

Mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the right to education; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on minority issues

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on the right to education; Special Rapporteur on the human rights of migrants; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 43/36, 44/3, 43/6 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **recently established programme, "Emergency Student Support Handout for Continuing Studies."** We are concerned that this programme does not comply with Japan's obligations under international human rights law, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which Japan is a State party.

According to the information received:

On 19 May 2020, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) announced a new programme, "Emergency Student Support Handout for Continuing Studies." This programme aims to support students financially challenged by the coronavirus disease (COVID-19) pandemic, by providing cash deposits, or emergency student support handouts in order to help them continue their higher education. Eligible beneficiaries include students attending universities, junior colleges, technical colleges, vocational schools, and Japanese language institutions designated as eligible by the Ministry of Justice. Eligible students must apply for support via their higher education institutions, each of which reviews their applications and submits a recommendation list to the Japan Student Services Organization (JASSO).

The programme's eligibility criteria, however, raise equality and non-discrimination concerns in at least two ways. First, the programme sets out additional criteria for international students, including students at Japanese language institutions. For example, international students are required to prove "excellent" academic performance. Specifically, their average grade for the previous school year must be 2.30 or higher.

Second, while the cash handout appears to be applicable to most schools under the three categories (Article 1 schools, Specialized Training Colleges and Miscellaneous Schools) as well as Japanese language institutions, students attending Korea University (Tokyo), categorized as "miscellaneous," are excluded from benefitting from this programme. The Act also excludes

Special Training Colleges that are predominantly attended by foreign nationals. This exclusion may amount to prohibited discrimination on race, ethnicity, or national origin grounds.

The difficulties international students face have nothing to do with their academic performance. In fact, a survey conducted by JASSO reveals challenging living conditions of self-financed international students in Japan. In 2017/2018, approximately 75 percent of this group relied on part-time jobs, which accounted for 50 per cent of their incomes. Although Japan's State of Emergency lifted on 25 May, staggering economic impacts of the pandemic likely pose continued barriers for international students to finance their education.

While we do not wish to prejudge the accuracy of the information made available to us and, recognizing the challenges faced by your Excellency's Government due to the pandemic and welcoming the adoption of measures aimed at supporting students, we express our concern over some aspects of the Emergency Student Support Handout programme. We fear that its exclusion of international students from receiving financial support based on additional criteria including academic excellence undermines international students' enjoyment of their right to education on an equal basis. The programme, by disqualifying international students in need, will not only risk their continuing education but also negatively impact their economic and social rights.

Although the International Convention on the Elimination of Racial Discrimination (ICERD) provides for differentiating between citizen and non-citizens, it should not be construed to undermine or detract rights recognized in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

The pandemic crisis likely exacerbates the suffering of the most marginalized including non-citizen students in financial challenges. In this regard, the programme appears inappropriate to the unprecedented situation to be remedied nor respects the principle of fairness or proportionality. The different treatment of international students through imposing additional criteria on them may amount to discrimination prohibited by ICERD as the criteria for the differentiation may not be proportional to the achievement of a legitimate aim. To guarantee equality between citizens and non-citizens in the enjoyment of rights to the extent recognized under international law, such programme should be designed and implemented on the basis of needs of individual or groups concerned with a focus, in this case, the socio-economic condition of students faced in the current situation.

We are equally concerned that the programme discriminates students who attend non-Article 1 schools, in particular minority students at the Korean University. Such exclusions risk undermining the institutional autonomy of these schools. For minority students, this further jeopardizes their access to an education that facilitates the promotion of their national, ethnic, cultural and linguistic identities.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide all relevant information on the implementation of the Emergency Student Support Handout for Continuing Studies and on measures in place to facilitate the continuation of learning in higher education institutions where international and minority students pursue their studies.
3. Please provide detailed information on the measures undertaken by your Excellency's government to ensure the protection of rights of minorities and their equal access to quality education.
4. Please provide information on additional measures considered and taken to address the impact of COVID-19 on the rights to education, work, social security, health, and other related areas of life for students in higher education.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

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Koumbou Boly Barry
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Special Rapporteur on the human rights of migrants

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to draw the attention of your Excellency's Government to several provisions of the International Covenant on Economic, Social and Cultural Rights, acceded to by your country in 1979, in particular Articles 11 on the right of everyone to an adequate standard of living, 12 on the right to health, and 13 on the right to education including the right to higher education. These provisions must be read in conjunction with Article 2, according to which States undertake to guarantee that the rights enunciated in the Covenant will be 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.

We call to the attention of your Excellency's Government the international standards regarding the protection of minorities, in particular Article 1.1 of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities. Article 1.1 states that States "shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within its respective territories and shall encourage conditions for the promotion of that identity." Article 2.1 establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination. Article 4.2 establishes that States create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs. Article 4.3 requires States to take appropriate measures so that they may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.

We would further like to bring to the attention of your Excellency's Government provisions of the International Convention the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan in 1979. Article 27 of the Covenant states that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language." Moreover, Article 26 of the ICCPR contains a general right to equality without discrimination on grounds such as religion, language or ethnicity, in fact or in practice, and stresses that all persons are equal before the law and entitled without discrimination to the equal protection of the law. We also wish to refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination and in full equality before the law (Article 4).

In addition, Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by your Excellency's

Government in 1995, defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, 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.” Article 2(1) also calls on States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and groups. States must ensure that public authorities and institutions on the national and local levels act in compliance with the obligation as stipulated in article 2(1).

General Recommendation No 30 of ICERD on discrimination against non-citizen highlights that State parties must remove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens in the areas of education (para 29). In para 30, it further urges that State parties avoid segregated schooling and different standards of treatment being applied to non-citizens on grounds of race, color, descent, and national or ethnic origin in elementary and secondary school and with respect to access to higher education. Lastly, it calls for State parties to take the necessary measures to prevent practices that deny non-citizens their cultural identity, enable non-citizens to preserve and develop their culture (Para 37).

We would like to refer to Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) that establishes State Parties’ obligation to recognize the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also to conserve, promote and develop their own culture.

We would like to call to the attention of your Excellency’s Government, resolution 9/5 of the Human Rights Council, which addresses the issue of the human rights of migrants and “reaffirms [...] the obligation of States to effectively promote protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and international human rights instruments”. The resolution also “reaffirms that States, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants.”

Finally, we would also like to draw the attention of your Excellency's Government to the Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants, of the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the United Nations Special Rapporteur on the human rights of migrants.¹ In this Note, the Experts warn that the COVID-19 pandemic is having serious and disproportionate effects on migrants and their families globally. Migrants who are in an irregular situation or undocumented are in a situation of even greater vulnerability. Migrants in many cases already do not have effective access to medical care, education and other social services, work in unstable jobs - usually without benefits or the right to unemployment benefits - and in some cases have been left out of the social assistance measures implemented by States, despite of their significant economic contributions to society. In this respect, the Experts called on States to include migrants and their

¹ [Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants.](#)

families, regardless of their migration status, in economic recovery policies as well as COVID-19 response plans and policies. A sustainable and resilient recovery after the pandemic requires that no one is left behind.