

The Japan Society for History Textbook (JSHT)

NGO in consultative status with the Economic and Social Council since 2019

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9th June, 2022

JAPAN

Stakeholder's Submission for UPR 42nd session

Request for enactment of a law to prevent hate speech against the Japanese people

1. Our Profile

The Japan Society for History Textbook is a General Incorporated Association in Japan and a non-governmental organization in consultative status with the Economic and Social Council since 2019. The objectives of the Society shall be the production, planning, and proposal of new history and civics textbooks, as well as other types of textbooks, and the delivery of those textbooks to children and student.

There are approximately 3 thousand members, backgrounds of whom are a large variety, such as professors, lawyers, doctors, officers, managers, students, etc. Additionally, our activities span widely in the society including petitions to the government authorities for, as an example, improving an educational policy.

2. UPR of JAPAN (3rd Cycle – 28th session)

Recommendation	Japan's Position A/HRC/37/15/Add.1
161.58 Eliminate legislative provisions that are discriminatory against women, children born out of wedlock, ethnic or national minorities, and lesbian, gay, bisexual, transgender or intersex persons, with a view to expressly prohibiting hate speech and penalizing any non-consensual sexual conduct (Mexico)	Note. There are no legislative provisions for sexual offences which are discriminatory.
161.60 Revise its laws to establish a broadly applicable anti-discrimination law which also effectively criminalizes hate speech (Sierra Leone)	Note. See 161.59. (Japan's position is stated in the national report (paras. 11) and in the interactive dialogue as recorded in the Draft Report of the Working Group on the UPR (para. 85).)
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	Partially accept to follow up. See 161.59.
161.85 Continue to address the problem of discrimination and hate speech, particularly through adequate allocation of resources on this issue	Accept to follow up.

through education and awareness programmes in schools (Malaysia)	
161.128 Take into full consideration the recommendations made by the United Nations human rights mechanisms on hate speech (Republic of Korea)	Accept to follow up.
161.205 Strengthen measures so that ethnic minorities — Ainu, Ryukyu and Burakumins — can fully enjoy their economic, social and cultural rights (Peru)	Partially accept to follow up. See 161.69. (Japan recognizes only the Ainu people as indigenous people in Japan.)

3. Abstract

In 2016, “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” was enacted in Japan. The act aims to eliminate hate crimes, but it has a serious flaw because it restricts the target for protection only to “persons originating from outside Japan.” In this context, “persons originating from outside Japan” are considered minorities and victims, while the Japanese as a majority are seen as perpetrators. Here, any possibility for the Japanese (majority) to become victims of hate crimes is not at all considered. However, hate crimes derive from prejudice and hatred toward individuals or groups with certain characteristics, whether minority or majority. There is no guarantee that minorities will never have prejudice or hatred toward the majority. When it comes to hate crimes, they should not be seen solely as confrontation between minorities and the majority. It is necessary to correct the flaw ensconced in this act as soon as possible.

4. Background and current situation of the issue

Hate crimes refer to criminal acts of harassment, threat, violence and others caused by prejudice or hatred toward individuals or groups with certain characteristics related to racial, ethnic or religious matters or sexual preferences. As a means to cope legally with such hate crimes, the “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan” (hereinafter, Hate Speech Elimination Act) was enacted in 2016 in Japan.

However, this Hate Speech Elimination Act has a serious flaw. That is, the Act applies only to persons originating from outside Japan, which means that those who are not “persons originating from outside Japan,” namely, the Japanese people, are not at all protected against hate crimes. Any hate crime against Japanese is neither prohibited by law nor punished legally. Due to this flaw, when hate crimes are committed against Japanese, there are no legal consequences. In other words, perpetrators of hate crimes against Japanese are given a free hand.

In the justification for enactment of this flawed law lies the preconception that there is conflict between those originating from outside Japan, who are minorities and victims, and the Japanese who are the majority and perpetrators. Owing to this premise, any possibility for the Japanese majority to fall prey to hate crimes is not at all taken into consideration.

However, hate crimes are committed out of prejudice and hatred against individuals or groups with certain characteristics. No one can say for certain that minorities never embrace prejudice or hatred against the majority. Naturally, the majority (Japanese) are very likely to become victims of hate crimes. The very idea that “persons originating from outside Japan” (regarded as minorities) are the only ones that need to be protected is based on prejudice. In the first place, it is wrong to put the issue in the perspective of minorities versus the majority when dealing with hate crimes.

Article 20-2 of the International Covenant on Civil and Political Rights states: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” In this article, there is no distinction between minorities and

the majority. On the other hand, Japan's Hate Speech Elimination Act strictly limits the legal protection from hate speech to "persons originating from outside Japan." This clearly breaches the ICCPR Article 20-2.

To remedy this flaw, supplementary resolutions had been adopted:

[Supplementary resolution by the House of Representatives]

In the light of this Act's principle, the Japanese Constitution and the Internal Convention on the Elimination of All Forms of Racial Discrimination and on the basis of fundamental understanding that it is wrong to assume any unfair discriminatory speech or behavior is permissible so long as it is committed against those other than "persons originating from outside Japan" as stated in the Act, the Act should be properly implemented.

[Supplementary resolution by the House of Councilors]

It is wrong to regard any unfair discriminatory speech or behavior as permissible so long as it is other than "unfair, discriminatory speech or behavior against persons originating from outside Japan," as stated in the Article 2 of the Act. In the light of this Act, the Japanese Constitution and the International Convention of the Elimination of All Forms of Racial Discrimination, the Act should be properly implemented.

These supplementary resolutions by both Houses of the Japanese Diet are extremely ambiguous. Why is it not simply stated that the protection provided by the Hate Speech Elimination Act is provided to all people?

Moreover, people generally do not know that there are such supplementary resolutions attached to the Hate Speech Elimination Act. So, it is not clear to what extent these resolutions are respected and taken account of by the courts. Being "supplementary", there is a high probability that the resolutions could be regarded as insignificant and remain mere reference or in the worst case may be completely ignored.

The issue cannot be solved by supplementary resolutions, it should be clearly stated in the Hate Speech Elimination Act that the Act protects "all people." In concrete terms, the words "persons originating from outside Japan" should be deleted and replaced with the words "all people", instead.

5. Conclusion

We request that the Japanese Government:

Crack down on hate crimes against Japanese people and enact a law to strictly punish perpetrators. Specifically, change the phrase "persons originating from outside Japan" to "all persons" and some others, if necessary, to make the law consistent.

END