

DISCRIMINATION AGAINST FOREIGNERS IN JAPAN**Kostina Ekaterina*****Alumni of Graduate School of Global Studies, Sophia University, Japan****Abstrak**

Pendapat yang menyatakan bahwa Jepang adalah masyarakat homogen telah dibantah oleh banyak penelitian. Kenyataannya, Jepang adalah rumah bagi berbagai kelompok minoritas, etnis dan non etnis yang berbeda-beda. Meskipun persentase orang asing relatif rendah dibandingkan dengan negara lainnya, tindakan diskriminasi rasial terjadi dalam kehidupan sehari-hari di Jepang. Oleh karena itu, studi ini membahas bagaimana perlakuan terhadap orang asing di Jepang dan menjawab pertanyaan apakah peraturan perundang-undangan yang ada mampu memberikan perlindungan hak dan menindak kegiatan diskriminasi yang dilakukan oleh warga masyarakat dan organisasi. Studi ini mengungkapkan bahwa meskipun Jepang telah menandatangani Konvensi PBB tentang Penghapusan Diskriminasi Rasial, permasalahan diskriminasi rasial terhadap warga negara asing masih sering terjadi. Berbagai peristiwa telah dilaporkan terkait pelanggaran hak asasi manusia dan praktek diskriminasi terhadap orang asing yang disebabkan karena perbedaan bahasa, agama, kebiasaan dan juga penampilan. Beberapa dari kasus tersebut ditangani oleh badan hak asasi manusia dari Kementerian Kehakiman termasuk penolakan penyewaan apartemen atau larangan masuk ke tempat permandian umum bagi orang asing. Studi ini menyarankan agar Jepang menerbitkan hukum yang baru yang menentang diskriminasi.

Kata Kunci : Diskriminasi, Orang Asing, Jepang**Abstract**

The notion of Japan as a homogeneous society has been challenged by many recent studies. In fact, Japan is a home to different minority groups, ethnic and non-ethnic. Although the percentage of resident foreigners is relatively low comparing to other countries, acts of racial discrimination against them occur in everyday life in Japan. Thus, this study discusses how the foreigners

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are treated in Japan, and therefore tends to answer the question whether the legislation exists in order to protect their rights and penalize discriminatory activities committed by citizens or organizations. The study reveals that although Japan signed the UN Convention on the Elimination of Racial Discrimination (CERD), the problem of racial discrimination against foreign nationals still remains considerable. There are many reported incidents of human rights violation and discrimination practice against foreigners among individuals due to differences in language, religion, custom and appearance as well. Some of the cases handled by the human rights organs of the Ministry of Justice include the refusals of apartment rental or entrance to a public swimming pool on the grounds of being a foreigner. The study suggests that Japan should introduce new legislation to combat discrimination.

Keywords : Discrimination, Foreigners, Japan

A. Introduction

It is frequently believed that Japan is a racially and ethnically homogeneous society. This way of thinking has deep roots in Japan back to the Tokugawa period (with its policy of isolation from the rest of the world), followed by the promotion of Shintoism (with its belief in the divine origin of the Japanese race and, thereby, its ethnic superiority over other races) and finally ending with the official patronage among the party leaders and the militarists in XX century. Thus, Japanese national identity can be defined as a “product of historical process of state formation and re-formation that occurred over the course of several centuries within the context of East Asian geopolitics”¹. The myth of ethnic homogeneity is strongly linked to the conception of national identity and this leads to the emergence of ethnic and racial discrimination in contemporary Japan. As Sugimoto has correctly pointed out, “In everyday life, racism and ethnocentrism still remain strong in many sections of the community and the establishment”². Moreover, the “strong loyalty of the Japanese to their nationhood and the notion of ‘we Japanese’ appear to be deep-seated” even among those who have chosen to

¹ Howell, David L. (2004). Ethnicity and Culture in Contemporary Japan. In Weiner Michael (Ed.), Race, Ethnicity and migration in modern Japan (pp. 103-115). New York: RoutledgeCurzon. p.103

² Sugimoto Yoshio. (2002). An introduction to Japanese Society. Cambridge: Cambridge University Press. p. 183

live abroad indefinitely”¹.

The notion of Japan as a homogeneous society has been challenged by many recent studies (Sugimoto 2003, 2010; Weiner 2004; Kondo 2008) and this leads to the conclusion that Japanese homogeneity itself is a myth. In fact, Japan is a home to different minority groups, ethnic and non-ethnic, which call into question the mentioned-above belief in homogeneity. Among these minority groups (the native minorities such as the Ainu, Okinawans, Burakumin; Koreans and Taiwanese and their descendants, the presence of whom Japan's external aggression) there is a group of recent immigrants, a significant number from China and Latin America, who have settled in Japan to work. As it is correctly pointed out by Sugimoto, “The attraction of the yen and the Japanese demand for manual labor has brought phenomenal numbers of foreign workers into Japan. Grassroots Japan is undergoing a process of irreversible globalization”². Thus, according to the Japanese immigration centre, the number of foreign residents was more than 2.2 million people³ (this number excludes the irregular migrants and short-time visitors) and it makes up approximately 1.6% of Japan's total legal resident population.

Although the percentage of resident foreigners is relatively low comparing to other countries, acts of racial discrimination against them occur in everyday life in Japan. Thus, this paper discusses how the foreigners are treated in Japan, and therefore tends to answer the question whether the legislation exists in order to protect their rights and penalize discriminatory activities committed by citizens or organizations.

B. Discussion

1. Provisions of international/national law

The government of Japan signed in 1978 and ratified in 1979 **The International Covenant on Economic, Social and Cultural Rights**, paragraph 2 of Article 2 of which states that:

“2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be

¹ Ibid., p. 209

² Sugimoto Yoshio. (2002). *An introduction to Japanese Society*. Cambridge: Cambridge University Press. p. 184

³ 平成 20 年末現在における外国人登録者統計について(Number of Foreign residents in Japan in 2008) http://www.moj.go.jp/nyuukokukanri/kouhou/press_090710-1_090710-1.html

exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”¹.

Also, the government of Japan signed in 1978 and ratified in 1979 **The International Covenant on Civil and Political Rights**, Article 2 of which states that:

“Article 2

- 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
- 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*
- 3. Each State Party to the present Covenant undertakes:*
 - (a). To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
 - (b). To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*
 - (c). To ensure that the competent authorities shall enforce such remedies when granted”².*

¹ See International Covenant on Economic, Social and Cultural Rights:
<http://www2.ohchr.org/english/law/cescr.htm>

² See International Covenant on Civil and Political Rights:
<http://www2.ohchr.org/english/law/ccpr.htm>

Thereby, according to these conventions, the government of Japan ensures equal opportunities not only for Japanese nationals but for foreign nationals as well.

Then, Japan as a member of the UN signed and ratified in 1995 The United Nations' International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 2 of which states that:

“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”*¹.

Then, Article 3 states that:

“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”.²

Also, Article 4 states that:

“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,*

¹ See International Convention on the Elimination of All Forms of Racial Discrimination: <http://www2.ohchr.org/english/law/cerd.htm>

² Ibid.

*national or local, to promote or incite racial discrimination”.*¹

As for Article 5, it is stated that:

“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;**

¹ See International Convention on the Elimination of All Forms of Racial Discrimination: <http://www2.ohchr.org/english/law/cerd.htm>

- (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, cafes, theatres and parks.”¹*

The government of Japan made reservation to this convention:

“Reservation:

In applying the provisions of paragraphs (a) and (b) of article 4 of the [said Convention] Japan fulfills the obligations under those provisions to the extent that fulfillment of the obligations is compatible with the guarantee of the 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”.²

Thereby, the UN Convention on the Elimination of Racial Discrimination (CERD) condemns all forms of racial discrimination and advocates a policy which will guarantee the elimination of racial discrimination. It requires each State Party to prohibit and bring to an end, by all appropriate means, including legislation if it is required by circumstances, racial discrimination by any persons, group or

¹ See International Convention on the Elimination of All Forms of Racial Discrimination: <http://www2.ohchr.org/english/law/cerd.htm>

² See Charter IV. Human Rights. International Convention on the Elimination of All Forms of Racial Discrimination: <http://treaties.un.org>

organization¹. As Japan signed and ratified the CERD, it promised to take drastic measures (and legislation if it is needed as well) at all levels of government in order to eliminate racial discrimination in its society².

The reservation made to the CERD refers to the Constitution of Japan, the supreme law in Japan's legal system, which came into effect in 1947. Article 14 of the Constitution states:

“Article 14:

*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. 2) Peers and peerage shall not be recognized. 3) No privilege shall accompany any award of honor, decoration or any distinction, nor shall any such award be valid beyond the lifetime of the individual who now holds or hereafter may receive it”.*³

Moreover, Article 44 provides that:

“Article 44:

*The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income”*⁴.

According to Article 14, the Constitution prohibits discrimination on the basis of race, creed, gender, social status, or family origin and states that people are equal under the law. However, as it is correctly pointed out by Tadashi Hanami “the legal status of foreign citizens is not addressed in the Constitution, and there is no consensus among legal theories or opinions about which fundamental human rights guaranteed by the Constitution are awarded only to Japanese citizens and which are granted to all residents”⁵. He continues his observation by asserting that some provisions of the Constitution refer to the term “every person” (何人)

¹ See International Convention on the Elimination of All Forms of Racial Discrimination: <http://www.crnjapan.net>

² See Japan Human Rights Record. Arudou Debito. <http://www.debito.org/japanvsun.html>

³ See The Constitution of Japan:

<http://www.solon.org/Constitutions/Japan/English/english-Constitution.html>

⁴ Ibid

⁵ Hanami Tadashi. (2004). Japanese Policies on the rights and benefits granted to foreign workers, residents, refugees and illegals. In Weiner Michael (Ed.), *Race, Ethnicity and migration in modern Japan. Imagined and Imaginary minorities* (pp. 37-56). New York: RoutledgeCurzon. pp 37-38

人 nanibito) as a subject of the guaranteed right, while in some others “every citizen” (国民 kokumin); also, when it comes to the right to participate in local community affairs the term “resident” (住民 jyumin) is used¹. Due to these distinctions, “some theories contend that some rights, such as voting rights and eligibility for public positions, are accorded only to Japanese citizens (kokumin)”². Nevertheless, the “Supreme Court laid down that constitutionally guaranteed fundamental human rights should also be given to foreigners staying in Japan, except for some which are reserved to Japanese citizens “because of their nature”³.

Finally, Article 98 of the Constitution of Japan states that:

“Article 98:

This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity. 2) The treaties concluded by Japan and established laws of nations shall be faithfully observed”⁴.

Thereby, according to Paragraph 2 of Article 98, provisions of treaties set up by Japan “have legal effect as a part of domestic laws”, however “whether or not apply provisions of the conventions directly is judged in each specific case, taking into consideration the purpose, meaning and wording of the provisions concerned”⁵. As it is known, the ratification of treaties requires extensive change in domestic law. However, Japanese courts tend to be conservative and reluctant to deal with arguments based on international law, partly because they are relatively unfamiliar with it and partly because of the relationship between the universal nature of international law and the view within Japan that the country is unique in the international system⁶.

However, there are still many cases in Japan which can be attributed

¹ Ibid., p. 37

² Ibid., p. 38

³ Ibid., p. 38

⁴ See The Constitution of Japan:

<http://www.solon.org/Constitutions/Japan/English/english-Constitution.html>

⁵ See Japan Human Rights Record. Arudou Debito: <http://www.debito.org/japanvsun.html>

⁶ Gurowitz Amy. (2006). Looking outward: International Legal Norms and Foreigner Rights in Japan. In Tsuda Takeyuki (Ed.), Local citizenship in recent countries of immigration (pp. 153-170). Oxford: Lexington Books. p. 161 Cambridge University Press. p. 184

to the violation of the Foreigner Rights.

2. Cases of racial discrimination in Japan.

In accordance with the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

“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”¹.

By signing this convention, according to article 5, Japan guarantees “equal rights to education and equal treatment (no tuition fees, free textbooks, etc.) for the children of foreign nationals who wish to study at public schools for compulsory education”². Also, discriminatory treatment with regard to labor conditions and employment is prohibited. As for public housing, it is available both for Japanese nationals and foreigner nationals as long as the latter register their place of residence and identity at the municipalities where they live. Social security is also granted regardless of nationality. “For example, the nationality requirement for joining the National Pension and the National Health Insurance as well as for receiving Child Allowance and Child-Rearing Allowance has been abolished”³. Furthermore, in accordance with Article 5, “permanent residents and settled residents residing in Japan in the same way as Japanese nationals can be provided, as an administrative measure, public assistance under conditions identical to those of Japanese nationals”⁴. However, there are cases which violated Article 5 with regard to public housing.

In Shiga prefecture there were prefectural government-run apartments for 3,100 households⁵. The prefectural government used to allow local residents (foreign nationals had been allowed to apply to rent

¹ See International Convention on the Elimination of All Forms of Racial Discrimination: <http://www.crnjapan.net>

² See Japan Human Rights Record. Arudou Debito: <http://www.debito.org/japanvsun.html>

³ See Japan Human Rights Record. Arudou Debito: <http://www.debito.org/japanvsun.html>

⁴ Ibid

⁵ See The Shiga prefecture housing discrimination case: <http://www.debito.org/TheCommunity/shigakendiscrim.html>

if they had a one-year or longer residency permit) to apply to this low-rent housing on condition that they had never failed to pay taxes and their income was below a certain level. As of 2002, a significant number of foreign nationals were living in apartments owned by the prefectural government (150 households, 80 of them were Japanese-Brazilians). However, in 1994, the prefectural government enacted new regulations stipulating that those who would like to apply to move in public housing had to have a sufficient ability to handle daily conversations in Japanese (even though the law governing public housing does not require Japanese-language ability to be necessary for moving into public apartments). According to these rules, officials rejected applications to rent public apartments if they considered that the applicants didn't speak Japanese. Moreover, those who didn't understand Japanese but accompanied by an interpreter were not allowed to file applications as well. The prefectural government defended its requirement of the Japanese-language ability by arguing that those who couldn't handle daily conversations in Japanese tended to have disputes with neighbors if they entered public apartments. A support group for foreign residents criticized this practice by pointing out that it was unreasonable that only foreigners couldn't enjoy public services even though they paid taxes¹.

This case demonstrates violation of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Even though the public housing law did not stipulate Japanese proficiency as a requirement to apply for public housing and foreign nationals were taxpayers, they were banned from public housing because of their lack of language ability.

This discrimination practice, however, lasted until July 2002, when the Mainichi Shimbun reported the case. After that, the Shiga governor had officially ordered a revision to this policy by explaining that “the present policy does not suit the prefecture's current situation, in which foreign residents are increasing”².

Another case which has been a continual source of conflict is the requirement that permanent foreign residents in Japan have to carry

¹ See The Shiga prefecture housing discrimination case:
<http://www.debito.org/TheCommunity/shigakendiscrim.html>

² See The Japan Times online: <http://search.japantimes.co.jp/cgi-bin/nn20020808a6.html>

documentation. In 1993 the UN Human Rights Committee determined that making it a penal offense for foreigners who fail to carry documentation with them all the time (a requirement that does not apply to Japanese nationals) violates the International Covenant on Civil and Political Rights. The government did not fully comply with this finding, but reduce the documentation to the size of a credit card and the Diet adopted a resolution urging the police not to abuse their power in order to demand presentation of the document¹.

With a rapid increase in the number of foreign residents, there are many reported incidents of human rights violation and discrimination practice against foreigners among individuals due to differences in language, religion, custom and appearance as well. “Some of the cases handled by the human rights organs of the Ministry of Justice include the refusals of apartment rental or entrance to a public swimming pool on the grounds of being a foreigner”². There are cases, when apartments, motels, night clubs, public baths in Japan have put up signs stating that foreigners are not allowed, or that they must be accompanied by a Japanese person to enter.

In fact, there were a sufficient number of lawsuits regarding discrimination against foreigners. One of the most famous is a case of Ana Bortz (Hamamatsu's Rosa Parks case):

On June 16, 1998, Ana Bortz, a Brazilian journalist and legal resident of Hamamatsu City, entered a jewellery store to buy a necklace. The proprietor, Takahisa Suzuki, approached her to ask, “Where are you from?” When she answered, “I am from Brazil,” he gestured her toward the door while pointing to a homemade poster in Japanese on the wall that read: “No foreigners allowed in this store”³. He, then, took from the wall a police department sign warning of frequent robberies in jewellery stores and demanded that she leave.

Bortz refused to leave, protesting that excluding foreigners from the

¹ Gurowitz Amy. (2006). Looking outward: International Legal Norms and Foreigner Rights in Japan. In Tsuda Takeyuki (Ed.), Local citizenship in recent countries of immigration (pp. 153-170). Oxford: Lexington Books. p. 163

² See Japan Human Rights Record. Arudou Debito: <http://www.debito.org/japanvsun.html>

³ See Ana Bortz's Law Suit and Minority Rights in Japan: <http://www.jpri.org/publications/workingpapers/wp88.html>

store is a violation of their basic human rights¹. In response, the proprietor summoned police who rushed to the store. In the presence of two policemen, Bortz repeated her argument, demanding removal of the poster and that a letter of apology be written. The proprietor again refused and the policemen declared that this was an issue beyond their jurisdiction and promptly departed. Bortz left too, but only after announcing that she would file a suit in court. Two months later she did so. “In the brief she submitted to the court, Bortz argued that Japan’s 1995 ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (hereafter ICERD) requires its citizens to abide by its provisions. It was on the basis of their violation of ICERD that Bortz made her case that Mr. Suzuki and his mother, co-owners of Seibido Jewelry Store, had infringed on her human rights, thus entitling her to reparation”².

“Fourteen months later, on October 12, 1999, a Shizuoka District Court judge astounded the nation when he ruled that the plaintiff had suffered discrimination because of her race and nationality and ordered the defendants to pay the full compensation she sought, ¥1,500,000 (\$12,500). He based his ruling **on the legal premises, unprecedented in Japan, that in the absence of a domestic anti-discrimination law** 1) ICERD’s provisions serve as the standard by which racial discrimination must be determined, and 2) ICERD’s provisions provide the grounds upon which Japanese Civil Law takes effect, thus entitling the victim to compensation”³.

This case illustrates violation of Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination. Also, it appeals to Article 6 of the same convention, which states:

“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

¹ Ibid.

² Ibid.

³ See Ana Bortz’s Law Suit and Minority Rights in Japan:
<http://www.jpri.org/publications/workingpapers/wp88.html>

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”¹.

By signing this Convention the government of Japan was required to legislate laws which would prohibit racial discrimination. As Japan had yet to enact such a law, and, thus, in the absence of an anti-discrimination law, CERD took effect as domestic law as it was pointed out by Bortz². This is not a single case when the Brazilian national becomes victim of discrimination in Japan³.

The lawsuit brought by Ana Bortz is a first case in Japanese history that ruled on discrimination between two private individuals⁴. However, the Otaru Onsens Case shows that holding the government accountable for not enforcing the CERD must be difficult.

“From 1993 until 2001, tourist city Otaru, on the northern Japanese island of Hokkaido, had at least three public-access bathhouses banning entry to all "foreigners". This included tourists, foreign residents, bilinguals, naturalized Japanese citizens, and even interracial Japanese children who looked too foreign”⁵. Hearing about these events Olaf Karthaus, Dave Aldwinckle (after naturalization – Arudou Debito), and networkers for NPO Issho Kikaku's BENCI Project, visited four Otaru bathing facilities on September 19, 1999 in order to confirm that only visibly non-Japanese people were excluded. They were able to verify and record the existence of this exclusionary policy⁶.

Then, “plaintiff Arudou Debito/Dave Aldwinckle receives his Japanese citizenship on October 10, 2000, and goes to Yunohana Onsen in Otaru with proof on Oct 31, 2000. Despite its express policy of "Japanese Only", Yunohana still turns Arudou away due to his appearance, saying, "We at the counter know you are a Japanese, but our

¹ See International Convention on the Elimination of All Forms of Racial Discrimination: <http://www.crnjapan.net>

² See Ana Bortz's Law Suit and Minority Rights in Japan: <http://www.jpri.org/publications/workingpapers/wp88.html>

³ See Brazilians that were victims of discrimination in Japan: <http://www.debito.org/bortzdiscrimreport.html>

⁴ Gurowitz Amy. (2006). Looking outward: International Legal Norms and Foreigner Rights in Japan. In Tsuda Takeyuki (Ed.), Local citizenship in recent countries of immigration (pp. 153-170). Oxford: Lexington Books. p. 164

⁵ See The Otaru lawsuit information site: <http://www.debito.org/otarulawsuit.html>

⁶ See Background to the Otaru onsens case: <http://www.debito.org/lawsuitbackground.html>

customers won't to look at you, so we have to refuse you admission." This exclusion of a Caucasian Japanese incontrovertibly demonstrates that the discriminatory policy is based on race, not nationality"¹.

As a result in February 2001 three people excluded - naturalized Japanese citizen Arudou Debito, German Olaf Karthaus and American Ken Sutherland took one Otaru onsen (Yunohana) and the City of Otaru to court for: 1) **violation of Article 14 of the Japanese Constitution** (which says that all people/citizens are equal before the law; denying entry to a Japanese citizen expressly for foreign features is incontrovertibly illegal), 2) **violation of the UN Convention on the Elimination of All Forms of Racial Discrimination** (according to a Shizuoka District Court ruling on the Ana Bortz Case of 1999, because international law applies when there is no domestic law covering the situation; Japan happens to be the only OECD country without a domestic law against racial discrimination)².

On November 2002, the Sapporo District Court ordered Yunohana to pay the plaintiffs ¥1 million each (about US\$25,000 in total) in damages³. The court stated that "refusing all foreigners without exception is 'unrational discrimination' [that] can be said to go beyond permissible societal limits"⁴. Finally, "Yunohana lost both in Sapporo District and High Court, and was ordered to pay plaintiffs one million yen each for "unrational discrimination". The City of Otaru won in Sapporo District Court, High Court, and the Supreme Court; the District and High Courts grounded their arguments in "separation of powers" arguments (as in, the judiciary cannot force a government body to pass laws against discrimination, and cannot hold one accountable for not doing so). The Supreme Court ruled that this contravention of Article 14 was "not a Constitutional issue"⁵.

Thus, despite the fact that plaintiffs won the court case against an exclusionary practice, they faced an explanation made by the court that "local governments may not be held liable for not taking effective

¹ Ibid

² See The Otaru lawsuit: <http://www.debito.org/lawsuitjustification.html>

³ See The Otaru lawsuit information site: <http://www.debito.org/otarulawsuit.html>

⁴ See The Otaru Lawsuit Decision and its Possible Effects. Arudou Debito: <http://www.debito.org/decisionbrief111202.html>

⁵ See The Otaru onsens lawsuit, ten years on. <http://www.debito.org/?p=4428>

measures against racial discrimination occurring in their jurisdiction”¹.

C. Conclusion

The mentioned above cases shows that for country such as Japan although it signed the UN Convention on the Elimination of Racial Discrimination (CERD) the problem of racial discrimination against foreign nationals still remains considerable. Despite the fact that the number of foreign residents has been increasing, even though they pay taxes and significantly contribute to the Japanese society, “there are several societal and legal barriers to them enjoying equal rights and social treatment”². Moreover Japan is the only OECD country which does not have civil rights legislation which enforces or penalizes discriminatory activities committed by citizens, businesses or other organizations. As it was pointed out by Ana Bortz during her press conference in 1998, “Two days after being driven out of jewelry store in Hamamatsu because I am Brazilian, I found out that the Civil and Penal Codes of Japan, the second strongest economy in the world, do not mention racial discrimination as a crime. There was no legal mechanism of protection against racism before December of 1995. This legal omission could lead residents to believe that there is not discrimination in Japan”³.

In 2005 Doudou Diène (Special Reporter of the UN Commission on Human Rights) concluded at the end of a nine-day tour in Japan that “racism in Japan is deep and profound, and the government does not recognize the depth of the problem” and “Japan should introduce new legislation to combat discrimination.”⁴ However, there is no significant change on this matter. According to the U.N. Committee on the Elimination of Racial Discrimination in 2010, “Japan's record on racism has improved, but there is still room for progress”⁵. “There seems to have been little progress since 2001, 2001, when the last review was held,” committee member Regis de Gouttes said. “There is no new legislation, even though in 2001 the committee said

¹ See On racism in Japan: <http://www.debito.org/meijigakuin071705.html>

² See Treatment of Japan's International Residents: <http://www.debito.org/handout.html>

³ See Ana Bortz at the Foreign correspondents' club, Japan: <http://www.debito.org/Bortzpressconf.html>

⁴ See Japan racism 'deep and profound': <http://news.bbc.co.uk/2/hi/asia-pacific/4671687.stm>

⁵ See Japan faces U.N. racism criticism: <http://search.japantimes.co.jp/cgi-bin/nn20100226a4.html>
<http://search.japantimes.co.jp/cgi-bin/nn20100226a4.html>

prohibiting hate speech is compatible with freedom of expression”¹.

No laws against racial discrimination, even though there is a significant number of cases which can be attributed to the violation of CERD and thus regarded as racial discrimination, show that Japan doesn't fulfill its obligations as a member of the United Nations. However, as it correctly noted by Yoshio Sugimoto “contemporary Japanese society is caught between the contradictory forces of narrow ethnocentrism and open internalization”². This proves the fact that passing laws at all levels of government outlawing discrimination in Japan is just a matter of time.

¹ See Japan faces U.N. racism criticism: <http://search.japantimes.co.jp/cgi-bin/nn20100226a4.html>

² Sugimoto Yoshio. (2002). *An introduction to Japanese Society*. Cambridge: Cambridge University Press. p. 183

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