

Problems within the Refugee Status Determination System for Asylum-seeking Women in Japan

Manami Honda

In 2014, the number of asylum seekers rose to 5,000, but only 11 were granted refugee status by the Japanese government. In addition, 110 people were given only statuses of residence rather than refugee status. Conditions for asylum seekers are harsh. Furthermore, we know that the situation for women in particular is more serious.

Racial and religious difference, political reasons and the like, the reasons for women becoming targets of persecution are diverse. But it is also true that once women become targets, they can be exposed to the additional risk of sexual assault. Sexual violence becomes a tool of persecution. And it is truly difficult for these women to share their experiences of abuse, as for sexual abuse victims. In addition, in the case of asylum seekers, the majority of perpetrators are men from national institutions, such as the military and the police.

Even if they are able to successfully apply for asylum, these victims of sexual assault do not find it easy to explain their terrible experiences

directly to the immigration officers in front of them. Some cannot bear talking with these officials in detail because they are suffering from severe PTSD. Even though conditions for such women remain harsh, Japan's refugee status determination system remains particularly unforgiving. These women still need to explain and prove their risky status in order to avoid persecution back home.

The pain of women under such pressure is immeasurable. Indeed, a woman who has become psychologically disturbed due to sexual abuse or torture by members of the military was not even able to give a statement because of physical symptoms she suffered.

Sometimes, asylum-seeking women face a real risk of being victims of human trafficking during their lives as refugees. When these women feel the threat of persecution by the authorities, they may try to escape to other countries undercover. Then the chances of encountering human traffickers become higher, if women seek brokers through

these routes.

I know a girl who was almost taken to a brothel in her neighboring country after she lost her father to murder, and tried to escape from the country.

Paragraph 36 of the "Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugee," issued by the United Nations High Commissioner for Refugees (UNHCR) states that "It is unnecessary to establish the precise details of the act of rape or sexual assault itself..." The Ministry of Justice in Japan, which conducts the determination of refugee status, should deal properly and flexibly with these women, in consideration of the UN's guidelines. Obviously, the Ministry of Justice should avoid inappropriate determinations, such as declining an application of refugee status due to lack of clear evidence of sexual assault. Furthermore, officials should take proper care and follow protocol in the investigation process, in order to avoid secondary damage. Needless to say, lawyers who serve these people as their agents should take the same precautions.

Even if they are granted refugee

status, female victims of sexual assault are by no means able to erase their fear, misery and grief completely. But Japan should at least offer them a place where they can live in peace as a country of asylum.

The girl whose story I shared above, who was almost taken to a brothel, was not recognized as a refugee but was given resident status. Some years later I heard some good news about her from someone through the grapevine: she had got married and had a baby. On the other hand, I know an asylum-seeking woman who made a suicide attempt in despair, as her life had become intolerable, with repeated rejections by the Ministry of Japan. There are also women who have waited a long time for results of their refugee application screenings in fear, while struggling with PTSD caused by sexual assault.

I truly hope that these women's human rights can be ensured, and I have been thinking, as a lawyer, that I need to present a specific vision of an ideal asylum grant system for this country.

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and only highlights once again the arrogance of the perpetrating country.

Survivors of Japanese military sexual slavery are not only in the Republic of Korea, but also in countries throughout the Asia Pacific including Japan, the DPRK, Taiwan, China, the Philippines and Indonesia, as well as in the Netherlands. There are also many women who passed away without having been able to come out as former "comfort women."

The recent "agreement" between the governments of Japan and Korea is not a resolution. The Japanese Government must implement the recommendations presented in order to achieve resolution. We strongly call upon Japan, as the perpetrating country, to fulfill its rightful responsibilities.

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Japan Nationwide Network for Resolution of the Japan's Military "Comfort Women" Issue

A Recent Movement Calling for an "Anti-Discrimination Bill"

On May 22, 2015, the Democratic Party of Japan (DPJ), together with the Social Democratic Party and an independent Upper House member, submitted a "Bill on Promoting Necessary Policies and Measures to Prohibit All Forms of Discrimination Based on Race, Color or Ethnic Origin" (For short, 'Elimination of Racial and Other Discrimination Bill') to the House of Councilors. The text of the bill bans all forms of discrimination against individuals and unspecified people due to their race, color, ethnicity and other differences.

(Full text of the bill is available on the DPJ website at <https://www.dpj.or.jp/article/106750> in Japanese)

The bill is an attempt to bring the country into compliance with the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) for the first time in

20 years since Japan signed the Convention, which stipulates that:

- 1) "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." (First clause (d) of Article 2)
- 2) States Parties undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination. (Article 4)
- 3) States Parties undertake to prohibit racial discrimination and to guarantee the right of everyone to equality before the law. (Article 5)

Several factors contributed to this legislation. Recent discriminatory treatment, hate-speech toward foreign people living in Japan, a court decision on a Korean School attack in Kyoto in particular, and successive recommendations by the UN on this issue created a need for this legislation.

On June 26 a gathering of lawmakers

and citizens, who were deeply concerned about human rights and hate-speech, was held inside the Upper House. It was organized by the Foreign Citizens' Human Rights Law Network ("Gaikokujin Jinkenho Renrakukai") and other groups. At the meeting the Upper House members and lawyers explained the purpose and the contents of the bill. Then all attendees shared the voices of people waiting eagerly for the bill.

"We already have a 'Sex Discrimination Act' and a 'Disability Discrimination Act', but we haven't had laws which prohibit hate-speech and racial discrimination. This provides an encouraging environment for harassers," said lawyer Satoko Kitamura. She also stressed the need for the law as a base to state publicly that racial discrimination is not allowed. DPJ member Toshio Ogawa, who chairs the Federation of Diet Members Seeking a Basic Law on the Elimination of Racial Discrimination ("Jinshu Sabetsu Teppai Kihonho wo Motomeru Giin Renmei"), said that "We wanted to do responsible work as lawmakers to introduce a legislative proposal in order to stop hate speech, unless the National Government draws up anti-discrimination programs in domestic law." Ogawa also said that "Some may say that its wording is vague. We accept it as we prioritize our goal to enact the bill ahead of achieving perfection. And we balanced the wording with 'freedom of expression'. It does not include punitive provisions as we are just aiming at advocating that discriminatory speech is illegal as a first step. We are sure this bill will have a profound effect and make an important step for future progress. Now we know that the bill will be discussed at the Upper House Judicial Affairs Committee (chaired by Yoshifu Arita from DPJ). So, we are expecting to start discussions as swiftly as possible." Participants attending the

meeting, such as Koreans and other foreign citizens, raised voices welcoming the legislation. An interesting fact was introduced by Kunitachi City Councilor Kazuko Uemura from Tokyo. According to Councilor Uemura, in September 2014 Kunitachi City Parliament adopted a resolution calling on the National Government to draw up proper legal frameworks to prohibit anti-discrimination treatments including hate speech toward racial and social minorities. She said that "Before we submitted a draft we held a study meeting with lawyer Yasuko Morooka, an expert in this area, as a guest lecturer. At the session we discussed what we could do as parliament members. Then we came to the conclusion of submitting an opinion to the Government. That is a hearty cheer from us to Upper House members." Following the Kunitachi City Parliament, 130 local parliaments had adopted the same sort of resolutions throughout Japan as of May 22nd 2015.

At the end of the meeting, Yasuko Morooka emphasized the significance of the bill, stating that "This bill is not a 'control law'. It is to demonstrate that both national and local governments should fulfill their legal obligation to eliminate discriminatory treatment. I hope all Diet members will share a sense of responsibility as their mission and work hard to pass the bill."

On July 22 a second meeting was held in the Upper House. At the meeting Toshio Ogawa explained the current status. He said that "Though the bill was brought to the Upper House Judicial Affairs Committee, we haven't seen further progress so far." In August the media reported that on August 6 the Upper House started a full consultation session of the bill, however, it is said that both the Central Government and the Justice Minister were reluctant to take up the issue. On August 19 a joint meeting on anti-discriminatory speech

regulations kicked off between the ruling and opposition parties (LDP, DPJ, Komeito and the Restoration party). However, the chances of passing the bill look uncertain as the ruling LDP maintains a cautious stance toward it. On July 28 the media said that the ruling LDP decided not to take a vote. Some NGO members who support the registration held a third meeting inside the Upper House on September 2, at the end of the current Diet Session.

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The Abe Administration's "Education Revitalization" and Selection of Middle School Textbooks

On June 20, 2014, the "Act Revising a Portion of the Act Concerning the Organization and Operation of Regional Education Administration" was promulgated; with the revision there is a new Board of Education system. The revision has resulted in the following:

1. The overall policy is to be set by the head of the board
2. The Comprehensive Education Conference was established
3. The positions of Superintendent of Education and President of the Board of Education have merged into a new position (new President of the Board of Education)
4. The check function of the Board of Education was strengthened
5. Revisions regarding the involvement of the state were included

With the revision, the textbook selection authority now resides with the Board of

Education but the involvement authority of the head of the Board has been greatly strengthened.

Until textbooks became available on a gratis basis in 1962, the selection of textbooks to be used was up to individual elementary and middle schools but since then the decisions have been made by Boards of Education. Furthermore, with the recent revised policy, new standards, such as that textbooks which are not in compliance with the government's position will not be permitted, have been established. It is said that herein lies the objective of the Abe Administration's "Revitalization of Education."

The goal of the "Group for Textbook Improvement" of the Japan Educational Revival Organization is to have "Liking Japan More" used not only by the fourteen autonomous organizations that previously selected it but to have it achieve a ten percent share of the domestic [Japanese] market (120,000 copies). In the cities of Yokohama and Fujisawa, and within Tokyo, in Ōta-ku and Musashi-Murayama-shi, there are on-going campaigns to collect signatures to prevent it from being chosen again.

Memories are still fresh of the 2011 incident wherein the Ministry of Education, Culture, Sports, Science and Technology demanded that the Board of Education of Taketomi-chō of Okinawa Prefecture replace the *Kōmin Kyōkasho* (Community/Civics Textbook) textbook chosen [by the Board of Education] with the Ikuho-sha edition (the parent organization of Ikuho-sha is the "The Conference to Create New History Textbooks", *Atarushi Rekishi Kyōkasho wo Tsukuru Kai*). (The textbooks were not distributed freely to the children of Taketomi-chō; the ones used were purchased by the town.) The Ikuho-sha textbook teaches that the Second World War was for "self-preservation and self-protection", and it denies that it was a war of aggression. This clearly differentiates the

