

Declaration Seeking the Building of a Harmonious Multiethnic, Multicultural Society, and the Enactment of legislation for the Basic Human Rights of Non-national and Ethnic Minorities

Many non-nationals including people from Korea, Taiwan, and other former Japanese colonies, and their descendants, as well as migrant workers and their families are residing and living in present-day Japan. There are also increasing numbers of people who are in the position of ethnic minorities, such as those who acquired Japanese citizenship, and children who have Japanese citizenship by virtue of international marriage or other reasons, which is inducing a rapid trend toward a multiethnic, multicultural society.

However, the focus of postwar Japanese law on non-nationals has been to control them with laws including the Immigration Control and Refugee Recognition Act and the Alien Registration Act, while there has been no legislation on rights of ethnic minorities.

Under these circumstances, human rights of non-nationals and ethnic minorities in Japan are violated in many instances. For example, non-nationals entitled to protection under international human rights conventions are not allowed to enter or stay in Japan, as symbolized by the very small number of people recognized as refugees; there is discrimination such as denial to enter shops and restaurants and to move in, and discriminatory statements by public officials; and there is insufficient guarantee of education to maintain ethnic identity.

Therefore the Japan Federation of Bar Associations (JFBA) asks the national and local governments to pass a basic law and ordinances of human rights including the following key provisions for non-nationals and ethnic minorities, and to establish a government department to promote a harmonious multiethnic, multicultural society and implement the requisite measures.

Additionally, in carrying out the foregoing measures, the national and local governments should consider the historical background of people from former Japanese colonies and their descendants, who have been obliged to live in Japan as a consequence of colonial rule, and promptly settle accounts for the colonial rule such as compensation for war damage.

Suggested Provisions

1. As a rule, equally guarantee basic human rights for non-nationals as a rule, and to institute rights peculiar to ethnic minorities should be instituted.
2. Broadly guarantee participation in legislation for non-nationals with permanent resident status and others by, for example, granting them local election voting rights and other rights, participation in administration by, for example, employment as public employees, and participation in justice.
3. To the greatest extent possible, provide non-nationals with the same level of coverage as Japanese nationals under the social security system overall, in sections such as healthcare, pensions, and livelihood assistance.
4. To substantively guarantee rights of migrant workers under labor law legislation.
5. Prevent damage from human trafficking, domestic violence, and other harm to non-national women and others, and enhance measures for helping victims.
6. Develop measures to provide secure residency in Japan to refugees, families, women, and children who should be protected under international human rights

- conventions, and to non-nationals who need humanitarian consideration, and to make efforts across the spectrum of immigration procedure to guarantee due process and assure transparency.
7. Implement measures including those that aim to enhance Japanese language education for foreign children, and institutionally guarantee opportunities for native-language education in public schools as well as opportunities for diverse education including those in ethnic schools and aliens' schools.
 8. Introduce legislation to ban racial discrimination, and establish a human rights institution independent from the government in order to ensure the effectiveness of such legislation, as well as provide extensive human rights education committed to anti-discrimination and multicultural understanding.

The JFBA is resolved to actively involve and cooperate in the implementation of these measures and to make every effort to build a fulfilling and harmonious multiethnic, multicultural society in which people appreciate each other's differences by achieving basic human rights for non-nationals and ethnic minorities.

The JFBA declares as described above.

Japan Federation of Bar Associations
October 8, 2004

Reasons

1. Circumstances of non-nationals in Japan

As of December 31, 2003 there were 1,915,030 registered non-nationals in Japan, the highest number ever, which is a 45% increase over the end of 1993, a decade earlier. Resident non-nationals came from 186 countries and accounted for 1.5% of Japan's total population. Additionally, there are not a few unregistered non-nationals living in Japan. Most of these non-nationals are members of ethnic minorities (among the ethnic groups composing a society, the people who differ by culture, language, religion, or other attribute from the majority group; International Covenant on Civil and Political Rights, Article 27, Convention on the Rights of the Child, Article 30, etc.).

There are additionally many people living in Japan with the position of ethnic minorities, such as people from former Japanese colonies like Korea and Taiwan who obtained Japanese citizenship, those who obtained Japanese citizenship after long-time residence in Japan, and those who obtained Japanese citizenship through birth, as through international marriage. As such, there is a rapid trend toward a multiethnic, multicultural society.

2. Protecting Human Rights of Non-nationals: Current Situation and Challenges

(1) Current situation on and challenges in participation by non-nationals in public society

A February 28, 1995 decision by the Supreme Court's Third Petty Bench ruled that "in light of the importance of local self-government in a democratic society... , those who are permanent residents and who are recognized to have acquired especially close relationships with their local public entities among non-nationals living in Japan, in order to reflect their intentions in the performance of the public duties of the local authorities, which are closely linked with their lives on a daily basis, instituting measures under law for granting voting rights for mayor, assembly members, and other public offices of those local authorities is not prohibited by the Constitution." Further, in November 2001, when a bill granting voting rights and election eligibility for members of municipal assembly and mayors was submitted, in view of the necessity to respect the principles of Article 25 of the International Covenant on Civil and Political Rights, the JFBA expressed an opinion, which states that not only voting rights of assembly members but also election eligibility for mayors and members of municipal assemblies should be granted. In view of the fact that government by oneself or a representative of one's choosing is the basis of democracy, and that the number of long-term foreign residents in Japan is on the increase, Japan should, as widely as possible, allow the participation of resident non-nationals in various public areas including legislation, administration, and the administration of justice.

There is still no progress in granting voting rights for municipal assembly members and other offices, and regarding the matter of holding public office in administration and other fields, the Cabinet Legislation Bureau's opinion of a half century ago (1953), which states, "As a natural legal principle regarding public employees, Japanese citizenship is required to become public employees, because they are involved in the exercise of public power or shaping the national will," is mechanically applied, and there are still situations in which the door is closed to foreigners to become employees of municipalities or other public bodies. Reviews should be conducted on the general principle of opening that door. Also amid the discussion on citizen participation in the administration of justice, the time has also arguably come for discussion to reconsider the blocks put up to the participation of

non-nationals in many venues such as Civil Conciliation Committee members.

(2) Current situation on and challenges in healthcare and social security for non-nationals

Depending on residence status and the type of social security, the applicability of healthcare, pensions, and other social security to non-nationals has been limited as a matter of administrative practice. However, except for developing countries, due to the nature of their basic livelihood conditions (International Covenant on Economic, Social and Cultural Rights, Article 2 Paragraph 3), social security should be guaranteed to non-nationals as well unless there is rational reasons (Universal Declaration of Human Rights, Articles 22 and 25 Paragraph 1; International Covenant on Economic, Social and Cultural Rights, Articles 9 to 12, Convention Relating to the Status of Refugees, Article 23). In Japan too, non-nationals should, to the extent possible, be accorded equal social security.

However, with national health insurance, for example, applicability was limited to non-nationals with residence statuses in accordance with the 1992 Ministry of Health and Welfare notification. Thus people without residence statuses were all denied eligibility. A January 15, 2004 Supreme Court Decision partially negated the administrative interpretation of that notification, allowing insurance applicability to non-nationals who have no residence status but are anticipated to be in Japan for a certain period of time. In response, the Ministry of Health and Welfare that June issued a revised ministerial ordinance that denied eligibility to non-nationals without residence statuses and to those with residence statuses of less than one year.

There have been cases going far back in time where non-nationals who needed emergency medical attention for humanitarian reasons had been denied such medical attention because of their being non-nationals. A reason cited is the inadequate institutional provisions for having national or local governments supplement unpaid medical expenses, leaving healthcare providers to foot the bill. What is more, the national and local governments have lagged in their efforts to provide medical translators and to widely implement health service measures for non-nationals.

Additionally, the lack of progress in pension agreements with other countries means that even if non-nationals paid into Japan's pension and insurance systems while here, they will find it very difficult to become eligible for benefits after returning to their home countries. This problem has yet to be solved.

(3) Current situation on and challenges in non-national workers

Whether or not foreign workers have residence statuses, and the kind of status, "the Employment Security Law, Dispatched Workers Law, Labor Standards Act, and other labor-related laws and ordinances" are supposed to apply to them (January 26, 1988 Ministry of Labor notification).

However, in actuality, the ratio of foreign workers who are indirectly employed despite being in a place of business because they are, for example, temporary workers, to workers who are directly employed is about 8 to 5 ("Report on the Employment of non-nationals," released on December 16, 2002 by the Ministry of Health, Labor and Welfare), and even among those in indirect employment, many workers are in precarious circumstances, not knowing when their contracts might be cancelled because they are actually day laborers. Additionally, not a few non-nationals in Japan with a nominal "training" residence status and in job types such as "carpenter," "welder," or "apparel sewing" are, for all practical purposes, performing the same jobs as workers. Yet they are

ineligible for workers' accident compensation insurance because nominally they are not workers.

The government must therefore implement measures to substantively guarantee foreign workers' rights under the labor law system.

(4) Current situation on and challenges in human trafficking of foreign women among others, and other issues

Mainly with regard to human trafficking of foreign women, international reports and news stories raise Japan as the main destination for trafficked women from Thailand, Columbia, and other countries. The annual US State Department Trafficking in Persons Report released in June 2004 lists Japan as a monitored country, the first of such mention.

For these reasons, efforts are being made for ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons and of corresponding domestic legislation, but the government should not only provide for stricter punishment of offenders and facilitate cooperation for international investigations as well as for administration of justice, but also institute measures with emphasis on protecting victims, such as a system to grant victims temporary or permanent residence status, a social security system, and collaboration between domestic and foreign NGOs and other organizations.

To assist foreign women who are victims of domestic violence, the government should consider implementing legal assistance systems that include granting victims residence statuses for however long it takes for the victims to recover, and providing interpreters.

(5) Current situation in and challenges on immigration procedures and residency

Regarding entry and exit of non-nationals, the government claims that it or the Minister of Justice, who has direct right of disposition, has broad discretion over whether to allow non-nationals to enter and stay in Japan.

Over the last 20-odd years, however, Japan has ratified and acceded to international human rights conventions including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Relating to the Status of Refugees, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture. Therefore, at least with regard to the security of residence and legal statuses of non-nationals who are especially protected under international human rights conventions such as refugees, families, women, and children, the government should actively implement policies also from the standpoint of faithful convention compliance and implementation. An example of the current situation is the mere 10-odd refugee approvals per year, which is an order of magnitude smaller than Western developed nations. As it cannot be judged that Japan operates in compliance with international conventions, immediate improvement is necessary.

The government should also consider measures to provide secure residency as broadly as possible to non-nationals who require humanitarian consideration, taking into account international human rights standards and humanitarian concerns.

Regarding establishment of temporary facilities to provide secure living arrangements for non-nationals who are granted residence under international human rights conventions, the provision of facilities for refugees has just partly begun and needs to be speeded up.

Another issue is that of immigration procedures for landing, residence, and

deportation. Some problems are that since application of the Administrative Procedures Act is uniformly exempt, specific reasons for non-approval are not made clear; and that not only are the requirements for physical detainment ill-defined, there are also no effective procedures for making appeals. Similarly, in immigration procedures, due to the serious restriction imposed on human rights by physical detainment and other actions, concrete measures for a guarantee of due process and an assurance of procedural transparency are necessary in light of Article 31 of the Constitution.

(6) Current situation on and challenges in enhancing education and preserving ethnic identity

Article 13 of the International Covenant on Economic, Social, and Cultural Rights guarantees that everyone, including non-nationals, is entitled to free primary education. Thus, it is urgent to guarantee this in actuality.

However, there is no accurate information on the number of ethnic minority children, including non-nationals, living in Japan who are not enrolled in general education. It is becoming clear that many such children are not enrolled in schools: 30.3% in Fuji City, Shizuoka Prefecture and 35.5% in Ota City, Gunma Prefecture (2002 data). Yet, only a few municipalities have performed surveys to determine how many non-national children need education for learning Japanese, including children not enrolled in schools. Some of the reasons cited for non-enrollment are that sufficient attention is not given to Japanese language education, there is lack of teachers for instructing classes, not all non-national children receive notifications for school attendance, and schools do not provide enough guidance for harmonious coexistence and learning with children of other ethnic groups. The right of foreign children to an education must be substantively guaranteed by enhancing help for learning Japanese and attentive measures for school enrollment.

Article 27 of the International Covenant on Civil and Political Rights confirms the right of ethnic minorities to preserve their ethnic characteristics and identity including language, religion, and culture. This is set forth specifically in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities and in Article 30 of the Convention on the Rights of the Child. Education has an especially important role in maintaining ethnic identity, and for an individual to establish his or her ethnic identity, it is of decisive importance to guarantee the opportunity to learn one's native tongue and the history and culture of one's native country during the character formation period.

Although there are sincere efforts to do this, such as the ethnic classes carried out in places like Osaka Prefecture, Japanese public education as a whole has actually been assimilative, with no consideration given to ethnic identity. In relation to financial assistance to non-nationals and ethnic minorities attending ethnic schools and aliens' schools as well as to discriminatory treatment as in qualification for college entry, the JFBA advised the government in 1998 that it should provide financial and other assistance to Korean schools. Since then, UN committees have repeatedly advised and expressed concerns about this matter. However, discriminatory treatment of Korean schools including qualification for college entry has yet to be eliminated, and nothing has been done to provide aliens' schools with sufficient financial assistance. It is necessary to institutionally guarantee diverse educational opportunities that include public education, ethnic schools, and aliens' schools.

(7) Current situation on and challenges in restraining ethnic discrimination and redressing of damage

To deal with discrimination against non-nationals and ethnic minorities, Japan

acceded to the International Convention on the Elimination of All Forms of Racial Discrimination eight years ago in December 1995.

However, there is discrimination by public officials, as seen in statements by the heads of municipalities — who should be taking charge of eliminating discrimination — who name certain ethnic groups and nationalities and make impressions as if they are groups of criminals.

For example, the abductions of Japanese by the Democratic People's Republic of Korea have triggered repeated violence and verbal abuse against people including Korean children in Japan. Further, courts have handed down a number of decisions confirming the illegality of discrimination in employment, housing, and entrance to shops and restaurants (examples: October 12, 1999 decision by the Hamamatsu Branch of Shizuoka District Court on a discrimination case that took place at a Hamamatsu jewelry store; November 11, 2002 decision by Sapporo District Court on refusal to allow entry to a public bath in Otaru).

Eliminating discrimination against these non-nationals and others requires the national and local governments to faithfully implement the International Convention on the Elimination of All Forms of Racial Discrimination and to quickly pass laws and ordinances to prohibit racial discrimination. Guaranteeing their effectiveness requires that Japan, in accordance with the Principles Relating to the Status of National Institutions ("Paris Principles"), establish a human rights institution that is independent of the government, and to thoroughly implement education for human rights and multicultural understanding aimed at prohibiting discrimination. In 1998, the International Committee on Civil and Political Rights, in its concluding observations on the Japanese government's report, strongly advised the establishment of a human rights institution independent of the government to investigate allegations of human rights violations. At its 2000 Convention on the Protection of Human Rights, the JFBA adopted a declaration demanding the establishment of a national institution on human rights that is independent of the government. However, as yet no such national human rights institution has been created. An independent institution should be created immediately to eliminate racial discrimination.

3. The need for basic legislation of human rights for non-nationals and ethnic minorities

(1) As the foregoing indicates, human rights of non-nationals and ethnic minorities, which include non-nationals, continue to be violated in many ways.

However, Japan's legal system covering non-nationals is comprised of the Immigration Control and Refugee Recognition Act and the Alien Registration Act, which are both laws mainly concerned with controlling non-nationals. Other than partial amendments to laws in conjunction with the ratification of international human rights conventions such as the Convention Relating to the Status of Refugees and the Convention on the Rights of the Child, there are no laws aimed at substantively guaranteeing the human rights of non-nationals and ethnic minorities.

From the standpoint of guaranteeing basic human rights of society's vulnerable, Japan has in the postwar years created a number of "basic laws" including the Basic Law on the Handicapped, Basic Law for a Gender-Equal Society, Basic Law on Measures for the Elderly and Disabled, and Basic Law on Consumer Protection.

There are no basic laws that guarantee the basic rights of non-nationals and ethnic minorities, or basic laws that establish national and local government measures for such purpose.

Therefore, to guarantee human rights of non-nationals, to realize the rights peculiar to

ethnic minorities, and to build a harmonious multiethnic, multicultural society, the national and local governments should pass basic human rights laws and ordinances with the following key provisions for non-nationals and ethnic minorities. The national government should also create a government department to promote a harmonious multiethnic, multicultural society and implement these measures.