groups, will allow the States Parties and the Committee to identify, compare and take steps to remedy forms of racial discrimination against women that may otherwise go unnoticed and unaddressed.

General Recommendation XXVI on Article 6 of the Convention (56th session, 2000)

1. The Committee on the Elimination of Racial Discrimination believes that the degree to which acts of racial discrimination and racial insults damage the injured party s perception of his/her own worth and reputation is often underestimated.

2. The Committee notifies States Parties that, in its opinion, the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, which is embodied in article 6 of the Convention, is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim whenever appropriate.

General Recommendation XXVII on Discrimination against Roma (57th session, 2000)

Having in mind the submissions from States parties to the International Convention for the Elimination of All Forms of Racial Discrimination, their periodic reports submitted under article 9 of the Convention, as well as the concluding observations adopted by the Committee in connection with the consideration of States parties periodic reports;

Having organized a thematic discussion on the issue of discrimination against Roma and received the contributions of members of the Committee, as well as contributions by experts from United Nations bodies and other treaty bodies and from regional organizations,

Having also recieved the contributions of interested non-governmental organizations, both orally during the informal meeting organized with them and through written information,

Taking into account the provisions of the Convention,

Recommends that the States parties to the Convention, taking into account their specific situations, adopt for the benefit of members of the Roma communities, *inter alia*, all or part of the following measures, as appropriate.

1. Measures of a general nature

1. To review and enact or amend legislation, as appropriate, in order to eliminate all forms of racial discrimination against Roma as against other persons or groups, in accordance with the Convention.
2. To adopt and implement national strategies and programmes and express determined political will and moral leadership, with a view to improving the situation of Roma and their protection against discrimination by State bodies, as well as by any person or organization.
3. To respect the wishes of Roma as to the designation they want to be given and the group to which they want to belong.
4. To ensure that legislation regarding citizenship and naturalization does not discriminate against members of Roma communities.
5. To take all necessary measures in order to avoid any form of discrimination against immigrants or asylum-seekers of Roma origin.
6. To take into account, in all programmes and projects planned and implemented and in all measures adopted, the situation of Roma women, who are often victims of double discrimination.
7. To take appropriate measures to secure for members of Roma communities effective remedies and to ensure that justice is fully and promptly done in cases concerning violations of their fundamental rights and freedoms.
8. To develop and encourage appropriate modalities of communication and dialogue between Roma communities and central and local authorities.
9. To endeavour, by encouraging a genuine dialogue, consultations or other appropriate means, to improve the relations between Roma communities and non-Roma communities, in particular at local levels, with a view to promoting tolerance and overcoming prejudices and negative stereotypes on both sides, to promoting efforts for adjustment and adaptation and to avoiding discrimination and ensuring that all persons fully enjoy their human rights and freedoms.
10. To acknowledge wrongs done during the Second World War to Roma communities by deportation and extermination and consider ways of compensating for them.
11. To take the necessary measures, in cooperation with civil society, and initiate projects to develop the political culture and educate the population as a whole in a spirit of non-discrimination, respect for others and tolerance, in particular concerning Roma.

2. Measures for protection against racial violence

12. To ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures for preventing racially motivated acts of violence against them; to ensure prompt action by the police, the prosecutors and the judiciary for investigating and punishing such acts; and to ensure that perpetrators, be they public officials or other persons, do not enjoy any degree of impunity.
13. To take measures to prevent the use of illegal force by the police against Roma, in particular in connection with arrest and detention.
14. To encourage appropriate arrangements for communication and dialogue between the police and Roma communities and associations, with a view to preventing conflicts based on racial prejudice and combating acts of racially motivated violence against members of these communities, as well as against other persons.
15. To encourage recruitment of members of Roma communities into the police and other law enforcement agencies.
16. To promote action in post-conflict areas, by States parties and from other responsible States or authorities in order to prevent violence against and forced displacement of members of the Roma communities.

3. Measures in the field of education

17. To support the inclusion in the school system of all children of Roma origin and to act to reduce drop-out rates, in particular among Roma girls, and, for these purposes, to cooperate actively with Roma parents, associations and local communities.
18. To prevent and avoid as much as possible the segregation of Roma students, while keeping open the possibility for bilingual or mother-tongue tuition; to this end, to endeavour to raise the quality of education in all schools and the level of achievement in schools by the minority community, to recruit school personnel from among members of Roma communities and to promote intercultural education.
19. To consider adopting measures in favour of Roma children, in cooperation with their parents, in the field of education.
20. To act with determination to eliminate any discrimination or racial harassment of Roma students.
21. To take the necessary measures to ensure a process of basic education for Roma children of travelling communities, including by admitting them temporarily to local schools, by temporary classes in their places of encampment, or by using new technologies for distance education.
22. To ensure that their programmes, projects and campaigns in the field of education take into account the disadvantaged situation of Roma girls and women.
23. To take urgent and sustained measures in training teachers, educators and assistants from among Roma students.
24. To act to improve dialogue and communication between the teaching personnel and Roma children, Roma communities and parents, using more often assistants chosen from among the Roma.
25. To ensure adequate forms and schemes of education for members of Roma communities beyond school age, in order to improve adult literacy among them.
26. To include in textbooks, at all appropriate levels, chapters about the history and culture of Roma, and encourage and support the publication and distribution of books and other print materials as well as the broadcasting of television and radio programmes, as appropriate, about their history and culture, including in languages spoken by them.

4. Measures to improve living conditions

27. To adopt or make more effective legislation prohibiting discrimination in employment and all discriminatory practices in the labour market affecting members of Roma communities, and to protect them against such practices.
28. To take special measures to promote the employment of Roma in the public administration and institutions, as well as in private companies.
29. To adopt and implement, whenever possible, at the central or local level, special measures in favour of Roma in public employment such as public contracting and other activities undertaken or funded by the Government, or training Roma in various skills and professions.
30. To develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing; to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance.
31. To act firmly against any discriminatory practices affecting Roma, mainly by local authorities and private owners, with regard to taking up residence and access to housing; to act firmly against local measures denying residence to and unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other facilities.
32. To take the necessary measures, as appropriate, for offering Roma nomadic groups or Travellers camping places for their caravans, with all necessary facilities.
33. To ensure Roma equal access to health care and social security services and to eliminate any discriminatory practices against them in this field.
34. To initiate and implement programmes and projects in the field of health for Roma, mainly women and children, having in mind their disadvantaged situation due to extreme poverty and low level of education, as well as to cultural differences; to involve Roma associations and communities and their representatives, mainly women, in designing and implementing health programmes and projects concerning Roma groups.
35. To prevent, eliminate and adequately punish any discriminatory practices concerning the access of members of the Roma communities to all places and services intended for the use of the general public, including restaurants, hotels, theatres and music halls, discotheques and others.

5. Measures in the field of the media

36. To act as appropriate for the elimination of any ideas of racial or ethnic superiority, of racial hatred and incitement to discrimination and violence against Roma in the media, in accordance with the provisions of the Convention.
37. To encourage awareness among professionals of all media of the particular responsibility to not disseminate prejudices and to avoid reporting incidents involving individual members of Roma communities in a way which blames such communities as a whole.
38. To develop educational and media campaigns to educate the public about Roma life, society and culture and the importance of building an inclusive society while respecting the human rights and the identity of the Roma.
39. To encourage and facilitate access by Roma to the media, including newspapers and television and radio programmes, the establishment of their own media, as well as the training of Roma journalists.
40. To encourage methods of self-monitoring by the media, through a code of conduct for media organizations, in order to avoid racial, discriminatory or biased language.

6. Measures concerning participation in public life

41. To take the necessary steps, including special measures, to secure equal opportunities for the participation of Roma minorities or groups in all central and local governmental bodies.
42. To develop modalities and structures of consultation with Roma political parties, associations and representatives, both at central and local levels, when considering issues and adopting decisions on matters of concern to Roma communities.
43. To involve Roma communities and associations and their representatives at the earliest stages in the development and implementation of policies and programmes affecting them and to ensure sufficient transparency about such policies and programmes.
44. To promote more awareness among members of Roma communities of the need for their more active participation in public and social life and in promoting their own interests, for instance the education of their children and their participation in professional training.
45. To organize training programmes for Roma public officials and representatives, as well as for prospective candidates to

such responsibilities, aimed at improving their political, policy-making and public administration skills.

The Committee *also recommends* that:

46. States parties include in their periodic reports, in an appropriate form, data about the Roma communities within their jurisdiction, including statistical data about Roma participation in political life and about their economic, social and cultural situation, including from a gender perspective, and information about the implementation of this general recommendation.
47. Intergovernmental organizations, in their projects of cooperation and assistance to the various States parties, as appropriate, address the situation of Roma communities and favour their economic, social and cultural advancement.
48. The High Commissioner for Human Rights consider establishing a focal point for Roma issues within the Office of the High Commissioner.

The Committee *further recommends* that:

49. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance give due consideration to the above recommendations, taking into account the place of the Roma communities among those most disadvantaged and most subject to discrimination in the contemporary world.

ANNEXE V: Full texts of the statements adopted by CERD

Statement on the human rights of the Kurdish people (54th session, 1999)

The Committee on the Elimination of Racial Discrimination is profoundly alarmed about widespread and systematic violations of human rights inflicted on people because of their ethnic or national origin. Ethnic antagonisms, especially when mixed with political opposition, give rise to many forms of violent conflict, including terrorist actions and military operations. In many parts of the world they cause immense suffering, including the loss of many lives, the destruction of cultural heritage and the massive displacement of populations.

In this context, the Committee expresses its concern about acts and policies of suppression of the fundamental rights and the identity of the Kurds as distinct people. The Committee stresses that the Kurdish people, wherever they live, should be able to lead their lives in dignity, to preserve their culture and to enjoy, wherever appropriate, a high degree of autonomy.

The Committee appeals to the competent organs of the United Nations and to all authorities and organizations working for peace, justice and human rights to deploy all necessary efforts in order to achieve peaceful solutions which do justice to the fundamental human rights and freedoms of the Kurdish people.

Statement on Africa (55th session, 1999)

The Committee on the Elimination of Racial Discrimination,

Extremely concerned over the growing ethnic conflicts and the inadequacy of attempts to prevent and mitigate them in the Great Lakes region and certain other parts of Africa,

Reiterating its recent decisions, declarations and concluding observations, such as decision 3 (49) of 22 August 1996 on Liberia, resolution 1 (49) of 7 August 1996 on Burundi, decisions 3 (51) of 20 August 1997, 1 (52) of 19 March 1998, and 4 (53) of 18 August 1998 on the Democratic Republic of the Congo, the declaration of 13 March 1996 on Rwanda, the concluding observations on Rwanda of 20 March 1997, the concluding observations on Burundi of 21 August 1997, decisions 4 (52) of 20 March 1998, 5 (53) of 19 August 1998 and 3 (54) of 19 March 1999 on Rwanda, decision 5 (54) of 19 March 1999 on the Sudan, which were the results of the Committee s consideration of the ethnic conflicts in these States Parties under its early warning and urgent action procedures within the context of the Convention,

Aware of the important initiatives undertaken recently by the Organization of African Unity which has also proposed taking urgent measures in order to cope with the tragic situation in Central Africa, and expressing its appreciation for the significant mediating efforts by the heads of State of four African countries at their meeting in South Africa on 8 August 1999, reflected in a solemn declaration with a view to overcoming current crises and ethnic conflicts,

Expressing its appreciation to the Secretary-General of the United Nations for his report on the causes of conflict and the promotion of durable peace and sustainable development in Africa (A/52/871-S/1998/318, dated 13 April 1998), presented to the General Assembly and the Security Council, in which he stated that among the warring parties and factions the main aim, increasingly, is the destruction not just of armies but of civilians and entire ethnic groups , and suggested specific measures inter alia, to promote peacemaking, harmonizing the policies and actions of external actors, mobilizing international support for peace efforts, improving the effectiveness of sanctions and enhancing the role of United Nations peacekeeping in Africa,

Expressing its appreciation to the United Nations High Commissioner for Human Rights for her recent and important initiatives directly related to ethnic conflicts in Africa, mentioned above, and its full support for the High Commissioner s actions,

1. Expresses its alarm at the growing mass and flagrant violations of human rights of the peoples and ethnic communities in Central Africa, in particular, massacres and even genocide perpetrated against ethnic communities, and resulting in massive displacement of people, millions of refugees, and ever deepening ethnic conflicts.

2. Urges the United Nations to take urgent action and effective measures under the Charter of the United Nations to put an end to these conflicts in Central Africa, to stop the massacres and the genocide, and to facilitate the safe return of the refugees and the displaced persons in their homes.

3. Urges all States and all United Nations bodies to support the initiatives and appeals of the Organization of African Unity and the heads of State of the four African countries in seeking a solution to current crises and ethnic conflicts in Central Africa.

184

ANNEXE VI: Text of ICERD

Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965

entry into force 4 January 1969, in accordance with Article 19

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,
Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:

PART I

Article 1
1. In this Convention, the term racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

185

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;
(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
(c) Political rights, in particular the right to participate in elections — to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;
(ii) The right to leave any country, including one s own, and to return to one s country;
(iii) The right to nationality;
(iv) The right to marriage and choice of spouse;
(v) The right to own property alone as well as in association with others;
(vi) The right to inherit;
(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;
(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
(ii) The right to form and join trade unions;
(iii) The right to housing;
(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;
(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, caf s, theatres and parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;
(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:

(a) within one year after the entry into force of the Convention for the State concerned; and
(b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;
(b) If the States Parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States Parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States Parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States Parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;
(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;
(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514(XV) applies, relating to matters covered by this Convention which are before these bodies;
(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21
A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.

Article 22
Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23
1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24
The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

(a) Signatures, ratifications and accessions under articles 17 and 18;
(b) The date of entry into force of this Convention under article 19;
(c) Communications and declarations received under articles 14, 20 and 23;
(d) Denunciations under article 21.

Article 25
1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

Notes

1 See, for example, General Recommendation XXI on the right to self-determination, and General Recommendation XXIII on the rights of indigenous peoples.
2 See also the *Manual on Human Rights Reporting*, Geneva, UN, 1997; and van Boven, T., The concept of discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination , in W. K lin, (ed.), *Das Verbot ethnisch-kultureller Diskriminierung: Verfassungs-und menschenrechtliche Aspekte*, Basel, Geneva, Munich, Helbing und Lichtenhahn, 1999.
3 *CERD Annual Report*, 1996, UN doc. A/51/18, para. 352.
4 General Recommendation VIII (38).
5 CERD s General Guidelines Regarding the Form and Contents of Reports to be submitted by States Parties under Article 9, para. 1, of ICERD (CERD/C/70/Rev. 4).
6 *Ibid.*, see new para. 9 adopted by CERD at its 55th session in August 1999 (CERD/C/70/Rev.4).
7 General Recommendation XI (42).
8 Initial report of Switzerland to CERD (CERD/C/270/Add. 1), para. 56.
9 *CERD Annual Report*, UN doc. A/53/18, para. 57.
10 General Recommendation XIV (42).
11 General Recommendation XIII (42).
12 General Recommendation XIX (47).
13 *Ibid.*
14 General Recommendations VII (32) and XV (42).
15 Van Boven, *op. cit.*
16 At the relevant time Article 266 (b) provided: Any person who, publicly or with the intention of disseminating it to a wide circle (videre kreds) of people, makes a statement, or other communication, threatening, insulting or degrading a group of persons on account of their race, colour, national or ethnic origin or belief shall be liable to a fine or to simple detention or to imprisonment for a term not exceeding two years.
17 Article 23, para. 1, reads: A provision establishing a criminal offence shall apply to any person who has assisted the commission of the offence by instigation, advice or action. The punishment may be reduced if the person in question only intended to give assistance of minor importance or to strengthen an intent already resolved or if the offence has not been completed or an intended assistance failed.
18 *CERD Annual Report*, UN doc. A/45/18, para. 56, quoted in van Boven, *op. cit.*
19 Jersild v. Denmark. The full text of the judgment of the European Court of Human Rights is available on: http://www.dhcour.coe.fr/hudoc/ViewRoot.asp?Item=0&Action=Html&ampX=1017232056&Notice=0&Noticemode=&RelatedMode=0.
20 See Human rights seminar condemns promotion of racism on the internet , *UN Press Release HR/97/76*, 17 November 1997.
21 Recommendations adopted at the 6th meeting of the Persons Chairing the Human Rights Treaty Bodies, in September 1995, UN doc. A/50/505, para. 20.
22 The Committee on Economic, Social and Cultural Rights was established according to the ECOSOC resolution 1985/17, and not formally as a treaty body under the International Covenant on Economic, Social and Cultural Rights. The Covenant had envisaged ECOSOC to serve as a monitoring body.
23 The usual practice is for a session to last three weeks, but on a trial basis the Committee held four-week sessions in August 1999 and 2000.
24 Examples are missions to Croatia, Guatemala and Yugoslavia (Serbia and Montenegro).
25 At its 56th session held in March 2000, CERD decided to discuss and adopt a uniform approach in dealing with states reports, which might alter some of the practices mentioned in this manual.
26 *CERD Annual Report*, UN doc. A/45/18, para. 29.
27 The manual can be ordered directly through UN Publications/Bookshop (see Useful addresses at the back) or via the internet: http://www.unhchr.ch/
28 Article 9, para. 1 of ICERD reads: States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention [ ] .
29 CERD s General Guidelines Regarding the Form and Contents of Reports to be submitted by States Parties under Article 9, para. 1, of ICERD, *op.cit.*
30 UN doc. CERD/C/319/Add. 2, submitted by the State Party on 1 April 1997 and considered by CERD at its 52nd session in March 1998.
31 Van Boven, T., The petition system under the International Convention on the Elimination of All Forms of Racial Discrimination; a sobering balance sheet ,

United Nations Yearbook, vol. 4, 2000, pp. 271—87.

32 General Recommendation XXVII — See the annexes to this manual.

33 Article 71 of the Charter of the United Nations, and ECOSOC resolution 1996/31. If your NGO wishes to obtain consultative status, see the Useful addresses section at the back of this manual. Note, however, that NGOs have no official right to participate in the working processes of CERD, which is not an ECOSOC body.

34 The services ARIS offers to NGOs include: making official UN documents available to them; keeping them informed of CERD s schedule; assisting them in their lobbying efforts with governments; reporting on the outcome of the discussion of their governments reports by supplying them with the country report that ARIS prepares after the session, and further, upon request, the official annual report of the Committee; encouraging human rights groups in the countries that have not accepted Article 14 of the Convention to exert pressure on their governments to do so; assisting human rights groups, where appropriate, in filing individual complaints; and, sending UN press releases, immediately after discussion by CERD, to the major news media in the countries concerned. (From ARIS leaflet, Geneva, September 1999.)

35 Communication to IMADR from Mr Martin Scheinin.

36 Banton, M., Decision-taking in the Committee on the Elimination of Racial Discrimination , presented at a public lecture on 13 November 1997 convened by the International Law Association (British Branch) and the British Institute of International and Comparative Law.

37 Examples of reports which have been submitted by NGOs, or at least a list of such NGOs, might be consulted through the CERD Secretariat or ARIS. See Useful addresses at the back of this manual.

38 Forum Against Racism, *Racism in Switzerland: First NGO report of Switzerland to the UN*, February 1998.

39 As from 2001, some of the sessions may also be held at a Conference Room in the Palais Wilson which houses the Office of the High Commissioner for Human Rights. Should its request be granted by the General Assembly, CERD may also hold one of its two annual sessions at the UN headquarters in New York.

40 CERD/C/35/Rev.3, of 1 January 1989, in particular Rules 80 to 97.

41 See communication no. 6/1995 (Z.U.B.S. v. Australia), and communication no. 8/1996 (B.M.S. v. Australia).

42 Communication no. 8/1996 (B.M.S. v. Australia), paras 6.1 and 6.2.

43 *CERD Annual Report*, UN doc. A/54/18, Annexe III. A.

1p2

Selected bibliography

Alfredsson, G. and Ferrer, E., *Minority Rights: A Guide to United Nations Procedures and Institutions*, Minority Rights Group and Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 1998.

Basic Facts about the United Nations, New York, United Nations, 1995.

Banton, M., Decision-taking in the Committee on the Elimination of Racial Discrimination , presented at a public lecture on 13 November 1997 convened by the International Law Association (British Branch) and the British Institute of International and Comparative Law.

Banton, M., *International Action Against Racial Discrimination*, Oxford, Clarendon Press, 1996.

Bidault, M., *Le Comit pour l Elimination de la Discrimination Raciale; analyse d une dynamique institutionelle*, Paris, Montchrestien, 1997.

Van Boven, T., United Nations strategies to combat racism and racial discrimination; a sobering but not hopeless balance-sheet , in F. van Hoof and J. Smith (eds), *The Role of the Nation-State in the 21st Century; Human Rights, International Organisations and Foreign Policy — Essays in Honour of Peter Baehr, Monique Casterman-Holleman*, The Hague, Kluwer, 1998.

Van Boven, T. The concept of discrimination in the International Convention on the Elimination of All Forms of Racial Discrimination , in W. K lin (ed.), *Das Verbot ethnisch-kultureller Diskriminierung: Verfassungs—und menschenrechtliche Aspekte*, Basel, Geneva, Munich, Helbing und Lichtenhahn, 1999.

Van Boven, T., The petition system under the International Convention on the Elimination of all Forms of Racial Discrimination; A sobering balance-sheet , *Max Planck Yearbook of United Nations Law*, vol. 4, 2000.

Decaux, E., *Le Droit Face au Racisme*, Paris, Editions A. Pedone, 1999.

English, K. and Stapleton, A., *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights*, Colchester, Human Rights Centre/University of Essex, 1995.

Human Rights Fact Sheet No. 7: Communications Procedures, Geneva, United Nations, 1989.

Human Rights Fact Sheet No. 12: The Committee on the Elimination of Racial Discrimination, Geneva, United Nations, 1991.

International Convention on the Elimination of All Forms of Racial Discrimination: full text and an unoffi-cial summary of the Convention s main provisions (revised version), Geneva, Anti-Racism Information Service, 1999.

Lerner, N., *The UN Convention on the Elimination of All Forms of Racial Discrimination*, Alphen a.d. Rijn, Sijthoff and Noordhoff, 1980.

Manual on Human Rights Reporting, Geneva, United Nations, 1997.

Meron, T., The meaning and reach of the International Convention on the Elimination of All Forms of Racial Discrimination , *The American Journal of International Law*, vol. 79, 1985, pp. 283—318.

O Flaherty, M., *Human Rights and the UN, Practice before the treaty bodies*, London, Sweet and Maxwell, 1996.

Partsch, K.J., The Committee on the Elimination of All Forms of Racial Discrimination , in P. Alston (ed.), *The United Nations and Human Rights: A critical appraisal*, Oxford, Clarendon Press, 1992.

The First Twenty Years: Progress Report of the Committee on the Elimination of Racial Discrimination, New York, United Nations, 1991, HR/PUB/91/4.

1p3

Finding documents and information on the internet

(Please note that the information provided in this manual is correct as at 21 July 2000 but is subject to change.)

United Nations

UN Office of the High Commissioner for Human Rights
<http://www.unhchr.ch>

A. (Choose) OHCHR programmes — conventional mechanisms (treaty-monitoring bodies)
Committee on the Elimination of Racial Discrimination <http://www.unhchr.ch/html/menu2/6/cerd.htm>
- ¥ introduction
- ¥ Press releases
- ¥ sessions (State party reports, Concluding Observations) since 50th session in March 1997
- ¥ individual complaints
<http://www.unhchr.ch/html/menu2/8/art14.htm>
  - ¥ Overview of procedure
  - ¥Statistical survey of individual complaints considered
  - ¥ Jurisprudence (selected decisions)
  - ¥ Other communications/complaints procedures
  Introduction — Fact Sheet 7: Communications Procedures — (general information on various communication procedures)
  - ¥Model questionnaires for communications/complaints

B. (Choose) OHCHR programme documents
Treaty bodies database
<http://www.unhchr.ch/tbsdoc.nsf>
- ¥ Committee members
- ¥ Reporting status
- ¥ Status of ratification
- ¥ Documents by treaty
  Committee on the Elimination of All Forms of Racial Discrimination
  - ¥ Jurisprudence
    (communications considered under Art. 14)
  - ¥ State party report
  - ¥ Concluding Observations/comments
  - ¥ Summary record
  - ¥Additional info from state party
  - ¥ Sessional/annual report of Committee
  - ¥ Basic reference document incl.
    - ¥ General guidelines regarding the form and contents of reports to be submitted by states parties under Article 9, paragraph 1, of the convention
    - ¥ Rules of procedure
  - ¥ Other treaty-related documents
  - ¥ Decision
  - ¥ General comments
    (General Recommendations)
  - ¥ Provisional agenda
  - ¥ Review of implementation

C. (Choose) treaties — International Convention on the Elimination of All Forms of Racial Discrimination (under Prevention of discrimination)
<http://www.unhchr.ch/html/menu3/b/d_icerd.htm>
Full text of ICERD
United Nations, Headquarters <http://www.un.org>

(Choose) International Law — Treaties — United Nations treaty collections — Sample access

Status of Multilateral Treaties Deposited with the Secretary-General <http://untreaty.un.org/English/sample/EnglishInternetBible/bible.asp>

(Choose) — Chapter IV (Human Rights) — International Convention on the Elimination of All Forms of Racial Discrimination <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/treaty2.asp
- Status of ICERD (list of states parties to ICERD, Reservations, Declarations made under Article 14, etc.)

Others

Interights international law reports: On-line database engine on recent decisions of tribunals applying international human rights law <http://www.interights.org/search.asp>

(Choose) ICERD under treaties / (choose) CERD under organs
Recent communications considered by CERD

Useful addresses

United Nations

Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland

CERD Secretariat
Office of the High Commissioner for Human Rights
Palais des Nations, CH-1211 Geneva 10, Switzerland
Tel. 41 22 917 9288
Fax. 41 22 917 9022

For UN official documents including states reports:
Documents Distribution Office
Door 40, Palais des Nations
CH-1211 Geneva 10, Switzerland
Tel. 41 22 917 4712 or 4900

General enquiries:
NGO Liaison Office, Palais des Nations
Room 153, CH-1211 Geneva 10, Switzerland
Tel. 41 22 917 2127
Fax. 41 22 917 0583

To apply for NGO Consultative Status:
Section of NGO, Division of Economic and Social Council Support and Coordination
Department of Economic and Social Affairs
United Nations, Room DC1-1480
New York, NY 10017, USA
Tel. 1 212 963 4842
Fax. 1 212 963 9248
Website: http://www.un.org/esa/coordination/ngo

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2613 (enquiries regarding publications, orders),
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United Nations Bookshop
Concourse Level, 46th Street and 1st Avenue
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Fax. 1 212 963 4910

Regional human rights bodies

Inter-American Commission on Human Rights
1889 F Street, NW, Washington, DC 20006 USA
Tel. 1 202 428 3967

Council of Europe
European Commission against Racism and Intolerance (ECRI), Secretariat, Directorate of Human Rights
F-67075 Strasbourg CEDEX, France
Website: http://www.ecri.coe.int

African Commission on Human and Peoples Rights
Kairaba Ave., PO Box 673, Banjul, The Gambia
Tel. 220 392 962;
Fax. 220 390 764

Information services (NGOs)

General assistance/information service for NGOs in regard to CERD:
Anti-Racism Information Service (ARIS)
14, avenue Trembley, 1209 Geneva, Switzerland
Tel. 41 22 740 3530
Fax. 41 22 740 3565
E-mail: aris@antiracism-info.org
Website: http.//www.antiracism-info.org

General assistance/information service for NGOs regarding any UN human rights bodies:
International Service for Human Rights
PO Box 16, 1 rue de Varemb
1211 Geneva, 20 CIC, Switzerland
Tel. 41 22 733 5123
Fax. 41 22 733 0826
Website: http//www.ishr.ch

The International Convention on the Elimination of All Forms of Racial Discrimination:

A Guide for NGOs

This manual is intended to act as a guide for non-governmental organizations (NGOs). It explains what the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is, how it fits within the United Nations system and how states, individuals and NGOs can make use of it.

As well as providing the necessary background for an understanding of ICERD, this manual explains how ICERD can be used to bring pressure on states to combat racial discrimination, and how NGOs can influence ICERD's Committee in its decision-making. This manual gives step-by-step guidance on activities NGOs may wish to take in order to influence such decisions on various states – showing, for example, how to submit a communication, who to contact, how and when.

This manual will be of interest to all NGOs, and many others, seeking to understand how ICERD can be used in the fight against racial discrimination throughout the world.

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February 2001

Joint NGO Report Regarding Rights of Migrant Workers, Immigrants, Refugees and Settled Foreigners in Japan
for
Consideration of the First & Second Periodic Report
Submitted by the Japanese Government
in Accordance with Article 9 of the ICERD

This report is compiled by:

- National Network in Solidarity with Migrant Workers (NNSMW)
- ISSHO Kikaku
- The Community Living Research Group
- The Center for Prisoners' Rights (CPR)

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Foreword

Okamoto Masataka & Suzuki Ken, Editor

This is a Joint NGO report, compiled by many organizations and individuals working for the protection and promotion of human rights of migrant workers, immigrants, refugees and settled foreigners in Japan, for the reference of the Committee on the Elimination of Racial Discrimination in its consideration of the first and second periodic reports submitted by the Japanese government in accordance with article 9 of the International Covenant on Elimination of all Forms of Racial Discrimination (CERD/C/350/Add. 2).

The following is a brief introduction of the cooperating organizations:

National Network in Solidarity with Migrant Workers (NNSMW) was established in April 1997 to promote communication and common action among organizations around Japan working for protection of the rights, relief or assistance of migrant workers and their families. It is a national wide network evolved from the Forum on Asian Immigrant Workers established in March 1987, and now NNSMW is composed of 89 organizations and 235 individual members.

ISSHO Kikaku is an NGO based in Tokyo established in 1992, which focuses on researching multiculturality in Japan. Its main activity is taking positive action against racial discrimination in Japan, particularly as expressed in policies such as exclusion of foreigners from entrance into private and quasi-public facilities. It is now composed of 300 members.

The Community Living Research Group is a NGO, from the standpoint of concerned local citizens, and recognizing mutual good relationship among Japanese and non-Japanese residents, work towards establishing a livable milieu, concentrating especially on "Housing" and "Community." It is involved in research and action on the local level.

The Center for Prisoners' Rights (CPR) was established in March 1995 with the aim to improve the human rights situation in criminal detention facilities of Japan and the Asia regions so that they will meet the international standards set forth. The Center's daily activities include releasing bimonthly newsletters, giving support to cases, which prisoners bring against detention facilities, or to those concerning the officers' labor conditions in the facilities, etc.

If any additional information is required, please contact with us.
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Contents

1pp

200

I. Introduction

Koyama Kaoru & Okamoto Masataka

The total number of foreign residents in Japan, including immigrants and migrant workers, but excluding people from Japan's wartime colonies and their descendants, was 1.2 million as of the end of 1999 (this number represents 1% of total population in Japan). Among these people, 25% (about 250,000) are staying beyond their visa expiration. Since 1980, the number of migrant workers coming to Japan has steadily increased, and the 1990 revised Immigration Control and Refugee Recognition Act accelerated this trend by enabling Latin American and Chinese nationals of Japanese decent and their families to migrate to Japan. Yet, the Japanese government persists in not allowing unskilled foreign workers into Japan, and thus it has been unwilling to take political measures to protect rights of immigrants and migrant workers.

The number of foreigners who registered with the government of Japan (as of the end of 1999)

Total	Korea	China	Brazil	Philippines	USA	Peru	Thailand	Indonesia	Vietnam	Others
1,556,113	636,548	294,201	224,299	115,685	42,802	42,773	25,253	16,418	15,402	127,834
	40.9%	18.9%	14.4%	7.4%	2.8%	2.7%	1.6%	1.1%	1.0%	8.2%

1. Increase in Indochina Refugees and Migrant Workers and Their Families

(a) Indochinese Refugees

Upon the conclusion of Vietnam War in 1975, the political systems of Vietnam, Laos and Cambodia became destabilized or civil wars took place there. This situation pushed 2 million people out from their countries and made them refugees in neighboring states. The Japanese government initially took a stance to accept refugees on a temporary basis, but not to grant them long-term residence in its territory. It was only after other nations, including the G7, criticized the measures taken by the Japanese government that it moved to give political refugees long-term resident status though a Cabinet Agreement in 1978. In practice, however, the maximum number of such status was quite limited: it was only 500 people in 1979 and gradually expanded to 10,000 people afterwards. Moreover, the recognition process to determine political refugee status was strict[1] and there was racial discrimination, which made it

[1] Although the Japanese government did put into effect the "Immigration Control and Refugee Recognition Act" in 1982 in order to conform with its signing of the Convention Relating to the Status of Refugees, it has been negative about recognizing refugees according to this Convention and by the end of 1999, it had only recognized 243 refugees according to this law (out of 1943 applicants).

The number of Applicants for Refugee Recognition Status from 1995-1999

Year	1995	1996	1997	1998	1999
Applicants	52	147	242	133	260
Recognized	2	1	1	16	16

Note: Application status is noted for the year ending the following March and recognition status is as of April 11 of the following year.

This is partly because the government requires people to apply for refugee status within 60 days of

201

hard for foreign residents to stand on their own feet in the country. As a result, many of them went to the USA, Canada or other countries. As of June 1999, only 10,465 Indochinese people (among them, 75.5% are Vietnamese) are living in Japan.

At the start of accepting Indochina refugees, Japanese government ratified the ICCPR and the ICECSR in 1979. It also became a signatory of the Convention Relating to the Status of Refugees in 1981. In the beginning, the Ministry of Health and Welfare insisted on not signing the treaty. Becoming a signatory would surely contradict the long maintained policy of excluding second and third generation residents of Korean, Chinese and Taiwanese nationality (i.e., from Japan's colonies) living in Japan from social welfare schemes which applied only to Japanese nationals. Especially article 24 of the Refugee Treaty would oblige the government to treat those people equally with Japanese nationals. Nonetheless, the government moved to open up access to the Housing Loan Bank, public housing, and the National Financial Bank to foreign nationals from April 1980 onwards. In January 1982, the national pension scheme, child allowances, special child allowances and child support allowances started to be available to foreign residents. Furthermore, the government revised article 24 of Japanese Immigration control act so that it can no longer expel people on the grounds that they are on welfare, have mental problems or Hansen's disease.

Refugees from Vietnam, Laos and Cambodia suffer from various forms of discrimination in Japanese society. Their children frequently face an identity crisis because of the gap between their parents, who do not understand Japanese, and themselves, who do not understand their parents' native tongues. Because of the lack of a coherent view on Japan among themselves, together with their status as refugees who somewhat rely for their well being on their host country, they do not explicitly publicize, let alone criticize, the discriminations that they are suffering. Also, the understanding of Indochinese refugees on the part of the Japanese is not sufficient. According to a survey in 1998, even among people in Hyogo Prefecture, where the second largest number of Indochinese refugee reside (15% of all Vietnamese in Japan), 60% of respondents saw the Vietnamese refugees as the same as foreign workers who sought jobs, instead of living in Japan primarily for political reasons[2].

(b) Migrant Workers and Their Families

The Japanese government, as prescribed in paragraph 22 and 23, firmly maintains the policy to accept foreign workers in technical fields or with skills and expert knowledge, but it will not let foreign workers in who merely seek simple (unskilled) labor. There was not the slightest change regarding this matter in "the 9th Basic Employment Plan" decided by the Cabinet in 1999. However, in the latter half of the 1980s, Japan's economic boom produced a severe labor shortage, and securing enough workers domestically became a difficult task, particularly in the manufacturing sector, whose jobs are frequently referred to as 3-D work (difficult, dirty and dangerous). Meanwhile, the economic boom invited a labor flow from

entering Japanese territory (the "60-day rule") and partly because the screening and recognition process is extremely strict and inadequately established. As a result of international criticism, the number of refugee recognition application screening personnel has increased and in 1998, the number of recognized refugees somewhat increased.

[2] Akuzawa , Mariko, "Reading Human Rights Education 'Materials'," in Hyuumanraitsu, No.151,October 2000, p.54.

neighboring countries into Japan and foreign labor has started to fill the places where Japanese are unwilling to work. As a result, the number of migrant workers in Japan has increased. At the root of the problem, there is a structural change in Japanese society; this situation is precisely the product of 1) the expanded income gap between Japan and other Asian nations, 2) the aging of Japanese society, 3) the decreasing young population, and 4) changing views on "work" among the Japanese. Yet, the Japanese government has not eased immigration policy, creating a population of "unlawful foreign workers" and "foreign overstayers" because many migrant workers could not acquire proper work visas. Many of them somehow manage to come to Japan on a short-term visa, such as for sight-seeing, and then start working in Japan without being able to change their visa status, so they end up staying beyond the visa expiration date. Among these workers, some stay long enough to marry, have children and send them to Japanese elementary, junior and senior high schools.

Under these circumstances, the Japanese government has revised the Immigration Control and Refugee Recognition Act in 1989 to strengthen the means for shutting out illegal foreign workers. It newly set up articles to (a) punish employers who hire illegal foreign workers (imprisonment for up to three years, or fines of up to 2 million yen). At the same time, it tackled the labor shortage by introducing such items as (b) to accept foreign nationals of Japanese descent (down to the third generation) as "long-term residents" regardless of the level of skills that they have, and (c) to receive trainees from other countries to utilize them as part of the labor force, within the framework of a "technical training program." However, Japan's Labor Standard Law does not apply to those foreign trainees, because they fall outside the worker category[3].

Consequently, the inflow of people of Japanese descent and foreign trainees skyrocketed between 1990 and 1998. The number of those of Japanese descent, mainly from Brazil and Peru, increased from 71,000 to 220,000 during this period. Foreigners engaged in "designated activities (tokutei katsudo)," such as training and skill training, increased from 3,000 to 12,000, and these two populations combined substantially serve as an unskilled labor market in Japan. Meanwhile, the total number of foreign workers in the same period increased from 260,000 to 663,000 which amounts to 1% of the total Japanese labor force (67,930,000) and 1.2% of all employees (53,680,000). On the other hand, the number of illegal foreign workers has decreased from 296,000 at the peak in 1993 to 271,000 in 1998. The government of Japan revised the Immigration Control Act in 1998 to add the "crime of unlawful stay" to the code, which took effect in February 2000.

Through accepting foreign nationals of Japanese descent (Nikkeijin) as "long-term residents," the government has opened up its door to receive foreigners and their families, albeit this limited to those with family connections to Japanese nationals. Quite contrary to its intention, however, even though they are of Japanese descent, the 2nd or 3rd generation of Nikkei from Latin America often have a different language, culture, way of thinking, customs and racial background from native Japanese, creating more drastic gap than people from Asian

[3] The trainee visa system began to be expanded in 1993 and under the "skills training system," "practical skills training" (which occurs in the second part of the internship when trainees are sent out individually to separate employers to work and learn on the job), trainees are technically given worker status and the Labor Standards Law applies to them, but many companies ignore this fact.

nations. Since the beginning of 1990, the number of children who need second language education has increased, most of who are children of Nikkei who came to Japan with long-term resident status and from China and Central and South America. A foreigner became a victim of a fatal incidence of violence in Aichi prefecture (near Nagoya) and was murdered in 1997. He was a Brazilian of Japanese descent.

2. Problems Confronting Foreign Workers and Others

Among the Japanese, there are not a few people who feel superior to or discriminate against other Asians. As most Asian countries were being colonized by Western Europe, Japan has had a policy of "Leave Asia, Join Europe" since the restoration of the Meiji Emperor in 1868, by which it gave up on a backward Asia and was admitted into the circle of Western countries. It is considered that a feeling of superiority among Japanese to other Asian people have been caused as it was not only one of the few countries that was not colonized in Asia but also it colonized Taiwan and the Korean Peninsula by its military power, joined the League of Nations as one of board countries, and invaded China and Southeast Asia. Even, after defeated in the World War II, it rose up in the world to become an economic superpower through hard work. Under these circumstances, it has been caused again a feeling of superiority against a "weak, poor, backwards Asia."

As from the 1970s, an anti-ethnic discrimination movement centered on Korean minority spread to each part of Japan. Japanese society has changed somewhat, but contempt for Asia is still deeply rooted. In order to perpetuate the illusion among the Japanese that Japan is an ethnically homogeneous country, the government does not take populations statistics separated by ethnicity and has hidden the existence of over 300,000 ethnic Koreans who have Japanese nationality. Although the era when a Japanese Ministry of Justice official could say with regard to resident North and South Koreans, "we are free to boil or grill foreigners," this long-term, legally camouflaged discrimination against people of former Japanese colonies, which has come to be called a *Japanese apartheid* policy, remains until the present and has also affected the treatment of refugees, migrant workers and their families who came to Japan after 1980.

According to a notice issued by the Director of the Social Affairs bureau of the Ministry of Health and Welfare in 1950 and 1954, foreign nationals could apply for livelihood assistance but in October 1990, it indicated its new stance that short-term stayers and visa overstayers could not qualify for this assistance. Afterwards, it excluded any foreign national who had been in Japan for less than one year. Because of that, many hospitals have refused to treat foreign nationals out of the fear that they cannot pay for it. [4] At present, social insurance is only available for foreign nationals who have visas, which allow them to stay in Japan for one year or more. The Ministry of Health and Welfare has repeatedly expressed its view in discussions with NGOs that "if we support foreigners who have broken the law with public funds, that is the same as aiding and abetting foreigners in breaking the law." Under these conditions, the health of migrant workers is not being adequately ensured and as of June 2000, 30% of people with AIDS in Japan are foreign nationals (1939 foreigners).

Also, with the increase in the migrant worker population, there have been more police incidents involving migrant workers, and as a result, the inadequacy of police and court administrative procedures has come out as an issue. There are also problems such as the qualifying process and quality of court interpreters, who have been found inadequate, the fact that foreign nationals are not guaranteed the right to interpreting into their native language, moreover, do not even have the guaranteed right to any translating or interpreting. At present, the police and courts are revising their lists of interpreters and carrying out their own studies of the problem, but the inadequate situation for minority languages persists. Nevertheless, the Ministry of Justice announced in March 2000 in its "Second Phase of a Basic Plan for Immigration Control Policy" that there would be no change in its basic stance of strengthening both the receiving and control of foreign workers for the benefit of Japan as a country.

[4] At present, the national and local governments have implemented systems to reimburse hospitals for such uncollected medical fees, although it is inadequate and the government has not made public cases of refusal of treatment.

204

205

II. Assessment of the Government's Implementation of the ICERD

1.Selection of Foreign Workers Based on Decent and National Origin

(Relating Art. 2, Par. 2 (c) and Art. 7)

Furuya Satoru

Present immigration policy of Japan maintains does not allow entries of unskilled foreign workers. Yet, as an exception, the government grants a Japanese descendant, or *nikkeijin*, a legal qualification to engage in any type of work. This practice is based on the framework of 'single-ethnic society and nationhood' and 'Japanese race superiority', thus constitute 'distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin' as indicated in the article 1. The government of Japan is engaged in implementing 'laws and regulations which have the effect of creating or perpetuating racial discrimination ' therefore it violates article 2, paragraph 1(c), and fails to carry out obligations set force in the article 7.

1. Nikkeijin - the Exception of Immigration Policy Disallowing Migrant Workers

As stated in the *paragraph 22* of the country report, the government of Japan 'in principle. no foreigner is permitted to enter the country to engage in unskilled labor', thus the present immigration control act does not list unskilled migrant as a recognized category of people entitled to hold resident permit. Based on this principle, a foreigner whose purpose of entry is seen to engage in unskilled work is refused of entry at immigration in general practice. When found working after the entry, the foreigner will be subjected to punishment and deportation for taking part in unauthorized unskilled work. The revision of immigration control act, which came into effect in 1990, introduced further regulations on the foreign workers taking up unauthorized employment.

The revised immigration control act of 1990, on the other hand, initiated a new provision of resident status visa (categories under 'a Spouse or Child of Japanese National ' or 'long term resident) to *nikkeijin* (Japanese descendant). [5] The permit for which up to a third

[5] According to the two Recent official documents from the Ministry of Justice of Japan, *Immigration Control* in1998 and *Basic Plan for Immigration Control(The 2nd edition)* in 2000 regarding resident permits of 'a spouses of Japanese and others' and 'long term resident' (permits for *nikkeijin*), it states ' they (*nikkeijin*) are being accepted in view of their 'ties with the Japanese society' and 'their blood relatives with the Japanese society.' The government insists that it was a coincident and unintended byproduct that nikkeijin immigrants turn out to be labor migrants. But the evidence suggests that the government was fully aware that the introduction of *nikkeijin* policy would induce a large-scale labor migration to Japan.

In the late 80s, in order to meet the labor demand in automobile manufacturing industries, labor recruitment agencies began recruiting *nikkeijin* in Latin American countries (Brazil and Peru). The initial target of recruitment was a *nikkeijin* with Japanese citizenship, but later expanded to the second generation Japanese without Japanese citizenship. The government of Japan confirmed the situation and issued the second generation Japanese resident permit which also allow them to work on the ground that their purpose of visit are family visit, at restrictive basis. The government is said to be aware of the fact that the second generation come to Japan with the intention to work.

generation Japanese can apply allows a holder to engage in paid work constitutes a clear exception in the basic principle of Japan's labor and immigration policies of Japan.

The enactment of the new legislation and the subsequent wave of advertisements put up by private labor recruitment agencies brought a number of *nikkeijin* to Japan in search for work from countries such as Brazil and Peru. Automobile industries and middle-small size business were the initial recipients of the *nikkeijin* workers, but they have spread to all industries. The figure of *nikkeijin* and their family has shown sharp increase since 1990, reaching over 300,000 in the end of 1999. Nikkeijin and their family constitute 30% of all the visa-holding foreign population (excluding those from former colony), forming one of the largest migrant labor communities besides that of foreign migrants without visa. [6]

The nikkeijin policy violates the Convention for the following reasons.

2. Promotion of Racism and Ethnic Confrontation

A dominant ethnic ideology of the post-war Japan has been "homogeneous country" that Japanese citizens and member of the society are composed of single ethnic group. This perspective has affirmed and legitimized discrimination and merginalization of other ethnic groups in Japan including indigenous Ainu, and Koreans and Chinese residents. The policy, which selectively allows entry of nikkeijin, is also conceived and implemented in the same framework of this "homogeneous country."

In the late 80s when the industrial circles demanded introduction of policy authorizing foreign labor, the ruling party, Liberal Democratic Party (LDP), and the government refused to do so on the ground that foreign workers of different ethnic groups would not be tolerated to stay in Japanese society for extended period. Alternatively, the government selected the second best policy of accepting *nikkeijin* whose origin traces back to Japanese ethnic group. An article on the promotion campaign for receiving *nikkeijin* from the party organ of the LDP, '*Minsyu Syugi' (Democracy)* states that 'the main reason for opposing to open the door to the foreign migrants is..... the destruction of the ethnic composition of Japan which is very close to single ethnic nation', and that 'those who oppose to the introduction of foreign migrants will have little to complain if selectively hosting *nikkeijin* who are accustomed to Japanese culture.' [7]

It is also assumed that *nikkeijins* after duration of stay in Japan will be quickly assimilated to and absorbed into Japanese ethnic group. The chairman of the Special Committee on the

(Fujisaki Yasuo. '*Dekasegi Nikkei Gaikokujin Roudousha.* Akashi Shoten Tokyo, 1991., Del Castillo, Albaro. '*Los peruanos en Japon'.* Gendai-kikakushitsu, Tokyo, 1999.) Political pressure was also present. Since the late 80s, at least few members of parliament in Brazil together with the then ruling Liberal Democratic Party of Japan (LDP) requested the Government of Japan to allow *nikkeijin* labor migrant (Fujisaki. Ibid., LDP party organ, '*Minsyu Syugi'.* May 1999, November 1989.) Japanese industrial circle is also assumed to have proposed a similar policy.

With all the background, the revised immigration control act allowing *nikkeijin* immigration was passed in the diet in December 1989. It was by the subsequent notification in May 1990 (a month before the revised immigration control act came into force) that the third generation Japanese will be eligible for resident visa.

[6] According to the calculation based on Alien registration statistics, among *nikkeijin* and their families, 265,000 comes from Latin American countries, 60,000 from People's Republic of China and Taiwan, followed by the Philippines, Indonesia.

[7]野島年彦「進めたい日系人の特別受け入れ」『自由民主』November 1989, page 92.

issue of foreign workers in the LDP, Taketoku Kato is recorded to have said ' descendants of the Japanese migrants abroad have an element that makes them easily assimilated when return and live in Japan permanently.' [8] After the introduction of new act, the Immigration Bureau of the Ministry of Justice of Japan provides favorable treatment for *nikkeijin* applying for long-term residence in Japan, however, the government's practice ignores diverse cultural ethnic identities of the *nikkeijin*, and fails to provide any policy to maintain their culture and ethnic identity. The Ministry of Education, in particular, does not allow native language course or ethnic education in the educational curriculum in both state and private schools for the reason that 'public education is a national education.'

The *nikkeijin* policy has served to preserve and strengthen racist and anti-foreign ideologies of 'single-ethnic society and nationhood' and 'Japanese race superiority' in Japanese society.

In their home countries, *nikkeijin* communities developed an extended mutual relationship among relatives and local community. This close-knit society makes it impossible to differentiate or single out a particular individual *nikkeijin* or a *nikkeijin* family from their hometown communities. As a consequence, many of those who do not meet the requirement for resident permit set by immigration bureau of Japan but maintain family, communal or social relationship to *nikkeijin* come to Japan in search for work in disguise. Counterfeit citizen registration certificates are made and sold in the black market. The abuse was soon known to Japan as 'bogus *nikkeijin*' scandal, leading to the tightening of nikkeijin inspection procedure in the immigration bureau. Yet, it needs to be pointed out that a part of the responsibility for the abuse also lie on the government of Japan, because it planed and implemented the policy based on its ethnocentric concept of *nikkeijin* without recognizing the reality of nikkeijin and their ethnic complexity in their home communities.

In Brazil, the criticism has been raised to why only *nikkeijin* is allowed to work in Japan and that such policy is a racial discrimination.[9] The unrealistic *nikkeijin* policy of Japan has a potential of leading ethnic confrontation in the home countries.

As described above, it is clear that the government of Japan maintains a policy that promotes racism and ethnic confrontation, and fails to take necessary measures to eliminate negative consequences of the policy.

3. Discriminate Practice Based on Decent and Ethnic or National Origin and One-sided and Inflexible Recognition System of Ethnic Group

The definition and the criteria of *nikkeijin* set forth by present immigration policy of Japan is considered to be based on 'decent and national or ethnic origin.' Among several categories of resident permits issued in Japan, a second generation Japanese receives a permit defined as 'a Spouse or Child of Japanese National'. Necessary condition for this particular permit is that one has to be the child of Japanese (according to immigration control act). For a third generation Japanese, a different resident permit defined as 'long term resident' is issued. This permit is mainly for the true child of the person who is born from Japanese (according to Notification of the Ministry of Justice). Other family members of *nikkeijin* are allowed to

[8]座談会「外国人労働者とわが国の対応」『自由民主』.April 1989, page 52.
[9]藤崎康夫『出稼ぎ日系外国人労働者』明石書店, 1991.

enter and stay in Japan as a very limited and exceptional case. The family members include the spouses of the second and third generation Japanese, and unmarried non-adult child of the third generation Japanese. They are eligible to apply for 'long term resident' permit on the condition that they live with the second or the third generation Japanese (Notification of the Ministry of Justice).

The required condition for the visa based on one's decent seems to contradict the real intention of the policy, which is to invite foreign labor. It also goes against the intended effect of policy implementation. The decent-based immigration policy ignores family structures and the reality of society in the countries from which *nikkeijins* migrate. In another word, the *nikkeijin* policy is presupposes the family concept and condition that are much narrower than that of reality, thus causing serious violations of the right to family reunion described below.

Case A

A Peruvian woman of non-Japanese decent was married to a Peruvian male of Japanese and Peruvian nationalities who died few years ago. Their three children (all adult) who are the second generation Japanese are living in Japan. For she has been in a bad health, she visited her sons under short-term family visit visa. She applied for resident visa in order to permantely live in Japan, but denied.

Case B

A single adult non-Japanese decent Brazilian male whose non-Japanese decent mother later married to a second generation Japanese male grew up and lived together until recent time with brothers who were born from the his real mother and step father. He came to Japan with short-stay visa in order to visit his mother, his stepfather and all brothers (all under age) who live in Japan. He applied for the change of his status from short-stay to resident, but was not permitted. In the similar case when an applicant is under age, he/she is entitled to resident permit, however, the applicant was an adult in this case.

The Immigration Bureau of the Ministry of Justice has been active in collecting testimonies from the family members when examining the *nikkeijin* visa issuance, and refuses to permit resident visa if other related family member testify that he/she is not an own child. (The immigration Bureau, in order to justify the verbal testimonies collected, often employs other investigation outcomes to support the claim.) Such examination procedure has brought a serious distrust and confrontation among the party involved as described in the following cases.

Case C

An adult Peruvian female, who in her early age was adapted to a man of Japanese and Peruvian nationalities, was registered as a real child. When she became adult, she came to Japan as a second generation Japanese along with her father. She has resided in Japan for more than 5 years with the resident permit under the category of 'Spouse or Child of Japanese National', but recently denied of the extension.

Case D

An adult Bolivian female was notified as the child of her grand mother, because her third-generation Japanese mother gave her a birth when she was under age. She is thus registered as a child from a second-generation Japanese. She came to Japan as a third generation Japanese with a resident permit under the category of 'long term resident' and stayed in Japan for 8 years. Her visa extension was recently denied.

It is clear from the evidence above that the current immigration control act is a discriminatory treatment based on decent, blood and national origin, backed up by the ideology of 'homogeneous country, because it selectively authorize *nikkeijin* workers while denying foreign workers from ethnic origin other than Japanese. The measure also violates right to family reunion by one-sided and inflexible recognition of ethnic group. Japan's immigration control act thus violates article 2,paragraph 1(c) and article 7.

2.Lynching Death of a Brazilian

(Art. 4, par. a)

Okamoto Masataka

During the 1990's, wherever there was a sudden increase of migrants from Brazil, violent crimes perpetrated by Japanese and rooted in racial hatred of Brazilians erupted in many different areas of Japan.

As an example of this, there was an incident in Komaki city, Aichi Prefecture[10] in October of 1997 where 20 or so Japanese young men (18 to 20yrs. old) attacked a few Brazilian teenagers who were gathered in front of Komaki Station to chat and socialize. After violently attacking 3 boys, the group of 27 Japanese youths abducted Herculano Reiko Lukosevicious (then 14) and brutally beat him to death. These Japanese youths were armed with wooden swords, steel bats and knives in order to retaliate the damages one of their members claimed to have suffered when his car was scratched by a "foreigner driving a Sylvia (car name)". They were determined to attack some of the foreign youths who just happened to be around Komaki Station[11].

The four Brazilian youths had no connections with the group called the "foreigners of the Sylvia", except for the fact that they were Brazilians. Initially the Japanese young man who had his car scratched wanted more information about who drove the Sylvia, but as he approached the station and noticed the Brazilian youths gathered there, he admitted that he was so overcome with hatred for foreigners that he forgot his original intent and began beating the four teenagers savagely. In the midst of the assault, the Japanese young men shouted to the teenagers with scorn, "Why did you ever come to Japan? Go back to Brazil! Don't belittle us Japanese! You aliens shouldn't put on airs and consider you superior to us! Get out of our country!"

While there was a total of 27 young Japanese men who lynched the Brazilians, only eleven were arrested. Of these, six were prosecuted, and two were convicted. But the severest sentence was merely five years of imprisonment. In this case of racial hatred resulting in homicide, 16 persons should have been arrested. For those arrested and convicted, the criminal punishment imposed was minimal because Japan does not yet regard racial discrimination as a crime. Thus appropriate punitive measures are not meted out to such perpetrators. Severities of crimes of racial discrimination are insufficiently assessed when such cases are being deliberated. Consequently they are regarded as simply "ordinary" homicide cases[12].

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[10] By the end of 1998, data on the number of registered foreigners indicate that of the total number of about 222,000 Brazilians living in Japan, 18% or roughly 41,000 Brazilians live in Aichi Prefecture. Of the approximately 125,000 registered foreigners in Aichi Prefecture, the Brazilian population makes up 32.7% of the total number of foreigners in Aichi.

[11] Nishino Rumiko, *Why was HERUCULANO Killed: The Case of a Japanese-Descent Brazilian Teenager who was Lynched by a Gang*, Akashi Shoten Publication, 1999.

[12] The handling of this case reveals the problems of racially based prejudice, which motivated some members of the Police Department of that precinct. After the brutal incident, Herculano was taken to a hospital. The police rushed there, only to interrogate the victim's parents about their visa status. Later on when the distraught parents called on the police to request that they locate the

In 1998, a Japanese man mistaken for a Brazilian person, was attacked by nine members of a Japanese motorcycle gang.[13] In 1989, 1994, and 1998, there were a number of cases involving resident Korean children who were victims of racially motivated violence. Of the perpetrators, however, none was accused of committing a crime stemming from racial discrimination.

As is clear from the above incident, the existing laws in Japan do not conform to article 4 of the ICERD that stipulates that violent assaults motivated by racial discrimination must be regarded as criminal acts. So long as the government fails to have the existing domestic legislations coincide adequately with the promulgation of the Convention, refuses to make necessary revisions of domestic legislations, and delays in commencing the enactment of such laws, it is negligent in its commitment to uphold the Convention which it has signed and ratified.

murderers of their son, they were told that the incident in which their son was killed was quite common and ordinary. The mass media interpreted the incident as a "fight between Japanese and Brazilian youths." Both Japanese and Brazilian media reported that the bereaved parents of the victim began a signature campaign (to demand justice). Only after the Brazilian Embassy initiated action did the police begin to investigate the incident.

[13] Chunichi Newspaper, June 8, 1999. In Toyota City of the same prefecture around the Homi Apartment complex were some 3000 Brazilian people live, ultra-rightists and motorcycle gangs using one bus, 10 automobiles, and 72 motorcycles invaded the apartment complex area wielding steel pipes, wooden swords, golf clubs, and baseball bats shouting, "Brazilians, get out! Brazilians, get out of Japan!" Reported in International Press, Spanish language version, June 19, 1999.

3.Disseminating the Lie of "Foreign Crime":

The White Paper on Police as a Tool for Instigating the Media

(Art. 4)

Nakajima Shin'ichiro

Every year, the National Police Agency (NPA), in its *Police White Paper*, uses statistical tricks to deliberately make it appear that "crime by foreigners in Japan" is increasing, and releases this to the mass media. Every year it pronounces that crime by "foreigners in Japan" and by "illegal foreign residents" is growing more common, more heinous, and more organized, and thus promotes discrimination against foreign residents in Japan.

1. Exaggerating Foreign Crime in the Media

In recent years, the mass media has offered readers many reports on the "increase" and "growing heinousness" of "foreign crime." For example, the major paper *Asahi Shimbun*, on May 1, 2000, reported that "Last year foreigners who had come to Japan were arrested by police for more than 34,000 instances of crimes such as murder, robbery, thief, and sales of stimulants. This was a historical high." Reading this, one gets the impression that foreigners committed tens of thousands of instances of heinous crimes such as "murder" and " robbery." However, the original figure of 34,398 crimes included 7,057 violations of the Immigration Control Act, and 331 violations of the Alien Registration Law – both laws that apply only to foreigners. By contrast, there were only 267 counts of "heinous crimes." by foreigners.

At the root of this misguided reporting is the *White Paper on Police* released by the NPA.

2. The Police White Paper: The Police's Analysis of Foreign Crime is Full of Racial and Ethnic Prejudice

(a) "Foreigners in Japan" as scapegoats

The NPA has created a special category, "rainichi gaikokujin" meaning "people who have come to stay in Japan temporarily." It excludes permanent residents and U.S. military personnel and families, and lumps together spouses of Japanese and other long-term residents, college students, pre-college students, trainees, all of whom have residence status, as well as "short-term visitors" with visas of less than 90 days, and "illegal stayers" who are in violation of the Immigration Control Act[14].

We call "rainichi gaikokujin" by "visiting foreigners," below.

And since 1991, the *White Paper on Police* has included a special chapter on these "visiting foreigners," which has been released to the press[15]. The intent of this is to blame crime on the

[14] This "Rainichigaikokuzin" category does not include "Teichaku-kyojuusha,"people from former Japanese colonies and their descendants, "Permanent resident, Spouse or Child of Japanese National and U.S military personnel and families" and "people whose status of residence is not known" (nationality is not known but it is apparent that they are not Japanese.)

[15] The White Paper on Police has never reported nor released to the media the statistics about "Teichaku-kyojuusha," "U.S. military personnel and families" and "people whose status of

weakest group in Japan, who cannot raise any objections: "visiting foreigners," which includes illegal stayers.

Furthermore, using statistical tricks as outlined below, the NPA attempts to give the impression that foreign crime is rising.

(b) The lie of the crime rate of visiting foreigners in Japan

Since 1991, the NPA has set aside separate chapters in the *White Paper on Police* with titles such as "the Internationalization of Society and Police Activities," where it has stressed "Crime by Visiting Foreigners." Also, from 1994 to 1998, subtitles were included stressing "The high percentage of foreigners among arrestees." In 1998, the *White Paper*, finding that visiting foreigners, who made up "1.0% of the total population," made up "1.7% of arrestees for criminal offenses," concluded "there is a need to focus on this as a problem of public security brought about by internationalization."

However, following questioning in the National Diet in the spring of 1998, it was revealed that this 1.0% figure was an assumption based on the National Census, and in fact was lower than the number of registered aliens in Japan. Also, the "visiting foreigners arrested for criminal offenses" included, in addition to "registered non-permanent residents," "short-term visitors" and "illegal stayers." Calculating for these groups, it can be assumed that foreigners made up 4% of the total population in 1998. This means that "visiting foreigners," who made up "roughly 4% of the population," only made up "1.7% of people arrested for criminal offense," a very low figure. As a result of the Diet questioning, this kind of assertion was deleted from the *1999 White Paper on Police*.

(c) Number of criminal cases cleared and number of people arrested

Let us now look at the number of *criminal cases cleared* and the number of people arrested. The *White Paper on Police* claims that the number of *criminal cases cleared* committed by "visiting foreigners" has doubled in the seven years from 1993 to 1999, and with regard to the number of people arrested, states that "it has increased seven times compared to the relatively low year of 1985, and has doubled since 1988. In recent years it has remained at a high level." In reality, however, the trend for crime in Japan as a whole has been a gradual increase, in both numbers of *criminal cases cleared* and people arrested (though there was a little decline in both figures in 1999). In the midst of this, crime by "visiting foreigners" has shown a tendency to increase in terms of *criminal cases cleared* because when police arrest a thief or thief group they put pressure on them to admit to past offenses than Japanese. But the number of people arrested, after hitting a high in 1993, declined until 1998 (though it increased a slightly little in 1999). (*See Chart 1*)

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residence is not known." In addition to those withheld statistics, the number of foreign victims of crimes perpetrated by Japanese also continues to be withheld.

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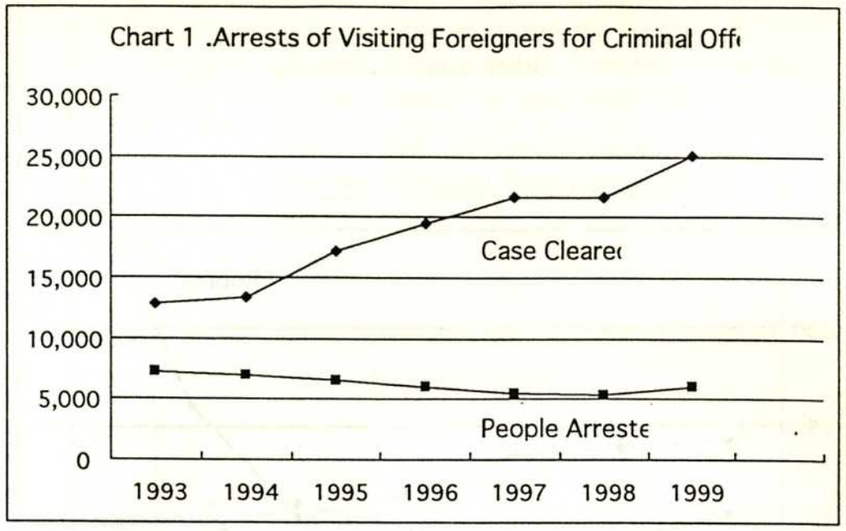

(d) "Heinous Crimes"

Looking at the past three years, the number of robbers among visiting foreigners in Japan has increased. The NPA, by lumping this crime together with murder, arson, and rape, asserts that "heinous crime" by visiting foreigners is increasing. In reality, though, the numbers of murders, arsons and rapes committed by "visiting foreigners" have decreased in the past three years (*See Chart 2*). In addition, under the influence of the recession, a similar trend for heinous crimes can be seen for Japanese (*See Chart 3*).

In this way, a look at the statistical figures in the *White Paper on Police* itself reveals that crimes by "visiting foreigners" and "illegal stayers" are few in number, make up only a small percentage of all crimes in Japan, and have not shown any tendency to increase in the past seven years.

However, the *White Paper* manipulates the statistics, by taking the figures for number of *criminal cases cleared* and highlighting kinds of crimes that have increased, making it seem that the crime is growing. For crimes that have not shown any particular increase, they compare them with figures of a decade earlier, and by this exaggerate the increase. Despite the fact that the trends for visiting foreigners are not much different from those of Japan as a whole, the NPA sets them apart as a special category and makes it seem that one section of the population, "visiting foreigners," has a tendency toward criminality. Furthermore, by using the term "illegal" foreigners, they make it seem as if people who are leading normal civil lives are somehow related to the "snakehead" gangs or the mafia, giving the impression that foreigners without residence status are all potential criminals.

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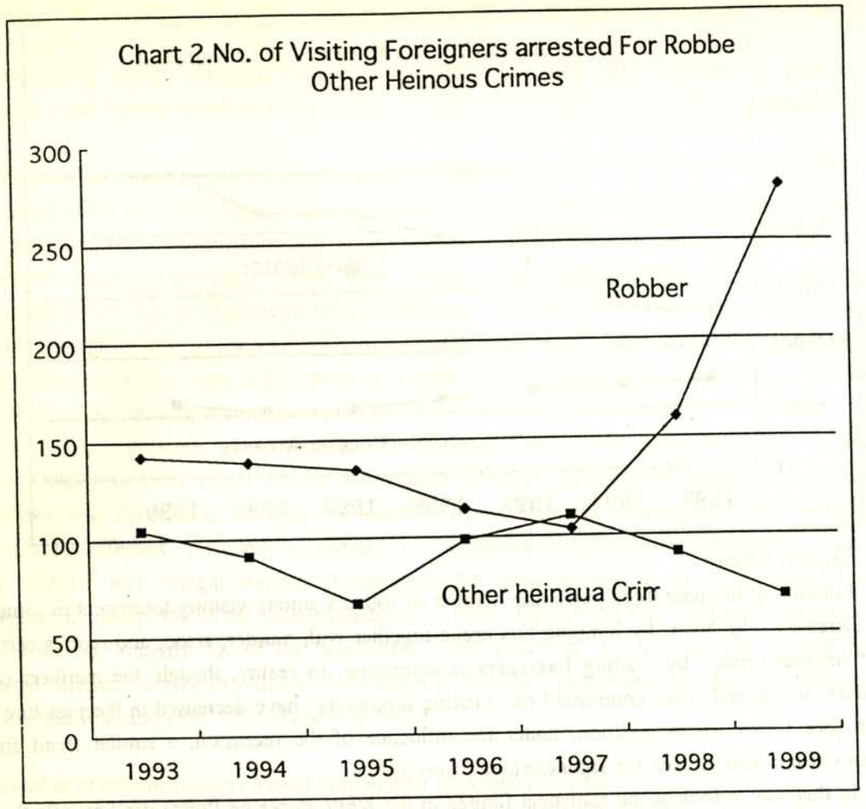
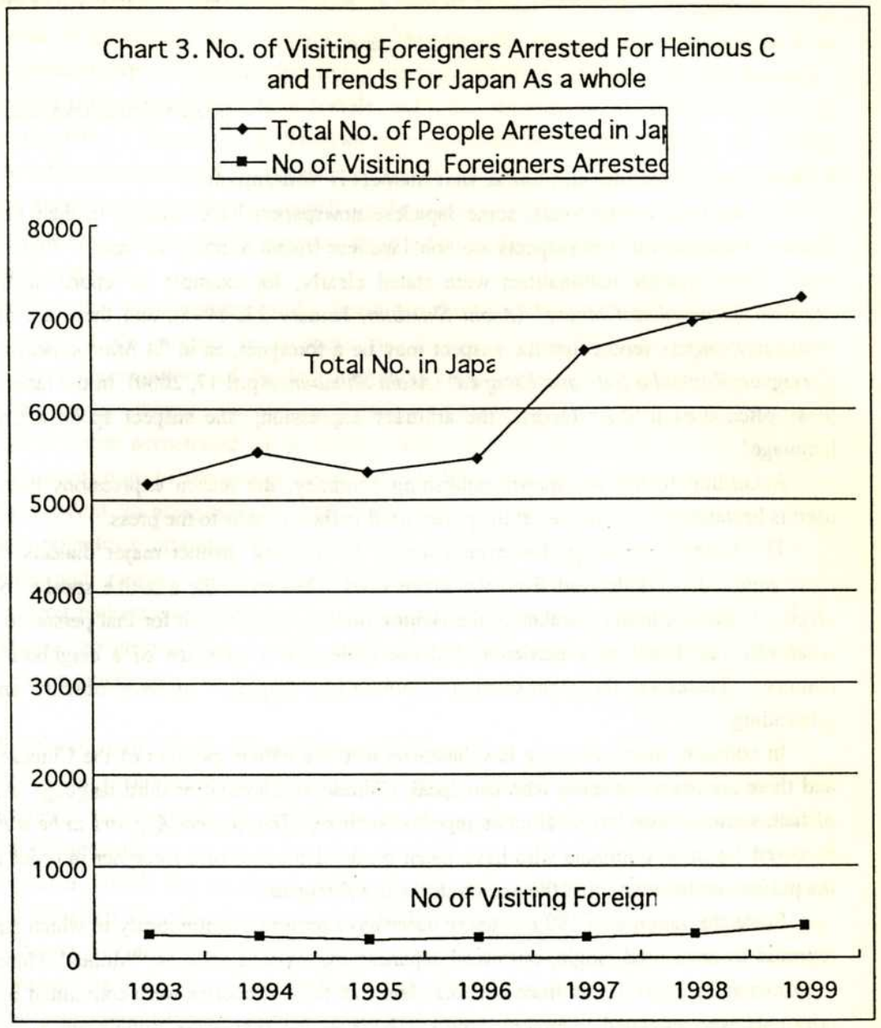


Notes: Heinous crimes other than Robby are murder, arson and rape.

By using such tricks, the NPA's statistical analysis and media reports make it seem as if crime by "visiting foreigners" and "illegal stayers" is growing year by year, becoming more heinous, and more organized. By making statements such as "Measures to combat crime by visiting foreigners is one of most important tasks in terms of public security" (*1999 State and Measures Toward the Problem of Visiting Foreigners*), and "The vast numbers of illegal stayers make visiting foreigners a hotbed of criminality" (*1999 White Paper on Police*), they create the image that "visiting foreigners and illegal stayers are criminals, heinous criminals, and organized criminals," and thus contribute to the permeation of Japanese society with prejudice and discrimination toward foreigners.

As we have seen above, police authorities have made statements in recent years that have promoted racial discrimination; the mass media, by propagating these statements issued by authorities, have contributed to an impression within society that "foreign crime is increasing, becoming more heinous, and more organized. This behavior by the NPA touches upon article 4 of the ICERD.



4. Call the police if you think you see Chinese-looking persons

(Art.4, par.c, Art.7)

Suzuki Ken & Okamoto Masataka

1. Newspaper Headlines emphasize that Suspect is Non-Japanese

For the past several years, some Japanese newspapers have stressed in their headlines of criminal incidents that the suspects are non-Japanese (racial minority in Japan). There have been cases where specific nationalities were stated clearly, for example in reports such as, "*The Arrested Criminal is Chinese*" (*Asahi Shimbun*, January 23, 1995), and there are other cases where newspapers report that the suspect may be a foreigner, as in "*A Man Appearing to be a Foreigner, Robbed a Safe and Escaped*" (*Asahi Shimbun*, April 17, 2000). In the latter cases, the press often uses in their reports, the arbitrary expression, "the suspect spoke a Chinese-like language".

According to the newspaper publishing company, the reason expressions like these are used is because they are just what the police used in their reports to the press.

The Chinese language, however, consists of six very distinct major dialects with many more minor dialects derived from the major ones. Thus even for a native speaker of Chinese origin, if s/he is a native speaker of the Beijing dialect, it is difficult for that person to recognize what s/he just heard as a particular Chinese dialect or a language of a neighboring race or country. Therefore, the expression a "*Chinese-like language*" is very obscure and can be misleading.

In addition, there are not a few Japanese who are native speakers of the Chinese language and there are many Japanese who can speak Chinese as a second or third language. As a matter of fact, some of those criminal cases reported such as, "*The Suspect Appears to be a Foreigner*" involved Japanese criminals who have taken on the demeanor of a foreigner in order to deceive the police into believing that the perpetrator was a foreigner.

Since the summer of 1999, robbery cases have occurred continuously in which suspects are reported to have used single, one-word Japanese expressions such as, "Money! Money! Safe!" in Osaka and Hyogo. It has since become clear that these robberies were committed by Japanese criminals who intended to make witnesses believe that they were non-Japanese by speaking fractured Japanese with a pseudo-foreign accent. (Mainichi Newspaper Flash News, November 28, 1999). According to a staff of the Asahi Shimbun Yokohama branch office, in an incident that occurred on November 30, 2000, describing the murder case of a jewel dealer in Tsurumi-ward, the police initially announced that "the suspect appeared to be a foreigner" and the Asahi Shimbun printed an article to that effect. But several hours after, the police claimed to have retracted the expression, "the suspect appeared to be foreigner."[16] But in such cases the newspapers generally do not print the correction, as their original articles are supposedly based on "reliable sources" from police official reports.

In December 2000 "Solidarity Center for Migrants" (SOL) appealed to 4 major nation-wide newspaper-publishing companies to call for a reconsideration of using such expression. In response to SOL's request, the *Sankei Shimbun* remarked that to be a non-Japanese is "an important clue to expediting an early arrest of the suspect" similar to descriptions such as "wearing a particular type of clothing, specifying the suspect's height and other physical features, indicating whether the suspect is male or female, and citing the number of criminals involved in a particular incident." The *Mainichi Shimbun* also expressed their opinion saying, "It is more important to inform the public of the appearance and characteristics of the suspect in this type of news." They assert that their priority is notifying the public of "criminal news which is of public concern", rather than "being overly anxious about whether they engage in and promote racial discrimination or not."[17]

We believe that emphasizing in the headlines that a crime was committed by a non-Japanese, while "if the suspect is Japanese we do not mention that the suspect may be Japanese," (the representative of Sankei Shimbun) only promotes prejudice against racial minorities and exposes them to threats. A mother of Chinese origin recently stated that when the news of "a crime perpetrated by a Chinese national" was announced, her children were extremely reluctant to go to school the following day. It is just one of many characteristics of any criminal incident, so news reports which deliberately emphasize this feature not only incite and reinforce prejudicial attitudes where there are racial differences, but tend to incite deeper discrimination and racism, resulting in the obstruction of understanding, tolerance and friendship among nations and racial or ethnic groups. This stance is incompatible with article 7. But the Japanese government lags behind in adopting swift and effective measures to correct and improve such situations.

2. The Police Caution the Public About Chinese in Japan

The Police, by making use of written media reports through press conferences (as in the above examples), and through direct announcements to the public, continue to proliferate discriminatory statements.

In December, 2000, the Akabane police station and another police station in Tokyo distributed 700 leaflets for crime prevention in which they wrote, "*Call the police (Dialing 110) if you see Chinese-like persons*," and "*If you see someone conversing in the Chinese language inside a building, be sure to call the police*". Call also the apartment building supervisors, neighborhood association officers, and the police box in that district. This leaflet, entitled "The Condominium, which you manage and the room that you own are targeted!" were originally made as samples by the local area guidance section of the Tokyo Metropolitan Police, local area division, and were distributed to 96 police stations within Tokyo on November 21, the same year.[18]

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[16] The Director of Asahi Shimbun Yokohama branch said this to Suzuki Ken.

[17] Answers given to an appeal letter which SOL sent. From the Sankei Shimbun written by Director of the Editorial Bureau, Social Issues Division (January 11, 2001) and the Mainichi Shimbun written by the Vice Director of the Division of Social Issues (January 29, 2001).

[18] The Chinese Embassy protested to Ministry of Foreign Affairs of Japan against this incident which could lead to having all Chinese people viewed by the public as criminals. The Embassy also demanded prevention measures to deter recurrences of such incidents. As a result the local area guidance section withdrew and disposed of the leaflet, ["Call the Police (Dial 110) if You See Chinese-looking Persons" which were distributed by the Tokyo Metropolitan Police. [Asahi Shimbun December 26, 2000]

In another case, Kanagawa police station in Kanagawa Prefecture issued the Area Security News entitled "Beware of Lock-Picking Larceny Rings!" and distributed 500 pieces to local residents in September, 2000 to announce the following:

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The thieves mentioned above are mostly undesirable and evil foreigners of Chinese origin who have entered the country illegally. Therefore if you notice the following around your condominium or neighborhood:

- Foreigners of Chinese origin who are carrying tote or travel bags:
- Groups of two or three foreigners of Chinese origin who have gone towards the upper floors of your condominium; - Foreigners of Chinese origin you have not seen before in your neighborhood who approach you with questions;
- Foreigners of Chinese origin who are speaking on cellular phones;
- Parked cars driven by foreigners of Chinese origin;

When you see people such as the above, please call the following number immediately: Kanagawa Police station Tel: 441-0110.

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This police station also distributed 6000 leaflets in December of the same year to ask residents to inform the police if they see any suspicious-looking foreigners loitering around their homes. This was announced in the local Police Box News, Special Edition entitled "Incidents of Tying-Up Victims in Larceny Cases by Foreigners on the Rise."

Furthermore, not a few Prefectural Police Departments have begun to advise the public through their Web sites to call the police without hesitation whenever they see *"suspicious-looking foreigners, for example foreigners they have not seen in the local area; foreigners who ask for directions in halting, one-word Japanese; or foreigners who are inept at using the public transportation system."* (Tottori Prefectural Police) [19]

Warning residents to inform the police if Chinese or Chinese-looking persons are present emerges from the kind of attitude that the police maintain while doing their every day routine job as police. Recently a case was reported by the media of a man living in Tokyo who was a third generation returnee from China with Japanese nationality. He was not able to speak Japanese fluently and was asked by a policeman to present his Alien Registration Certificate. However he did not carry any ID card to prove his Japanese nationality, so the policeman interrogated him at the police station. ("*DongFang ShiBao*" April 12, 2000).

Police, regarding that reports from residents play a very important role in arresting criminals, announce criminal incidents as public information notices. As part of their organization's characteristic, their priority is to hasten early stage arrests of suspects, as well as to promote crime prevention. So they have more interest in their appeal for caution about the Chinese to Japanese residents than for a concern to deter racial discrimination. Therefore, what seems to be problematic here is the lack of a government body to monitor the actions of the police and admonish them in the event of violations of terms that are guaranteed according to the ICERD. At present NGO's play this vital role of vigilance, but NGO's can detect only a small part of whole; NGO's cannot solve the whole problem. In addition, NGO's have no

[19] As of February 2001 the Tottori Prefectural Police has posted the following appeal on their Web site: "Please cooperate in the arrest of gangs who smuggle themselves into the country."

220

authority to resolve the violations other than carrying out negotiations or disseminating information regarding the violations and urging the general public to protest.

Actually on January 31, 2001, Solidarity network with Migrants in Kanagawa (consisting of 8 groups) held a negotiation session with the Kanagawa Prefectural Police regarding the above-mentioned case of the leaflets entitled "Beware of Lock-Picking Larceny Rings!" The police, after admitting that there were some inappropriate expressions, withdrew that particular leaflet. But they refused to withdraw the other leaflet mentioned, because they had specified "suspicious" foreigner. The Government does not take effective measures to prevent such police publications that promote racial discrimination, a restriction that the Convention imposes on its signatories in article 4, paragraph c and article 7.

3. The Japanese Government's Unique Interpretation of the Article 4, Paragraph C

The police, to whom the above-mentioned issues were pointed out, explain that those leaflets "were printed without the intention of racial discrimination". Since September 2000, the Yamanashi Prefectural Police distributed a total of 400 posters to banking facilities that pictured a Japanese woman being robbed of money and goods by 2 non-Japanese men.[20] The caption reads, "The number of such victims has increased throughout the prefecture." When an NGO protested to the police and demanded withdrawal of these posters, the prefectural police also disregarded the demand saying, "There was no intention to incite discrimination and prejudice."[21]

Here we would like to highlight the unique interpretation of article 4, paragraph c by the government shown in the Cabinet reply paper on October 3, 2000. It shows the following interpretation.

"Article 4 of the Convention imposes obligations for state parties to take certain measures toward acts which have the intention to incite or promote racial discrimination, and therefore, for those acts which do not have such intentions are not subject to this Convention." "Even if statements or acts of public authorities or public institutions, national or local, were regarded to incite or promote racial discrimination, in cases where they were done without intention to incite or promote racial discrimination, they do not violate article 4, paragraph c."[22]

With this kind of distorted interpretation of article 4, paragraph c, whenever the national or local public authorities or institutions act to incite or promote racial discrimination, if they merely express that they had no intention of racial discrimination, article 4, paragraph c is not applicable. This warped interpretation of the ICERD by the Japanese government is a convenience for state parties but is stripped of all its enforcement.

[20] This poster pictured a man with brown skin and red hair stealing valuables from a Japanese woman while another Caucasian with blonde hair is talking to the woman at the ATM machine.

[21] Crime prevention poster. "Promoting Discrimination Against Foreigners; Prefectural police refuse to withdraw posters" Yamanashi Nichinichi Shimbun on December 26 2000. But three days after this report, the police decided to withdraw the posters.

[22] Mori Yoshiro, Prime Minister, "A Paper of Reply to the Interpretation Submitted by Takemura Yasuko, A Member of the House of Counselors, regarding the Government's Duty to Implement the ICERD, in the case of the Governor of Tokyo's Remark", October 3, 2000.

221

5. Race and Nationality-based Exclusion at Private and Quasi-Public Establishments

(Art.2 par.1 (d), Art.5 par.f)

Tony Laszlo, Director of ISSHO Kikaku

This report describes the widespread and persistent problem of private establishments and quasi-public establishments in Japan which prohibit entrance to people based on race and nationality on a daily basis and for years on end. ISSHO KIKAKU has recorded, through our investigation, a number of cases in Hokkaido Prefecture, Okinawa Prefecture, Shizuoka Prefecture and the Metropolis of Tokyo.

1. Particularly Illustrative Violations

The following is a record of a portion of the cases known to ISSHO Kikaku as of January 19, 2000. For this report, ISSHO Kikaku has focused, for the most part, on family-oriented facilities, as such establishments are especially troublesome for the long-term resident and affect a broad variety of people rather than a special group.

(a)Hokkaido

A disturbingly large number of the private and quasi-public establishments in Hokkaido Prefecture prohibit entrance to foreign nationals and Japanese nationals who are not racially Japanese.

1) Mombetsu City Restaurateurs Union, Mombetsu

The Mombetsu City Restaurateurs Union actively promoted the purchase and display by its members, of a Russian language sign that reads, "This shop is for Japanese Only." During ISSHO Kikaku's investigation of August 2000, the president of the union confirmed that the union began taking orders for the signs in 1995 and that approximately 100 shops (half of the shops in the union) placed orders for the signs. The president told ISSHO Kikaku that about the same number are currently displaying the signs, despite a request from the Regional Legal Affairs Bureau to take them down. During the investigation, ISSHO Kikaku's members who speak fluent Japanese and were accompanied by a Japanese, were also denied entry at several of these shops solely because they appeared to be non-Japanese (two Caucasian males). We estimate that the number of shops displaying the sign is approximately 55 as of December 2000.

2) Yunohana Privately-owned Public Bath, Otaru City

In response to a report from a foreign resident who had been denied entrance into this establishment on June 26, 1999, ISSHO Kikaku organized a fact-finding team on September 19, 1999. The group consisted of Hokkaido residents of German, American, Chinese and Japanese nationalities (many of the Japanese being spouses and children of the foreign nationals). The group confirmed the existence of a trilingual (Russian, English and Japanese) "No Foreigners/Japanese Only" sign at the door of this establishment. Members of the group

222

who were visibly foreign were refused entry to the facility. A foreigner who was not distinguishable from the other Japanese (a Chinese national) was allowed to enter the facility at first, as were some of the Japanese nationals (children and spouses of the foreigners) in the group. However, when the manager learned that the Chinese national was not a Japanese, he insisted that she also leave the premises[23].

On October 31, 2000, this facility also refused entrance to a Caucasian male who had naturalized and tried to enter as a Japanese citizen, showing proof of nationality. He was refused on the grounds that the Japanese patrons would not consider him to be a Japanese.

This facility has ignored requests from the local government to remove the exclusionary sign and change its policy[24]. The manager told ISSHO Kikaku that he has conducted an in-house survey that shows that a significant percentage of the Japanese clientele would not patronize the facility if foreigners were allowed in. The Otaru city government illustrated a stance on August 7, 2000, in a response to questions posed by an Otaru NGO, that the city considers the desire of some Japanese to avoid contact with foreigners to be part of the problem. However, the city has not found any effective measures to deal with the issue because of the reasons mentioned below in Section 2 (Absence of Domestic Legislation).

3) Yuransen Quasi-public Bath + Privately-owned Public Bath, Wakkanai City

This facility was built with two entrances, one for Japanese and the other exclusively for non-Japanese. The "Japanese Only" side is a quasi-public bath that costs 360 yen (approximately 3 USD) to use. The "Foreigners Only" side charges the user 2,500 yen (approximately 21 USD) [25]. Foreign citizens in Wakkanai who pay taxes together in the same manner as Japanese citizens cannot use the quasi-public bath that is run using the city's financial support. The manager of this facility told ISSHO Kikaku members and various media that the establishment was built with this dual system in place as it determined that a significant number of the Japanese clientele would not patronize the facility if foreigners were also allowed to enter.

4) Shido Sports Shop, Wakkanai City

Sporting goods shop named *Shido Sports Shop* had posted a Russian language sign that meant that "Russians" should not enter the shop. The reason given by the management: "Russians shoplift, throw cigarette butts on the linoleum floor, try on clothes and leave their body odor on them, and generally scare the Japanese customers." The management explained to ISSHO Kikaku on April 9 and August 23, 2000 that foreigners were only to be allowed into their shop if they were accompanied by Japanese who were willing to take responsibility for them. The management also said they were convinced that they were doing nothing that would

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[23] This establishment changed its sign early in 2000, the new one having only Japanese text and reading "This establishment does not accept foreigners."

[24] However on January 17, 2001, the day after an announcement that a lawsuit would be filed against it by persons who had been refused entrance, and after years of having ignored requests from the local government, the management changed their sign to read "Foreigners will be allowed entrance if they 1) have lived in Japan for more than one year, consecutively, 2) speak Japanese, 3) understand how to use a Japanese bathing facility and 4) are not a nuisance to other customers".

[25] It should be noted that the price charged to foreigners does have some value-added services

223

constitute a problem. They justified their business practices by saying that they had a right to deny entrance to Russians just as they had a right to turn away an intoxicated Japanese. The management further indicated their understanding that the Ministry of Justice had found their practices to be beyond fault, based on a visit that they had received from the Regional Legal Affairs Bureau of the Ministry of Justice sometime after ISSHO Kikaku's first visit.

5) Private and Quasi-public bath in Rumoi City and Nemuro City

The management of *Hotel Kamuiwa*, a privately-owned public bath in Rumoi city, told ISSHO Kikaku on April 8, 2000 that foreigners are denied entrance every day between 5 pm. and 7 pm., the hours which are reserved for Japanese patrons. However, if the management could determine that the foreigners were not Russian, they often allowed them entrance, as well.

On June 9, 2000, ISSHO Kikaku learned that the management of *Akebono-yu*, a quasi-public bath in Nemuro city, denies entrance to foreigners unless they are accompanied by a Japanese national. According to the manager, this establishment turns away foreigners who are fluent in the language if they attempt to enter without a Japanese companion.

(b) Shinjuku Ward, Metropolis of Tokyo

On September 6, 2000, ISSHO confirmed that *Ensotei Cafe* (Hyakunincho, Shinjuku Ward) has displayed several Japanese-language signs which read "No Foreigners" since 1998. The management told ISSHO Kikaku that he does not consider the practice to be discriminatory and does not intend to change his policies in the foreseeable future.

ISSHO Kikaku confirmed on September 6, 2000 that *Beat* (Kabukicho, Shinjuku Ward), a game center, displays a Japanese language sign which reads, "No Members of Organized Crime Groups...No Chinese...No People Using or Possessing Drugs." This shop is located directly opposite the main entrance to the offices of the ward assembly and is in plain sight to assembly members, ward office workers and any visitors to their offices.

Hotel Southern Cross (Hyakunincho, Shinjuku Ward) has displayed a bilingual (Japanese/English) sign at the door (later at the hotel counter) which read "No Ruffians, No Foreign Women since its establishment in 1991. The management told ISSHO Kikaku that the signs were erected in response to concerns voiced by the local police and Shopkeeper's Union. The management does not intend to change its policies in the foreseeable future.

ISSHO Kikaku has determined that *Sutajio* (Kabukicho, Shinjuku Ward), a cafe, has had a bilingual (Japanese/English) sign at the door which reads "No Members of Organized Crime Groups, No Chinese, Japanese Only" since at least 1998.

(c) Hamamatsu City, Shizuoka Prefecture

In 1998, a Brazilian reported being denied service when he entered a Fishing equipment shop named *Tokai Tsurigu, Ltd.* with his wife to buy fishing reels. According to the report, the shop owner said, "I don't sell to Brazilians." This shop owner was quoted in Asahi Shimbun's Ronza Magazine of March/April, 2000, as saying "I don't care if it is illegal," in response to the reporter's question about whether he thought his shop's policy was legal or not.

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included, such as a rental fee for a robe, use of a sauna and bathing trunks.

ISSHO Kikaku confirmed on October 2, 1999 that a Karaoke bar named *Music Lounge Abend* (Hamamatsu City, Sunayamacho) posted a notice in Portuguese which forbid the entrance of Brazilians and Peruvians. After October 1999, the sign was changed to an English language one which denied entrance to all foreigners. The management removed the exclusionary sign in December 1999, but continues to turn foreigners away. (While foreign customers are turned away, most of the female workers at this bar are non-Japanese.)

2. Absence of Domestic Legislation to Prohibit and Punish Racial Discrimination

There are many similar racial discriminatory incidents in different regions, but there are no cases on record in which the Japanese authorities or a governmental agency has prosecuted the owners or managers of private or quasi-public establishment which persist in their discriminatory practices, despite the fact that the government is aware of such cases that appear in this report. Setting possible unwillingness aside, the reason there have been no prosecutions is, of course, the inability on the part of the authorities to prosecute. The Legal Affairs Bureaus of the Ministry of Justice, the governmental body chiefly in charge of cautioning parties which practice racial discrimination, readily admits that, in the face of such a case, it is capable of nothing more binding than the issuance of a request that the practice be stopped.

The local governments are unable and in many cases unwilling to prevent and eliminate these discriminatory practices. Of the local governments of each of the municipalities listed below, only that of the city of Otaru has bothered to establish a regular committee to study the issue. And too often the local governments fail to recognize the offenses as being racial discrimination, as in the case of Ohtakimura.[26]

Assembly members in the municipalities with confirmed violators have also shown their inability to act to remedy the problem. During 1999 and 2000, ISSHO Kikaku submitted essentially identical petitions to the assemblies of Otaru, Wakkanai, Mombetsu, Hokkaido, Shinjuku, Tokyo and Hamamatsu, requesting the drafting and implementation of an ordinance which would allow the authorities under the local jurisdiction to prosecute the offending parties. ISSHO Kikaku has confirmed that two of the assemblies, those of Mombetsu and Wakkanai, failed to introduce the petition so that it could be deliberated by the assemblies' committees or in the general sessions. We have also learned that the assembly members of Shinjuku, Hamamatsu and Otaru deliberated over the petitions but, citing the difficulty of drafting ordinances which contain provisions for penalties in the absence of a related national-level law, voted to "continue to deliberate," a move that most likely sentences the petition to abandonment several months subsequent to said decision. During the deliberation by the Shinjuku Assembly, one of its members asserted that the displaying of "No Foreigners" and "No Chinese" signs in that municipality did not constitute discrimination but was, rather, a legitimate business practice. This remark was not rebutted by the other members of the assembly.

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[26] In November 1997, two Japanese-speaking foreign residents of Hokkaido accompanied by a Japanese national were denied entrance to a hotel-run, open-to-the-public bath named Kawasemi in Ohtakimura, Hokkaido. The foreign residents notified the town's mayor of the treatment they had received. The mayor wrote back in February 1998, stating that the foreigners should patronize a large hotel the next time they wished to use a public bath in that town.

The Japanese government should enact legislation which will enable Japan's authoritative bodies to prosecute the offending parties and thus empower them to eliminate said discrimination. Specifically, offenders should face punishments which include the payment of fines, suspension of business, loss of license and imprisonment. At present offenders face none of the above; thus parties who choose to continue the illegal discrimination simply do so.

Even in the 1999 Bortz decision, in which one victim was able to sue successfully for compensation after having been discriminated against, the plaintiff had to resort to an indirect application of the ICERD - in the absence of appropriate domestic legislation - to prove that the treatment she had received constituted "an illegal act" under the Civil Law Act.

In light of the situation noted above, ISSHO Kikaku maintains that the Japanese government has not been implementing its obligation under Art.2 para..1(d) and Art.5 para..f of the ICERD as it does not prohibit and bring to an end racial discrimination by these private and quasi-public establishments, thus shirking its obligation to set up legally empowered measures to prosecute such offenders.

6. Housing Discrimination against foreigners

(Art. 2, par.1(d), Art. 5, par.d (i), e (iii))

Shioji Akiko, The Community Living Research Group

Many of the residents in Japan with foreign nationality rent private housing, but restrictions on housing based on race is openly practiced here, especially housing discrimination against Koreans, Chinese and other Asians, and people from Central and Latin America. Concerning this problem, a couple of local governments (such as Kawasaki City) have established ordinances with supportive policies to abolish housing discrimination. The national government, however, has not taken effective measures except for informing citizens.

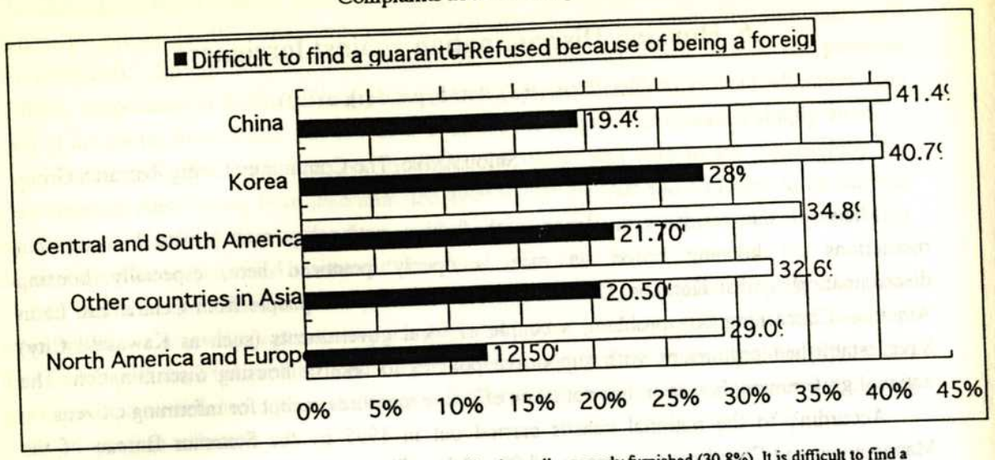
According to the national census carried out in 1995 by the Statistics Bureau of the Management and Coordination Agency, 48.9% of the "households including foreigners" rent private housing while 25.6% of the Japanese do. The national government decreed that foreigners should have the same rights regarding residence as the Japanese about renting public housing, but public housing accounts for only 6.8% of all dwellings in Japan. (Study of Housing and Land Survey of Japan by the Statistics Bureau of the Management and Coordination Agency, 1998). The government has informed the concerned real estate groups about desirable practices regarding renting housing which 50% of the foreigners living in Japan depend on. However, these weak recommendations leave the housing discrimination problem in Japan as serious as ever.

According to the survey of private real estate agents in 15 prefectures including big cities, 52.8% of them answered that "they put some kinds of limits on the qualification of tenants," and 49.8% of them answered that they put limits on "foreigners."[27]

"An investigation into the actual life of foreigners living in Tokyo" carried out by Tokyo Metropolitan Government Bureau of Citizens and Cultural Affairs (March, 1997) has revealed that the following complaints about housing are given: 36.5% answered that "they are refused because they are not Japanese," and 20.3% answered that "they have difficulty finding guarantors." Among this, more Koreans, Chinese, other Asians, and people from Central and Latin America compared with people from North America and Europe have been discriminated against. (*See the chart below*)

[27] Report on the Investigation into Rationalization Measures about Houses for Rent by the Real Estate Transaction Modernization Center, Foundation, March 1997.

Complaints about housing



Note: Refused because of being a foreigner (36.5%); the dwelling is small, or poorly furnished (30.8%). It is difficult to find a guarantor (20.3%). The rent is too high (63.0%), there is a custom of key money and security deposit (48.3%).

The same survey has also pointed out the following specific cases:

"When I tried to change my apartment, almost all of the real estate agents would not talk to me because I am from India. They rejected me even though I had a guarantee from my office. In fact, only one out of 20 listened to me." (Male in his 20s from India)

"When I first tried to find a room in Tokyo, almost all of the real estate agents rejected me because I am a 'foreigner,' so I had a very hard time. Even though I proved that I am a special permanent resident, that I was educated in Japan and that I have no difficulty speaking Japanese, I was still rejected once I gave my real name. It seems that in the real estate world, there is no difference between permanent foreign residents and people who have recently come to Japan, and it seems that they want to reject "foreigners." In the end, I had to visit around 30 real estate agents until I came across one connected with Koreans." (Male in his 30s from Korea)

As to the housing discrimination against foreigners in private houses for rent, the government has only done "enlightenment campaign" as is mentioned in *paragraph 31 and 130* of the government and has never taken effective measures whatsoever. The Tokyo Metropolitan Government, about half of the "special cities" in Tokyo, and Kawasaki City have laws about housing in which housing discrimination in renting private housing based on nationality should be abolished. However, these laws do not carry any penalties. The local governments, except for Kawasaki City and Shinjuku Ward in Tokyo, have used the phrase " try to raise public awareness" and do not take any effective measures, so this does not lead to the abolishment of discrimination.

The abolishment of housing discrimination should be done not only by some individual local governments, but by local government throughout the country. The national government, which has left housing discrimination based on race as it is, is not performing the duties of articles 2 and 5. The national government should enact laws to prohibit housing discrimination and take supportive measures as a national policy.

228

7. Non-Japanese Women in Japan:

Victimized by Trafficking, Domestic Violence, and Discriminatory Treatment at the Hands of Government Agencies

(Art.2, Art.5 (a), Art.6, Art.7)

Motoki Tomoko, HELP Asian Women's Shelter

1. Trafficking of Asian and South American Women

Since the 1980's there have been an increasing number of cases in Japan of brokers getting women a tourist or entertainer visa, and then saddling them with an enormous debt, calling it a commission or some other charge. The brokers force the women to work in the sex industry, which is completely different from the original job description and the contract they have signed, and they do not pay the salary they have promised. In Japan in the 1980's almost all of the women who were trafficked were Thai or Filipina, but now women from Latin America stand out. Also, the brokers are becoming more sneaky in the methods they use to bring the women here.[28] The women are sent to work in the sex industry where they are subjected to inhuman treatment.

Table1 Number of Trafficking Survivors Who Have Escaped to HELP (1996-1999)

Nationality	1996	1997	1998	1999	Total
Thailand	9	7	8	5	29
Colombia	5	5	3	4	17
Taiwan	0	1	0	7	8
Korea	0	1	1	1	3
Hong Kong	1	0	0	0	1
China	0	1	0	0	1
Mexico	0	0	0	1	1
Rumania	0	0	0	1	1
Total	15	15	12	19	61

At the Human Rights Committee in its 64th session in 1998, Committee Member Medina Quiroga spoke about trafficking in Japan as a "very serious problem," saying that Japan seems "to offer the largest pool of Asian women in the sex industry." She stated that holding women in a state of debt bondage is a clear violation of articles 7 and 8. The Committee's Concluding Observations prescribed that even though Japan has revised its laws and regulations on businesses affecting public morals, the situation of women who have been trafficked and held in slavery-like conditions, and the inadequacy of protective and supportive services for these women continue to be a source of serious concern in terms of article 8, and a main point on which the Japanese government needs to improve (CCPR/C/79/Add.102,

[28] For example, when brokers traffic women to Japan, they go to the countryside and look for women who have less access to information and do not know the realities of what they will be subjected to, making them easier to deceive.

229

paragraph 29).

In response to the HRC's list of issues 5(b) – What means have been taken to prevent the trafficking of women today?? (CCPR/C/64/JAP) – Japanese government representative responded that the revised regulations on businesses affecting public morals include a new prohibition on hiring illegal workers. They have strengthened the ability of the police to go after law-breaking employers and managers, and have prohibited businesses from taking or holding the passports of their employees.

However, a woman who escaped to HELP in January 2000 said that the person forcing her to work had been arrested in 1998 for employing illegal workers, and used the same methods to traffic her from the same country as other women in the past. The Embassy employee in charge of her case said that this broker was released just two weeks after being arrested. In 1999 there were only 7 reported violations of the Prostitution Prevention Law in the whole country. Most of these were for forced prostitution. This fact speaks to how lenient the law is towards brokers. Additionally, the clause prohibiting employers from holding their employees' passports contains no penalties, and has no power to check their actual behavior. And, as in the past, police, Immigration Bureau, and other public officials are often discriminatory in their treatment of South American and non-Japanese Asian survivors of trafficking.

Police: Even when a woman who has been held in captivity risks her life to escape from a broker, some officers will not even offer protection or shelter. These are some of the stories told by women who have escaped to HELP: "The police turned me away, gesturing that I should go to the Embassy since I can't speak Japanese" (1997, Thai woman, Shimodate Police Station). "The police just said that the Mafia aren't their problem, and wouldn't talk to me any more" (2000, Colombian woman, near Nagoya). "I managed to escape in the middle of the night and the police took me in, but then just dumped me at the Embassy which was closed for the night. No one was there" (2000, Colombian woman, Tokyo). This is the way trafficking survivors are being treated by the police.[29]

Government-run shelters called *Fujin Sodanjo* were established to house and "rehabilitate" women who "are prostituting themselves, or are in danger of being prostituted." They are not supposed to differentiate between women with and without a visa, but in reality women without a visa have been denied access and received no shelter. In some places such as Tokyo and Fukui, women who do not have a return ticket to their home country cannot use the *Sodanjo*. In 1998 HELP provided shelter for 71 non-Japanese women (44% of HELP's total residents). In the same year, non-Japanese women were only 4% (24 women, not including children) of the total residents at the Tokyo Women's Sodan Center. This shows just how much public facilities are not functioning to help and protect non-Japanese women.

2. Domestic Violence Against Asian and South American Women

Table 2 shows the rapid increase in international marriages in Japan since the 1980's.

[29] In the cases of the women from Tokyo and Nagoya, since they were able to flee immediately after being brought to Japan, they didn't know the geography of the area and could not read anything, so we could not find out exactly which police station it was.

	1980	1985	1990	1995	1996	1997
Number of international marriages registered in Japan	7,261	12,181	25,626	27,727	28,372	28,251
(% of all marriages in Japan)	0.94%	1.66%	3.55%	3.50%	3.57%	3.64%
Number in which the wife is non-Japanese	4,386	7,738	20,026	20,787	21,162	20,902
(% of all international marriages)	60.40%	63.50%	78.10%	75%	74.60%	74%
Nationality of the wives						
Korean	2,458	3,622	8,940	4,521	4,461	4,504
	56%	46.80%	44.60%	21.70%	21.10%	21.50%
Chinese	912	1,766	3,614	5,174	6,264	6,630
	20.80%	22.80%	18%	24.90%	29.60%	31.70%
Filipina				7,188	6,645	6,035
				34.60%	31.40%	28.90%
Thai				1,915	1,760	1,688
				9.20%	8.30%	8.10%
Brazilian				579	551	488
American	178	254	260	198	241	148
Peruvian				140	130	156
British				82	88	90
Other	838	2,096	7,212	990	1,022	1,127

In the past 15 years, the percentage of these couples in which the non-Japanese spouse is the wife has gone up from 60% to 75% within international marriage couple. Up until the 1980's, almost all international marriages were between Japanese and Korean residents or their descendants who had been in Japan since before the Second World War. Recently, however, marriages between Japanese and Chinese, Filipinas, Thais, Brazilians, Peruvians, etc. are increasing.

It has become clear that there are a huge number of women in cross-cultural relationships being abused by Japanese men. Of the survivors of domestic violence who escape to HELP, almost all are Asian. Domestic violence can include physical violence such as punching and kicking, in addition to verbal abuse and psychological abuse such as limiting many aspects of the woman's daily life. Some women narrowly escape being killed by their partners when they flee to the shelter.

Something that stands out in the stories of the women who have fled to HELP is violence that belittles and rejects the environment and culture in which the women were raised. Abusive Japanese husbands will say, "Your country's food stinks. Don't cook it here. Don't eat it here." "Don't make friends with anyone from your own country." "Only speak Japanese" (or, "Nothing else besides English."). Many women such as Chinese and Filipinos who have been introduced to their husbands through a broker or intermediary are treated like baby-making machines. As soon as they produce a child they are told, "This isn't your country so get out. Leave the kid and go home." They are submitted to this abuse and to violence. Also, many women were forced to work in the sex industry and met their future husbands there, but even after marriage the men continue to see the women as sex objects or tools. Their level of consciousness is, "I bought you from that club." They don't see their

wives as individual human beings, and this can lead to domestic violence.

When such women seek assistance from governmental agencies, the police, courts, etc. also treat them with racism or ethnic discrimination, treating them in such a way that it benefits their Japanese husbands more than the women who have already been victimized.

Police: There are many cases of a woman going to the police for help and being told that the police cannot become involved in private or domestic affairs. The police will not help or protect the woman from her violent partner. Or, since she cannot speak perfect Japanese, the police just listen to what the husband has to say and refuse to protect or shelter the wife. Many husbands take away their wife's passport, but as in the case of the Urawa Police Department in 1998, the police will not do anything to help the woman, saying that it's a problem between the wife and her husband and the police cannot interfere. In this way women are denied access to visas, passport renewals, and the freedom to travel and cross national borders. Many of their rights and freedoms are usurped.

At the *courts*, tacit approval of domestic violence is apparent in the statements of the mediators: "How is some foreigner going to raise a kid in Japan?" "How do we know you didn't get married just to get a visa?" They do not mention or even admit to the existence of the violence. One Filipino in 1998 was forced to go through an entire mediation hearing at the Kisarazu Family Court without an interpreter. And, although there are government-sponsored counseling centers that can be contacted about domestic violence, they do not provide interpreters or even information in different languages. Individuals and non-governmental organizations are forced to provide all these services. The government's refusal to respond to this situation is an infringement of articles 2, article 5, paragraph a, and article 6.

3. The Government Did Not Act Against the Book *Tai Kaishun Dokuhon* – "Guide to Buying Thai Women"

There are books published in Japan that treat the women of one specific country as sex objects, but there are no laws defining and prohibiting this as racial discrimination, and the government has not stopped publication of this book. *Tai Kaishun Dokuhon*, published by Data House in 1994, targets Thai women as objects to be bought. This book ferociously degrades the human rights of Thai women and has met with great opposition, but was reissued in 1997 as a "revised edition." Although it has a new title, the contents are unchanged. The same company then published guides to buying the women of other countries, including Korea, the Philippines, etc. These are the same countries from which women are trafficked into the sex industry in Japan. The lack of government action on this issue is in serious conflict with article 7.

232

8. Exclusion of Immigrant Pupils from School Education:

Government's Refusal to Recognize Brazilian School

(Art.2, par.2, Art.5, par.e-v, Art.7)

Ernest Atsushi Shimamoto

During the 1990s observed an rise in entry and settlement of migrant workers and their family to Japan. This phenomenon has led an increase in the foreign school age children in Japan. According to a survey conducted by the Ministry of Education in September 1, 1999 (Table 1), the total number of enrolled foreign students requiring Japanese language guidance in compulsory educational institutions (elementary and lower secondary schools), upper secondary schools, and schools for deaf, blind and handicapped educational institutions is 25,463, among which 18,585 students are non-Japanese citizen. The latter figure has more than tripled from 5674 students in 1991 survey. The real number of such students, however, is estimated to be nearly double of the figure in the survey, because many Brazilian and Peruvian school age students are not enrolled in school (see later discussion for the detail).

There are as many as 58 languages spoken as their mother tongues. 7,739 (41.6%) are Portuguese speakers, 5,674 (30.5%) are Chinese speakers, and 2003, (10.8%) Spanish; the speakers of the three languages constitute up to 83.0% of the total number.

<Table 1> Students requiring Japanese language guidance

Year		Elementary	Lower secondary	Upper secondary	Special Education	Total
1991	Foreigner	3,978	1,485	0	0	5,463
1995	Foreigner	8,192	3,350	264	0	11,806
1999	Foreigner	12,383	5,250	901	51	18,585
	Japanese	1,144	357	91	15	1,607
	Total	13,527	5,607	992	66	20,192

Source : Ministry of Education, Education Founding bureau returnee children's education division "A survey to determine how schools accept foreign children who needs Japanese language guidance" May 25,2000.

1. The Exclusion of Brazilians and Peruvians from school education

The Table 2 shown below indicates that only 49.7% of foreign students proceed to upper secondary school education, while up to 93.3% of Japanese students continue higher education.

<Table 2> Ratio of foreign students in enrollment and the ratio of students proceeding to higher education in lower and upper secondary schools of Japan

	Total	Japanese	Foreigner	A*
Number of junior hight school students, as ofMay 1996	4,527,400	4,500,486	26,914	0.60%
Number of hight school students as of May 1999	4,211,826	4,198,461	13,365	0.30%
% of students proceeding to high school	93.00%	93.30%	49.70%	

Note: A=Percentage of foreign students in the total students population

Source: Ministry of Education School Survey. Foreigners include stateless students.

233

Majority of the foreign students are presumably the Korean permanent residents and their attendance and enrollment rates at upper secondary educational institution are seen similar to those of Japanese students. Therefore, the actual rate of upper secondary school enrollment of migrant children who have come to Japan since 1990s is estimated to be much lower that 49.7%.

Although the immigrant pupils who drop out from Japanese school education are from diverse countries of origin, increasing number of drop outs are observed among the pupils from South America who have remarkably different customary and linguistic backgrounds. This is particularly true for Brazilian pupils in Japan; up to 20% of all school age (elementary, and lower secondary schools) Brazilian youths are not enrolled in school.[30] In the Oizumi village of Gunma Prefecture where foreign (mainly Brazilians) residents account for 13% of the total inhabitants, the percentage of enrollment among foreign students in elementary and lower secondary schools has dropped to 56% (289 out of 518) in 2000, indicating decline, compared to 68% in 1999, and 74% in 1998. It is important to note that their lower secondary school enrollment rate is as low as 45% while that of elementary school is 61%.[31]

Most of Brazilian students, at the time of their entry to Japan, hope to attend higher education, however, by the time they enter lower secondary school (end of compulsory education) many students decide to look for a job. Immigrant pupils enrolled Japanese schools are often laughed at and discriminated by Japanese students, and treated as an "uninvited", "guest" or "out of the target in schooling education" by schoolteachers. Due to such mistreatments and inadequate education many students idle their time away and lose their motivation to study, losing hope and respect for schooling system. In 1997, a teacher in the public school in Gifu Prefecture during career consultation is said to have told a Peruvian student 'why do you, a Peruvian want to go to a Japanese school? Why don't you want to work like other foreign students do?' The teachers of the several public schools in Aichi Prefecture are said to made comments inferring 'Brazilians, go to Brazilian school. This is a Japanese school. "[32]

There are increasing cases that Brazilian students even drop out from the compulsory education. More than few teachers refrain from taking responsibility when migrant students are to drop out from compulsory education. What is more, there is a case that a school which is unprepared for migrant students advised them to drop out school. [33]

The condition described above shows serious violation of the right to education ensured by the article 5, paragraph e-(v) of the Convention.

Although the Ministry of Education maintains that any children who wish to enroll in school will be permitted regardless of their nationalities of visa status, the practice varies

[30] A report in the Symposium, 'Simpósio sobre a Educação de Nikkeis no Japão'q, held in November 1997 at Tenri University, Nara Prefecture, Japan. The report is also mentioned in the Brazilian newspaper in Japan, *International Press*.

[31] Kaminoge Shimbun July 7, 2000, Tokyo Shimbun (Gunma version) July 7, 2000, Mainichi Shimbun July 7, 2000 and others. Since the introduction of revised immigration control act in 1990, Oizumi village, together with its commercial sector has accepted Brazilian workers, but has not provided adequate education to Brazilian children.

[32] Cases in Gifu Prefecture and Aichi Prefecture are based on author's research.

[33] *Op.sit,* Nishino Rumiko, *Why was HERUCULANO Killed.* Herculano Reiko Lukosevicius, a Brazilian boy killed in October 1997 in Komaki City, Aichi Prefecture was one of the students excluded from the schooling education. (For detail page 11-12)

among local governments which are in charge of actual school administration. Therefore, the right to education of the foreign students is not legally ensured. Aichi Prefecture hosts the largest number of Brazilians (41,241 in 1999, which is 18.4% of all Brazilians in Japan). Industries in the prefecture including auto mobile manufacturing sectors based in Toyoda city employ many Brazilian workers, creating within the prefecture the highest population of Brazilian students in Japan.[34] Nagoya City, the capital of Aichi Prefecture and one of the twelve special cities designed by ordinance, refuses to permit school enrollment of the children who are either not recorded in the alien registration, or not holding proper visa. Although this practice is against the principle set by the Ministry of Education that nationality of the child is not considered at school enrollment, Nagoya city refuses to change its own practice.

The followings are the 3 main reasons why Brazilians and Peruvian students drop out from school.

(a) Lack of Japanese language education

The Japanese language education for the children of migrants is far from being adequate. Many local governments facilitated "international class" within compulsory educational institution with more than five foreign students, providing Japanese language lessons In some areas, the local authorities have selected certain schools as the 'base' and ask students enrolled in the neighboring schools to come to attend the language classes at the designated schools. In any case, the language course is allocated very limited amount of time (varies according to school, fiscal year, and the teachers in charge) and fall short to equip migrant children with enough language ability to carry out self-relied life in Japan. Among all the schools which have enrollment of foreign students, up to 80% of the schools have less than 5 students who require Japanese language course. Many local governments allocate little or inadequate human and financial resources to such schools. It is reported that some schools send migrant children with poor Japanese ability to the special class originally set for mentally handicapped students in order to alleviate the burden of teachers in charge of normal class.[35] The lack of language education makes foreign students difficult to keep up with the classes, constructing inducement to their dropouts.

(b) Discrimination by schoolteachers

In the late 1990s, some local governments introduced a multicultural education policy regarding foreign students. (For example, in April 1998, Kawasaki City of Kanagawa

[34] The number of foreign students requiring Japanese language lessons totals 2328 (as of 1999) in Aichi Prefecture, constituting 12.5% of the all in Japan.

[35] These schools, in the process of requesting special teacher to the regional educational board, referred to "special education system" which permits allocation of one additional teacher to the school with 4-12 mental handicapped students (two teachers if there are more than 13 students.) Under this system, in March 1980, Iwatsuki Elementary School of Takatsuki City, Saitama Prefecture was succeeded in acquiring a special Chinese-speaking teacher for the children of Japanese returning from China. This strategy came out of struggle because there is no policy providing special teachers for foreign students. For most of the school, they tend to focus solely on enrolling immigrant pupils to the special class to alleviate burden of the teachers. It remains rather rare for immigrant pupils pushed to special class to receive Japanese language lesson such as found in Minamiura Elementary School, Mitaka City, Tokyo.

Prefecture revised its basic policy on education for foreigners.) Yet administrative their effort to educate schoolteachers still remains perfunctory, and ineligible number of teachers continues to exhibit discrimination against ethnic minority.

In 1998, the then principal of the Kanagawa prefectural Ishikawa High school, in the negotiation with the union officials, is noted to have said, "Korean permanent residents in Japan should go to their ethnic school. They should not be enrolled in the public school." In 1999, Professor Masami Oiso of Shizuoka University in the lecture of international politics insisted that there was no massacre took place in Nanjing, China and that so-called comfort woman (sex slave for military) was a good policy because it protected women in the locality. When some Asian foreign students protested against his claim, he stroke them off the enrollment list and refused to give credits on based on their dishonest acts that he made up to justify his conduct. The teacher of Hikarigaoka High school in Tokyo, Kiyoshi Kosuge made claim in his lecture that the foreigner who is neutralized as Japanese citizen has no ethnic trait but of Japanese. He also put up his claim on the Internet Web site for a long duration. In 1998, a schoolteacher of Kanagawa Prefectural Yurigaoka High school said at the human rights training seminar to the Korean lectures and students who were invited as the guest speakers, "you have two countries of your own. Why don't you go back ?"

Except from the incident in Shizuoka University, no one in the question has received any form of punishment for his or her misconduct. The government has failed to comply the obligation set in the article 7. It has not yet taken any prompt and effective measure against prejudice that could lead to discrimination.

(c) Inequality in the upper secondary school entrance examination

All the contents of the upper secondary school entrance examination are written in Japanese. For immigrant pupils, it is almost as if they are tested of their Japanese language ability rather than their academic performance. The local governments do not allow foreign students to take exams in their mother tongues on the ground that it is difficult to translate and mark the result[36]. Japanese language in its written form is composed of Kanji, or the symbolic sign, and Hiragana and Katakana, or the phonetic sings. Compared with Chinese speakers who use similar symbolic signs, Portuguese and Spanish speaker will face serious difficulty in learning Japanese especially that of written form.

In the entrance examination of Japanese upper secondary school, English is designated as the only foreign language to be tested. Portugal, Spanish, Chinese, Korean languages are excluded. For this reason, many Brazilian and Peruvian students are forced to make their applications to the high schools of relatively poor academic record which does not send many students to university. Even when applied, only a part of them actually enters a school. There is almost no possibility for immigrant pupils to receive educations necessary to proceed their study at University level.

In several part of Japan, some initiatives are observed to set up schools for Brazilian and Peruvian children who are excluded from state schooling, Except for Oizumi-village in Gunma Prefecture which is to set a village-funded Brazilian school by the end of March 2001, all the

[36] Result of negotiation between Kanagawa prefecture teacher's union and Kanagawa prefecture. Based on reserch of Mr.Takahashi Toru.

other schools are privately funded. The central and local government does not recognize them as a public schooling institution, providing neither financial nor any other means of support.

2. Unrecognition of Brazilian School

In recent years, Brazilian schools have been set up across Japan and their number is on increase. In March 1995, the first Brazilian school, Escola Alegria de Saber was opened in Toyoda city. By the end of 2000, there are 7 schools in Aichi Prefecture (Toyoda City, Toyohashi City, Komaki City, Nagoya City, Hekinan City, Handa City, Anjo City), 3 schools in Shizuoka Prefecture (Hamamatsu City –2 schools-, and Yaezu City), and one school each in Suzuka City of Mie prefecture, Kani City of Gifu Prefecture, Ohta City of Gunma Prefecture and Manaoka City of Tochigi Prefecture. The total number of Brazilian schools has now reached 14. In these schools, classes are structured in accordance with Brazilian school curriculum together with some Japanese lessons and aim to prepare Brazilian students to transfer to Brazilian school when they return. These Brazilian schools also function a shelter to help Brazilian students who receive harsh treatments in Japanese schools.

But Aichi Prefecture does not recognize Brazilian school as an educational institution because of its own curriculum, therefore does not provide any subsidy. For Korean schools, the local authorities recognize them as a "Miscellaneous schools", but no such treatment is given for Brazilian schools. The parents of the attendants have to pay the schooling cost of 30,000 yen to 50,000yen ($350) per month, including tuition, texts, transportation that are free in the public education. The amount is a heavy burden for migrant workers who are often not affluent. Because of their poor Japanese language ability and difficulty in obtaining qualification, the Brazilians graduating from Brazilian schools in Japan face difficulty in entering Japanese state own upper secondary school.[37] As many Brazilian show tendencies to stay in Japan rather than returning to Brazil, they begin to form economic underclass in Japanese society.

Also in Nagoya City of Aichi Prefecture, a Christian organization runs Ecumenical Learning Center for Children (ELCC). It was set in April 1998 and provides educational opportunity to some 20 Philipino students who were refused to attend Japanese schools. Not only Nagoya City does not recognize the school and provide no support, but also designate the school as the place for public security investigation.

According to article 2, paragraph 2 of the ICERD, the government is urgently requested to take special and specific measures to institutionally support above mentioned ethnic school in order to protect and encourage necessary development of Brazilian and Peruvian communities formed in Japan and of individuals constituting the communities.

[37] The attendants of the Brazilian schools in Japan are qualified to transfer or apply for higher education in the schools in Brazil. But Japanese education board maintains that graduating from Brazilian lower secondary school is not adequate qualification to be eligible to apply for Japanese state upper secondary school.

9. Racial Discrimination in Japanese Prisons and Detention Centers

(Art. 2, para.1, Art. 6)

Center for Prisoners' Rights

Recently, with the rise in number of the foreign prisoners in Japan, many problems have arisen from insufficient consideration of differences in language, religion and living customs, as well as from the discriminative prejudice held by the officers. Also because of the judges' biased racial discriminatory views, it is difficult to assure that just remedies through judicial measures can be given in many cases of racial discrimination ,

1. Situation of Foreign Prisoners

Foreign prisoners are separated into two groupings namely, unconvicted prisoners (detainees for trial) and convicted prisoners. Unconvicted foreign prisoners are scattered across the nation in detention houses. Foreign convicted prisoners are classified into two classes; ones that are given the same treatment as that of Japanese nationals[38] and others that are classified as "F-class prisoners", who are considered to have " strikingly different manners and customs from Japanese prisoners and thus difficult to be given the same treatment as that of Japanese nationals"[39].

Numerous cases of racial discrimination are reported to us. We will introduce some of the most serious cases below.

(a) Johnny Crittenden was an Afro-American who belongs to the Rastafarian religion. When he was imprisoned in Fuchu Prison in April 1994, he was ordered to be put into solitary confinement by day and night until his release in January 1999, for the reason that he refused to ."have his hair cut" following his religious doctrine. Also in July 1994, for the reasons of not shaving his beard, he was assaulted by prison officers and after being restrained with leather hand-cuffs was put into a "protection cell" . Mr. Crettenden has filed a lawsuit against the government for damages in the Tokyo District Court.

(b) Mohammed Amran was a British Muslim of Pakistan origin. In January 1998, when he refused to eat at the Tokyo Detention House during the Ramadan period, the prison officer, saying things like "I will force you to eat." and "I will make you eat before sunset" , forcefully supplied nutrition by inserting tubes through the nose. Mr. Amran took lawsuit for damages concerning this incident, but only in vain since the Tokyo District Court rejected his claim. Though the Court admitted that the prison authorities forcefully supplied nutrition, they said that "Tokyo Detention House authorities were not aware that the plaintiff was a Muslim, and that it was during the Ramadan period, They claimed that "it was a justifiable medical treatment as a remedy to the rejection of being fed," and therefore concluded that it was not illegal.

(c) In March 1994, Yahia Radwan from Egypt had not only suffered insults such as "You beggar!" but also, before being assaulted at the Tokyo Detention House, had been victimised by vulgar statements such as "This is what I had always wished for. You are lucky. I will show you how tough we Japanese can be. Don't you fool around with us Japanese!" Radwan has filed a lawsuit for damages to the Tokyo District Court but has lost the case since the Court decided on March 7, 2000 that the allegation brought forth by the plaintiff "not only does not have any objective proof which supports the view but that the plaintiffs claim concerning important facts in the case has changed without good reason."

(d) Nigerian Michael Igdaro suffered assaults such as being punched and kicked and furthermore went through punishment ever since he made a protest by saying "You fool" to the prison officer who had called him a "gorilla" which is contemptuous of his African origin. Igdaro brought action for damages but the Tokyo High Court, on May 28, 1998, turned down all claims made by the plaintiff, though it accepted the fact that although the prison official called him "gorilla" , the statement was not with the intention of racial discrimination and thus was not illegal. The Supreme Court has given a final judgement in regards to this case supporting the judgement of the High Court's reasoning.

(e) When Iranian Bahman Daneshian protested after being insulted that "all Iranians are liars" by an executive prison officer whilst being interrogated in a disciplinary punishment case, he suffered severe violence. A lawsuit claiming for damages has been brought to the Tokyo District Court by Bahman. In this case, the State (the defendant) is claiming that it will reject Bahman's right to claim compensation for damages by invoking the provision of "guarantee of reciprocity principle"[40] under article 6 of the *National Redress Law*.

The fact that the above-mentioned cases have occurred continuously indicates that there exists a racial discriminatory culture inside prisons. Furthermore, the fact that the claims brought to court by the victims (plaintiffs) are being dismissed on irrational grounds proves that the function of the judicial courts in remedying human rights violation is not working adequately. This strongly shows the tendency of the courts giving tacit approval to the acts of administrative bodies and also of the fact that judges hold a racial discriminatory view towards foreign prisoners. These situations violate article 2, Paragraph 1a. and article 6. To fulfill the obligations of the Convention the government needs to take appropriate measures, including legislation , to insure that article 2, Paragraph 1d will be promulgated. Racial discrimination among officials in public office and responsibilities should be prohibited and punished.

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[38] However, in many cases "Korean residents in Japan", "Chinese residents in Japan", "descendants of Japanese nationals left behind in China after WW II", "Nikkei- ni-sei, san-sei" (second-generation, third-generation Japanese) mainly emigrating from South America and others are not classified as "F-class prisoners". Many problems arise from this factor. "F-class prisoners" are placed into specific prisons.

[39] Male prisoners in 9 prisons including Fuchu Prison and Osaka Prison, female prisoners in 2 prisons namely Tochigi Prison and Wakayama Prison. The number of foreign prisoners in 1990 amounted to 1739, of which 1380 were classified into "F-class" status. The present statistics (1999) reads 4053 total foreign prisoners and 2903 of them were given "F-class" and shows a sharp rise.

[40] "The Guarantee of reciprocity principle" is a provision that limits the State's obligation to provide redress in a reciprocal way. In other words, the State owes an obligation to redress under the *National Redress Law* towards a foreigner, who has suffered damage in terms of the *National Redress Law* in Japan, only when a Japanese national, who has suffered similar damage from the foreigner's country of origin, is given the right to claim redress against the foreign state. The defendant, the State, is showing the same strategy of fighting the right to claim compensation itself by claiming the "guarantee of reciprocity principle" in a different case that an American inmate is the plaintiff (victim). Invoking the domestic National Redress Law as a pretext to refusing

Victims of racial discrimination should be protected and guaranteed sufficient remedy. In order to have officials in prisons and detention facilities, as well as judges in court amend their prejudiced and discriminatory attitudes, ongoing education based on international human rights standards should be required. The government needs to abolish article 6 of it National Redress Law which it uses as a pretext to reject claims demanding redress for damages incurred because of racial discrimination which is covered by article 6 of the Convention.

2. Prison Law and Prison Law Enforcement Regulations (Source of discriminatory treatment towards prisoners)

As cited above, discriminative treatment towards foreign prisoners at the hands of Japanese prison guards occur on a daily basis stemming indirectly from prison regulations.

For example interviews with detainees must be supervised by prison officers with records kept of its contents. (article 127 of the *law*). During an interview, the use of a foreign language is, in principle, forbidden (art.128). Thus, unless the languages being spoken are understood by the prison officers on duty, the use of a foreign language during interviews with foreign detainees is not feasible, except for English and Chinese when such language-speaking guards are available. In addition, interviews between prisoners and consulates or those between prisoners and attorneys are also to be supervised by the prison officers. All correspondence are censored (art. 130). Letters written in a language that cannot be translated are first sent to Embassies to be requested of translation, which will then be censored. This often leads to delay of correspondence. Because of such strict regulations binding foreign prisoners, it is difficult for Japanese guards to regard their foreign prisoners humanely. Foreign prisons are forced by guards to obey minute regulations which might be contradictory to their own customs, Enforcing multiple regulations tend to create in prison guards a sense of superiority with regards to foreign prisoners. This attitude only exacerbates their inhumane treatment of their charges.

Recommendations on the Treatment of Foreign Prisoners adopted in the Seventh Crime Congress in 1985 prescribes that; 'Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations. The religious precepts and customs of foreign prisoners should be respected. Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly. Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner and so on[41].

These prison regulations cannot be justified according to article 1, paragraph 2 of the ICERD. The Japanese government needs to revise, rescind or nullify prison laws, prison regulations and various other regulations which have the effect of creating or perpetuating racial

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redress to victims of racial discrimination is a violation of Article 6 of the Convention.

[41] Some improvements can be seen. For instance the Tokyo Detention House has started to permit sending in "halal" canned foods to Islamic foreign prisoners, but in general, consideration for each of the foreign prisoners' eating habits and religious rituals are still insufficient.

240

discrimination against foreign detainees. Concretely, the Japanese government needs to do the following:

(a) It should guarantee that foreign prisoners be able to receive adequate information in their comprehensible language in written form, at each stage of the procedure where serious disadvantages can be given to them. Such as; information of prisoners' rights and obligations, announcement of important prison rules at the beginning of confinement or investigation of disciplinary punishment.

(b) Guarantee detainees the rights to have interviews in their own native language and provide for swift correspondence. When interpretation or translation cannot be provided resulting from the facilities' inconvenience, supervision of the interviews or censorship of letters should be abandoned.

(c) To provide the prison officers and the judges with human rights education.

(d) To abolish the "guarantee of reciprocity principle" provision under article 6 of the *National Redress Law*.

(e) To take necessary measures in protecting the rights of foreign prisoners based on the Recommendation on the Treatment of Foreign Prisoners in 1985.

241

10. Harsh and violent Treatment of Foreigners in Immigration Bureau Detention Facilities

(Art. 2, par.1, Art.4, par.a, Art.6)

Takahashi Toru, Immigration Review Task force

1. Violence and Threats Perpetrated Against Foreigners by Immigration Bureau Officials and Airport Security Firm Employees

Cases of violence against detained foreigners at the hands of Immigration officials (cf. below - "Immigration") and security firm employees at Immigration detention facilities and entry control offices continue to occur[42]. As shown in the table below, victims of these incidents are from these specific countries:

Table 1: The number of cases of violence perpetrated by immigration and airport security firm employees (between 1982 - 2000).

Country of Victims	Number	Country of Victims	Number
China	9	Colombia	2
Peru	8	Vietnam	2
Iran	6	Korea	1
Philippine	5	Ethiopia	1
Thailand	4	Pakistan	1
Republic of China (Taiwan)	3	Tunisia	1
Myanmar	2		

Note: Of the 51 cases covered by the mass media and shown in the survey of problems within the immigration bureau, the table includes only those incidents where the nationality of the victim could be determined (Sexual harassment cases included)

A former Immigration Bureau employee (employed from April to July, 1993) testified that it was mostly Iranian, Chinese and Korean migrants who were victims of abuse (Violations of Human Rights Behind Closed Doors), Gendaijin Bunsha, 1996). There are cases of sexual attacks on detained women by Immigration Bureau officials including rape, peeping into showers, and touching the bodies of women. Similar to women who have been trafficked, victims mentioned in this report are from the Philippines, Thailand and Latin America. (There are reports of some cases where officials have been reprimanded and others where they have been brought up on criminal charges for such offenses).

According to reports by the media and surveys conducted by the Immigration Review

[42] This report is compiled referring the following materials: The Immigration Review Task Forces "Mishitu no jinken shingai – nyukokukannrikyoku no jitai" Genaijinbunsha, 1996. "Taikyokyousei sareta gaikokujin no shougen'95, 97" vol.1. "*Taikyokyousei sareta gaikokujin no shougen'95, 97*" vol.2. "*Jiyukenkiyaku dai4kai nihonshinsa ni okeru nyuukanmondai ni kanshiteno houkokusho*" Immigration Review Task Force Landing Prevention Facility, *The Actual Status of the Deportation Procedures and Immigration Detention Facilities in JAPAN*, 7 August 2000, Public Statement by Amnesty International, Japan.

242

Task force, detainees have been shouted at, jabbed, kicked, beaten, reproached, and had their money or valuables forcibly taken from them by immigration officials at the time of interrogation at the airport. They have also been assessed fraudulent fines.

Moreover, there are also incidents where individuals refused entry are similarly abused by the guards hired (under contract with the airlines) to watch over them prior to deportation. On June 20, 2000 a Tunisian national who entered Japan at Narita Airport was treated with violence by an A.I.M Corporation employee who was trying to extract a guard fee. At an August 17, 2000 press conference, a former employee of the security company hired to guard persons denied entry at Narita Airport, claimed I'M Co, Ltd as a matter of company policy, exacted this sort of sham "guard money" through threats. Persons from developing countries were especially threatened with violence to extract so-called "guard money, while those from advanced countries were not. Chinese and Koreans in particular suffered this treatment." From 1988 through August 2000 mass media reports and surveys conducted by the Immigration Review Task Force have recorded fifty-one violent incidents committed by Immigration investigators or guards against foreigners during entry processing, arrest procedures, interrogation, and detention. Four of these incidents are currently in court with plaintiffs demanding national compensation for their injuries. We can assume that the incidents recorded are just the tip of the iceberg. As for the cases under suit, the Ministry of Justice's Immigration Bureau is not moving to settle, claiming that the incidents involve "appropriate use of force" (with one exception).

2. Obstruction of remedy for racial discrimination: Deportation and Guarantee of Reciprocity

The Immigration Bureau of the Ministry of Justice hastily approves deportation for foreigners who have suffered violence while in the custody of the Immigration Bureau, thus hindering relief for violations of their human rights. In the cases of violence victims Tao Yaping of China, Song Je Yoo of Korea and Amjadhi Khorasani Muhammad Mshidiof Iran, lawsuits were filed seeking compensation from the government for violence stemming from racial discrimination that the victims suffered while in custody between 1993 and 1994. However, all three people were promptly deported even though typically deportees are required to pay for their deportation. In each of these cases the deportation was paid for by the Japanese government. The Team of Lawyers for these plaintiffs could not defend their clients adequately and protested the government's actions as serious interference in the ongoing proceedings. This action is in violation of rights established in Paragraph 6 and guaranteed to treaty signatories.

Article 17 of the Constitution of Japan states that when human rights violations are perpetrated by national civil servants in the course of their duties, victims have a right to receive compensation from the government. This article clearly stipulates that this remedy is available to "any person." In 1993 when an Iranian national, Amjadhi Khorasani Muhammad Mshidi, suffered violence from a Tokyo Immigration Bureau employee, he invoked this article and sued the government for compensation. The government, however, countered with its domestic law, article 6 of the National Redress Law that states, "This Law will apply to foreigners whose rights have been violated only if there is a guarantee of reciprocity". The government demanded that the lawsuit be rejected. In like manner, if any other individual

243

suffers violence while in immigration custody or detention, or at the hands of the police and files a lawsuit for compensation citing article 17 of the Constitution, the government will first consider the plaintiff's country of origin. If he/she is a national of a country that does not guarantee reciprocity, his or her demand for reparation for damages will be rejected without exception on the pretext that article 6 does not apply to nationals of countries that do not guarantee reciprocity. This is another violation of article 6 of the Convention.

3. A Principle of "Detention in All Cases" and the Detention of Children

The Japanese government detains all foreigners accused of immigration control act violations, including those for whom detention is inappropriate, such as pregnant women, ill people, children and the elderly. In 1999 successive cases of this type, one involving a Chinese family whose visas were questioned and others involving youths studying in Japan, were widely discussed when these persons were detained in Osaka after their apprehension. Of the people who are detained, a great number are from Asian and Latin American countries. In the past several years detainees from China have been particularly numerous, probably due to a sharp increase of Chinese nationals staying illegally in Japan. This has led to a "targeting" of Chinese nationals for intensified exposure of immigration control act violations. (Refer to Section Ⅱ, chapter of this report "Dial 110 Call the police immediately (Dial 110) if you think you see Chinese-looking persons"). Given this background, Chinese children in particular have received a lot of exposure along with their parents as their parents have been detained in immigration facilities. At times children are detained with their parents, while at other times children are forcibly separated from their parents and placed in temporary care institutions operated by the Child Guidance Centers. The children lose their right to an education since detention in either case distances them from the schools where they have been studying.

Regarding the detention of foreign children by immigration authorities, the Japanese Government denies these illegalities by stating, "The detention of children is not treated as imprisonment." (This was the answer given to House of Representative member Mizuho Fukushima on April 14, 2000, when she questioned the government on the issue of detaining foreigners).

As seen from the above, in cases of detention at immigration centers of the Immigration Control Bureau, there is a need to revise the philosophy of "detention of all cases". Detention should be carried out only after determining its necessity or appropriateness.

Table 2: Nationality of Minors (under the age of 20) detained by the Immigration Bureau in 1999

Nationality	Korea	Philippine	China	Thailand	Malaysia	Republic of china (Taiwan)	Total
Number	60693	36379	32896	23503	9701	9243	251697
	24.1%	14.5%	13.1%	9.3%	3.9%	3.7%	

Table 3: Age of Minors (under the age of 20) detained by the Immigration Bureau in 1999

Nationality	Korea	China	Philippine	Thailand	Peru	Others	Total
Number	11,788	9,710	6,804	3,989	2,000	13,997	48,288

	24.4%	20.1%	14.1%	8.3%	4.1%	29.0%	

Table 4: Total Number of Writs of Detention issued by the Immigration Bureau in 1999, by Nationality

Nationality	China	Philippine	Korea	Thailand	Colombia	Peru	Others	Total
Number	285	84	69	36	17	11	56	558
	51.1%	15.1%	12.4%	6.5%	3.0%	2.0%	10.0%	

Table 5: Number of illegal over-stayers as of the end of January 2000

Age	0-4	5-9	10-14	15-19	合計
Number	104	40	35	379	558

Additional report to the "Joint NGO Report Regarding Rights of Migrant Workers, Immigrants, Refugees and Settled Foreigners in Japan for Consideration with the First & Second Periodic Report Submitted by the Japanese Government in Accordance with Article 9 of the ICERD"

Edited by Immigration Review Task Force

Unreasonable Treatment Before the Court (Article 5 (a))

Article 5(a) of the Convention on the Abolition of Racial Discrimination provides for the right to receive equal treatment from the law courts and from all other judicial facilities. However, it is difficult to say that foreigners are treated equally to Japanese nationals with respect to criminal proceedings in Japan.

Attorney Higashizawa, a lawyer with deep knowledge in international human rights law, quoted in magazine "Sekai (="world" in Japanese) that "it is not just Governor Ishihara's comment. It must be questioned whether there is an apparent scheme in the campaign of "strict control over foreigners' crimes" that might have great influence to policies. Recently the police department has been making announcements annually that "the number of crimes by foreigners has increased acutely" or that "brutal crimes are committed by foreigners", and though it has been made clear in the diet that such announcements are a result of false manipulation of statistics, social conspiracy has been built up that crimes by foreigners must be controlled more strictly." (Magazine "Sekai" 2000.07, vol.677, pages 33-36).
Below, we will take up a case for civil procedure and criminal procedure and point out the issues in each procedure.

1. Unreasonable treatment in criminal procedure

● Long period of Detention before Issuing the order of arrest due to the foreign national

In a murder case, where a Filipino woman was held unofficially by the police for 9 nights and 10 days before an arrest warrant was issued, the judges in the procedure of objection against custody pointed out the fact that she was a foreigner, as one of the factors to justify the actions by the police (the interrogation procedure was later found illegal but the confession itself was not excluded from the evidences for the reason that the violation was not serious enough and the confession can be admitted to be given voluntary.).
Being a foreigner and the "possibility of fleeing outside of Japan" is used as a reason without substantial ground to justify violation of one of the most basic rights, not only in police practice but also in court.

● Overwhelmingly low bail rate

In 1997 the percentage of foreigners detained without bail was 99.0%, which is a very high proportion compared to the corresponding 76.1% for Japanese nationals. To compound the problem, the proportion of foreigners retained in custody while awaiting the pronouncement of their sentence reached 97.7%, which is also extremely high compared to the corresponding 61.4% for Japanese nationals (Japan Federation of Bar Associations Human Rights Symposium 1st study group no.4 bail, chart no.6&7).

On Feb. 28, Mikio Miyoshi, now one of the chief judges in Osaka District Court, stated in his essay "On bailing foreign defendants; factors to be considered; for example whether bail should be granted to defendants that are illegally staying in the country and are scheduled to be

deported" (Enlarged edition of "Basic Questions in Warrant Issuing" (vol. 2) " the 96th question), that in most cases, the defendants' base of living is outside Japan, so when s/he is bailed there is a great possibility that the defendant will leave the country without permission. There is no system that alarms the immigration officers whether this specific foreigner is under bail or is now being put on trial. Immigration officers can only delay confirmation of leaving the country of foreign defendants of specific serious crimes for a limit up to 24 hours (Immigration Control and Refugee Recognition Act, article 25-2), but they cannot take forceful measures such as holding those defendants under custody to avoid them from leaving the country. And once the foreigner goes out of the country, it is almost impossible to call them back for trial. This is why we must be careful in judging whether it can be made sure to have the defendants show up in trial court in bailing foreign defendants.

As seen in the comments above, it may have to be admitted that in cases involving foreigners, there are special factors to be considered. However, from the viewpoint of human rights protection, lack of international cooperation system to punish criminals or lack of coordination of procedures in Criminal Procedure Law and that of Immigration Control and Refugee Recognition Act should never be allowed to put extra burden on foreign defendants. Anyways, it is also striking that, compared to their Japanese counterparts, 24% more foreigners are held and 36% fewer foreigners are bailed and in most cases the foreign defendants are held in confinement until a judgment is reached.

●Deportation procedures applied to the person acquitted of the charge

Govinda Prasad Mainali (see Box) was detained in the detention center of the Second Building of the Tokyo Immigration Office in accordance with a written detention order stipulated in Article 39 of the Immigration Control Act immediately when he was acquitted of the charge on April 14, 2000, although the effect of detention already lapsed. Then, he got a ticket to Nepal on April 17, and a passage certificate issued by the Embassy of Nepal on April 18. Usually, once the person has completed those preparations for departure, he/she can leave within 10 days of it. On the contrary, the Tokyo Immigration Office was reluctant to follow procedures for investigation or examination of violation, stating that the case was attracting public attention, so a deliberate examination was necessary. In principle, deportation procedures are those for determining whether the causes for deportation exist or not. In the case of Mainali, he was convicted of a crime of violating the provision written in the Immigration Control Act (overstaying) on May 20, 1997, and that decision was already finalized. Hence, there is no dispute over his violation of the Immigration Act, and no reasons for needing a "deliberate examination" are found.

In Mainali case, the deportation procedures by the Tokyo Immigration Office took much longer time than usual. As a result, he was unreasonably deprived of his freedom of departure. It is not too much to say that such reluctance to take deportation procedures contributed to his "confinement" until the Tokyo High Court decided on detention.

The deportation procedures applied to the person acquitted of the criminal charge in the court should be followed immediately regardless of public attention. See an attached report for human rights violation by the Immigration Office including an arbitrary detention

●Detention of the person acquitted of the charge

The Supreme Court dismissed a special appeal concerning the detention of Mainali on June 28, 2000, showing a new judgement that it may be considered that the fact that the deportation procedures to be applied to the defendant in accordance with the Immigration Control and Refugee Recognition Act are now under way is one constituent of judgement in finding reasons for detention and its necessity. No doubt that judgement leads to the possibility that the detention system is also used as a means to prevent deportation. However, clearly, it is a deviation from the meaning of detention system. If the judgement of the Supreme Court is used in an improper way, all overstaying foreigners found not guilty would continue to be kept in custody after or regardless of the decision when the case has been brought to the High Court, and fundamental human rights might be abused in that some certain foreigners are deprived of their freedom of movement. Yasushi Higashisawa, attorney at law, said in the book mentioned above, "The decision supporting detention might abuse the right to a presumption of innocence since the possibility of innocence increased by a decision of "not guilty" is not taken into consideration, and what

is sufficiently discriminatory is that all the reasons to detain foreigners with their visa status overdue, compared to Japanese, are justified equally owing to the possibility of deportation", adding that the judgement shows that the Japanese Supreme Court doesn't understand the meaning of the Convention on the Abolition of Racial Discrimination, Convention on Free Rights, and the like.

This problem is not specific to overstaying foreigners. Once a foreigner, even with proper status, is held into custody, it is very difficult to have his/her period of stay extended in the detention center. If the person cannot update his/her status which would expire during detention, as a result, he/she would be regarded as an overstaying person, except foreigners with permanent residence.

These situations contradicts Article5(a) of the Convention on the Abolition of Racial Discrimination defining the right to an equal treatment in the court as well as all the machinery of law.

In order to prevent the occurrence of similar cases, the human rights education of the judges who determine detentions as well as law enforcers, in particular, their familiarity with international human rights conventions is obligatory. Law enforcement should be done based on due process regardless of nationality.

BOX) The Case of Mr. Govinda Prasad Mainali, Nepalese

On March 19, 1997, the body of a woman was discovered in a vacant apartment in Shibuya and shortly afterwards a Nepalese named Govinda Prasad Mainali (30), who lived in a neighboring apartment, was arrested for her murder.
The reasons why he is said to be innocent are as follows;
A) In Japan, The police and The immigration officials distribute so many information, which treats foreigners as if they are criminals. There is even the information from the government that undocumented foreigners themselves are very dangerous people.
B) The police arrest Minali not for the murder but for the expiration of his visa and then searched him as the murder suspect. This is an unlawful procedure and could not be done if his visa had not expired.
C) Mainali has protested his innocence from the very beginning and furthermore
D) The police questioned several Nepalese men who shared room with Mainali, interrogating them continuously from early morning to late evening for a period of several days. They were allegedly threatened, then later provided lodgings and lucrative jobs in an effort to induce favorable statements from them. Both Attorneys of Mainali and a journalist who had published this case reported that the police forced the Nepalese to admit false statement.
E) After having been pronounced innocent, Minali had still been kept in custody. After the Tokyo District Court had opened its court for 34 times, it had decided that he was not guilty on 14th April 2000. But on 8th May 2000, the 4th criminal division of the Tokyo Supreme Court decided to grant the compulsory detention of the suspect. And then, on 28th June, the Supreme Court decided against granting release that had appealed by the attorneys.
F) After the scentence of the Tokyo District Court, the Tokyo Immigration Bureau took unusual longer time to deport him till he had kept in custody again. It arbitrary had deprived him of the freedom to return to his home. And it is suspected that the immigration officials tried to place him in detention.
G) From Tsukuda, attorney at Mainali's case, at the Appeal Court, the Prosecutors did not present any single objective evidence that claiming him guilty. The Tokyo Supreme Court rejected authentication of so many evidence from the defend which is inevitable to prove that he is innocent.

Tokyo Supreme Court found him guilty (life imprisonment). But, Minali was treated under the illegal procedure taken into the account of the discriminatory social context. So, we strongly doubt the sentence of the Tokyo Supreme Court.

2. Unreasonable treatment under the Civil Procedure

On 25th January, 2001, the 19th Civil Division of Tokyo Supreme Court decided to reduce the compensation fee for a dead Sri Lankan from 26million yen (approximately 220000 US Dollars) to 5million yen (approximately 42000 US Dollars) . Since the value of money between the Sri Lanka and the Japan are so different (in Japan, it is 10 times as much as Sri Lanka's). In the judgement, Judge Asao explained that the family of the deceased are the Sri Lankas and going to spend the compensation fee in Sri Lanka. So, the examination of the compensation fee should be the price level and the income level of the Sri Lanka or it would cause unfairness in essential. But it is nothing more than the violation of article 5(a) of the CERD which defines equal treatment before the court that if the value of the death is calculated based of his/her nationality. It might cause serious discrimination in compensation not only for the dead but also for the all compensation caused both from the criminal and civil reasons. From these issues, we can say that it is urgently needed to provide human right education to the judges and "rule on law" in a true sense.