

INTERNATIONAL SECRETARIAT

6F 1-7-1 IRIFUNE CHUO-KU
TOKYO 104-0042 JAPAN
TEL: +81-3-6280-3101 FAX: +81-3-6280-3102
EMAIL: imadr@imadr.org <http://www.imadr.org>

**UN OFFICE**

RM 490, 150 ROUTE DE FERNEY, C.P. 2100,
CH-1211 GENEVA 2, SWITZERLAND
TEL: +41-22-791-6263 FAX: +41-22-791-6480
EMAIL: geneva@imadr.org

THE INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM

NGO Written Contribution
to the 4th Cycle of
the Universal Periodic Review of Japan
on the issues of
"Elimination of Racial Discrimination in Japan"

prepared and submitted by
The International Movement Against All Forms of Discrimination and Racism
(IMADR)

July 13, 2022

IMADR is an international non-profit, non-governmental human rights organization devoted to eliminating discrimination and racism, forging international solidarity among discriminated minorities and advancing the international human rights system. Founded in 1988 by one of Japan's largest minorities, the Buraku people, IMADR has grown to be a global network of concerned individuals and minority groups with regional committees and partners in Asia, Europe, and North America. IMADR's International Secretariat is based in Japan and maintains a UN liaison office in Geneva. IMADR is in consultative status (special) with the United Nations Economic and Social Council.

The International Movement Against All Forms of Discrimination and Racism, IMADR, submits the NGO report focusing on four main concerns;

- A. Legislation to prohibit racial discrimination
- B. Hate speech and the reservation of ICERD Art. 4- a. b.
- C. Establishment of a national human rights institution
- D. Multiple Forms of discrimination against minority/indigenous women

For each concern is explained below from three aspects i.e., recommendations from the 3rd UPR cycle and the assessment of their implementation, suggested recommendations for the 4th UPR, and backgrounds of the recommendations.

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A. Legislation to prohibit racial discrimination

Recommendations from the 3rd UPR cycle and assessment of their implementation (in bold):

161.56 Adopt a number of legislative and practical measures designed to combat manifestation of racial discrimination (Russian Federation): **partially implemented**

161.80 Take appropriate measures and implement legislation effectively to eliminate racial discrimination (Guatemala): **partially implemented**

161.82 Conduct more active policy against racial discrimination, including addressing the issue of incorporating an adequate definition of racial discrimination in national legislation (Kyrgyzstan): **not implemented**

161.84 Take further steps to effectively address hate speech and protect the rights of minorities, including introducing legislation to prohibit discrimination on the grounds of race, ethnicity, sexual orientation and gender identity (Australia): **not implemented**

161.63 Adopt and implement a comprehensive anti-discrimination law that would prohibit and sanction any direct or indirect form of discrimination based on age, race, gender, religion, sexual orientation, ethnic origin or nationality (Germany): **not implemented**

161.83 Adopt a comprehensive law on racial discrimination, with an adequate definition of racial discrimination, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination (Botswana): **not implemented**

Suggested recommendations for the 4th UPR:

- 1) Adopt a law to comprehensively prohibit racial discrimination with clear definition of racial discrimination in accordance with ICERD Article 1-1 and concrete clauses for its prohibition combined with sanction and effective remedy.

- 2) Implement the recommendation made by CERD in its Concluding Observations (CERD/C/JPN/CO/10-11, para 8) that urges to ensure the definition of racial discrimination be in line with the ICERD Art. 1-1 and to enact a comprehensive law to prohibit racial discrimination.

Backgrounds:

In the periodic report to Committee on Elimination of Racial Discrimination (CERD/C/JPN/10-11, submitted in 2017), the Government of Japan stated; “the government regulates racial discrimination, and therefore does not recognize that it must adopt comprehensive legislation prohibiting racial discrimination as the concluding observation urges.”

Meanwhile, the *Analytical Report of the Foreign Residents Survey* published by the Ministry of Justice in March 2017 indicated that discriminatory practices are experienced by foreign residents in their daily life including instances related to renting houses, employment, social association, derogatory words, etc. See, <https://www.moj.go.jp/content/001249011.pdf>

Concerning the definition of racial discrimination, the Government of Japan has been failing to recognise that discrimination against Buraku people is prohibited by ICERD Article 1-1 (discrimination based on “descent”) despite the repeated recommendations made by CERD (CERD/C/ JPN/7-9, CERD/C/JPN/4-6). The recent judgement made by the Tokyo District Court of September 2021 to the collective litigation¹ filed by Buraku people demonstrates the negative effects of the absence of a comprehensive law prohibiting racial discrimination as well as the lack of clear definition of racial discrimination in accordance with the Art 1-1 of the ICERD in domestic legislation. The plaintiff demanded the court recognition of the case as a breach of the right not to be discriminated on the basis of the article 14 of the Constitution that stipulates that **all of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or descent**. The court did not recognize the demand on the ground that there is no law that stipulates that disclosure of Buraku location constitutes discrimination. However, the act of disclosure of a location and identifying a certain person as a Burakumin is clear discrimination against them as prohibited by ICERD.

¹ In early 2016, the so-called “Buraku List” was posted online, which disclosed locations of more than 5,000 Buraku districts/communities nationwide with their names. By comparing the List to one’s address (past and present) or ancestor’s domicile, his/her connection to Buraku is easily found, therefore, it can be used to identify who is from Buraku, especially if combined with other methods to obtain personal information e.g. their origins, permanent address or address of family members, even though the person concerned is living another place. As such, the List makes the persons from Buraku district/ community, including those whose ancestors are from Buraku, seriously exposed to discrimination.

B. Hate speech and the reservation on ICERD Art. 4- a. b.

Recommendations from the 3rd UPR cycle and assessment of their implementation (in bold):

161.1 Consider lifting existing reservations to the international human rights treaties (Ukraine): **not implemented**

161.77 Strengthen efforts designed to prohibit racist and xenophobic discourses (Saudi Arabia): **partially implemented**

161.60 Revise its laws to establish a broadly applicable anti-discrimination law which also effectively criminalizes hate speech (Sierra Leone): **not implemented**

161.84 Take further steps to effectively address hate speech and protect the rights of minorities, including introducing legislation to prohibit discrimination on the grounds of race, ethnicity, sexual orientation and gender identity (Australia): **not implemented**

161.85 Continue to address the problem of discrimination and hate speech, particularly through adequate allocation of resources on this issue through education and awareness programmes in schools (Malaysia): **partially implemented**

161.128 Take into full consideration the recommendations made by the United Nations human rights mechanisms on hate speech (Republic of Korea): **not implemented**

161.78 Continue to take effective measures to combat all forms of discrimination, including racial superiority and hatred, and to eliminate gender stereotypes (Uzbekistan): **partially implemented**

Suggested recommendations for the 4th UPR:

- 1) Withdraw the reservation on Article 4 a), b) of the International Convention on the Elimination of All Forms of Racism (ICERD), and prohibit hate speech and hate crimes in accordance with Article 4.
- 2) Effectively implement the Article 4 c) that prohibits promotion or incitement of racial discrimination by public authorities.

Backgrounds:

While the Hate Speech Elimination Act was introduced in 2016, there are still cases of hate demonstrations or street propagandas. Cases of hate crimes against minority groups have also been reported occasionally. Please refer to the recent arson case against ethnic Korean residential area in Kyoto by a culprit out of his strong hatred against Koreans.

<https://www.asahi.com/ajw/articles/14622390>

In this context, the government of Japan is strongly urged to make a decisive statement not to condone any act of hate crimes. It is also urged to take preventive measures and responses when occurred.

In order to effectively tackle the issue of hate speech and hate crimes against minorities, taking full

account of the CERD's GR35, the government has to withdraw its reservation on the ICERD Article 4.

It was reported that on September 23, 2017, Taro Aso, then Deputy Prime Minister and Minister of Finance, mentioned the possibility of a large number of refugees flooding into Japan from the Korean Peninsula while giving a lecture, and stated that "They may be armed refugees. Will the police cope with them? Will the Self-Defense Forces be called in? Will we shoot them to death? We must seriously think about this." These remarks led to concerns and protests from organizations that support refugees and others as indicating the Japanese government's lack of willingness to fulfill its obligation to protect refugees, and describing refugees as though they are a threatening existence, needlessly inflaming anxiety. The government adopted a Written Answer by a Cabinet decision stating that the remark was made by Mr. Aso as a politician and the government was not in a position to respond, and the government "had understood that the statement was intended to evoke the audience's awareness of various situations that may occur in an emergency."

C. Establishment of a national human rights institution

Recommendations from the 3rd UPR cycle and assessment of their implementation (in bold):

161.37 Continue efforts towards the establishment of an independent national human rights institution in full accordance with the Paris Principles (Georgia); continue efforts to establish a national human rights institution in accordance with the Paris Principles (Malaysia) (Qatar) (Bolivarian Republic of Venezuela): **not implemented**

161.38 Accelerate its efforts to establish a National Human Rights Commission, ensuring its independence and full compliance with the Paris Principles (Australia); accelerate efforts towards the establishment of a Paris Principles-compliant national human rights institution (Philippines): **not implemented**

161.39 Take the necessary steps to establish a national human rights institution in line with the Paris Principles, with competence to consider and act on complaints of human rights violations by public authorities, and with adequate financial and human resources (Republic of Moldova): **not implemented**

161.40 Promote the drafting of a new law in order to establish a National Institution of Human Rights in accordance with the Paris Principles (Costa Rica): **not implemented.**

161.46 Strengthen the work of the Bureau as well as to continue the effort to establish a National Human Rights Commission in Japan (Indonesia): **not implemented.**

Suggested recommendations:

- 1) Establish an independent national human rights institution in full accordance with Paris Principles.

Backgrounds:

Japan is one of the few UN Member States that do not have any independent national human rights institution in accordance with Paris Principles. Despite repeated recommendations made in the previous UPR cycles as well as by UN Treaty Bodies, Japan has failed to take any steps towards the establishment since 2012 when the bill for the establishment of national human rights committee was scrapped at the Diet. Absence of NHRI has been hindering effective protection and promotion of human rights in the country. For instance, victims of hate speech have no way but filing a suit for damage caused by defamation.

The recent pandemic we have experienced suggests that under a pandemic-like situation, an NHRI is expected to perform important functions including monitoring its impact on human rights, and reporting and advising the government desirable responses, for protection of human rights of all residents.

D. Multiple forms of discrimination against minority/indigenous women

Recommendations from the 3rd UPR cycle and assessment of their implementation (in bold):

161.57 Adopt a legislative measure prohibiting and repressing all forms of discrimination against non-citizens, and a law eliminating the stereotypes that constitute the cause of violence against women (Madagascar): **not implemented**

161.181 Continue with the positive work already being implemented to combat domestic violence, in particular against foreign, minority and indigenous workers and through ensuring that victims have support, care and redress for the abuse (Maldives): **partially implemented**

161.205 Strengthen measures so that ethnic minorities – Ainu, Ryukyu and Burakumins – can fully enjoy their economic, social and cultural rights (Peru): **not implemented**

Suggested recommendations:

- 1) Conduct a comprehensive survey on the situation of minority women and multiple forms of discrimination they face.
- 2) Provide comprehensive training to the counselling staff at the Women Human Rights Hotline as well as 14000 Human Rights Commissioners throughout the country course on the multiple forms of discrimination and prejudice against Buraku, Ainu, ethnic Korean and migrant women.

Backgrounds:

Currently, government policies do not reflect or take into account of multiple and intersectional forms of discrimination against minority women², while the government has not even attempted to

² chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://imadr.org/wordpress/wp-content/uploads/2016/01/CEDAW_63rd-session_submission-Situations-and-Challenges-of-Minority-

conduct a survey on the situation of minority women. There are some social, economic and cultural statistics containing disaggregated data by sex, but not by ethnicity, nationality, or disability. According to the analysis of the 2010 national census conducted by the Human Rights Association for Korean Residents in Japan, ethnic Korean women marked a higher percentage of 4.1 point in the total unemployment rate and by 7.8 point in the irregular employment rate than other Japanese women. They also marked a higher percentage of 3.5 point and 35.1 point than fellow ethnic Korean males, respectively.

The survey conducted by the Apeuro Ethnic Korean Women Network in 2016 revealed that about 30% of 888 respondents (ethnic Korean women) did not go to the public counselling service when they suffered discrimination based on ethnicity or gender. Those Buraku, Ainu or ethnic Korean women who went to the public counselling service tended to find themselves frustrated with the service they were given because of the lack of understanding of their difficult situations among counselling staff. Furthermore, in case of domestic violence, women victims were further victimatised, in some cases even humiliated, during the counselling service due to the lack of understanding of their situations among counselling staff. As a result, women from minority communities find it very difficult to go to public services.