

MISSION PERMANENTE DU JAPON
AUPRÈS DES ORGANISATIONS INTERNATIONALES
GENÈVE-SUISSE

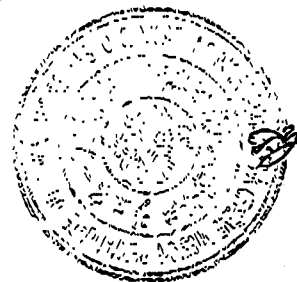
EM/UN/33

The Permanent Mission of Japan to the United Nations and Other International Organizations in Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights and, with reference to the Note Verbale YB/GN/TT dated 3 December 2012, has the honour to transmit herewith the response of the Government of Japan.

The Permanent Mission of Japan to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 23 January 2013

Enclosure mentioned



OHCHR REGISTRY

23 JAN 2013

Recipients : ADU
.....
.....
.....

1. Introduction

Japan has taken every conceivable measure to fight against racial discrimination. The Constitution, the supreme law of Japan, guarantees equality under the law without any form of discrimination, irrespective of the form, that is, whether discrimination is direct or indirect, as is evidenced by the provision laid down in Paragraph 1 of Article 14 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 family origin." Based on this principle of the Constitution, Japan has striven to realize a society without any form of racial or ethnic discrimination, and will continue to make efforts to achieve a society in which each person is treated without any discrimination and respected as an individual and can fully develop his or her own personality.

2. Efforts of the Human Rights Organs of the Ministry of Justice

The Human Rights Organs of the Ministry of Justice conduct necessary investigation into alleged cases of human rights infringement including racial discrimination and adopt measures most suitable for each case in question in accordance with the Regulations on Investigation and Resolution of Human Rights Infringement Cases, the Human Rights Volunteers Act, etc.

(1) Organization of the Human Rights Organs of the Ministry of Justice

The Ministry of Justice has a Human Rights Bureau which acts as an administrative organ engaging in human rights protection. As subordinate organs, there are the Human Rights Departments of the Legal Affairs Bureaus (eight locations nationwide), the Human Rights Divisions of the District Legal Affairs Bureaus (42 locations nationwide), and their branch bureaus (264 locations nationwide (as of 1 December 2012)).

Moreover, in Japan, about 14,000 Human Rights Volunteers (private citizens appointed by the Minister of Justice) engage in human rights protection activities across Japan in cooperation with the Human Rights Bureau of the Ministry of Justice, the Legal Affairs Bureaus and the District Legal Affairs Bureaus.

The Human Rights Bureau of the Ministry of Justice, the Human Rights Departments of the Legal Affairs Bureaus and the Human Rights Divisions of the District Legal Affairs Bureaus and their branch bureaus as well as Human Rights Volunteers are collectively referred to as the "Human Rights Organs of the Ministry of Justice."

(2) Human rights counseling and investigation of and resolution of human rights infringement cases by the Human Rights Organs of the Ministry of Justice

The Human Rights Organs of the Ministry of Justice widely provide human rights counseling services at the Legal Affairs Bureaus, the District Legal Affairs Bureaus and their branch bureaus at 314 locations nationwide (as of 1 December 2012), covering all forms of human rights infringements, including racial discrimination. In addition, they engage in investigation and resolution of human rights infringement cases on fair and impartial grounds. An outline of the investigation and resolution of human rights infringement cases is as follows.

(a) Commencement of remedy procedures

The Human Rights Organs commence remedy procedures when they recognize a suspected case of human rights infringement based on a request for relief from an alleged victim of human rights infringement or his/her relative or other person concerned or a report from a related administrative organ, etc. A request for relief may be made to the Legal Affairs Bureaus, the District Legal Affairs Bureaus and their branch bureaus either orally, in writing, by telephone, or by email.

Moreover, regarding human rights issues concerning foreign nationals, "Human Rights Counseling Offices for Foreign Nationals" with interpretation services have been established within the Legal Affairs Bureaus in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka and Takamatsu as well as within the District Legal Affairs Bureaus in Kobe and Matsuyama. Human rights counseling services are provided in seven languages in total, including English and Chinese, though the available languages differ depending on the offices.

(b) Implementation of investigation

The Human Rights Organs conduct questioning of persons concerned and other necessary investigation.

The Human Rights Organs do not have compulsory measures for investigation; and, therefore, investigation is conducted based on the voluntary cooperation of persons concerned. This is because, unlike criminal proceedings, investigation conducted by the Human Rights Organs is not intended to impose criminal sanctions against persons who have infringed human rights but is intended to have the persons concerned voluntarily eliminate the situation of human rights infringement by raising their awareness of respect for human rights through investigation and remedy

measures. By doing so, remedies for victims will be promoted.

(c) Remedy measures, etc.

(i) The Human Rights Organs take remedy measures such as "assistance" (introduction to a related administrative organ or a related public or private organization, providing alleged victims with legal advice, etc.) and "mediation" (coordinating relationships between alleged victims and other parties) on a case-by-case basis. They also take the following remedy measures if they identify an act of human rights infringement through investigation.

① "Request"

To request a third party who is capable of taking effective measures regarding the relief or prevention of damages by human rights infringement to take such measures

② "Instruction"

To indicate to the party who committed human rights infringement why his/her action infringed human rights and to instruct him/her to take adequate measures

③ "Recommendation"

To make the necessary recommendation in writing to the party who committed human rights infringement by specifying what kind of human rights infringement they committed, in order to stop it or to prevent him/her from recommitting a similar human rights infringement

④ "Notification"

To give a notification to a related administrative organ in writing that a party committed human rights infringement in order to request the exercise of appropriate measures to remedy or prevent damages

⑤ "Accusation"

To make an accusation in writing pursuant to the provisions of the Code of Criminal Procedure

(ii) If it is necessary to conduct human rights promotion to deepen understanding of the principle of respect for human rights in the course of investigation, the Human Rights Organs conduct awareness-raising directed at the persons concerned on a case-by-case basis.

(3) Statistics on the number of human rights infringement cases and human rights

counseling concerning foreign nationals

See annex.

3. Securing access to the judiciary

The Human Rights Organs of the Ministry of Justice provide human rights counseling services and investigation and remedy procedures for human rights infringement cases free of charge for the purpose of realizing simple, quick and flexible remedy for the victims. The Human Rights Organs conduct investigation and remedy activities for human rights infringement cases *ex officio*, and no legal knowledge or other special knowledge is required of a person who requests relief. In addition, the matter is kept strictly confidential so that those who request relief need not fear societal criticism or retribution.

In addition, the Human Rights Organs are making efforts to disseminate and publicize the rights of individuals through various human rights promotion activities. In addition, in receiving requests for human rights counseling, they give appropriate advice on the rights of those who request human rights counseling on a case-by-case basis.

The Japan Legal Support Center (*Houterasu*), established in 2006 based on the Comprehensive Legal Support Act, provides victims, etc. of racial discrimination with information concerning legal systems for compensation, etc. and counseling organs, organizations, etc. free of charge. *Houterasu* also introduces attorneys at law who have experience in and understanding of support for crime victims to the victims, etc. of racially-motivated crimes free of charge.

Moreover, *Houterasu* provides services, such as free legal counseling services and temporary payment of attorney's fees, for victims, etc. of racial discrimination who are not able to consult with an attorney at law and pursue a civil lawsuit due to lack of financial resources in cases in which such a victim, etc. claims damages against the perpetrator.

The Code of Civil Procedure of Japan establishes a system of judicial aid whereby a person who lacks the financial resources to pay the expenses necessary for preparing for and conducting a suit, or a person who will suffer substantial detriment in his/her standard of living by paying such expenses, is granted grace of payment of judicial costs, etc. where it cannot be said that such person is unlikely to win the case (Article 82 and

thereafter of the Code of Civil Procedure).

4. Reservation

In acceding to the Convention, Japan made the following reservation about paragraphs (a) and (b) of Article 4:

“In applying the provisions of paragraphs (a) and (b) of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, Japan fulfils the obligations under those provisions to the extent that fulfilment of the obligations is compatible with the guarantee of rights to freedom of assembly, association and expression and other rights under the Constitution of Japan, noting the phrase ‘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’ referred to in Article 4.”

The reason for this reservation is as follows.

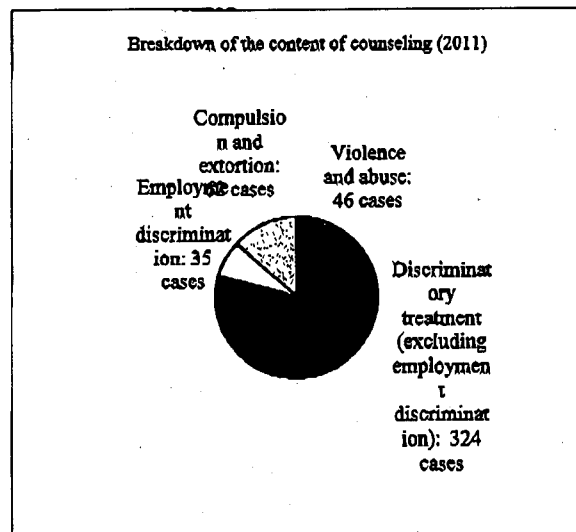
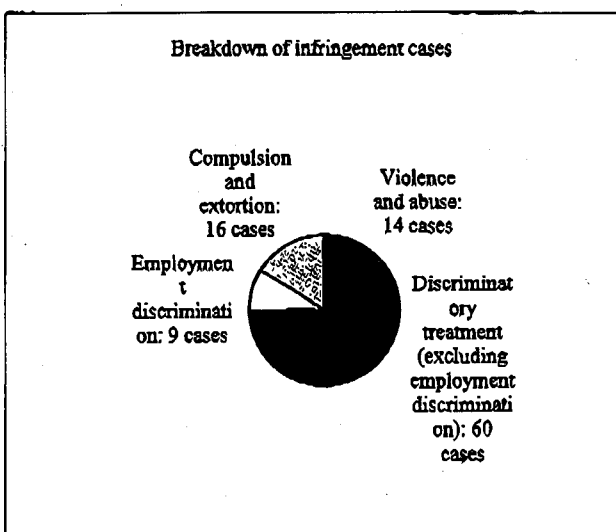
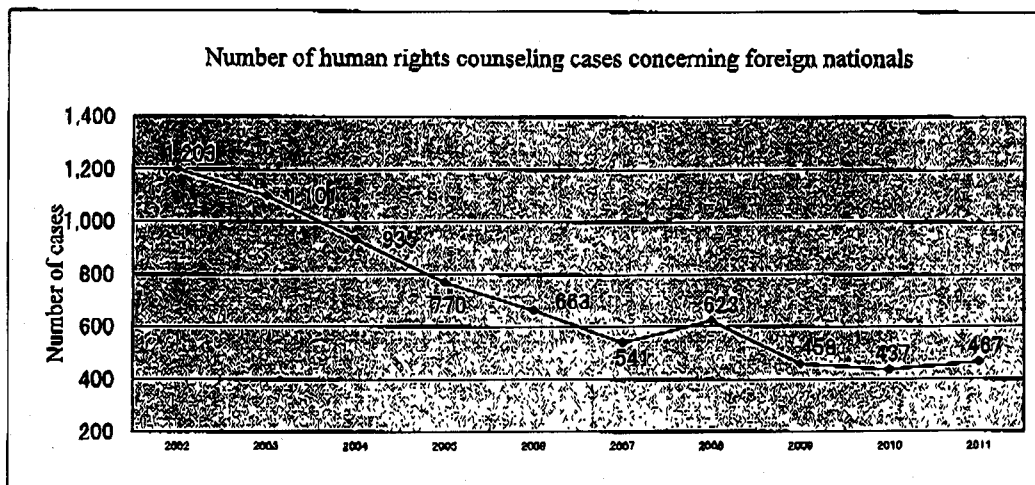
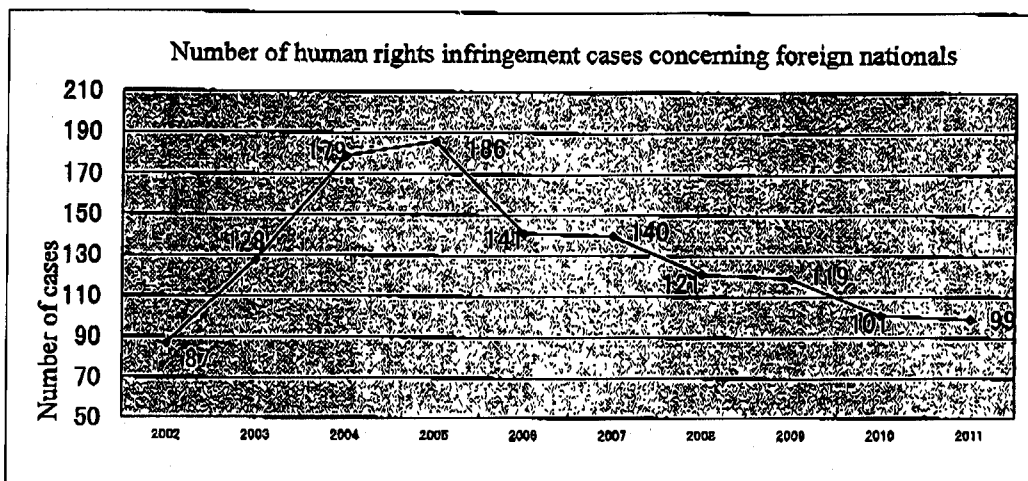
The Constitution of Japan guarantees freedom of assembly and association, as well as speech, press and all other forms of expression (hereinafter “freedom of expression”) in the provisions of Article 21, paragraph 1. Freedom of expression is one of the most important of the fundamental human rights since it is an indispensable prerequisite for people to participate in politics and is directly related to respect for an individual’s dignity. In view of the importance of freedom of expression, excessively broad restrictions on freedom of expression are interpreted as not being permitted under the Constitution, and the necessity and rationale for such restrictions are strictly demanded even in cases that entail a conflict with the rights of other persons. This principle is applied even more strictly in cases where acts of expression are restricted by penalties. Article 31 of the Constitution of Japan guarantees the principle of legality of crime and punishment, requiring that the provisions of criminal laws shall state as concretely and clearly as possible the practices that are punishable and the penalties that are to be meted out.

Article 4 (a) and (b) of the Convention require that State parties punish dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination. In Japan, it is possible to punish such practices as long as this is compatible with the Constitution; accordingly, Japan fulfils the obligation established by the Convention to that extent. However, as stated above, to control all such practices with criminal laws and regulations beyond the current legal system is likely to be

contrary to the freedom of expression and other freedoms guaranteed by the Constitution. This is because the concept referred to in the said article may include various practices under diverse conditions. Therefore, Japan has decided to fulfil obligations stipulated in Article 4 of the Convention so long as they do not contradict the guarantees of the Constitution of Japan, while paying due regard to the rights proclaimed in the Universal Declaration of Human Rights.

(end)

Annex: Statistics on the number of human rights infringement cases and human rights counseling cases concerning foreign nationals



Number of counseling cases

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Violence and abuse	68	68	58	55	49	47	73	40	39	46
Discriminatory treatment (excluding employment discrimination)	983	867	711	561	464	380	434	325	291	324
Employment discrimination	61	73	71	54	38	49	40	38	40	35
Compulsion and extortion	91	93	95	100	112	65	76	55	67	62
Total	1,203	1,101	935	770	663	541	623	458	437	467

Measures taken

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Violence and abuse	22	20	31	26	20	11	16	10	11	14
Discriminatory treatment (excluding employment discrimination)	48	75	117	135	94	99	91	84	69	60
Employment discrimination	11	12	17	10	15	16	6	15	11	9
Compulsion and extortion	6	21	14	15	12	14	8	10	10	16
Total	87	128	179	186	141	140	121	119	101	99