRC/31/66

<sup>x</sup> Ibid, para 87.

<sup>xi</sup> [https://imadr.org/wordpress/wp-content/uploads/2016/02/Joint-submission-Violation-of-freedom-of-expression-and-peaceful-assembly-in-Okinawa\\_11Dec2015.pdf](https://imadr.org/wordpress/wp-content/uploads/2016/02/Joint-submission-Violation-of-freedom-of-expression-and-peaceful-assembly-in-Okinawa_11Dec2015.pdf)