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Japan Federation of Bar Associations Report  
on Response to the Seventh, Eighth and ninth Report  
of the Japanese Government of the International Convention  
on Elimination of All Forms of Racial Discrimination

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Japan Federation of Bar Associations

# **JAPAN FEDERATION OF BAR ASSOCIATIONS**

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## Introduction

- A. Based on Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (the “Convention”), the Seventh, Eighth, and Ninth (the “Seventh to Ninth”) Combined Periodic Report of the government of Japan (the “Government Report”) was submitted in January 2013. The Japan Federation of Bar Associations (the “JFBA”) has prepared this document as an NGO alternative report to the Government Report, and respectfully submits it to the Committee on the Elimination of Racial Discrimination (the “Committee”) with the hope that the JFBA’s provision of useful information will contribute to making the Committee’s review of the Government Report productive.
- B. Although the Government Report is organized in the order of the provisions of the Convention, this report is focused on the key issues concerning specific groups and minorities which are considered to be subjects of the Convention. Moreover, as the Committee has requested in the past, this report highlights the government’s response to concerns and recommendations which the Committee has pointed out upon the review of the government’s previous reports. In addition, there have been new issues raised in the past five years which were not addressed in the previous review. Although the Government Report does not necessarily mention them, the JFBA has made additional report of these issues which are considered to be particularly important in the implementation of the Convention.
- C. Below is thus organization of this report.
  - C1. Chapter 1 of the General Issues indicates the extreme inadequacy of the Government Report with regard to all the list of matters identified by the Committee in the previous review, and, in particular, points out that no measures have been taken to address issues that are necessary for effective implementation of the Convention such as the establishment of a national human rights institution and the declaration recognizing the individual communications procedure.
  - C2. Chapter 2 provides details of each right with regard to continued serious violations of human rights of those from former colonies who had no other choice but to continue to live in Japan even after the war as a consequence of Japan’s colonial occupation during the prewar era.
  - C3. Chapter 3 points out problems with the focus on the current status of the implementation of rights specified in each provision of the Convention in connection with an increase of foreign residents in Japan to over two million, including those from former colonies, due to the Japanese government policy of accepting foreigners implemented since the 1980s.

In addition, the chapter also calls attention to specific issues, the issues faced by people of Japanese descent such as those from Brazil and Peru, the issue of refugees from Indochina, and problems found in the Technical Intern Training Program.

- C4. Chapters 4 through 7 address the current status and problems affecting groups and minorities, including refugees, Burakumin, the Ainu people, and returnees from China, to which should be paid attention particularly in relation to the application of the Convention.
- C5. Chapter 8 of the problems that arise in penal facilities and other institutions mentions the treatment of prisoners, and the need for education of staff at those facilities (Article 7 of the Convention).
- C6. Chapter 9 reports discriminatory statements which still continued to be made by public officials, then Osaka governor Toru Hashimoto (now mayor of the prefectural capital Osaka City), then Tokyo governor Shintaro Ishihara (now a member of the House of Representatives ), and Nagoya mayor Takashi Kawamura, even after the examination of the previous report.
- C7. Chapter 10 covers the issue of hate speech. Hate speech demonstrated around a school for Koreans in Kyoto was covered for the examination of the previous report, but organized hate speech rallies are still rampant in areas such as Tokyo and Osaka Prefectures. In addition, with regard to the hate speech at the ethnic Korean school for in Kyoto which was mentioned in the previous report, the Kyoto District Court recognized the wrongfulness of the hate speech directed at the school, and ordered the payment of damages.
- C8. Chapter 11 covers multiple discrimination against women with focus on the issue faced by foreign spouses who are married to Japanese men, and on the issue of the victims of military sexual slavery, and indicates the current status and problems.
- C9. Chapter 12 mentions the issues of discrimination based on genetic information, and proposes policies to prevent potential abuse of genetic information along with advance in technology of the human genome and genetic analysis in the future, and to promote protection of genetic information.

## Chapter 1 General Issues

A. Following the Committee's review of the Initial and Second Periodic Report in 2001, and of the Third, Fourth, Fifth and Sixth (the "Third to Sixth") Periodic Report in 2010, this is actually the Committee's third review of a report of the Japanese government under the Convention.

At the previous review of the Third to Sixth Government Report by the Committee, the Committee issued the Concluding Observations composed of 35 paragraphs (recommendations). It is desirable to examine the government's implementation of measures taken in response to the Committee's Concluding Observations since 2010 upon the review of the Seventh to Ninth Government Report, but the Government Report is little more than a listing of the provisions of the Convention with very little information concerning actual measures taken to address the concerns in the Concluding Observations.

The government indicates that it has indicated, in the Seventh to Ninth Government Report, to the measures taken to eliminate racial discrimination as of December 2012, but the discussion of the Government Report shows very little progress in response to the recommendations. For most part, it merely repeats the viewpoints of the state party expressed at the time of the preceding review. Although it is recognized that there have been some reforms, including partial revision of implementation of the Immigration Control and Refugee Recognition Act in July 2012, and the commencement of the program of the free tuition at public high schools and the high school enrollment support fund which discriminatively excludes application of ethnic Korean schools, there has been almost no other progress.

This chapter of general issues refers to general facts relating to the application of the Convention, and facts of specific discrimination will be mentioned in other chapters.

B. Paragraph 11 of the Committee's Concluding Observations (the "Recommendation 11")<sup>1</sup>

B1. There has been no investigation of the ethnic composition of Japan's population since the Committee issued its Concluding Observations. The JFBA shares some understanding of the government's concern that clarifying ethnic backgrounds through such an investigation would have a perverse effect on aggravating prejudice in society. However, social circumstances in Japan which make it impossible to disclose ethnic backgrounds

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<sup>1</sup> Committee, Consideration of reports submitted by States Parties under article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/JPN/CO/3-6) (April 6, 2010) Para. 11. [http://www.mofa.go.jp/policy/human/pdfs/race\\_rep\\_concluding.pdf](http://www.mofa.go.jp/policy/human/pdfs/race_rep_concluding.pdf)

show that the Convention's purposes to eliminate racial discrimination are not fully understood. This fact not only indicates the necessity of means of surveys and others, but also raises questions of the effort to create a society where people can freely disclose their ethnic backgrounds along with promotion to implement measures to eliminate racial discrimination.

#### B2. Recognition of Okinawans as an ethnic group

In the Recommendation 21<sup>2</sup>, while “highlighting that UNESCO has recognized a number of Ryukyu languages, as well as the Okinawans’ unique ethnicity, history, culture and traditions,” the Committee “expresses its concern about the persistent discrimination suffered by the people of Okinawa.” It further “reiterates the analysis of the Special Rapporteur on contemporary forms of racism that the disproportionate concentration of military bases on Okinawa has a negative impact on residents’ enjoyment of economic, social and cultural rights,” and “encourages the State party to engage in wide consultations with Okinawan representatives with a view to monitoring discrimination suffered by Okinawans, in order to promote their rights and establish appropriate protection measures and policies.” However, the Government Report has failed to mention anything about the issue of Okinawa. The governor of Okinawa agreed with the relocation of the Futenma Base to Henoko, but the mayor of Nago where Henoko is located won the election, stating the intention to oppose to the relocation, which caused major turmoil to residents of Okinawa over the relocation of the Futenma Base, not to mention the disproportionate concentration has not been eliminated.

#### C. Interpretation of “descent” in the Recommendation 8<sup>3</sup>

Despite the recommendation issued by the Committee in its review of the Initial and Second Report regarding “descent,” the government’s interpretation has not changed. In spite of the concept of “descent” which is focused on social origins, the government views “descent” as a concept focused on ethnic and tribal differences, which clearly restricts the scope of applicability of the Convention. Although it is certainly true that various measures have been implemented with the goal of eliminating discrimination against Burakumin, application of the Convention would also result in further progress toward that goal. As the Committee has pointed out, the current coverage of prohibition of discrimination in Japan solely under Article 14 of the Constitution of Japan (the “Constitution”) is not satisfactory.

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<sup>2</sup> Committee, *supra* note 1, at Para. 21.

<sup>3</sup> Committee, *supra* note 1, at Para. 8.

In order to realize that application of this Convention, which is preponderant before the law, can facilitate further evolution of the debate, the government should recall the fact that the International Covenant on Civil and Political Rights has significantly contributed to the dissemination of the human rights concepts which go beyond the human rights provisions under the Constitution.

Discrimination against resident Koreans in Japan and against Burakumin is the most serious problem of discrimination in Japan. Discrimination against resident Koreans in Japan is a typical example of discrimination to be covered by the Convention, but the JFBA expects the Committee to provide a strong recommendation of application of the Convention to discrimination against Burakumin, the other serious case of discrimination in Japan, upon the review of the Government Report.

D. Article 14 of the Constitution, legislation to Prohibit Discrimination, and the legal system of Japan (Recommendations 8, 9, and 13)<sup>4</sup>

D1. Article 14 of the Constitution and the application of law

Article 14 of the Constitution states 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.” This provision is thought to carry the same meaning as Article 1 of the Convention. However, in light of the interpretation of “descent” described above and other matters, the scope of its application is more limited than that of the Convention. Further, as the Committee has pointed out, no other laws directly prohibits discrimination.

While Article 14 of the Constitution prohibits discrimination by public authority, there must be a finding of violation of the concept of “public order and good morals” under the Civil Code in order to regulate discrimination arisen among private individuals. In the Government Report, the government asserts that such discrimination is exposed to criminal liability due to reasons such as defamation. However, no discriminatory statements and acts are subject to the application unless they constitute defamation and others of specific individuals. In other words, the judicial judgment stands on the basis that even if there is infringement of reputation of a certain group i.e., statements and acts of racial discrimination, it is not regarded as defamation of specific individuals who belong to such group. This also applies to tort cases under civil procedures. In recent years,

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<sup>4</sup> Committee, *supra* note 1, at Para.8, 9, 13.

a very few court decisions have been made in civil tort cases to order damages for statements and acts of racism against specific individuals.

The government states that acts of violence out of beliefs of racial discrimination are punishable for assault and injury under the Penal Code, but there is no legal system at all to investigate whether the acts are committed out of racist backgrounds as well as to administer aggravated punishment for such background.

As described above, the existing legal system in Japan fails to effectively address the issue of hate speech which has been escalated in recent years. The Japanese government should thus take adequate prevention measures against this.

#### D2. Japan's reservations to Articles 4 (a) and (b) of the Convention

As noted in the Government Report, some people oppose to restrictions of racism by punitive sanctions, since it may regulate freedom of speech. However, the same issue may arise in all other states parties, and is not a specific problem that Japan alone cannot solve. The JFBA welcomes the Committee's view that "the prohibition of the dissemination of ideas based upon racial superiority or hatred is compatible with freedom of opinion and expression (Recommendation 13)."<sup>5</sup>

According to the Government Report, the government does not believe that racial discrimination in Japan is serious, to the extent that legislation to impose punishment should be considered even at the risk of unduly stifling legitimate speech. However, this is not accurate description of present-day Japan. Ideas based on racial superiority to people of the Republic of Korea and the Democratic People's Republic of Korea has existed for a long period of time, and signs of dissemination of such ideas repeatedly resurge. Refusal to move in rental housing and crimes out of discrimination is not rare. There is no end to statements and acts of discrimination targeted at the Burakumin. Recently, pernicious statement and attack based on racial discrimination have been noticeably found especially through the electronic media such as the Internet, which is urgently necessary to be regulated even at present. There is no denying that the view of the Government Report fails to understand the reality of such situations.

#### E. The need for enactment of a basic law to prohibit discrimination<sup>6</sup>

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<sup>5</sup> Committee, *supra* note 1, at Para.13.

<sup>6</sup> JFBA, The 59th JFBA General Meeting Resolution Calling for Full Implementation of International Human Rights Norms in Japan -Toward Immediate Establishment of Human Rights Safeguards including Establishment of Individual Complaint Procedures and an Act on the Elimination of Discrimination against Persons with Disabilities (May 30, 2008).

In view of the foregoing, discrimination cannot be regarded as illegal under the existing laws and regulations in Japan. A basic law to prohibit discrimination need to be enacted in order to turn the concept of Article 14 of the Constitution into reality, to establish the concept that discrimination is comprehensively unlawful throughout the society, and also to actually eliminate statements and acts of discrimination.

As indicated above, regulations and indemnification for damage under the existing Penal Code and Civil Code are insufficient. The view stated by the Committee in the Recommendation 10<sup>7</sup> must be therefore thoroughly respected. Moreover, its need is even more heightened, and is never diminished since the Committee's previous review.

F. The need for establishment of a national human rights institution (Recommendation 12)<sup>8</sup>

According to the Government Report, the government submitted a bill to establish a Human Rights Commission in November 2012 which was scrapped because of the dissolution of the House of the Representatives on November 16, 2012, and only indicated its intention to make further efforts for necessary preparations for its establishment (Paragraph 67). However, when Mr. Menendez, a member of the UN Committee Against Torture, stated the opinion on the issue of a national human rights institution that “a national human rights institution is necessary to realize fundamental human rights, and is needed to be established under the current administration” upon the second review by the Committee Against Torture held in May 2013, the government only responded to it by stating that “a bill to establish a Human Rights Commission was submitted to the Diet in November 2012, but was scrapped.” In response to the government's comment, Mr. Tugusi, a member of the UN Committee Against Torture asked the question of the schedule of establishment of an independent national human rights institution. The government replied that it could not give an answer, since the schedule of the establishment was under examination. However, the Liberal Democratic Party, which is currently in power, publicly makes its intention not to establish the national human rights institution at all as an election promise. Furthermore, despite a number of advice by institutions of international conventions and recommendations by the UN Human Rights Council, the government has no intention to resubmit a bill to establish a Human Rights Commission, and there is no further progress of such establishment by the government and the

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<http://www.nichibenren.or.jp/en/document/statements/year/2008/20080530.html>

<sup>7</sup> Committee, *supra* note 1, at Para.10.

<sup>8</sup> Committee, *supra* note 1, at Para.12.

ruling parties.<sup>9</sup>

#### G. Human rights education for judges and other officials

No system is available in Japan to provide education on the international human rights law for judges and other legal professionals. Besides lectures on the international human rights law held about once a year at the Legal Research and Training Institute (a training institute for new candidates of judges, prosecutors and attorneys), no other educational curriculum exists. There seem to be a few internal lectures for judges held at the courts, but this is not an official educational system. Courses of the international human rights law are offered at law schools, institutions to provide pre-qualification legal education, but because it is not a mandatory subject for the bar examination, very few students take such courses. This shows that the Committee's view in the Recommendation 14<sup>10</sup> has not been sufficiently implemented yet. Meanwhile, the JFBA organizes briefing sessions to explain about discussions held at the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on Elimination of Discrimination Against Women, the Committee Against Torture, the Committee on the Rights of the Child, the Human Rights Council and other organizations as well as the Committee of this Convention every time meetings of those committees are convened. In addition, it holds seminars of the international human rights law for all its members. As a result, understanding of the international human rights law is slowly developing among JFBA members.

#### H. Declaration recognizing the individual communications procedure (Recommendation 29)<sup>11</sup>

H1. The declaration recognizing the competence of the Committee to receive and consider individual complaints will contribute to review of a guarantee of human right in Japan from an international perspective to bring it up to the international standards, and is also important to encourage active application of the Convention in Japan. The government should thus make the declaration provided for in article 14 of the Convention.<sup>12</sup>

H2. While considering the individual communications procedure to be noteworthy in that it effectively guarantees the implementation of human rights treaties, the Government

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<sup>9</sup> JFBA, 61st JFBA General Meeting - Declaration Requesting Establishment of Human Rights Guarantee Systems and Implementation of International Human Rights Standards in Japan- (May 28, 2010).

<http://www.nichibenren.or.jp/en/document/statements/year/2010/20100528.html>

<sup>10</sup> Committee, *supra* note 1, at Para.14.

<sup>11</sup> Committee, *supra* note 1, at Para.29.

<sup>12</sup> JFBA, *supra* note 6.

Report states that the government is making an internal study on various issues including whether it poses any problem in relation to Japan's judicial system or legislative policy, and a possible organizational framework for implementing the procedure in case Japan is to accept it, and also that in this process, the Division for Implementation of Human Rights Treaties was set up in the Ministry of Foreign Affairs in April 2010. Additionally, it mentions that the government will continue to seriously consider whether or not to accept the procedure, while taking into account opinions from various quarters.

- H3. The mechanism to guarantee the rights under the Convention consists of regular review of government reports and the individual communications procedure, but since Japan has not introduced the individual communications procedure which plays one of the pivotal roles in guaranteeing the rights under the Convention, the rights under the Convention is hardly guaranteed thoroughly in Japan. This is revealed in the court cases in Japan alleging violation of the Convention or of human rights conventions such as the International Covenant on Civil and Political Rights where no practical reasons or even violation of the conventions are mentioned in the rulings at all. If the individual communications procedure is introduced under such circumstances, violation of rights under the Convention must be fully examined at a court case in Japan since the Committee may review such ruling after the case is concluded, which will ensure promotion of guarantee of the rights under the Convention at court cases in Japan.
- H4. The JFBA held a number of talks with the Ministry of Foreign Affairs and the Ministry of Justice ("MOJ") to introduce the individual communications procedure, but it has not been realized yet. The Ministry of Foreign Affairs set up the Division for Implementation of Human Rights Treaties in April 2010, but explained that the review which was necessary prior to the introduction of the procedure was already completed.
- H5. The government should immediately make the declaration recognizing the competence of the Committee to receive and consider individual complaints for reasons which include: there is no grounds for not making the declaration which is one of the means of implementation of the Convention, since Japan already ratified the Convention in 1995; aiming at human rights diplomacy, Japan is responsible for setting an example in the field of human rights in Asia; there is no reason to refuse the review of human rights in Japan in comparison with the international standards, since this procedure now plays a role of the global standard to implement the Convention; views of the Committee are not legally binding, and a state party can determine a specific design of the procedure based on the opinion of the Committee; the prior review of the ratification was already completed at

the Ministry of Foreign Affairs; and all parties will highly possibly agree with the introduction of the procedure without any grounds for objection, since improvement of human rights in Japan is an issue cut across the party lines.

**Chapter2 Persons from the Former Colonies**

A. Historical Background

A1. Conclusion and Recommendations

The government should adopt a comprehensive basic law guaranteeing the rights of people from the former colonies (Koreans and Taiwanese) and their descendants (Korean residents and Taiwanese residents in Japan) in order to eliminate discrimination against people from the former colonies who were deprived of Japanese nationality and their descendants, and to ensure their rights equivalent to those of Japanese nationals in principle.

A2. Position of the JFBA

a. Colonial Occupation by Japan

Japan implemented the policy of colonial occupation of Taiwan between 1895 and 1945, and of the Korean Peninsula between 1910 and 1945 prior to the defeat of Japan in the Second World War. Under this colonial occupation, in the name of the Greater East Asia Co-Prosperity Sphere, Japan pursued assimilation policies such as the worship of shrines and the change of name to a Japanese one, and a sense of discrimination was fostered toward people of Korea and Taiwan. This discrimination led to the sense of superiority of the Japanese people, and resulted in lingering discrimination against them which Japanese people still have.

b. People from the former colonies after the war

In the aftermath of Japan’s colonial policies, it is estimated that there were several million people from Korea and Taiwan living in Japan at the end of the war who had been forced to travel to or live in Japan from Taiwan and the Korean Peninsula or who were forcefully taken to Japan under the military conscription and others to become labor force for Japan’s pursuit of war.

Many of them subsequently returned to their countries of origin, but approximately 500,000 Korean people and several thousand Taiwanese people were still residing in Japan in 1952 when Japan regained its independence with the effectuation of the San Francisco Peace Treaty (the “Treaty”). They continued to live in Japan after the end of the Second World War, and are known as “Korean residents in Japan” (*zainichi kankokujin* or *zainichi chosonjin*) and “Taiwanese residents in Japan” (*zainichi taiwanjin*). In this report, these people are collectively referred to as “people from the former colonies.”

c. Japanese nationality of people from the former colonies

Approximately 500,000 people from the Korean Peninsula who resided in Japan at the time of the Treaty had no other choice but to settle in Japan due to circumstances, including the division of the Korean Peninsula into north and south through the foundation of the Republic of Korea and the Democratic People's Republic of Korea (“DPRK”), and the Korean War. In addition, several thousand Taiwanese people have continued to reside in Japan from that time.

Although they were deemed imperial subjects with Japanese nationality under the pre-war colonial policy, in accordance with the notice from the director of the Civil Bureau of the Justice Office dated April 19, 1952, which was issued immediately before the conclusion of the Treaty, they lost Japanese nationality upon the effectuation of the Treaty (effective on April 28, 1952) by which Japan regained its independence.

According to this notice, all people of Korea and Taiwan, including those residing in Japan, lost Japanese nationality, but those who had been entered in the Japanese registry due to status changes, would retain Japanese nationality even after the Treaty took effect. In addition, Japanese nationality was lost in a case where those who resided in Japan were removed from the Japanese registry due to status changes such as marriage to a Korean or Taiwanese person and adoption before the Treaty became effective.

Because of this notice, approximately 500,000 residents of Koreans and Taiwanese in Japan at that time were deprived of their Japanese nationality unilaterally, which resulted in sudden emergence of about 500,000 foreigners in Japan upon the effectuation of the Treaty.

However, this notice entirely ignored the intentions of Korean and Taiwanese residents in Japan who had lived in the territory of Japan for many years and had planned to continue residing in Japan in the future as well. This is a clear violation of Article 15 of the Universal Declaration of Human Rights<sup>13</sup> and Article 10 of the Constitution.

d. Discrimination against people from the former colonies in the form of ethnic discrimination

People from the former colonies were legally deprived of Japanese nationality on the effective date of the Treaty as described above, but the Alien Registration Ordinance had already applied to them. In other words, in spite of holding Japanese nationality, they had been regarded as foreigners.

Even the Constitution established two categories, Japanese nationals and foreign nationals, which are extremely different in guarantee of human rights. While unilaterally revoking Japanese nationality of people from the former colonies who were supposed to have Japanese

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<sup>13</sup> Adopted by the third United Nations General Assembly on December 10, 1948, the Universal Declaration of Human Rights is proclaimed “as a common standard of achievement for all peoples and all nations” to respect and secure the human rights and freedoms. [http://www.mofa.go.jp/policy/human/univers\\_dec.html](http://www.mofa.go.jp/policy/human/univers_dec.html)

nationality, and thereby forcing those people into the category of foreign nationals, then the government imposed a number of disadvantages on them because of not having Japanese nationality.

Discrimination against people from the former colonies is not discrimination against foreigners based on the reason of not having Japanese nationality, but is rather ethnic discrimination.

The government occasionally argues the discrimination for its justification on the grounds that people from the former colonies are foreigners, which is complete misrepresentation of the fact. Article 1(2) of the Convention states “[t]his Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens,” but this cannot justify discrimination against people from the former colonies who are foreign nationals.

As already explained above, the reason for this is discrimination against people from the former colonies is discrimination based on national or ethnic origin, and is therefore considered as “racial discrimination” under Article 1 of the Convention.

e. Characteristics and forms of discrimination against people from the former colonies

People from the former colonies who reside in Japan are discriminated from those with Japanese nationality in many ways in their social life under the legal system. This is not discrimination based on the fact that they do not hold Japanese nationality, but is rather ethnic discrimination based on the fact that they are people from the former colonies (Taiwan and the Korean Peninsula).

The history of people from the former colonies living in Japan spans almost a century. A large number of descendants of the people from the former colonies live social life which is not different at all from those with Japanese nationality; they were born in Japan, live in Japanese culture, speak Japanese perfectly, participate in the Japanese economy, make a tax payment to the national and local governments in Japan, participate in volunteer and other community services, and contribute to the development of the Japanese society and a local society. As a characteristic of discrimination in Japanese society, the discrimination is rooted in superiority over people of Taiwan, the Korean Peninsula, and other Asian countries which was cultivated in the people of Japan during the period of the colonial rule of Taiwan and the Korean Peninsula. That superiority resulted in indifference of Japanese people to the issue of discrimination against people from the former colonies, and even leads to emergence of hostility in some incidents.

f. Conclusion

The government justifies the discrimination on the grounds that the people from the former

colonies do not have Japanese nationality, but as explained above, the discrimination against people from the former colonies is not discrimination against foreigners on the basis of not holding Japanese nationality, but is rather ethnic discrimination.

With understanding of that historical background and in the spirit of the Convention and of Article 26 of the International Covenant on Civil and Political Rights, the government should enact a comprehensive basic law to guarantee the rights of people from the former colonies and their descendants in order to eliminate legal, administrative and social discrimination against people from the former colonies who were deprived of Japanese nationality and their descendants, and to ensure that they enjoy the same rights as those with Japanese nationality in principle.

## B. Issues Affecting Korean Residents in Japan

### B1. Discriminatory statements, violence and harassment against Korean schools and students

#### a. Conclusions and Recommendations

The government should study the obstacles to overcome in order to improve the situation where Korean schoolchildren and others suffer from discriminatory statements, violence and harassment and then implement more decisive and effective measures to eliminate them.

#### b. Concerns and Recommendations of the Committee

The Committee states in the Recommendation 13<sup>14</sup> that “the Committee is concerned over the reservations of the State party to articles 4(a) and (b) of the Convention. The Committee also notes with concern the continued incidence of explicit and crude statements and actions against groups, including children attending Korean schools, and the harmful and racist expressions and attacks via the Internet directed, in particular, against *Burakumin*.”

#### c. Statements of the Government Report

The Government Report states in Paragraph 47 that “when North Korea’s missile launch in April 2009, underground nuclear test in May 2009 and missile launches in April and December 2012 were reported, the Government of Japan undertook awareness-raising activities to prevent the occurrence of harassment against Korean schoolchildren and students in Japan, and also took necessary measures including through providing counseling for them.”<sup>15</sup>

<sup>14</sup> Committee, *supra* note 1, at Para.13.

<sup>15</sup> Government of Japan, Seventh, Eighth, and Ninth Combined Periodic Report by the Government of Japan

d. Positions of the JFBA

- d1. The response by the government is inadequate. In the first place, the Government Report fails to mention details of the content and scale of “enlightenment activities” stated in the Government Report. Also, it does not provide specific information of the statement relating to “necessary measures including through providing counseling”; the number of counseling cases and details of “necessary measures” taken for each counseling case. There is no denying that the Government Report lacks a prerequisite of the study.
- d2. The inadequacy of the government’s response is also shown in the reality of damage.

The harassment that followed the Summit Meeting between Japan and DPRK on September 17, 2002, can be referred to the previous JFBA’s report.<sup>16</sup>

Immediately after it was reported that DPRK had a missile-launching test on July 5, 2006, Korean schools received a large number of threatening and silent phone calls, and derogatory e-mails only within the three weeks from July 5 to July 26. One of the threatening calls made such remarks as “I am going to throw a firebomb into your school” and “five high school students will be killed within a week.” There was also such harassment as marks in red paint on the entrance gates. There were 121 cases in total only which the schools reported to the central headquarters of the teachers’ union for DPRK residents in Japan. In some cases, defamatory bills were posted on the street. In Osaka, a boy in the second grade at elementary school was beaten by Japanese, and also in Aichi, a boy in junior high school was beaten.

Moreover, insults and intimidation against Korean schools and students were done not only by individuals but also by organized groups in 2009.

In November 2009, an organization which took a hostile view of Korean residents in Japan intruded into Korea University in Kodaira City, Tokyo, insulted by discriminatory statements and harassed the university. The same organization mobbed into the university festival of Korea University for interference.

As mentioned in Chapter 10 of hate speech, an anti-Korean activist group crowded before the gate of the Kyoto No.1 Korean Elementary School, and shouted slurs at the school: “destroy the Korean school”; “promise is something which can be made between humans,

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under Article 9 of the International Convention on Elimination of All Forms of Racial Discrimination, JAPAN (January 2013), Para.47. <http://www.mofa.go.jp/mofaj/files/000023045.pdf>

<sup>16</sup> JFBA, Alternative Report to the Third, Fourth, Fifth and Sixth Combined Periodic Report of Japan of the International Convention on the Elimination of All Forms of Racial Discrimination (June 2009), Chapter 2, Section 2(1). [http://www.nichibenren.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/Racial\\_discrimination\\_en.pdf](http://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_en.pdf)

so it cannot be made between humans and North Koreans”; and “Kick out Korean schools from Japan.” The group interfered with the school’s educational activities on that date, and committed assaults such as throwing the platform for the morning assembly, which resulted in the arrest of four people for crimes such as forcible obstruction of business. Despite witnessing the apparent insults and forcible obstruction of business, the police at the scene did not arrest the group members on the spot, and even failed to deter them from such crimes. This incident indicates that insults, intimidation and harassment committed by individuals prior to 2009 are now done by groups and organizations. Furthermore, in spite of being present at the crime scene, the police did not promptly prevent the group from committing the crime or arrest them. Partly because of not being immediately arrested, the same activist group once again intruded into the Kyoto No.1 Korean Elementary School in January 2010 to unleash a torrent of abuse.

As described above, the inadequate response of the government is clearly shown in the recurrence of such damage, and the failure of immediate deterrence and punishment relating to such damage.

- d3. As described in financial support for Korean schools in Sections 2 and 6 of Chapter 2, the Japanese government excludes Korean schools from the application of the Act on Free Tuition at Public High Schools. This decision is based on the political, diplomatic reasons which are irrelevant to education, including a lack of progress in the issue of Japanese citizens abducted by DPRK and no diplomatic relations with DPRK, and obviously constitutes irrational discrimination against Korean schools. In addition, local governments such as Tokyo froze or terminated the subsidy programs, and other municipalities begin to follow suit. This trend shows that the Japanese government and municipalities publicly discriminate against Korean schools, and promotes discriminatory statements, violence and harassment against students of Korean schools.

In addition, the general affairs section of the Board of Education of Machida City, Tokyo, made a decision to exclude children of Korean elementary schools from the distribution of security buzzers on March 27, 2013. The Board of Education of Machida City commenced the distribution of security buzzers for first-graders of public elementary schools, and also for students of private schools and Korea elementary schools if requested since 2004. However, the general affairs section of the Machida educational board terminated the distribution for children of elementary schools for Koreans on the grounds of citizens’ sentiment of the current political climate and provocation by DPRK. This is nothing less than a declaration that there is no need to ensure safety of students of Korean schools, and

plays a role of justifying and promoting discriminatory statements, violence and harassment against students of Korean schools. In the first place, the general affairs section of the Board of Education made this decision on its own authority without noticing educational board members, so the Education Board of Machida City officially reversed the decision later.

- d4. The government should thus study the obstacles to overcome in order to improve the situation where Korean schoolchildren and others suffer from discriminatory statements, violence and harassment and then implement more decisive and effective measures to eliminate them, including criminal punishment of assailants.

In addition, the national and local governments should face the fact that the discrimination against Korean schoolchildren and others will be aggravated by the exclusion of Korean schools from the application of the Act on Free Tuition at Public High Schools, and the freeze and termination of the subsidy programs which have been implemented, and should withdraw such measures without delay to provide treatment equal to other foreign schools.

## B2. Political Participation

### a. Conclusions and Recommendations

Facing the historical background and their current reality of life, the government should revise the Public Offices Election Law and the Local Government Autonomy Law, and should at minimum grant the right to vote in local government elections to people from the former colonies.
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### b. Position of the JFBA

Article 15 of the Constitution provides that “[t]he people have the inalienable right to choose their public officials and to dismiss them.” In response to this provision, Article 9(1) of the Public Offices Election Law states that “Japanese people who are twenty years old or older have the right to vote for Members of the House of Representatives and Members of the House of Councilors,” and Article 9(2) of the same Law provides “Japanese people who are twenty years old or older and who have continuously for three months or more maintained residence in a particular municipality have the right to vote for members of the legislative assembly and executive officers associated with that local government body.”

Also, Article 93(2) of the Constitution provides that “[t]he chief executive officers of all local government bodies, the members of their assemblies, and such other local officials as may be

determined by law shall be elected by direct popular vote of the residents within their several communities.” In relation to this provision, Article 11 of the Local Government Autonomy Law specifies that “Japanese people who are residents of ordinary local government bodies have the right to participate in the elections of the local government body as provided for under this Law,” and also Article 18 of the Local Government Autonomy Law provides that “Japanese people who are twenty years old or older and who have continuously for three months or more maintained residence in a particular municipality have, as otherwise provided under law, the right to vote for members of the ordinary government body and chief executive officers associated with that municipality,” thereby limiting voting rights even in local government bodies to “Japanese people.”

Article 92 of the Constitution provides that “[r]egulations concerning organization and operations of local government bodies shall be fixed by law in accordance with the principle of local autonomy.” Accordingly, supervision and formation of local government bodies requires participation of residents. In addition, Article 93(2) of the Constitution provides that the residents of local government bodies shall directly elect officials of each local government body. From this provision, the meaning of “residents” here is not thus limited to persons who hold Japanese nationality.

If “residents of the local government body” in Article 93(2) of the Constitution is limited to “Japanese nationals” as provided in the Local Government Autonomy Law, this would exclude foreigners who have lived in Japan for an extended period of time and have established their lives in a local community in the same manners as other residents from elections of local government bodies. This ignores the reality of their lives, and excludes such foreign people from elections of local governmental bodies only on the pro forma basis of whether or not to hold Japanese nationality, which is discrimination against foreigners.

Foreigners without exception should not be excluded from voting because of their lack of Japanese nationality. Rather, with distinction of “foreigners domiciled in Japan” (domiciled foreigners) from “general foreigners,” domiciled foreigners should be guaranteed the right to vote in local government elections in light of their lives established in a community.

In the decision on the legal action concerning the election of a local government by “special permanent residents” of Korean residents in Japan who were born in Japan and have established their lives in Japanese society, the Supreme Court decided as follows:

“It can be reasonably concluded that the Constitution does not prohibit the implementation of measures to grant by law the right to vote in elections of the chief executive officers of a local government bodies, the members of the assemblies, and such

other local officials to permanent residents and others who are deemed to have an exceptionally close relationship with a local government of a place of residence among foreign residents in Japan in order to reflect their wills onto the public operations of the local government which has a close relationship with their daily lives. However, it is exclusively a matter of the legislative policy of the government to decide whether such measures should be taken, and the failure to take such measures does not cause the issue of unconstitutionality” (Decision dated February 28, 1995).

The above decision states that the conferment of the right to vote in local elections to “permanent residents and others among foreign nationals” is a matter of the legislative policy of the government. However, the Japanese government should proactively guarantee at minimum the voting right in local elections in particular for people from the former colonies and their descendants among the permanent residents in Japan. In light of the historical background that people from the former colonies were deprived of Japanese nationality without regard to their own wills by the Japanese government, there is no legitimate basis for their exclusion even from elections in local governments only because of their lack of Japanese nationality. History of residence in Japan of people from the former colonies has continued over a century, and their actual lives are not different from those of the Japanese citizens at all.

Facing the historical background and their reality of life, the Japanese government should revise the Public Offices Election Law and the Local Government Autonomy Law to grant at minimum the right to vote in local government elections to Korean and North Korean residents in Japan.

### B3. Right to Take Office as Government Employees

#### a. Conclusions and Recommendations

The government should grant special permanent residents the opportunities for appointment to employment as government officials, and should eliminate the obstacles which prevent such opportunities. In particular, residents of foreign nationality with the status of special permanent residency should not be excluded from the qualification of a member of a national Human Rights Commission.<sup>17</sup>

#### b. Concerns and Recommendations of the Committee

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<sup>17</sup> JFBA, Opinion Paper Requesting Appointment of Foreign Nationals as Conciliation Commissioners and Judicial Commissioners (March 18, 2009). [http://www.nichibenren.or.jp/en/document/opinionpapers/20090318\\_2.html](http://www.nichibenren.or.jp/en/document/opinionpapers/20090318_2.html)

Recommendation 15<sup>18</sup>: states

“[n]oting that family court mediators do not have any public decision-making powers, the Committee expresses concern over the fact that qualified non-nationals are not able to participate as mediators in dispute settlement. It also notes that no data was provided regarding the participation of non-nationals in public life (art. 5).

The Committee recommends that the State party review its position so as to allow competent non-nationals recommended as candidates for mediation to work in family courts. It also recommends that it provide information on the right to participation of non-nationals in public life in its next report.”

c. Statements of the Government Report

Paragraph 32 of the Initial and Second Government Report states:

“Japanese nationality is required for civil servants who participate in the exercise of public power or in the public decision-making, but it is understood that Japanese nationality is not necessarily required for civil servants who do not engage in the above-mentioned work. Korean residents in Japan have been employed as civil servants according to the above-mentioned principle.”<sup>19</sup>

In addition, Paragraph 100 of the Seventh to Ninth Government Report<sup>20</sup> states:

“[...] the fact that a foreign national cannot become a Conciliation Commissioner of Domestic Relations does not fall under discriminatory treatment for the reason of nationality: a person shall have Japanese nationality to become a public servant engaged in the exercise of public authority or participation in the formation of national intention; and a commissioner, which is a part-time court official, falls under the category of such public servants. Japanese nationality is thus considered as necessary to become a commissioner.”

d. Position of the JFBA

d1. Public servants are categorized into national public officers and local public officers. The requirement of holding Japanese nationality to become a public servant is not provided in the Constitution, the National Government Employee Law or the Local Government Employee Law.

Despite the above fact, the regulations of the National Personnel Authority, which holds a subordinate position to the laws, state in connection with national public officers that “those who do not hold Japanese nationality may not take the employment examination.” The

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<sup>18</sup> Committee, *supra* note 1, at Para.15.

<sup>19</sup> Government of Japan, International Convention on the Elimination of All Forms of Racial Discrimination (First and Second Report) (June 1999). [http://www.mofa.go.jp/policy/human/race\\_rep1/index.html](http://www.mofa.go.jp/policy/human/race_rep1/index.html)

<sup>20</sup> Government of Japan, *supra* note 15, at Para.100.

regulations of the Ministry of Internal Affairs and Communications which is an administrative agency state with regard to local public officers that “pursuant to the “Commonly Understood Principle” of public servants, those who do not have Japanese nationality may not be appointed to a public servant engaged in the exercise of public authority or participation in the decision making process of a local government.”

- d2. Subsequently, in the judgment of the Grand Bench by the Supreme Court dated January 26, 2005, on the case where a Korean resident in Japan with special permanent residency who held Korean nationality requested the eligibility of taking an examination for qualifying for a managerial position, the court stated that taking measures to limit the promotion of managerial positions only to officers with Japanese nationality is not considered as breach of law on the grounds that “in the first place, the legislative system of Japan does not assume foreign nationals become local public officers engaged in the exercise of public authority and others.”

The court concluded that it was lawful that the Tokyo government refused the Korean resident in Japan with special permanent residency who held Korean nationality from taking an examination for qualifying for a managerial position.

- d3. Japan has not established “a national human rights institution which is independent of the government” yet, but with a view to establishing such national human rights institution, the Ministry of Justice released a paper titled “the Establishment of a new Human Rights Relief Institution (Basic Policy)” on August 2, 2011, and also “the outline of the bill under review on the establishment of a human rights committee and other matters” in December 2011. This bill does not include the nationality clause, but the Japanese government stated that foreigners, in particular Korean and Taiwanese residents in Japan who hold special permanent residency, are not eligible for a member of the Human Rights Relief Institution pursuant to the “Commonly Understood Principle”.

In addition, the Minister of Justice answered “a human rights committee member shall hold Japanese nationality in accordance with the ““Commonly Understood Principle.”” Moreover, Section 10 in Q&A concerning the establishment of a new Human Rights Relief Institution, which was released on March 16, 2012, by the Human Rights Bureau of the Minister of Justice, mentioned that “a chairperson and members of the Human Rights Relief Institution shall hold Japanese nationality under an obvious prerequisite,” which excludes foreign nationals.

The Human Rights Relief Institution in the above basic policy and outline released by the Ministry of Justice is a national human rights institution which is being requested to establish

pursuant to the Principles relating to the Status of National Institutions (the “Paris Principles”). The responsibilities of a national human rights institution under the Paris Principle include the domestic implementation of the international human rights law. In detail, its key task is to “eliminate all forms of racial discrimination”, an important principle of the Convention.

However, on the basis of the “Commonly Understood Principle”, the Ministry of Japan excludes Korean and Taiwanese residents in Japan who hold special permanent residency from the eligibility to become members of the Human Rights Relief Institution whose responsibility is elimination of discrimination.

In the section of the composition and guarantees of independence and pluralism of the Paris Principles which was adopted by the UN General Assembly in 1992 states with regard to the appointment of members:

“The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists.”

Under the Paris Principles, it is desirable that those with foreign nationality who are discriminated against, in particular Korean and Taiwanese residents in Japan, to become members of the Human Rights Relief Institution in a society where persistent discrimination and prejudice still remain.

The Paris Principles stand on the basis that effective implementation of a human rights institution cannot be ensured unless such institution is composed of those on the side of people whose human rights are violated and representatives on the side of people who are discriminated against.

The requirement of the Paris Principles does not allow “the Commonly Understood Principle” which excludes Korean and Taiwanese residents in Japan from the qualification of members of a human rights institution.

- d4. The JFBA suggests inclusion of the provision concerning the eligibility of members of a national human rights institution in accordance with the concept of the Paris Principles that

“a person shall not be excluded from the eligibility on the basis of race, ethnic group, creed, social status, nationality, family origin, disability, diseases or sexual orientation.”

d5. The JFBA provides its opinions on the assumption of public services by foreign nationals below.

First, the JFBA called on the national and local governments for the “legislation of basic human rights acts and ordinances for foreign nationals and ethnic minorities” which set forth “a guarantee of legislative participation such as the conferment of the right to vote in local elections, a guarantee of administrative participation such as the assumption of public servants, and an extensive guarantee of judicial participation for permanent residents who hold foreign nationality.”

In the talk by President of the JFBA, it pointed out with regard to the above Supreme Court decision that “its endorsement of the Tokyo government’s total prohibition of foreign nationals from promotion to managerial positions disregards equality under the law, and freedom of job selection for foreign residents in Japan, in particular special permanent residents.”

In addition, it also indicated:

“such decision can be justifiable only with a limitation imposed by laws and regulations in a case where thorough review is conducted for the circumstances in Japan faced by foreign nationals such as special permanent residents and also when it is recognized that there are truly compelling reasons. In this regard, the above decision by the Supreme Court recognized the total refusal of foreign nationals to become a public servant engaging in exercise of public authority and others without considering details of duties of a broad range of public servants. It is therefore an illegitimate decision.”<sup>21</sup>

Finally, the JFBA issued the opinion in the report of JFBA regarding the Third Periodic Report by the Government of Japan under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights:

“[t]he State Party requires “civil servants engaging in exercise of public authority or in participation in the formation of public intent” to hold Japanese nationality in order to be hired. However, it should allow hiring of non-Japanese nationals in general national and other civil service positions, as well as promotion of those who are hired at the same level as Japanese nationals, unless there would be substantial difficulties in the performance of work when non-Japanese nationals are hired in those positions.”<sup>22</sup>

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<sup>21</sup> JFBA, *supra* note 17.

<sup>22</sup> JFBA, Report of JFBA Regarding the Third Periodic Report by the Government of Japan under Article 16

- d6. Meanwhile, in the past bills relating to a national human rights institution, the government constantly attempted to exclude foreign nationals, mainly Korean and Taiwanese residents in Japan with special permanent residency who have established their lives in Japanese society, from the eligibility to become a public servant, in particular a member of a national human rights institution, by setting the Commonly Understood Principle, a concept unfounded by the law, or express provisions in the law. Such bills by the government clearly contradicted the Paris Principles and the JFBA's opinion, and are unacceptable by any measure.
- d7. In conclusion, special permanent residents (people from the former colonies and their descendants) should be given the opportunity to become a public servant in consideration of details of such duty and irrespective of whether such public servant is engaged in the exercise of public authority or participation in the public decision making process. Also, obstacles of such opportunity should be removed. Especially, residents of foreign nationality with special permanent residency should not be excluded from the qualification of a member of a human rights institution.

#### B4. Re-Entry Permit System

##### a. Conclusions and Recommendations

The Japanese government still allows the decision of a re-entry permit to be made at the discretion of the Minister of Justice for special permanent residents wishing re-entry after two years from their departure even after the introduction of the "special re-entry permit" procedure. The government should abolish such procedure immediately, and should guarantee free re-entry for special permanent residents in the same way as Japanese nationals.

##### b. Statements of the Government Report

The government indicated that under the revision of the Immigration Control Act in July 2012, the upper limit of the valid period extended from four to six years as to the valid period for a re-entry permit for those under the status of a special permanent resident, the period extended to within seven years from the original permission as to the extension of a re-entry permit from outside Japan<sup>23</sup>, and no need in principle for those under the status of a special permanent resident who leave Japan with a valid passport, etc. to obtain re-entry permission in cases in which they re-enter Japan within two years after their departure by the introduction of a system

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and 17 of the International Covenant on Economic, Social and Cultural Rights (January 18, 2013), P. 34. [http://www2.ohchr.org/English/bodies/cescr/docs/ngos/JapanFederationBarAssociation\\_Japan\\_CERCR50.pdf](http://www2.ohchr.org/English/bodies/cescr/docs/ngos/JapanFederationBarAssociation_Japan_CERCR50.pdf)

<sup>23</sup> Government of Japan, *supra* note 15, at Para.39

of “special re-entry permit.”<sup>24</sup>

c. Position of the JFBA

The revision of the Immigration Control Act as mentioned above surely improved the convenience of the re-entry procedure compared with the previous system.

However, the system of “special re-entry permit” is not applicable to special permanent residents who wish re-entry after two years from their departure. In this case, such special permanent residents are thus required to obtain a permit to re-enter prior to departure from the Minister of Justice as usual, and such permit is made at the discretion of the Minister of Justice. This legal system significantly infringes on the freedom of departure and entry of a country for special permanent residents, and the right to leave and return to a country of residence where a livelihood is made,” which violates Article 5(d)(ii) of the Convention.

The UN Human Rights Committee also pointed out in its Observing Conclusion upon the review of the Fourth Government Report that it “strongly urges the State party to remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents like persons of Korean origin born in Japan.”<sup>25</sup>

The government should thus abolish the system of the re-entry permit for special permanent residents immediately.

B5. Accreditation of Korean Schools

a. Conclusions and Recommendations

The government’s policy which relaxed the requirements for university entrance qualifications for graduates of foreign schools in 2003 caused new discriminatory treatment between ethnic Korean schools and other foreign schools. Graduates of Korean schools should be recognized as qualified for university entrance in the same manner as graduates of other foreign schools and ethnic schools.

b. Concerns and Recommendations of the Committee

The Committee stated in the Recommendation 22 that “the Committee expresses concern about acts that have discriminatory effects on children’s education including: (partially omitted)

<sup>24</sup> Government of Japan, *supra* note 15, at Para.40.

<sup>25</sup> Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee Japan. (CCPR/C/79/Add.102) (November 19, 1998), Para.18.

[http://www.nichibenren.or.jp/activity/international/library/human\\_rights/liberty\\_report-4th\\_observation\\_en.html](http://www.nichibenren.or.jp/activity/international/library/human_rights/liberty_report-4th_observation_en.html)

[o]bstacles in connection with school accreditation and curricular equivalencies and entry into higher education.”<sup>26</sup>

c. Statements of the Government Report

The Government Report stated in para 44 and 45:

“[...] in September 2003, the system was revised to make university entrance qualification more flexible. Thereby, those who have completed a course of study at an educational facility which is positioned as one that has a curriculum equivalent to a curriculum of a foreign school that corresponds to that of high school in Japan under the educational system of the foreign country are now recognized as qualified for university entrance.”

“Also, this revision enables universities to examine each candidate in terms of his/her total educational background; and when examination demonstrates that the candidates, including graduates of Korean high schools, have academic ability equal to or higher than that of graduates of Japanese high schools, they are afforded university entrance qualification.”<sup>27</sup>

d. Position of the JFBA

The JFBA notes with appraisal that there has been improvement to make the university entrance qualification more flexible since 2003 as the Government Report indicates. However, the new policies have given rise to new discriminatory treatment between graduates of Korean schools and graduates of other foreign schools.

According to the new policy, graduates of foreign schools that are recognized as qualified for university entrance are defined without exception as “those who have completed a course of study at an educational facility which is positioned as one that has a curriculum equivalent to a curriculum of a foreign school that corresponds to that of high school in Japan under the educational system of the foreign country.” Yet, because it is not possible to confirm whether what are taught at Korean schools meet the above requirement due to the lack of diplomatic relations between DPRK and Japan, graduates of Korean schools are not recognized as qualified for university entrance, and the decision of each candidate’s academic qualification is left up to each university.

Moreover, although Taiwan does not have diplomatic relations with Japan just like DPRK, all graduates of Taiwan’s Chinese School are recognized as qualified for university entrance on

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<sup>26</sup> Committee, *supra* note 1, at Para.22.

<sup>27</sup> Government of Japan, *supra* note 15, at Para.44 and 45.

the ground that their curriculum of their schools was confirmed.

By excluding Korean schools, which is made up of a majority of students enrolled in ethnic and foreign schools and also have a similar education system to that of Japan, from foreign schools which are recognized as qualified as university entrance, the government's new policy has caused a new discrimination among ethnic schools and foreign schools.

On the one hand, pursuant to the above policy, most universities independently recognize qualification of university entrance of graduates from Korean schools, and open their door to them. On the other hand, there was an incident in January 2007 in which Tamagawa University refused a student of a Korean school who sought to apply for a general entrance examination of the university from sitting for the examination for the reason that students of Korean schools were not qualified for university examinations. Such incident highlights the imposition of an extremely unstable situation upon graduates of Korean schools by the government policy that each university makes their own decision concerning the qualification. On March 24, 2008, the JFBA issued recommendations to the Prime Minister and the Minister of Education, Culture, Sports, Science and Technology in connection with the petition for human rights relief filed by Korean schools that such discriminatory treatment should be corrected on the ground that such treatment infringes on the right to education of students attending or planning to attend Korean schools.

## B6. Financial Support for Korean Schools

### a. Conclusions and Recommendations

The government should include Korean schools in the application of the Act on Free Tuition at Public High Schools without discrimination from other foreign schools.
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### b. Concerns and Recommendations of the Committee

The Committee stated in the Recommendation 22:

“[...] the Committee expresses concern about acts that have discriminatory effects on children's education including: (partially omitted)

(d) The differential treatment of schools for foreigners and descendants of Korean and Chinese residing in the State party, with regard to public assistance, subsidies and tax exemptions;

(e) The approach of some politicians suggesting the exclusion of North Korean schools from current proposals for legislative change in the State party to make high school education tuition free of charge in public and private high schools, technical colleges and various

institutions with comparable high school curricula (arts. 2 and 5).”<sup>28</sup>

c. Statements of the Government Report

With regard to the free tuition fee at public high schools and high school enrollment support fund system, the Government Report mentioned in Paragraph 134 that “[t]his system covers students who are enrolled in (partially omitted) schools for foreign nationals approved as miscellaneous schools which are designated by the Minister of Education, Culture, Sports, Science and Technology as having curricula equivalent to the high school curricula, irrespective of their national affiliation.”<sup>29</sup>

d. Positions of the JFBA

Foreign schools and ethnic schools in Japan are not recognized to be “schools” as defined by Article 1 of the School Education Law, but are instead recognized as “miscellaneous schools” in Article 134 of the said law which is the same as a driving school. As a result, foreign schools, including ethnic Korean schools, did not receive subsidies from the national government.

Meanwhile, the Act on Free Tuition at Public High Schools and the High School Enrollment Support Fund (the “Act on Free Tuition at Public High Schools”) was passed on April 1, 2010. This act is intended to make public high schools tuition-free and to provide the enrollment support fund for students at private high schools and students at foreign schools which are equivalent to high school. However, on the one hand, many foreign schools are designated for provision of the enrollment support fund i.e., they are applicable schools of the Act on Free Tuition at Public High Schools. On the other hand, this act has caused a new discrimination that Korean schools are not designated for the provision of the enrollment support fund i.e., they are excluded from the application of the Act on Free Tuition at Public High Schools.

The government delayed drawing a conclusion in response to the request by Korean schools to designate Korean schools to be provided with the enrollment support fund. After more than two years of the review, it practically excluded Korean schools from the application of the enrollment support fund; they are not designated for the application of the Act on Free Tuition at Public High Schools.

Moreover, the government revised the Ordinance for Enforcement of the Act on Free Tuition at Public High Schools on February 20, 2013, in order that there was no room for the application of the Act on Free Tuition at Public High Schools to Korean schools.

The Ordinance for Enforcement of the Act on Free Tuition at Public High Schools before the revision stated in connection with schools in which children of foreign nationals were enrolled

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<sup>28</sup> Committee, *supra* note 1, at Para.22.

<sup>29</sup> Government of Japan, *supra* note 15, at Para.134.

such as international schools and ethnic schools that in addition to (1) schools which could be confirmed to have a curriculum equivalent to a curriculum of a high school in its country through embassies and other official organizations and (2) schools which were accredited by international evaluation organizations, (3) schools which did not fall under (1) and (2) could be designated by the Minister of Education, Culture, Sports, Science and Technology to be eligible for the enrollment support fund and other funds if such schools were recognized to have a curriculum equivalent to that of high school in Japan, regardless of whether diplomatic relations exists or not.

The government decided that Korean schools did not fall under (1) due to its lack of diplomatic relations with DPRK, and they were not categorized into (2), either, since they are not classified as European or US international schools. Thus, Korean schools requested the designation of the schools to be eligible for the enrollment fund pursuant to (3) in the above.

However, the underlying provision to decide the designation on a school-by-school basis was deleted in the revised Ordinance for Enforcement of the Act on Free Tuition at Public High Schools. This revision made no room for Korean schools to be eligible for the enrollment support fund.

The Ministry of Education, Culture, Sports, Science and Technology (the “MEXT”) took a measure not to designate any Korean schools which made the request to be eligible for the funds under the Act on Free Tuition at Public High Schools in February 2013 by the revision of the Ordinance for Enforcement of the said Act. In other words, the MEXT officially excluded Korean schools in the application of the Act on Free Tuition at Public High Schools. This indicates that such measure reinforced “[t]he differential treatment of schools for foreigners and descendants of Korean and Chinese residing in the State party, with regard to public assistance, subsidies and tax exemptions”<sup>30</sup> which the Committee expressed concern about in its Concluding Observations in the previous review.

While the Committee had expressed its concern about “[t]he approach of some politicians suggesting the exclusion of North Korean schools from current proposals for legislative change in the State party to make high school education tuition free of charge in public and private high schools, technical colleges and various institutions with comparable high school curricula,” “the approach of some politicians” developed into the official decision of the government.

The JFBA issued recommendations to repeal the revised ministerial ordinance to the head of

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<sup>30</sup> Committee, *supra* note 1, at Para.22.

the MEXT on February 1, 2013, indicating that the above revision was considered as discriminatory treatment which denied the provision of the funds i.e., the application of the Act on Free Tuition at Public High Schools, on the basis of matters which were totally irreverent to the right to education of children such as Japan's lack of diplomatic relations with DPRK and a progress of the abduction issue.

In addition, the Committee expressed Korean schools as "North Korean schools", but this is not accurate. Korean schools in Japan positions DPRK as their home country, and have ties with DPRK. However, Korean schools were not established in accordance with laws of DPRK, but were voluntarily established by Korean residents in Japan to educate their children.

The curricula of their schools are different from those of DPRK. For example, the DPRK's school curriculum consists of four years of elementary school and six years of junior high school, and its compulsory education is conducted in total of 11 years, the final year of kindergarten and ten years of elementary and junior high schools. Whereas, the schooling years at ethnic Korean schools are segmented along the lines of 6-3-3-4 which is the same as that of Japan. Their timetables are very different from those of DPRK. Moreover, they use textbooks compiled by Korean residents in Japan, not the ones designated by DPRK.

#### B7. Need for Systematic and Organized Ethnic Studies Classes at Public Schools

##### a. Conclusions and Recommendations

From a perspective of guaranteeing the right of children of Korean residents in Japan to learn their own language and culture, the national and local governments should ensure the establishment of a scheme of ethnic studies classes to learn their languages and cultures at schools in which a certain number of children of Korean residents in Japan are enrolled.

##### b. Concerns and Recommendations of the Committee

The Committee stated that it encourages the State party to consider providing adequate opportunities for minority groups to receive instruction in or of their language.<sup>31</sup>

##### c. Statements of the Government Report

The Government Report stated in Para.128:

"[...] it is also important for children to develop their personalities and abilities with an international point of view in order to understand and live with people who have different

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<sup>31</sup> Committee, *supra* note 1, at Para.22.

customs and are from different cultures. Therefore, schools are now providing education for international understanding through subjects such as Social Studies, Moral Education, Special Activities, and the Period for Integrated Studies. In such education, it is also possible to use the Period for Integrated Studies to learn about the native languages and native cultures of foreign students, in keeping with the actual circumstances of communities and those of such students. Incidentally, learning about native languages, native cultures, etc. can also be included in extracurricular activities. Several local governments are implementing such activities in practice.”<sup>32</sup>

#### d. Positions of the JFBA

The history, cultures, languages and others of Korea are not taught at public primary and secondary schools. Ethnic studies classes are thus offered at some public primary and secondary schools in certain residential areas such as Osaka, Kyoto, Tokyo and Kanagawa Prefectures in which many Koreans reside. Ethnic studies classes function as important opportunities of education where children of Korean residents in Japan can familiarize themselves with their own cultures and languages, and take pride in their roots and identity.

However, such ethnic studies classes are not established as a formal system. The establishment of the ethnic studies classes cannot be sought as the right even at schools in which a certain number of children of Korean residents in Japan are enrolled, either. In the decision dated November 27, 2008, concerning the discontinuation of all ethnic studies classes at eight primary and secondary schools by the Takatsuki Municipal Board of Education, the Osaka High Court held that the establishment and discontinuation of ethnic studies classes was within the discretion of the Board of Education and did not recognize a concrete right of children of minorities to demand the establishment and continuation of ethnic studies classes. The decision also stated in connection of the right to education for minorities (the right to receive education as minorities, use languages of minorities, and enjoy an educational environment to actively learn about cultures of minorities at public expense) that “in light of the way of providing the article, Article 2(2) of the Convention merely provides a State-party has the political responsibility to proactively implement measures to realize such right. The court cannot thus recognize that this article immediately guarantees a concrete right, the right to education for minorities.”

Yet, from a perspective of guaranteeing the right to education for minority children, the

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<sup>32</sup> Government of Japan, *supra* note 15, at Para.128.

national and local governments should ensure the establishment of a scheme of ethnic studies classes to learn their languages and cultures at schools in which a certain number of minorities are enrolled.

## B8. National Pension System

### a. Conclusions and Recommendations

It is violation of Article 5(e)(iv) of the Convention that the elderly (born before January 1, 1926) and the disabled (those who were at the age of 20 or older and had disabilities as of January 1, 1982) of Korean residents in Japan are not allowed to join the national pension plan, and are not eligible for senior welfare pensions and basic disability pensions, either. The Japanese government should revise related laws and regulations and immediately implement relief measures so that the pensions are paid to those people.

### b. Summary of the Government Report

Although there has been no progress in the current status relating to the issue of the national pension plans for the elderly and the disabled of Korean residents in Japan since the previous report, the Government Report does not mention about such issue.

### c. Problems found in the Government Report

Mr. Doudou Diène, a Special Rapporteur appointed by the UN Commission on Human Rights, concerned about the issue of the elderly of foreign nationality residing in Japan without pension benefits, and issued the recommendation in the report after the visit to Japan in July 2005 and January 2006 that “[t]he Government should adopt remedial measures for Koreans who are more than 70 years old and who have no access to pension benefits because of the existence of the nationality clause when they were of working age.”<sup>33</sup>

In addition, the Human Rights Committee pointed out in its Concluding Observations following the review of the Fifth Periodic Report of Japan:

“[t]he Committee notes with concern that, as a result of the non-retroactivity of the elimination of the nationality requirement from the National Pension Law in 1982 combined with the requirement that a person pay contributions to the pension scheme for at

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<sup>33</sup> Office of the High Commissioner for Human Rights, Racism, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2) (January 24, 2006). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/103/96/PDF/G0610396.pdf?OpenElement>

least 25 years between the ages of 20 and 60, a large number of non-citizens, primarily Koreans who lost Japanese nationality in 1952, are effectively excluded from eligibility to pension benefits under the national pension scheme”<sup>34</sup>

Following its indication that “the same applies to disabled non-citizens who were born before 1962,” it issued the recommendation to the government that “[t]he State party should make transitional arrangements for non-citizens affected by the age requirements stipulated in the National Pension Law, with a view to ensuring that non-citizens are not discriminatorily excluded from the national pension scheme.”

Moreover, claims for damages against the government are instituted in various places on the ground that it is the violation of the Constitution that the government failed to take any relief measures relating to the issue of non-nationals living without pension benefits.

Still, the Government Report fails to state anything about this issue at all.

#### d. Positions of the JFBA

The nationality clause long existed in the national pension schemes which began in 1959. The clause was abolished on January 1, 1982, and since 1986, in a case where a person does not pay into the Japanese state pension fund for the 25-year minimum pay-in requirement to start drawing the pension, such person can count the “*kara kikan*”, a period of time during which pension payments are not made, toward the required 25 years, which enables many Korean residents in Japan to subscribe to the national pension schemes.

However, because the government failed to make transitional arrangements along with the revision of the National Pension Law, the pensions under the national pension schemes have not been paid to (1) the elderly of Korean and North Korean residents in Japan who were born before January 1, 1926, and (2) the disabled who were over 20 years old and had disability as of January 1, 1982.

The actions for damages against the government are currently taken with regards to the government’s failure to make transitional arrangements in order not to disqualify a certain people from receiving the pensions. Yet, the government insists that the legislative body had the discretion on the nationality clause upon the establishment of the state pensions and the decision not to take relief measures, and that it does not violate the Constitution unless such

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<sup>34</sup> United Nations Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observation of the Human Rights Committee Japan (CCPR/C/JPN/CO/5) (October 30, 2008), Para.30.  
[http://www.nichibenren.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/Concluding\\_observations\\_en.pdf](http://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Concluding_observations_en.pdf)

decisions are significantly unjustifiable.

However, those originally from Korea and DPRK have established their lives in Japan for a long period of time, just like Japanese nationals, and the backgrounds of their settlement in Japan should not be overlooked. In addition, Korean residents in Japan were deprived of Japanese nationality without regard to their intentions. Leaving such elderly and disabled residents originally from Korea and DPRK living without pension benefits is violation of Article 5(e)(iv) of the Convention.

The social security system is established through solidarity and mutual support by those who belong to society, and should not allow any exclusion or discrimination.

The Japanese government should immediately revise relevant laws and regulations to provide pensions and take remedial measures for the elderly and the disabled of Korean residents in Japan without the qualification to receive the pension.

## B9. Special Permanent Resident Certificate

### a. Conclusions and Recommendations

It is violation of Article 5(d)(i) (the right to freedom of movement) to require Korean residents in Japan who are special permanent residents to present a special permanent resident certificate and to impose criminal punishment for the failure to do so. The government should promptly abolish this system.<sup>35</sup>

### b. Summary of the Government Report

Paragraphs 37 and 38 of the Government Report does not mention the obligation of Korean residents in Japan who are special permanent residents to receive and present a special permanent resident certificate and the establishment of criminal punishment for the violation following the abolishment of the Alien Registration Act and the revision of the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality on the Basis of the Treaty of Peace with Japan (the “Special Act on the Immigration Control”) in July 2012.<sup>36</sup>

### (3) Problems found in the Government Report

Following the abolishment of the Alien Registration Act and the revision of the Special Act on the

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<sup>35</sup>JFBA, Statement on a Bill to Revise the Immigration Control and Refugee Recognition Act and Other Related Acts to Strengthen Residential Control of Foreign Nations (April 24, 2009). <http://www.nichibenren.or.jp/en/document/statements/year/2009/20090424.html>

<sup>36</sup> Government of Japan, *supra* note 15, at Para.37, 38.

Immigration Control in July 2012, instead of the former alien registration card, a special permanent resident certificate is issued to Korean residents in Japan who are people from the former colonies and their descendants. A special permanent resident has the obligation to present his/her special permanent resident certificate to an immigration inspector, immigration control officer, police official, coast guard officer or any other official of a state or local public entity if such official requests presentation of the special permanent resident certificate in the execution of his/her duties. A person who violates this provision shall be punished by imprisonment with work for not more than 1 year or a fine of not more than 200,000 yen.

More than 95% of Korean residents in Japan to whom a special permanent resident certificate is issued were born in Japan as the second generation and subsequent generations. They have long lived in Japan peacefully, and do not differ from Japanese nationals in clarity of status and residence. Yet, Japanese nationals are not required to present an identification card and other documents verifying their status.

The JFBA notes with appreciation the abolishment of the obligation to carry an alien registration card at all times as stipulated in the Alien Registration Act following the revision of the Special Act on the Immigration Control. However, because of the obligation to present a special permanent resident card and the imposition of penalty for its violation, discrimination is not completely eliminated even with such abolishment.

## Chapter 3 Other Permanent Foreign Residents

### A. General Issues

Although the number of registered foreign nationals in Japan was 2,078,508 as of the end of 2011, a decrease of nearly 140,000 from a peak of 2,217,426 in 2008 (in reference to Annex 3 of the change in the number of registered foreign nationals by nationality (country of birth) in the Seventh to Ninth Government Report<sup>37</sup>), it still exceeds two million.

By region as of the end of 2011, while there were more than 1,650,000 people from Asia which constitute as much as 79.6% out of the registered foreign nationals in Japan, there were over 270,000 people from South America which consist of 13.3% of the total, the second largest group to Asia (in reference to Annex 2 of the change in the number of registered foreign nationals by region in the Seventh to Ninth Government Report<sup>38</sup>). By country as of the end of 2011, there were approximately 675,000 from China, followed by about 566,000 from Korea and DPRK, about 210,000 from Brazil in the third place, about 210,000 from the Philippines in the fourth place and about 53,000 from Peru in the fifth place.

Although the number of settled foreign residents called “New Comers” such as those from Brazil and Peru is on the decrease due to the impacts of the Lehman Shock and others, those people still constitute a large portion of the total number of registered foreign nationals in Japan as mentioned above.

Apart from the discrimination against people from the former colonies, problems of ethnic and racial discrimination against other settled foreigners have continued to be left unresolved since the review of the previous Government Report, and new issues have also arisen.

### B. General Issues of Permanent Foreign Residents

#### B1. Prohibition of Discrimination Comitted by the National and Local Authorities and Agencies

##### a. System of the Residence Card and the Residence Certificate for Foreign Nationals

##### a1. Basic Resident Registration System

##### i. Conclusions and Recommendations

A foreign national granted a certain status of residence is eligible for the Residence Card and the

<sup>37</sup> Government of Japan, *supra* note 15, at Anex 3: Change in the number of registered foreign nationals by nationality (country of origin).

<sup>38</sup> Government of Japan, *supra* note 15, at Anex 2: Change in the number of registered foreign nationals by region.

Residence Certificate for foreign nationals. However, this system makes it impossible for foreign residents who are excluded from the application of the system to receive administrative services, including education, emergency medical services and maternal and child health services, which may violate Article 5(e)(iv)(v) of the Convention. The government should take effective measures for this issue.<sup>39</sup>

## ii. Summary of the Government Report

Paragraph 28 of the Government Report states:

“[...] the Government of Japan introduced a new residency management system and abolished its previous alien registration system in July 2012 in order to contribute to securing appropriate residency management of foreign nationals and improving convenience for legitimate foreign residents in Japan.”<sup>40</sup>

However, it fails to mention that this system excludes foreign nationals granted permission to stay for not more than three months and those without a proper status although they all had been included in the previous alien registration system.

## iii. Problems found in the Government Report

Through the abolishment of the Alien Registration Act and the revision of acts such as the Immigration Control and Refugee Recognition Act and the Basic Resident Registration Act in July 2012, the Alien Registration system was abolished, a Special Permanent Resident Certificate is issued to special permanent residents, and a Residence Card is issued to other foreign nationals except those who granted permission to stay for not more than three months or persons granted such statuses of residence as Diplomat, or Official.

Before the revision was made, there were separate systems, the Residential Basic Book only for Japanese nationals and the Alien Registration for foreign nationals, but special permanent residents, foreign nationals and others who are eligible for the issuance of the Residence Card were registered in the Residential Basic Book in the same way as Japanese nationals were.

The previous Alien Registration System included all foreign nationals who stayed in Japan for a certain period regardless of residential statuses, but under “the new residency management system,” foreign nationals granted permission to stay for not more than three months and those

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<sup>39</sup> JFBA, Statement on the Commencement of the Residence Card and the System of the Basic Resident Registration for Foreign Nationals (July 9, 2012). <http://www.nichibenren.or.jp/en/document/statements/year/2012/120709.html>

JFBA, Statement on the Enactment of the Revised Immigration Control and Refugee Recognition Act and the Revised Residential Basic Book Act (July 8, 2009). <http://www.nichibenren.or.jp/en/document/statements/year/2009/20090708.html>

JFBA, *supra* note 35.

<sup>40</sup> Government of Japan, *supra* note 15, at Para. 28.

without proper statuses are excluded from the issuance of the Residence Card and the Basic Resident Registration System.

Before the acts were amended, the government stated that the introduction of the new residency management system would not worsen administrative services, including education, emergency medical services and maternal and child health services. Although administrative services of local governments for foreign nationals used to be conducted on the basis of the alien registration, the governments have no means to grasp the picture of foreign residents who are now excluded from the Basic Resident Registration System upon the introduction of the new residency management system. This system may practically cause limitations of such foreigners' right to receive administrative services which had been provided for foreign nationals regardless of their residential statuses, including education, emergency medical services and maternal and child health services. For example, guidance of school attendance which used to be sent at school age of a child may be no longer sent to those who are excluded from the new system.

The Japanese government implements the measure to notify a local government of information such as an address for foreign nationals who obtain permission for provisional release of those without proper statuses, but there are very few applicable foreign nationals of this measure among those who are excluded from the Basic Resident Registration System.

a2. Obligation to carry a Residence Card at all times

i. Conclusions and Recommendations

It is violation of Article 5(d)(i) of the Convention (the right to freedom of movement) to require permanent residents and other foreign nationals who make their living in Japan to carry a Resident Card at all times and present it when requested, and to impose criminal punishment for the failure to do so. The Japanese government should promptly abolish this system.<sup>41</sup>

ii. Summary of the Government Report

Paragraph 28 of the Government Report mentions about the introduction of the new residency management system in July 2012, but does not state that foreign nationals such as permanent residents who are eligible for a Resident Card are required to carry the card at all times and

<sup>41</sup> JFBA, *supra* note 39 (July 9, 2012).

JFBA, Opinion on the Creation of a New System for Immigration and Residence Control of Foreign Nationals and the Development of an Alien Residential Register System (February 19, 2009). <http://www.nichibenren.or.jp/en/document/opinionpapers/20090219.html>

present it when requested, and may be exposed to criminal liability for the failure to do so.<sup>42</sup>

### iii. Problems found in the Government Report

Instead of the former Alien Registration Card, a Residence Card is now issued to foreign nationals with a status of residence except for people from the former colonies and their descendants who are eligible for the system of a Special Permanent Resident Certificate, those granted permission to stay for not more than three months and others. A foreign national who is eligible for a Residence Card has the obligation to carry his/her Residence Card at all times and present it to an immigration inspector, immigration control officer, police official, coast guard officer or other official of a state or local public entity if such official requests presentation of the Residence Card in the execution of his/her duties. A person who fails to carry the Residence Card at all times shall be punished by a fine of not more than 200,000 yen, and in a case of the failure to present the Residence Card, imprisonment with work for not more than 1 year or a fine of not more than 200,000 yen shall be imposed.

According to the statistics in December 2012, besides 381,364 Korean residents who are special permanent resident who account for 19%, permission for permanent residence is granted to 624,501 foreign nationals who constitute about 31% out of 2,033,656 foreign residents in Japan. It is violation of Article 5(d)(i) of the Convention (the right to freedom of movement) to require those who have lived in Japan peacefully to carry a Residence Card at all times and present it when requested, and to impose criminal punishment for the breach, which Japanese nationals are not required to do so.

The UN Human Rights Committee expressed its opinion in its Observing Conclusion upon the review of the Fourth Government Report that the Alien Registration Act, which sets forth a penal offence for alien permanent residents not to carry certificates of registration at all times and imposes criminal sanctions, is incompatible with article 26 of the International Covenant on Civil and Political Rights.<sup>43</sup> Subsequently, the Japanese government abolished the obligation to carry only a special permanent resident certificate which is issued to special permanent residents who are mainly people from the former colonies and their descendants, but still maintains the obligation to carry a Residence Card which is issued to other permanent residents and the criminal sanctions for the violation.

## b. Discrimination in Criminal Procedures

### b1. Conclusions and Recommendations

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<sup>42</sup> Government of Japan, *supra* note 15, at Para. 28.

<sup>43</sup> Human Rights Committee, *supra* note 25.

Education should be thoroughly provided at the police, the prosecution and courts with regard to human rights in criminal procedures, and human rights of foreign nationals.

Written statements of foreign suspects should be allowed to be prepared in their mother tongues.<sup>44</sup>

b2. Summary of the Government Report

The Government Report states that human rights education is implemented for police in Paragraph 70, 71 and 72, that lectures are held concerning international conventions on human rights such as the Convention for prosecutors and officials of the Public Prosecutors Office in Paragraph 73, and that lectures are given on such themes as human rights issues in criminal proceedings, human rights for foreign nationals, and issues relating to international human rights law such as human rights conventions for the training of judges and legal apprentices in Paragraph 77.<sup>45</sup>

b3. Position of the JFBA

The Government Report mentioned above fails to provide clear details of the education which is implemented and measures which are taken. Education relating to the human rights issues in criminal procedures and human rights for foreign nationals should be thus thoroughly provided to the police, the prosecution and the courts.

The current situation has not changed since the submission of the previous Government Report; because only the Japanese language is allowed to be used in written statements even for a foreign suspect whose mother tongue is not Japanese, there is still a possibility that such written documents are different from what an interpreter translates.

Written statements of foreign suspects should be thus allowed to be prepared in their mother tongues.

c. Discrimination in Public Assistance and Related Administrative Appeal Procedures

c1. Conclusions and Recommendations

The Japanese government should recognize the right of settled foreign nationals suffering from poverty to receive public assistance and entitle them to receive relief under the Administrative Appeals Act in relation to decisions of public assistance.<sup>46</sup>

c2. Summary of the Government Report

The Government Report states in Paragraph 123 that “the number of persons who belong to a

<sup>44</sup> JFBA, Opinion Concerning for Legislation Regarding Court Interpretes (July 18, 2013). <http://www.nichibenren.or.jp/en/document/opinionpapers/20130718.html>

<sup>45</sup> Government of Japan, *supra* note 15, at Para. 70, 71, 72, 73, 77.

<sup>46</sup> JFBA, *supra* note 16, at Chapter 3, Section 2(1)(iii).

household receiving public assistance of which the head is a foreign national was 68,965 in FY2010.”<sup>47</sup> The ratio of those who belong to a household receiving public assistance of which the head is a foreign national is increasing year by year (in reference of Annex 1 of the Government Report; number of persons who belong to a household receiving public assistance of which the head is a foreign national<sup>48</sup>).

### c3. Problems found in the Government Report

The Government Report in the preface says that:

“[b]ased 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.”<sup>49</sup>

Yet, it does not recognize the right of foreign nationals settled in Japan to receive public assistance.

The bills related to the amendment to the Public Assistance Act have been recently submitted, but no discussion is held to recognize the right of settled foreign nationals to receive protection under the Public Assistance Act and to allow them to be eligible for public assistance.

### c4. Position of the JFBA

The previous Public Assistance Act which was established in November 1946 did not include the nationality clause, but the current Act which was established in 1950 provides in Article 2 that “[a]ll citizens may receive public assistance under this Act (partially omitted) in a nondiscriminatory and equal manner as long as they satisfy the requirements prescribed by this Act” which does not recognize the right to receive public assistance for non-Japanese nationals on the ground of “citizens” in the provision, and only recognizes such foreign nationals as people who may be protected as “benefits.”

On the one hand, foreign nationals suffering from poverty can thus receive assistance by *mutatis mutandis* application of the act, but cannot demand such assistance as their right. On the other hand, Japanese nationals who are guaranteed legal protection as their legal right under the act may resort to administrative appeal in a case of violation of the right to protection. However, such appeal is not available to foreign nationals.

Such appeal system contributes to easy and prompt recovery of the right, but since foreign

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<sup>47</sup> Government of Japan, *supra* note 15, at Para.123.

<sup>48</sup> Government of Japan, *supra* note 15, at Annex1: Number of persons who belong to a household receiving public assistance of which the head is a foreign national.

<sup>49</sup> Government of Japan, *supra* note 15, at Para.3.

nationals cannot utilize such system, they have no other way but to face economic and procedural burdens to bring suits against the government to the court.

Such policy of the government undoubtedly contradicts the approach to realizing 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 with the application of the social security system on the basis of the principle of equality between citizens and non-citizens. It also runs counter to the fact that the ratio of those who belong to a household receiving public assistance of which the head is a foreign national is increasing year by year.

The government should redress this problem, recognize the right of settled foreign nationals to receive public assistance and entitle them to receive relief under the Administrative Appeals Act.

#### d. Judicial Participation

##### d1. Conclusions and Recommendations

The Supreme Court should reform its practice of refusing to appoint foreigners as civil and family conciliation commissioners and judicial commissioners on the ground that such positions involve the exercise of public authority and should make appointments on the basis of equality, irrespective of Japanese nationality.<sup>50</sup>

##### d2. Summary of the Government Report

The Government Report states in Paragraph 100:

“[...] the fact that a foreign national cannot become a Conciliation Commissioner of Domestic Relations does not fall under discriminatory treatment for the reason of nationality: a person shall have Japanese nationality to become a public servant engaged in the exercise of public authority or participation in the formation of national intention; and a commissioner, which is a part-time court official, falls under the category of such public servants. Japanese nationality is thus considered as necessary to become a commissioner.”<sup>51</sup>

##### d3. Problems found in the Government Report

###### i. Concerns and Recommendations of the Committee

The Committee states in Recommendation 15:

“[n]oting that family court mediators do not have any public decision-making powers, the Committee expresses concern over the fact that qualified non-nationals are not able to

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<sup>50</sup> JFBA, *supra* note 17.

<sup>51</sup> Government of Japan, *supra* note 15, at Para.100.

participate as mediators in dispute settlement. It also notes that no data was provided regarding the participation of non-nationals in public life (art. 5). The Committee recommends that the State party review its position so as to allow competent non-nationals recommended as candidates for mediation to work in family courts. It also recommends that it provide information on the right to participation of non-nationals in public life in its next report.”<sup>52</sup>

ii. Position of the JFBA

- (i) Civil and family conciliation commissioners play a role of facilitating communication between parties concerned, and expediting a settlement in order to resolve civil and family disputes. A conciliation commissioner who is also an attorney is appointed by the Supreme Court based on recommendations of bar associations. A judicial commissioner facilitates a settlement and expedites discussions between parties concerned as an assistant of a court in legal proceedings of the Summary Court. A judicial commissioner who is also an attorney is appointed by District Courts based on recommendations of bar associations.
- (ii) In March 2003, the Hyogo-ken Bar Association recommended a member with Korean nationality as a candidate for a family conciliation commissioner to the Kobe Family Court, but the court rejected its recommendation. In March 2006, the Sendai Bar Association recommended a member with Korean nationality as a candidate for a family conciliation commissioner, but the candidate was rejected. Also in March of 2006, the Tokyo Bar Association recommended a member with Korean nationality as a candidate for a judicial commissioner, but the candidate was rejected. In the autumn of 2007, the Sendai Bar Association, the Tokyo Bar Association, the Osaka Bar Association, and the Hyogo-ken Bar Associations, respectively, recommended members with Korean nationality (the Tokyo Bar Association recommended its candidate for a civil conciliation commissioner, and the other bar associations recommended four candidates in total for a family conciliation commissioner). All the candidates, however, were rejected between December 2007 and March 2008. The Supreme Court has rejected all candidates recommended by those bar association (and the Daini Tokyo Bar Association and the Kyoto Bar Association other than the bar associations described above) almost every year to this day. In response to these rejections, each of the bar associations delivered resolutions of its general assembly, statements from its president, and opinions

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<sup>52</sup> Committee, *supra* note 1, at Para.15.

to the Supreme Court.

- (iii) The JFBA made referral to the Supreme Court for clarification regarding the reasons for the requirement of Japanese nationality for selection of a conciliation commissioner or a judicial commissioner. The Personnel Affairs Bureau of the General Secretariat of the Supreme Court then replied on October 14, 2008, “the Supreme Court refrains from making its own response to the enquiry by the JFBA, but the procedures within its office are below.” Although no provisions of the laws and regulations exist, the reply continued:

“it is assumed that a person holding Japanese nationality is to be employed as a public officer who exercises public authority or makes decisions related to important policies, or whose work is to participate in the aforementioned duties. Because a conciliation commissioner and a judicial commissioner fall under this category of a public officer, Japanese nationality is required for such appointment.”

- (iv) The rules of the Supreme Court relating to a conciliation commissioner provide that a person who is eligible for a conciliation commissioner “is qualified to be an attorney at law, has expert knowledge and experience necessary to resolution of civil or family related disputes or has extensive knowledge and experience gained through daily life in society, and has advanced integrity and insight at the age of forty to less than seventy years.” It does not include any suggestion of matters related to the nationality. The provision concerning a judicial commissioner does not include the nationality clause, either. In spite of such fact, refusal of employment on the ground of the nationality and other matters is based on reasons which the law does not set forth. This is against the rule of law. In particular, there is no requirement of detailed specialty for an attorney. An attorney who specializes in resolving legal disputes is supposed to have expert knowledge and experience necessary to dispute resolution, and therefore there is no room for discussion on the nationality.
- (v) The purpose of the conciliation system is to resolve civil and family disputes based on discussion and agreement between parties concerned before such disputes enter into lawsuits. The fundamental role of conciliation and judicial commissioners is to utilize expertise or extensive knowledge and experience gained through daily life in society in order to assist in resolution of disputes through mutual concession. A conciliation commissioner solely plays a role of mediation of discussion between parties concerned and assists in reaching an agreement. If the parties do not reach an agreement, then the mediation fails. The conciliation commissioner does not make unilateral determinations.

The same is true of a judicial commissioner. A conciliation commissioner and a judicial commissioner only function as mediation, and cannot serve as a public official engaged in the exercise of public authority.

- (vi) Following the review of the previous Government Report, the research by the Osaka Bar Association found a precedent that an attorney with the nationality of the Republic of China who belonged to the Osaka Bar Association was appointed as a civil conciliation commissioner from January 1974 to March 1988. Yet, the Supreme Court continues to refuse employment of attorneys with foreign nationality recommended by a bar association even today.
- (vii) There are many foreign nationals living in Japan as a member of Japanese society, including special permanent residents such as people from the former colonies and their descendants who had no other choice but to reside in Japan while losing the Japanese nationality when the Treaty took effect pursuant to the notice, and settled foreigners. Such foreign nationals often have opportunities to make use of the mediation system in Japan. A conciliation commissioner who has knowledge of cultural backgrounds unique to such permanent residents and settled foreign nationals may be of service to a number of cases among the conciliation cases involving foreign residents in Japan. Similarly, foreigners occasionally become parties to court cases in which judicial commissioners are involved. In light of the freedom of job selection and the principle of equal treatment, it is naturally reasoned for a conciliation commissioner or a judicial commissioner of a foreign nationality to participate in cases equally to those with the Japanese nationality.<sup>53</sup> Refusal of a foreign national to become a conciliation commissioner or a judicial commissioner lacks logical reasons, and violates Article 5 of the Convention.
- (viii) Despite the statement that the Committee “recommends that it provide information on the right to participation of non-nationals in public life in its next report<sup>54</sup>,” the government fails to provide the information in its Government Report. It should provide the information to the Committee without delay.

## B2. Prohibition of Discrimination by Private Persons

### a. Conclusions and Recommendations

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<sup>53</sup> JFBA, *supra* note 17.

<sup>54</sup> Committee, *supra* note 1, at Para.15.

The Japanese government should act affirmatively to take all necessary measures, including education and guidance, for a purpose of elimination of discrimination by private persons. The entire nation should tackle the issues of discrimination by measures such as review of necessary legislation, in particular, (1) discrimination in entry to shops, restaurants and other commercial facilities, (2) discrimination in renting apartments, and other residences, (3) discrimination in employment and (4) discrimination in entrance to schools which should be eliminated through school and regional education and guidance by administrative authorities.

b. Summary of the Government Report

There is no statement concerning the prohibition of discrimination by private persons in the Government Report.

c. Problems found in the Government Report

c1. Discrimination in entry to shops, restaurants and other commercial facilities

Refusal of foreigners to enter privately-operated public bath houses and other commercial facilities still exists. The government recognizes this fact in the paper entitled “The Reinforcement Matters among Enlightenment Activities in the FY2013.”

The government includes “respect for human rights of foreign nationals” in the above Reinforcement Matters, but it is not sufficient. The government should take concrete actions.

c2. Discrimination in renting apartments and other residences

There is evident discrimination by refusal of a foreign national to conclude a lease agreement when renting a privately-owned housing. The government recognizes this fact in “The Reinforcement Matters among Enlightenment Activities in the FY2013.”

The government includes “respect for human rights of foreign nationals” in the above Reinforcement Matters, but it is not sufficient. The government should take concrete actions.

c3. Discrimination in employment

The government recognizes discrimination against foreign nationals in employment in “The Reinforcement Matters among Enlightenment Activities in the FY2013.”

The government includes “respect for human rights of foreign nationals” in the above Reinforcement Matters, but it is not sufficient. The government should take concrete actions.

c4. Discrimination in entrance to schools

There is a court case in which the Tokyo District Court sentenced as violation of Article 14 of the Constitution (equality under the law) and Article 4(1) of the Basic Act on Education (equal opportunity in education) and invalid that a research institute of a national university

rejected the admission of an Iranian national of refugee status as a researcher on the basis of Iranian nationality (the decision by the Tokyo District Court dated December 19, 2011).

The government should take concrete actions with a view to preventing rejection of admission to schools solely on the basis of nationality.

### B3. Problems found in the Technical Intern Training Program

#### a. Conclusions and Recommendations

The Technical Intern Training Program should be abolished. Thorough review should be then conducted at places such as the Diet as to whether to accept foreign nationals by establishing status of residence as a prerequisite of acceptance of unskilled workers, its scale and other matters.

#### b. Summary of the Government Report

The Government Report states in Paragraph 29 that “foreign workers whose purpose is to engage in so-called unskilled labor are in principle not permitted to enter Japan,”<sup>55</sup> and in Paragraph 117 that “there is no distinction based on nationality, etc. with regard to workers who organize a labor union. Therefore, workers having foreign nationality and workers in groups subject to protection under the Convention are also granted the right to organize and join a labor union.”<sup>56</sup>

#### c. Problems found in the Government Report

The Government Report fails to mention about the Technical Intern Training Program.

Yet, since Technical Intern Trainees provide labor to an employer and are under protection of the acts and ordinances of labor standards, they practically fall under foreign nationals engaged in unskilled labor. There is thus inaccuracy in the statements of the Government Report.

There are acts of serious violation of the human rights of trainees, including the seizure of passports and the nonpayment of wage by employers. In addition, it is reported that in many cases formation and participation of a labor union is prohibited by internal rules of accepting organizations. Foreign workers are currently discriminated against under the Technical Intern Training Program.

In light of such circumstance, the government revised the Immigration Control and Refugee

<sup>55</sup> Government of Japan, *supra* note 15, at Para. 27.

<sup>56</sup> Government of Japan, *supra* note 15, at Para. 99.

Recognition Act and relevant ministerial ordinances in July 2009 (effective in July 2010), and insists the strengthening of the supervision mechanism of violation, including the extension of the suspension period to five years of an accepting organization in a case of serious human rights violation such as the taking away of passports and the nonpayment of wage, as well as the protection of trainees under the acts and ordinances of labor standards from the first year of entry into the country. The government explains that based on that, it reinforces supervision and guidance by the labor standards offices, and makes efforts to implement the program in an appropriate way through the mutual notification system established with immigration organizations.

However, the amended Immigration Control and Refugee Recognition Act is merely intended to establish measures for problems which can be addressed impromptu out of the issues in the Technical Intern Training Program (Item 10 of the supplementary resolution by the Committee on Judicial Affairs of the House of Representatives, Item 13 of the supplementary resolution by the Committee on Judicial Affairs of the House of Councilors, and the Fourth Basic Plan for Immigration Control<sup>57</sup>).

More specifically, the revised act responded impromptu to the criticism from home and abroad which points out various problems of malignant infringement of human rights regarding the Technical Intern Training Program, including the forcing of interns and trainees practically into cheap labor, the taking away of passports, bank passbooks and other possessions during a training period, and the mandatory saving of money. Yet, the circumstances surrounding the trainees described above have not been changed even after the revised acts took effect as mentioned from c1 to c4 below.

The Technical Intern Training Program for foreign nationals should be thus abolished. Thorough review should be then conducted at places such as the Diet as to whether to accept foreign nationals by establishing status of residence as a prerequisite of acceptance of unskilled workers, its scale and other matters.

- c1. “Status of recent cases subjected to supervision and direction of Labour Standards Inspection Offices and sent to public prosecutor's office in order to ensure appropriate working conditions for technical interns in recent years” by the Ministry of Health, Labour and Welfare (the “MHLW”)

According to the above release by the MHLW, 2,748 cases were subjected to supervision and direction of Labour Standards Inspection Offices given to organizations which

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<sup>57</sup> MOJ, Basic Plan for Immigration Control 4<sup>th</sup> edition (March 2010).  
<http://www.moj.go.jp/content/000054446.pdf>

implemented the Technical Intern Training Program in FY2011. The breach of the acts and ordinances of labor standards was found in 2,252 cases out of the total cases which constituted 82%, both of which were above the level prior to the revision of the act. 23 cases out of the 2,252 cases were sent to the public prosecutor's office. The number of cases sent to prosecutors increased from the previous year.

The cases which were sent to the prosecutor's office include: the assistance by a board member of a management organization in violation of the Minimum Wages Act by an accepting company; the repeated violation of the Minimum Wages Act in spite of the guidance of a labor standard inspector; the death of a trainee in explosion due to the failure of taking necessary measures to prevent danger of inflammable materials; and the death of a trainee from being caught in the press machine due to the fact that although the company knew that the safety device of the press machine was not working and was not repaired yet, it let the trainee use the machine. Material and malicious cases of the violation of the acts and ordinances of labor standards were reported.

c2. "The number of findings of misconducts in 2011" by the Mminister of Justice (MOJ)

According to the above release by the MOJ, "misconducts" were found in 184 organizations in 2011, increased by 12.9% from 163 organizations in the previous year.

By category of findings of misconduct, there are 84 cases of nonpayment of wages and others (53.8%), 28 cases of violation of the acts and ordinances of labor standards (17.9%), and discrepancy in the internship and technical training plan (9.6%). These three categories constitute approximately 81.4% of the total.

c3. "The number of deaths of foreign interns and technical trainees in FY2011" by the public interest incorporated foundation of the Japan International Training Cooperation Organization

According to the release by the Japan International Training Cooperation Organization (the "JITCO"), there were 285 deaths of interns and trainees between 1992 and 2011, out of which 85 deaths, 30% of the total, were caused by brain and heart diseases. This trend can also be found in 2011 even after the revision of the acts when 6 cases out of the 20 deaths, 30% of the total, were caused by brain and heart diseases.

Taking into consideration the fact that most foreign nationals who visit Japan as an intern or trainee are young and healthy (according to the White Paper of the JITCO in FY 2012, approximately 80% of the trainees are in their 20s), 30% for the death by the brain and heart diseases is an abnormally high rate (according to the release by the MHLW, not more than 5% of the Japanese of the same age group die from the brain and heart disease).

c4. Research by the Human Rights Protection Committee of the JFBA

According to the research on relevant organizations such as labor unions and international associations by the Human Rights Protection Committee of the JFBA, cases below are confirmed even after the revised acts took effect.

- i. In addition to the report that there are still many cases of the nonpayment of wages and overtime money, it is reported even now that many cases include the taking away of bank passbooks and passports and the forced deposit of money.

An agreement which sets guarantee money and a penalty is frequently concluded at sending organizations.

Even after the revision of the acts, the matters even prohibited by the revised act and relevant ministerial ordinances are not complied with in reality.

- ii. In some cases, an accepting organization demands to an agricultural trainee removal of the provision concerning payment of extra wage such as overtime money from an employment agreement. If refused, the trainee is forced to return to the home country. Such “forced return” is frequently observed in other areas as well, but the revised acts do not regard “forced return” as the problem, and thus do not regulate this issue in the first place.

- iii. In many cases, even when a problem is found in an accepting organization, trainees cannot change their accepting organization in principle. The guideline of the Minister of Justice concerning the Technical Intern Training Program provides that only if an accepting organization cannot continue the training, such organization finds another organization, but this is hardly effective in reality.

As mentioned above, a technical trainee can be an easy subject of control of an accepting organization in the system where the organization is fixed, and the status of residence is lost in a case of change in accepting organization. The revision in 2009 does not provide any solution for this issue.

B4. Issues surrounding Article 5 of the Convention

a. Issues surrounding Article 5 of the Convention

a1. Conclusions and Recommendations

- i. Biometric information<sup>58</sup>

The use of biometric information should be examined in order to reduce discrimination.<sup>59</sup>

<sup>58</sup> MOJ, Outline of New Immigration Procedure: Requirement for the Provision of Personal Information. <http://www.moj.go.jp/content/000001943.pdf>

<sup>59</sup> JFBA, Opinion on Proposed Ministry Ordinance to Amend the Implementation Ordinance of the

ii. Deportation

Foreign nationals should be deported with consideration of whether a home country has an adequate structure to accept such people. Due consideration should be given to those who make their livelihood in Japan or have a Japanese spouse.<sup>60</sup>

iii. Stateless persons

Aid should be provided for stateless persons.

Requirements for naturalization of those without nationality should be relaxed compared to those for foreign nationals in general.

iv. Naturalization

Officials in charge of naturalization should ensure that identity of an applicant for naturalization is respected, and that he/she does not have to use a Japanese name or characters out of fear of discrimination. Attention should be paid to what to be filled in on an application form.

v. Legal Assistance

The government should aim to guaranteeing legal assistance for foreign nationals regardless of residential status as expeditiously as practicable.

vi. Guarantee of Interpreters in Criminal Proceedings

Foreign nationals should be ensured to have the right to criminal trials, and a guarantee of interpretation in criminal proceedings should be expanded.<sup>61</sup>

vii. Rights to Housing

The Japan Housing Finance Agency should provide financing without regard to nationality.<sup>62</sup>

viii. Rights to Social Security

The national and local governments should not discriminate between foreign nationals and Japanese nationals in emergency medical services. They should also allow non-settled foreign nationals to subscribe to the National Health Insurance provided that insurance premiums are paid by them.

a2. Summary of the Government Report

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Immigration Control and Refugee Recognition Act (October 11, 2007).

<http://www.nichibenren.or.jp/en/document/opinionpapers/20071011.html>

<sup>60</sup> JFBA, Recommendations on Special Residence Permits (November 17, 2010) <http://www.nichibenren.or.jp/en/document/opinionpapers/20101117.html>

<sup>61</sup> JFBA, *supra* note 44.

<sup>62</sup> JFBA, *supra* note 16, at Chapter 3, Section 2(3).

- i. Paragraph 98 of the Government Report states that immigration examination has been conducted with the use of biometric information since November 20, 2007, but there is no discriminatory treatment for the reason of race, ethnicity, etc. in implementing this examination.<sup>63</sup>
- ii. Paragraph 103 of the Government Report states with regard to the right to leave any country, including one's own, and to return to one's country (Article 5 (d)(ii) of the Convention) that “[t]he Act clearly stipulates that no person subject to deportation is in principle deported or transferred to a country or region where he/she is at risk of being subject to serious human rights abuse including torture.”<sup>64</sup>
- iii. Paragraph 106 of the Government Report states in connection with the right to nationality (Article 5 (d)(ii) of the Convention) that the requirements for the acquisition of nationality by birth and naturalization by submitting notification are applied equally without discrimination for the reason of race, ethnicity, etc.

In addition, Paragraph 107 mentions that Japan adopts the *jus sanguinis* principle, but makes arrangements to add the principle of place of birth, and also that requirements for naturalization of a child born in Japan who is without nationality are extremely relaxed compared to those for foreign nationals in general.<sup>65</sup>

- iv. The Government Report states in Paragraph 117 with regard to the rights to labor (Article 5 (e)(i) of the Convention) that “workers having foreign nationality (partially omitted) are also granted the right to organize and join a labor union.” In addition, it states in Paragraph 118 with regard to the right to housing (Article 5 (e)(iii) of the Convention) that “regarding equal treatment in selecting tenants for rental housing, on qualifications for tenants for public housing, etc., the Acts (partially omitted) provide for fair procedures and requirements,” and that as to private rental housing, the Government of Japan provides support for the efforts to facilitate people, including foreign nationals, to smoothly move into private rental housing.<sup>66</sup>
- v. Paragraphs 124 to 134 of the Government Report mention about education.<sup>67</sup>

Paragraph 124 mentions that children of foreign residents are guaranteed the right to receive education in the same way as Japanese nationals.

Paragraph 125 states “the municipal boards of education send school guidance for foreign residents who have children at school age.”

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<sup>63</sup> Government of Japan, *supra* note 15, at Para. 98.

<sup>64</sup> Government of Japan, *supra* note 15, at Para. 103.

<sup>65</sup> Government of Japan, *supra* note 15, at Para. 106, 107.

<sup>66</sup> Government of Japan, *supra* note 15, at Para. 119.

<sup>67</sup> Government of Japan, *supra* note 15, at Para. 124-134.

Paragraph 126 states “regarding upper secondary schools, (partially omitted) all students (partially omitted) are qualified to be admitted to upper secondary schools, without any kind of discrimination.”

Paragraph 127 states that in receiving foreign children at public schools, the government is working on a number of measures to establish systems to provide appropriate Japanese language education and orientation regarding Japanese schools.

Paragraph 128 states that in order for children to have an international point of view, several local governments are implementing activities to learn about native languages, native cultures, etc. of foreign students.

Paragraph 129 states that the Ministry of Education, Culture, Sports, Science and Technology “is making efforts to promote education for international understanding.”

Paragraph 130 states “if a foreign student, etc. (partially omitted) is affected by a disaster, he/she will be eligible for disaster mutual benefit in the same manner as Japanese citizens.”

Paragraph 132 states that the independence of schools for foreign nationals such as international schools is respected.

Paragraph 133 mentions about a system to eliminate tuition fees for public high schools and supply support funds to students of national and private high schools, etc. for the stage of upper secondary education which commenced in April 2010.<sup>68</sup>

### a3. Problems found in the Government Report

#### a. Biometric information

The Government Report mentions that there is no discriminatory treatment for the reason of race, ethnicity, etc. in implementing the immigration examination with the use of biometric information, and it seems there is no problem with it. However, the use of biometric information itself presents a problem from a perspective of the right to privacy in the first place. Additionally, the government should recognize the problem that the use of biometric information in the immigration procedure discriminates between foreign nationals and Japanese nationals. The use of biometric information should be examined in order to reduce discrimination against foreign nationals.

#### b. Deportation (Article 5 (d)(ii) of the Convention)

The Government Report mentions that the act clearly stipulates that no person subject to

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<sup>68</sup> MEXT, White Paper on Education, Culture, Sports, Science and Technology 2009, Feature 2 Making Public High Schools Tuition-Free and High School Enrollment Subsidies.  
[http://www.mext.go.jp/b\\_menu/hakusho/html/hpab200901/detail/1305888.htm](http://www.mext.go.jp/b_menu/hakusho/html/hpab200901/detail/1305888.htm)

deportation is in principle deported or transferred to a country or region where he/she is at risk of being subject to serious human rights abuse including torture. There seems to be no problem with deportation, but it fails to mention problems which actually occur in the process of deportation.

Actually, 75 undocumented immigrants from the Philippines who had avoided deportation were forcibly deported altogether by airplane chartered by the Immigration Bureau at the expense of the government on July 6, 2013. There were a number of problems during the deportation, including insufficient acceptance in the Philippines, the inability to contact an attorney, a wife and a guarantor, the separation from families in Japan, no provision of referrals to organizations and hospitals in the Philippines, getting a bruise due to the control by the immigration officials, and the handcuffing of those deported for eight to nine hours.

In addition, 46 people from Thailand were forcibly deported back home altogether by charter on December 8. Some of the 46 deportees had Japanese spouses. The deportation separated such people from families in Japan. Some people resided in Japan for over 20 years, but since they do not have their livelihood in Thailand, they may be turned adrift, and fall into poverty. Some of those deported were forced to return home only within a month after the deportation order was issued. Lawsuits for revocation can be filed for six months after a written deportation order is issued, but such people were forced to be deported before a lapse of the period of filing a lawsuit for revocation of the order. Since a deportation order may be withdrawn by a lawsuit for revocation, deportation should not be conducted before a lapse of the period for filing a lawsuit.

The Government Report does not mention anything about this issue.

c. Stateless persons (Article 5 (d)(iii) of the Convention)

The Government Report states that requirements for naturalization of a child who is without nationality are extremely relaxed compared to those for foreign nationals in general. However, people without nationality actually exist (in reference to Annex 3 of the change in the number of registered foreign nationals by nationality (country of origin) in the Seventh to Ninth Government Report<sup>69</sup>), the Government Report fails to address the issues of stateless persons who cannot exercise a number of rights and face difficulties.

The Government Report mentions about the relaxation of requirements only for naturalization of a child born in Japan who is without nationality, but the government should relax the requirements for naturalization of those without nationality in general as well as stateless

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<sup>69</sup> Government of Japan, *supra* note 15, at Annex 3: Change in the number of registered foreign nationals by nationality (country of origin).

children. The Committee also expressed its concern in the review of the previous Government Report about the increase of the number of stateless persons in Recommendation 16.<sup>70</sup>

d. Naturalization (Article 5(d)(iii) of the Convention)

Those who apply for naturalization tend to change their names out of fear of discrimination. In order to respect a country of origin and a background of an applicant for naturalization, a form of an application form and an approach of officials in charge of naturalization should refrain from directing those seeking naturalization to use a Japanese name or characters for a name after naturalization.

The Committee also states in Recommendation 16 that “the State party develop an approach where the identity of non-Japanese nationals seeking naturalization is respected and that officials, application forms and publications dealing with the naturalization process refrain from using language that persuades applicants to adopt Japanese names and characters for fear of disadvantages or discrimination,”<sup>71</sup> which should be respected.

e. Legal Assistance

Only foreign nationals with a valid status of residence are eligible for the legal assistance service in civil affairs of the Japan Legal Support Center operated at the expense of the Japanese government.

From a perspective of human rights relief, assistance such as a fee for an attorney at law is only available for foreign nationals without a residential status under certain requirements as part of the JFBA’s legal support service which commenced in April 2007 at the JFBA’s expense.

The government should therefore aim to guaranteeing legal assistance for foreigners at its expense regardless of residential status as expeditiously as practicable.

f. Guarantee of Interpreters in Criminal Proceedings

Due to language barriers, proper defense for foreign nationals cannot be thus conducted either at an investigation stage or at a trial without presence of a capable interpreter. Therefore, in order to secure services of capable interpreters, the current fee for an interpreter at an investigation stage (70% of the fee for an interpreter at a trial) should be returned to the original level before they were reduced in October 1999.

g. Rights to Housing (Article 5(e)(iii) of the Convention)

The Japan Housing Finance Agency should provide financing for foreigners to the full extent possible.

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<sup>70</sup> Committee, *supra* note 1, at Para.16.

<sup>71</sup> Committee, *supra* note 1, at Para.16.

See for details concerning private renting B2. Prohibition of Discrimination by Private Persons in Section B General Issues of Permanent Foreign Residents of Chapter 3 Other Permanent Foreign Residents.

h. Rights to Social Security(Article 5(e)(iv) of the Convention)

i. Emergency Medical Services

Although social security may be a matter of policy, no discrimination should be allowed in emergency medical services on the basis of foreign nationality, since consideration from a humanitarian standpoint is vital. In some cases, medical services are denied because of foreign nationality, but one of the reasons for this denial is that the system of the national and local governments, including coverage of unpaid medical bills, has not been sufficiently established, so only medical providers are asked to bear such costs. In addition, the national and local governments have been slow to address the need for medical interpreting services and health and hygiene policies for foreigners.

ii. National Health Insurance

Pursuant to the notice issued by the Ministry of Health and Welfare in 1992 which limited the eligibility to foreign nationals with a valid residential status, all foreigners without a valid residential status (temporary visitors and illegal overstayers) were excluded from the eligibility for the National Health Insurance. By the Supreme Court's decision dated January 15, 2004, the administrative interpretation of the notice was partly denied, and foreign nationals without a valid status who was expected to stay for a certain period of time was eligible for the national insurance.

In response to this decision, the MHLW revised the ministerial ordinance to exclude all foreign nationals and others who have no residential status or stay for less than one year from the eligibility for the health insurance in June 2004. The government should also allow non-settled foreign nationals to subscribe to the National Health Insurance provided that insurance premiums are paid by them.

i. Education

Education can be referred to b. Education Issues of B5. Issues Affecting Brazilians, Peruvians and Other Persons of Japanese Descent in Section B. General Issues of Permanent Foreign Residents of Chapter 3 Other Permanent Foreign Residents, and also a. System of the Residence Card and the Residence Certificate for Foreign Nationals of B1. Prohibition of Discrimination by the National and Local Authorities and Agencies in Section B. General Issues of Permanent Foreign Residents of Chapter 3 Other Permanent Foreign Residents.

## b. Emergency Response

### b1. Conclusions and Recommendations

The national and local governments should not discriminate between foreign nationals and Japanese nationals in safety in the event of a disaster and reconstruction of lives of people after a disaster.

### b2. Summary of the Government Report

The Government Report does not mention about safety at the time of a disaster and reconstruction of lives of people after a disaster.

### b3. Problems found in the Government Report

- i. The Government Report was submitted after the Great East Japan Earthquake which occurred in March 2011. The government should have included statements concerning safety of foreign nationals in the event of a disaster and reconstruction of their lives after a disaster in light of concerns arisen through the experience of the March 11 disaster, but does not mention anything about this issue.
- ii. It had been pointed out before the Great East Japan Earthquake that attention should be paid to foreign nationals who have language problems in order to ensure their safety in the event of a disaster (in reference to the previous JFBA's counter report). Through the experience of the Great East Japan Earthquake, issues below are highlighted with regard to safety measures for foreign nationals at the time of a disaster.
- iii. Transmission of emergency warning and evacuation information

It is necessary to convey to all people an emergency warning and information on evacuation in the event of a disaster, which informs them what has happened and what to do.

However, since the tsunami warning was issued only in Japanese when the Great East Japan Earthquake occurred, some foreign nationals who resided in disaster-hit areas said that they had no idea what would happen then.

It is assumed that unless they live in Japan for a very long period of time, foreign nationals do not have sufficient knowledge and awareness to prepare for a disaster unlike Japanese people who have undergone disaster drills and others since their childhood.

In addition to information of a disaster itself, an action to be taken immediately after a disaster significantly affects a matter of life or death. Thus, it is necessary to implement measures to convey accurate information to foreign nationals by multilingual emergency warning and evacuation information. The government should establish a mechanism to transmit information

immediately after a disaster, and also provide assistance for measures taken by local governments and private organizations.

In urban areas, since conveyance of emergency warning and information on evacuation at public transportation is important, the government should affirmatively support in measures taken by private transportation companies.

iv. Transmission of information of aid in the process of reconstruction

In the case of the Great East Japan Earthquake, various measures for reconstruction of people's lives were implemented at levels of the national government, local governments and private organizations. Since some of these measures have a time limit for application, obtaining appropriate information at the right time is necessary. However, mainly due to the language problem, foreigners tend to be left out from such information.

In the event of the Great East Japan Earthquake, international associations of local governments such as the Miyagi International Association engaged in activities, including the provision of multilingual information on their websites and the direct provision of information at the time of an on-site consultation in the disaster-affected regions. Several private organizations also provide multilingual information on disasters.

The government should also affirmatively provide support for measures taken by local governments and private entities with a view to establishing a mechanism to convey information on reconstruction measures after a disaster.

B5. Issues Affecting Brazilians and Peruvians of Japanese Descent

a. Issues of Employment and Poverty (Article 5(e)(i)(iv) of the Convention)

a1. Conclusions and Recommendations

The government should make efforts to improve unstable forms of employment in order for South American workers of Japanese descent work in Japan with a sense of security. In addition, South Americans of Japanese descent who fall into poverty should be provided necessary assistance such as public assistance without difficulties. Foreign nationals who receive public assistance and other financial aids should not be discriminatorily treated on the ground of their receipt of such financial aids.<sup>72</sup>

a2. Position of the JFBA

<sup>72</sup> JFBA, *supra* note 22, at Para. 184.

Many South Americans of Japanese descent are engaged in manufacturing. Most of their employment takes the form of unstable non-regular employment such as employment from a temporary-employment agency. They are susceptible to Japanese economic conditions, and many of them actually lost their jobs at the time of the Lehman Shock. A term of labor contracts for many South Americans of Japanese descent is less than six months, and an extremely short term of contracts such as two months is also on the increase, which further exacerbates the instability of their employment.

In reality, some workers of South Americans of Japanese descent face limitations on their rights of workers, including non-allowance of paid leave, discharge due to pregnancy, and non-eligibility for social insurance. In some cases, wages of South Americans of Japanese descent are unreasonably exploited in the name of a rent for company housing, as a hefty commission for a broker of a sending country or as payment of an airfare in installments. Many workers of South Americans of Japanese descent cannot refuse such unjust infringement of rights due to the instability of their employment. An administrative agency does not conduct adequate guidance and supervision of employers in connection with the violation of the workers' rights, and thus fails to implement appropriate relief measures against the infringement of the rights.

The government should strive to improve unstable forms of employment for South Americans of Japanese descent so that they can work in Japan with a sense of security. It should also provide necessary assistance for the redress of their rights.

In some cases, a local government took inappropriate responses to the application of public assistance by South Americans of Japanese descent who suffered from poverty due to loss of their jobs, such as the illegitimate rejection of the application and demanding them to return home. In addition, the government implemented the financial aid program to offer workers money to pay for travel expenses to return to their home countries as an alternative to public assistance, but also imposed limitations of re-entry on those who utilized the program without provisions set out in the acts.

Furthermore, in some cases, Japanese-descended South Americans who received public assistance were treated in a disadvantageous way in the renewal of their period of stay. The welfare office also attempted to dissuade some South Americans of Japanese descent from receiving public assistance, giving them a warning of report relating their receipt of welfare to the immigration office of the Ministry of Justice.

Foreign nationals who are on welfare or utilize the financial aid program to workers returning to their home countries are forced into loss of employment and poverty due to changes in

economic conditions without regard to their own responsibilities, and thus resort to such programs. The national and local governments should not be allowed to discriminatorily treat such people on the ground of the use of the systems.

b. Education Issues (Article 5(e)(v) of the Convention)

b1. Conclusions and Recommendations

The national and local governments should ensure South American children of Japanese descent equally enjoy their right to education. They should: relax requirements of foreign schools to be recognized as a miscellaneous school; implement financial aid programs for foreign schools and students; and further expand opportunities to receive education to learn the languages of Portuguese and Spanish at public school.

b2. Summary of the Government Report

The Government Report states in Paragraphs 124 to 134: the acceptance of children of foreign nationality at public school to receive compulsory education without payment of tuitions and the guarantee of their right to receive education; the sending of school guidance for foreign residents who have children at school age; the establishment of the system for appropriate teaching of the Japanese language; the provision of certain assistance from the national government to some foreign schools recognized as a miscellaneous school; and the learning opportunities of native languages at the Period for Integrated Studies and other periods and also for extracurricular activities which are already implemented in practice by several local governments.<sup>73</sup>

b3. Position of the JFBA

The national and local governments merely provide the opportunity to start school for children of foreign nationality, and do not further encourage parents of foreign nationality who do not send their children to school. However, from a perspective to practically ensure the right of children to education, the governments should proactively encourage parents to send their children to school, not just providing the opportunity to attend school.

Due to the strict requirements to be recognized as a miscellaneous school such as the standard of facilities and equipment, the recognition is difficult. Even recognized schools do not receive sufficient public assistance, so parents who send children to foreign school bear a heavy

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<sup>73</sup> Government of Japan, *supra* note 15, at Para.124-134.

burden. Furthermore, due to the economic downturn in recent years, an increased number of children gave up attending school, which caused the abolishment of many schools. The government should relax the requirements to recognize a foreign school as a miscellaneous school, and also implement financial aid program for foreign schools and students.

Children at school in Japan do not spend their school lives in the languages of South America such as Portuguese and Spanish. Children of South Americans of Japanese descent who attend Japanese school thus mainly use Japanese, which cause the difficulty in communication at home where their parents have no or few opportunities to learn Japanese. The most effective way for children who visit Japan at their school age is to further acquire their native language, and make their native language as their foundation to learn Japanese. This is also important to maintain their identity.

The JFBA notes with appraisal the commencement of the opportunities to learn native languages of foreign students at the Period for Integrated Studies and also for extracurricular activities as indicated in the Government Report. Yet, a limited number of local bodies offer the classes of native languages. There are many restrictions in the attendance of the classes even in municipalities which hold the classes of native languages, such as the location of a classroom which is far from home or school to study. The government need to further expand such opportunities.

## Chapter 4 Issues of Refugees

### A. Treatment of Applicants for Refugee Status

#### A1. Conclusions and Recommendations

The government should provide a stable residential status to refugee status applicants (including those currently in litigation) with minimal exceptions. In addition, all refugee status applicants should either be given financial aids or permission to work.<sup>74</sup>

The government needs to immediately process appeals pertaining to denial of the recognition of refugee status, and also to implement reforms of the refugee examination counselors system to make it independent of the government.<sup>75</sup>

#### A2. Summary of the Government Report

The government states that it makes efforts to improve the treatment of refugee applicants by mentioning about: the system of provisional stay to permit temporary stay of those in the process of an application for refugee status; the prompt processing by setting the period of standard processing (examination) of a refugee application at six months; and the introduction and expansion of the refugee examination counselors system for the procedure of appeals.<sup>76</sup>

Additionally, according to the government, 598 people have been recognized as refugees so far, and approximately 2,000 people have been permitted to stay in Japan for protection. It also states that it attempts to accept Indochinese refugees and refugees from Myanmar for resettlement.<sup>77</sup>

The Government Report further mentions that applicants for the recognition of refugee status are also provided with funds to meet their living, housing (including provision of temporary living), and medical expenses as needed, while they are waiting for the results of their application.<sup>78</sup>

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<sup>74</sup> JFBA, *supra* note 39 (July 8, 2009).

JFBA, Opinion Aiming at the Improvement of Support for the Lives of Refugee Applicants (June 18, 2009). <http://www.nichibenren.or.jp/en/document/opinionpapers/20090618.html>

<sup>75</sup> JFBA, Opinion Paper on New Refugee Status Recognition System (October 17, 2006). <http://www.nichibenren.or.jp/en/document/opinionpapers/20061017.html>

<sup>76</sup> Government of Japan, *supra* note 15, at Para. 50.

Government of Japan, Third, Fourth, Fifth and Sixth Combined Periodic Report on the Implementation of the International Convention on Elimination of Racial Discrimination (August 2008), Para. 28. [http://www.mofa.go.jp/policy/human/race\\_rep3.pdf](http://www.mofa.go.jp/policy/human/race_rep3.pdf)

<sup>77</sup> Government of Japan, *supra* note 15, at Para. 54, 55, 60.

<sup>78</sup> Government of Japan, *supra* note 15, at Para. 64.

### A3. Problems found in the Government Report

#### a. Permission for Provisional Stay

With the permission for provisional stay, a foreign national who applies for refugee recognition can lawfully stay in Japan without being detained while his/her deportation procedure is suspended. However, an extensive range of exceptions exists in the system of permission for provisional stay. For example, the permission is not granted for cases, including (1) submission of an application for refugee recognition made after a lapse of six months following disembarkation in Japan, (2) not directly entering Japan from a territory where he/she may suffer the persecutions, and (3) recognition of reasonable grounds to suspect that the applicant was likely to flee.<sup>79</sup> The ratio of permission for provisional stay remains around 10% in recent years. The permission was granted to 74 people, but 627 people were denied the permission in 2012.

Furthermore, in a case in which an application for the recognition of refugee status is denied and an appeal is dismissed, an administrative litigation is instituted for recognition of refugee status. Permission for provisional stay, however, is terminated once a refugee applicant brings the administrative lawsuit to the court.

The system of permission for provisional stay thus does not function adequately.

#### b. System of Refugee Examination Counselors<sup>80</sup>

The UN Human Rights Committee pointed out in its concluding observations of the fifth Government Report that a refugee examination counselor is not appointed independently of the government, and does not have the authority to issue a legally binding decision.

Actually, besides the appointment of a refugee examination counselor by the Minister of Justice, the selection process is not made clear, and in many cases, persons with academic standing who do not have any experience in decision of recognizing refugee status are appointed. In addition, officials of the Immigration Bureau are in charge of clerical work such as provision of reference materials even in the refugee examination counselors system, which shows that an opinion of the Immigration Bureau may affect a counselor.

As the UN Human Rights Committee noted, the system of refugee examination counselors is not independence of the government.

#### c. Current Status of Refugee Recognition

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<sup>79</sup> Immigration Control and Refugee Recognition Act, Article 61-2-4, paragraph (1).

<sup>80</sup> United Nations Human Rights Committee, *supra* note 34, at Para.25

Japan's refugee recognition ratio is low. 2,545 people applied for the recognition of refugee status in 2012, but only 18 people were recognized as refugees in the same year, and merely 130 people in total, including 112 people granted special permission to stay, were allowed to stay in Japan for protection.

Nationalities of refugee applicants are as diverse as 57 countries in 2011 and 50 countries in 2012. Yet, those recognized as refugees were mainly from Myanmar. The recognized refugees from Myanmar constituted 85.7% in 2011 and 83.3% in 2012.

d. Circumstances of applicants for refugee recognition

In the current situation, most applicants for refugee recognition without residential status have experienced the detention at facilities of the immigration authorities. There are problems with treatment of refugee applicants at facilities of the immigration authorities. For example, there are only two facilities which have a full-time medical doctor among the seven facilities with a capacity of 200 people and over. A person, even a spouse, a parent, and a child, can visit refugee applicants only through a glass partition. Such visitation is only allowed on weekdays, and is limited to within 30 minutes per day. Refugee applicants who were dissatisfied with such treatment have been on a hunger strike several times.

Such detention can be terminated by provisional release, but there are no clear rules such as granting provisional release in a case of a detention for a certain period of time, and the immigration authorities have discretion as to decisions of provisional release. Some foreign nationals who apply for the recognition of refugee status have been detained for over a year at a detention facility of the immigration office.

Then, the Committee against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (the "Committee against Torture") issued the recommendation in its concluding observations to the second Government Report that detention at facilities should be restricted. The Committee against Torture recommended a wider use of provisional release by noting "[f]urther utilize alternatives to detention as provided for in the Immigration Control and Refugee Recognition Act." In addition, the Committee against Torture recommended the detention should be used for as short a period as possible when necessary, and that a maximum period of detention pending deportation should be introduced.<sup>81</sup>

Moreover, even if granted permission for provisional stay or provisional release<sup>82</sup>, refugee applicants are not allowed to engage in work. They are not eligible for public assistance, either.

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<sup>81</sup> Committee against Torture, Concluding observation on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6-31 May 2013) (June 28, 2013) Para. 9. [http://www.nichibenr.en.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/torture\\_report\\_en2013.pdf](http://www.nichibenr.en.or.jp/library/ja/kokusai/humanrights_library/treaty/data/torture_report_en2013.pdf)

<sup>82</sup> Immigration Control and Refugee Recognition Act, Article 56-2, paragraph 3, item 3.

Thus, most refugee applicants who are not detained rely on financial aids which include 1,500 yen per day for living and 40,000 yen for housing per month for a single person provided by the Refugee Assistance Headquarters (the “RHQ”) in commission of the Ministry of Foreign Affairs.<sup>83</sup>

Such assistance, however, is far below the amount of public assistance which guarantees a minimum standard of living. In addition, since the government restricted the provision of assistance in 2012 for the reason of the fraudulent receipt of the financial assistance by a refugee applicant, more than 50 applicants for refugee status became homeless in December 2012. Also, refugee applicants without a legitimate status are not eligible for national health insurances, and thus have the difficulty to receive necessary medical care.

The Committee on the Elimination of Racial Discrimination recommended in its concluding observations upon the examination of the previous Government Report that the government should ensure the rights of all asylum seekers, in particular, the right to appropriate living standard and medical care.<sup>84</sup> Yet, the current condition of the assistance is far from ensuring the right to appropriate living standard and medical care.

The Japanese government should thus guarantee financial aids or permission to work for applicants for the recognition of refugee status, including those who are not granted permission for provisional stay. In providing assistance, it should also take sufficient budgetary steps so that refugee applicants can maintain health, not falling into poverty.

## B. Economic Support for Refugees

### A1. Conclusions and Recommendations

The government should grant a status of a long-term resident to those who are permitted to stay in Japan for the purpose of protection from a human rights and humanitarian standpoint for reasons other than recognition of refugees in the same way as recognized refugees.

It also ought to conduct research on the actual status of social and economic disparity between all refugees and Japanese nationals, and consider the need to take proactive measures to ensure the rights all refugees hold, in particular the right to a reasonable standard of living.<sup>85</sup> In addition, it is imperative for the government to explore a fundamental overhaul of assistance measures for resettled refugees so that they can adapt to Japanese society.

<sup>83</sup> Government of Japan, *supra* note 15, at Para.54.

<sup>84</sup> Committee, *supra* note 1, at Para. 23.

<sup>85</sup> JFBA, *supra* note 74 (June 18, 2009).

## A2. Summary of the Government Report

The Japanese government mentions as cited from the previous Government Report that it provides various protection and humanitarian aids in terms of matters such as employment, education, social security and housing as treatment following the recognition of refugee status pursuant to the Convention relating to the Status of Refugees.<sup>86</sup>

Also, the government reports the backgrounds for the acceptance of Indochinese refugees and resettled refugees, the measures taken for those people, their living conditions, and the assistance for their lives and employment.<sup>87</sup>

## A3. Problems found in the Government Report

### a. Residential status for a refugee

Those who are recognized as a refugee are granted a status of a “long-term resident” equivalent to a permanent resident. Also, the government ought to assist in settlement of not only refugees, but also those who are granted permission to stay in Japan from a perspective of human rights and humanitarian protection, since there is no difference in necessity of protection.

However, the status of residence of “designated activities,” in which invitation of family members and others is not allowed, is granted to those who are permitted to stay for the recognition of the need of protection from a human rights and humanitarian standpoint for reasons other than the recognition as a refugee. Those under the status of designated activities therefore face difficulty uniting with other family members. On the one hand, those recognized as refugees and their families are eligible for assistance by the RHQ even if it is insufficient. On the other hand, those under the status of designated activities are excluded from the assistance in settlement. No rational reason exists for such discriminatory treatment.

### b. Treatment of refugees

The government notes that according to the 2000 Survey of the Status of Local Integration Situation of Indochinese Refugees (conducted by the RHQ of the Foundation for the Welfare and Education of the Asian People), 35% of the refugees had difficulty with the Japanese language, and that challenges are arising from the aging of the first-generation refugees. In addition, it recognizes that there are some cases of those facing various challenges in their daily

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<sup>86</sup> Government of Japan, *supra* note 15, at Para. 49.

Government of Japan, *supra* note 76 (August 2008), at Para. 28.

<sup>87</sup> Government of Japan, *supra* note 15, at Para.56 -64.

lives due to differences in language and customs.<sup>88</sup>

From April 2006, the government decided to launch new measures of local integration support, including Japanese language training, livelihood guidance, and employment consultation, for those recognized as refugees and their families at the “RHQ Support Center” which took over the support measures it had been previously taken.

However, this local integration support is provided for as short as six months of the full-time course and only for a year of the night course. The language levels of the refugees still remain insufficient even after the completion of the course.

Because of their deficiency in the language, it is hard for refugees to be employed. Due to this situation, there seems to be a considerable number of refugees without jobs who are on welfare, but the detailed information is not available. The government has not conducted research on the living conditions of refugees in recent years, either.

The government should make public surveys of the living conditions of all refugees and in particular the ratio of households who receive public assistance, and proactively take steps with a view to improvement of their living standards and securing of jobs.

c. Current status of resettled refugees

With the aim of the pilot project at receiving 30 people annually of resettled refugees, there were 27 people (five families) in 2010, 18 people (four families) in 2011, and none in 2012. Eight people (two families) declined the offer before their visit to Japan in 2011, and 16 people (three families) who had been expected to be received all declined the visit to Japan in 2012.

45 people who arrived in Japan in 2010 and 2011 received the settlement support program which ran for 180 days which included the Japanese language course, the guidance for Japanese life, and the vocational counseling service by the RHQ in commission of the Japanese government. After completing this program, they were expected to undergo a training to adapt to a workplace for six months in various places in Japan. Such job training is conducted at the expense of the national government, but does not differ from usual labor. A corporation which offers the training is supposed to become an employer after the training is completed, but two families out of the refugees who arrived in 2010 had trouble; they did not reach an employment agreement, and rejected aids from the RHQ. Also, during the course of the training and after the conclusion of an employment agreement, some employers consider resettled refugees to be cheap labor, and make them work long hours.

The failure of the government’s resettlement support for resettled refugees is demonstrated in

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<sup>88</sup> Government of Japan, *supra* note 15, at Para.61.

the refusal by refugees who were expected to visit Japan and the problems encountered by refugees in Japan. The causes for this include a lack of due consideration of work experience and needs of resettled refugees by the Japanese government at the settlement support program and the job training, and discrepancy in expectation between an employer and resettled refugees when conducting the resettlement support program and the training to adapt to work. The Japanese government should thus overhaul the resettlement support measures for resettled refugees fundamentally such as securing of an appropriate employer in order for resettled refugees to adapt to Japanese society.

## Chapter 5 Burakumin Issues

### A1. Conclusions and Recommendations<sup>89</sup>

- a. The Japanese Government should publicly recognize that discrimination against the Burakumin is included in the definition of “descent” in Article 1 Paragraph 1 of the Convention.<sup>90</sup>
- b. The Government should establish an appropriate and effective legal regulation system, as well as promote human rights education and awareness raising with a view to eliminate vicious discrimination against the Burakumin, such as discriminatory investigations by real estate agents into the residential areas.
- c. Since unlawful acquisitions of copies of family registries are continuing, the Government should take stricter legal measures to restrict use of these registries for purpose of discrimination against the Burakumin in employment, marriage and use of land.
- d. The Government should introduce regulations including legislation of an anti-discrimination law against incitement of Buraku discrimination on the internet as well as such speech and acts. It should also establish a system of providing remedies to the victims,
- e. The Japanese Government should take legal measures to realize the contents of the Recommendations issued by the Committee in clauses (a) to (f) of paragraph 19.<sup>91</sup>

### A2. Concerns and Recommendations of the Committee on the Elimination of Racial Discrimination

The Committee maintained in paragraph 8 “the position expressed in its general recommendation No. 29 (2002) “that the term ‘descent’ has a meaning and application which complement the other prohibited grounds of discrimination” and “that discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification ... and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.” Moreover, the Committee reaffirms that the term "descent" in Article 1, Paragraph 1, of the Convention does not solely refer to "race" and that discrimination on the ground of descent is fully covered by article 1 of the Convention.” The Committee, therefore, urged “the State party to adopt a comprehensive definition of racial discrimination in conformity with the Convention.”

In paragraph 13, while it took note of “the explanations provided by the State party, the Committee is concerned over the reservations of the State party to articles 4 (a) and (b) of the Convention. The Committee also notes with concern the continued incidence of explicit and crude statements and actions against groups, including children attending Korean schools, and the harmful and racist

<sup>89</sup> JFBA, *supra* note 16, at Chapter 5.

<sup>90</sup> JFBA, *supra* note 22, at Para. 31.

<sup>91</sup> Committee, *supra* note 1, at Para.19.

expressions and attacks via the Internet directed, in particular, against Burakumin (art. 4 (a) and b)).

The Committee continued to make the following recommendations:

“(a) Remedy the absence of legislation to give full effect to the provisions against discrimination under article 4;

(b) Ensure that relevant constitutional, civil and criminal law provisions are effectively implemented, including through additional steps to address hateful and racist manifestations by, inter alia, stepping up efforts to investigate them and punish those involved;

(c) Increase sensitization and awareness-raising campaigns against the dissemination of racist ideas and to prevent racially motivated offences including hate speech and racist propaganda on the Internet.”

Further, in paragraph 18, it stated that “[w]hile acknowledging the position of the State party on the family registration system and noting the legislative changes made to protect personal information (2008), the Committee reiterates its concern about the difficulties in the system and that invasion of privacy, mainly of Burakumin, continues (arts. 2 and 5).

The Committee recommended “the enacting of a stricter law, with punitive measures, prohibiting use of the family registration system for discriminatory purposes, particularly in the fields of employment, marriage and housing, to effectively protect the privacy of individuals.”

Also, in paragraph 19, the Committee expressed its concern and made the following recommendations.

“Noting with interest the recognition by the State party of discrimination against Burakumin as a social problem and the achievements of the Dowa Special Measures Law, the Committee is concerned that the following conditions agreed between the State party and Buraku organizations upon termination of the Dowa Special Measures in 2002 have not been fulfilled to date: full implementation of the Convention; the enactment of a law on human rights protection; and a law on the promotion of human rights education. The Committee regrets that there is no public authority specifically mandated to deal with Burakumin discrimination cases and notes the absence of a uniform concept used by the State party when dealing with or referring to Burakumin and policies. Further, the Committee notes with concern that although socio-economic gaps between Burakumin and others have narrowed for some Burakumin, e.g. in the physical living environment and education, discrimination remains in areas of public life such as employment, marriage, housing and land values. It further regrets the lack of indicators to measure progress in the situation of Burakumin (arts. 2 and 5).

The Committee recommends that the State party:

(a) Assign a specific government agency or committee mandated to deal with Buraku issues;

(b) Fulfil the commitments made upon the termination of the Special Measures Law;

(c) Engage in consultation with relevant persons to adopt a clear and uniform definition of Burakumin ;

(d) Supplement programmes for the improvement of living conditions of Buraku min with human

rights education and awareness-raising efforts engaging the general public, particularly in areas housing Buraku communities;

(e) Provide statistical indicators reflecting the situation and progress of the above-mentioned measures;

(f) Take into account general recommendation No. 32 (2009) on special measures, including the recommendation that special measures are to be terminated when equality between the beneficiary groups and others has been sustainably achieved.”

#### A3. The Summary of the Government Report

There is no reference to the Burakumin issue in the Seventh to Ninth Combined Periodic Report by the Government of Japan.

#### A4. Problems in the Government Report

a. The Japanese Government still maintains its position that discrimination against the Burakumin is not included in the definition of “descent” under Article 1 Paragraph 1 of the Convention.

The Committee stated in its Concluding Observations to the Initial and 2<sup>nd</sup> Periodic Report (March 8 and 9, 2001), that it, “unlike the State party, considers that the term “descent” has its own meaning and is not to be confused with race or ethnic or national origin” “(w)ith regard to the interpretation of the definition of racial discrimination contained in article 1 of the Convention” and it therefore recommended “that the State party ensure that all groups including the Burakumin community are protected against discrimination and afforded full enjoyment of the civil, political, economic, social and cultural rights contained in article 5 of the Convention.” In the Concluding Observations to the combined 3<sup>rd</sup> to 6<sup>th</sup> Report, the Committee again raised its concern and made detailed recommendations regarding discrimination against the Burakumin<sup>92</sup>.

The Japanese Government has stated in the two examinations in the past that the term “descent” defined in the Convention as one of the grounds of racial discrimination, indicated “a concept focusing on the race or skin color of a past generation, or the national or ethnic origins of a past generation, and it is not interpreted as indicating a concept focusing on social origin” and therefore the Government did not consider that “discrimination against “persons belonging to or descending from the Buraku community” was discrimination based on “descent” provided in the Convention.” It also noted that the people living in the Dowa areas were not of a different race or ethnicity, but were Japanese without question, and that Buraku discrimination, which was discrimination based on social class was not covered by the Convention. The current Government Report maintains these past positions, and there is

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<sup>92</sup> Committee, *supra* note 1, at Para. 8, 13, 18, 19.

no reference to the Buraku issue.

However, the Committee presented its collective view on “descent” prescribed in Article 1 Paragraph 1 of the Convention and adopted General Recommendation XXIX (2002) reaffirming that “discrimination based on “descent” includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.” Therefore, the Committee makes it clear that the discrimination against the Burakumin is included in the discrimination based on “descent.”

Therefore, the Government should publicly recognize that discrimination against the Burakumin is included in the definition of “descent” in Article 1 Paragraph 1 of the Convention.

b. On the discriminatory investigations relating to real estate

Discriminatory investigations relating to real estate are inquiries or investigations into and provision of information on whether a particular property is related to Buraku in real estate transactions, purchase or rentals. In Osaka Prefecture, there have been Buraku discrimination incidents in which numerous companies conducting market research surveyed the conditions of the location around areas for which there were plans for construction of residential buildings, prepared reports on the location of Buraku areas in a report and submitted them to their clients. These discriminatory investigations by private companies are conducted around the country, fostering separation of the discriminated Buraku and other areas, and the status of segregation in the field of land use and residence.

Therefore, in order to eliminate the vicious discrimination against Buraku including discriminatory investigation relating to real estate, human rights education and awareness raising should be promoted, as well as an appropriate and effective system of legal regulation be established.

c. Unlawful acquisition of the family registry

In November 2011, it was revealed that judicial scriveners and others had carried out approximately 10,000 false acquisitions of the family registry (the so-called Prime case). A particular feature of this case was that the judicial scriveners had abused a procedure allowing people of 8 professions including judicial and administrative scriveners to apply for copies of the family registry without the approval of the person in question, using the “application for copies of family and residential registry in the course of duties.” They falsified over 20,000 “applications,” let private investigators apply in the judicial scriveners’ names and carried out 10,000 unlawful acquisitions of the family registry around the country. Even before the incident, there had been cases of unlawful acquisitions of the family registry in other parts of the country. These were misused for the purpose of discrimination against Burakumin in employment, marriage and places of residence.

In view of the continuing cases of unlawful acquisitions of the family registry, the legal measures restricting use of the registry for purpose of discrimination against Burakumin in employment, marriage,

places of residence and land use must be strengthened.

d. Incitement to Buraku discrimination on the Internet

There have been frequent cases of promotion of and incitement to Buraku discrimination using the Internet in the past. But a particularly vile incident occurred on January 22, 2011. A man using a hand-held loudspeaker shouted an angry tirade in front of the Suiheisha Museum in Gose City, Nara Prefecture. The Museum conducts research and surveys on Buraku issues as well as the Suiheisha (Levelers) movement. It also collects and conserves related materials and artifacts for exhibit to the general public. The video of the man shouting, “The *eta* (derogatory term for Burakumin) and *hinin* (also, a derogatory term for Burakumin) have been getting together to hold denunciation meetings, haven’t they? Come out, *eta*! Some of you must be listening. I heard this was the holy place for the *eta*, and that there are only *eta* here. Come out, *eta*! Really, stop fooling around in Japan!” “Why don’t you come out, *eta*! *Eta*, *hinin*, *hinin*. The letters for *hinin* mean ‘non-human’. Are you really human?” was published on the website, and was made available around the country. The case involving this incident was litigated in the Nara District Court, and the judgment on May 7, 2012 held that the speech amounted to defamation and awarded 1.5 million yen in compensation for damages.

Recently, such incitements to hatred and discrimination have been repeated by particular groups against not just the Burakumin but also resident Koreans and migrant families. No appropriate remedies were provided for the victims, and no legal measures have been taken.

Therefore, legal restrictions including legislation of an anti-discrimination law should be introduced and a system for remedies for victims should be established to respond to incitement to Buraku discrimination on the Internet or through physical speech or acts.

e. On the domestic implementation of the Committee Recommendations in paragraph 19 of the Concluding Observation (March 2010)

The Japanese Government has not taken any concrete steps to implement any of the measures indicated in clauses (a) to (f) in paragraph 19 of the Committee’s Recommendations. In particular, the measures indicated in (b) and (c) of the paragraph, “(fulfil the commitments made upon the termination of the Special Measures Law,” and “(e)ngage in consultation with relevant persons to adopt a clear and uniform definition of Burakumin” are those that should be taken promptly, in order to make clear that discrimination against the Burakumin is included in the definition of term “descent” in Article 1 Paragraph 1.

Therefore, the Government should reform the laws to realize the contents of the measures indicated in clauses (a) to (f) in paragraph 19 of the Committee’s Recommendations.

## Chapter 6 The Ainu People

### A1. Conclusions and Recommendations<sup>93</sup>

a. The Japanese Government should continue to increase participation of the Ainu people in the membership of the Council for Ainu Policy Promotion, and other fora for the discussion of Ainu policies. Discussions and policies should be carried out through methods that allow active participation of the Ainu people.

The Government should further improve related legislation as well as promote integrated policies that bring together social, cultural, political and educational aspects, bearing in mind the indigenesness of the Ainu people. It should prepare and publish a roadmap to realize the promotion of the policies to enable third party verification.

b. The results of the surveys on the remains of Ainu people and other issues, that became clear during the work of the Working Group of the Council for Ainu Policy Promotion<sup>94</sup> should be published, and the confirmation and return of the remains based on the survey should be swiftly done.

Measures should be taken immediately to remedy past human rights violations including the review of the history of past researches that promote discrimination and prejudice against the Ainu people.

c. Bearing in mind the history of discrimination against the Ainu people, the Government should improve and strengthen opportunities to learn the history, culture and other aspects of the Ainu people in public education.

d. In order to protect the right to access to higher education for the Ainu people, the Government should further improve economic support including scholarships.

e. As the term “*Ainu no hitobito* (people of Ainu)” used by the Government gives the wrong impression that it does not fully recognize the status of the indigenous status of the people, the term “*Ainu minzoku* (Ainu ethnic group)” should be explicitly used. In addition, the Government should protect the right of the Ainu people to receive education in their own language.

f. Given the continuous destruction of the natural environment, which forms the basis of the cultural life of the Ainu people, measures should be taken to reflect the views of the Ainu people in the development in particular of Hokkaido, to prevent indiscriminate development ignoring the intentions of the Ainu people.

### A2. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination<sup>95</sup>

<sup>93</sup> JFBA, *supra* note 22, at Para. 5-9.

<sup>94</sup> Cabinet Secretariat, Council for Ainu Policy Promotion. [http://www.kantei.go.jp/jp/singi/ainusuishin/ind\\_ex\\_e.html](http://www.kantei.go.jp/jp/singi/ainusuishin/ind_ex_e.html)

<sup>95</sup> Committee, *supra* note 1, at Para. 5, 20.

In paragraph 5, the Committee congratulated the State party “for the recognition of the Ainu people as an indigenous people (2008) and notes with interest the creation of the Council for Ainu Policy (2009),” and continued in paragraph 20, “(w)hile welcoming the recognition of the Ainu as an indigenous people and noting with interest measures reflecting the commitment of the State party, including the establishment of a working group to set up a symbolic public facility and of another to conduct a survey on the status of Ainu outside of Hokkaido, the Committee expresses its concern about:

- a. The insufficient representation of Ainu people in consultation forums and in the Advisory Panel of Eminent Persons;
- b. The absence of any national survey on the development of the rights of Ainu people and improvement of their social position in Hokkaido;
- c. The limited progress so far towards implementing the United Nations Declaration on the Rights of Indigenous Peoples (arts. 2 and 5).

The Committee recommends that further steps be taken in conjunction with Ainu representatives to translate consultations into policies and programmes with clear and targeted action plans that address Ainu rights and that the participation of Ainu representatives in consultations be increased. It also recommends that the State party, in consultation with Ainu representatives, consider the establishment of a third working group with the purpose of examining and implementing international commitments such as the United Nations Declaration on the Rights of Indigenous Peoples. It urges the State party to carry out a national survey of the living conditions of Ainu in Hokkaido and recommends that the State party take into account the Committee’s general recommendation No. 23 (1997). The Committee further recommends that the State party consider ratifying the International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.”

### A3. Statements of the Government Report

Meanwhile, the Government Report explains as follows.<sup>96</sup>

“4. Ainu people

(1) Hokkaido Ainu living conditions survey

13. See Paragraphs 10 and 11 of the Third, Fourth, Fifth and Sixth Combined Periodic Report<sup>97</sup>.

(2) Measures to improve the livelihood of Ainu people in Hokkaido

14. See Paragraph 12 of the Third, Fourth, Fifth and Sixth Combined Periodic Report<sup>98</sup>.

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<sup>96</sup> Government of Japan, *supra* note 15, at Para.13-24.

<sup>97</sup> Government of Japan, *supra* note 76 (August 2008), at Para.10, 11.

(3) Advisory Council for Future Ainu Policy

15. In June 2008, the Japanese Diet unanimously adopted resolutions concerning Ainu people.

Responding to this resolution, the Government of Japan issued a Statement by the Chief Cabinet Secretary, based on which it was decided to establish the Advisory Council for Future Ainu Policy, in order to further promote Ainu policy and make efforts to establish comprehensive measures while listening to the opinions of eminent high-level experts.

16. With an Ainu representative among its members, the Advisory Council conducted a comprehensive deliberation on the history of Ainu people and their indigenesness, as well as new principles and measures for future Ainu policy. The report of the Advisory Council, submitted to the Chief Cabinet Secretary in July 2009, recommended a variety of desirable Ainu policy measures in Japan, in line with the actual conditions of Japan and those of Ainu people, while referring to the related provisions of the United Nations Declaration on the Rights of Indigenous Peoples.

(4) Council for Ainu Policy Promotion

17. In response to the recommendations of the Advisory Council, the Government of Japan decided to establish the Council for Ainu Policy Promotion in December 2009, hosted by the Chief Cabinet Secretary, in order to promote comprehensive and effective Ainu policy, with taking the opinions of Ainu people into consideration. The Council, with several Ainu representatives among its members, discusses the promotion of overall Ainu policy, including the follow-up of various measures recommended by the Advisory Council.

18. Regarding the two issues that require particular consideration by experts, i.e., the “Research on Living Conditions of Ainu People outside Hokkaido” and the “Symbolic Space for Ethnic Harmony,” respective working groups were established in March 2010 which held discussions over a one-year period.

19. The Working Group for the “Research on Living Conditions of Ainu People outside Hokkaido” conducted research on the living conditions, etc. of Ainu people who have transferred their livelihoods outside Hokkaido, in order to consider necessary policies from a nationwide perspective, so that Ainu people can be self-reliant and play a part in the promotion and inheritance of Ainu culture, irrespective of their places of residence.

According to the results of the research, the living conditions of Ainu people in and outside Hokkaido are closely similar. However, compared to those of the general public, there is still a gap in terms of income, education, etc.

20. The Working Group for the “Symbolic Space for Ethnic Harmony” considered the basic concept

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<sup>98</sup> Government of Japan, *supra* note 76 (August 2008), at Para.12.

and the vision concerning the “Symbolic Space for Ethnic Harmony” which was recommended as the most important measure in the report of the Advisory Council.

21. Both of the working groups compiled the results of their considerations in June 2011 and reported them to the Council for Ainu Policy Promotion. Following that, in August 2011, the “Working Group for Ainu Policy Promotion” was newly established, and it is holding discussions mainly on the following three points: (1) concretization of the “Symbolic Space for Ethnic Harmony,” (2) development of measures from a nationwide perspective based on the “Research on Living Conditions of Ainu People outside Hokkaido” and (3) activities to promote public understanding of the history and culture of Ainu people.

22. Representatives who are Ainu account for one-third or more of the members of the Council for Ainu Policy Promotion and its working groups. In addition, most of the other members are specialists who are well-versed in Ainu culture and Ainu policy.

(5) Protection of the human rights of Ainu people

23. See Paragraph 13 of the Third, Fourth, Fifth and Sixth Combined Periodic Report.

(6) Measures based on the “Act on the Promotion of Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition, etc.”

24. See Paragraph 19 of the Initial and Second Periodic Report and Part III, Article 7, 2(1) of this Report for the measures taken based on the said Act.

#### A4. Position of the JFBA

a. As the Government mentions in its Periodic Report, it decided to convene the Council for Ainu Policy Promotion chaired by the Chief Cabinet Secretary in December 2009. A number of representatives of the Ainu people have participated in the Council, which continues to discuss issues on policies regarding the Ainu people in general. In particular, it has set up working groups since March 2010, to conduct a year long discussion on the two issues of the “Research on Living Conditions of Ainu People outside Hokkaido” and the “Symbolic Space for Ethnic Harmony.” These events themselves are groundbreaking and are an important move towards promotion of policies based on past history.

On the other hand, although the Council has a number of representatives of the Ainu people as members, the number of representatives of the Ainu people is still insufficient, as the Committee has pointed out. In implementing policies in the future, there is a need to bring together the views of the broader Ainu people, and take their intentions into account, as well as a need to implement policies in a manner, which ensures effective participation of the Ainu people.

Also, as the discussion in the Council for Ainu Policy Promotion shows, new legislative measures that are not limited to cultural promotion and take into consideration the position in which the Ainu people

had been placed historically are essential, in order to promote policies in an integrated manner.

At the same time, promotion of policies integrating social, cultural, political and educational aspects should be implemented, taking into consideration the historical circumstances in which the Ainu people had been placed and their indigenoussness,

Moreover, there is a need to prepare and publish a comprehensive roadmap, indicating the time frame and the method of realizing the integrated policies, so that discussions involving the public can be held.

- b. At the Working Group of the Council for Ainu Policy Promotion held on April 19, 2013, it was revealed that 11 universities were holding in safekeeping the remains of 1,633 Ainu people, which had been excavated from grave sites for research purposes by university academics since the Meiji era until the 1970s.

There were few remains that could be individually identified, and consultations for the return of the remains have yet to begin, but it is expected that the consultations would be considerably difficult, because of the passage of time.

It is necessary to clarify the history of human rights violations by the academics and universities against the people of Ainu, and to swiftly proceed with the return of the remains in a manner respecting as much as possible the wishes of those concerned.

At the same time, measures to remedy the past human rights violations in the name of research should be promptly taken, taking into consideration the review of the history of research that promoted discrimination and prejudice against the Ainu people in the past.

- c. The JFBA has pointed out in its previous Report the need to enhance and strengthen opportunities to learn about the history of Ainu people, their culture and other aspects in public education, based on the history of discrimination against the Ainu people. But since the Ainu people are not just victims of historical discrimination, but they also face discrimination today, further enhancement and strengthening of opportunities to learn about the history, culture and other aspects of the Ainu people mainly in public education is necessary.

- d. In considering eliminating discrimination against the Ainu people, improving support for education is needed, as well as support for living, because there is a gap in the rate of enrollment in higher education between the Ainu people and other people living in the same area.

In particular, when considering that the rate of households receiving public assistance among the Ainu people is 1.5 times as high as the average rate for Hokkaido as a whole, and 2.5 times as high as the national average, and that the rate of enrollment in universities is approximately half of the national average (Final Report of the Advisory Council for Future Ainu Policy, July 2009<sup>99</sup>) it is necessary to

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<sup>99</sup> Advisory Council for Future Ainu Policy, Final Report (July 29, 2009). [http://www.kantei.go.jp/jp/singi/ainu/dai10/siryou1\\_en.pdf](http://www.kantei.go.jp/jp/singi/ainu/dai10/siryou1_en.pdf)

effectively ensure the right of the Ainu people to receive higher education at universities and other institutions. The Government should promptly introduce measures including special scholarship systems and affirmative actions such as preferential enrollment in universities, to give a few concrete examples.

- e. As the JFBA pointed out in its previous Report, the term “*Ainu no hitobito* (people of Ainu)” used by the Japanese Government gives the wrong impression that it does not fully recognize the status of the indigenous status of the people.

The Government should fully recognize the indigenesness and ethnic identity of the Ainu people, and should use the term “*Ainu minzoku* (Ainu ethnic group)” instead. Moreover, in July 2008, indigenous peoples around the world gathered in Hokkaido and held the “Indigenous Peoples Summit in Ainu Mosir 2008”. “An Appeal to the Japanese Government” published by the organizing committee of the Summit, recommends adopting the Ainu language as one of the official languages of Japan, and making it available in compulsory education. This means that the Ainu people require a place, where they can learn their own language as an official language as part of the compulsory education.

- f. The destruction of the natural environment has been continuing around Japan, but in Hokkaido in particular, the destruction of the natural environment violated the right of the Ainu people to life, and their right to live according to one’s culture. Therefore, bearing in mind that the natural environment, which is the basis of the cultural life of the Ainu people, has been continuously destroyed, measures should be taken to reflect the views of the Ainu people in development, particularly in Hokkaido, to prevent rampant development ignoring the intent of the Ainu people.

## Chapter 7 The Returnees from China

### A1. Conclusions and Recommendations

The Japanese Government should continue to conduct a survey on the living conditions and other aspects of the returnees from China, and examine the necessity of further support measures to help the returnees in their lives (economic independence) and self-support (education, lifestyle)

### A2. Problems in the Government Report

- a. Before the Second World War, Japan established the “Manchukuo” in northeast region of China on March 1, 1932. Many Japanese had migrated there as pioneers under the “Twenty-Year, One Hundred Million-Family Plan to Send Agricultural Migrants to Manchuria,” but with the Soviet participation in the war against Japan on August 9, 1945, many found themselves caught up in the war, and many ended up losing their lives because of starvation or illness during evacuation. There were also many who were orphaned after being separated from their families, and were taken care of by Chinese foster parents, or otherwise forced to stay behind in China. These people were called “war-displaced persons and others” or “war-displaced orphans” (collectively called “war-displaced persons”) and until the restoration of diplomatic ties with China in 1972, the way back to Japan remained close to them. Even after the normalization of diplomatic ties, there were various obstacles until search missions in Japan were started in 1981, and their permanent return was greatly delayed. Because of this, the age of the returnees at the time of their return was quite advanced, namely in their 40s and 50’s. They had also forgotten the Japanese language after living many years in China, and they faced difficulties in learning the language, as they had to start learning Japanese from scratch. Not only that, but because of their advanced age at the time of their return, as well as the language barrier, they faced difficulties in finding employment, and large number of the returnees found themselves receiving public assistance.
- b. Since February 1984, the Japanese Government set up the “Center for Promotion of Stabilization of Chinese Returnees.” But the returnees were receiving only 3 to 6 months of Japanese language education, which was insufficient to acquire the Japanese language skills that would have enabled the returnees to find employment. Since 1988, the “Center for Self-Support Training for War Displaced Persons” was established, and it provided Japanese language education for the duration for approximately one year, but this too was insufficient. In 1994, the “Act on Measures on Expediting the Smooth Return of Remaining Japanese in China and for Assistance in Self-Support after Permanent Return to Japan” (the “Support Law”) was enacted and special measures for the national pension was introduced, allowing for periods of legal exemptions from premium payments, as well as late payments. Returnees were also eligible for loans for late payments, but the measures were insufficient, as loan

repayments would be deducted from their pensions.

- c. On March 24, 2004, the JFBA adopted a report, urging the Japanese Government to fully promote measures to facilitate the returnees' return, provide welfare payments (the amount of which should not be lower than the wage census based on age and education), set up a special pension system (the pension amount equivalent to or more than the average pension amount received by other Japanese nationals), and provide education support, living support as well as other measures since the state bore full responsibility for the creation of the war-displaced people.
- d. Of the returnees, the "war-displaced orphans" (those who were children under age 13) found the support measures provided by the Japanese Government insufficient, and they filed suit against the state in Tokyo, Osaka and other places in Japan, to recover the "right to live as a human being, as a Japanese national." More than 90% of the "war-displaced orphan" returnees participated in the lawsuits as plaintiffs.
- e. The Japanese Government amended the Support Law in 2007, and launched new support measures from April 2008. In response, the "war-displaced orphans" who started the legal action, withdrew their suit. The contents of the new support measures consisted of full pension funding, fixed welfare support payments and new policies to assist self-support. However, because there was an income threshold to become a beneficiary of the support measures, some returnees were not eligible for the support payments, and the measures were not designed to provide uniform remedies for all returnees. Some of them complained that the measures were insufficient. In particular, there were problems such as the children of the "war displaced" (the so-called second generation issue) not being covered by the support measures, and the support payments for spouses of the "war-displaced" being terminated in case of deaths of the "war-displaced." The amount of support payments was well below the level recommended by the JFBA, namely, not less than the wage census based on age and education. The pension is also not based on the special system (the amount of which should be equivalent to or above the average amount received by Japanese nationals) called for by the JFBA.
- f. Therefore, because the Japanese Government bears full responsibility for the creation of the "war displaced," it should continue to survey the living conditions of the returnees, and consider whether revision in the policies are necessary for new living support (economic self-support) and self-support (education, living).

## Chapter 8 Problems in the Penal Facilities

### A1. Conclusions and Recommendations

The Japanese Government should impose administrative dispositions, administrative or criminal penalties on officials who performed racially discriminatory behaviors, or conducted racially discriminatory treatment in penal and related facilities. At the same time, human rights training should be further provided for the officials in penal and related facilities

The Japanese Government should restrictively implement solitary confinement to foreign nationals in light of many foreign nationals being deprived of all social contact as it is difficult for their families to visit them.

### A2. Concerns and Recommendations of the Committee on the Elimination of Racial Discrimination

In paragraph 13 of the Concluding Observations to the Initial and Second Periodic Reports, the State party is urged “to provide appropriate training of, in particular, public officials, law enforcement officers and administrators with a view to combating prejudices which lead to racial discrimination.”<sup>100</sup> This recommendation may be understood as covering prison officials as major recipients of the training.

In paragraph 14 of the Concluding Observations to the previous Periodic Reports, the Committee indicated that, “(w)hile noting the measures being taken by the State party to provide human rights education to public officials, the Committee reiterates its concern from previous concluding observations (para. 13) that discriminatory statements by public officials persist and regrets the absence of administrative or legal action taken by the authorities in this regard, in violation of article 4 (c) of the Convention. It is further concerned that the existing laws on defamation, insult and intimidation making statements punishable are not specific to racial discrimination and only apply in case of injury to specific individuals (arts. 4 (c) and 6).”<sup>101</sup>

### A3. The Government’s Response and the Statement in the Government Report

Although the Initial and Second Periodic Report by the Government includes references on training for public officials and law enforcement officials for the protection of human rights and prevention of discrimination, regrettably, there is no mention of prison officials.<sup>102</sup> Also, the following case in which a court recognizes racially discriminatory words and acts in a prison was mentioned in

<sup>100</sup> Committee, Concluding observations of the Committee on the Elimination of Racial Discrimination, 58<sup>th</sup> Session (CERD/C/58/CRP) (March 20, 2001).

<sup>101</sup> Committee, *supra* note 1, at Para.14.

<sup>102</sup> Government of Japan, *supra* note 19, at Para. 64.

paragraph 66 of the above Periodic Report.<sup>103</sup>

“(b) Tokyo District Court decision on June 26, 2003

A prison officer was judged to have acted unlawfully and committed contempt when he uttered a racial slur against an Iranian inmate: “All Iranians are liars.” (However, the right to claim state liability for the racial slur was denied due to the doctrine of laches. But the right to claim compensation for damages from mental suffering were granted for the remaining tort, based on Paragraph 1, Article 1 of the State Redress Law.) ”

#### A4. The Position of the JFBA

##### a. The first reform of the Prison Law in 100 years

The laws regarding treatment of prisoners were overhauled for the first time in approximately 100 years in May 2006. A year later, new provisions regarding unsentenced detainees were added, and the Act on Penal Detention Facilities and Treatment of Inmates and Detainees (hereafter , Treatment of Inmates and Detainees Act) was enacted. The Minister of Justice had created the Committee on Reforming Prison Administration in March 2003 as a consultative body after the horrific incident in Nagoya Prison, in which several inmates were killed or injured due to assault and abuse by prison staff (October 2002). Experts in various fields participated in this Committee, and the JFBA as well as representatives of NGOs working for the purpose of prison reform were also able to participate. In December of the same year, a report, viewed positively by the JFBA, was published. Based on this report, the draft amendment of the Prison Law was submitted to the Diet, and was unanimously approved.

Until then, there were harsh criticisms against the secrecy, which allowed the discrimination and violence within the prisons to continue. Under the new Act, Penal Institution Visiting Committees, consisting of attorneys (attorneys recommended by the Bar Associations have been selected), doctors, academics local administration officials and members of the local citizens, have been established in each of the 74 (currently 77) institutions (all penal detention facilities, including those for unsentenced detainees), in order to improve the transparency of the operations of the institutions as well as the treatment of detainees. Also, regarding a complaints mechanism for the prisoners, a system was introduced, in which the Minister of Justice must consult and “respect” the views of the Study Group on Review of Appeals Filed by Inmates of Penal Institutions, consisting of attorneys, academic lawyers, doctors and others. Under the previous Law, prisoners could receive visits only from family members, but under the new Act, they can also meet and correspond with “good friends.” Human rights training for prison officials was also explicitly obliged. The JFBA has been calling for these reforms for many

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<sup>103</sup> Government of Japan, *supra* note 19, at Para. 66.

years, and the treatment of detainees in the Japanese penal institutions can be seen as having made great progress.

b. Remaining important issues regarding treatment

As shown above, the reform of the system was carried out, but there are various problems remaining in the prisons around the country. The extremely serious issues are medical care within the prisons and solitary confinement.

The UN Committee against Torture has viewed the establishment of the Penal Institutions Visiting Committee positively, but has made detailed recommendations on the two issues in August 2007.<sup>104</sup>

The UN Human Rights Committee has also made detailed recommendations on the strengthening of the independence of the Visiting Committee, strengthening the independence and functions of the Study Group on Review of Appeals Filed by Inmates of Penal Institutions, as well as on the issue of solitary confinement.<sup>105</sup>

c. The situation of foreign inmates in Japan

Those who are detained in penal institutions can be categorized into those who are not yet sentenced and those who are. The unsentenced detainees including foreign nationals are detained in detention facilities around the country, while those who are sentenced are separated into those who can be given similar treatment to Japanese nationals, and those who should be treated differently (F class). (Because of the increase in the prisoners designated as F class, currently, they are no longer detained in concentrated locations. With regard to the implementation of the instructions regarding group organization, a considerable number of institutions is expected to receive F class inmates under the instructions.)

According to the 2012 White Paper on Crime<sup>106</sup>, the number of foreign inmates was 1,289. Foreign inmates who require different treatment from Japanese, were designated as F class inmates, and are treated according to their respective cultures and lifestyles. The shift in numbers of F class inmates (for the last 20 years)<sup>107</sup> is shown in the following chart. They numbered 780 in 2010.

In the same year, the number of F class inmates categorized by nationality was as follows; 195 Chinese, 119 Brazilians, 75 Iranians, 71 Koreans, and 68 Vietnamese.

Categorized by crime for which they were convicted, theft was the largest group with 257, followed by violation of the Stimulants Control Act with 179, violation of the Immigration Control Act with 94,

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<sup>104</sup> Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture (CAT/C/JPN/CO/1) (August 7, 2007), Para. 15. <http://www.mofa.go.jp/mofaj/gaiko/gomon/pdfs/kenkai.pdf>

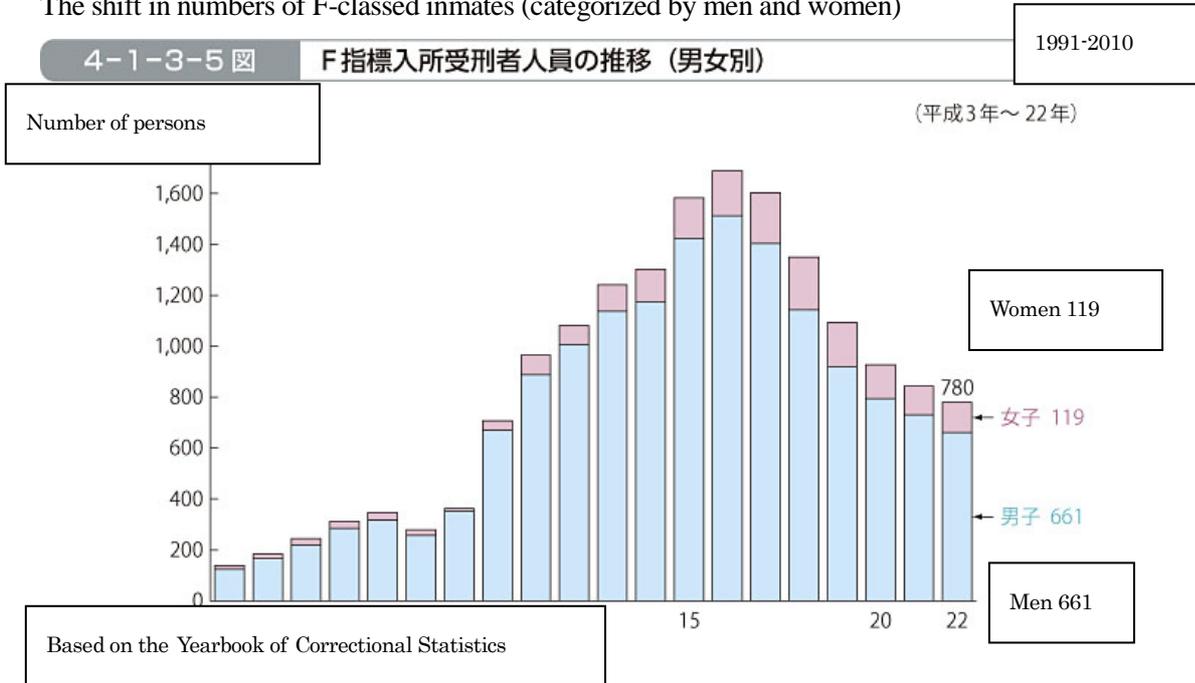
<sup>105</sup> United Nations Human Rights Committee, *supra* note 34, at Para. 20.

<sup>106</sup> MOJ, White Paper on Crime 2011. <http://hakusyo1.moj.go.jp/en/60/nfm/mokuji.html>

<sup>107</sup> *Idem*, Figure 4-1-3-5 Number of new Code F inmates by gender. [http://hakusyo1.moj.go.jp/en/60/nfm/n\\_60\\_2\\_4\\_1\\_3\\_3.html](http://hakusyo1.moj.go.jp/en/60/nfm/n_60_2_4_1_3_3.html)

robbery with 58, assault and causing injury with 29, violation of the Road Traffic Act with 26 and violation of the Narcotics Control Act with 24.

The shift in numbers of F-classed inmates (categorized by men and women)



As of end 2010, the number of F-classed inmates is 2,786 (2,538 men and 248 women).

As these figures show, the number of foreign inmates has fallen dramatically. One of the reasons may be the decreased number of crimes, but it is more likely the effect of the change in policy to use administrative procedures in principle for violations of the Immigration Control Act instead of criminal proceedings.

d. Racially discriminatory acts and speech are not eliminated

Although the numbers have fallen as mentioned above, the difficulty in communication between the officials of the facilities and the foreign inmates still remains, and emotional confrontations, mutual distrust and racial prejudice may easily arise out of mutual misunderstanding.

In fact, several cases which can be considered as racially discriminatory treatments have been reported in the Initial and Second Periodic Report by the Government<sup>108</sup>.

“(b) Tokyo District Court decision on June 26, 2003

A prison officer was judged to have acted unlawfully and committed contempt when he uttered a racial slur against an Iranian inmate: “All Iranians are liars.” (However, the right to claim state liability for the racial slur was denied due to the doctrine of laches. But the right to claim compensation for

<sup>108</sup> Government of Japan, *supra* note 19, at Para.66.

damages from mental suffering were granted for the remaining tort, based on Paragraph 1, Article 1 of the State Redress Law.)”

It is important that such facts were realized by the court, but in the end, remedies for the rights were not recognized because of the doctrine of laches. Bearing in mind that it is extremely difficult for foreign nationals to take legal actions by themselves, such decisions by the courts indicate that the access to remedies for human rights is not fully ensured by the Japanese judiciary.

In March 2003, an official of Kurobane Prison admitted to calling an inmate “*kuronbo*,” a racially derogatory term for people with dark skin. Specifically, the claim that he had said, “You, *kuronbo*, come here,” “This is not your country, *kuronbo*, you bastard,” and “Sit, *kuronbo*,” was admitted as being true. The Tochigi Prefectural Bar Association made a recommendation on March 22, 2006, requiring authorities to conduct human rights training, so that such incidents would not happen again.

With the urging by JFBA, provisions on human rights training was included in the Treatment of Inmates and Detainees Act (Article 13 paragraph 3), and human rights training have been conducted. In 2013, as part of the settlement in a case claiming state redress for violence committed by prison officials on the inmates, not only did the warden of the Tokyo Detention Center apologize and pay compensation to the victim, but he also promised to conduct human rights training by outside experts, such as members of the Penal Institution Visiting Committees, as well as to conduct training incorporating behavioral science and psychological methods according to the work of the officials. There are such examples. There is a need to further improve on the human rights training not just for prison officials but also for law enforcement officials such as investigators and police and the officials of detention facilities.

Some of the prison and detention facilities officials have racially discriminatory ideas and some may repeat them in the course of their work. But there are no known cases of administrative disposals, administrative or criminal penalties being imposed on them. There is a possibility that there have been almost no punishment imposed on them. This situation may violate paragraph Article 4 paragraph (c) and Article 7 of the Convention.

We would very much like to ask the Committee to raise the question to the Japanese Government, on how the perpetrators and victims were treated in these two cases.

- e. Treatment that does not take foreign social customs into consideration, harsh and strict rules that are difficult to follow

The “strict prison rules” that are characteristic of Japanese prisons remain basically unchanged.

Treatment such as military-style marching to move within the prison, and harsh penalties for looking the other way, were prevalent without exceptions in all penal facilities in the past, but currently, it is left to the discretion of the wardens of the prisons to decide whether to carry out such treatments.

Such harsh rules are difficult to follow even for Japanese nationals, but they pose further difficulties for foreign inmates, whose lifestyles are different.

On October 19, 2011, the Tokyo Bar Association made a recommendation for human rights relief requesting improvement in the treatment of an Indian inmate by the prison authority in Fuchu Prison.

The petitioner of this case has been held since March 13 2007 until the present in solitary confinement in Fuchu Prison. He is an Indian national, and has been a Protestant (Evangelist) since around age 16. He has requested the prison authority on April 7, 2008 at the latest, to be allowed to sit on the bed or kneel to say his prayers (in silence) in early mornings, an hour before the time to rise, or in the dim light of dawn. The time to rise out of bed for weekdays in the prison was set at 6:40 in the morning. But the prison decided not to allow the request on April 14, 2008. And when the inmate tried to carry out the act without permission, he was stopped. He then was interrogated as part of the penalty and was given a warning.

The Tokyo Bar Association made a request to the prison authority to change the rules to allow such requests for permission to engage in acts of worship or other religious acts, which were conducted alone, and which could be recognized as being based on true beliefs, unless there were special circumstances, such as a considerable probability that the manner of the religious act might cause concrete management problems, instead of perfunctorily refusing the request for the reason that the acts would be carried out outside of the recreational times.

Also, there are both Japanese and foreign nationals held in solitary confinement, but in case of foreign nationals, family visits are difficult for many of them. In many cases, they will lose all contact with outside society when they are held in solitary confinement, resulting in harsh treatment.

f. Visits, correspondence and books in foreign language

Among foreign inmates, there are many, who do not understand Japanese very well.

In Japan, Fuchu and Osaka Prison has an international affairs office, with staff responsible for interpreting and translating in foreign languages such as English, Chinese, Spanish and Persian. The Correction Bureau's efforts in this area can be viewed positively. Translation of correspondence and attendance at interviews within the prison could be managed in almost all languages.

The number of languages that cannot be dealt with by prison staff is decreasing, but it is said that they rely on outside cooperation, such as the relevant embassies. Because of this, it has been pointed out that inspection of correspondence after translation is significantly delayed.

Also, because of the reasons given above, visits are in fact limited to those conducted in Japanese. Therefore, even when the inmate and the visitor can communicate in a foreign language with no problems, they need to have an interpreter present to translate the words into Japanese. Such interpreters must be found, and the cost is also a large burden. In order to decrease occurrence of such cases,

teleconference systems have been introduced so that officials attending the visits can monitor the communications on the screen.

The Treatment of Inmates and Detainees Act, as did the draft bill on Penal Facilities, has a provision allowing the expenses to be charged to the inmate, in case there is a need to examine the oral communication or translate the correspondence when the visit or correspondence is conducted in a foreign language (Article 148). There is a similar provision regarding access to books.

However, such expenses should be borne by the state, which needs to attend and inspect the visits and correspondence, and should not be charged to the inmates.

Visits and correspondence in foreign languages should not be interfered with, as it was provided for in Article 129 and Article 130 of the draft penal detainees bill proposed by the JFBA, and it should have been explicitly prohibited to charge interpretation and translation costs to the inmates. In practice, translation costs are not charged, when the translation can be done by prison officials. Such mechanical application of the provision has a risk of significantly limiting communication with the outside of foreign nationals using minority languages. At least, the provision should exclude cases, when it can be determined from the visitor, the sender or recipient of the correspondence, and in case of publications, by the title or appearance that these will not cause any problems. In order to do so, the provisions, “if interpretation or translation is necessary in order to examine the oral statements or the communication,” and “if translation is necessary in order to examine the contents of the correspondence” should be limited by the phrase, “only if it cannot be determined unless interpreted or translated whether there is a risk that the statements, communication or letters will harm the discipline or order.”

The provisions of the Act themselves could not be amended, but there have been considerable improvements at the ordinance levels.

There was concern that the charges for expense for translation and interpretation for publications, visits and correspondence in foreign languages might be required more broadly, but the actual provision was restrictive. Namely, for the translation of foreign publications, “those who do not have the ability to read the national language” and “those who cannot access publications unless they are in Braille” would not be charged with the expense unless under special circumstances. Others may be charged, only when “it is recognized that it is appropriate to charge the inmate according to the purpose of the access and the ability of the inmate to bear the expenses.” (Article 26 of the Ordinance) Therefore the cases in which the inmates bear the costs were considerably limited. For visits and correspondence, those with diplomats, family members and persons dealing with important matters would not be charged, and for other cases, costs would be charged only when “it is recognized that it is appropriate to charge the inmate according to the purpose of the access and the ability of the inmate to bear the expenses.” (Article 73 of the Ordinance)

g. Communication between the facility officials and inmates

Communication between the facility officials and inmates are also fraught with problems.

Problems occur because of difficulties in communication between penal detention facility officials and foreign inmates in facilities such as Kurobane Prison, which houses inmates who can understand some Japanese, rather than in facilities like Fuchu Prison, which has in-house specialist interpreters.

In many cases, foreign inmates do not fully understand the notification of the rights and responsibilities at the beginning of his/her internment, notification of important rules, and important adverse dispositions such as penalty procedures for violation of rules, while there may be no interpreters present in the facilities, or only extremely limited interpretation available. The effects are reflected in the assessment by the penal facilities authorities of the prison records.

The survey of Fuchu Prison by the Research and Training Institute of the Ministry of Justice found a positive correlation between the prison records and the ability to communicate and read in Japanese. According to the report, those with lower Japanese language ability tend to show lower prison records.

h. The provision requiring mutual guarantee in Article 6 of the State Redress Act is a clear violation of Article 6 of the Convention.

Article 6 of the State Redress Act stipulates that “(i)n cases where the victim is a foreign national, this Act shall apply only when a mutual guarantee exists.” Based on this provision, the state has shown its intent to refuse responsibility for state redress in the Japanese courts on the basis of the lack of mutual guarantees in Iranian law and U.S. law in cases involving inmates of Iranian and U.S. nationality. Under Iranian law, it is possible to claim responsibility of the individual public official, who committed the illegal act, and the court recognized the effectiveness of the provision. Therefore the court has indicated an unfair position of requiring the plaintiff to prove the existence of a legal system of mutual guarantee, and deferred hearings of the case until the existence is proven.

Article 6 of the Convention that Japan has ratified in 1995, however, requires State parties to assure “to everyone within their jurisdiction” to effective protection and remedies against any acts of racial discrimination as well as the right to seek just and adequate reparation or satisfaction. Article 6 of the State Redress Act may violate the Article 2 paragraph 3, Article 7 and Article 26<sup>109</sup> of the International Covenant on Civil and Political Rights, but it also can be seen as violating the Convention in a more direct manner. The Article should be abolished immediately.

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<sup>109</sup> The Optional Protocol to the International Covenant on Civil and Political Rights. [http://www.nichibenren.or.jp/activity/international/library/human\\_rights/liberty\\_protocols\\_no1\\_en.html](http://www.nichibenren.or.jp/activity/international/library/human_rights/liberty_protocols_no1_en.html)

## Chapter 9 Discriminatory Statements by Public Officials

### A1. Conclusions and Recommendations

The state should promptly conduct appropriate education and training for public officials to eliminate racially discriminatory statements by these officials

### A2. Statements in the Government Report

In paragraphs 68 to 80, the Japanese Government states that human rights education is being provided to public officials<sup>110</sup>.

### A3. Problems in the Government Report

#### a. Committee's Recommendations

The Committee has stated in paragraph 13 of the Concluding Observations to the Initial and 2<sup>nd</sup> Government Report, that “(t)he Committee notes with concern statements of a discriminatory character made by high-level public officials and, in particular, the lack of administrative or legal action taken by the authorities as a consequence, in violation of article 4 (c) of the Convention, and the interpretation that such acts can be punishable only if there is an intention to incite and promote racial discrimination. The State party is urged to take appropriate measures, in compliance with article 7 of the Convention, to prevent such incidents in the future and to provide appropriate training of, in particular, public officials, law enforcement officers and administrators with a view to combating prejudices which lead to racial discrimination.”<sup>111</sup>

Also, in paragraph 14 of the Concluding Observations to the previous Government Report, it stated that “(t)he Committee reiterates its recommendation that the State party strongly condemn and oppose any statement by public officials, national or local, which tolerates or incites racial discrimination and that it intensify its efforts to promote human rights awareness among politicians and public officials. It also recommends with urgency that the State party enact a law that directly prohibits racist and xenophobic statements, and guarantees access to effective protection and remedies against racial discrimination through competent national courts. The Committee also recommends that the State party undertake the necessary measures to prevent such incidents in the future and to provide relevant human rights education, including specifically on racial discrimination, to all civil servants, law enforcement officers and administrators as well as the general population.”<sup>112</sup>

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<sup>110</sup> Government of Japan, *supra* note 15, at Para.68 to 80.

<sup>111</sup> Committee, *supra* note 100, at Para.13.

<sup>112</sup> Committee, *supra* note 1, at Para. 14.

b. Current situation

Discriminatory statements by public officials, however, have been repeatedly made even since the last Concluding Observations.

a1. Statements regarding Korean schools and the senior high school enrolment subsidy program

On March 3, 2010, while expressing his views that Korean schools should be excluded from the enrolment subsidy program which was being newly introduced by the national government, Mr. Hashimoto, then Governor of Osaka Prefecture (current Osaka City Mayor) commented, “the nation of North Korea and gangsters are basically the same. Should subsidies be paid to schools that are on friendly terms with gangsters?” He also noted, that “the nation of North Korea is a lawless state. We will not associate ourselves with related schools or facilities.” Fearing that these statements may lead to an increase of harassments and threats to the children, a group of mothers of children who attend Korean schools in Osaka Prefecture submitted a petition to Osaka Prefecture requesting safety measures.

Further, on April 5, 2010, Mr. Hashimoto commented on Twitter, that “those who disregard the will of the people, go to North Korea! Those who arrogantly disregard the will of the people are sure to end up in prison in North Korea!”

Mr. Hashimoto argued that these comments point out to the problems of the state and is not ethnic discrimination. But his comments go beyond mere criticisms against a system of state. They deny the *raison d’etre* of the country of the DPRK as a whole, or uses expression denigrating the country as a whole, and by doing so, they have the effect of creating prejudice and contempt, namely ethnic discrimination towards people living in that country in people who heard those comments.<sup>113</sup>

a2. On April 17, 2010, Mr. Ishihara, then Governor of Tokyo (current Member of House of Representatives) participated in a meeting against granting resident foreign nationals the rights to participate in politics, and stated that “a number of political parties have many leaders and higher officers (who are naturalized).” “I don’t know whether they are trying to do their duty to their ancestors, but they are trying to pass a law that determines the fate of Japan.”

This statement is based on his own groundless assumption that many politicians who support granting rights to political participation to permanent foreign residents are ethnic Koreans who acquired Japanese nationality (became naturalized). By stating that that “determines the fate of Japan,” he gives the misguided impression that ethnic Koreans are intending to somehow harm Japan. Such statements do nothing but incite fear and anxiety, and ultimately, ethnic hatred against the Korean people.

a3. On February 20, 2012, Mr. Takashi Kawamura, Nagoya City Mayor said, “the so-called Nanjing

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<sup>113</sup> Committee, *supra* note 1, at Para.14

Massacre may have not happened,” and was severely criticized in China. On the 27<sup>th</sup> of the same month, he explained “I meant that there had been no systematic massacre, in which the Japanese military massacred 300,000 unarmed Chinese.”

It is possible to defend Mr. Kawamura’s statements as being merely an expression of opinion on a past historic fact. But the denial of the Nanjing Massacre is nothing but a justification of the colonial rule. Such ideas of history are also linked to the justification of feelings of disdain for the Chinese people that underpinned the colonial rule, namely ethnic discrimination, and cannot be permitted.

a4. Statements regarding the Japanese military “comfort women”

On May 13, 2013, Mr. Hashimoto spoke in a press conference on the issue of the Japanese military “comfort women”. He said, “in the circumstances in which bullets are flying like rain and storm the soldiers are running around at the risk of losing their lives. If you want them to have a rest in such a situation, a comfort women system is necessary. Anyone can understand that.” He also said that, “at that time, the militaries of the countries around the world had the comfort women system.”

On the 17<sup>th</sup> of the same month, Mr. Shingo Nishimura, Member of the House of Representatives belonging to the same political party as Mr. Hashimoto, spoke at the party meeting, that “the ‘comfort women’ is being translated as ‘sex slaves’ so if this becomes widespread internationally, the conspiracy and riots against Japan might be successful. We have to actively explain that ‘prostitutes’ and ‘sex slaves’ are different, that there are still many prostitutes roaming in Japan. Koreans.” “We should begin our conteroffensive. I am going back to Osaka today, so I should tell the women in the Osaka downtown area, ‘you must be a Korean comfort woman.’”

Considering that at the time of World War II, there were ideas of sex discrimination as well as ethnic discrimination behind the violent treatment of the victims of the Japanese military “comfort women” system, the statements themselves of Mr. Hashimoto positively affirming the Japanese military “comfort women” system constitute discrimination based on ethnicity.

Also, Mr. Nishimura’s statements on Korean prostitutes roaming in Japan not only insults Koreans but also disseminates the misguided ideas on the history that the Japanese military “comfort women” were not “sex slaves” but accompanied the military voluntarily as prostitutes.

In fact, after these statements were made, ethnic and racial hatred against Korean people who were making an appeal about the damages caused by the system, and were calling for an apology and compensation, have been increasing on the Internet and demonstrations by right-wing organizations.

c. The Japanese Government should act to strongly condemn any discriminatory statements made by public officials. Also, in order to eliminate ethnically discriminatory statements by people in public positions, appropriate education and training for these people must be conducted immediately.

## Chapter 10 Hate Speech

### A1. Conclusions and Recommendations

The Japanese Government should conduct a survey on the situation of harassment and hate speech against foreign nationals and minorities including Korean citizens. It should promptly take effective measures to prevent such acts based on the survey.

### A2. Summary of the Government Report<sup>114</sup>

The Government states in its report as follows;

- a. 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 fulfillment 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.
- b. The Government of Japan does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited, to the extent that the withdrawal of its reservations or legislation to impose punishment against dissemination of racist thoughts and other acts should be considered even at the risk of unduly stifling legitimate speech.
- c. The Government of Japan recognizes that racially discriminatory motive is proven as vicious motive accordingly in the criminal trials in Japan and that the court takes it into consideration in sentencing.

### A3. Problems with the Government Report

- a. The Government Report is not based on the actual situation of hate speech in this country.
  - a1. The Japanese Government claims that it does not believe that “in present-day Japan, racist thoughts are disseminated and racial discrimination is incited,” but that has no basis in fact.
  - a2. There have been concerns in the past about rude statements and acts targeting, for example, groups of children going to Korean schools in Japan, as well as harmful racist expression and attacks on the Internet against the Burakumin. Recently, with the rising conflict with Korea on territorial issues, the issue of hate speech targeting Korean citizens has become increasingly serious.
  - a3. In recent years, in particular, an organization calling itself the Zaitokukai (Association of citizens intolerant to special privileges granted to Korean residents in Japan, hereafter, Zaitokukai) has repeatedly engaged in hate speech around the country, and it has become a social problem.

Zaitokukai began its activities in January 2007, claiming that the Korean citizens residing in Japan are “descendants of illegal migrants,” and that they are enjoying unfair “privileges.” The Zaitokukai

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<sup>114</sup> Government of Japan, *supra* note 15, at Para.83, 84 and 93.

carries out propaganda activities and demonstrations attacking Korean citizens. It also promotes racially discriminatory ideas on the Internet. It has increased its membership to 12,000 in 2012 to become a huge organization. In 2009, it shouted in front of the gates of a Korean school in Kyoto, “throw the Korean schools out of Japan. These are training schools for North Korean spies,” “Don’t think we are fools, throw them out!” “Get out of Japan. What do you mean, they are children? These are children of spies,” “Promises are made between human beings. There can be no promises between human beings and Koreans.” They disrupted the educational activities of that day, and 4 members were arrested for forcible obstruction of business and defamation. Later an action for civil damages was also filed (the Kyoto Korean school case). But the Zaitokukai continues to increase its strength.

- a4. On January 22, 2011, the Zaitokukai protested on the streets against the Suiheisha History Museum, which was established with the cooperation of the Buraku Liberation League and others. At that time, the Museum was holding a temporary exhibition titled, “Korea and Japan – 100 years from the annexation of Korea,” including exhibitions on human rights violations of the “comfort women” under the Japanese military. The Zaitokukai ranted in loud volume, that “they are saying that the comfort women are sex slaves. They are idiots. If you have anything to say, come out, *eta* (derogatory term for Burakumin).” “They work in the sex industry. They like working in the sex industry very much. This is their vocation. They are saying that it is human rights violation, when these women are happy working there,” “Come out, *eta*. *Eta*, *hinin* (derogatory term for Burakumin), *hinin*. *Hinin* is written with letters meaning ‘non-human’. Are you really human?” “*Eta* is written with letters meaning ‘full of filth’. Filthy, filthy, vulgar people, if you have anything to say, come any time.”

In August of the same year, the Suiheisha History Museum filed a civil lawsuit against a male member of the Zaitokukai, and on June 25, 2012, the Nara District Court ordered the man to pay 1.5 million yen. The civil case became final, but no one was tried for criminal responsibility in this case.

- a5. In 2012, when the territorial conflict between Korea and Japan involving the Takeshima Island became complicated, the Zaitokukai began its activities in Shin-Okubo, a place known as the Korean Town in Tokyo. On August 2 of the same year, several members of the Zaitokukai marched in an area lined by Korean restaurants and shops in the Korean Town and shouted, “Don’t buy things in Korean shops,” “There are no good Koreans or bad Koreans. Kill them all.”

Since January 12, 2013, the Zaitokukai has been conducting demonstrations in the main street of Shin-Okubo approximately twice amonth. For each demonstration, approximately 200 of its members gather, holding signs saying, “Kill all Koreans, both good Koreans and bad Koreans,” “Koreans, hang yourselves, take poison, jump off” and “pest control” among others. The demonstrators shouted, “Kill, kill the Koreans,” “Throw the Koreans out,” “Strangle the Koreans,” “Set Seoul into flames,”

The demonstrators then turned their loudspeakers to the staff of the Korean restaurants and shops, and

shouted, “you will die if you eat *kimchi*,” “It is certainly not for human consumption,” “The Korean *nori* (laver) is mixed with toilet paper.” They also jeered at the female shoppers, “Don’t shop in a place like this,” “You ugly sisters, who love the *o-chonko* (derogatory term for Koreans), stick them in,” “You hag, what are you doing selling your body to Koreans,” “Just because no Japanese man will have you, what you are doing is shameful,” thereby obstructing the business.

The media reported numerous comments from the commercial areas that sales have decreased because of the demonstrations.

- a6. At the same time, Zaitokukai propaganda was being repeated in Tsuruhashi, the Korean Town in Osaka. At a Zaitokukai demonstration in Tsuruhashi on February 24, 2013, a female junior high school student made a speech against the Korean citizens, “I hate you people so much it is unbearable. If you are being complacent, we would be committing a Tsuruhashi Massacre like the Nanjing Massacre.”

On March 24, at a demonstration on the streets in Osaka, the leader of the demonstration spoke using a loudspeaker, “People of Osaka, if you see a Korean, throw a stone at him. You can rape Korean women.”

- a7. These street propaganda and demonstrations by the Zaitokukai were disseminated through video sites, such as YouTube, and were viewed by many people. At a site called “Niconico Douga ” there were comments from citizens who approved of the Zaitokuka’s actions. Zaitokukai further increased its supporters through the Internet.
- a8. The Zaitokukai has also attacked foreign citizens including Chinese and Philippine nationals, as well as other vulnerable groups and minorities in the society, such as those receiving public assistance.
- a9. Hate speech by the Zaitokukai was widely reported in the newspapers and television. On May 7, 2013, Prime Minister Shinzo Abe speaking at the House of Councillors Committee on Budget meeting commented that “it was extremely regrettable that there are speeches and acts trying to exclude certain countries and ethnic peoples,” regarding demonstrations in Tokyo aiming to exclude particular foreign nationals.

Hate speech has become a major social issue, and the Japanese Government is aware of it. The statement in the Government Report stating that “Japan does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited” is in contradiction to its own awareness.

- b. The Japanese Government has not taken any measures that it can under the existing laws.
- c1. The Japanese Government has explained that it can prohibit hate speech under existing laws, but it has not taken any measures that it can take under existing laws.

c2. During the attack on the Korean school in Kyoto in 2009, police officers were close by to where the Zaitokukai were committing forcible obstruction of business. But the police officers did not try to restrain them.

In Shin-Okubo, the police again merely carried out traffic control while the demonstration participants were shouting, “kill them, kill them,” and were harassing the shopping area. They did not restrain their acts of threats or obstruction of business.

The Tokyo Metropolitan Public Safety Commission granted permits to the demonstrators each time they requested permission. When other citizens protested, the demonstrators replied “The Commission explained that the demonstrations were legal.” It did not give any possible administrative guidance on the conduct of the demonstrators, and refused the requests from the other citizens to drop the Korean Town from the planned demonstration route.

c3. The Japanese Government also explains that it “recognizes that racially discriminatory motive is proven as vicious motive accordingly in the criminal trials in Japan and that the court takes it into consideration in sentencing” but this is also not based on facts.

First, in the above mentioned case of the Korean school in Kyoto, there are no facts indicating that the racist motivations of the defendants were reflected in the sentencing. The racist motives were not mentioned in the reasoning of the sentencing, and the sentence itself was very lenient compared with other similar cases. And although none of the defendants showed any remorse in the courtroom, even showing hostility towards the victims, execution of their sentences were suspended, and they were all released.

Also, at the demonstration in Shin-Okubo, 4 members of the Zaitokukai who participated in the demonstrations were arrested for having allegedly struck at the citizens along the route on June 16. But all were sentenced to very small fines, and their racist motivations were not given any consideration.

Meanwhile, the judgment in the civil case regarding the Korean school in Kyoto was delivered on October 7, 2013, ordering payment of 12 million yen for compensation for damages and placing a ban on propaganda activities on the streets around the school. But on October 19, the Zaitokukai appealed, and as of December 2013, the victims have not yet been remedied.

#### A4. The position of the JFBA

a. As shown above, dissemination of racist ideas and incitement to racial discrimination and violence is now a serious social issue in the current Japanese society, and the Japanese Government is aware of this. Therefore, the Japanese Government must promptly conduct a survey, and begin consideration of effective preventive measures.

- b. In particular, the Japanese Government should immediately take measures that they can take under existing laws. Obstruction of business and incitement to violence can be prevented by applying the provisions on intimidation or forcible obstruction of business, and damages can be mitigated by administrative guidance. Also, considerations should begin immediately on necessary legislation and amendments of laws.
- c. Further, public education promoting understanding of people of other ethnicities is also not progressing. The Zaitokukai is claiming on the Internet that the Korean citizens are “descendants of illegal migrants,” and that they enjoy unfair “privileges.” Students in Japan easily believe the claims by the Zaitokukai, since they have not received proper history education.
- The Japanese Government should promote education on the history and culture of people of other ethnicities to increase understanding, and should make efforts to overcome racist ideas.

## Chapter 11 Double Discrimination against Women

### A1. Conclusions and Recommendations

- a. The Japanese Government should collect data and conduct research on the measures to prevent gender-related racial discrimination, including exposure to violence, and it should release its findings. It should also conduct a comprehensive study on the situation of minority women, including women of indigenous Ainu, Buraku and Zainichi Korean and Okinawa, and it should make the research result available to the public.
- b. The Japanese Government should conduct a study on the actual condition of marriage immigrant women and their families, and implement concrete measures to support them. It should also consider legislation for regulating middlemen arranging international marriage in an appropriate manner.<sup>115</sup>
- c. Sexual Slavery in the Japanese Military during Second World War
  - c1. The Japanese Government should make a renewed apology clearly to the victims and provide them with public-funded compensation.
  - c2. The Japanese Government should make the contents of the 1993 Chief Cabinet Secretary, Yohei Kouno statement known to the public, and through education and publicity educate the current and future population accurately about the reality and ensure that intent to avoid repeating past mistakes is a common understanding in society. To this end, historical evidence of “comfort women” should be stated in the history textbook of junior and senior high schools, and students should be taught about the reality of exploitation, and similarly, the education must be given to the general public. It should refute attempts to deny the facts by government authorities and public figures and to re-traumatize the victims through such repeated denials.
  - c3. The Japanese Government should fulfill legal obligations by entering into a dialogue with the countries concerned, including Korean, Chinese, Taiwanese, Philippine, Dutch government immediately, acknowledging legal responsibility, creating victim relief legislation as promptly as possible, apologizing to the victims, taking steps to reinstate their dignity, providing monetary compensation, as well as establishing an investigative body to reveal the truth.

### A2. Summary of the Government Report<sup>116</sup>

The “Act on the Prevention of Spousal Violence and the Protection of Victims” (hereafter Spousal Violence Prevention Act) was promulgated in 2001 to prevent spousal violence, and the Act has been revised twice since then. The State Party formulated a “basic policy concerning measures for the

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<sup>115</sup> JFBA, *supra* note 35.

<sup>116</sup> Government of Japan, *supra* note 15, at Para.7-12.

prevention of spousal violence and the protection of victims” in 2008. “The Specialist Committee on Violence against Women” of the Council for Gender Equality, which is established within the Cabinet Office, held discussions toward smooth enforcement of the Spousal Violence Prevention Act. The results of the discussions are included in the Third Basic Plan for Gender Equality, formulated in December, 2010. The Japanese Government states that it is promoting wide-ranging efforts at present to cope with violence against women, including violence by husbands or partners based on the Plan.

### A3. Problems found in the Government Report

#### a. Collection of data and research

Committee on the Elimination of Racial Discrimination pointed out in “the general recommendation 25 on the gender related dimensions of racial discrimination”<sup>117</sup> that “racial discrimination does not always affect women and men equally or in the same way, certain forms of racial discrimination may be directed towards women specifically because of their gender,” and requested the State Party to provide specific information necessary for the implementation of the Convention regarding the situation of women, and sufficient information related to these points. Committee also recommended in the Concluding Observation of previous Government Report that “the next State party report contain socio-economic data disaggregated by gender and national and ethnic group and information on measures taken to prevent gender-related racial discrimination, including sexual exploitation and violence.”<sup>118</sup>

The Committee on the Elimination of Discrimination against Women in the Concluding Observation of the sixth periodic report of Japan stated in 2009 that “it regrets the lack of information and statistical data about the situation of minority women in the State party, who suffer from multiple discrimination based on gender and ethnic origin, both in society at large and within their communities. The Committee further regrets the absence of any proactive measures, including a policy framework for each minority group, to promote the rights of minority women.” Then, the Committee recommended “the State party to take effective measures, including the establishment of a policy framework and the adoption of temporary special measures, to eliminate discrimination against minority women. To this end, the Committee urges the State party to appoint minority women representatives to decision-making bodies. The Committee reiterates its previous request (A/58/38, para. 366) that the State party include information on the situation of minority women in Japan, especially with regard to education, employment, health, social welfare and exposure to violence, in its next periodic report. In this context,

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<sup>117</sup> Committee, General Recommendation No.25: Gender related dimensions of racial discrimination (March 20, 2000).

<sup>118</sup> Committee, *supra* note 100, at Para. 17.

the Committee calls upon the State party to conduct a comprehensive study on the situation of minority women, including indigenous Ainu, Buraku and Zainichi Korean and Okinawa women.”<sup>119</sup>

Nevertheless, it is only the statistical data with regard to the number of foreign nationals by status of residence, including number by age, by gender, and by marital status that the State Party submitted, and it has not provided the data and the research results on the measures to prevent gender-related racial discrimination, including exposure to violence. The Japanese Government has not conducted comprehensive study on the situation of minority women, including women of indigenous Ainu, Buraku and Zainichi Korean and Okinawa, either.

b. Foreign women married to Japanese men

b1. Number of marriage between foreign women and Japanese men hovers around 30,000 cases per year.

Majority of international marriage in Japan used to be the combination of Japanese women and foreign men. However, the combination of Japanese men and foreign women has become the majority since around 1975, and this new trend has continued since then. 80 per cent of these women are from other Asian countries, and it is presumed that the economic gap explains this figure. There are many middlemen arranging marriage between Japanese men and foreign women, and many problems have occurred as they passed incorrect and/or arbitrary information to the women, and charged a large amount of deposit for the marriage arrangement.

b2. Rights of foreign women who are married and living in Japan are not protected well enough. First of all, they need Japanese husbands' corporation in order to obtain the status of residence as “the spouse of a Japanese national,” or to extend their stay, thus it is easy for Japanese men to control foreign wives systematically. Even when Japanese husbands are responsible for their separation, including in cases of domestic violence (hereafter DV), there is a risk that their stay as “the spouse of a Japanese national” may not be renewed, having been considered that “practical basis for the marriage in social life has been dissolved” in case they are separated for certain period of time.

In particular, it is problematic that the Immigration Control and Refugee Recognition Act was revised in 2009, and was enacted in July, 2012. According to the revised act, the status of residence of women who stay in Japan as a spouse of a Japanese national may be revoked in case they failed to continue to engage in the activities corresponding to that status for more than six months without “justifiable grounds” while residing in Japan, or failed to continue to reside in the registered domicile in Japan without valid reason.

Some consideration are being made when determining whether the foreign national has a justifiable grounds” for not engaging in the activities corresponding to their status of residence while residing in Japan, especially for cases of domestic violence. However, except for cases where there are several medical certificates and photographs to prove the injury,

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<sup>119</sup> Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women (August 7, 2009), Para.51, 52.  
<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.JPN.CO.6.pdf>

these cases may not be correctly identified as DV cases, especially if there is only non-physical form of violence such as psychological abuse, and there is no sign of physical violence. Only a limited number of non-Japanese women are granted other status after they are divorced. They often find it difficult to claim their legitimate rights, for fear of losing their resident status, being unable to extend their status, and being separated from their children, and all these conditions make their situation extremely vulnerable.

There is a concern, however, that even if Japanese husbands are responsible for breakdown of their marriage, only non-Japanese women may be placed at a disadvantage due to the misjudgment of immigration authorities and the court. There is a case where this concern has become a reality.

In this case, non-Japanese woman "A" who has been married to a Japanese man and has three children complained to her husband in February or in March, 2008, having been controlled by her husband financially for many years, and she was thrown out of their house from her husband who flew into a rage. She moved from one friend to another since then, and she moved into non-Japanese man's house since around August, 2009.

During this time, she used to visit their house when her husband was not at home, looking after their children, and doing domestic work three to four times a week. However, she was unable to renew her status in December, 2010 as her husband did not cooperate, and she ended up overstaying her status. She was held in an immigration control center in April, 2011.

Then, a woman "A" applied for special permission for residence, but she was not granted special permission by the Minister of Justice, and the decision for the forced deportation was made.

A woman "A" filed a suit against the government seeking the repeal of the forced deportation in July, 2011.

However, Yokohama district court stated in April, 2013 that "Since whether A was abused or not is not directly related to how children were taken care of after separation, the court does not conduct fact finding regarding this matter."

"It's difficult to say that a woman A looked after their children well enough even before they were separated, due to the work A was engaged in for the purpose of sending money to her parents in her home country. She cared for children only to a limited extent both in terms of time and quality, and it became even more limited after their separation. Also financially, since A's children's living expense was covered solely by A's husband's salary before and after their separation, a plaintiff's involvement with care for their children was fairly limited."

"Children can contact A by visiting A's home country, or through using means of communications even if A goes back to her home country." Thus, the court dismissed her

claim, deeming the judgment of the government to deny her the special permission for residence and to order forced deportation to her lawful. A woman “A” filed an appeal.

- b3. These non-Japanese women know little about the language, Japanese culture, customs, social system, and legal system in Japan. The opportunity to learn them either for free of charge or at a low expense is not guaranteed in most cases, and it is only some local governments with many non-Japanese populations that offer such learning opportunities. Many women cannot read, write and speak Japanese well, and being unable to make use of the skill and qualifications they acquired in their home country, they engage in part-time job at a low pay. When they look after their parents-in-law, or help their family business, they are given no wages. Thus, they are put in even more vulnerable position, having no choice but to depend on their husbands financially.

On the other hand, learning opportunity is not guaranteed to Japanese men, either, who wish to be married (or already married) to non-Japanese women and their families to study language, culture, customs of their partner’s (or family member’s partner’s) home country, and learn about the difficulty women face when living in Japan and how to support them. Especially, when they get married through broker, many men consider that “naïve and obedient women who serve her husband” “came to Japan so that she can get married to a Japanese man because of economic gap.” In particular, when they pay high commission to the marriage broker, they tend to look down upon the women.

- b4. Reflecting these situations, non-Japanese women suffer from physical violence and various forms of non-physical violence (e.g. holding women’s passport, not allowing them to have their own money, forcing them to assimilate into Japanese culture, including food and custom, prohibiting them to associate with those from the same country of origin, prohibiting the use of their mother tongue, prohibiting to send money to their family, and make phone call to their families, prohibiting them to return home, refusing to pay money for them to return home) by their Japanese husbands.

The Government Report mentions the stipulation and revision of the Act on the Prevention of Spousal Violence and the Protection of Victims, but foreign women are not able to receive the same level of support as Japanese women even in the cases of domestic violence. There are various problems which includes; means and provision of support and information in multiple language is limited to resources on the internet and so forth, access to the support organization is unknown to the users, lack of staff who are able to deal with the case in multiple language at support organizations, qualified interpreters are not stationed in the office, staff do not know much about the background of marriage immigrants, and their knowledge about the Immigration Control and Refugee Recognition Act is insufficient. Also from the side of the women, it’s difficult for them to understand the information because of their lack of understanding about the social and legal system in Japan, and also there are only

few lawyers and doctors who are able to deal with the cases in multiple languages. Thus, they are faced with many problems and difficulties.

Even when non-Japanese women are unable to renew their status as a “spouse of a Japanese national” because their Japanese husbands do not cooperate, they are unable to receive welfare benefits however desperate their financial situations may be. Public Assistance Act allows only Japanese citizens as the recipient of the public assistance, and it can only be applied to foreigners “whose stay in Japan is legal, and whose activities are not restricted, including those who are permanent resident, long-term resident, a spouse of a permanent resident, and a spouse of a Japanese nationals [verbal instruction by Ministry of Health and Welfare, 1990].”

Non-Japanese women face not only domestic violence, but also various difficulties which includes; lack of easy access to support information due to language barrier, little contact with local community, and have only limited circles of friends and families in Japan, they often hide their experience of abuse and violence, as they are afraid of their experience being exposed, and excluded from their own community as a result, they hesitate to consult with support organization for fear of losing their resident status, and lack of sufficient support system in the national and local government. It is highly likely that many cases of abuse and violence remain hidden, and aggravated.

- b5. There is no legislation in Japan to support marriage immigrant and their families, and to regulate international marriage broker appropriately. Concrete measures should be taken promptly to conduct research on the situation of migrant women and their families and to support them. The government should also conduct a study on the legislation to regulate the international marriage broker appropriately.

In addition, public assistance should be provided as much as possible towards non-Japanese citizens in the same way as Japanese citizens, regardless of their resident status.<sup>120</sup>

Furthermore, even when separated, revocation of the resident status should not be applied to cases where non-Japanese women are fleeing from domestic violence, or they are asked to divorce from those who are responsible for separation. Revocation of the status should not be applied to these cases, deeming that there is a “justifiable grounds” stipulated by law, and it should be made clear how the case is determined so that judgment of domestic violence is not limited to only extreme cases. In such cases when non-Japanese women cannot renew or extend their status as a spousal to a Japanese national resulting from separation and divorce, their stay must be guaranteed during dissolution of their marriage, including the settlement of their divorce and in the divorce proceedings to prevent

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<sup>120</sup> JFBA, *supra* note 22, at Para.184.

disadvantage. Also, the conditions should be made clear in which status of long-term residency are granted to non-Japanese citizens with consideration for their previous resident status history.<sup>121</sup>

c. Victims of Sexual Slavery in the Japanese Military

a. Committee on the Elimination of Discrimination against Women, Committee on Economic, Social and Cultural Rights, Human Rights Committee, Committee against Torture have shown strong concern to the Japanese Government repeatedly with regard to the Japanese Military “Comfort Women” during Second World War. This includes; Japanese Government’s failure to admit the responsibility for the Japanese military’s “Comfort Women” during Second World War, failure to prosecute perpetrators of such acts of torture and bring them to justice, the compensation, financed by private donations rather than public funds, was insufficient and inadequate, there is hardly any mention about the issue in the history textbook, continuing official denial of the facts and re-traumatization of the victims by high-level national and local officials and mass media. And they have recommended the Japanese Government repeatedly to publicly admit its legal responsibility for the crimes of sexual slavery, make sincere apology to the victims, to persecute perpetrators who are still alive, to take swift and effective legislative measures to provide official compensation to all survivors of war time abuse as a matter of right, as well as to provide education to students and the general public, and refute attempts to deny the facts and to re-traumatize the victims through repeated denials, and to take appropriate punitive measures against them.

In addition, UN Committee on the Rights of the Child showed its concern in the concluding observation of the third periodic report of the Government of Japan that “Japanese history textbooks do not enhance the mutual understanding of children from different countries in the region as they represent a Japanese interpretation of historical events only.” “The Committee recommends that the State party ensure that officially reviewed textbooks present a balanced view of historical events in the Asia-Pacific region.”<sup>122</sup>

b. On the other hand, the Japanese Government’s stance is that the government is aware that the Japanese military’s “comfort women” issue has been a grave affront to many women’s honor and dignity. It has admitted Japanese military’s involvement with sexual slavery, and expressed feelings of sincere apology and remorse to former comfort women whose honor and dignity have been seriously damaged in a speech by the Chief Cabinet Secretary Yohei Kouno in 1993. It also claims that although the issues of compensation, property and the right to claim have already been legally

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<sup>121</sup> JFBA, Statement on the Commencement of the Resident Card and the System of the Basic Resident Registration for Foreign Nationals (July 9, 2012). <http://www.nichibenren.or.jp/en/document/statements/year/2012/120709.html>

<sup>122</sup> Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention (CRC/C/JPN/CO/3) (June 20, 2010). [http://www.mofa.go.jp/policy/human/pdfs/concluding1006\\_rights.pdf#search='CRC%2FC%2FJPN%2FCO%2F3'](http://www.mofa.go.jp/policy/human/pdfs/concluding1006_rights.pdf#search='CRC%2FC%2FJPN%2FCO%2F3')

solved in relation to the Second World War including these issues, the government have taken action in order to aim at a realistic remedy for former “comfort women” who had already grown old, and has carried out projects to provide “atonement money” to victims through the Asian Peace and Friendship Foundation for Women (hereafter “Asian Women’s Fund”).<sup>123</sup>

- c. The Japanese Government, however, has no consideration of publicly admitting the legal responsibility for the sexual slavery of Japan’s former military regime before 1945. The Government neither intend to investigate nor persecute the perpetrators of the crime of sexual slavery who are still alive, as well as to educate the general public on the issue, and to provide compensation to the victims as their right to redress.

Source of Asian Women’s Fund did not come from government funds, but financed by private donations, so it lacked the significance of state compensation for victims, and many of the victims thus refused to accept “atonement money”. Furthermore, Korea, the Philippines, Holland, Indonesia and Taiwan were the only countries targeted by the project, and also, the fund is now dissolved. The amount of compensation was also quite inadequate. Therefore, the UN Committees mentioned above have requested the Japanese Government repeatedly to publicly admit the legal responsibility, and to take state-led legislative and administrative measures separate from the fund. But, to date, the Governemnt has not attempted to take any form of legislative or administrative steps.

- d. There are still various discourses in circulation in Japan that deny the facts of harm towards the victims or that insult victims. A particularly common discourse is that “there was no coercion”, “they were prostitutes who worked of their own free will”. The fact-denial movement is running repeated campaigns to revise the Chief Cabinet Secretary Yohei Kouno’s statement in 1993. The Government of Japan neither refutes nor sanctions these discourses, but allows them to run. In this way, it inflicts on-going emotional pain on and fosters the re-traumatization of victims.<sup>124</sup>

In May, 2013, the person in the position of co-leader of the public political party and Osaka mayor remarked that “The comfort women were necessary for Japan’s wartime troops. And I suggested to the U.S commander of Marines at Okinawa that legalized sexual services could better be used.” The JFBA has repeatedly requested the Japanese Government to make an apology to victims who have suffered under the system of “comfort women” in Japan’s military, and provide monetary compensation. However, Osaka mayor’s such remarks further inflicts on-going emotional pain on the victims who have suffered under the system of “comfort women,” and still suffer from the trauma. Furthermore, his remarks demonstrates the recognition that the “use” of women’s sex is justifiable for the management of the military base and military personnel even now, and it is directly opposed to

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<sup>123</sup> JFBA, Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 10 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (February 25, 2013), Para.19. [http://www.nichibenren.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/alternative\\_report\\_en2013.pdf](http://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_en2013.pdf)

<sup>124</sup> *Idem*, P.52.

the dignity of each person and equality of men and women enshrined in the Constitution. Such statement made by personnel who exercise public authority as a co-leader of the public political party, and the head of the local government is grave affront to women's honor and dignity, and extremely inadequate. Nevertheless, the Japanese Government neither refutes nor sanctions these remarks, but allows them to run.

- e. Furthermore, accounts of the “comfort woman” issue in all Junior high school textbooks in Japan have already disappeared. While senior high school textbooks retain mention of the issue, all students do not necessarily learn history in senior high schools whereby subjects are electives. While one could argue that the contents of textbooks are the decision of the author, it is for sure that the current situation is a result of Ministry of Education, Science, Sports and Technology administration not welcoming the inclusion of this issue in textbooks. While the issue is not taught in compulsory education, and fact-denial discourses spread unchecked throughout society, most people in the general public have no opportunity to know the truth of this issue.<sup>125</sup>
- f. In the lawsuits filed in Japan against the Japanese government by ex-“comfort women”, some lower courts acknowledged the fact of damage inflicted on the plaintiff, however, the Supreme Court dismissed all such cases for reasons that various bilateral agreements between Japan and other nations have settled all postwar claims of compensation, or it has passed the statute of limitation. On the other hand, on August 30, 2011, the Korean constitutional court made a decision regarding the issue of the war-time military” comfort women’s” individual right to claim compensation from the Japanese government. It states that the Korean government’s failure to follow the procedure for the settlement of the dispute as stated in the article 3 of the agreement between Japan and the Republic of Korea on the right to compensation, while there is still a dispute between Korea and Japan over the interpretation of the article 2 of the above agreement regarding whether “comfort women’s” individual rights to claim compensation has been extinguished, violates the constitution. [The article 3, clause1 of the agreement on the right to compensation stipulates that both parties should make a diplomatic effort first, and set up an arbitration committee in case the issue has not been dissolved through diplomatic effort.] Upon this decision, on September 15, 2011, Government of Korea made a formal proposal in writing for the direct talk based on the article 3 clause1 of the agreement between Japan and the Republic of Korea on the right to compensation to the Minister of Japan to Korea. Nevertheless, Japan has made no official response to this request on the ground that the issue had “already been legally resolved”, even though Japan has obligation to respond under the agreement.<sup>126</sup>

Abe Cabinet was inaugurated in December, 2012. Just before the inauguration of the cabinet, Shinzo Abe who later became prime minister, and four others who later became cabinet members signed an

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<sup>125</sup> JFBA, *supra* note 123, P.53.

<sup>126</sup> JFBA, *supra* note 123, P.53.

advertisement publicized in the newspaper in the US in November, 2012, dismissing the coercion and the Japanese government's responsibility for the issue of "comfort women" by the former Japanese Army. Prime Minister Abe has held a view that the Government should review the statement made by Yohei Kouno, and publicly stated that he would review Kouno's statement until just before he became prime minister. Thus, he has no intention to resolve the issue as a government's policy, but rather adopt a resolution at a Cabinet meeting that the Government has no legal responsibility to follow the recommendation issued at international level.

- g. Committee against Torture recommended in its concluding observation on the second periodic report of Japan (published on 31 May, 2013) with regard to war-time military slavery (issue of so-called "comfort women" by the former Japanese military) to take legislative and administrative measures to find a victim-centered resolution for the issues of "comfort women", in particular, through education of the historical evidence, and by refuting attempts to deny the facts by government authorities and public figures.
- h. The Japanese Government should take the recommendations made by the UN treaty bodies seriously, and it should fulfill legal obligations by publicly admitting its legal responsibility as promptly as possible, creating victim relief legislation, apologizing to the victims, taking steps to reinstate their dignity, providing monetary compensation and establishing an investigative body to reveal the truth.

## Chapter 12 Discrimination Based on Genetic Informati

### A1. Conclusions and Recommendations

In view of the ongoing progress in technologies for human genome and genetic analysis, the Japanese Government should raise the people's awareness for the need to prohibit discrimination based on genetic information, so that racial discrimination and stigmatization does not occur because of abuse of large volumes of genetic information or methods of identifying racial differences. It should also promptly consider and take measures to prevent abuse of as well as protect genetic information

### A2. The position of the JFBA

Since the beginning of this century, technologies for human genome and genetic analysis have advanced dramatically. In Japan, too, it is expected that the results of the progress would be used in the development of medicine and welfare, as well as development of new industries.

However, genetic information also has relevance to ethnicity, and has the potential to lead to racial discrimination. Moreover, genetic information is a special type of information that also has an impact on the decisions regarding reproduction. It can also be used as an excuse for social stigmatization related to employment, insurance, and marriage. It may even have the potential to lead to eugenic discrimination.

In view of the feature of genetic information as special information as explained above, the Universal Declaration on Human Genome and Human Rights adopted at the 27<sup>th</sup> UNESCO General Conference (November 11, 1997) declared a ban on discrimination based on genetic characteristics in Article 6, and the International Declaration on Human Genetic Data adopted at the 32<sup>nd</sup> UNESCO General Conference declared that genetic data should not be used to discriminate or be used for the purpose of stigmatization in Article 7.

In Japan, too, discrimination based on genetic information can already be seen, such as the rampant discriminatory statements targeting Koreans based on genetic information. Certainly, much of the genetic information presented as their basis are currently lacking significantly in scientific basis, and it seems difficult to distinguish most of them from mere prejudice. However, not only is there a danger that the increasing genetic information through further development of technologies for human genome and genetic analysis may link with racially discriminatory prejudice, leading to a promotion of new kind of racial discrimination with a scientific appearance, but there is also considerable possibility that problems of discrimination in employment and insurance may arise. The Government, therefore, should not leave the current situation as it is.

Although the Japanese Government currently has a tendency to emphasize the scientific usefulness of

the development of technologies for human genome and genetic analysis, it does not have much awareness on the dangers of the problems of discrimination that may arise in the various related areas. Regarding legislation, although there is a law on the protection of personal information, there are no laws specializing in genetic information. To prevent abuse of genetic information, measures are taken only at the level of the “Ethical Guidelines for Human Genome and Gene Analysis,” which was adopted in 2001, and overhauled on February 8, 2013. However, the Ethical Guideline focuses on the protection of human rights of the individual provider of genetic information by ensuring informed consent, and there seems to be no consideration of prevention of discrimination.

Therefore, the Japanese Government should raise awareness of the people of Japan on the need for prohibition of discrimination based on genetic information, by such measures as explicitly banning such discrimination. It should also immediately consider and implement policies to prevent abuse of and promote protection of genetic information.

## Chapter 13 National Human Rights Institution

### A1. Conclusions and Recommendations

The State Party should establish the independent national human rights institution promptly, following the principles relating to the status of national institutions (Paris principles), adopted at the UN assembly on 20 December, 1993.<sup>127</sup>

### A2. Concerns of and Recommendations from Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination states in the paragraph 12<sup>128</sup> of the concluding observation of the reports submitted by states parties under article 9 of the Convention that “the Committee regrets the repeal of the proposed Human Rights Protection Bill, which included provisions for the establishment of a human rights commission, as well as the delays and overall absence of concrete actions and time frame for the establishment of an independent national human rights institution. The Committee also notes with concern the lack of a comprehensive and effective complaints mechanism (art. 2). The Committee encourages the State party to draft and adopt a human rights protection bill and promptly establish a legal complaints mechanism. It also urges the establishment of a well-financed and adequately staffed independent human rights institution, in compliance with the Paris Principles, with a broad human rights mandate and a specific mandate to address contemporary forms of discrimination. “

### A3. Statement in the Government Report

Paragraph 67<sup>129</sup> of the Government Report says that “the Government of Japan positions the establishment of an independent national human rights institution as an important task. In November 2012, the Cabinet submitted a bill to establish a Human Rights Commission and a bill to partially amend the Human Rights Volunteers Act to the Diet. The Human Rights Commission will be an independent commission that executes its duties without the control and supervision of the Government, and therefore is compliant with the Paris Principles. Although the bills were scrapped because of the dissolution of the House of the Representatives on 16 November 2012, the Government of Japan will make further efforts for necessary preparations for its establishment.”

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<sup>127</sup> JFBA, *supra* note 9.

<sup>128</sup> Committee, *supra* note 1, at Para.12.

<sup>129</sup> Government of Japan, *supra* note 15, at Para.67.

#### A4. Opinion of JFBA

- a. No effort has been made for the new legislation after the bills to establish a Human Rights Commission were repealed.

Paragraph 67 of the Government Report states that “although the bills were scrapped because of the dissolution of the House of the Representatives on 16 November 2012, the Government of Japan would make further efforts for necessary preparations for its establishment”.

In this regard, it is true that the bill for the establishment of Human Rights Commission was approved in the cabinet meeting, and the bill was submitted to the Diet in 2012. Although the draft bill mentioned above is still problematic as described in the section b. below, it was a positive step and it was appreciated that the Japanese government progressed towards the establishment of the national human rights institution.

However, the government has made no further cabinet decision on the bill, nor it submitted the bill to the Diet, although more than a year has passed since the bill was repealed. No consideration has been made either, for the establishment of effective national human rights institution other than Human Rights Commission.

In other words, the government has made no effort for setting up national human rights institutions, following the Paris principle since 16 November, 2012 when the bills were repealed.

- b. Shortcoming of the bill for the establishment of Human Rights Commission that has been repealed.

Approval of the draft bill at the cabinet meeting for the establishment of Human Rights Commission has been a positive step, however, the bill is still problematic in many ways in light of the Paris principle.

First of all, Human Rights Commission in the draft bill will be established under the Ministry of Justice, and it cannot be said that independence from the Ministry of Justice, which wield administrative authority as a government body, is perfectly guaranteed.

In Addition, no punitive measures have been provided for with regard to the duty to cooperate with the investigation conducted by Human Rights Commission in the draft bill, and it could cause problem for ensuring the effectiveness of the investigation.

Furthermore, it is stated in the Paris Principles that the composition of the national human rights institution and the appointment of its members shall be established “in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights”.

Therefore, foreign residents will be excluded from the members of Human Rights Commission based on the “Commonly Understood Principle” according to the current government’s view. There is also no provision in the draft bill to ensure the pluralist representation of the social forces for its composition, such as appointment of disabled people and social minorities as a committee member. Thus, government’s standpoint and the content of the draft bill lack consideration for the pluralist representation of civil society for the composition of Human Rights Commission. Also, the issue of pluralistic representation of the social forces for the Human Rights Commission has been addressed in the Chapter 2, B2 and B3 entitled Right to Take Office as Government Employees.

c. Conclusion

The Japanese Government should establish the national human rights institution independent from the Government promptly, following the Paris principles. In particular, consideration should be given for the independence of the national human rights institution and its plurality of its composition when establishing a national human rights institution.