

(Original: Japanese)

**An Open Letter to the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Dr. Doudou Diène**

Dear Dr. Doudou Diène,

**Re: Your Report on your Mission to Japan**

We, the minority groups of Japan, and NGOs concerned about racial discrimination, racism, xenophobia and colonialism, wish to express our deep appreciation to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance for his report following his official mission to Japan (E/CN.4/2006/16/Add.2). We thank the Special Rapporteur for his many concrete recommendations, which we strongly support.

Realizing the importance of publicizing the report in Japan, we immediately created a Japanese translation. Now, having circulated the translation widely, we are calling upon minority groups and individuals, a broad range of NGOs, intellectuals and the media to read the report thoroughly and help us build public opinion in support of the recommendations, and the social and historical perspectives highlighted by the Special Rapporteur.

We are calling upon members of the Diet, news organizations and civil society to join forces in pressuring the Government of Japan to accept these recommendations and implement them fully, in cooperation with civil society. We also call upon the Government of Japan to take full consideration of the report (including implementing its recommendations) as it prepares its third and fourth periodic reports due under the International Convention on the Elimination of All Forms of Racial Discrimination.

We, the undersigning NGOs, wish to thank the Special Rapporteur for the comprehensive approach of his report. Rather than simply enumerating, in legalistic fashion, various human rights violations corresponding with the respective provisions of the International Convention on the Elimination of all forms of Racial Discrimination, the report also grasps the underlying social and historical context, taking into account the root causes of racism, racial discrimination and xenophobia. The report describes the present-day situation of discrimination within a historical context of minority groups being marginalized and rendered invisible. In Japanese society, there do exist many groups whose members have been rendered invisible or whose presence has been poorly recognized: the Buraku people; the Ainu; the people of Okinawa; people from former Japanese colonies (Korea and China) and their descendants; foreigners and migrant workers from Asian countries and around the world. Without recognizing this fact together with its social and historical context, and taking appropriate measures, a multicultural society cannot be built. This message, which the report conveys, is precisely the core of what we have been asserting for many years. It is of great importance to us that you have tackled these issues head-on. We believe that the approach of the report, in taking social and historical context into account, must be valued not only by us, but by Japanese civil society and policymakers.

Recognizing the great significance and value of the report, we believe every effort must be made to circulate it and to carry out its recommendations. At the same time, however, we would like to share with you that we have found some issues that were not included in the report, perhaps due to various time and physical restrictions – the existence of which we could imagine from paragraph 13 (I-E. Methodology) of the report. We do this not to suggest that the report is in any way incomplete, but rather to further enhance the report's high value and rich content.

## **Historical and Social Context – Construction of the Nation State and Colonialism**

We welcome section I-B (para. 5-8), “Historical and Social Context”, as the portion of the report that most comprehensively expresses its value. This is because the section makes clear the history of how minorities have been marginalized as a result of the formation of the Japanese nation-state and colonialism. Paragraph 8 of this section is titled “The Colonial Past”, but we praise the Special Rapporteur for endeavoring to describe the history of colonial rule not only in this paragraph, but throughout Section I-B. His intention is made clear in paragraphs 4-7, in which he touches on the colonialist policies against the Ainu and Okinawan peoples, and the domination of the masses through the establishment of a caste-like class system based on social position and occupation. We recognize that in paragraph 4, in which he states that the Ainu are an indigenous people, he means that the Ainu were subject to colonial rule in the past. Regarding the people of Okinawa, based on the understanding mentioned above regarding section I-B as a whole, and based on the assertion in paragraph 6 that their characteristic language, traditional customs, beliefs and lifestyle have been subjected to colonialist and assimilationist policies, we believe that the understanding is shared that the people of Okinawa are an indigenous people whose aboriginal lands were subjugated, or that they are a Nation that has been subject to colonial rule of the Japanese State.

In addition, we believe that Chinese (including Taiwanese) should also have been included as subjects of colonial rule in section I-B, along with migrant workers and foreigners who have been marginalized by neo-liberal globalization, which is an extension of colonialism, and by the “war on terror”. In the same way, in the light of current circumstances, we seek recognition of the fact that returnees from China and their families, who were abandoned under Japan’s policy, and migrant workers of ethnic Japanese origin who have come to Japan after the 1990 revisions to immigration and refugee laws as well as the spouses of Japanese nationals, are basically discriminated against and excluded, assimilated and forced to live under oppressive circumstances, in the same way as first generation Koreans in Japan are, and that the Japanese government’s attitude on refugee intake is extremely negative. However, we gather from the overall substance of the report and from the fact that people of Chinese (including Taiwanese) origin, migrant workers and foreigners are listed among the groups affected by racial discrimination and xenophobia in paragraph 69 (which opens section IV, “Analysis and Assessment of the Special Rapporteur”) that the recommendation in paragraph 74 that the government should publicly recognize the existence of racial discrimination, conduct a survey of discriminated groups and express the political will to fight discrimination, applies to people of Chinese (including Taiwanese) origin and to migrant workers and other foreigners as well as other groups. The same is true of paragraph 82, which recommends the revision of history textbooks.

### **The Ainu and People of Okinawa**

We feel encouraged by the fact that the Special Rapporteur described the situation of the Ainu over a number of paragraphs. We also firmly believe that the significance and value of those paragraphs would be even greater if the social and economic situation of Ainu living in Hokkaido, and how they are discriminated, were clearer. However, as many Ainu left their traditional lands in Hokkaido after the Second World War to escape discriminatory treatment or in search of work, the statistics on Ainu referred to in the report are based only on surveys carried out by the Hokkaido Prefectural Government. They do not take into account Ainu who no longer live in Hokkaido. In this context, the recommendation in paragraph 74, requiring a survey of discriminated communities, is a way to overcome this problem, so that Ainu living outside of Hokkaido will be included in the survey.

Unlike what is stated in paragraph 45, we believe that the policies of the Former Natives Protection Law, aimed at assimilating the Ainu, were not limited in scope to turning Ainu from hunters into farmers. Despite this, we find this same paragraph very valuable in explaining the situation of the Ainu because it points out the important fact that although the Japanese Government has abolished the Former Natives Protection Law and the colonialist and assimilationist policies it carried out under it, the rights of Ainu to access their natural resources such as salmon and

deer, as well as their traditional territories, are still not recognized today. In this context, the recommendation in Paragraph 85 (Guarantee of rights of the Ainu as an indigenous people) is of definitive importance, and the intent behind paragraph 45 becomes clear when considering the comprehensive shades of meaning within this recommendation. Furthermore, taking their history fully into consideration, we recognize that by interpreting and applying this recommendation to include the people of Okinawa the value of the recommendations and report further increases.

### **The 'War on Terror' and Racism**

The report analyses many of the main problems faced by migrant workers and foreigners in Japan. These problems are becoming worse with time, and the types of problems themselves are increasing.

We would have liked the Special Rapporteur to concretely mention the problems brought on by racist treatment of and discriminatory surveillance of foreigners, including migrants from Islamic countries. For example, foreigners are intimidated and their freedoms limited by the Joint Declaration on the Strengthening of Policies against Illegal Immigrants (October 2003) of the Immigration Bureau of the Ministry of Justice and Tokyo Immigration Bureau, Tokyo Municipal government and Metropolitan Police Department. The latter have also designated Islamic organizations in Japan as high-risk groups, and assert that crimes perpetrated by foreigners is on the rise while citing only the number of arrests made, and routinely making arrests on a separate charge for the purpose of gathering information. The Special Rapporteur is also aware of the case of mistaken arrest of a Bangladeshi man under suspicion of being a member of Al-Qaeda, an example of what can result from rampant racial profiling.

We imagine that in the current political climate it would have been difficult to mention in the report the racism that is brought on by the War on Terror. However, we firmly believe that although the report does not directly mention the problem, a solution to it is proposed in its recommendations. That is, there are many sections of the report that deal with this type of racism, for example: Paragraph 81 which recommends the abolishment of a reporting system for illegal immigrants; Paragraph 94 which recommends the eradication of discrimination against foreigners; and guarantee of right of access to public places, mentioning the right not to be perceived as potentially more dangerous than the Japanese; and Paragraph 95, which recommends combating prejudice against foreigners through culture. In the future however, the recommendations above will not be enough to deal with the worsening problem. Actually, under the pretext of preventing terrorism, the current Japanese Government is preparing revisions to the immigration law so that all foreigners over the age of 16 will be required to provide fingerprints and have their photos taken on entering the country, and this information will be also used for criminal investigations. The government will be able to refuse entry to anyone they deem a 'terrorist' suspect. They are strengthening policies so that all foreigners will be treated as though they are potential criminals or terrorist suspects. We request the Special Rapporteur's continued support in our efforts to combat racism in the policies of the Government of Japan that result from the 'War on Terror.'

### **Children of Foreign Nationality and Education**

We wish to point out that while we welcome that the report, by focusing on Korean schools, raises the issue of the education of children of foreign nationality, there is the same serious problem when it comes to children of other nationalities.

As with Korean schools, ethnic schools are, compared to Japanese schools, systematically discriminated against and not recognized as normal schools. The right to learn one's ethnic language (part of learning about one's roots) is not guaranteed to children of foreign nationalities. Loss of dignity results from being unable to establish one's ethnic identity.

To deal with this problem, we believe it is important for the Japanese Government to understand that the essence of

the recommendation elaborated in paragraph 89 to abolish discriminatory differential treatment of Korean schools goes beyond the differential treatment between Korean and other ethnic schools ( e.g. eligibility to take entrance exams for national universities ) or Western international schools and ethnic schools ( e.g. eligibility to receive tax breaks for private donations ) and is based on the situation of the discriminatory treatment of ethnic schools as compared with Japanese schools. Unlike Japanese schools, ethnic schools do not come under the article 1 of the School Education Law, resulting in a difference in eligibility to graduate and receive grants. We believe that there would be considerable improvement if the Japanese Government were to implement the recommendation based on this understanding. In this way, we praise the recommendation under paragraph 89.

The government maintains that children of foreign nationality have no right to education, and that a child of foreign nationality has the option of going to a Japanese school. In this case, however, there is a problem in that the child will not have the right to a proper Japanese language education, or to learn his or her ethnic language, and education with the aim of assimilation goes unquestioned. As a result, many children cannot keep up with the classes in Japanese schools, are unable to find opportunities to foster their identity, and are in reality excluded from education. In this context, the problem of children of newcomers who are not enrolled in school has become a serious problem. There are thousands of children in Japan today who continue to live without the necessary requirements for residency. In general, there are four categories that these children fall into: step-children and adopted children of returnees from China, step-children of Japanese or permanent residents, children of those who have overstayed their visa, and children of those applying for refugee status. The need to guarantee these children's right to education is a serious problem.

According to recommendations arising from the examination of Japan's compliance with the Convention on the Elimination of Racial Discrimination, although the Ministry of Education has taken some steps, these remain insufficient. For example, 17 prefectures have established special categories for high school entrance examinations, but that has not led to an increase in the number of target students entering high school because the schools have not been adequately prepared to accept them.

We hope to continue to provide the Special Rapporteur with information on these problems.

### **Municipal Suffrage/Employment as a Civil Servant/Social Security for Foreigners – Abolishing the nationality clause and promoting public participation in society**

Paragraph 66 of the report elaborates on the Japanese nationality requirement to become civil servants in the public administration. We wish to add that the Department of General Affairs has not changed its position on the nationality requirement to become a civil servant at the national level, and in the case of the local level, while the decision lies at the discretion of the local government, they are not in favor of abolishing the nationality requirement, especially when it comes to attaining higher positions in managerial and high-level posts. Due to this position of the central government, many local governments today still have nationality requirements for becoming a civil servant or taking on a managerial post, and this has even been approved by the Supreme Court of Justice.

As the Special Rapporteur states in paragraph 86, political representation of minorities should be guaranteed in State institutions – this is not possible with the current nationality clause in place. We would also have liked the report to include the issue of municipal suffrage for those of foreign nationality. Despite a Supreme Court ruling in 1995 that ruled constitutional the right of permanent residents to municipal suffrage, the legislature has not taken the necessary actions to make it a reality.

Regarding the recommendation in paragraph 91, calling for the adoption of remedial measures for Koreans over 70 years old without access to pension benefits, we believe it would have been better to have included the aforementioned generation's disabled children, who are now over the age of 43 and are also unable to access the pension scheme. Disabled foreign nationals over the age of 20 at the time of the abolishment of the pension

scheme's nationality clause (January 1, 1982) are unable to receive the pension received by disabled Japanese nationals. This is because at the time of the abolishment of the nationality clause, the Japanese government did not provide remedial measures for those falling between gaps in the law. Furthermore, under the 2004 Special Benefits Law for Disabled Peoples, although social welfare measures are provided for disabled Japanese students (approx. 20,000) and housewives (approx. 4,000) who were not enrolled when the optional enrollment system was in place, disabled foreign nationals in Japan (approx. 5,000) are not eligible, and have remained neglected for over 20 years. Of those unable to access the pension system in Japan, most elderly foreign nationals are first-generation Koreans, and most disabled foreign nationals are second-generation Koreans. Unable to enroll in the health insurance scheme at the time, there are even cases of children becoming ill, and then disabled, as a result of not receiving adequate treatment. There are tens of thousands of Koreans and disabled people without access to the pension scheme, and there are cases where in one family, neither the elderly parents nor their disabled children receive a pension, such that the latter's children have to struggle to support the whole extended family. There can be no reason other than discrimination for this, considering that disabled foreigners who come to Japan on short-term study programs are eligible to receive the Disability Basic Pension, yet Koreans who are born and bred in Japan and pay taxes cannot access the pension system.

For foreigners, and especially Koreans who came to live in Japan as a result of colonial rule and have since made it their base, overcoming the problems of suffrage, social security and the nationality requirement to become a civil servant, is at the base of their public participation in society, and a necessary measure for conquering discrimination. In this context, we believe that the Japanese Government can, by correctly understanding and implementing the essence of the recommendations in paragraph 91 regarding measures to assist Koreans without pension benefits, and paragraph 86 to guarantee political representation of minorities, begin to move towards the elimination of various forms of discrimination based on nationality and barriers to public participation in society.

### **Revision of History Textbooks**

We welcome the recommendation in paragraph 82, calling for the revision of history textbooks to propagate a correct understanding of the history of minorities, as well as Japan's history of invasion, beginning with the Japanese war of aggression and the so-called 'comfort women' under colonial rule. This recommendation is epoch-making. In Japan, strong control is exerted at the national level over the content of school textbooks. Particularly in the case of history texts, it is widely known that the government has demanded changes to passages that contradict its views. We strongly hope that teachers' ability to convey the true history of Japan's past war crimes and colonialism, and of minorities who have been rendered invisible and whose existence is poorly understood, will be guaranteed.

In connection with the sentence where the Special Rapporteur mentions concern that "decisions on the content of textbooks can be taken without any accountability at the national level," we wish to add that the responsibility of the government is not just to ensure that the content requirements mentioned in paragraph 82 are reflected in the curriculum guidelines. We believe it is important as well for the government to democratize the decision-making process on textbook adoption, which are currently being made by boards of education appointed by local government heads without involving teachers and the local community.

### **Establishing an Anti-Discrimination Law**

We praise the Special Rapporteur's recommendation in paragraph 76, to urgently adopt domestic laws prohibiting discrimination. At the same time however, we are concerned about criticism regarding the Special Rapporteur's analysis included in paragraph 11 and 34, because a judicial standard can be found in the prohibition of racial discrimination in Article 14 of the Constitution, and the Civil Code's general clauses such as those on the act of tort do offer the possibility of redress, while statutes such as the National Public Service Law, Local Public Service Law,

Labor Standards Law, Employment Security Law, Daily Life Security Law, and the Fundamental Law of Education include prohibitions against racial discrimination.

We strongly emphasize that the existing legal framework has been extremely insufficient in resolving the problems of racial discrimination, racism and xenophobia, offering redress to victimized individuals and groups or penalizing offenders. We assert that the adoption of a comprehensive anti-discrimination law, as recommended in paragraph 76, is needed to overcome this situation, a fact that reinforces the analysis in paragraphs 11 and 34.

### **Multiple Discrimination Against Minority Women**

We praise the following paragraphs in the report: paragraph 42, which states that Buraku women face double discrimination; paragraph 47, which touches on the situation of Ainu women; and paragraph 96, a recommendation that the rights of women be guaranteed within minority groups. By grasping the realities of multiple discrimination, we go beyond simply dividing the majority and minority of society, and face up to the fundamental structures that give rise to this discrimination. In this context, we recognize the importance in all groups highlighted in the report overcoming borders between them, in order to explore the possibilities of concrete action that can be taken together, and that all groups themselves must face up to the recommendations in the report.

We wish to express our deep appreciation to the Special Rapporteur for basing a considerable part of his report on interviews with minority groups and NGOs fighting to eliminate discrimination. We also welcome the fact that the Special Rapporteur prepared and submitted the corrigenda of the report, which we understood as an expression of the Special Rapporteur's attitude placing importance on the follow-up of the report. We take responsibility for any inaccuracies in the large volume of information presented, and for the fact that the Special Rapporteur took our explanations of certain local realities to be true for the nation as a whole. While apologizing for inaccuracies, we wish to stress that the few paragraphs that may come under attack by those who find their racist attitudes criticized by the report do not affect in any way the report's general analysis and conclusions. Indeed, even the paragraphs that contain factual errors are correct in their basic analysis. We are examining the fine details of the report, endeavoring to add supplementary information to certain sections, in order to make the content of each and every paragraph easier to understand.

We believe it is significant that the report ends with a recommendation for discriminated groups to act in a spirit of solidarity, and support each others' causes (para. 97). Considering the crisis of multiculturalism and the advancement of xenophobia in Japan today – and, as a result, the impairment of the full functioning of democracy – we believe that this recommendation provides an opportunity to turn the tide. In building a wide coalition to deepen mutual understanding, within the same and among different minority groups, as well as with those not in minority groups, of the existence, history and current situation of historically marginalized and invisible minority groups, and to share awareness of these issues, the report will not only serve as an example of 'outside pressure,' but help to build popular internal support to overcome racism, racial discrimination, xenophobia and colonialism. Thus we ourselves can make the recommendations a reality, and show the significance and value of the report through action.

With this in mind, we, minority groups engaged in a wide variety of issues, and NGOs engaged in issues such as racism, racial discrimination, xenophobia and colonialism, have released a joint statement expressing the significance and value of the report, both within and outside Japan calling for the implementation of the recommendations and promotion of the report, and calling for others to join this wide coalition.

We appreciate the Special Rapporteur's analysis of racism, racial discrimination, and xenophobia in Japan, and assure him that we will further deepen the line of analysis and critique initiated in his report. We are considering the task of preparing a White Paper on Racism, racial discrimination and xenophobia in Japan. In this White Paper, we

will touch upon some points the report could not cover for lack of space or information. Our effort is by no means due to a lack of appreciation for its deep insight, but is rather an expression of our full-hearted support for the valuable recommendations and analyses of the complex nature of racism, racial discrimination and xenophobia in Japan made by the Special Rapporteur.

We vividly recall a remark by Special Rapporteur Diène, made during the press conference at the end of his mission to Japan: “The submission of the report is not the goal. I want this to serve as an opportunity to help Japan move towards multiculturalism – this is what the end-goal is.” To reach this goal, we close this open letter by requesting Special Rapporteur Diène’s continued support and guidance, and call upon the various actors in Japanese society to strengthen solidarity with the United Nations.

**May 2006**

**Jointly signed by 77 Organizations  
As of September 11, 2006**

**Signatory Organizations (in no particular order)  
As of September 11, 2006**

1. The International Movement Against all forms of Discrimination and Racism (IMADR)
2. The International Movement Against all forms of Discrimination and Racism - Japan Committee (IMADR-JC)
3. Asia-Japan Women's Resource Center
4. Center for Prisoners' Rights
5. KOREA NGO CENTER
6. Rights of Immigrants Network in Kansai
7. Solidarity Network with Migrants Japan
8. Forum for Peace, Human Rights and Environment
9. The Association of Indigenous Peoples in the Ryukyus (AIPR)
10. The Association of Korean Human Rights in Japan
11. Association for Returnees from China
12. Japan Women's Council I
13. Association to Protect Utoro
14. International Movement against Discrimination on the Internet (INDI)
15. The Ainu Association of Hokkaido
16. Multi-Ethnic' Human Right's Education Center for the Pro-existence
17. Support Network for State Redress Lawsuits
18. Ainu Association of RERA
19. Kanagawa Human Rights Center
20. Release Education Laboratory
21. Kanagawa Council For Combating Discrimination Against Ethnic People in Japan
22. Human Rights Research Institute against All Forms of Discrimination and Racism- MIE
23. Network in Support of the Edagawa Trial
24. National Christian Council of Japan Human Rights Committee of Foreigners Living in Japan
25. The Japan Citizens' Coalition for the UN International Decade of the World's Indigenous Peoples
26. Children and Textbooks Japan Network 21
27. The Kyoto Korean Community Center - LFA
28. Women's Active Museum on War and Peace (WAM)
29. Network for Human Rights Legislation for Foreigners and Ethnic Minorities (FR-Net)
30. Korean Women Residents in Japan, MIRINE
31. Peace Boat
32. Okinawa Citizens' Information Center
33. The National Research Association for Dowa Education
34. Ainu Women's Association
35. Citizens' Diplomatic Centre for the Rights of Indigenous Peoples
36. Research-Action Institute for the Koreans in Japan (RAIK)
37. Shin Professional Studio (Human-Resource Development Institute)
38. Organization of United Korean Youth in Japan
39. Buraku Liberation League Central Headquarters
40. Amnesty International Japan
41. Buraku Liberation and Human Rights Research Institute
42. Osaka Liaison Conference for the Universal Declaration of Human Rights
43. Network against Discrimination for Research on Human Rights

44. Human Rights Center in Tochigi
45. Network of Religious Organizations Addressing "Dowa Issues"
46. Kyojukon
47. APEURO Women's Self-investigation and Analysis Project
48. Council of Democratic Resident Korean Women in Japan
49. ARC (Action for the Rights of Children)
50. Ainu Resource Centre
51. Yay Yukar no Mori
52. Zentoitsu (All United) Workers Union
53. National Committee for the Support of Elderly Residents from Japan's Former Colonies in their Lawsuit against the Government for Non-inclusion in the National Pension Plan
54. Osaka Council For Combating Discrimination Against Ethnic People in Japan
55. The National Research Association for University Dowa Education
56. The Wakayama City Children's Network
57. National Network for the Total Abolition of the Pension Citizenship Clause
58. Supporters of the Suit for a Pension System for Disabled Foreign Residents in Japan
59. Kyoto Supporters of the Case for a Pension System for Elderly Korean Residents in Japan
60. National Christian Liaison Conference to struggle with Issues of Alien Registration Law
61. Save the Dugong Foundation (Okinawa)
62. Japan Catholic Council for Justice and Peace
63. Committee for BURAKU Issues Catholic Bishops' Conference of Japan
64. Catholic Commission of Japan for Migrants, Refugees and People on the Move
65. Network for the rights of Indigenous People
66. Association for the Support of Children out of Wedlock
67. Aomori Residents Concerned about the Sayama Case
68. Club of Children and Students working together for multicultural society
69. Edogawa Union Japanese Language Class
70. Ebina Liberation Educators Association
71. Japan Network for Forced Labor Litigations
72. Bunny Knights SC
73. People for Social Change
74. Network Addressing the Problem of Non-Inclusion in the National Pension Plan
75. Association for Elimination of Pension Discrimination against Korean Residents
76. Association for the Abolishment of the Nationality Clause in Disability Pension
77. Seminar for Human Rights of Korean Residents in Japan

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**For more information:**

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