

ALTERNATIVE REPORT  
TO THE THIRD, FOURTH, FIFTH AND SIXTH COMBINED PERIODIC REPORT OF JAPAN  
ON THE INTERNATIONAL CONVENTION ON THE ELIMINATION  
OF ALL FORMS OF RACIAL DISCRIMINATION

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JAPAN FEDERATION OF BAR ASSOCIATIONS

(JFBA)

## CONTENTS

Introduction .....	4
Chapter 1: General Issues .....	5
Chapter 2: Persons from the Former Colonies	
Section 1: Historical Background .....	11
Section 2: Issues Affecting Resident Koreans	
( 1 ) Verbal and Physical Harassment of Korean Schoolchildren.....	19
( 2 ) Political Participation.....	22
( 3 ) The Right to Take Office as Government Employees .....	24
( 4 ) The Re-Entry Permit System (Art. 5(d)(ii)) .....	27
( 5 ) Accreditation of Korean Schools (Article 5(e)(v)) .....	29
( 6 ) Financial Support for Korean Schools.....	31
( 7 ) The Need for Systematic and Organized Ethnic Studies Classes at Public Schools .....	33
( 8 ) The National Pension System .....	35
( 9 ) Discrimination Against Resident North Koreans Due to Political Tensions with the Democratic People’s Republic of Korea .....	37
( 1 0 ) The Duty to Carry Proof of Alien Registration At All Times.....	40
Chapter 3: Other Permanent Foreign Residents	
Section 1: General Issues .....	41
Section 2: Permanent Foreign Residents Generally	
( 1 ) The Prohibition of Discrimination by Agencies of the State and of Local Governments	
(i) Invasions of Privacy Rights by Tightening Immigration Control .....	42
(ii) Discrimination in Criminal Procedures .....	44
(iii) Discrimination in Public Assistance and Related Administrative Appeal Procedures (Art. 5(a)(e)(iv)).....	45
(iv) Participation in Judiciary .....	46
(v) System for Reporting Illegally Staying Migrants.....	49
( 2 ) Prohibition of Discrimination by Private Persons (Convention Art. 2(1)(d)).....	51
( 3 ) Article 5 .....	53
( 4 ) Issues Affecting Brazilians, Peruvians and Other Persons of Japanese	

Descent .....	
(i) Employment and Public Assistance Issues (Article 5(e)(i)(iv)).....	56
(ii) Education Issues (Article 5(e)(v)).....	58
 Chapter 4: Refugees	
Section 1: Treatment of Applicants for Refugee Status .....	60
Section 2: Economic Support for Refugees .....	62
 Chapter 5: Burakumin Issues.....	65
Chapter 6: The Ainu People.....	68
Chapter 7: Returnees from China .....	72
Chapter 8: Problems that Arise in Penal Facilities.....	74
Chapter 9: Discriminatory Statements by Public Officials.....	81
Chapter 10: Multiple Discrimination Against Women .....	83

## **Introduction**

( 1 ) In accordance with Article 9 of the International Convention on the Elimination of All Forms of Discrimination, the Third, Fourth, Fifth and Sixth Combined Periodic Report of the government of Japan was submitted in August 2008. The Japan Federation of Bar Associations (hereinafter referred to as “the JFBA”) has prepared this document as an NGO alternative report to the government’s report, and respectfully submits it to the Committee on the Elimination of Racial Discrimination (hereinafter “the Committee”) with the hope that it will provide the Committee with useful information as it conducts consideration of the government report.

( 2 ) 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 may be considered to be subjects of the Convention. Moreover, as the Committee has requested in the past, this Report highlights how the government has responded to items of concern and recommendations issued by the Committee when it considered the government’s Initial and Second Periodic Report. In addition, new issues have arisen in the past eight years which were not addressed at the previous examination. Although the government report does not always address these issues, in cases where the issues may be considered especially important concerning the implementation of the Convention, the JFBA has added these issues in this Report.

( 3 ) Consequently, this Report is organized as follows:

- (1) Chapter One, “General Issues,” comments on the extreme inadequacy of the government report with regard to the list of matters identified by the Committee in the preceding review. In particular, it reports that no measures have been taken to address issues that are necessary to the effective implementation of the Convention such as the establishment of a national human rights institution or education for judges and other officials on the international human rights law.
- (2) Chapter Two provides details on serious violations of specific human rights which are experienced today by individuals who are from the old colonies and were made to live in Japan as the result of Japan’s control of colonies in the pre-war period.
- (3) Chapter Three. Due to the Japanese government policy of accepting foreigners beginning in the 1980s, the population of foreigners residing in Japan, including individuals from the former colonies, presently exceeds two million. This chapter focuses on the current status of the enjoyment of rights specified in each provision of the Convention. In addition, as a separate matter it focuses on problems experienced by Brazilians, Peruvians and others of Japanese descent.

- (4) Chapters 4 through 7 describe the conditions and problems affecting groups and minorities including refugees, Burakumin, the Ainu people, and returnees from China who should be paid attention in relation to the application of the Convention.
- (5) Chapter 8 mentions the treatment of prisoners at penal facilities and the need for education of staff at those facilities. (Convention Article 7)
- (6) Chapter 9 reports that there has been no end to discriminatory statements by public officials even after the problem of the discriminatory statements by the governor of Tokyo was taken up during the preceding consideration of the report of Japan.
- (7) Chapter 10 points out the need for a factual investigation of multiple discrimination against women and publication of the results.

## **Chapter 1: General Issues**

1. Following the Committee's review of the Initial and Second Periodic Report in 2001, this is the Committee's second review of a report of the Japanese government under the Convention. At the consideration by the Committee of the Initial and Second Periodic Report, the Concluding Observations composed of 27 paragraphs were issued.

Although the government's periodic report should provide an examination of the implementation of measures addressed to the Committee's Concluding Observations since 2001, in fact the government report itself is little more than a listing of the provisions of the Convention with very little information concerning actual measures taken to address the concerns of the Committee.

On the other hand, there was a report on follow up to the consideration of the Initial and Second Periodic Report up to August 2007. However, the content of this report shows that there has been very little progress in response to the recommendations. For the most part, it merely repeats the viewpoints of the State Party expressed at the time of the preceding review. We can recognize that there have been some reforms, including refugee policy, improvements in immigration control, and elimination of the requirement imposed on those foreigners to change their names as a condition to obtaining Japanese nationality by naturalization. But aside from these measures, there has been almost no progress.

In this chapter on general issues, we will comment on matters affecting the overall application of the Convention; we will address the specific facts of discrimination under separate sub-headings.

### **2. Concerning Paragraph 7 of the Committee's Concluding Observations**

- (1) There has been no investigation of the ethnic composition of Japan's population since the

Committee issued its Concluding Observations. To some degree we share the government's concern that clarifying ethnic backgrounds through such an investigation would have the perverse effect of increasing prejudice in society. However, circumstances in Japan which do not allow public disclosure of ethnic backgrounds show that the purposes of the Convention to eliminate racial discrimination are not fully understood. This does not merely concern such matters as investigation techniques; it raises questions about the progress of policies both to eliminate racial discrimination and the sufficiency of efforts to build a society in which individuals can freely disclose their ethnic backgrounds.

## **(2) Recognition of Okinawans as an Ethnic Group**

The claim that the Okinawans constitute a separate ethnic group has existed for a long time, whether or not one accepts this as the majority opinion.

It is a historic fact that there was clearly a separate national structure until the mid-18<sup>th</sup> Century. The residents of Okinawa were not granted the right to participate in national elections at the time the Meiji Constitution was enacted in 1889; in that sense, one can say that the Constitution was not fully implemented. Thereafter the Japanese government continued to forcefully seek the elimination of the Okinawan dialect. Experts have pointed that this policy was not limited to a ban of a dialect within a single language (on this point there is disagreement among linguists), but extended to destruction of the unique Okinawa culture. Moreover, we must face the historical facts that the only land battle fought within Japan during World War II took place on Okinawa and that Okinawa was occupied by the United States for more than twenty years thereafter.

Although there is no established view even among experts on the question whether the Okinawan people are part of the same ethnic grouping as the Japanese people, if one considers the totality of these historical factors and circumstances following World War II, no one can deny that the Okinawan people have created a unique culture and respect for this culture must be protected under the Convention.

The report of the Special Rapporteur on Racial Discrimination on the mission to Japan in 2005 states that racial discrimination exists in Japan and that the Okinawan people are one of the groups that is discriminated against.

## **3. Interpreting "Descent" in Recommendation Number 8**

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. The government opinion that "descent" is a concept focused on social origin to which the Convention, which is focused on ethnic or tribal differences, does not apply, 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, it is also certain that application of the Convention would result in further progress toward that goal. As the Committee has pointed out, the current situation that in Japan the only law which carries an express prohibition of discrimination is Article 14 of the Constitution is insufficient. Application of this Convention, which is superior to domestic law, can contribute to evolution of the debate. It should be recalled that the International Covenant on Civil and Political Rights has made a great contribution toward the dissemination of human rights concepts, unrestricted by the human rights provisions of Japan's Constitution.

Discrimination against resident Koreans and against Burakumin are the most serious problems of discrimination in Japan. Discrimination against Koreans is a typical example of discrimination covered by the Convention. We would hope a strong recommendation from the Committee indicating that the Convention should also apply to discrimination against *Burakumin*, another serious case of discrimination in Japan.

#### **4. Concerning Constitution Article 14, the Need for a Law Prohibiting Discrimination, and the Japanese Legal System (Recommendations 9 through 13)**

##### **(1) Constitution Article 14 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." It is generally thought that this text carries the same meaning as Article 1 of the Convention, however it may be that, 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 pointed out by the Committee, aside from the text of this provision, there is no Japanese law that directly prohibits discrimination.

Article 14 of the Constitution prohibits discrimination by public authorities. In order to restrict discrimination by private entities, there must be a finding of a violation of the civil law concept of "public order and good morals." In its report, the government asserts that criminal punishment is available for the crime of defamation. However, no matter what kind of racially discriminatory statement is made, if it does not cause injury to a specific individual, this law does not apply. In other words, the courts apply the basic rule that damage to the reputation of a group (racially discriminatory words and actions) does not mean damage to the reputation of an individual who may be a member of that group. This rule also applies in civil law tort cases. In recent years, there are a few court decisions in civil tort cases involving racially discriminatory words and actions which have granted the payment of financial compensation.

Acts of violence based on racially discriminatory beliefs can be prosecuted under the criminal law as assault or the infliction of injury, but in such cases there is no law at all under which investigation of racially discriminatory aspects would be conducted or added penalties would be

applied because of such background.

## **(2) The Relationship Between the Convention and Domestic Law**

In accordance with Article 98 of the Constitution treaties have the same direct effect as domestic law even without action by the legislature. In other words, treaties are self-executing. This is not subject to dispute; it is “monism” legal system. However, in order for a treaty to be self-executing, treaty language must be as specific as domestic law and the treaty must not require an additional budget. Disputes over determinations whether treaty content is or is not specific affect other treaties as well. In fact, the government frequently denies that treaties are self-executing on the ground that treaty content is not specific. As a result, direct application of treaties has been realized only within a narrow range.

The Committee’s General Recommendations state that not all the provisions of the Convention have a self-executing character. Therefore, in paragraph 11 of its Concluding Observations, the Committee specifies that Article 4 is of a mandatory nature. At the same time that we welcome this kind of observation, we also feel a degree of concern about the emphasis on this statement generally denying the self-executing character. As such view will be expansively disseminated in the debate in Japan to represent complete denial of the direct application (self-executing effect) of other treaties.

## **(3) Japan’s Reservations Concerning Paragraphs (a) and (b) of Article 4**

As noted in the government report, there are some who oppose the application of criminal sanctions to racial discrimination because such action has the aspect of a restraint on freedom of speech. However, the same issue arises in all states parties. This is not a problem that can be solved by other countries but not by Japan. The JFBA would welcome a statement from the Committee to the effect that “prohibition of the dissemination of all ideas based upon racial superiority or hatred is not compatible with rights to freedom of opinion and expression.”

The view of the government report that discrimination in Japan is not so serious enough to consider to take legislative actions for criminal sanctions even by taking risks to chill legitimate discussions does not present an accurate description of conditions in Japan. A sense of racial superiority toward Koreans has existed since long ago. Symptoms of a resurgence of these feelings repeatedly appear. Meanwhile, discriminatory statements and actions aimed at the Burakumin never cease. In particular, pernicious racist expressions and attacks on the Internet are especially conspicuous. There is an urgent need to police these matters. The government report fails to grasp any of this.

## **(4) The Need for Enactment of a Basic Law Prohibiting Discrimination**

In view of the foregoing, we must conclude that discrimination cannot be made illegal under

existing law. In order to materialize Article 14 of the Constitution and establish the concept that discrimination is unlawful throughout society and comprehensively, and moreover, to eliminate discriminatory words and acts in reality, it is necessary to enact a Basic Law Prohibiting Discrimination.

As indicated above, sanctions and financial compensation provided for under existing criminal and civil law are insufficient. For that reason, the opinion expressed by the Committee in Paragraph 10 of its Concluding Observations must be respected. Moreover, since the Committee's review of the Initial and Second Periodic Report, the need for this law has not declined; if anything, it has increased.

#### **(5) The Need for Establishment of a National Human Rights Institution**

The government reports that it proposed a Human Rights Protection Bill but that the proposed bill expired in 2003. Approximately six years have passed since then, but the government has not made a new proposal for legislation.

There is an urgent need for the enactment of a basic law prohibiting discrimination and the establishment of a national human rights institution to provide a means to regulate and provide remedies for human rights violations resulting from discrimination.

The JFBA has appealed to public opinion by publishing the outline of a bill seeking establishment of a national human rights institution. There is a need for establishment of a national human rights institution based on the Paris Principles. However, debate over the Human Rights Protection Bill proposed by the government mentioned above centered on issues such as the independence of the institution, the appointment of foreigners as the members and fears over restrictions on free speech. Nonetheless, national human rights institutions have been established in many countries, so it can be said that such issues have been resolved. It should be stressed that only Japan is going to establish a problematic institution.

#### **(6) Human Rights Education for Judges and Other Officials**

There is no system in Japan to provide education on the international human rights law to judges and other legal professionals. At Japan's Legal Research and Training Institute (a training institute for new candidates to become judges, prosecutors and attorneys) lectures on international human rights law are held approximately once per year. There is no other educational curriculum. We have heard that there have been a few internal lectures for judges, but no educational system has been publicly disclosed. Courses in international human rights law are offered by law schools, the institutions to provide pre-qualification legal education, but because this is not a mandatory subject for the bar examination, the number of students who take such courses is extremely small.

We must conclude that the recommendation in paragraph 13 of the Committee's Concluding

Observations concerning the education of public officials has not been fully implemented.

On the other hand, the JFBA, organizes meetings and shares the discussions in 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, and, of course, the Committee of this Convention as well as the Human Rights Council, etc., the JFBA every time sessions of these Committees are held, and holds workshops to introduce these proceedings, and several times per year holds seminars on international human rights law available to all members. As a result, understanding of international human rights law is slowly developing among JFBA members.

## **Chapter 2: Persons from the Former Colonies**

### **Section 1: Historical Background**

#### **A. Conclusion and Recommendations**

Japan should adopt a comprehensive law guaranteeing the rights of people from the former colonies and their descendants to the same degree as Japanese citizens and eliminating discrimination against them.

Japanese government should adopt a comprehensive law guaranteeing the rights of people from the former colonies and their descendants to the same degree as Japanese citizens and eliminating discrimination for the reason of non-Japanese against them, known as “Korean residents in Japan ” and “Taiwanese residents in Japan ”, who had have the Japanese nationality, that was , however, perfectly deprived on April 28, 1952 by Japanese government without their consent.

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

In paragraph 7, the Committee stated, “While taking note of the State party’s point of view on the problems involved in determining the ethnic composition of the population, the Committee finds that there is a lack of information on this point in its report. It is recommended that the State party provide in its next report full details on the composition of the population, as requested in the reporting guidelines of the Committee, and, in particular, information on economic and social indicators reflecting the situation of all minorities covered by the Convention, including the Korean minority and the Burakumin and Okinawa communities. The population on Okinawa seeks to be recognized as a specific ethnic group and claims that the existing situation on the island leads to acts of discrimination against it.”

Further, in paragraph 10, it said “The Committee is concerned that the only provision in the

legislation of the State party relevant to the Convention is article 14 of the Constitution. Taking into account the fact that the Convention is not self-executing, the Committee believes that it is necessary to adopt specific legislation to outlaw racial discrimination, in particular legislation in conformity with the provisions of articles 4 and 5 of the Convention.”

The Committee also stated “The Committee is concerned about discrimination affecting the Korean minority. Though efforts are being made to remove some of the institutional obstacles preventing minority students from international schools, including Korean schools, from entering Japanese universities, the Committee is particularly concerned that studies in Korean are not recognised and that resident Korean students receive unequal treatment with regard to access to higher education. It is recommended that the State party undertake appropriate measures to eliminate discriminatory treatment of minorities, including Koreans, in this regard and to ensure access to education in minority languages in public Japanese schools.”

### **C. Statements of the Government Report**

Paragraph 21 of the Government Report includes the following statements.

“The majority of Korean residents, who constitute about one-fourths of the foreign population in Japan, are Koreans or their descendants who came to reside in Japan for various reasons during the 36 years (1910-1945) of Japan's so-called rule over Korea and held Japanese nationality during that period. They have continued to reside in Japan even after having lost their Japanese nationality due to the enforcement of the San Francisco Peace Treaty (April 28, 1952) after the World War II.

“The Korean residents are divided into those who have obtained the nationality of the Republic of Korea and those who have not, based upon their own will, under the current circumstances in which the Korean Peninsula is divided into the Republic of Korea and the Democratic People's Republic of Korea.

“These residents stay in Japan under the status of ‘Special Permanent Resident’. They numbered 426,207 as of the end of 2007. (The total number of ‘Special Permanent Residents’ is 430,229, including 2,986 Chinese nationals and people of other nationalities) As for region of their residence, about half of these Korean residents live in the Kinki region centering on Osaka, and approximately 23% of them live in the Kanto region such as Tokyo and Kanagawa Prefecture.

“The number of ‘Special Permanent Residents’ continues to decrease every year due to the settlement and naturalization of Korean residents in Japanese society.”

Paragraph 22, regarding legal status, does nothing more than quote paragraph 39 of the Initial and Second Periodic Report and there are no specific statements. Regarding special period of validity for re-entry permit and special conditions for landing examination, among preferential treatment under the Special Regulations Law on the Immigration Control (paragraphs 41, 42 and 43 of the Initial and Second Periodic Report), paragraph 23 states “For cases in which the special

permanent residents work abroad as corporate representatives or study abroad and so on, the valid period for re-entry permit is set at within four years (three years for foreigners staying under other status, but in the case of foreigners whose period of stay are less than 3 years, their expired dates of re-entry permit are same date as their period of stay.). Likewise, one year of extension of re-entry permit within five years in total from the original permit (within four years for foreigners staying under other status) is permitted in the case of an application made outside of Japan. This facilitates the re-entry procedure for the special permanent residents who live abroad for long periods of time.”

On the special conditions for landing examination, it also says “When special permanent residents who have left Japan with a re-entry permit re-enter the country, of the landing conditions set out in article 7, paragraph 1, item 1 of the Immigration Control and Refugee Recognition Act, immigration inspectors consider only the validity of their passport, and do not examine items for refusing entry. Thus, the Government tries to legally stabilize the status of the permanent resident.”

Further, concerning education, paragraph 24 states “Japanese public schools at the compulsory education level guarantee foreign nationals the opportunity to receive education if they wish to attend such school by accepting them without charge, just as they do with Japanese school children.”

“In addition, a school subject called “*sogo-gakushu*” (general learning), which primarily aims at developing children’s learning ability beyond the borders of conventional subjects, allows conversational foreign language classes and opportunities to study traditional cultures, to be provided as part of the education for cultivating international understanding. In the case of children of foreign nationalities, they can even receive education in their native tongues (minority languages) and learn about their native cultures, according to local circumstances and situation of school children such as the number of children of a particular nationality and their command of Japanese. Furthermore, when these foreign children enter school, maximum attention is given to ensure that they can receive, without undue difficulty, the education in Japanese normally taught to Japanese children. Toward this end, they are provided with, among other things, guidance in learning Japanese and are supported by their regular teachers as well as by others who can speak their native language. Likewise, at the social education level, a variety of opportunities to learn the foreign cultures of South/North Korea and the Korean language are offered, according to local circumstances, in classes and lectures for youths, adults and women.”

Also, paragraph 25 states, “Most of the Korean residents who do not wish to be educated in Japanese schools attend North/South Korean schools established in Japan. Most of these schools have been approved by prefectural governors as ‘miscellaneous schools’.

“In Japan, this provision was revised in September 1999 to enable graduates of South and North Korean schools to gain qualification to enter university if they pass the University Entrance Qualification Examination (renamed the High School Graduation Equivalency Test in 2005). Furthermore, in September 2003, the revision of the ordinance about university entrance

qualification enabled students who have completed a course of study at an educational facility in Japan deemed by the school education system of a foreign country to possess an academic standard equivalent to that of a school corresponding to a high school in the said foreign country to have university entrance qualification. By this revision, Tokyo Korean School is now recognized as such an educational facility and its graduates are entitled to have university entrance qualification.

“Also, the revision enabled universities to examine each candidate in terms of his/her total educational background, and when the examination recognizes that the candidates, including graduates of South and North Korean high schools, have an academic ability equal to or higher than that of graduates of Japanese high schools, they will have university entrance qualification.”

“Further, regarding the response to acts of harassment against small children, students, and others, paragraph 26 says “In a summit meeting between the political leaders of Japan and North Korea held on September 17, 2002, the North Korean side officially acknowledged the abduction of some Japanese nationals by North Koreans. For this and other reasons, students attending South and North Korean schools in Japan became targets of harassment and other abuses. To tackle such problems, Legal Affairs Bureaus and District Legal Affairs Bureaus took appropriate measures including displaying posters for human rights promotion in municipalities and distributing pamphlets and articles for human rights promotion at major railway stations and other busy areas, and provision of human rights counseling concerning harassment and other abuses.

“Moreover, when North Korea was reported to have launched missiles in July 2006 and to have undertaken a nuclear test in October 2006, the students became targets of harassment and other abuses again. To tackle such problems, Legal Affairs Bureaus and District Legal Affairs Bureaus took appropriate measures similar to those stated above.”

Regarding employment, paragraph 27 quotes paragraphs 49 and 50 of the Initial and Second Periodic Report.

#### **D. Position of the JFBA**

##### **1. Colonial Occupation by Japan**

Before the defeat of Japan in the Second World War, Japan implemented a policy of colonial occupation of Taiwan between 1895 and 1945 and of the Korean Peninsula between 1910 and 1945. Under this colonial occupation (under the banner of a Greater East Asia Co-Prosperity Sphere), Japan pursued assimilation policies such as mandating Shinto worship and requiring that people living in the colonies take Japanese names. A feeling of discrimination toward Taiwanese people and Korean people developed. This discrimination led to the Japanese people’s sense of superiority, and the result has been that even today the Japanese people have a lingering feeling of discrimination against Taiwanese people and Korean people.

## **2. People from former Colonies in the aftermath the Second World War**

Due to Japan's colonial policies, it is estimated that at the end of the Second World War, several million Taiwanese people and Korean people were living in Japan who had been forced to move from Taiwan and the Korean Peninsula and to live in Japan or who were forcefully taken to Japan through military conscription to be used as human labor in Japan's pursuit of war. Most of these people subsequently returned to their countries of origin, but in 1952, the year that Japan regained its independence with the signing of the San Francisco Peace Treaty, approximately 500,000 Korean people and several thousand Taiwanese people were still residing in Japan.

The Korean and Taiwanese people who continued to live in Japan even after the end of the Second World War came to be known as "South Koreans resident in Japan" (*zainichi kankokujin*), "North Koreans resident in Japan" (*zainichi chosonjin*) and "Taiwanese resident in Japan" (*zainichi taiwanjin*). In this report, these people are collectively referred to as "people from the former colonies."

## **3. Japanese Nationality of People from the Former Colonies**

Approximately 500,000 Korean people who resided in Japan at the time of the signing of the San Francisco Peace Treaty were forced to continue residing in Japan due to circumstances such as the Korean War, and the subsequent division of the Korean Peninsula into north and south with the founding of the Republic of Korea and the Democratic People's Republic of Korea. In addition, several thousand Taiwanese people have continued from that time to reside in Japan.

Under the pre-war colonialism policy, these people were deemed imperial subjects and held Japanese nationality. However, in accordance with the Justice Office "Notice From Director of the Civil Bureau" issued on April 19, 1952, immediately before the conclusion of the 1952 San Francisco Peace Treaty (entered into force on April 28, 1952) that returned independence to Japan, these people lost Japanese nationality upon entry into force of the Treaty. This Notice provided that in principle all Korean people and Taiwanese people, even those resident in Japan, lost their Japanese nationality, but, those who had been included in the domestic Japanese registry, would retain Japanese nationality even after the entry into force of the Treaty. On the other hand, even among those who were located within Japan, those who before the conclusion of the Treaty had been removed from the domestic Japanese registry through marriage with a Korean or Taiwanese person, or through adoption and the like, would lose their Japanese nationality.

With this Notice, the approximately 500,000 resident Koreans and Taiwanese then living in Japan had their Japanese nationality unilaterally revoked; when the Treaty took effect, 500,000 foreign people suddenly appeared in Japan. However, this Notice entirely ignored the intent of the resident Koreans and Taiwanese, who had lived on Japanese land for many years and who had planned to continue to live on Japanese land in the future. This is a clear violation of Article 15 of

the Universal Declaration of Human Rights and Article 10 of the Constitution of Japan.

#### **4. Problems of the Alien Registration Act**

People from the former colonies were deprived of Japanese nationality on April 28, 1952, the date of entry into force of the San Francisco Peace Treaty. Therefore, up until April 27, the previous day, people from the former colonies were thought to have held Japanese nationality. However, in practice, the Alien Registration Ordinance (Decree No. 207 of 1947) had applied to them.

The Alien Registration Ordinance, (the last decree under the former Constitution), was promulgated and came into force on May 2, 1947. Because this decree, as the title “Alien Registration Ordinance” suggests, applied to foreign people, it should not have applied to people from the former colonies who held Japanese nationality at that time.

However, the Ordinance contained a provision which read “Regarding the application of this decree those Taiwanese determined by the Minister of Justice and Koreans shall be deemed to be foreign people, for the time being” (Article 11) and an obligation to be registered was placed on “Taiwanese people” and “Korean people” as foreign people subject to regulation.

#### **5. Development and Characteristics of the Alien Registration Act**

Drafting of the Alien Registration Ordinance, the precursor to the current Alien Registration Act, was led by officials of the Research Bureau of the Ministry of Home Affairs. This ordinance provided the legal basis for the “regulation of foreign people.”

Even though the purpose of the Alien Registration Ordinance was to “implement appropriate measures related to the immigration of foreign people” (Article 1), it had no provisions related to procedures for entry into Japan. To the contrary, it contained a provision that deems Taiwanese people and Korean people who were thought to have had Japanese nationality to be foreign people (Article 11) and imposed many obligations on them.

Later, the Ministry of Home Affairs was dissolved, and the post-war regulation of foreigners was transferred primarily to the Immigration Bureau of the Justice Ministry. The Alien Registration Ordinance which had been drafted by the Ministry of Home Affairs was transformed into the law known as the Alien Registration Act on the date that the San Francisco Peace Treaty came into effect (April 28, 1952). This law continues in force to this day.

#### **6. Discrimination Against People from the Former Colonies in the Form of Ethnic Discrimination**

Even though people from the former colonies were by law deprived of their Japanese nationality on the day the San Francisco Peace Treaty came into effect (April 28, 1952), they had already been

made subject to application of the Alien Registration Ordinance. In other words, they had been treated as foreigners notwithstanding the fact that they were Japanese nationals.

The government included a provision in the Alien Registration Ordinance that deemed people from the former colonies who had been thought to have Japanese nationality to be foreigners, categorized people from the former colonies as foreign people, and established to regulate them as foreigners.

The government by establishing Japanese nationals and foreigners as two different categories that differ greatly from the point of view of the protection of human rights under the Constitution of Japan, while unilaterally revoking the Japanese nationality of people from the former colonies who were thought to have Japanese nationality, placing those people into the category of foreigners, then based on the reasoning that they did not have Japanese nationality, imposed various disadvantages upon them. Discrimination against people from the former colonies is not discrimination against foreigners because they do not have Japanese nationality, but rather is purely ethnic discrimination.

In some cases, the government has argued for the justification of the discrimination on the grounds that people from the former colonies are foreigners. This is a complete misrepresentation of the situation. Article 1, Section 2 of the International Convention on the Elimination of All Forms of Racial Discrimination states “This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.” However, discrimination against people from former colonies who are foreigners is not something that can be justified by that provision. This is because, as has already been explained, discrimination against people from the former colonies is discrimination based on national or ethnic origin, and is therefore “racial discrimination” under Article 1 of the Convention.

## **7. Special Characteristics and Forms of Discrimination against People from the Former Colonies**

People from the former colonies who are living in Japan are discriminated against in many ways in the legal system and in social life in comparison to Japanese nationals. This is not discrimination based on the fact that these people lack Japanese nationality, but rather is racial discrimination based on the fact that they are people from the former colonies (Taiwanese people and people from the Korean Peninsula).

The history of people from the former colonies living in Japan spans almost an entire century. A large number of the current descendants of the people from the former colonies were born in Japan and are immersed in Japanese culture. They speak Japanese perfectly and participate in the Japanese economy. They are taxed by the Japanese national and local governments, and participate in volunteer and other community activities. They contribute to the development of society on a national and community scale. They function in society in a manner that is in no way different

from Japanese nationals living in Japan. The special characteristic of discrimination in Japanese society is that it is rooted in feelings of superiority over Taiwanese people, people of the Korean Peninsula, and other Asian people that were cultivated during the period of Japan's colonial rule over Taiwan and the Korean Peninsula. Those feelings of superiority gave rise to the disregard that Japanese people have toward the issue of discrimination against people from the former colonies. Additionally, in certain circumstances such feelings appear as animosity toward those people.

## **8. Conclusion**

The government attempts to justify this discrimination on the grounds that the people from the former colonies do not have Japanese nationality, but, as has already been explained, at its core, the discrimination against people from the former colonies is not discrimination based on nationality because of their lack of Japanese nationality, but rather is 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 basic and comprehensive law to eliminate societal, administrative, and legal discrimination against people from the former colonies who were stripped of their Japanese nationality and their descendants, and ensure that they enjoy the same rights as Japanese nationals.

### **Section 2. Issues Affecting Koreans Resident in Japan**

#### **(1) Discriminatory Statements, Violence and Harassment against Korean Schoolchildren (Article 4 (a)(b))**

##### **A. Conclusions and Recommendations**

<p>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.</p>
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##### **B. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination**

In paragraph 10 the Committee states "The Committee is concerned that the only provision in the legislation of the State party relevant to the Convention is article 14 of the Constitution. Taking into account the fact that the Convention is not self-executing, the Committee believes that it is necessary to adopt specific legislation to outlaw racial discrimination, in particular legislation in conformity with the provisions of articles 4 and 5 of the Convention." In addition, in paragraph 14, the Committee states "The Committee is concerned about reports of violent actions against Koreans,

mainly children and students, and about inadequate reaction on the part of the authorities in this regard and recommends that the Government take more resolute measures to prevent and counter such acts.”

### **C. Statements of the Government Report**

Paragraph 26 of the government report states “In a summit meeting between the political leaders of Japan and North Korea held on September 17, 2002, the North Korean side officially acknowledged the abduction of some Japanese nationals by North Koreans. For this and other reasons, students attending South and North Korean schools in Japan became targets of harassment and other abuses. To tackle such problems, Legal Affairs Bureaus and District Legal Affairs Bureaus took appropriate measures including displaying posters for human rights promotion in municipalities and distributing pamphlets and articles for human rights promotion at major railway stations and other busy areas, and provision of human rights counseling concerning harassment and other abuses.

Moreover, when North Korea was reported to have launched missiles in July 2006 and to have undertaken a nuclear test in October 2006, the students became targets of harassment and other abuses again. To tackle such problems, Legal Affairs Bureaus and District Legal Affairs Bureaus took appropriate measures similar to those stated above.”

### **D. Positions of the JFBA**

#### **1. The response by the Government is inadequate.**

Most fundamentally, the government’s report lacks specifics as to what number of “posters” and “pamphlets” mentioned in the government’s report were printed, what number were distributed, and where they were distributed. Additionally, regarding the statement that “appropriate measures including...provision of human rights counseling concerning harassment and other abuses,” specific information is lacking regarding the number of counseling sessions, and what specific “appropriate measures” were implemented with respect to each counseling session. The information provided is simply not sufficient to enable a meaningful review of the government’s measures.

#### **2. The inadequacy of the Government’s response is shown by the reality of harm itself**

The harassment that followed the September 17, 2002 Summit Meeting between Japan and the DPRK was of an intensity rarely seen in recent years. The result was that many Korean schools were forced to implement measures such as the suspension of the wearing of school uniforms, and requiring students to commute to school in groups. Also, according to the results of an investigative survey, initiated by young lawyers (with 2710 respondents) of students at 21 Korean schools located in the Kanto Region, one in five students had been the target of harassment after press coverage of the abduction of Japanese people. The data show that female junior high school students were

especially targeted – a rate of one in three had been victims. (“Investigative Report on the Situation of Harassment against Children of Korean Descent Living in Japan” June 2003) The harassment included malicious acts that were not insubstantial in nature. The most common harassment came in the form of insults such as “Die, Korean!” and “I’m going to kill you!” Other malicious acts that amount to crimes were not uncommon, including incidents where individuals were kicked, spit upon, and nearly pushed off of train station platforms, and assaults including some that caused physical injury, the destruction of personal property, and the slashing of school uniforms in the traditional *chima jeogori* style. Also, extremely malicious statements were rampant under cover of author anonymity on the Internet (e.g., referring to Koreans as “cockroaches,” an “inferior race,” “they all should have been killed in the colonial era”).

Then, on July 5, 2006, the media reported that the DPRK had test fired a missile, and from that day until July 26, in a short three week time span, harassment such as intimidating telephone calls stating, “Tomorrow, I am going to throw a firebomb into your school,” “Five high school students will be killed within the week,” and marks in red paint on the entrance gates were made to different Korean schools came to light, even only the number of such incidents that were reported to the Central Headquarters of the Korean Educators’ Union reached 121.

These repeated incidents clearly show that the government’s response has been inadequate.

3. The harassment is directed not only at Korean schoolchildren, but at all Korean people widely.

Particularly on the Internet, malicious language that betrays discriminatory sentiments and hostility toward Korean people is widespread. Numerous Internet websites depict ethnically Korean people living in Japan as heinous criminals.

Recently, in response to messages exchanged through these sites, people who before did not know each other are beginning to coordinate their activities by forming groups, organizing meetings and protest activities and distributing the images of such activities through video footage on the Internet instantaneously.

4. Therefore, in order to eliminate discriminatory statements, violence and harassment against Korean schoolchildren and others, the government should 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 effective and decisive measures.

## (2) Political Participation

### A. Conclusions and Recommendations

Reflecting upon history and their current reality of life, the government should revise the Public

Offices Election Law and the Local Government Autonomy Law and, with regard to people from the former colonies, should at minimum grant the right to vote in local government elections.

**B. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination**

None.

**C. Statements of the Government Report**

None.

**D. Position of the JFBA**

Article 15 of the Constitution of Japan provides that “The people have the inalienable right to choose their public officials and to dismiss them,” and Article 9, Section 1 of the Public Offices Election Law states “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.” Article 9, Section 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, Section 2 of the Constitution of Japan provides that “The 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.” Based on this constitutional 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 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 for even local government bodies to “Japanese people.”

Article 92 of Japan’s Constitution provides that “Regulations concerning organization and operations of local government bodies shall be fixed by law in accordance with the principle of local autonomy.” Accordingly, decision making in local government bodies requires the participation of residents. In addition, Article 93, Section 2, provides that the residents of local government bodies shall directly elect officials of each local government body. “Residents” may be understood to

include persons who do not hold Japanese nationality.

If, as provided in the Local Government Autonomy Law, “residents of the local government body” is limited to “Japanese nationals,” then foreign people who have lived in Japan for extended periods of time as integrated and entrenched residents of the community in entirely the same manner as all of the other residents in the community will be excluded from the elections for local government bodies. This ignores the reality of daily life and excludes foreign people from elections for local governmental bodies based solely on the formalistic basis of whether or not they hold Japanese nationality.

Foreign people should not be excluded from voting categorically due to lack of Japanese nationality. Rather, foreigners residing in Japanese society should be distinguished from among general foreigners. Those resident foreigners, considering the reality that they have been integrated into the fabric of their community, should be afforded the right to vote in local government elections. In a declaration adopted at the 47<sup>th</sup> Conference on the Protection of Human Rights held in October 2004, the JFBA demanded the “enactment of a basic law and municipal ordinance on the human rights of foreigners and minorities” that “widely guarantees rights, starting with legislation to increase participation in legislature by including granting voting rights in local elections to foreign permanent residents, and participation in the administration through including their appointment as civil servants, and broadening their participation in the judiciary.”

In a decision concerning the right to vote in local government elections of resident Korean “special permanent residents” who were born in Japan and have established life in Japanese society, the Supreme Court decided as follows.

“As regards foreign nationals on sojourn in Japan, it is reasonable to understand that the Constitution does not prohibit taking measures to grant voting rights to those permanent residents and others who have come to have an especially close relationship with the local self government in the area of residence in elections for the chief executive of the local self government, members of the local assembly, and other officials by law. However, whether or not such measures should be taken is exclusively a matter of the legislative policy of the state, and even if such measures are not taken, it is not a matter of unconstitutionality.” (Decision issued February 28, 1995)

This decision declares that granting voting rights in local elections to “permanent residents and others among foreign nationals” is a matter of legislative policy of the state.

Reflecting upon the history and their reality of life, Japanese government should revise the Public Offices Election Law and the Local Government Autonomy Law and, with regard to people from the former colonies, should at minimum grant the right to vote in local government elections.

### **(3) The Right to Take Office as Government Employees**

**A. Conclusions and Recommendations**

The government should grant special permanent residents opportunities for appointment to employment as government officials, and except in cases in which a restriction is possible in light of the subject matter of the position for which the appointment is incompatible with the principle of people's sovereignty, as a general rule, regardless of whether or not the government official would wield public authority or would be involved in determining the public will. The government must eliminate barriers that prevent such opportunities for appointment to such positions.

**B. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination**

None.

**C. Statements of the Government Report**

Paragraph 32 of the Initial and Second 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."

**D. Position of the JFBA**

1. Government employees include both national and local government employees. Neither the Constitution, nor the National Government Employee Law, nor the Local Government Employee Law specifies Japanese nationality as a requirement for such employment. In the case of national government officials, National Personnel Authority rules state that "People who do not hold Japanese nationality may not take the exam for employment." In the case of local government officials, Ministry of Internal Affairs and Communications rules state "In light of the commonly understood principles of law regarding government officials, individuals who do not have Japanese nationality may not be appointed to civil servant positions in which they would wield public authority, or would be involved in determining the policies of a local government body."

In a declaration adopted at the 47<sup>th</sup> Conference on the Protection of Human Rights held in October 2004, the JFBA demanded the "enactment of a basic law and municipal ordinance on the human rights of foreigners and minorities" that "expanded rights, starting with legislation to increase participation by granting to permanent residents voting rights in local elections, and participation in the bureaucracy through appointments as civil servants, and broadened participation in the legal system."

However, in a decision that came after the JFBA Declaration, the Supreme Court ruled as

follows regarding a case in which a resident Korean living in Japan who has the status of special permanent resident demanded to be allowed to sit for a qualifying exam for management positions in the Tokyo government. (Supreme Court, Grand Bench, decision of January 26, 2005)

First, the decision discussed the principle of people's sovereignty, putting forth the powerful presumption that "it is not contemplated under the Japanese legal framework that foreign nationals who belong to a nation other than Japan and have rights and obligations as the people of the nation, may take office as local government employees with public authority" The decision then explained the aspects of discretion that are built into the system of appointing individuals to manager class positions in local governments, and further distinguished between "employees who are Japanese nationals and employees who are foreign residents." The decision states that establishing a system in which those who are promoted to manager class positions are limited to employees who are Japanese citizens is not unlawful. It further states that, "This reasoning also applies to employees having the status of special permanent resident."

2. However, there were two dissenting opinions in this 2005 Supreme Court decision, by Justice Shigeo Takii and Justice Tokuji Izumi. Justice Takii's dissenting opinion states "foreign nationals should be subject to certain restrictions under the principle of sovereignty of the people when they intend to take office as government employees in Japan, and I uphold the measure to require Japanese nationality as a qualification for appointment to particular posts if it is allowed by law and there are reasonable grounds to do so." However, Justice Takii also stated "it should be considered that, in local administrative bodies, posts for which Japanese nationality is required as a natural consequence from the principle of sovereignty of the people should be limited only to principals of local public bodies, such as the heads of the bodies." Justice Takii's opinion goes on to say "no reasonable grounds can be found if such local public body requires all its employees in managerial posts to have Japanese nationality, irrespective of the nature of their duties" Additionally, the minority opinion of Justice Izumi concludes "refusing the jokoku appellee who is a special permanent resident from taking the examinations for the Selection is in violation of the principle of equality before the law and freedom of choice in occupation provided under the Constitution."

The JFBA indicated in a January 28, 2005 public statement of its President that "It is not only that the scope of 'government officials who exercise public authority' cannot clearly be determined, but it cannot help but be said that to allow the metropolitan government to close the path of promotion to management class positions devalues the rights of foreign people resident in Japan, in particular special permanent residents, to select an occupation and to equality under the law."

Additionally, the "Opinion Paper Demanding the Hiring of Mediators and Jurists who Hold Foreign Nationality" dated March 18, 2009, states "Even if it might be that the right of foreign people to choose their occupation will naturally be limited as a result of such right's infringement on

the principle of people's sovereignty, the scope of the limitation on choice of occupation must be interpreted in a narrow manner in light of the subject matter of each specific occupational position, and in a manner to allow people with foreign nationality to be appointed to the type of work in question when such appointment would not be materially incompatible with the principle of people's sovereignty." For positions other than these, even if the imposition of limitations according to nationality is allowed, in addition to giving adequate consideration to the position into which foreign people who are special permanent residents have been put in Japan, limitation by law may only be justified in cases in which the basis for the permitted limitation cannot be avoided." The paper continued, "On this point, in the Supreme Court case mentioned above, regarding the broad range of government officials, allows the prohibition as a matter of course of a foreign person to sit in a position that exercises public power without examining the specific subject matter of the position and therefore is unjustified."

Sufficient consideration must be given to the desire on the part of special permanent residents to be given an opportunity to realize their potential in the society with which they are affiliated throughout their lifetimes.

Consequently, except in cases in which a limitation may be possible in light of the subject matter of the position in order to avoid a material incompatibility with the principle of people's sovereignty, as a general rule, the government must grant opportunities for appointment to employment of special permanent residents (people from the former colonies and their offspring) as government officials. This general rule should apply whether or not the government official would exercise public authority or would be involved in determining the public will. The government must eliminate barriers that obstruct such opportunities for appointment as government officials

#### **(4) The Re-Entry Permit System and (Article 5(d)(ii))**

##### **A. Conclusions and Recommendations**

Application of the re-entry permit system to special permanent residents under the Immigration Control Law violates Article 5(d)(ii) of the Convention, which protects "The right to leave any country, including one's own, and to return to one's country." Therefore related laws and regulations must be revised to the effect that the requirement that special permanent residents obtain re-entry permits prior to departure are abolished and the rights to freely re-enter Japan are guaranteed in the same manner as Japanese nationals.

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

There is no mention to this issue in the Committee's Concluding Observations. However, in Paragraph 18 of its Concluding Observations concerning Japan's fourth periodic report under the International Covenant on Civil and Political Rights, the Human Rights Committee stated 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."

### **C. Statements of the Government Report**

Paragraph 23(a)(2) of the government report states that "For cases in which the special permanent residents work abroad as corporate representatives or study abroad and so on, the valid period for re-entry permit is set at within four years (three years for foreigners staying under other status, but in the case of foreigners whose period of stay are less than 3 years, their expired dates of re-entry permit are same date as their period of stay.). Likewise, one year of extension of re-entry permit within five years in total from the original permit (within four years for foreigners staying under other status) is permitted in the case of an application made outside of Japan. This facilitates the re-entry procedure for the special permanent residents who live abroad for long periods of time."

### **D. Position of the JFBA**

1. At the time of the 1999 revisions to the Immigration Control and Refugee Recognition Law, the House of Representatives and the House of Councilors of Japan's national parliament each debated and passed supplementary resolutions regarding the re-entry permit system in relation to special permanent residents who are Koreans and Taiwanese living in Japan. The resolution of the House of Representatives declares that "In view of the historical background associated with special permanent residents, we will strive to implement the re-entry permit system in an appropriate manner giving consideration to human rights while examining the re-entry permit system." The House of Councilors resolution declares, "Giving due consideration to the historical background associated with the legal determination of status of residence regarding special permanent residents, appropriate consideration from the point of view of human rights will be given when examining the workings and operation of the re-entry permit system."

However, even after these resolutions were adopted, the Japanese government has not made appropriate revisions to the re-entry permit system with respect to special permanent residents. Also, after the July 2006 test launch of a missile by the Democratic People's Republic of Korea (DPRK), the Ministry of Justice changed the treatment of resident Koreans who indicated "DPRK" in the field for "nationality" for Alien Registration Law purposes. Previously, when these resident Koreans indicated that they intended to make a trip abroad at the time of departure from Japan, they were issued "multiple re-entry permits" that allowed them to enter and leave the country multiple times during the term of the re-entry permit. However, the Japanese Ministry of Justice changed its

treatment of these people so that they were put at a disadvantage by being granted only a single use re-entry permit.

2. Under the re-entry permit system established by the Immigration Control Law and Refugee Recognition Law, the Minister of Justice exercises free discretion to grant or withhold permission to re-enter Japan to special permanent residents whose lives are based in Japan. This kind of system significantly impedes the freedom of special permanent residents to enter and leave Japan in practice. This infringement of the right to “leave one’s own country” and to “return to one’s own country” which is the “country of residence in which one’s life has been made,” violates Article 5(d)(ii) of the Convention and must be revised immediately.

### **(5) Accreditation of Korean Schools (Article 5(e)(v))**

#### **A. Conclusions and Recommendations**

The Government policy in 2003 that revised the requirements for university entrance qualifications for graduates of schools for foreign students have resulted in new discriminatory treatment between Korean schools and other schools. To resolve this problem, graduates of Korean schools should be recognized as qualified for university entrance in the same manner as graduates from other schools for foreign students and schools for people of other ethnicities.

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

In paragraph 16, the Committee states “The Committee is concerned about discrimination affecting the Korean minority. Though efforts are being made to remove some of the institutional obstacles preventing minority students from international schools, including Korean schools, from entering Japanese universities, the Committee is particularly concerned that studies in Korean are not recognised and that resident Korean students receive unequal treatment with regard to access to higher education. It is recommended that the State party undertake appropriate measures to eliminate discriminatory treatment of minorities, including Koreans, in this regard and to ensure access to education in minority languages in public Japanese schools.”

#### **C. Statements of the Government Report**

Paragraph 25 of the government report states “Furthermore, in September 2003, the revision of the ordinance about university entrance qualification enabled students who have completed a course of study at an educational facility in Japan deemed by the school education system of a foreign

country to possess an academic standard equivalent to that of a school corresponding to a high school in the said foreign country to have university entrance qualification. By this revision, Tokyo Korean School is now recognized as such an educational facility and its graduates are entitled to have university entrance qualification. Also, the revision enabled universities to examine each candidate in terms of his/her total educational background, and when the examination recognizes that the candidates, including graduates of South and North Korean high schools, have an academic ability equal to or higher than that of graduates of Japanese high schools, they will have university entrance qualification.”

#### **D. Positions of the JFBA**

As the government report indicates, after 2003, improvements have been implemented regarding university entrance, and these improvements are welcomed. However, the new policies have given rise to new discriminatory treatment between graduates of Korean schools and graduates of other foreign schools.

Based on the new policy, graduates of schools for foreign students that are recognized to be qualified for entrance to a university are limited to “Students who have completed a course of study at an educational facility in Japan deemed by the school education system of a foreign country to possess an academic standard equivalent to that of a school corresponding to a high school in the said foreign country.” Because the DPRK and Japan have no diplomatic relations, graduates of Korean schools are not recognized as qualified for entrance to Japanese universities on the ground that it is not possible to confirm whether the subject matter of study meets the requirement mentioned above. The decision is left up to each individual university.

Moreover, by comparison, all graduates of Taiwan’s Chinese School have been recognized as qualified for university entrance, even though Taiwan, like the DPRK, does not have diplomatic relations with Japan, on the ground that the subject matter of the course of study has been confirmed.

By excluding the graduates of Korean schools, whose education system is most similar to the education system of Japan, from qualification for university entrance, the government’s new policy gives rise to a new discrimination among schools for foreign students and ethnic schools that affects more than half of all students at those schools.

And while it is true that after the policy mentioned above was instituted, most universities have on their own decided to open their doors to graduates from Korean schools, there was an incident in January 2007 in which a Korean student who sought to apply to take the general entrance examination to Tamagawa University was rejected and was told by the university that “Students from Korean schools are not qualified to take the exam.” Such a case highlights the extremely uneasy situation that is imposed upon graduates of Korean schools by a government policy that allows each individual university to make such determinations for themselves.

In response to a petition for human rights relief filed by Korean schools, on March 24, 2008 the JFBA issued a recommendation to the Prime Minister and the Minister of Education, Culture, Sports, Science and Technology finding that the discriminatory situation described above is an infringement of the right to education of students who attend or plan to attend Korean schools and urging them to take action to remedy the problem.

## **(6) Financial Support for Korean Schools (Article 5(e)(v))**

### **A. Conclusions and Recommendations**

The 2003 governmental policy establishing preferential tax treatment for donations to schools for foreign students has created a new discrimination between international schools that have been accredited by Western accreditation bodies and other types of schools (Korean schools, Chinese schools, etc.). The Japanese government should implement measures to correct this.

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

In paragraph 16, the Committee states “The Committee is concerned about discrimination affecting the Korean minority. Though efforts are being made to remove some of the institutional obstacles preventing minority students from international schools, including Korean schools, from entering Japanese universities, the Committee is particularly concerned that studies in Korean are not recognised and that resident Korean students receive unequal treatment with regard to access to higher education. It is recommended that the State party undertake appropriate measures to eliminate discriminatory treatment of minorities, including Koreans, in this regard and to ensure access to education in minority languages in public Japanese schools.”

### **C. Statements of the Government Report**

Paragraph 24 of the report of Japan states “Japanese public schools at the compulsory education level guarantee foreign nationals the opportunity to receive education if they wish to attend such school by accepting them without charge, just as they do with Japanese school children.” However, it says nothing about economic support for individuals who wish to study at Korean schools.

### **D. Positions of the JFBA**

Schools for foreigners and ethnic schools in Japan are not recognized as “schools” as defined by Article 1 of the School Education Law. Instead, like driver training schools, they hold the status of “miscellaneous schools” as defined in Article 134 of the Law.

As a result, Korean schools and other schools for foreigners receive no financial support from

the national government. The financial support that local governments provide to Korean schools is no more than about 10% of that provided to public schools, and about one-fourth of the financial support provided to private schools. In the case of the Tokyo metropolitan government, financial support for upper division students in Korean schools (equivalent to Japanese high schools) in 2003 was 15,000 yen per student annually. While 900,000 yen (60 times this amount) per student is provided to Japanese municipal and public high schools, 340,000 yen (23 times this amount) is provided to private high schools.

Due to the lack of government support, the finances of Korean schools rely on tuition and donations from parents. However, under the tax law, donations to these schools are treated differently from donations to “schools” that come within the definition of Article 1 of the School Education Law and, in general, have been excluded from preferential tax treatment.

On this point, on March 31, 2003, the ministerial regulations related to the Corporation Tax Law and the Income Tax Law were revised and “miscellaneous schools established for the purpose of providing primary or secondary education in a foreign language” were added to the category of “special incorporated entities for the advancement of public interest,” which are able to receive preferential tax treatment. However, on the same day, Ministry of Education, Culture, Sports, Science and Technology issued guidance that this provision will be limited to international schools that have received accreditation from Western accreditation bodies.

In other words, while donations to international schools that have received accreditation from a Western accreditation body receive preferential tax treatment, every other school, including Korean and Chinese schools do not receive such treatment and the government’s new policy has created new discrimination among schools for foreigners and ethnic schools.

In response to petitions for human rights relief filed by Korean and Chinese schools, on March 24, 2008 the JFBA issued a recommendation to the Prime Minister and the Minister of Education, Culture, Sports, Science and Technology finding that the discriminatory situation described above is an infringement of the right to education of students who attend or plan to attend Korean and Chinese schools and urging them to take action to remedy such treatment.

## **(7) The Need for Systematic and Organized Ethnic Studies Classes at Public Schools**

### **A. Conclusions and Recommendations**

<p>In order to guarantee the right of the children of resident Koreans to learn their ethnic language and culture, national and local governments must establish systematic ethnic studies classes at schools that have a certain minimum number of such children where they can learn their language</p>
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and culture.

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

In paragraph 16, the Committee recommended that Japan provide access to education conducted in minority languages in Japan's public schools.

## **C. Statements of the Government Report**

Paragraph 24 of the government report states "(at public schools) a school subject called *sogo-gakushu* (general learning), which primarily aims at developing children's learning ability beyond the borders of conventional subjects, allows conversational foreign language classes and opportunities to study traditional cultures, to be provided as part of the education for cultivating international understanding. In the case of children of foreign nationalities, they can even receive education in their native tongues (minority languages) and learn about their native cultures, according to local circumstances and situation of school children such as the number of children of a particular nationality and their command of Japanese."

## **D. Positions of the JFBA**

Korean history, culture, language and similar subjects are not taught at public primary and secondary schools. Because of this, public primary and secondary schools in certain residential areas of Osaka Prefecture, Kyoto Prefecture, Metropolitan Tokyo and Kanagawa Prefecture in which many Koreans reside have established ethnic studies classes. Ethnic studies classes function as an important place for education where Korean children are able to gain pride in their roots and identity and have an opportunity to learn about their own culture and language.

However, these ethnic studies classes are not established in any formal system. For example, even if a certain number of Korean children are at a particular school, they do not have the right to demand that ethnic studies classes be established. In a January 23, 2008 decision by the Osaka District Court concerning the Takatsuki Municipal Board of Education's discontinuation of ethnic studies classes at eight primary and secondary schools, the court held that the establishment or discontinuation of ethnic studies classes is within the discretion of the Board of Education and the court did not recognize minority children's concrete right to demand the establishment or continuation of ethnic studies classes.

In order to guarantee the right of minority children to receive an education, national and local governments must guarantee at the very least the establishment of systematic ethnic studies classes at schools that have a certain minimum number of minorities where those minorities may learn their language and culture.

## **(8) The National Pension System**

### **A. Conclusions and Recommendations**

The ineligibility of elderly resident Koreans (born before January 1, 1926) and resident Koreans with disabilities (people who were over 20 years of age and had disabilities as of January 1, 1982) for the national pension plan, and their ineligibility for financial support under pension funds for the elderly and the disabled violates Article 5(e)(iv) of the Convention. The Japanese government should revise related laws and regulations so that pensions are paid to these individuals and immediately implement relief measures.

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

This issue is not addressed in the Concluding Observations and Recommendations of the Committee. However, in its Concluding Observations following review of the Fifth Periodic Report of Japan under the International Covenant on Civil and Political Rights, the Human Rights Committee pointed out as follows.

“The 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 least 25 years between the ages of 20 and 60, a large number of non-nationals, primarily Koreans who lost Japanese nationality in 1952, are effectively excluded from eligibility for pension benefits under the national pension scheme. It also notes with concern that the same applies to disabled non-nationals who were born before 1962 owing to a provision that non-citizens who were older than 20 years at the time when the nationality clause was repealed from the National Pension Law are not eligible for disability pension benefits (art. 2 (1) and 26).”

In addition, paragraph 91 of the report on Japan by Special Rapporteur Doudou Diene (Special Rapporteur for Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance) ( E/CN.4/2006/16/Add.2 ) carries this recommendation: “The 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.”

### **C. Statements of the Government Report**

Paragraph 54 of the government report cites the Initial and Second Periodic Report. Paragraph 82 of the Initial and Second Periodic Report says that because there is no nationality clause in the national pension law, there is no racial, ethnic or other discrimination. However, the government

report makes no mention at all that because of the absence of any remedial measure at the time of the elimination of the requirement of nationality, some resident Koreans are excluded from pensions for the elderly and for the disabled.

#### **D. Position of the JFBA**

When the national pension system was established, the government implemented the following measures so that Japanese who were unable to meet the requirements to receive a pension would not be left without a pension.

First, because Japanese nationals who were over 50 years old as of April 1, 1961, the day that national pension system premiums began to be collected, were not able to join the national pension system, even though they did not pay premiums, the government established a noncontributory old-age pension plan system which had been created through which they could receive benefits when those people became 70 years of age.

Second, because disabled Japanese nationals who were over 20 years of age as of November 1, 1959 (the day that the national pension law entered into effect) were not eligible to receive disability pension even if they joined the national pension plan, a system for providing them with disability welfare pensions (today, basic disability pension) was created.

On January 1, 1982, with the amendments to the law that came with Japan's accession to the International Convention on the Status of Refugees, the requirement of nationality was removed from the national pension plan, and on the same day, foreigners became eligible to participate in the national pension plan. In 1985 the law was revised and, foreigners whose period of participation in the national pension plan was less than 25 years, the minimum requirement period to receive pension, at the time the requirement of nationality was removed were also allowed to receive payments from the old-age basic pension plan. However, foreigners who were over the age of 60 as of January 1, 1986 were excluded from the old-age basic pension plan. The removal of the nationality requirement did not apply retroactively, and people who acquired Japanese nationality after removal of the nationality requirement clause also were not given relief. Also, in contrast to the measures for Japanese, no transition measures were implemented for Koreans resident and other foreigners with disabilities in Japan and they were not provided with disability welfare pensions.

As a result, elderly and resident Koreans with disabilities (including those who were later naturalized) filed a lawsuit claiming that such discrimination is unlawful. However, the Supreme Court ruled in 2007 that there was no unlawful discrimination affecting Koreans with disabilities, and in 2008 elderly Koreans respectively. The decision was based on the reasoning that in the area of social security, the legislative branch has broad discretionary powers and reasonable differences in treatment are allowed.

However, the reality of life of Koreans who have resided in Japan for many years is no different

from Japanese people. Their Japanese nationality was unilaterally revoked by the Japanese government. Therefore, the Japanese government's having kept elderly or disabled Koreans living in Japan left in the situation where no pension is provided, and the revocation of pension plans for such people, is a violation of Article 5 (e)(4) of the Convention. The Japanese government should immediately establish measures to provide remedies to the elderly and disabled Koreans living in Japan who currently have no pensions.

**(9) Discrimination Against Resident North Koreans Due to Political Tensions with the Democratic Peoples Republic of Korea**

**A. Conclusions and Recommendations (Art. 2(1)(a)(b), Art. 5(d)(viii)(ix), (e)(v))**

There is suspicion that the discriminatory treatment of resident Korean individuals and groups by Japan's national and local governments, which occurs against the backdrop of strained political conditions between Japan and the Democratic Peoples Republic of Korea, violates the prohibition of racial discrimination in Article 2(1)(a) of the Convention. There is also suspicion that large-scale compulsory investigations of resident Korean individuals and groups by Japan's national and local governments are conducted for political purposes and that publicizing those investigations through the news media exacerbates discrimination.

Also, Japan's local government must not violate the freedom of expression and assembly of resident Koreans and must protect it positively.

**B. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination**

None.

**C. Statements of the Government Report**

None.

**D. Position of the JFBA**

**1. Background**

Adversary political conditions exist between Japan and the Democratic People's Republic of Korea, featuring such issues as abductions and military tension involving nuclear weapons and missiles. The Japanese government has adopted several sanctions in order to apply pressure to the government of the Democratic People's Republic of Korea. With this situation as a backdrop, many incidents of discrimination against individual Koreans resident in Japan and related groups have occurred. In addition to those incidents, there are numerous examples where the national and

local governments that are supposed to control incidents of threats and violence by private persons against the General Association of Korean Residents in Japan (“*Chongryon*”) and Korean schools, to the contrary, have actually contributed to the discrimination. Some incidents are described below.

## **2. Abnormal Large-scale Compulsory Investigations over Trivial Charges Accompanied by Highly Publicized News Coverage**

### **(1) Direction from the Commissioner of the National Police Agency**

Throughout his term of office as Commissioner of the National Police Agency (2004—2007), Iwao Uruma repeatedly made public statements before the national parliament and in other fora such as the following:

“In order to solve the kidnapping cases, we will apply pressure to the government of North Korea not only by investigating the kidnapping cases themselves, but also by cracking down on other cases related to North Korea.”

As a declaration of a discriminatory investigation policy applied to Koreans resident in Japan for political purposes, these statements contravene Article 2(1)(a) of the Convention.

### **(2) Sweeping Investigations of Trivial Incidents and Related News Reporting**

Beginning in 2005, any case concerning an individual with even a minor tie to *Chongryon* or related organizations has involved coercive investigations carried out by extremely large numbers of police and riot police. These cases have all concerned trivial matters which ordinarily would not result in prosecutions, and if they did, would rely solely on voluntary cooperation of persons involved. There are strong suspicions that the police activity in these cases is driven by political purposes based on the policy announced by the Commissioner of the National Police Agency described above. Moreover, information concerning police raids has been communicated to media in advance and television and newspaper accounts have been accompanied by photos and film coverage.

As a result, ordinary citizens have been given the impression that resident Koreans are criminals. Most of these cases result in decisions not to prosecute or in very light punishments such as monetary penalties or no punishment at all. But there is almost no reporting of such results; the bad impression of resident Koreans created by the initial news coverage is left among ordinary citizens and leads to more prejudice.

### **(3) Raids on individuals and organizations not involved in crime**

As part of these coercive investigations, the police have conducted searches of the premises of *Chongryon* and related organizations (including Korean schools) even though they are not involved in any crimes. Through these searches, the police have confiscated membership lists for these

organizations and other information. There is a strong suspicion that the purpose of these actions by the police was not related to the investigation of crime, but that they are illegal investigations with the purpose of gathering organizational information concerning groups related to DPRK. There is a suspicion that such investigation constitutes violations of the right of association of resident Koreans (Convention Article 5(d)(ix), (e)(v)). (Illegal searches of the Korean schools may constitute violation of the right to education.)

### **3. Repression of Artistic Performances and Gatherings by Resident Koreans**

The traditional Korean artistic group Kumgangsán Opera Troupe has conducted performances all over Japan for many years with the support of host local governments. However, after the launch of a missile by the Democratic Peoples Republic of Korea in July 2006, no fewer than six local governments withdrew support and seven local governments have sent protests of the missile launches to resident Koreans who have sponsored the performances. In 2006 and 2007, Miyagi Prefecture and the cities of Kurashiki, Sendai and Okayama have rejected requests to use public facilities for the performances.

In addition, when resident Koreans sought to hold gatherings in Tokyo in March 2007, requests to use public facilities were denied by the Tokyo Metropolitan government. The reason given for denial of the use of public facilities was to avoid disruption from protests by rightist groups. The event was held as scheduled because a court issued an injunction overturning the Tokyo government's denial. However, demonstrations by rightists at the performances and gatherings were not stopped.

The actions of local governments described above violate the resident Koreans' rights of freedom of expression and peaceful assembly and constitute violations of Articles 2(1)(a)(b) and 5(d)(viii)(ix) of the Convention.

Japan's national and local governments should recognize that resident Koreans can easily become the victims of human rights violations, in particular affected by the political situation at the very time of the increased political tension with the DPRK. Japan's national and local governments should not only refrain from discriminatory acts themselves, but should also take special care to protect the human rights of these people.

## **(10) The Duty to Carry Alien Registration Cards At All Times**

### **A. Conclusions and Recommendations**

The requirement that non-Japanese with the permanent resident qualifications carry an alien registration card at all times and the application of criminal and administrative penalties for failure to do so violates Article 5(d)(i) (freedom to move) of the Convention. Japanese government should

take immediate action to abolish this system.

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

There is no comment on this issue in the Committee's Concluding Observations. However, paragraph 17 of the Concluding Observations of the Human Rights Committee in review of Japan's Fourth Periodic Report under the International Covenant on Civil and Political Rights states "The Committee reiterates the comment made in its concluding observations at the end of the consideration of Japan's third periodic report that the Alien Registration Law, which makes it 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 Covenant. It once again recommends that such discriminatory laws be abolished." Paragraph 6 of the Human Rights Committee's Concluding Observations in review of the Fifth Periodic Report of Japan expressed the concern that many of the recommendations made in response to Japan's Third Periodic Report, including this one, had not been implemented.

## **C. Statements of the Government Report**

None.

## **D. Position of the JFBA**

Japanese law requires that foreign persons aged 16 or older carry an alien registration card at all times. Violations are punishable by fines of 100,000 yen or less in the case of special permanent residents and 200,000 or less in the case of other foreigners.

However, when we consider the stability of their lives in Japan and their personal relationships and residential relationship to Japan, there is no difference between Japanese nationals and persons who hold the "permanent resident" qualification. This is discrimination because Japanese nationals have no duty to carry equivalent personal identification. The irrationality of this treatment is especially apparent when we consider that more than 95% of Korean residents who hold the "special permanent resident" qualification are at least the second generation of people born in Japan or their descendants.

Therefore, at minimum the duty of non-Japanese with the permanent resident qualification to carry an alien registration card at all times should be abolished and they should be released from criminal and administrative penalties.

Japanese government is considering to introduce the new system that all medium and long term foreign residents, except for special permanent residents, carry an alien registration card which embedded an IC chip at all times and that the criminal and administrative penalties are applied for

failure to do so, and the special permanent residents carry an identification card as special permanent residents and the administrative penalties are applied for failure to do so. This new system contains the same problem as the current system.

### **Chapter 3: Other Permanent Foreign Residents**

#### **Section 1: General Issues**

Commencing in the 1980s, mainly to overcome labor shortages, Japan has accepted foreign persons from China, the Philippines and other countries as students and in other immigration categories. At the end of 2007, the number reached a high of 2,152,973. This was a 45.2% increase from the level at the end of 1997. Within ten years, the number of registered foreigners had increased by a factor of 1.5. This represented an increase to a 1.69% share of Japan's total population. (Ministry of Internal Affairs and Communications, Statistics Bureau, "Current Estimated Population, as of October 1, 2007"). The number of countries of origin of these individuals reached 190.

In addition, the number of resident foreigners referred to as "newcomers" continued to increase. By nationality, the number of Chinese among registered foreigners passed the number of resident South Koreans and North Koreans to become the largest group; the number of persons of Brazilian and Peruvian origin continued to increase throughout the past decade.

Along with these trends, new problems of racial and ethnic discrimination emerged, additional to those experienced by individuals from the former colonies.

#### **Section 2: Permanent Foreign Residents Generally**

##### **(1) The Prohibition of Discrimination by Agencies of the State and Local Governments**

###### **(Article 2(1)(a))**

##### **(i) Invasions of Privacy Rights Through Tightening Immigration Control**

#### **A. Conclusions and Recommendations**

The use of biometric technology at immigration control should be reviewed immediately. Further, the tightening of immigration control on foreigners through biological data acquired through the use of biometric technology should promptly be revised and such data should be immediately deleted at the point where data matching is completed during immigration inspections.

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

None.

## **C. Statements of the Government Report**

None.

## **D. Position of the JFBA**

### **1. Implementation of Immigration Control Utilizing Biometric Technology**

Primarily as a counter-terror measure, immigration control has been tightened by the 2006 revised Law on Immigration Control and Refugee Recognition. Under this law, immigration control utilizing biometric technology (technology that recognizes biological information) has been implemented. This system requires individuals to provide fingerprint and facial information at entry and departure, enabling confirmation of the identities of passport holders and matching against lists of individuals who have been subject to compulsory deportation and fugitive criminal suspects.

These immigration procedures constitute violations of the important human rights of privacy and self-control of individual information guaranteed by Article 13 of the Constitution. Accordingly, even if these measures are necessary and effective for the prevention of terrorism and crime, there should be a review to consider whether less restrictive means are available.

Moreover, these measures are also applied to permanent residents. We are not aware of any other country where such measures are applied to permanent residents.

The Japanese government should promptly enact measures to eliminate the use of biometric technology on permanent foreign residents. Further, the Japanese government should consider exempting foreigners who have already completed immigration inspections and hold resident qualifications from submitting biometric information when they return to Japan after temporary trips abroad.

### **2. Storage of Biometric and Other Information**

It is believed that the Japanese government stores and maintains biometric information gathered from foreigners at the time of entry even after the entry of the foreigners and use such information in administration of immigration status, in criminal investigations, and for other purposes. However, there is an extremely high risk of violation of rights to privacy and self-control of individual information due to the continued storage of digitized biometric information and surveillance of all foreigners even after they have completed the process of matching biometric data against lists of individuals who have been subject to compulsory deportation and fugitive criminal suspects and have entered Japan, even when there is no suspicion of criminal activity whatever. In particular,

under current circumstances in which the transfer of individual information from one administrative agency to another is allowed at the decision based on the nationality of the head of an administrative agency, the risk of injury is especially great.

Moreover, increasing surveillance and data collection focused solely on foreigners cannot avoid obstructing the development of a stable Japanese society with coexistence with non-Japanese people.

Therefore, at that point in the immigration inspection where the matching of information against passport data and lists of individuals who have been subject to compulsory deportation is complete, the acquired biometric data should immediately be deleted; it should not be stored and used for the above-mentioned purposes after foreign persons have entered Japan.

## (ii) Discrimination in Criminal Procedures

### A. Conclusions and Recommendations

Drafting of statements of criminal suspects in foreign languages should be allowed.
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### B. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination

None.

### C. Statements of the Government Report

Paragraphs 34 and 35 of the government report state that the police conduct education regarding human rights protection, that violations are investigated by human rights protection offices of the Ministry of Justice, and that appropriate measures are being taken. However, there are no clear statements showing specifically what kind of education is being conducted or what measures have been taken, so it is impossible to judge the content of these measures.

### D. Position of the JFBA

Unchanged from the time of the Initial and Second Government Report, the creation of statements of criminal suspects<sup>1</sup> is allowed in the Japanese language only, even when Japanese is not the native language of foreign suspects. The possibility that the content of such statements will differ from that provided by interpreters cannot be eliminated. Therefore, drafting in foreign languages should be allowed.

## (iii) Discrimination in Public Assistance and

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<sup>1</sup> According to standard practice in Japan, following interrogation sessions prosecutors draft statements to be signed by criminal suspects for submission as evidence in criminal trials. These statements, called “*chosho*” often contain suspects’ confessions.

## **Related Administrative Appeal Procedures (Art. 5(a)(e)(iv))**

### **A. Conclusions and Recommendations**

The government should recognize that permanent foreign residents with difficulties in daily life have a right to public assistance and a right to appeal administrative determinations concerning public assistance under the Administrative Appeals Act.

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

None.

### **C. Statements of the Government Report**

In paragraphs 21 and 82 of the Initial and Second Combined Report, the government states that the social security system is applied according to the principle of equal treatment of citizens and non-citizens. The government said that foreigners without Japanese nationality have no rights under the public assistance law but that as a matter of administrative practice permanent residents who are experiencing difficulties in daily life receive the same public assistance benefits as Japanese people.

### **D. Position of the JFBA**

The government takes the position that foreigners who receive public assistance are not the rights under the Public Assistance Law, but receive such support as a benevolent measure governed by administrative practice and available funding.

Further, the government takes the position that foreigners do not have the right to appeal the determinations of administrative agencies concerning public assistance, so even if foreigners file cases under the Administrative Appeals Act, such appeals are simply denied, without examination of substance.

In cases where Japanese citizens have complaints regarding administrative determinations related to public assistance, they can seek remedies through the simple and fast procedure of an appeal filed under the Administrative Appeals Act. By contrast, a foreigner who has such a complaint must go to the trouble and expense of bringing an administrative lawsuit in court.

This Japanese government practice contradicts its declaration that it applies the social security system based on the principle of equality between citizens and non-citizens. If there were a policy of equal treatment, it would be irrational discrimination to deny to foreigners only remedies that are provided under the Administrative Appeals Act to Japanese people. Therefore the Japanese government should rectify this situation by recognizing that foreigners have rights to receive public

assistance benefits and to remedies provided under the Administrative Appeals Investigation Law.

#### **(iv) Participation in Judiciary**

##### **A. Conclusions and Recommendations**

The Supreme Court should reform its practice of refusing to appoint foreigners as mediators and judicial commissioners on the ground that such positions involve the exercise of public authority and should make appointments on the basis of equality without regard to Japanese nationality.

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

None.

##### **C. Statements of the Government Report**

None.

##### **D. Position of the JFBA**

1. Mediators facilitate communication between the parties in order to resolve civil and family disputes. They play a mediating role so that agreements can be reached and mediators who are also attorneys are appointed by the Supreme Court based on the recommendations of bar associations. Judicial commissioners assist the courts in civil proceedings before Summary Courts<sup>2</sup>, seeking to reach settlements of disputes. They play a role in facilitating communications between the parties and judicial commissioners who are also attorneys are appointed by District Courts based on the recommendations of bar associations.

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<sup>2</sup> Japan's judicial system establishes three types of courts with original jurisdiction that are mentioned in this section. Summary Courts (*kan'i saibansho*) have original jurisdiction over civil cases involving claims for amounts not exceeding 1,400,000 yen (approximately US\$14,000) and criminal cases for offenses punishable by fines or lighter punishment and other offenses, such as habitual gambling and embezzlement.

Family Courts (*katei saibansho*) have limited jurisdiction over domestic relations, succession, and juvenile offenses. Mediators engage in discussions between the parties to try to produce settlements. District Courts are courts of general jurisdiction.

2. In March 2003, when the Hyogo Prefecture Bar Association recommended a member with Korean nationality as a candidate for appointment as a family affairs mediator to the Kobe Family Court, the candidate was rejected. In March 2006, when the Sendai Bar Association recommended a member with Korean nationality as a candidate for appointment to be a family affairs mediator, the candidate was rejected. Also in March of 2006, when the Tokyo Bar Association recommended a member with Korean nationality as a candidate for appointment as a judicial commissioner, the candidate was rejected. In the autumn of 2007, the Sendai Bar Association, Tokyo Bar Association, Osaka Bar Association, Hyogo Prefecture Bar Associations each recommended members with Korean nationality. All candidates were rejected between December 2007 and March 2008. (The Tokyo Bar Association recommended its candidate as a civil affairs mediator. The other bar associations recommended a total of four members to be family affairs mediators.) In response to these rejections, each of the bar associations sent a resolution of its general assembly, a statement from its president, or a position paper to the Supreme Court.

3. When the JFBA asked the Supreme Court for clarification regarding the reasons why Japanese nationality is a requirement for employment as a mediator or judicial commissioner, in a response dated October 14, 2008 the human resources department of the Supreme Court General Secretariat replied: “The Supreme Court itself will refrain from making a response to your enquiry, but the procedures within our office are as follows.” Although there is no clear basis under laws and regulations, the reply continued, “Because it is expected that individuals holding Japanese nationality will be appointed as public officials who exercise public authority, or make decisions related to important policies, or who have work duties involving the same, and because mediators and judicial commissioners come within this category of public officials, we think that Japanese nationality is required for such appointments.”

4. The Supreme Court rules relating to mediators provide that those who are qualified to be appointed as mediators are, “People who are licensed to become attorneys at law, people who have specialized knowledge and experience necessary to the resolution of civil or family related disputes, and people who have extensive knowledge and experience gained through daily life in society, and who have great insight into the human condition between forty and seventy years of age.” There is absolutely no indication regarding the holding of nationality. The provisions for judicial commissioners are the same.

To make nationality the basis for rejecting such applications is to base the decision on a reason that is not required by any law. This must be said to be a violation of the rule of law.

Regarding attorneys in particular, there is no requirement of a specific specialty. As specialists in resolving legal disputes, it is assumed that they have specialized knowledge regarding dispute

resolution. Especially in the case of attorneys there is no room to make nationality an issue.

5. The purpose of the mediation system is to resolve civil and familial disputes based on discussion and agreement between the parties before such disputes enter into lawsuits. The primary role of citizen mediators and judicial commissioners is to utilize the rich knowledge and experience they have acquired as specialists or through daily life in order to support the parties' own resolution of their disputes. The role of mediators is merely to facilitate discussions between the parties and to support the reaching of an agreement. If the parties do not reach agreement, then the mediation fails. Mediators do not issue unilateral determinations. The same is true of judicial commissioners. Therefore, the work of mediators and judicial commissioners is nothing more than an adjusting function; they cannot be said to be public officials who are charged with exercising public authority.

6. Many foreigners have become constituent members of Japanese society. They include many special permanent residents including Koreans and others from the former colonies who were left to live in Japan after they lost their Japanese nationality due to the issuance of an official notice when the San Francisco Treaty of Peace came into force. They also include the descendants of such individuals and other foreigners who are permanent residents living in Japan. These foreigners have many opportunities to use Japan's mediation system.

Among these cases there are many instances in which the involvement of mediators with knowledge regarding the unique cultural backgrounds of resident or special permanent resident foreigners would be beneficial.

Similarly, there are many cases in which foreigners become parties to court cases in which judicial commissioners are involved. In light of the freedom to select an occupation and the principle of equality, it is a natural result that mediators and judicial commissioners with foreign nationality be allowed to participate in such cases on an equal basis with Japanese mediators and judicial commissioners.

On March 27, 2009, the JFBA submitted a position paper to the Supreme Court demanding that mediators and judicial commissioners be hired without discrimination on the basis of nationality. As explained above, there is no reasonable basis for denying the appointment of foreigners to positions as mediators or as judicial commissioners, and such denials violate Article 5.

#### **(v) System for Reporting Illegally Staying Migrants**

##### **A. Conclusions and Recommendations**

Japan has implemented a system to enable reporting of information concerning foreigners suspected being illegal by electronic mail through the homepage of the Immigration Control Bureau
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of the Ministry of Justice. This system violates Article 4 of the Convention and should be abolished immediately.

**B. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination**

None.

**C. Statements of the Government Report**

None.

**D. Position of the JFBA**

The Immigration Control Bureau of the Ministry of Justice states that the population of illegally staying migrants provides a breeding ground for crime by foreigners and has set the goal of cutting the number of illegally staying migrants in half over the next five years. As one element of its plan, on February 16, 2004, the Bureau launched a new feature on the front page of its website providing overall guidance on immigration control under the title "Information Window." Visitors to the website who select this feature are provided a special form and can enter information and send it to the Bureau. Thus, the Bureau has constructed and is operating a system which enables the automatic delivery of information concerning foreigners suspected of being illegally staying migrants to the district Immigration Control Bureau or branch office with jurisdiction.

By alerting ordinary citizens that foreigners and ethnic minorities with physical appearance that may be considered foreigners may be illegally staying migrants, this system has the effect of increasing scrutiny of foreigners by members of society. Moreover, it fosters the prejudicial notion that an increase in the number of illegally staying migrants breeds crime by foreigners and thereby causes increased prejudice and discrimination. Therefore, the damage caused by this system is especially great.

At Article 4 of the Convention, the States parties undertake to condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one color or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt measures designed to eradicate all incitement to, or acts of, such discrimination. Subsection (c) of that article admonishes the States Parties not to permit public authorities or public institutions to promote or incite racial discrimination. However, because the system described in the paragraph above has the effect of increasing scrutiny, and thereby promoting prejudice and discrimination against foreigners by society at large, it is likely to conflict with the aforementioned provisions of the Convention.

Moreover, this system runs contrary to the current trend towards a society in which diverse peoples and cultures coexist.

On the other hand, it is greatly doubtful that this system is effective even for its purpose to

identify illegally overstaying migrants. The Immigration Control Bureau's response to a JFBA inquiry in connection with a human right's relief application indicates that it is also highly questionable that it represents an effective means of eliminating illegally overstaying migration. In its response to this inquiry, the Bureau reported that, as of the end of May 2004, approximately 2,200 e-mails had been received through this web page, 80% of which contained reports of persons suspected of being illegal aliens. The Bureau also reported, however, that of these, only 20 were found to actually be persons in the country illegally.

It is clear from the above the extent and seriousness of the harmful effects of this system far outweigh any merits, and the government should abolish this system immediately.

## **(2) Prohibition of Discrimination by Private Persons (Convention Art. 2(1)(d))**

### **A. Conclusions and Recommendations**

The Japanese government should act affirmatively to take all necessary measures including education to eliminate discrimination by private entities. In particular, the government should endeavor to eliminate (1) discrimination by merchants, (2) discrimination in housing, and (3) general disdain of foreigners, through education in the schools and in the community.

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

In paragraph 10, the Committee states "The Committee is concerned that the only provision in the legislation of the State party relevant to the Convention is article 14 of the Constitution. Taking into account the fact that the Convention is not self-executing, the Committee believes that it is necessary to adopt specific legislation to outlaw racial discrimination, in particular legislation in conformity with the provisions of articles 4 and 5 of the Convention."

### **C. Statements of the Government Report**

The government report does not mention in general prohibition of discrimination by private entities, however concerning discrimination in housing paragraph 53 cites paragraph 81 of the Initial and Second Periodic Report, which states "As to private housing, the Government gives guidance to lessors through lessor organizations, such as the National Rental Housing Management Association, to prevent them from carrying out any discriminatory conduct, including selectivity of tenants on the basis of race or ethnicity." It also says "The human rights organs of the Ministry of Justice make efforts to ensure equality in selecting tenants through campaigns against unfair treatment."

### **D. Position of the JFBA**

#### **1. Housing Discrimination**

Cases of housing discrimination in which landlords and real estate agents have rejected

applications to rent privately-owned housing for the reason that the applicant is a foreigner have continued unchanged since the time of the JFBA Alternative Report to the Initial and Second Periodic Report.

There is a precedent involving discrimination against a resident South Korean in which a court ruled that refusal to enter into a contract for rental of an apartment because the applicant was a foreigner is a violation of the duty of fairness (*shingisoku*) and required the payment of financial compensation. (Osaka District Court, decision of June 18, 1993)

On the other hand, in a case where the plaintiff, a second generation resident South Korean born and raised in Japan, asserted that he was the victim of racial or ethnic discrimination concerning a rental apartment and had suffered emotional injury because the defendant local government had failed to adopt an ordinance prohibiting racial discrimination and it was against Article 1 of the State Redress Law, Osaka District Court dismissed his demand for financial compensation under the State Redress Law on the ground that the proviso to Article 2(1) of the Convention and Article 2(1)(d) of the Convention create only political obligations in contracting parties and not clear and unambiguous legal obligations. (Osaka District Court, decision of December 18, 2007)

Denial of housing must be eliminated.

## **2. Discrimination by Merchants**

Discrimination against foreigners by privately operated public bath houses and other merchants has continued unabated, since the time the JFBA made comments in its First and Second Reports. Courts have found the company operating a public bath house in Otaru to have acted unlawfully in denying admittance of a foreigner (a German citizen) and an individual who appeared to be foreign (a former U.S. citizen who was, at the time of denial, a naturalized citizen of Japan) pursuant to a policy of prohibiting all foreigners (decided September 16, 2004 by the Sapporo High Court. It upheld the decision of the District Court.).

Discrimination by merchants must be eliminated.

## **3. Disdain of Foreigners**

Disdain of foreigners, particularly other Asians, is a continuing problem and must be eliminated.

## **4. Government Policy**

The government should provide comprehensive support for the elimination of discrimination against foreigners by landlords and merchants, and should use litigation as a tool to resolve discrimination when it is discovered. Finally, the government should undertake measures in the public schools to teach understanding of other peoples, as a means of eliminating disdain of and discrimination against foreigners.

### (3) Article 5

#### **A. Conclusions and Recommendations**

- (i) **Legal Assistance**  
To the extent possible, legal assistance should be guaranteed to foreigners in the same manner as Japanese.
- (ii) **Guarantee of Interpreting in Criminal Proceedings**  
The right of foreigners to criminal trials should be guaranteed and the guarantee of interpretation in criminal proceedings should be expanded.
- (iii) **Rights to Housing (Art. 5(e)(iii))**  
The Japan Housing Finance Agency should provide financing without regard to nationality.
- (iv) **Social Security Rights (Art. 5(e)(iv))**  
Neither the national government nor local governments should differentiate between foreigners and citizens when providing emergency medical services. The national government should recognize participation in the national insurance program of short-term residents as well, as long as they pay the insurance premium.
- (v) **Safety in Disasters**

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

None.

#### **C. Statements of the Government Report**

Paragraph 54 of the government report cites Paragraph 82 of the Initial and Second Periodic Report, which states that the Public Assistance Law does not apply to foreigners and that the National Health Insurance Law applies to foreigners if they have a residence in Japan.

#### **D. Position of the JFBA**

##### **(i) Legal Assistance**

One condition to use of services provided by Japan Legal Assistance Centers operated at the expense of the Japanese government in civil matters by foreigners is that such persons must have a valid resident status.

Commencing in April 2007, the JFBA has provided funding for lawyers fees and other expenses required to provide legal assistance to foreign persons without valid resident status, as a measure to protect human rights, only if they satisfy certain requirements.

To the extent possible, legal assistance should be guaranteed to foreigners in the same manner

as Japanese.

**(ii) Interpreters in Criminal Proceedings**

Aliens (foreign persons) face language barriers; the reality is that it is not possible to present a defense at either the investigation stage or the trial stage without the participation of interpreters. In order to secure the services of capable interpreters, interpreters fees allowed during the investigation stage should be returned to the levels before they were reduced in October 1999, when they were reduced from 100% of the rate paid at the trial stage to only 70%.

**(iii) Right to Housing (Article 5(e)(iii))**

To the extent possible, the Japan Housing Finance Agency should provide financing to foreigners.

**(iv) Right to Social Security (Article 5(e)(iv))**

**(a) Emergency Medical Services**

Although providing social security benefits may be a matter of policy, because there is a moral obligation to provide emergency medical services, such services should not be denied for the reason that someone is foreign. There should be no discrimination against foreign persons in providing access to emergency medical services.

In fact, there are cases where foreigners are denied medical services, but one reason for this is there is insufficient provision by the national and local public bodies to cover unpaid medical bills, so the burden for non-payment currently falls solely on the providers. In addition, national and local public bodies have been slow to address the need for medical translation services and health services policies for foreigners.

**(b) National Health Insurance**

Under a directive issued by the Ministry of Welfare in 1992, foreigners who were not residents of Japan (foreigners on short-term visas and illegally overstaying foreigners) were automatically excluded from the eligibility for Japanese national health insurance. A Supreme Court decision handed down on January 15, 2004, found a portion this administrative interpretation to be invalid, and held that foreigners with an expectation to be in Japan for a definite period of time were eligible. Based on this court decision, the Ministry of Welfare and Labor issued a revised regulation, directing that no foreigner not a resident or present for a stay of one year or less would be eligible.

The government should recognize participation in the national insurance program of short-term residents as well, as long as they pay the insurance premium.

**(v) Emergency Response**

In event of emergency, Japanese and foreigners alike should be rescued as quickly as possible, irrespective of the visa status of the latter. In fact, foreigners may require special attention, as language difficulty may make it difficult to obtain information needed to seek refuge from the emergency.

According to a survey conducted among foreign residents in quake-damaged areas of Niigata, including Nagaoka City, after a big earthquake struck in October 2004 (the “Niigata-Chuetsu Earthquake”), 20% responded that they “did not receive necessary information” at the time of the quake.

Since then, however, private organizations have undertaken measures to provide information through the Internet in multiple languages during emergencies. For example, to respond to emergencies such as earthquakes and typhoons, the Japan Operation System of Emergency Information for Foreign Residents (“JOSEF”) has launched a service allowing access to emergency response information in ten languages via cell phone.

In addition, local organizations have begun initiating such measures as distribution of translated versions of manuals for disaster avoidance and emergency management, producing DVDs and providing disaster lectures and training for foreigners.

The government should also either directly undertake affirmative measures to address these problems, or affirmatively supports the efforts of local organizations to do so.

**( 4 ) Issues Affecting Brazilians and Peruvians of Japanese Descent**

**(i) Employment and Public Assistance Issues (Article 5(e)(i)(iv))**

**A. Conclusions and Recommendations**

<p>National and local governments should proactively provide information regarding administrative and legal services in Portuguese and Spanish. Also, South Americans of Japanese descent who temporarily become unemployed due to economic fluctuations should not have that made a reason to reject their applications to renew durations of stay.</p>
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**B. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination**

None.

**C. Statements of the Government Report**

There is no reference in the government report to employment issues or administrative services affecting persons of Japanese descent.

#### **D. Position of the JFBA**

The government has adopted an immigration policy that does not allow for unskilled foreign labor. However, admission to Japan was granted to the children of emigrants to South America (people of Japanese descent) under a resident visa status that did not exclude such type of labor. The result was that from the latter half of the 1980's until the 1990's, a large number of South Americans of Japanese descent entered Japan. The largest number of people was from Brazil, and the second largest number of people was from Peru. Many of these people settled in regions where there were manufacturing plants and found work as unskilled labor.

Many of these South Americans of Japanese descent cannot speak Japanese, but the Japanese government only provided these migrants with visa status and failed to implement policies to support them in adjusting to daily life, or support their language education. Only local governments in the regions in which concentrations of these migrants live have attempted to provide such services on their own. This support has been completely inadequate.

Because of this, South Americans of Japanese descent who do not speak Japanese were faced with serious problems, particularly in terms of employment and acquiring language skills.

Regarding employment, many of them were not hired as permanent regular employees, but rather as irregular employees whose future employment status was not assured. Because of this, they have been easily affected by economic conditions and when economic conditions worsen, it is they who are first to lose their jobs. Many Japanese people who are irregular employees also lose their jobs, but Japanese people consult with labor unions or with legal specialists, and it is possible for them to receive some form of relief from discussions with employers or through the legal process. Japanese people also receive unemployment insurance and it is possible for them, as a final step, to receive public assistance. However, South Americans of Japanese descent who cannot understand Japanese do not even know their rights or what types of assistance there are, and are even in a position such that they do not know to whom they should go to discuss their situation.

In the second half of 2008, economic problems became more serious and many South Americans of Japanese descent lost their jobs. Examples surfaced of people who became homeless when they were thrown out of the dormitory that they had lived in. Some people returned to South America, but many did not have enough money to pay for the costs of returning to their home countries. They were unaware of how to access public assistance, and even if they had been able to access it, a condition of their resident visa status was that they were able to independently generate their own living expenses, and there was the problem that receiving public assistance would make it difficult when it came time to renew their visas as residents.

Because South Americans of Japanese descent face a language barrier, they cannot access governmental or legal services which they should receive. National and local governments in order to remove barriers to access governmental or legal services when they have employment problems or are in need of assistance, the government should translate all types of information and application forms into Portuguese and Spanish, establish counseling services in the applicable language, and actively provide information regarding assistance in these languages. Also, when people who are long-term residents of Japan temporarily lose the ability to earn a living, the fact that they have received public assistance should not be a reason to deny the renewal of their visa status.

## **(ii) Education Issues (Article 5(e)(v))**

### **A. Conclusions and Recommendations**

National and local governments must enable South American children of Japanese descent to enjoy their rights to receive an education on an equal basis. The government must promptly implement policies 1) to license schools for foreigners as “miscellaneous schools,” 2) to reduce the cost of commuting to schools that are not officially licensed as schools, and 3) to strengthen and expand education in Portuguese and Spanish in public schools.

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

None.

### **C. Statements of the Government Report**

Paragraph 55 of the government report states that public schools accept foreign children as students, and that Japanese language teachers are dispatched to schools. The report also states that since 2007 a “Program to Accelerate Foreigner’s Adaption to the Life Environment” that covers the Japanese language classes for foreigners of Japanese descent and consultations with the governments of the children’s country’s of origin, has been implemented, and that some schools for foreigners have been licensed as miscellaneous schools and their independence is respected. However, the report does not mention unlicensed schools.

### **D. Position of the JFBA**

In Japanese schools, school life is not conducted in South American languages (Portuguese, Spanish). Because of this, a serious problem has arisen of parents who have no opportunity to learn Japanese being unable to communicate with their own children for whom Japanese becomes the primary language because they were born in Japan or who immigrated to Japan when they were very

small and who attend Japanese schools.

Additionally, for children who immigrated to Japan when they were of school age, being able to continue the study of their native language while learning Japanese is most effective and allows these children to maintain their identity as South Americans. However, efforts in public schools to support teaching in the native language of these children have been less than adequate. Also, the purpose of the support provided for this type of teaching is for the children to acquire Japanese language ability, and the importance of the children's identity as South Americans or the development of their ability in their native language is not always recognized.

In order to respond to the needs of South Americans of Japanese descent, Brazilian schools and Peruvian schools were created in several regions. There are approximately 90 Brazilian schools and several Peruvian schools. At these schools, education is provided in Portuguese and Spanish. However, because many of these schools have limited financial resources, conditions are such that they cannot even be licensed in Japan as "miscellaneous schools." Because they are not recognized, not only do they not receive public funding, but consumption tax is assessed on tuition received from students. Because these schools receive no public funding, tuition is expensive, and students do not receive student discounts on the fares they pay to commute to and from school. Because of this, the burden on their parents is heavy, and the serious human rights problem of children that those children cannot attend school when their parents have lost their jobs has arisen. According to a study by the Ministry of Education, Culture, Sports, Science and Technology, in the two months that the economic situation has worsened since December 2008, the number of children who attended schools for Brazilians fell by 39 percent. Among those who stopped attending, 42% returned to their home countries, 9% transferred to Japanese public schools, and approximately 35% "stayed at home," or did not attend any school. There were also examples of schools that themselves closed because of the reduction in the number of students. In 2009, the national government hastily instructed local governments to relax the conditions for accreditation of "miscellaneous schools," but it must be said that this was long overdue. Policies offering financial support must be undertaken immediately in order to protect the rights to education of children who have been forced to transfer schools or not to attend any school at all.

In order to guarantee the rights of children to receive an education, national and local governments must promptly implement the following policies: 1) license as "miscellaneous schools" schools for South Americans of Japanese descent, 2) provide financial support to unlicensed schools or to the parents of children that attend them, 3) augment with public funds the tuition of households that have lost income due to unemployment, and 4) provide supplemental lessons and deploy teachers so that the children of South Americans of Japanese descent who attend public schools can improve their Portuguese or Spanish ability while they study Japanese.

## **Chapter 4: Refugees**

### **1. Treatment of Applicants for Refugee Status**

#### **A. Conclusions and Recommendations**

The government should provide a stable status to refugee status applicants (including those currently in litigation) with minimal exceptions. In addition all refugee status applicants should either be provided economic support or permission to work.

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

In paragraph 19, the Committee stated “The Committee recommends that the State party take the necessary measures to ensure equal entitlement to such services by all refugees. In this context, it is also recommended that the State party ensure that all asylum-seekers have the right, inter alia, to an adequate standard of living and medical care.”

#### **C. Statements of the Government Report**

Paragraph 28 of the government report states that “The major amendment to the Immigration Control Act that came into effect in May 2005 introduced a new refugee recognition system that allows undocumented persons applying for recognition as a refugee to stay in Japan on a temporary basis to protect their legal status. The amendment also newly provides for refugee examination counselors to be appointed to act as a third party in the procedures for examination of appeals to enhance the impartiality and neutrality of the refugee recognition procedure. When an application for refugee recognition is submitted, the Ministry of Justice conducts an investigation into the case and judges whether the case falls under the definition of Article 1 of the Refugee Convention and Article 1 of the Refugee Protocol. The Government faithfully and strictly implements its obligations provided in the Refugee Convention and the Refugee Protocol.” Paragraph 32 of the government report states that “In addition, the Government provides living expense, housing expense (including providing temporal housing facilities) and healthcare cost on as-needed basis to applicants for refugee status until when the result of their refugee status applications will become clear.

#### **D. Positions of the JFBA**

##### **1. Permission for Provisional Stay and Livelihood Assistance**

Pursuant to the May 2005 amendment to the Immigration Control and Refugee Recognition Act, a system was established that would, as a general rule, grant permission for “Provisional Stay” to an applicant for recognition of refugee status. The law indicated that deportation proceedings against a

refugee applicant receiving permission for Provisional Stay would be suspended, and the refugee could proceed with the application process free from risk of detention.

However, permission for Provisional Stay included a wide variety of exceptions. For example, permission would not be granted to an applicant where: (1) application for refugee status was filed more than six months after arrival in Japan; (2) the applicant did not enter Japan directly from a territory where they had a well-founded fear of being persecuted; (3) there are reasonable grounds to suspect that the applicant was likely to flee (Immigration Control and Refugee Recognition Act 61-2-4-1). In fact, records from 2005 through 2008 indicate that in 2005, 50 applications for permission were granted but 276 were denied; in 2006, 122 were granted with 599 denied; in 2007, 79 were granted with 359 denied, and in 2008, 57 were granted with 599 denied.

Furthermore, although the law is silent with respect to the establishment of any preferential treatment of refugee status to applicants who have been granted Provisional Stay permission, employment is prohibited even to those receiving Provisional Stay permission (Immigration Control and Refugee Recognition Act Implementing Regulation 56-2-3-3).

For this reason, support for refugee status applicants consists solely of support payments made by the Ministry of Foreign Affairs through the Refugee Assistance Headquarters (RHQ) of the Foundation for the Welfare and Education of the Asian People. This support is limited, however, to ¥1,500 per day in living expenses and ¥40,000 for housing per month (for single persons), which is far less than the amount of the public livelihood assistance considered necessary to guarantee a level of minimum living. Furthermore, assistance is, as a general rule, limited to four months, whereas the average time required to process a refugee status application is two years. On top of this, RHQ has only two offices in Japan (Tokyo and Hyogo Prefecture), making access difficult.

In addition, since April of 2009, on the grounds of insufficient budget due to a rapid increase in the number of refugee status applicants, restrictions on support payments have been tightened. To receive payment, an applicant now must show that, in addition to being destitute, he/she must either (1) be suffering from a serious illness, (2) is pregnant, or is under the age of 12, or (3) is legally in Japan in a status such as a tourist status but is not permitted to work. According to a support organization, of the 282 support recipients at the end of March 2009, two months later nearly half had had their support payments terminated. On top of this, many new applicants who would formerly have been eligible to receive support are now being denied such support because they do not meet the new conditions.

The Japanese government should either extend support payments or grant permission to work to all refugee status applicants, including those not granted permission for Provisional Stay. Further, the government should take sufficient budgetary measures to correspond to the increase in the number of refugee status applicants.

## **2. Refugee Examination Counselors**

Applications for refugee status recognition are reviewed by the Minister of Justice. A refugee whose application is denied may appeal such denial, but that appeal is also determined by the same Minister of Justice. Administration of refugee status applications is carried out by the Ministry of Justice Immigration Bureau. The JFBA recommends that refugee status processing be carried out by an independent agency, unrelated to the agencies charged with immigration control or diplomatic policy.

Pursuant to the May 2005 amendment to the Immigration Control and Refugee recognition Act, a system was established to introduce a third-party Refugee Examination Counselor (“REC”) to the appeal process, and the Minister of Justice shall consider the opinion of the REC in considering the appeal of an applicant denied refugee status (Immigration Control and Refugee Recognition Act 61-2-9-3 and 61-2-9-4).

However, the REC is appointed by the Minister of Justice (Immigration Control and refugee Recognition Act 61-2-10-1 and 61—10-2) under the auspices of the Ministry of Justice Immigration Bureau, does not their own independent secretariat. Furthermore, the REC’s opinion is not legally binding.

Consequently, the introduction of the REC cannot be regarded as equivalent to the establishment of an independent appellate agency.

## **Section 2: Economic Support for Refugees**

### **A. Conclusions and Recommendations**

The government should grant any recognized refugee the right to reside in Japan as a “Long Term Resident.” An individual who is not a convention refugee but who is granted permission to stay in Japan to protect his human rights or humanitarian cause, should, as a general rule, also be granted the right to reside as a “Long Term Resident.”

Further, disparity in social and economic conditions between refugees and Japanese should be studied, and the need for affirmative measures to ensure the rights—and in particular the standard of living—of all refugees should be considered.

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

Paragraph 19 of the Concluding Observations says “In this context, it is also recommended that the State party ensure that all asylum-seekers have the right, *inter alia*, to an adequate standard of living and medical care.”

### **C. Statements of the Government Report**

Paragraph 28 of the government report states that “Japan provides a person recognized as a refugee with various forms of protection and humanitarian assistance in the areas of employment, education, social security and housing in accordance with the Refugee Convention.” Paragraphs 29 through 32 report on the history of acceptance of asylum seekers from Indochina and on policies, living conditions, government support for daily living and employment.

### **D. Positions of the JFBA**

#### **1. Refugees’ Residence Status**

Because an individual who has been recognized as a convention refugee is in great need of protection, the government should support him/her to settle down and grant “Long Term Resident” status irrespective of whether refugee is currently in Japan illegally, irrespective of whether or not he came directly to Japan from the country where they were likely to be persecuted, and irrespective of whether he/she made the application for refugee recognition without delay. Furthermore, the government should also support long term residency for an individual permitted to stay based on the need for protection of human rights or humanitarian causes even if he/she is not a convention refugee, as his/her need for protection is no different from one who has been so recognized.

However, where he/she has not entered Japan directly from the country where he/she was likely to be persecuted, where application for recognition was made more than six months after entering Japan, or where he/she is not recognized as a convention refugee, he/she may, in some cases, not be granted Long Term Resident status, but instead, may be issued a “Designated Activities” status, and a Designated Activities status holder is not eligible for social security such as national health insurance or public assistance, etc. This status is also a handicap to those wishing to reunite his family by bringing other family members to Japan from his/her home country. There is no logical reason for making this discriminatory treatment.

#### **2. Other Aspects of Treatment of Convention Refugees**

As is set forth in Paragraph 30 of the government report, while activities supporting long term residency such as Japanese language education, vocational training, and job assistance were formerly available only to refugees from Indochina, since 2004 such assistance has been made available to refugees from all regions, and this is certainly a welcome development. However, according to Paragraph 31 of the report, a year 2000 survey of Indochinese refugees indicated a number of problems, including the fact that people who suffer from language difficulties were up to 35%, that first-generation refugees were becoming elderly, a lack of job opportunities for Indochinese refugees, and the fact that such job opportunities as did exist were largely limited to such areas as plastics, rubber molding, metal working, electrical and mechanical equipment, automotive assembly, and

food products. From this government report on Indochinese refugees, it can be clearly seen that the need to formulate a more affirmative policy for protecting these and all other convention refugees is urgent. Furthermore, because the now-defunct Long Term Resident Support Centers in Hyogo, Kanagawa, and Nagasaki prefectures provided only short, six month language and vocational training courses, 35% of Indochinese refugees suffer from language difficulties, which in turn limits the occupational opportunities for most to simple labor jobs such as manufacturing industries. In addition, because of the lack of job opportunities, the survey of living conditions conducted by the Refugee Assistance Headquarters in the year 2000 found that 31.5% of Indochinese refugees were experiencing economic difficulty (RHQ pamphlet, Page 4). It is thought that many of these refugees are unemployed and receiving public assistance, but no precise information is available on these matters. No study has been conducted on other aspects of refugee living conditions. The government should survey all aspects of refugee living conditions and should especially get a clear understanding of what percentage of refugee households are receiving welfare assistance, and should then take affirmative measures to improve such living conditions and ensure employment for refugees.

## **Chapter 5: Burakumin Issues**

### **A. Conclusions and Recommendations**

1. The Japanese government should implement a policy for eliminating disparity between Burakumin and the general Japanese population in the areas of labor and discrimination.
2. In response to the proliferation of Burakumin district listings, pernicious online background checks, discriminatory advertising, and other activities intended to incite discrimination, education to further enlightenment with respect to human rights should be promoted, together with the establishment of effective preventive and remedial measures.
3. To provide remedies to the victims of discrimination—including Burakumin—as well as others who suffer from the infringement of human rights, the government should move quickly to establish an independent and effective domestic human rights agency.

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

In Paragraph 7, the Committee stated that “While taking note of the State party’s point of view on the problems involved in determining the ethnic composition of the population, the Committee finds that there is a lack of information on this point in its report. It is recommended that the State party provide in its next report full details on the composition of the population, as requested in the reporting guidelines of the Committee, and, in particular, information on economic and social indicators reflecting the situation of all minorities covered by the Convention, including the Korean

minority and the Burakumin and Okinawa communities.”

In Paragraph 8 the Committee stated that “With regard to the interpretation of the definition of racial discrimination contained in article 1 of the Convention, the Committee, 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. The Committee therefore recommends 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.”

Moreover, in Paragraph 23 the Committee stated that “The State party is also invited to provide in its next report further information on the impact of: (a) the 1997 Law for the Promotion of Measures for Human Rights Protection and the work and powers of the Council for Human Rights Promotion; (b) the 1997 Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture; and (c) the Law concerning Special Government Financial Measures for Regional Improvement Special Projects and envisaged strategies to eliminate discrimination against Burakumin after the law ceases to apply, i.e. in 2002.”

### **C. Statements of the Government Report**

Paragraph 4 of the government report states “As of 1 October 2005, Japan's total population was estimated at 127,767,994 people. However, the ethnic breakdown of Japan is not readily available since Japan does not conduct population surveys from an ethnic viewpoint.” The government report does not otherwise make any mention of the Burakumin problem.

### **D. Positions of the JFBA**

1. Special measures of the Japanese government ended, on March 31, 2002, with the expiration of the “Law Concerning Special Government Financial Measures for Regional Improvement Special Projects.” Since then the government has had no basic policy, nor has it undertaken any specific measures, towards the elimination of discrimination against Burakumin.

The Japanese government has taken the position that special provisions pursuant to the special measures law terminated because disparity in living conditions and other areas of difference have been greatly reduced through the efforts of national and local government agencies, and conditions have greatly improved in the Burakumin districts that had been subject to discrimination.

However, in the Year 2000 the Osaka Prefectural Government conducted a survey for the purpose of addressing the problem of discrimination (there are many Burakumin neighborhoods in Osaka). In 2001, results of this survey were reported by the prefectural government’s Committee on Anti-Discrimination Measures, pointing out the following:

"[3] The rate of students going on to high school has increased to over 90%, exhibiting great improvement and leaving a discrepancy of only 3% - 4% with the average for Osaka as a whole.

However, there is still a large discrepancy with respect to the number of students going on to college, and the high rate of high school dropouts remains a significant issue.” “[8] The percentage of households with computers is far lower in the Burakumin neighborhoods than the nation as a whole, and internet usage in these areas is half the national average. In a highly sophisticated information society, disparity in available information is inevitable between those with the means to access such information and those without such means, leading in turn to social and economic disparity and giving rise to the issue of ‘Barrier-Free Information.’ [9] Unemployment is higher than the average for the Osaka as a whole, particularly among the young, and the unemployment rate for men in their 40s is about twice that of the average for Osaka as a whole. For this reason, comprehensive measures addressing the employment problem are required. A 1990 survey found a trend towards higher employment and wage rates in inverse proportion to age and a trend towards stable employment, but these trends did not continue in the current survey.”

Thus, it can be seen that while there has been some improvement with respect to the Burakumin problem, disparity in such areas as employment and education clearly remains. Nevertheless, the government’s report is completely devoid of any explanation of the Burakumin problem.

2. In addition, the 2001 report on the results survey conducted by the Osaka Prefectural Government’s Committee on Anti-Discrimination Measures makes clear that discrimination against Burakumin with respect to marriage also continues to exist. The report points out the following:

“Marriages between Burakumin and others is definitely increasing in particular among younger generations. However, discrimination in connection with marriage is experienced by twice as many such couples compared to the general population. Further, among those acknowledging themselves to be Burakumin, 20% have experienced broken marriage engagements, and nearly half of those report a belief that their Burakumin background was the cause of the break up. It was also found that about 20% of the population of the area thought it important to know if a potential marriage partner were a Burakumin, reflecting the influence that Buraku issues have on views on marriage among the Osaka population. The need for measures to eradicate this persistent discriminatory consciousness goes without saying, and counseling and other services for those contemplating marriage in spite of this prejudice must also be made readily available.”

3. It is clear that credit services and private investigators are being used to conduct background investigations to determine whether a potential marriage partner or employee is a Burakumin. Officially prepared copies of family registers are frequently obtained in connection with these background checks. Furthermore, since 2005, new editions of Burakumin District Listings have been published, and in one case, a floppy disk containing such a listing was recovered from an

Osaka investigation agency. The government's report contains no reference to the very serious matter of the discovery of the existence of these electronic listings, nor does it explore any fundamental policy of regulation of such investigative agencies, other than the issuance of administrative and educational guidance.

4. In recent years, there has been an increase in the fomenting of anti-Burakumin discrimination, including anti-Burakumin graffiti, letters to the editor, Internet sites and advertising. However, no legal measures have been enacted to aid and protect the Burakumin who are the victims of these violations of human rights.

In Paragraph 12 of its Concluding Observations, the Committee urged that the State party "...ensure...access to effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination." However, although a Human Rights Preservation Law was proposed in the Japanese Parliament, pursuant to which a Human Rights Committee would be established as an outside agency of the Ministry of Justice, that bill was subsequently withdrawn, and as of this date the government has established no independent and effective agency to provide relief from the violation of human rights.

## **Chapter 6: The Ainu People**

### **A. Conclusions and Recommendations**

1. In light of the history of discrimination against the Ainu, stronger and more in-depth opportunities for learning about Ainu history and culture should be provided in public education.
2. In light of the indigenous nature of the Ainu, a comprehensive policy should be developed to address social, cultural, political and educational issues in a way permitting the Ainu people to participate as principals in the development of such policy. For that purpose, new laws should be enacted
3. To ensure access by Ainu to higher education, adequate economic assistance should be provided.
4. The term "*Ainu no hitobito*," (Ainu persons) used by the Japanese government, gives the impression that the Ainu are not fully recognized as an indigenous ethnic group, and should be replaced with the unambiguous "*Ainu Minzoku*" (Ainu ethnic).

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

In Paragraph 17, the Committee wrote “The Committee recommends that the State party take steps to further promote the rights of the Ainu, as indigenous people. In this regard the Committee draws the attention of the State party to its General Recommendation XXIII (51) on the rights of indigenous peoples that calls, *inter alia*, for the recognition and protection of land rights as well as restitution and compensation for loss. The State party is also encouraged to ratify and/or use as guidance the Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization.”

In addition, in Paragraph 23, the Committee wrote “The State party is also invited to provide in its next report further information on the impact of... (b) the 1997 Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture....”

### **C. Statements of the Government Report**

Paragraph 10 of the government report states that “According to the ‘2006 Hokkaido Ainu Living Conditions Survey’, the Ainu people’s living standard continued to improve as explained below, although the gap with other residents in the district where the Ainu people reside has not yet completely diminished.” Paragraph 11 of the government report states that “According to the 2006 survey, with regard to “the state of discrimination since one’s earliest recollection to today”, 30.6% of the Ainu answered that they experienced discrimination at school, at job interviews or in making marriages, or that they knew of someone who had experienced such discrimination.”

Paragraph 12 of the government report states that “the Government of Japan set up the ‘Joint Meeting of Ministries Concerned in the Hokkaido Utari Measures’ in 1974 (renamed as ‘Joint Meeting of Ministries Concerned in the Measures for the Improvement of the Living Standards of the Ainu people in Hokkaido’ in 2002) to cooperate with and promote the above-mentioned measures led by the government of Hokkaido Prefecture. Through this forum, the Government ensures close cooperation among the related administrative organs to obtain sufficient budget for the measures for the improvement of the living standards of the Ainu in Hokkaido. On June 6, 2008, the Japanese Diet unanimously adopted the resolution concerning the Ainu people. Responding to this resolution, the Government of Japan issued the Statement by the Chief Cabinet Secretary. The Government of Japan will plan policies in accordance with the Statement by the Chief Cabinet Secretary. The Government of Japan decided on July 1 to establish the “Advisory Panel of Eminent Persons on policies for the Ainu people” in light of the Statement by the Chief Cabinet Secretary.” Paragraph 13 of the government report states that “The issue concerning the human rights of the Ainu people is taken up as one of the human rights issues in the ‘Basic Plan for promotion of Human Rights Education and Encouragement (See Part VII (Article 7) of this Report). The human rights organs of the Ministry of Justice have expanded and strengthened their promotion activities to spread

and enhance the idea of respect for human rights with a view to realizing a society where the dignity of the Ainu people is fully respected by eliminating prejudice and discrimination against the Ainu people while disseminating and deepening correct knowledge and understanding of the unique culture and traditions of the Ainu people.”

Paragraph 14 of the government report says “See Paragraph 15 of the Initial and Second Periodic Report for the measures taken based upon the said Law.”

#### **D. Positions of the JFBA**

1. On June 6, 2008, with the unanimous passage of a resolution concerning the Ainu people, the government established the “Advisory Panel of Eminent Persons on Policies for the Ainu,” and discussion of a comprehensive policy for the Ainu people ensued. This effort may be considered a major breakthrough when compared to the primarily culture-oriented measures taken heretofore pursuant to the Ainu Culture Promotion Law on the basis that the Ainu are an indigenous population.

2. As was brought out in that discussion, because the Ainu people have historically suffered discrimination, and because such discrimination continues today, stronger and more in-depth opportunities for learning about Ainu history and culture are needed, principally in public education.

3. Through Advisory Panel discussion, the Japanese government is moving towards the establishment of a comprehensive policy. However, in view of the fact that the Ainu are an indigenous population, a comprehensive policy must be developed to address social, cultural, political and educational issues, and it is imperative that the Ainu people themselves participate in the discussion at the government and the Diet and implementation of such policy as principals—specifically, as members of national and local government.

4. As noted in the government report, according to the 2006 “Survey of the Lifestyle of the Hokkaido Ainu,” there is a discrepancy in the percentage of students continuing on to higher education between the Ainu and the surrounding population. For this reason, educational assistance as well as living assistance is needed.

5. The Diet Resolution noted that “the government recognizes that, in light of the United Nations ‘Declaration on the Rights of Indigenous Peoples,’ the Ainu are indigenous to the northern regions of the Japanese Archipelago, and in particular, to Hokkaido, with their own language, religion, and culture.” In light of this, a comprehensive policy based on the presumption that the Ainu are an indigenous ethnic group is required. For this reason, the unified term currently used by the Japanese government to refer to the Ainu (“*Ainu no hitobito*”) (Ainu persons) should be replaced by “*Ainu*

*Minzoku*,” (Ainu ethnic) as the former invites the misapprehension that the government does not recognize the Ainu with the indigenous nature and the ethnic identity (that have been historically deprived of).

## **Chapter 7: Returnees from China**

### **A. Conclusions and Recommendations**

The government should continue to survey the living conditions of the Chinese returnees in order to determine whether new measures for living support (economic independence) and promotion of self-support (education, lifestyle) are needed.

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

None.

### **C. Statements of the Government Report**

None.

### **D. Positions of the JFBA**

1. Prior to World War II, Japan established “Manchukuo” on March 1, 1932 in the northeastern region of China, and a large number of Japanese pioneers migrated here pursuant to the “Twenty-Year, One Hundred Million-Family Plan to Send Agricultural Migrants to Manchuria.” After the Soviet Union entered the war against Japan on August 9, 1945, many of these pioneers suffered famine and disease while seeking refuge from the fighting, became separated from their families and were forced to remain in China, many to be raised by adoptive Chinese parents. These Japanese remaining in China were called “war-displaced spouses,” or “war-displaced orphans” (or collectively, “war-displaced persons”) and until restoration of diplomatic relations with China in 1972, there was no way for them to return to Japan. Even after restoration of diplomatic relations, until the missions to Japan began in 1981, they encountered a variety of hindrances, and their return to Japan was greatly delayed.

For this reason, the returnees were advanced in age (in their forties and fifties), had forgotten their native language and had to learn Japanese again from the beginning, experiencing all the difficulties that accompany language study. Their age as well as their difficulty with the language also made finding work difficult. The result was that many of these returnees required public assistance.

2. In February 1984, the Japanese government established the “Center for Promotion of Stabilization of Chinese Returnees,” but only three to six months of Japanese language instruction was provided, which was not sufficient to lead to employment opportunities for returnees. In 1988, the “Center for Study of Self-Support for War Displaced Persons” was established, providing one-year courses in Japanese language, but this too could not be considered sufficient. 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 “National Pension Special Measures” were implemented, recognizing a statutory period of exemption from premium liability and extra payments and permitting advances against these extra payments, but this too was insufficient for a variety of reasons, including withholding from pension payments for repayment of these advances.

3. On March 24, 2004, the JFBA issued a recommendation to the Japanese government, asserting that the government bore full responsibility for the creation of the war-displaced persons, and on this basis, demanding support measures including strengthening of measures for promoting return, welfare payments (in an amount no less than a standard derived from a wage census based on age and education), introducing the special pension system (in an amount at least equal to the average amount received by Japanese nationals), educational support, and living support.

4. On the grounds that government support measures were insufficient, lawsuits were filed against the Japanese government in Tokyo, Osaka and other districts throughout the country by the “war-displaced orphans” among the returnees, demanding restoration of “the right to live as human beings Japanese nationals.” Over 90% of the war-displaced orphans participated in these lawsuits.

5. When the Support Law was revised by the government in 2007 and a new support policy implemented in April 2008, the “war-displaced orphans” dropped their lawsuits. The new policy included full pension funding, fixed welfare support payments, and measures to promote self-support. However, because the new policy included limits on income, some returnees were ineligible to receive welfare payments, and there were complaints that the policy was insufficient because it failed to provide aid uniformly to all returnees. The welfare payment amounts fell far short of the age and education level-based wage census standard demanded by the JFBA, and the pension payments were also less than the special pension system demanded by JFBA (payments at least equal to the average amount received by Japanese nationals).

6. In conclusion, because the government bears full responsibility for the creation of the war-displaced persons, further study of the living situations of the returnees is required, and we must

consider—based upon the results of such study—whether new measures for living support (economic independence) and promotion of self-support (education, living) are needed.

## **Chapter 8 Problems that Arise in Penal Facilities**

### **A. Conclusions and Recommendations**

Difficulties in communication between foreign prisoners and personnel at penal detention facilities may lead to mutual misunderstanding and racial prejudice resulting in emotional confrontations, mutual distrust and conflicts sparked by racial prejudice.

Article 13(3) of the Law concerning Penal Detention Facilities and the Treatment of Inmates and Detainees enacted in 2006 and amended in 2007 provides that “prison officers shall be given training and discipline necessary for promoting a better understanding of the human rights of inmates and for acquiring and improving knowledge and technique necessary for appropriate and effective treatment of inmates.” Significant progress has been made in that human rights training of prison officers is a requirement, and it appears that this training is being carried out. However, the substance of this human rights education cannot be adequately ascertained, and it has not been studied whether organized education of prison officers under Article 7 of the Convention is being carried out.

Also, despite the fact that lawyers and judges indicate that there are prison officers who have made racially discriminatory statements, there are no known instances of there ever being any administrative disposition, penalty, or administrative penalties imposed on those prison officers who have made such statements. It is possible that those who make such statements have not been disciplined at all.

This situation violates Article 7 of the Convention, and may also be a violation of Article 4 (c) of the Convention.

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

In paragraph 13, the Committee stated “The State party is urged to take appropriate measures...provide appropriate training of, in particular, public officials, law enforcement officers and administrators with a view to combating prejudices which lead to racial discrimination.” We understand that prison officers are a major target of this recommendation.

### **C. Statements of the Government Report**

Paragraphs 46 through 48 concern training for government officials and law enforcement personnel, but unfortunately there is no mention of prison officers.

Paragraph 66 of the government report cites the following case in which a court recognizes

racially discriminatory words and acts in a prison.

“(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.)”

#### **D. Position of the JFBA**

##### **1. The First Amendment to Prison Law in One Hundred Years**

In May 2006, laws related to the treatment of inmates underwent their first comprehensive revision in approximately 100 years, and a year after that, new provisions were added related to unsentenced detainees and the “Law on Penal Detention Facilities and Treatment of Inmates and Detainees” (Law on the Treatment of Penal Inmates) was enacted. Following a tragic incident in October 2002 in which several inmates were killed and injured from beatings inflicted upon them by prison officials in Nagoya prison, a Committee on Reforming Prison Administration was established in March 31, 2003, as a consultative body to the Minister of Justice.

Experts from various fields participated on this Committee, as did representatives of the JFBA and the representatives from non-governmental organizations that seek to reform the prisons. In December of 2003, the JFBA published a positive evaluation. Based on this report, a draft revision to the Prison Law was submitted to the Diet. The Diet approved the draft unanimously. Until this time, it had been painstakingly pointed out that that secrecy allowed discrimination and violence to occur inside Japanese prison walls. In order to make improvements in transparency to the operation of the facilities and in the treatment of detainees, 74 “Committees to Inspect Penal Detention Facilities” made up of lawyers (recommended by the bar associations), physicians, researchers, officials in charge of local government agencies, members of the local community were set up at each penal detention facility. (Currently there are 75 such committees.)

In addition, a “Committee to Examine and Investigate Inmate Complaints” made up of lawyers, legal researchers, and physicians has been established to review cases in which the Minister of Justice is considering rejecting a complaint filed by an inmate regarding that inmate’s conditions. The Minister of Justice is required to accord “respect” to the opinions of this Committee.

Under the previous law, inmates were allowed visits only by their family members, but now they are allowed to have face-to-face communication with “good friends.” Also, a duty to train prison officers in human rights has been clearly provided for under the new law. These reforms had been demanded for many years by the JFBA. It can be said that these reforms constitute a significant improvement to the treatment of prison inmates in Japan.

## **2. Remaining Significant Problems in the Treatment of Inmates and Detainees**

The system was reformed, but many problems remain in conditions at prisons around the country. Two extremely serious problems concern medical treatment and solitary confinement. Although the Committee Against Torture had seen the establishment of Committees to Inspect Penal Facilities as a favorable development, in May 2007, it issued detailed recommendations regarding these two problems. Additionally, in October 2008, the Human Rights Committee issued detailed comments calling for the strengthening of the independence of the Committees to Inspect Penal Facilities, strengthening the independence and functioning of the Committee to Examine and Investigate Complaints, and highlighting the problem of solitary confinement.

## **3. The Situation of Foreign Detainees in Japan**

Penal detainees are divided into those detainees who have not been sentenced, and those detainees who have been sentenced. Unsensenced foreign detainees are confined in detention centers scattered across the country, but sentenced foreign detainees are divided into those who may be treated the same as Japanese detainees, and those who receive treatment that is different from the treatment given to Japanese detainees (“F class”). (Currently, because the number of F class detainees is increasing, they are not confined together in one place. Regarding the implementation of rules of operation for housing detainees in a group, (administrative orders) F class detainees are detained at a large number of facilities.)

As of the end of 2007, there were 70,053 detainees (65,508 males and 4,545 females) in detention at penal facilities in Japan. Of these, there were 5,139 foreign detainees (4,655 males and 484 females), amounting to 7.3% of the total number of incarcerated people (7.1% of the male population and 10.6% of the female population).

By nationality, 31.8% of the foreign detainees are Chinese (including Taiwanese) citizens, 28.4% are citizens of the two Koreas, and 7.7% are Iranian citizens. (The nationality of much of the remainder is classified as “other”. Available data shows that citizens from more than 20 different countries are incarcerated, but more specific data is not clear even from the annual report prepared by the Justice Ministry on the state of the population in corrections facilities.) In addition, at the end of 2008, foreign visitors, and not long term residents consist the majority of foreign detainees counting 75.5%.

## **4. Racially discriminatory statements have not been eliminated.**

Under the circumstances described above, difficulties in communication between foreign prisoners and personnel at penal detention facilities easily lead to mutual misunderstanding resulting in emotional confrontations, mutual distrust and conflicts sparked by racial prejudice. In fact, examples of treatment that might be racially discriminatory have been reported. Paragraph 66(b) of the government report provides the following example:

“Tokyo District Court Decision on June 26, 2003A 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.) ”

It is important that the unlawfulness of this incident was recognized by the court, but the right to claim relief was denied based on the statute of limitations. Given that it is extremely difficult for a foreigner to bring an action in court without help, that this decision indicates that the system for providing human rights relief is not adequately guaranteed under the Japanese legal system.

Recently, the Tochigi Prefectural Bar Association admitted that on March 22, 2006, a prison officer at the Kurobane Prison had sometime in March 2003, used the racial slur “*kuronbo*” (“blackie”) with regard to a Black inmate. Specifically, the claim that the employee made statements like “You, *kuronbo*! Get over here!” ”This isn’t your country, *kuronbo*, you good for nothing,” ”Sit down, *kuronbo*.” etc. was admitted as having had occurred. Therefore, it is recommended that there be training in human rights in order to assure that this type of incident does not occur again.

Among prison officers, there are some who have feelings of discrimination and who repeatedly express them while at work, yet, there are no known instances of there ever being any administrative dispositions, penalty, or other sanction imposed on those prison officers who have made such statements. It is possible that those who make such statements have not been disciplined at all. This situation violates Article 7 of the Convention, and may be a violation of Article 4 (c) of the Convention.

By all means, we hope that the Committee will ask the Japanese government how the perpetrators and victims in each of these cases were treated.

## **5. Strict Rules Are Especially Hard on Foreigners**

The special characteristic of Japanese prisons – the enforcement of “strict house rules,” remains basically unchanged. In the past, disciplinary treatment such as military-style marching and punishing inmates who fail to look straight ahead, had been required in all penal facilities with no exception. Currently, enforcement of such rules is left to the discretion of the head warden of each prison, so this conduct is practiced in some facilities and not in others.

It is difficult for even Japanese to abide by these types of severe rules, but for foreign inmates whose lifestyles are different, complying with these rules poses particular difficulties.

Additionally, although both Japanese inmates and foreign inmates are held in solitary confinement, there are many foreign inmates for whom visits by family members are difficult. In many cases, foreigners are cut off entirely from contact with society as a result of being placed in solitary confinement.

## **6. Foreign Languages at Visits and in Correspondence and Self-Supplied Books**

Among the foreign inmates who visited Japan, there are many inmates whose Japanese language ability is inadequate.

International affairs offices have been established at the Fuchu Prison and the Osaka Prison, with

staff in charge of translating and interpreting English, Chinese, Spanish, Persian and other languages. In this area, the response of the Corrections Bureau is to be evaluated favorably. Translation for correspondence, and prison official participation in face-to-face meetings can be dealt with in almost all languages.

The number of languages that prison officers cannot handle has decreased. It is said that prisons ask outside partners such as embassies for written translations. Because of this, there are cases in which even after the translation of a correspondence has been completed, the correspondence takes a particularly long time to pass through content examination at the prison.

Also, for the reasons mentioned above, in practice, visits are limited to those in which the Japanese language is used. Therefore, even in cases where an inmate and visitor can converse without any difficulty in a foreign language, a Japanese interpreter must be provided for their visit, arrangements must be made for this interpreter, and the expenses cost of interpreting is a great burden. In order to decrease the number of such cases, teleconference systems in which the official overseeing the visit is able to supervise the conversation on a monitor have been adopted.

The Law Concerning the Treatment of Inmates and Detainees, and the draft Law on Penal Facilities provided that in cases of a visit or correspondence in a foreign language, but that if interpretation or translation is necessary in order to examine the oral statements or the correspondence, then the warden may charge the expenses thereby incurred to the inmate (Article 148). A similar provision applies to the warden examining inmate self-supplied books. (Article 70, Section 2).

We think that these expenses should be borne by the government, which requires and implements the presence of a prison worker at visits and examination of correspondence is necessary. It is unacceptable to cause inmates to bear this expense.

Articles 129 and 130 of the draft law on the treatment of penal detainees proposed by the JFBA provided that visits or correspondence in foreign language must not be interfered with, and clarified that the interpretation or translation expenses incurred thereby would not be borne by the inmate. In practice, when prison workers are able to deal with the foreign language situation, inmates are not asked to bear translation expenses. The mindless application of a provision such as this brings with it the danger of severely limiting the ability of foreigners who use one of the less common languages to communicate with the world outside of the prison. At the very least, in order to exclude cases where it can be judged that there is no problem based on the outward appearance of the visitor or the other party to the correspondence or the titles of the books, expressions such as “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” must be revised to include language such as “limited to cases in which, without an interpreter or translation it cannot be determined whether or not there is a risk of causing either disruption of discipline and order in the penal institution.”

The law itself was not revised to address his point, but significant reforms were made at the rulemaking stage. There was concern regarding the possibility that there might be instances of charging inmates for the costs of translation or interpretation related to books, visits, or correspondence, but in practice this has been limited. In other words, “people who do not have reading ability in

Japanese,” and “people who cannot access reading material unless it is in Braille” will not bear translation costs for foreign language self-supplied books unless there are special circumstances. Cases in which other people will be required to bear costs have been significantly reduced to cases in which other people will be required to bear costs” it is deemed reasonable in light of the purpose “for accessing the material and depending on the ability of the inmate to bear the costs.” (Article 26 of the Regulations) Translation costs are not charged for visits and correspondence with foreign diplomats, relatives and people involved in important business. Even in other cases, charges are assessed only in special circumstances in which charging the inmate is deemed reasonable in light of the ability of the inmate to bear the costs.” (Article 73 of the Regulations)

#### **7. Communication between Penal Facility Personnel and Inmates.**

There are many problems with communication between facility workers and inmates.

Not just in a prison such as Fuchu Prison, where specialist interpreters are available, but or in a prison such as Kurobane Prison, where inmates who are supposed to have an understanding of Japanese are incarcerated, the difficult problem of communication between foreign prisoners and penal facility administration arises.

Not infrequently, the understanding of foreign inmates is not adequately secured regarding notices regarding rights and obligations at the commencement of incarceration, notices regarding important rules, and communication regarding important disciplinary procedures such as punishment based on violation of the rules and the like. In reality, often no foreign language interpretation occurs at the time such situation arises, and there are cases in which only extremely inadequate interpreting was proved. This effects the assessment of the inmates by penal facility authorities.

According to a survey conducted by the Research and Training Institute of the Ministry of Justice at Fuchu Prison “The assessment of the inmates and the ability to converse, read and write in Japanese is correlated, and a trend is seen in that the lower a person’s ability is in Japanese, the lower the assessment of the inmates will be.”

### **Chapter 9: Discriminatory Statements by Public Officials**

#### **A. Conclusions and Recommendations**

In order to eliminate racially discriminatory statements by public officials, the government should promptly implement appropriate training and education of such persons.
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#### **B. Concerns and Recommendations of the Committee on Elimination of Racial Discrimination**

In Paragraph 13, the Committee wrote “The 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.”

### **C. Statements of the Government Report**

The Japanese government notes at Paragraph 35 of its report that affirmative measures are being undertaken to educate police officers with respect to human rights.

### **D. Positions of the JFBA**

Discriminatory statements by high officials of the Japanese government have continued unabated following the Committee’s expression of concern—set forth above—in March 2001. The influence that such discriminatory remarks can have on ordinary citizens cannot be ignored, and stern corrective measures are called for.

The government’s only comment on this subject concerned the undertaking of measures to educate police officers regarding human rights. However, such education should be carried out for all government officials, including civil service employees, law enforcement personnel, and all other administrative officers. In addition, it is unclear whether education on racial discrimination is included—as it obviously should be—in the “human rights education” noted by the government.

Some examples follow:

- (a) On May 8, 2001, Tokyo’s governor was quoted in newspapers as having said, with respect to a murder perpetrated by a Chinese national, “We are concerned about the possibility that crimes such as this, presenting racial DNA, will become pervasive, eventually leading to a change in Japanese society... Of the roughly 10,000 foreigners entering Japan illegally each year, just under 40% are Chinese. Since they are illegally staying migrants, they cannot get decent jobs and inevitably become criminal factor.”
- (b) On May 31, 2003, the then-chairman of the Liberal Democratic Party (“LDP”) stated, in a lecture at Tokyo University, “The policy of assigning Japanese names to Koreans<sup>3</sup> was instituted at the request of the Koreans themselves... Hangul was taught to Koreans by the Japanese, and Japan also provided compulsory education in Korea.”
- (c) On July 12, 2003, a former head of the Management and Coordination Agency, speaking at a regular meeting of a local chapter of the LDP with respect to illegally staying migrants,

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<sup>3</sup> This policy was in effect until 1945.

stated “When an incident occurs on the Korean Peninsula, tens of thousands make their way here by boat. There are a million illegal immigrants, thieves and murderers in Japan. They foment civil unrest... Just look at the Kabuki-cho district in Tokyo. It is a haven for criminals, controlled by the people from the third country . Lately, there have been burglaries by bands of Chinese, Koreans, and other illegal foreigners... The story that 300,000 killed in the Nanjing Massacre is a complete lie.” In fact, the total number of foreigners arrested in 2003 was about 20,000, with only 8,725 convicted, showing the above statements to be patently false.

(d) In a speech on November 1, 2003, Tokyo’s governor stated, with respect to the successful launch of a manned-spacecraft by China in the preceding month, “In our neighboring country China, everyone is amazed that they were able to put a man in space. Chinese are ignorant so they were pleased , crying “Aiya!”.But putting a man in space is no big deal today. If Japan wanted to, it could do it in a year.”

(e) On November 2, 2003, the governor of Kanagawa Prefecture stated, in an election speech, “People come (to Japan) from places like China with working visas, but the truth is, they’re all a bunch of thieves. They make trouble, then they leave... Japanese prisons are heated in winter. They feed you. So there’s no fear in committing a crime, and break-ins and burglaries (by foreigners) continue to increase.”

## **Chapter 10: Multiple Discrimination Against Women**

### **A. Conclusions and Recommendations**

In reporting on each of the groups covered by the Convention, the government even did not provide gender disaggregated data. The Japanese government should conduct and publish results of a survey to make clear whether female members of these groups are subject to multiple forms of discrimination, particularly in the areas of education, employment, health, social welfare and exposure to violence.

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

1. In the Concluding Observations of the Committee issued on the review of the Initial and Second Periodic Report, although no concerns and recommendations were noted on this issue, in General Recommendation XXV (“Gender related dimensions of racial discrimination”) the Committee requested, at Paragraph 6, that State parties describe, as far as possible in quantitative and qualitative terms, factors affecting and difficulties experienced in ensuring the equal enjoyment by women, free from racial discrimination, of rights under the Convention.

2. Further, in the Concluding Observations of its 2003 review of the fourth and fifth periodic reports of Japan, the Committee on the Elimination of Discrimination Against Women expressed concern about the lack of information in the reports about the situation of minority women in Japan. The Committee also expressed concern at the multiple forms of discrimination and marginalization that these groups of women may face with respect to education, employment, health, social welfare and exposure to violence, including within their own communities, and requested that the State party provide, in its next report, comprehensive information, including disaggregated data, on the situation of minority women in Japan, especially with regard to their educational, employment and health status and exposure to violence (A/58/38, Paragraphs 365 and 366).

3. Finally in the 2008 Universal Periodic Review by the UN Human Rights Council, the recommendation was made to the government to address the problems faced by women belonging to minorities (A/HRC/8/44, Paragraph 60.8), and the government accepted that recommendation (A/HRC/8/44, Addendum 1, Paragraph 1).

#### **C. Statements of the Government Report**

At Paragraph 9 of its report, the government noted that the “Act for the Prevention of Spousal Violence and Protection of Victims” was revised in 2004 to clearly state that those in charge of providing protection to victims of spousal violence must respect the human rights of the victims regardless of their nationality. However, no mention was made of problems or difficulties faced especially by women in Japan who are subject to discrimination covered by the Convention.

#### **D. Positions of the JFBA**

In its sixth periodic report of Japan under the Convention on the Elimination of All Forms of Discrimination against Women, submitted to the Committee on the Elimination of Discrimination against Women in April 2008, the government included data concerning gender break-down for the Ainu population, as well as for North and South Koreans registered as residents of Japan (Attachments 14 and 15). At a minimum, such data should also be included in its report under the Convention on the Elimination of All Forms of Racial Discrimination. However, this data alone would be insufficient to provide an understanding of the state of human rights enjoyment by Ainu and Korean women, or whether or not these women suffer gender as well as racial discrimination. Furthermore, no gender disaggregated data was provided for other groups, such as Burakumin, foreigners, and refugees.

As described at Section 2.2(1) of this Report (Verbal and Physical Harassment of Korean School Children), following the September 17, 2002 Japan-North Korea summit meeting, a group of young

lawyers conducted a survey regarding harassment of Korean school children in the Kanto area. From this survey (to which 2,710 responses were received), we know that since the surfacing of reports of abduction, while one in five students have suffered some form of harassment, girls are more frequently victims, with one in three girls at the middle school level reporting such harassment. The results of this survey are only one example of the vulnerable status of women, who, among groups subject to racial discrimination, are frequently also put in the vulnerable status in connection with gender discrimination, making them easy targets of even more pernicious violations of human rights.

The Japanese government should conduct and publish results of a survey to make clear whether female members of the groups covered by the Convention are subject to multiple forms of discrimination, particularly in the areas of education, employment, health, social welfare and exposure to violence.

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