

Japan Federation of Bar Associations Report
on Response to the tenth and eleventh Report
of the Japanese Government of the International Convention
on Elimination of All Forms of Racial Discrimination

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Japan Federation of Bar Associations

JAPAN FEDERATION OF BAR ASSOCIATIONS

1-3, KASUMIGASEKI 1-CHOME, CHIYODA-KU, TOKYO 100-0013 JAPAN

TEL: +81 3 3580 9741 FAX: +81 3 3580 9840

Email: international@nichibenren.or.jp URL: www.nichibenren.or.jp

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Chapter 1 General Issues

A. Introduction

The review by the Committee on the Elimination of Racial Discrimination (the “Committee”) of the Tenth and Eleventh reports of Japan based on Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (the “Convention”) is substantially the Fourth review, following review of the Initial and Second reports conducted in 2001, the review of the Third, Fourth, Fifth and Sixth reports conducted in 2010 and the review of the Seventh to Ninth reports conducted in 2014.

At the review of the Seventh to Ninth reports, the Committee issued the Concluding Observations dated September 26, 2014 (CERD/C/JPN/CO/7-9, hereinafter referred to as the “Last Concluding Observations”²) composed of 35 paragraphs. While it is desirable that the status of implementation of measures taken in response to these Concluding Observations of the Committee since 2014 will be examined in the review of the latest “Tenth and Eleventh Combined Periodic Report by the Government of Japan under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination” (the “Government Report”), the Government Report is little more than a listing of the provisions of the Convention with very little information on such implementation status.

It is indicated that the Government Report describes measures that have been taken to eliminate racial discrimination as of December 2016, but the discussion in the Report shows very little progress in response to the recommendations under the last Concluding Observations. For the most part, it merely repeats the viewpoints of the State party expressed at the time of the preceding review, and except for the “Act on the Appropriate Implementation of Technical Intern Training for Foreign Nationals, and Protection of Technical Intern Trainees” (hereinafter referred to as “Technical Intern Training Act”) established on November 18, 2016 and implementation of basic measures for elimination of hate speech according to the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (hereinafter referred to as “Hate Speech Elimination Act”) enforced on June 3, 2016, there has been almost no progress.

This chapter refers to general facts relating to the application of the Convention, and

² Committee on the Elimination of Racial Discrimination “Concluding observations on the combined seventh to ninth periodic reports of Japan” (dated September 26, 2014) <http://www.mofa.go.jp/mofaj/files/000060749.pdf>

specific facts will be described in the relevant sections under the other chapters.

B. Non-existence of Institutional Framework

I. National Human Rights Institution

It is reported in the Government Report that the Human Rights Commission Bill to establish a new human rights institution was submitted to the 181st session of the Diet in November 2012 but it was cancelled due to the dissolution of the House of Representatives in the same month (Paragraph 109). Five years have passed since then, but the Government of Japan has not proposed the new legislation.

The Last Concluding Observations raises concerns that “the examination of the Human Rights Commission Bill was cancelled in 2012 following the dissolution of the House of Representatives and that progress made in establishing a national human rights institution has been very slow (art. 2)” and “recommends that the State party promptly resume the consideration of the Human Rights Commission Bill and expedite its adoption with a view to establishing an independent national human rights institution, providing it with adequate human and financial resources as well as with a mandate to address complaints of racial discrimination, in full compliance with the Paris principles” (Paragraph 9).

Establishment of a national human rights institution according to the principles on the status of national institutions (General Assembly resolution 48/134) (hereinafter referred to as “Paris Principles”)³ is an urgent issue. The JFBA has already published an institutional outline to request establishment of a national human rights institution⁴, appealing to public opinion.

II. Declaration Recognizing the Individual Communications Procedure

With respect to the individual communications procedure, the Government Report indicates that “Japan considers the individual communications procedure set forth in Article 14 of ICERD to be noteworthy in that it effectively guarantees the implementation of human rights treaties” (Paragraph 195) and states that the Division for Implementation of Human Rights Treaties was set up in the Ministry of Foreign Affairs in April 2010 and it will continue to seriously consider whether or not to accept the procedure (Paragraph 196). However, no progress has been

³ Website of the Ministry of Justice http://www.moj.go.jp/JINKEN/public_jinken04_refer05.html

⁴ JFBA “Institutional Outline of National Human Rights institution Proposed by the JFBA” (dated November 18, 2008) https://www.nichibenren.or.jp/library/ja/opinion/report/data/081118_4.pdf

seen although over seven years have passed since the start-up of the Division for Implementation of Human Rights Treaties.

The Last Concluding Observations encourages Japan to make the optional declaration provided for under Article 14 of the Convention recognizing the individual communications procedure (Paragraph 31).

The individual communications procedure is an important institution which will enable review of the level of guarantee of human rights in Japan from an international perspective and raise it to an international standard as well as eventually promote active application of the Convention within the country. Therefore, Japan should immediately make the optional declaration provided for under Article 14 of the Convention.

C. Non-existence of Legislation

Article 14 of the Constitution of Japan (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.” However, except for this provision, there is no law directly stating the comprehensive prohibition of racial discrimination among private persons.

Article 14 of the Constitution prohibits discrimination by public authority. To regulate discrimination among private individuals, it shall be applied only through general provisions of private law. In the report of a response status by the Government of Japan, it is argued that such discrimination could be punished due to reasons such as defamation (Article 230 of the Penal Code), etc. However, racially discriminatory statements or behavior are not subject to the application unless the same constitute defamation of particular individuals. In other words, the judicial judgment stands on the basis that discriminatory statements and behaviors targeted at unspecified people or infringement of reputation of (racially discriminatory statements and acts against) a certain group would not constitute defamation of individuals who belong to such a group. This applies also to tort cases under civil procedures. Further, it is argued that acts of violence out of beliefs of racial discrimination (hate crimes) are punishable as crimes of injury (Article 204) or assault (Article 208) under the Penal Code, but there is no law to administer aggravated punishment for any violent act on the grounds that the same is committed with racially discriminatory motives. These measures are insufficient to effectively address hate speech, and thus, consideration should be made

in establishing at least a comprehensive anti-discrimination law.

According to the Government Report, it is not believed that racial discrimination in Japan is serious enough to warrant legislation to impose punishment measures even at the risk of unduly stifling legitimate speech. However, such a view in the Government Report is not an accurate description of the present situation of Japan. Ideas based on racial superiority toward people of Korean ancestry have existed conventionally, and signs of dissemination of such ideas repeatedly resurge. In particular, recent hate speech by specific groups against Korean residents in Japan is extremely serious in light of their content and frequency. In addition, there is no end to statements and acts of discrimination targeted at the Burakumin (modern-day descendants of Japan's feudal outcaste group). Recently, malicious statements and attacks based on racial discrimination have been noticeably found especially through the electronic media including the Internet, etc. It is highly necessary to regulate these acts when taking measures to eliminate hate speech without impeding legitimate speech. There is no denying that the view of the Government Report fails to understand the reality of such situations.

The Last Concluding Observations expresses concerns that "While noting that some laws include provisions against racial discrimination, the Committee is concerned that acts and incidents of racial discrimination continue to occur in the State party and that the State party has not yet enacted a specific and comprehensive law on the prohibition of racial discrimination that would enable victims to seek appropriate legal redress for racial discrimination" and states that "The Committee urges the State party to adopt specific and comprehensive legislation prohibiting racial discrimination, both direct and indirect, in compliance with articles 1 and 2 of the Convention, which will enable victims of racial discrimination to seek appropriate legal redress" (Paragraph 8).

In view of the foregoing, we would have to say that the existing laws and regulations in Japan are insufficient for the elimination of discrimination. In order to turn the idea of Article 14 of the Constitution into reality among private persons, to establish the concept that discrimination is comprehensively unlawful throughout society, and also to actually eliminate discriminatory statements and behaviors, it is necessary to enact a comprehensive basic law to prohibit discrimination.

Chapter 2 Common Issues

A. Discrimination among Private Individuals

1. Discriminatory Statements and Acts (Hate Speech)

I. Conclusions and Recommendations

The Government of Japan should:

1. Conduct continuous surveys on the reality of hate speech and verify the effects of policy measures and laws;
2. Promptly enact a comprehensive basic law to prohibit discrimination in order to overcome the limitations of the Hate Speech Elimination Act;
3. Make efforts to overcome racism by promoting education on history and culture in public education for the purpose of better understanding people of other ethnic groups; and
4. Promptly establish a national human rights institution in compliance with the Paris Principles as an institution to effectively provide redress for victims of hate speech.

II. Concerns and Recommendations of the Committee

The Committee made the following recommendations in the Last Concluding Observations (Paragraph 11):

- “(a) Firmly address manifestations of hate and racism, as well as incitement to racist violence and hatred during rallies;
- (b) Take appropriate steps to combat hate speech in the media, including the Internet;
- (c) Investigate and, where appropriate, prosecute private individuals, as well as organizations, responsible for such acts;
- (d) Pursue appropriate sanctions against public officials and politicians who disseminate hate speech and incitement to hatred;
- (e) Address the root causes of racist hate speech and strengthen measures of teaching, education, culture and information, with a view both to combating prejudices that lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and among racial or ethnic groups.”

III. Statements of the Government Report

The Government of Japan states as follows:

1. Japan states that: “In applying the provisions of paragraph (a) and (b) of Article 4 of the International Convention on the Elimination of All Forms of

Racial Discrimination, Japan fulfills the obligations under those provisions to the extent that fulfillment of the obligations is compatible with the guarantee of rights to freedom of assembly, association and expression and other rights under the Constitution of Japan” (Paragraphs 124-126).

2. Concerning so-called hate speech, the Hate Speech Elimination Act came into force in June 2016, and under the Act, the national government and local governments have assumed responsibilities for measures taken towards eliminating hate speech (Paragraphs 105-107).
3. When demonstrations related to hate speech take place, the police have so far provided required security from a strict and impartial standpoint, and firmly addressed any act violating criminal laws and regulations based on the law and evidence. In response to enactment of the Hate Speech Elimination Act, it will continue to address these issues accordingly (Paragraphs 129 and 130).
4. The Broadcast Act provides that, when editing the broadcast programs, broadcasters “shall not harm public safety or good morals”. Accordingly, broadcasters are required to broadcast programs appropriately so as not to harm public safety and good morals by justifying or encouraging dissemination or incitement of racism, and violence (Paragraph 131).
5. The human rights bodies of the Ministry of Justice ran a nation-wide anti-hate speech campaign in the wake of the enactment of the Hate Speech Elimination Act (Paragraph 133).

IV. Facts

1. Current Situation of Hate Speech in Japan
 - i) In Japan, discriminatory statements against minorities have been a problem for a long period of time, but hate speech directed against in particular the Koreans has become a social issue since around 2000 as Japan’s relationship with neighboring countries including South Korea has deteriorated due to the “comfort women” issue and so on. Owing also to the spread of the Internet, racist groups calling for the exclusion of Korean residents in particular, have increased in influence. One representative group formed in 2007 has more than 14,000 members as of December 2013, capable of mobilizing around 200 people consistently for demonstrations.
 - ii) According to a survey by the Government of Japan published in March

2016⁵, the number of demonstrations involving hate speech held from April 2012 until September 2015 was 1,152 nationwide, with about 100 demonstrations held on monthly basis from the first half of 2013 until around the middle of 2014, and demonstrations continue to take place in various locations in 2015.

- iii) In demonstrations and propaganda activities on the street by racists, they use violent hate speech against Koreans residents, such as “Those who make purchases at Korean shops are not Japanese,” “There are no good Koreans or bad Koreans. Kill them all. Kill all Korean residents,” “Dear citizens, if you see a Korean, throw a stone at him and rape Korean women. That’s what they’ve done to us. Let’s kill Koreans.,” etc.⁶
- iv) In response to the abovementioned situations, the Hate Speech Elimination Act was put into force on June 3, 2016 but hate speech demonstrations have not ended even after that. On the 5th of the same month, immediately after the enforcement, large-scale demonstrations were planned in Shibuya (Tokyo) as well as Kawasaki (Kanagawa) , and the one in Kawasaki where many Korean residents live led to a large-scale confrontation with those against the demonstration. In Kawasaki, another large-scale hate speech demonstration was held in July 2017 as well.

2. Inadequacy of the Hate Speech Elimination Act

- i) Since the Hate Speech Act enforced in 2016 limits the target of hate speech to those “lawfully residing in Japan,” there is a danger of leading to an interpretation that hate speech targeted at a person without a status of residence would be accepted. This is in violation of Paragraph 7 of the General recommendation No. 30 on discrimination against non-citizens adopted by the Committee.
- ii) In addition, while the Act enshrines the idea that hate speech is unacceptable in its preamble, it provides only for responsibilities of the national government and local governments, and no penal or prohibitive provisions against hate speech by private individuals are included.
- iii) Furthermore, in the first place, the Act limits the mode of discrimination

⁵ Ministry of Justice “Interview Survey on Hate Speech” (dated March 2016)
<http://www.moj.go.jp/content/001201160.pdf>

⁶ Judgment of Tokyo District Court, September 26, 2017 (Case No. 2016 (Wa) 18742)

covered by it to hate speech, and when considering the minorities in Japan who suffer from various forms of discriminatory treatment with respect to voting rights, education, residency, etc., the Act has only a very limited effect as a remedy for them.

3. Inadequacy of Other Policy Measures

- i) The Government of Japan argues that it has firmly addressed any act violating criminal laws and regulations based on the law and evidence, but in Japan there is no law which provides that existence of discriminatory motives shall be reflected in sentencing, and determination of the appropriate amount of punishment is left up to the discretion of judges. Therefore, it is hard to say that hate speech is prevented by existing criminal punishment.

Also, in the case of Kyoto Korean Daiichi Elementary School taken as an example by the Government of Japan (Paragraph 130), there is no such fact that the racist motives of the accused were reflected in sentencing. The ruling does not mention their racist motives, and sentencing was comparatively light in relation to similar acts. Moreover, despite the fact that the accused indicated no remorse and even showed hostility towards the victims in court, all of them were given a suspended sentence and released.

- ii) The Government of Japan states that according to the provisions of the Broadcast Act, broadcasters are required to broadcast programs appropriately so as not to justify dissemination or incitement of racism and violence. However, the Act just includes the phrase “shall not harm public safety or good morals” but neither contains any provision regarding racial discrimination nor provides for punishment.

In fact, in January 2017, a TV program with a content labeling a Korean woman residing in Japan as belonging to a “North-Korean faction,” etc., was broadcast. That woman filed a petition for human rights redress to the Broadcast and Human Rights Committee of the Broadcasting Ethics & Program Improvement Organization (BPO) and the Committee recognized in March 2018 that the said broadcasting had defamed the woman⁷.

⁷ Website of The Mainichi Newspapers <https://mainichi.jp/articles/20180308/k00/00e/040/322000c>

iii) There is no law which directly regulates hate speech on the Internet.

V. Opinions

1. While dissemination of racist beliefs and incitement of racial discrimination and violence are serious social issues of the Japanese society in the present day, policy measures taken by the Government of Japan remain inadequate.
2. The Hate Speech Elimination Act enforced in June 2016 is still inadequate in that its scope of regulation is narrow and that its legal effect is indefinite, as aforesaid. The Government of Japan should establish a comprehensive basic law which prohibits discriminatory statements and behaviors on the grounds of race, color of skin, descent, ethnicity or tribal origin not only against “people from outside Japan,” and provides for elimination of not only discriminatory statements and behaviors but also various forms of social discrimination with respect to employment, housing, etc.
3. Official survey by the Government of Japan on hate speech has not been conducted since its first survey in 2015 which was published in March 2016. In order to verify the effect of the Hate Speech Elimination Act enforced in 2016 and to implement better policy measures, the Government of Japan should continue to conduct similar surveys.
4. Further, public education promoting better understanding of people of other ethnic groups is also lagging. In view of the current situation where discourse to slander or defame people of other ethnic groups or to disseminate false information on the Internet are not adequately regulated, the role of public education is important.

Therefore, the Government of Japan should make efforts to overcome racism by promoting education related to history and culture in public education in order to promote better understanding of people of other ethnic groups.
5. Additionally, given the time and energy required for judicial redress for damages incurred by hate speech, prompt redress should be implemented by a national human rights institution independent of the Government of Japan. Therefore, the Government of Japan should promptly establish a national human rights institution in accordance with the Paris Principles.

2. Discriminatory Treatment

I. Conclusions and Recommendations

The Government of Japan should:

1. Continuously conduct surveys on the reality of racial discrimination to verify the effects of policy measures and laws;
2. Promptly enact a comprehensive anti-discrimination law for the purpose of elimination of not only discriminatory speech and behavior but also discriminatory treatment.
3. Promptly establish a national human rights institution in accordance with the Paris Principles as an institution to provide an effective remedy for victims of discriminatory treatment.

II. Concerns and Recommendations of the Committee

The Committee made the following recommendations in the Last Concluding Observation (Paragraphs 8 and 15):

“The Committee urges the State party to adopt specific and comprehensive legislation prohibiting racial discrimination, both direct and indirect, in compliance with articles 1 and 2 of the Convention, which will enable victims of racial discrimination to seek appropriate legal redress.” (Paragraph 8)

“The Committee recommends that the State party take appropriate measures to protect non-citizens from discrimination in access to public places, in particular by ensuring effective application of its legislation. The Committee also recommends that the State party investigate and sanction such acts of discrimination and enhance public awareness-raising campaign on the requirements of the relevant legislation.” (Paragraph 15)

III. Statements of the Government Report

The Government of Japan states that “the Government of Japan regulates racial discrimination as follows, and therefore does not recognize that it must adopt comprehensive legislation prohibiting racial discrimination as the concluding observation urges.” (Paragraph 101) and points to the Constitution and the Hate Speech Elimination Act as regulatory bases against racial discrimination, as well as states that relevant laws in the fields of education, medical care and traffic prohibit discriminatory treatment (Paragraphs 102-107).

Further in Paragraphs 150 through 179, the Government of Japan introduces its efforts regarding civil rights and economic, social and cultural rights.

IV. Facts

1. Existing Laws

As already described, the Hate Speech Elimination Act covers only discriminatory speech and behavior, and discriminatory treatment is excluded from its scope.

Moreover, the provisions to prohibit discriminatory treatment under the relevant laws in the fields of education, medical care, transportation and housing referred to by the Government of Japan in Paragraphs 104, 178 and 179 are merely general provisions which stipulate that service provider must not refuse to provide its service without justifiable grounds. They neither prohibit discrimination nor specify the basis of the racial discrimination.

Article 3 of the Labor Standards Act prohibits discriminatory treatment with respect to working conditions by employers (private persons) on the grounds of the nationality of workers, but this article covers neither the employment phase nor discrimination based on not nationality but race and ethnicity and so on.

2. Reality of Discriminatory Treatment Revealed by the Government of Japan's Survey

In March 2017, the Government of Japan published the "Foreign Residents Survey Report."⁸

This survey is the first official survey conducted by the Government of Japan on foreign nationals residing in Japan to understand what human rights issues they must confront, and it deserves recognition that such a survey was finally conducted by the Government of Japan.

This survey was sent out to 18,500 foreign nationals selected at random from various regions in Japan, of which 4,252 persons responded. As a result of the survey, it was revealed that there are serious discriminatory practices against foreign nationals in renting housing, in employment, etc.

For instance, as for discrimination in renting apartments and other residences, out of 2,044 foreign nationals who responded that they had experience looking for a residence in Japan during the past five years, 39.3% had experience being refused renting housing on the grounds of being a foreign national, 41.2% had experience being refused renting housing because they had no Japanese guarantor, and 26.8% had experience giving up as they saw

⁸ Website of the Ministry of Justice of Japan <http://www.moj.go.jp/content/001226182.pdf>

an indication of “No foreign nationals.”

Further, as for discrimination in employment, out of 2,788 foreign nationals who responded that they had experience looking for employment or working in Japan during the past five years, 25.0% had experience being refused employment on the grounds of being a foreign national, 19.6% had experience getting a lower wage than a Japanese colleague for the same job, and 17.1% had experience in not being able to receive a promotion on the grounds of being a foreign national.

These are important findings clearly demonstrating that the various efforts described by the Government of Japan in the Government Report are inadequate. However, the Government of Japan does not refer to the said survey results in the Government Report at all. In other words, only the efforts by the Government of Japan are described in the Government Report without referring to the serious situation revealed by its own survey.

In addition, at a forum for exchange of opinions with civil societies held by the Government of Japan prior to the Universal Periodic Review (UPR) in March 2017, the Government of Japan was asked whether it had a plan to continue to conduct similar surveys in the future, but it merely replied that it “would consider the necessity” without showing a true intention of continuing similar surveys in the future.

3. Limitations of Judicial Remedies

Acts of treating a person in a discriminatory manner because of his/her race or ethnicity, etc., may be subject to compensation as a tort even under the current Civil Code.

However, while court proceedings are time-consuming, requiring about one year just to go through the first trial, as well as incur economic costs, even if the victim wins the case, the monetary compensation awarded is often insufficient to cover attorney’s fees, and so on, and time and mental anguish that is incurred for the proceedings.

Consequently, hardly any person would bring an action against discriminatory treatment, such as discrimination in renting housing, entry to shops and so on, that may arise on daily basis, and people are forced to swallow them in reality.

V. Opinions

1. Continuation of Surveys

As aforesaid, the Government of Japan has taken a negative stance in the continuation of fact-finding surveys. But now that such serious conditions have become clear, there is an urgent need for the Government of Japan to implement more effective legislation and policy measures, and in order to verify their effectiveness, a continuation of status surveys are indispensable. Surveys to be conducted in the future should target not only foreign nationals residing in Japan as in the March 2017 survey, but all minority groups (the Ainu, the Burakumin, Korean residents, immigrants, etc.) in Japan to collect information according to field such as education, employment, health, social welfare, violence, and so on, as well as analyze it by gender to understand the reality more precisely and in greater detail.

2. Legislation

As already described, the Hate Speech Elimination Act is very limited in content which is far from a comprehensive basic law in prohibiting discrimination.

The Government of Japan has consistently made the case that “there is no serious discrimination in Japan” in the reviews of the Government Reports so far as a reason why it has not established a comprehensive basic law to prohibit discrimination as a domestic law of the Convention for years. However, as a result of the above survey, it is clearly evident that such explanation is not accurate, there is no reason not to advance legislation any longer.

3. Prompt and Flexible Remedial Measures

As aforesaid, a judicial system that imposes time-consuming and costly burdens on victims is not suited as a remedy to discrimination. Therefore, a system of prompt and flexible remedies by a national human rights institution, which Japan has not established yet, should be immediately introduced.

B. Discrimination by National/Local Governments

1. Political Participation

I. Conclusions and Recommendations

The Government of Japan should:

1. revise the Public Offices Election Act and the Local Autonomy Act, and at a minimum grant the right to vote in local government elections to people

from former colonies and their descendants who do not hold Japanese nationality, coming to terms with their historical background and the current reality of their life.

2. Consider granting the right to vote also to other permanent foreign residents and long-term residents.

II. Opinions

1. Article 15 of the Constitution provides that “[t]he people have the inalienable right to choose their public officials and to dismiss them.” In response to this provision, Article 9 (1) of the Public Offices Election Act states that “Japanese nationals who are 18 years old or older have the right to vote for Members of the House of Representatives and Members of the House of Councilors.” Further, Article 9 (2) of the same Act provides that “Japanese nationals who are 18 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.”
2. Article 93 (2) of the Constitution provides that “[t]he chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.” In relation to this provision, Article 11 of the Local Autonomy Act specifies that “Japanese nationals who are residents of ordinary local government bodies have the right to participate in the elections of the local government body as provided for as under this Act.” Also, Article 18 of the same Act provides that “Japanese nationals who are 18 years old or older and who have continuously for three months or more maintained residence in a particular municipality have, as otherwise provided under law, the right to vote for members of the ordinary government body and chief executive officers associated with that municipality,” thereby limiting voting rights even in local government bodies to “Japanese nationals.”
3. Article 92 of the Constitution provides that “[r]egulations concerning organization and operations of local government bodies shall be fixed by law in accordance with the principle of local autonomy,” and accordingly, supervision and formation of local government bodies require participation of residents. In addition, Article 93 (2) of the Constitution provides that the

residents of local government bodies shall directly elect officials of each local government body. From this provision, the meaning of “residents” here is not thus limited to persons who hold Japanese nationality.

4. If “residents of the local government body” in Article 93 (2) of the Constitution is limited to “Japanese nationals” as provided in the Local Autonomy Act, this would exclude foreign nationals who have lived in Japan for an extended period of time and have established their lives in a local community in the same manners as other residents from elections of local government bodies. This ignores the reality of their lives and excludes such foreign people from elections of local government bodies only on the pro forma basis of whether or not one holds Japanese nationality, which is discrimination against foreign nationals.
5. In the judgment on the legal action in which it was contested whether or not the right to vote in elections of local government bodies shall be granted to “special permanent residents” of Koreans who were born and have been brought up in Japan, the Supreme Court decided as follows:

“It can be reasonably concluded that the Constitution does not prohibit the implementation of measures to grant by law the right to vote in elections of the chief executive officers of local government bodies, the members of the assemblies, and such other local officials to permanent residents and others who are deemed to have an exceptionally close relationship with a local government of a place of residence among foreign residents in Japan in order to reflect their will in the public operation of the local government which has a close relationship with their daily lives. However, it is exclusively a matter of the legislative policy of the government to decide whether such measures should be taken, and the failure to take such measures does not cause the issue of unconstitutionality.”⁹

The above decision states that the conferment of the right to vote in local elections to “permanent residents and others” among “foreign nationals” is a matter of the legislative policy of the government. However, in light of the historical background that people from the former colonies were deprived of Japanese nationality without regard to their own will by the Government of

⁹ Case No. 1993 (Admin/tsu) 163 (dated February 28, 1995)
http://www.courts.go.jp/app/files/hanrei_jp/525/052525_hanrei.pdf

Japan, there is no legitimate basis for their exclusion even from elections in local governments only because of their lack of Japanese nationality. Moreover, history of residence in Japan of people from the former colonies has continued for over a century, and their actual lives are not different from those of Japanese citizens at all. Therefore, the Government of Japan should proactively guarantee at minimum voting rights in local elections in particular for people from the former colonies and their descendants among the permanent residents in Japan.

6. Coming to terms with the historical background and their reality of life, the Government of Japan should revise the Public Offices Election Act and the Local Autonomy Act to grant at minimum the right to vote in local government elections to “special permanent residents” originally coming from the former colonies and should also consider granting the right to vote in local government elections to other permanent foreign residents and long-term residents as well.

2. Right to Take Office as Public Servants

I. Conclusions and Recommendations

The Government of Japan should:

1. Relax the nationality requirement for the right to take office as public servants and open the door further to long-term foreign residents.
2. Guarantee the right to take office as public servants in principle to people from the former colonies and their descendants without holding Japanese nationality if they intend to work as public servants.

II. Concerns and Recommendations of the Committee

1. The Committee states in its Concluding Observations in 2010 as follows:

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

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

right to participation of non-nationals in public life in its next report.”
(Paragraph 15)

2. The Committee states in the Last Concluding Observations as follows:

“While noting the explanation provided by the delegation of the State party, the Committee is concerned about restrictions and difficulties faced by non-citizens in accessing some public-service jobs which do not require the exercise of State authority. The Committee is particularly concerned about the position and the continued practice of the State party to exclude competent non-citizens to act as mediators in family dispute settlement courts (art. 5).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party review its position so as to allow competent non-citizens to act as mediators in family dispute settlement courts. The Committee also recommends that the State party remove legal and administrative restrictions in order to promote more participation by non-citizens in public life, including access to public jobs that do not require the exercise of State authority, paying due attention to non-citizens who have been living in the State party for a long time. The Committee further recommends that the State party provide in its next periodic report comprehensive and disaggregated data on the participation of non-citizens in public life.” (Paragraph 13)

III. Statements of the Government Reports

1. In the Initial and Second Government Reports, the Government of Japan states that “Japanese nationality is required for civil servants who participate in the exercise of public power or in 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 in accordance with the above-mentioned principle.” (Paragraph 50)
2. In the Seventh to Ninth Government Reports, the Government of Japan states that “the fact that a foreign national cannot become a Conciliation Commissioner of Domestic Relations does not fall under discriminatory treatment for the reason of nationality: a person shall have Japanese nationality to become a public servant engaged in the exercise of public authority or participation in the formation of national intention; and a

commissioner, which is a part-time court official, falls under the category of such public servants. Japanese nationality is thus considered as necessary to become a commissioner.” (Paragraph 100)

3. In its Government Report, the Government of Japan states that “Japanese nationality is required for civil servants who participate in the exercise of public power or in public decision-making, but it is understood that Japanese nationality is not necessarily required for civil servants who do not engage in the abovementioned work. Korean residents in Japan have been employed as civil servants in line with the abovementioned principle.” (Paragraph 81; the same sentence as under the Initial and Second Government Report (Paragraph 50))

IV. Opinions

1. With only a handful of exceptions, Japanese laws do not include provisions to prohibit appointment of foreign nationals as public servants. Public servants are categorized as national public officers and local public officers. The requirement of holding Japanese nationality to become a public servant is neither provided in the Constitution, the National Public Service Act nor the Local Public Service Act.

Despite the fact above, the Rules of the National Personnel Authority (8-18 Article 9), which is an administrative standard holding a subordinate position to laws, state in connection with national public officers that “those who do not hold Japanese nationality may not take employment examinations.” With regard to local public servants, the former Ministry of Home Affairs which is an administrative agency states that pursuant to the commonly understood principle of public servants, those who do not hold Japanese nationality may not be appointed as a public servant engaged in the exercise of public authority or participation in the decision-making process of a local government¹¹.

2. The Government of Japan has restricted the appointment of foreign nationals as public servants based on its understanding that holding Japanese nationality is required for public servants who participate in the exercise of public authority or in public decision-making, but holding Japanese

¹¹ Ministry of Home Affairs – Public No.28 (Dated May 28, 1973)
<https://www.city.ikoma.lg.jp/cmsfiles/contents/0000000/526/1803.pdf>

nationality is not necessarily required for public servants who do not engage in the above-mentioned work. However, there is injustice in restricting the important human rights of taking a post as a public servant based on such a vague and overbroad concept of participation in the exercise of public authority or in public decision-making while there are no such provisions of laws. It is still even further injustice to restrict the rights of people from the former colonies and their descendants in taking posts as public servants without considering the historical background.

3. Discrimination of Public Secondary/High School Teachers

In 1982, a special law concerning academics was established¹². Accordingly, foreign nationals are now eligible to be university teachers.

However, at the same time as the establishment of the said Act, the Government of Japan issued an administrative notice to the effect that existing treatment shall remain unchanged for high schools and hereunder. According to this administrative notice, foreign nationals may not be appointed as a principal or vice-principal of a high school or hereunder. In the opinion of the Government of Japan, the office of a principal or vice-principal involves the exercise of public authority. This opinion has been maintained until the present day. Therefore, it remains that while foreign nationals can become the president of a (national, public or private) university or the principal of a private secondary or high school, they are employed as “full-time lecturers,” and not even eligible to become “teachers,” and cannot assume any managerial position or the post of principal at a national/public secondary or high school. In this way, it is a matter of fact that foreign teaching staffs may be employed only as “full-time lecturers” who are not eligible to assume any managerial position and suffer disadvantages in promotion as well.

In March 2012, the JFBA made a recommendation to the Ministry of Education, Culture, Sports, Science and Technology and the Kobe Municipal Board of Education to adopt a policy of foreign teaching staffs as “teachers” and allow promotion to managerial positions¹³.

¹² Act on Special Measures concerning National/Public Universities’ Employment of Foreign Teachers and Other Matters; current Act on Special Measures concerning Public Universities’ Employment of Foreign Teachers and Other Matters

¹³ JFBA, “Petition for Human Rights Remedy Concerning Revocation of Appointment of a Foreign Teacher” (dated March 6, 2012) https://www.nichibenren.or.jp/activity/document/complaint/year/2012/2012_5.html

4. Refusal of Application for Taking an Examination for Managerial Positions

On January 26, 2005, the Supreme Court dismissed a complaint by a local public servant who was a Korean resident¹⁴. The said local public servant was a public health nurse employed by the Tokyo metropolitan government, but the Tokyo metropolitan government refused to accept her request to take a managerial position examination.

This local public officer was born in 1950 and held Japanese nationality when she was born but was deprived of Japanese nationality in 1952. Her father had held Korean nationality while her mother was Japanese¹⁵. The Supreme Court decided that it was lawful that the Tokyo metropolitan government refused to accept her request to take the examination without consideration for such circumstances.

The JFBA pointed out with regard to the above Supreme Court decision that “its endorsement of the Tokyo metropolitan government’s total prohibition of foreign nationals from promotion to managerial positions disregards equality under the law, and freedom to choose her/his occupation for foreign residents in Japan, in particular special permanent residents.”¹⁶

5. Conclusion

There are many foreign nationals living in Japan as members of Japanese society, including special permanent residents including people from the former colonies and their descendants who have had no other choice but to reside in Japan while losing Japanese nationality pursuant to the circular issued when the San Francisco Peace Treaty took effect, such as Korean residents, as well as settled foreign nationals.

Considering the aforesaid historical background relating to people from the former colonies, the Government of Japan should guarantee the right to take office as public servants in principle to people from the former colonies and their descendant without holding Japanese nationality if they intend to work as a public servant.

¹⁴ (Admin/Tsu) No.93 of 1998

¹⁵ According to the additional remark of the above decision, “the Appellee was born in Japan to a Japanese mother and was brought up receiving a Japanese education, but her father had Chosen-seki (Korean nationality), and consequently the Appellee lost Japanese nationality regardless of her own will when the Peace Treaty with Japan went into effect”

¹⁶ JFBA, “President’s Statement on the Judgment of the Grand Bench in the Case against the Nationality Clause for Qualifying for a Tokyo Metropolitan Government Managerial Position” (dated January 28, 2005)
https://www.nichibenren.or.jp/activity/document/statement/year/2005/2005_01.html

Further, the appointment of other permanent foreign residents and long-term residents as public servants should also be broadly allowed.

3. Judicial Participation

I. Conclusions and Recommendations

The Supreme Court should reform its practice of refusing to appoint foreign nationals as civil and family conciliation commissioners as well as judicial commissioners and counselors on the grounds that such positions involve the exercise of public authority, and should make appointments on the basis of equality, irrespective of holding Japanese nationality.

II. Concerns and Recommendations of the Committee

The Committee made the following recommendations in the Last Concluding Observations:

“Recalling its general recommendation No.30 (2004) on discrimination against non-citizens, the Committee recommends that the State party review its position so as to allow competent non-citizens to act as mediators in family dispute settlement courts. The Committee also recommends that the State party remove the legal and administrative restrictions in order to promote more participation by non-citizens in public life, including access to public jobs that do not require the exercise of State authority, paying due attention to non-citizens who have been living in the State party for a long time. The Committee further recommends that the State party provide in its next periodic report comprehensive and disaggregated data on the participation of non-citizens in public life.” (Paragraph 13)

III. Statement of the Government Report

It states in Paragraph 148 that “the fact that a foreign national cannot become a Conciliation Commissioner of Domestic Relations does not fall under discriminatory treatment for the reason of nationality: a person shall have Japanese nationality to become a public servant engaged in the exercise of public authority or participation in the formation of national intention; and a commissioner, which is a part-time court official, falls under the category of such public servants. Japanese nationality is thus considered as necessary to become a commissioner.”

IV. Facts and Opinions

1. Civil and family conciliation commissioners are responsible for facilitating communication between parties concerned and expediting settlements in order to resolve civil and family disputes. A conciliation commissioner who is also an attorney is appointed by the Supreme Court based on recommendations of bar associations.

Judicial commissioners are responsible for facilitating settlements and expediting discussions between parties concerned as an assistant of a court in legal proceedings of the Summary Court. A judicial commissioner who is also an attorney is appointed by a District Court based on recommendations of bar associations.

Counselors are responsible for attending or expressing an opinion at trials or attempt to conduct settlements in domestic relations cases or personal status litigation cases of a Family Court and are appointed by a Family Court.

2. In March 2003, the Hyogo-ken Bar Association recommended a member holding Korean nationality as a candidate for a family conciliation commissioner to the Kobe Family Court, but the court rejected its recommendation. Almost every year from 2006 to the present day, the court rejected all recommended bar association candidates holding non-Japanese nationality¹⁷. In response to these rejections, each of the bar associations delivered resolutions of its general assembly, etc., to the Supreme Court.
3. In September 2008, the JFBA made referral to the Supreme Court for clarification regarding the reasons for the requirement of Japanese nationality for selection of a conciliation commissioner or a judicial commissioner¹⁸. The Personnel Affairs Bureau of the General Secretariat of the Supreme Court then responded on October 14, 2008, “the Supreme Court refrains from making its own response to the enquiry by the JFBA, but the procedures within its office are below.” Although no provisions of laws and regulations exist, the response continued, “it is assumed that a person holding Japanese nationality is to be employed as a public officer who exercises public

¹⁷ In March 2006, the Sendai Bar Association recommended a member holding Korean nationality as a candidate for a family conciliation commissioner, but the candidate was rejected. Also in March of the same year, the Tokyo Bar Association recommended a member holding Korean nationality as a candidate as a judicial commissioner, but the candidate was rejected. In December 2011, the Okayama Bar Association recommended a member holding Korean nationality as a candidate as a counselor to the Family Court, but the candidate was rejected.

¹⁸ The JFBA made a referral titled “Situation of Judicial Participation by People without holding Japanese Nationality (Referral)” dated September 25, 2008.

authority or makes decisions related to important policies, or whose work is to participate in the aforementioned duties. Because a conciliation commissioner and a judicial commissioner fall under this category of a public officer, Japanese nationality is required for such appointment.”

4. The rules of the Supreme Court relating to a conciliation commissioner provide that a person who is eligible to become a conciliation commissioner is “qualified to be an attorney, has expert knowledge and experience useful for resolution of civil or family-related disputes or has extensive knowledge and experience gained through daily life in society, and has a high degree of integrity and insight within an age range of forty to less than seventy years,”¹⁹ and it does not include any suggestion of matters related to nationality. The same applies for a judicial commissioner or a counselor as well. Nevertheless, refusal of employment on the grounds of nationality and other matters is based on reasons which the law does not set forth, and it must be said that this is against the rule of law. In particular, there is no requirement for any detailed specialization as an attorney. An attorney who specializes in resolving legal disputes is naturally assumed to have expert knowledge and experience necessary to take on cases involving dispute resolution, and therefore there is no room for discussion about matters of nationality.
5. The purpose of the conciliation system is to resolve civil and family disputes among citizens based on discussion and agreement between parties concerned before such disputes enter into lawsuits. Moreover, the fundamental role of conciliation and judicial commissioners is to utilize expertise or extensive knowledge and experience gained through daily life in society in order to assist in resolution of disputes through mutual concession. A conciliation commissioner is solely responsible for mediation of discussions between parties concerned and assists in reaching an agreement. If the parties do not reach an agreement, then the mediation is considered to have failed, and the conciliation commissioner cannot make unilateral determinations. The same is true of a judicial commissioner and a counselor.

Therefore, conciliation commissioners, judicial commissioners and counselors only function as mediations, and it cannot be said that they serve as public

¹⁹ The Supreme Court Website: http://www.courts.go.jp/vcms_lf/chouteiinkisoku2.pdf

officials engaged in the exercise of public authority.

6. In October 2010, after the publication of the Committee's Concluding Observation on the Third to Sixth Periodic Report as of March 16 of the same year, a research by the Osaka Bar Association found a precedent that an attorney holding the nationality of the Republic of China belonging to the said Bar Association was appointed as a civil conciliation commissioner from January 1974 to March 1988. Yet, the Supreme Court continues to refuse employment of foreign national attorneys recommended by the bar associations even today.
7. There are many foreign nationals living in Japan as members of society, including special permanent residents such as people from the former colonies and their descendants including Korean residents, etc., who have had no other choice but to reside in Japan while losing Japanese nationality pursuant to the circular issued when the San Francisco Peace Treaty took effect, as well as settled foreign nationals. Such foreign nationals often have opportunities to make use of the mediation system in Japan. A conciliation commissioner who has knowledge of cultural backgrounds unique to such permanent residents and settled foreign nationals may be of service in number of cases among the conciliation cases. Similarly, foreign nationals often become parties to trial or court cases in which judicial commissioners or counselors are involved. From the perspective of freedom to choose an occupation and the principle of equal treatment, it is only natural that a conciliation commissioner or judicial commissioner with foreign nationality should participate in cases equally to those holding Japanese nationality. The JFBA published the "Opinion Paper Requesting Appointment of Foreign Nationals to Conciliation Commissioners and Judicial Commissioners" (dated March 18, 2009) as well as submitting a request to the Supreme Court to employ conciliation commissioners and judicial commissioners without discrimination based on nationality²⁰. Also, as for councilors, the JFBA published the "President's Statement to Request Appointment of Members with Foreign Nationality to Councilors" (dated February 15, 2012).

As described, refusal of a foreign national to become a conciliation

²⁰ A request titled "Concerning the Matter of Appointment of Foreign Nationals to Conciliation Commissioners" was submitted as of March 30, 2011.

commissioner, judicial commissioner or councilor lacks reasonable grounds and violates Article 5 of the Convention.

8. Despite the fact that the Concluding Observations “recommends that the Government of Japan provide in its next periodic report information on the right of participation of non-citizens in public life,” the Government Report does not provide relevant information. The Government of Japan should promptly provide such information to the Committee.

4. National Pension System

I. Conclusions and Recommendations

The Government of Japan should revise related laws and regulations and immediately implement remedial measures so that pensions are paid to elderly foreign nationals (those who were over 60 years old as of April 1, 1986) and disabled foreign nationals (those who were over 20 years old who have suffered from disabilities as of January 1, 1982) residing in Japan.

II. Concerns and Recommendations of the Committee

1. Mr. Doudou Diène, a “Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance” appointed by the UN Commission on Human Rights, visited Japan in July 2005, and in his report “Mission to Japan” (E/CN.4/2006/16/Add.2) he expressed his concern about the issue of foreign national elderly residing in Japan without pension benefits and recommended that “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.”²¹
2. The Committee recommends in the Last Concluding Observations as follows: “Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take measures to allow non-citizens, in particular Koreans, who may have been left out and remain excluded from the National Pension Act owing to the age requirement, to be eligible to join the national pension scheme. The Committee also recommends that the State party amend its legislation in order

²¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/96/PDF/G0610396.pdf>, paragraph 91

to allow non-citizens who are currently ineligible to apply for the Basic Disability Pension.” (Paragraph 14)

III. Facts

1. The nationality clause has long existed in the national pension scheme which began in 1959. The nationality clause was abolished in January 1982, and since 1986, in a case where a person does not pay into the Japanese state pension fund for less than 25 years, which is the minimum pay-in requirement period for drawing a pension, it was permitted to include any insufficient payment period toward the required 25 years, which enabled foreign nationals who had been excluded from the national pension scheme to join the national pension scheme.

However, because the government failed to make transitional arrangements along with the revision of the National Pension Act, the pensions under the national pension scheme have not been paid as of today to (1) elderly foreign nationals who were over 60 years old as of April 1, 1986 and (2) disabled foreign nationals who were over 20 as of January 1, 1982.

2. Actions by elderly foreign nationals and disabled foreign nationals residing in Japan who cannot receive pension payments because of the government’s failure to make transitional arrangements have been brought to court in various locations in Japan.

However, the judgment of the lower courts which rejected the plaintiffs’ claims on the grounds that such exclusion is within the broad discretion of the legislative body and cannot be said to be unreasonable discrimination was finalized by the Supreme Court²².

IV. Opinions²³

Relevant provisions of the National Pension Act which exclude elderly foreign nationals who were over 60 years old as of April 1, 1986 and disabled foreign nationals who were over 20 years as of January 1, 1982 residing in Japan as not eligible to receive pensions under the national pension scheme discriminate against such people from Japanese nationals without reasonable grounds.

²² Ruled on February 6, 2014

²³ JFBA “Case of Petition for Human Rights Remedy by Foreign National Elderly and the Disabled Residing in Japan without Access to Pension Benefits (Recommendation)” (dated April 7, 2010)
https://www.nichibenren.or.jp/activity/document/complaint/year/2010/2010_3.html

In particular, many foreign residents in Japan who have no access to pension benefits because of the lack of transitional measures are Koreans who came to Japan as “Japanese subjects” during the period of colonial administration by Japan, who were deprived of their Japanese nationality unilaterally without being given an option and became foreign nationals upon the effectuation of the San Francisco Peace Treaty in 1952. Permitting such elderly and disabled Koreans in Japan living without pension benefits is a violation of Article 5C (iv) of the Convention, Article 26 of the International Covenant on Civil and Political Rights (“ICCPR”) and Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).

Moreover, while remedial measures have been taken regarding the matter of the remaining Japanese in China without access to pension benefits and the matter of disabled students without access to pension benefits, no remedial measures have been taken for disabled and elderly foreign nationals without access to pension benefits. Considering the situation where many such people are forced to live in poverty due to age and deterioration of the socioeconomic environment because of protracted stagnation, the aforesaid status of violation of the Convention is even more significant at present.

Therefore, the Government of Japan should promptly revise related laws and regulations to immediately implement remedial measures so that pensions are paid to elderly foreign nationals and disabled foreign national residing in Japan who have no access to pension benefits.

5. Discrimination in Public Assistance and Related Administrative Appeal Procedures

I. Conclusions and Recommendations

<p>The Government of Japan should recognize the right of settled foreign nationals suffering from poverty to receive public assistance and allow them to receive relief under the Administrative Complaint Review Act in relation to decisions on public assistance.</p>
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II. Statement of the Government Report

Paragraph 164 states that “In FY2014, the number of persons belonging to a household receiving public assistance of which the head is a foreign national was 74,386.”

In the Seventh to Ninth Periodic Government Reports, it is pointed out that “the number of persons who belong to a household receiving public assistance of which the head is a foreign national was 68,965 in FY2010” (Paragraph 123), and the number of persons who belong to a household receiving public assistance of which the head is a foreign national continues to increase on a yearly basis.

III. Facts

1. The previous Public Assistance Act which was established in November 1946 did not include the nationality clause.

However, the current Act which was established in 1950 provides in Article 2 that “[a]ll citizens may receive public assistance under this Act in a nondiscriminatory and equal manner as long as they satisfy the requirements prescribed by this Act.” As a result, the Government of Japan interprets that non-Japanese nationals do not have the right to receive public assistance on the grounds of the word “citizens” in the provision, and only recognizes such non-Japanese nationals as people who may be protected as “grace.”

Under present circumstances, foreign nationals suffering from poverty can thus receive assistance as benefits based on the circular of the Ministry of Health, Labor and Welfare, but cannot demand such assistance as their rights.

2. Consequently, while Japanese nationals who are guaranteed legal protection as their legal right may resort to administrative appeal in a case of violation of the right to protection, such appeal is not available for foreign nationals.
3. Recently, bills to amend the Public Assistance Act have been submitted to the Diet, but again, no discussion has been held to recognize the right of settled foreign nationals to receive protection under the Public Assistance Act so as to allow them to be eligible for public assistance.
4. Moreover, on July 18, 2014, in a case where a foreign national with permanent residency demanded that the decision to reject her application for public assistance be repealed, the Supreme Court dismissed the decision of the High Court which had recognized her claim and ruled that such claim should not be recognized²⁴.

V. Opinions

²⁴ (Adin/Hi) No.45 of 2012

1. The appeal system for public assistance contributes to simple and prompt rights relief, but unless non-Japanese nationals have the right to receive public assistance, foreign nationals cannot utilize such system and there is no other option but to face economic and procedural burdens to bring lawsuits against the government to court.
2. Such policy of the Government of Japan not to recognize the rights of foreign nationals to receive public assistance obviously contradicts the approach to realizing a society in which each person is treated without discrimination and respected as an individual and can fully develop his or her own personality with application of the social security system on the basis of the principle of equality between citizens and non-citizens (Paragraph 3).
3. Therefore, the Government of Japan should redress this problem, recognize the rights of settled foreign nationals to receive public assistance and allow them to receive relief under the Administrative Complaint Review Act.

6. Discriminatory Statements by Public Officials

I. Conclusions and Recommendations

The Government of Japan should:

1. Promptly release a message to strictly condemn any discriminatory statements by public officials and implement strict measures such as removing any person who made such statements, as necessary and possible.
2. Implement specific and effective training courses on discrimination to prevent discriminatory statements by public officials.

II. Concerns and Recommendations of the Committee

The Committee recommends in the Last Concluding Observations to “(d) pursue appropriate sanctions against public officials and politicians who disseminate hate speech and incitement to hatred” (Paragraph 11).

III. Statements of the Government Report

The Government of Japan states in the Government Report that prohibition of discrimination by national and public authorities is guaranteed by Article 14 (1) of the Constitution which provides equality under the law, Article 98 (1) of the Constitution which stipulates that the Constitution shall be the supreme law of the nation, and Article 99 of the Constitution which stipulates that public officials shall have an obligation to respect and uphold the Constitution

(Paragraph 102).

Further, it states that training and lectures related to human rights shall be implemented for public officials including administrative officials and judges (Paragraphs 110-122).

However, their specific contents are not made clear, and Diet members are not covered by them.

IV. Facts

Even after the release of the Last Concluding Observations in September 2014, there is no end to discriminatory statements by public officials. Shown below are only a few examples of such incidents:

1. In August 2014, a former municipal assembly member of Sapporo City posted on Twitter that “the Ainu no longer exist now as an ethnic group. At best, what they are now is a mix of Ainu-Japanese ancestry, and it’s so unreasonable that they continue to take advantage of their vested rights and interests. I cannot explain this to taxpayers.”²⁵ Following this tweet, there was a rise of hate speech posted against the Ainu, and in November of the same year, a hate speech demonstration targeted at the Ainu took place in Tokyo. Participants in this demonstration made hate speech, such as “Pure Ainu no longer exist,” “Discrimination against Ainu was trumped up,” “Kick those self-claimed Ainu who get money from the Ainu Association out of Japan!,” and so on.
2. On October 18, 2016, a riot police officer intensively hurled abusive language at citizens carrying out protest activities near the construction site of US military helipads in Okinawa Prefecture, saying “What do you think you are grabbing, you idiots? You *dojin*,” etc.²⁶ “*Dojin*” is a discriminatory word used in an insulting manner to refer to inhabitants living in an uncivilized place under primitive conditions.

The said police officer belonged to the Osaka prefectural police, and on the following day, the Governor of Osaka Prefecture, instead of criticizing the police officer, offered understanding to such an utterance and praised his service, stating in his Twitter account, “Even though the expressions used were inappropriate, I found that the Osaka prefectural police officers were

²⁵ Website of J-CAST News <https://www.j-cast.com/2014/08/17213275.html?p=all>

²⁶ Website of The Mainichi Newspapers <https://mainichi.jp/articles/20161019/k00/00e/040/225000c>

earnestly carrying out their duties under orders. I appreciate their service.”

The Minister of State for Okinawa and Northern Territories Affairs (at that time) also stated on November 8 of the same year, “I cannot absolutely determine as a minister that calling someone *dojin* is discriminatory.”

And on the 18th of the same month, the Government of Japan approved at the Cabinet meeting a written response stating that “We do not consider that it is necessary for the Minister to apologize and correct his statement made in the Diet,”²⁷ and on the 21st of the same month, the Chief Cabinet Secretary stated, “It is a concurrent view of the government that we cannot conclude that it was discriminatory.”²⁸

3. On June 21, 2017, the Governor of Ishikawa Prefecture said at a general meeting of mayors within the prefecture, “We would have to implement a strategy of starving the North Korean people into surrender,” in relation to a question from a participant about what to do if North Korea launched a missile targeting the nuclear power plant in the prefecture²⁹, but then subsequently retracted the statement in response to criticism.
4. On September 23, 2017, after talking about the outflux of refugees from Syria and Iraq in a lecture, the Deputy Prime Minister said in effect that there is a possibility that refugees would come to Japan in droves from the Korean Peninsula and in response to such an influx of refugees, Japan might have to arrest them all but it would be difficult to house such a large number of refugees. He further said that they could be “armed refugees” and the police might not be able to deal with them and it is necessary to consider defense mobilization of the Self-Defense Forces as well as countermeasures including shooting them³⁰.
5. On November 23, 2017, the former Minister of State for the Promotion of Overcoming Population Decline and Vitalizing Local Economy in Japan said at a seminar, “Why does he love such black ones?” referring to another Diet member who engages in activities to support African countries. On the 25th of the same month, he retracted his comment, saying, “I would like to retract if it

²⁷ Website of the House of Representative

[http://www.shugiin.go.jp/internet/itdb_shitsumon_pdf_t.nsf/html/shitsumon/pdfT/b192130.pdf/\\$File/b192130.pdf](http://www.shugiin.go.jp/internet/itdb_shitsumon_pdf_t.nsf/html/shitsumon/pdfT/b192130.pdf/$File/b192130.pdf)

²⁸ Website of the Okinawa Times <http://www.okinawatimes.co.jp/articles/-/72243>

²⁹ Website of The Asahi Shimbun <https://www.asahi.com/articles/ASK6P5TWCK6PPJLB00D.html>

³⁰ Website of The Asahi Shimbun <https://www.asahi.com/articles/ASK9R6DCPK9RUTFK00J.html>

was misleading,”³¹ but explained, “I had no intention of discrimination.”

V. Opinions

Listed above are only a few examples of such statements which became particularly big issues over the past few years, but there have been many other discriminatory statements made by public officials in addition to those described above.

It is not excusable for public officials vested with authority to make such insulting statements or statements that incite hostility against specific minority groups.

Moreover, in a case where some public officials make such statements, the Government of Japan should at least criticize them promptly and harshly so that such remarks will not foster discriminatory sentiments from citizens, and if such a public official is a high-level government official including a minister, etc., dismissal of such an official should be considered.

However, none of the high-level officials who made the aforesaid statements have been dismissed. Rather, when the “*dojin*” remark was made by the police officer, many politicians made remarks defending the officer instead of criticizing him, and the Government of Japan also confirmed them. Such an attitude by the Government of Japan will produce an effect to foster a discriminatory consciousness of citizens even further.

In the Government Report, the Government of Japan states that it implements human rights education for public officials, but its specific contents are not made clear. Considering the harmful influence of racial discrimination by public officials across all of society, specific and effective training particularly focused on the issue of racial discrimination should be implemented.

7. Penal Detention Facilities

I. Conclusions and Recommendations

II.

The Government of Japan should eliminate racial discrimination in penal detention facilities, respect the religious beliefs of detainees, and ensure that no discrimination occurs in the treatment of detainees.

³¹ Website of JJI Press <https://www.jiji.com/jc/article?k=2017112500406&g=pol>,
Website of The Asahi Shimbun <https://www.asahi.com/articles/ASKCT3CT8KCTTIPE005.html>

The Committee recommends in Paragraph 13 of its Concluding Observations in 2001 that “the State party is urged ... to provide appropriate training of, in particular, public officials, law enforcement officials and administrators with a view to combating prejudices which lead to racial discrimination.”

Rule 2 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted in 2015 provides that “The present rules shall be applied impartially. There shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status. The religious beliefs and moral precepts of prisoners shall be respected.”

III. Facts

Cases which are considered to fall under discriminatory practices in the treatment against foreign prisoners at detention facilities are reported as follows:

1. Sapporo Prison unjustly infringed the freedom of religion by continuing to offer meals to a Jewish inmate contrary to the doctrine of his religious beliefs³².
2. Sapporo Prison imposed a disciplinary punishment on an inmate on the grounds that the inmate conducted worship according to religious beliefs. It is unjust to prohibit an inmate from conducting religious acts such as worships quietly alone in a single room or restrict such acts³³.
3. Tochigi Prison retained a scarf of a Muslim inmate used in worship in the Prison, did not respond to the inmate’s request with respect to mealtimes during Ramadan, and further did not respond to the inmate’s request for prayer time during Ramadan. Such treatment by the Prison infringes the inmate’s freedom to practice religion³⁴.

IV. Opinions

As described above, there are cases of racial discrimination or lack of respect towards religions in penal detention facilities, which need to be eliminated as quickly as possible. The Government of Japan should treat detainees in accordance with the Standard Minimum Rules for the Treatment of Prisoners, and in particular, should eliminate racial discrimination in penal detention facilities, respect religious

³² Sapporo Bar Association “Recommendation Concerning Petition for Human Rights Remedy” (dated August 24, 2013) <http://www.satsuben.or.jp/info/statement/2012/jin01.html>

³³ Sapporo Bar Association “Recommendation Concerning Petition for Human Rights Remedy” (dated October 30, 2013) http://www.satsuben.or.jp/info/statement/pdf/131118_kankoku.pdf

³⁴ JFBA “Request Concerning Petition for Human Rights Remedy” (dated May 12, 2017) https://www.nichibenren.or.jp/library/ja/opinion/hr_case/data/2017/complaint_170512.pdf

beliefs of detainees, and ensure that no discrimination occurs in the treatment of detainees.

Chapter 3 Issues Specific to Each Minority Group

A. Korean Residents in Japan

I. Conclusions and Recommendations

1. The Government of Japan should include Korean schools in the application of the Act on Payment of the High School Tuition Support Fund (previously, the Act on Free Tuition at Public High Schools and the High School Enrollment Support Fund, hereinafter, the “Act on Free Tuition at Public High Schools”) without discrimination from other foreign schools.
2. The Government of Japan should retract the notice of the Minister of Education, Culture, Sports, Science and Technology titled “Points of Note Concerning Granting of Subsidies to Korean Schools” dated March 29, 2016 (the “Notice”), which in effect requests local governments to suspend granting of subsidies³⁵ to Korean schools.
3. Local governments should operate the subsidy payment system for Korean schools in consideration of equal rights and rights to education of children.

II. Concerns and Recommendations of the Committee

The Committee recommends in the Last Concluding Observations as follows:

“The Committee encourages the State party to revise its position and to allow Korean schools to benefit, as appropriate, from the High School Tuition Support Fund and to invite local governments to resume or maintain the provision of subsidies to Korean schools.” (Paragraph 19)

III. Statements of the Government Report

The Government of Japan argues against the aforesaid recommendations of the Committee and the main part of its argument in its report is as follows:

“[T]he exclusion of North Korean schools from High School Enrollment Support Fund System is not discrimination.” (Paragraph 170)

“In regards to the applicability of the High School Tuition Support Fund System to North Korean schools, as a result of an examination to determine whether North

³⁵ Fund paid by the Government of Japan based on the Act on Free Tuition at Public High Schools is the “Enrollment Support Fund” and in this paper, funds paid by local governments at their own discretion are referred to as “subsidies” regardless of how they are named.

Korean schools satisfy the requirements for eligibility to the system, it became clear that North Korean schools have a close relationship with Chongryon (Chosen Soren in Japanese)³⁶ and that these schools are under the influence of Chongryon in regards to educational content, personnel affairs, and finance. Since we were unable to obtain adequate evidence that these schools were not under ‘improper control,’ which is prescribed by Article 16, Clause 1 of the Basic Act on Education, and were unable to confirm that these schools conform with one of the criteria for designation, as stipulated in the above-mentioned Article 13, in terms of ‘appropriate school management in accordance with regulations,’ they could not be designated for eligibility to the High School Tuition Support Fund System.” (Paragraph 172)

“If North Korean schools obtain the approval of the relevant prefectural governor and become high schools ... (Omitted) ..., those schools will be eligible for the current High School Tuition Support Fund System.” (Paragraph 173)

“Children of foreign nationality, including those of North Korean nationality, can receive education for free at public compulsory schools, just as Japanese children can, and the Government of Japan provides educational opportunities for them. Therefore, the Government does not consider cases where local governments do not provide subsidies to North Korean schools as falling under violation of North Korean children’s right to education as a result of being North Korean residents in Japan.” (Paragraph 174)

“[W]ith regard to the provision of local government subsidies to North Korean schools, the Government of Japan recognizes that each prefectural or municipal government on its own responsibility and judgment decides whether to implement such measures, giving due consideration to its own financial condition and the necessity of such measures in terms of public interest or educational promotion. The Government recognizes that it is inappropriate for it to directly request local governments to resume or maintain the provision of subsidies without a proper understanding to resume or maintain the provision of subsidies without a proper understanding of the situation surrounding each local government.” (Paragraph 175)

IV. Facts

³⁶ General Association of Korean Residents in Japan (Chongryon)

1. Responses of the Government of Japan

In April 2010, the Act on Free Tuition at Public High Schools was enforced. The purpose of the Act is to “reduce the economic burden relating to education at high schools, etc., and contribute to equal education opportunities,” and it was a unified view of the Government of Japan as well in the process of deliberation of the bill that designation of foreign schools eligible for the system should not be determined based on diplomatic considerations, but objectively from an educational perspective. In fact, many foreign schools were designated as schools eligible to receive enrollment support funds in accordance with the said Act, and Korean schools also applied these funds at the end of November 2010.

However, the Government of Japan subsequently eliminated the previous unified view of the government, and in February 2013 when more than two years had elapsed after the application, it extinguished the provision of the law under which the application was made³⁷, stating that “As for North Korean schools, we have determined that their designation at this point would not be understood by the public in light of the lack of progress on the issue of Japanese citizens abducted by North Korea and their close relationship with Chosen Soren with its influences on them with respect to educational content, personnel affairs and finance”³⁸, and retroactively turned away the application

³⁷ The Ordinance for Enforcement of the Act on Free Tuition at Public High Schools before the revision stated in connection with schools in which children of foreign nationals were enrolled such as international schools and ethnic schools that in addition to [1] schools which could be confirmed to have a curriculum equivalent to a curriculum of a high school in its country through embassies and other official organizations and [2] schools which were accredited by international evaluation organizations, [3] schools which did not fall under these could be designated by the Minister of Education, Culture, Sports, Science and Technology (MEXT) to be eligible for the enrollment support fund and other funds if such schools were recognized to have a curriculum equivalent to that of high school in Japan, regardless of whether diplomatic relationships exists or not.

The Government of Japan determined that Korean schools did not fall under [1] due to its lack of diplomatic relationship with the Democratic People’s Republic of Korea (but Chinese Schools, whose home country Taiwan has no diplomatic relationship with Japan, have become eligible for the Act based on [1] above), and they do not fall under [2] above, either, since Korean schools are not European or US international schools. Thus, the Korean schools applied for designation to be eligible for the enrollment support fund based on the provision of [3] above. However, on February 20, 2013, the MEXT revised the Ordinance for Enforcement of the Act on Free Tuition at Public High Schools and deleted the underlying provision for individual designation of [3] above (it was decided that such deletion of the underlying provision for individual designation of [3] would not affect the schools which had been already designated based on this provision). Consequently, legal room for Korean schools to be eligible for the enrollment support fund was lost. In addition, the MEXT took a measure not to designate any Korean school which had made application based on the Act on Free Tuition at High School to be eligible for the enrollment support fund under the Act. Since then, all Korean schools in Japan have been excluded from provision of enrollment support fund.

³⁸ MEXT “Result of the Public Comment Procedures Concerning the Draft Ordinance to Revise a Part of the Regulations for Enforcement of the Act on Free Tuition at Public High Schools and the High School Enrollment Support Fund (dated

by the Korean schools at the door. Consequently, all Korean schools in Japan were excluded from the application of the Act on Free Tuition at Public High Schools.

2. Responses of Local Governments

In connection with the decision by the Government of Japan to exclude Korean schools from the high school tuition-free program as described above, an increased number of municipalities stopped providing subsidies (subsidies provided to private schools at the discretion of local governments).

Moreover, the Minister of Education, Culture, Sports, Science and Technology issued the Notice in March 2016 to the local governments of 28 districts in which Korean schools are located.

In the Notice, the Minister stated that “as for North Korean schools, the government recognizes that Chosen Soren, which is an organization having a close relationship with North Korea, attaches importance to their education and influences their educational content, personnel affairs and finance. In this regard, I would like to request local governments to examine the public nature of subsidies with respect to North Korean schools and their effects in terms of educational proportion thoroughly, to ensure appropriate and transparent administration of subsidies in accordance with their intent and purpose and to appropriately provide information on the intent and purpose of the subsidies to their citizens, taking the aforesaid characteristics of the operation of North Korean schools into account, as well as considering the effect on the children attending such schools.”

In response to this Notice, some local governments newly suspended provision of subsidies.

According to media reports, all 28 local governments which have Korean schools in their districts had granted subsidies in FY2007, but subsequently, the number of those which suspended granting of subsidies gradually increased, and for FY2017, 16 local governments have suspended granting subsidies, and 3 of these local governments officially admit that they suspended providing subsidies because of the Notice³⁹.

3. Judicial Decisions

February 20, 2013) <http://search.e-gov.go.jp/servlet/PcmFileDownload?seqNo=0000097102>

³⁹ <https://www.asahi.com/articles/ASK7H124QK7GUTIL068.html>

Judicial decisions are divided on the exclusion by the Government of Japan of Korean schools only. Actions were filed in 5 locales nationwide, and 4 rulings have been rendered as of April 2018, but they are all being challenged and have not been finalized yet.

One of them, the judgment of the Osaka District Court on July 28, 2017 ruled that the measures taken by the Government of Japan are illegal measures based on political and diplomatic reasons⁴⁰, but the judgments of the Hiroshima District Court on the 19th of the same month⁴¹, the Tokyo District Court on September 13 of the same year⁴² and the Nagoya District Court on April 27, 2018 all ruled that the measures taken by the Government of Japan are lawful, stating that its decision neither goes beyond nor abuses its discretionary powers.

V. Opinions

1. Korean schools are attended by children of Korean residents in Japan who settled in Japan because of the historical background and live in Japan as members of Japanese society, and these schools have already earned certain social recognition as a place to provide school education centering on ethnic education.
2. Children attending Korean schools are also guaranteed the right to education (Article 26 (1) and Article 13 of the Constitution of Japan), which is an inherent right to receive education necessary to grow, develop, and complete and realize their own personality as human beings and as citizens. Further, equal opportunity in education, which is the purport of the Act on Free Tuition at Public High Schools, is required also by Article 28 of the Convention on the Rights of the Child. Moreover, the said Convention and the ICCPR guarantee the right to receive education while maintaining ethnic identity. It falls under unjust discriminatory treatment to exclude them from the application of the Act on Free Tuition at Public High Schools and cause them to suffer disadvantages different from children attending other schools on the grounds of matters totally unrelated to the rights of children to receive education, such as lack of diplomatic relationships and the degree of progress

⁴⁰ (Admin/u) No.14 of 2013

⁴¹ (Admin/u) No.27 of 2013

⁴² (Wa) No.3662 of 2014

in the issue of Japanese citizens abducted by North Korea, etc., despite the above guarantee⁴³.

3. In this regard, the Government Report argues as aforesaid that non-provision of the enrollment support fund is not discrimination, pointing out that “North Korean schools have a close relationship with Chosen Soren and that these schools are under its influence with respect to educational content, personnel affairs, and finance” as well as the possibility of “improper control” by the Democratic People’s Republic of Korea or Chosen Soren over Korean schools.

And moreover, the Government of Japan stated, “As for North Korean schools, we have determined that their designation at this point would not be understood by the public in light of the lack of progress on the issue of Japanese citizens have been abducted by North Korea and their close relationship with Chosen Soren with its influence on them with respect to educational content, personnel affairs, and finance.”⁴⁴

Therefore, it is obvious that not designating Korean schools to be eligible for the enrollment support fund provided under the Act on Free Tuition at Public High Schools is discriminatory treatment of Korean schools, which aim at providing ethnic education to Korean people living in Japan for generations, and the children attending those schools for political and diplomatic reasons not relevant to education.

4. The Government of Japan does not indicate in the Government Report any specific facts to support that Korean schools are under “improper control” by the Democratic People’s Republic of Korea or Chosen Soren. The Government of Japan merely states that they might be under “improper control” based on presumption on the grounds that Chosen Soren, which is an ethnic organization, has a relationship with Korean schools.
5. Further, the Government of Japan argues that “if North Korean schools obtain the approval of the relevant prefectural governor and become high schools ... (Omitted) ..., those schools will be eligible for the current High School

⁴³ JFBA “President’s Statement Requesting Not to Exclude Korean Schools from the High School Tuition-Free Program, etc.” (dated February 1, 2013) <https://www.nichibenren.or.jp/activity/document/statement/year/2013/130201.html>

⁴⁴ MEXT “Result of the Public Comment Procedures Concerning the Draft Ordinance to Revise a Part of the Regulations for Enforcement of the Act on Free Tuition at Public High Schools and the High School Enrollment Support Fund (dated February 20, 2013)

Tuition Support Fund System” (Paragraph 173).

However, in order for a school to be approved as a Japanese high school, it would need to become an educational institution which follows the Japanese Courses of Study, uses authorized Japanese textbooks written in Japanese and provides classes taught by teachers having a Japanese teacher’s license. Therefore, saying that a Korean school may become a Japanese high school is equivalent to requiring the Korean school to give up its ethnic education such as using the Korean language, teaching the Korean geography (geography of the entire Korean Peninsula including the territory of the Republic of Korea) and Korean history (history of the entire Korean Peninsula including the history of the Republic of Korea), etc., which would obviously be intervention in the autonomy of the Korean school. In fact, many foreign schools have already become eligible for the application of the high school tuition-free program without obtaining approval to become a Japanese high school, and in effect, only Korean schools are excluded from the program.

6. The Government of Japan further points out that children of Korean residents in Japan can receive education at public schools in Japan the same as Japanese children. But such view of the Government of Japan insists that the right of children of Korean residents to receive ethnic education is not acknowledged and must be regarded as a violation of the right to education of the children.

The authority to grant subsidies is vested in local governments and the same must be granted at their discretion and responsibility, but the Notice issued by the Government of Japan to the local governments is nothing short of a request for the local governments to refrain voluntarily from granting subsidies to Korean schools. This is clear also from the fact that at least 3 local governments admit they decided to suspend subsidies on the grounds of the Notice from the Government of Japan.

Suspending provision of subsidies for political reasons totally unrelated to the right to education of children could lead to violation of the right of the children attending Korean schools to receive education.

Therefore, the Government of Japan should retract the Notice which in effect requests the local governments to suspend granting of subsidies to Korean schools, and the local governments should operate the subsidiary payment system for Korean schools in consideration of the aforesaid rights under the

Constitution⁴⁵ and treaties.

B. Women

I. Conclusions and Recommendations

1. Trafficking in Persons

The Government of Japan should:

- i) Enact the Act on Assistance to Victims of and Prevention of Trafficking in Persons (tentative title) which comprehensively provides for assistance to victims of trafficking in persons and prevention of the same including elimination of demands; and
- ii) Eliminate the Technical Intern Training Program and establish a status of residence for accepting unskilled workers.

2. Violence against Foreign and Minority Women

The Government of Japan should:

- i) Exclude not only cases of domestic violence but also cases in which a Japanese husband is responsible for the degradation of marital relationship from revocation of residence status, and establish the practice to guarantee residence during the process of divorce such as mediation or lawsuit, and to grant long-term status of residence such as "long-term resident," taking the past record of residence into consideration; and
- ii) Investigate the reality of violence against minority women and consider/implement concrete measures to protect their rights.

3. "Comfort Women" for the Japanese Army

The Government of Japan should:

- i) Ensure that cabinet ministers, heads of local governments and other public officials including administrative officials holding a position of responsibility will refrain from making thoughtless remarks regarding responsibility of the Government of Japan;
- ii) Humbly face the Concluding Observations⁴⁶ of the Committee on the

⁴⁵ JFBA "President's Statement Opposing Suspension of Subsidies to Korean Schools" (dated July 29, 2016))
<https://www.nichibenren.or.jp/activity/document/statement/year/2016/160729.html>

⁴⁶ Committee on the Elimination of Discrimination against Women "Concluding Observation on the Combined Seventh and Eighth Periodic Reports of Japan"(dated March 7, 2016, CEDAW/C/JPN/CO/7-8, para28)

Elimination of Discrimination against Women in which the Committee regrets that the announcement of the bilateral agreement with the Republic of Korea in December 2015 “did not fully adopt a victim-centred approach” and urges to recognize “ the right of the victims a remedy, and accordingly provide full and effective redress and reparation, including compensation, satisfaction, official apologies and rehabilitative services,” and work on this issue faithfully with consideration given to the feelings of the victims; and

- iii) Not prevent the issue of “comfort women” from being appropriately incorporated into textbooks to ensure that the historical facts would be objectively presented to students and people.

II. Concerns and Recommendations of the Committee

The Committee states in its Last Concluding Observations as follows:

1. Trafficking in Persons (Paragraph 16)

“While noting information provided by the delegation of the State party on measures taken to prevent and combat trafficking in persons, the Committee is concerned about the persistence of trafficking in minority women in the State party, in particular for purposes of sexual exploitation. The Committee is also concerned about the lack of data which would enable the extent of the phenomenon of trafficking in the State party to be assessed. The Committee is further concerned about the absence of information on specific legislative provisions against trafficking, as well as on cases related to investigations, prosecutions and sanctions imposed on those responsible (art. 5).

The Committee recommends that the State party:

- (a) Adopt specific legislation against trafficking in persons;
- (b) Intensify its efforts to combat trafficking in persons, including of migrant women, and take preventive measures to address its root causes in the context of the Japan’s Action Plan of Measures to Combat Trafficking in Persons;
- (c) Provide assistance, protection, temporary residence status, rehabilitation and shelters, as well as psychological and medical services and other assistance, to victims;
- (d) Promptly and thoroughly investigate, prosecute and punish those responsible;

- (e) Provide specialized training to all law-enforcement officials, including police officers, border guards and immigration officers in the identification of, assistance to, and protection of victims of trafficking;
- (f) Inform the Committee of the situation on trafficking in the State party, especially of people from minority groups.”

2. Violence against Foreign and Minority Women (Paragraph 17)

“The Committee is concerned about information of persistent violence against foreign, minority and indigenous women. It is particularly concerned that, under the provisions of the revised Immigration Control and Refugee Recognition Act of 2012, the authorities may revoke the residence status of foreign women who have been married to a Japanese national or a foreigner with a permanent residency status if such foreign women ‘fail to continue to engage in activities as spouse while residing in Japan for more than six months,’ as provided under Section I, Article 22-4 of the Immigration Control Act. These provisions may prevent foreign women who are victims of domestic violence by their husbands from leaving abusive relationships and from seeking assistance (art. 2, 5).

In the light of general recommendation No. 25 (2000) on the gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take adequate measures to effectively address the issue of violence against migrant, minority and indigenous women by prosecuting and sanctioning all forms of violence against them, and to ensure that victims have access to immediate means of redress and protection. The State party should also review its legislation on residence status to ensure that foreign women married to Japanese citizens or to non-citizens with permanent residence status will not be expelled upon divorce or repudiation, and that the application of the law does not have the effect, in practice, of forcing women to remain in abusive relationships.”

3. “Comfort Women” for the Japanese Army (Paragraph 18)

“The Committee notes information provided by the delegation of the State party about efforts made to solve the issue of foreign ‘comfort women’ who were sexually exploited by the Japanese military during the World War II. The Committee also notes information on compensation provided through the Asian

Women's Fund, established by the State party in 1995, and government expressions of apology, including the apology of the Prime Minister of Japan in 2001. Bearing in mind that human rights violations against surviving 'comfort women' persist as long as their rights to justice and reparation are not fully realized, the Committee is concerned at reports that most of the 'comfort women' have never received recognition, apologies or any kind of compensation (art. 2, 5).

The Committee urges that the State party take immediate action to:

- (a) Conclude investigations on violations of the rights of comfort women by the Japanese military, and bring to justice those responsible for human rights violations;
- (b) Pursue a comprehensive, impartial and lasting resolution of the issue of comfort women, including expressions of sincere apology and the provision of adequate reparation to all surviving comfort women or to their families; and
- (c) Condemn any attempts at defamation or denial of such events."

III. Statements of the Government Report

1. Trafficking in Persons

The Government of Japan states in Paragraphs 56 through 71 of its report on the formulation and revision of the "Japan's Action Plan to Combat Trafficking in Persons," the establishment of the "Council for the Promotion of Measures to Combat Trafficking in Persons," appropriate protection of victims, providing support for repatriation and social integration support after repatriation through contributions to the International Organization for Migration (IOM), creation of leaflets for victims, arrest of perpetrators through appropriate collection of information and investigation by the police, information exchanges with the investigative authorities of the home countries of victims through the International Criminal Police Organization (ICPO), investigative cooperation in response to requests from foreign countries, etc.

Further, it states the supervision and instruction by the labor standards inspection agencies for businesses employing foreign workers including technical intern trainees, and the formulation and utilization of the "Human Trafficking Regulation Manual."

2. Violence against Foreign and Minority Women

The Government of Japan states in Paragraphs 9 through 16 of its report that the revision of the Act on the Prevention of Spousal Violence, the Protection of Victims (the “DV Prevention Act”) made it applicable not only to victims of violence by their spouses but also to victims of violence by their partners under certain conditions, and that according to such revision, the Government of Japan reviewed the basic policy concerning measures against domestic violence, conducted surveys of the actual conditions, and reflected such measures in the “Fourth Basic Plan for Gender Equality,” etc.

IV. Opinions

1. Trafficking in Persons

- i) The Technical Intern Training Program has a structural problem that equal and even labor-management relationships cannot be established because the trainees are not entitled for freedom to change workplaces due to nominal purposes of the Program, although the Program is in effect used as a means to resolve the labor shortage of unskilled workers, and there have been many human rights violations against technical interns⁴⁷. Acts of serious violations of human rights have arisen, including sexual harassment, etc., against female trainees, as well as nonpayment of wages, coercion of labor by assault, intimidation, confinement and other means to unreasonably restrain them mentally or physically.

In November 2016, the Technical Intern Training Act to reinforce supervision by the Government of Japan was enacted and enforced in November 2017. However, under this Act, the supervision of organizations which send out technical intern trainees is not adequate, and it is questionable whether misconduct and human rights violations can be fully prevented. In order to fill the gap between the nominal purpose of the Technical Intern Training Program which is to “transfer advanced technical skills from Japan to overseas” and the reality of “acceptance of cheap unskilled workers from overseas,” fundamental review of the Program is necessary⁴⁸.

⁴⁷ JFBA “President’s Statement Concerning the Enactment of the “Act on Proper Technical Intern Training and Protection of Technical Intern Trainees”” (dated November 24, 2016)
https://www.nichibenren.or.jp/activity/document/statement/year/2016/161124_2.html

⁴⁸ JFBA “JFBA Report for the Preparation of the List of Issues on the Seventh Periodic Report of the Government of Japan based on Article 40 (b) of the International Covenant on Civil and Political Rights” (dated July 24, 2017) P.13

In addition, there have been cases where foreign nationals, etc., have been exploited as lower wage workers such as by enticing JFC (Japanese-Filipino Children, children mainly born to Japanese men and Filipino women) and their mothers to Japan by taking advantage of the fact that they can obtain status of residence or Japanese nationality, or by making those with a status of “Student” work without permission, etc.

Also, with respect to the start of acceptance of foreign domestic workers in National Strategic Special Zones⁴⁹, it should be noted that there are risks of causing labor exploitation, such as the high risk of harassment behind closed doors of private homes, the risk that work hours and wages might not be properly managed, difficulty in refusing instructions by the employer because losing a job as a domestic worker will make them illegal residents, and so on.

- ii) Trafficking in foreign women for the purpose of sexual exploitation is still an on-going issue. Out of victims of trafficking recognized by the police, 21 out of 46 in 2016 and 36 out of 49 in 2015 were foreign women and they were forced to work as hostesses or to prostitute themselves at adult entertainment shops⁵⁰.

Some examples include a case where 4 Thai women, who came to Japan believing the enticing words of a broker in Thailand that they could travel to Japan to sightsee for free, were made to become indebted in the name of travel expenses, etc., forced to prostitute themselves at a call-girl establishment, etc., under the pretext of repaying such debt and then completely exploited. In another case, the perpetrator forced 3 Filipino women to perform fake marriages with Japanese men and took away their passports upon arrival to Japan and made them work as hostesses at a bar run by him, and exploited earnings⁵¹.

Considering that it has become a global problem that trafficking in persons

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep7_ICCPR_en.pdf

⁴⁹ Refers to the regulatory reform project to relax regulations/systems drastically and provide tax benefits in designated regions and/or fields for the purpose of “creating an environment that is the most business-friendly in the world.” Relevant laws were enacted in 2013, and the first zone was designated in 2014. Regulations are relaxed within the designated zones with respect to fixed-term labor contracts, dismissal and working hours/holidays/late-night labor.

⁵⁰ The National Police Agency, Community Safety Bureau, Safety Division “Arrest Status, etc., of Human Traffickers during 2016” (dated February 16, 2017)

⁵¹ *Ibid.*

increases due to expansion of opportunities for prostitution when a large-scale sporting event is held, it will be necessary to pay sufficient attention also for the Tokyo 2020 Olympic and Paralympic Games⁵².

- iii) In July 2017, the Government of Japan approved the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime⁵³, but it has no plans to enact an implementing act.

Moreover, while the “Protocol to The Forced Labour Convention, 1930, Adopted in 2014” of the International Labour Organization (ILO) places greater emphasis on relief than the said Protocol, the Government of Japan has not ratified it.

- iv) As a means to suppress demand, which is the root cause of the problem, the Government of Japan has created and distributed awareness posters and leaflets on sexual exploitation, and the pamphlet distributed to people travelling overseas points to prostitution as an example of cases in which Japanese become “criminals,” as well as explains that child prostitution, possession of child pornography, etc., will be subject to punishment of crimes committed outside Japan.

However, in Japan, there is no restriction on prostitution except for child prostitution. Pornography using objects other than children abounds. Education regarding sexual exploitation is not sufficient. The Government of Japan should take more countermeasures.

- v) The Government of Japan provides shelter to recognized victims, grants to them a status of residence including special residence permission and provides support for return to their home countries. However, Lighthouse: Center for Human Trafficking Victims, which is an NPO supporting victims of trafficking in Japan, estimates that there are currently about 54,000

⁵² The JFBA/ Booklet “How to Utilize Concluding Observations and Future Issues: In Light of the Examination on the Seventh and Eighth Reports” (dated April 18, 2017) p.41 & 42
https://www.nichibenren.or.jp/library/ja/publication/booklet/data/pam_04_170418.pdf

⁵³ In June 2017, the Government of Japan steamrolled the revision of the Act on Punishment of Organized Crimes including conspiracy ignoring the opposition of a large number of citizens, and it pointed to the acceptance of the Protocol as one of the reasons.

victims in Japan⁵⁴, and those recognized by the Government of Japan as victims are only a very small fraction of the actual victims. Victims need to be recognized in a flexible manner since they cannot receive support without recognition. Further, individual support according to the situation of the victims is necessary, such as renewal of the residency period, change of the status of residence, special residence permission, etc., not only support for return to their home country. In addition, establishment of a shelter for male victims has remained an issue to be considered for a long time. Financial support to private support organizations is also insufficient.

vi) Punishment for perpetrators is light and it cannot be said to be functioning as an adequate sanction or deterrence. For example, during 2016, the police arrested 46 human traffickers in a total of 44 cases, of which 43 persons were indicted, 2 persons were not prosecuted, and 1 is still under investigation. Out of the 43 persons indicted, 33 persons have been convicted, while trials are pending for 10 persons (as of March 31, 2017). As for sentencing, many of them have been sentenced to fines, and while there is a case of a prison sentence of three years without a suspended sentence, a suspended sentence has been granted to many⁵⁵.

2. Violence and Discrimination against Foreign and Minority Women

i) For a foreign woman to obtain the status of residence of “Spouse or Child of Japanese National,” or to renew the period of such status, cooperation of her Japanese husband will be necessary. Thus, it is institutionally easy for a Japanese husband to control his foreign wife. Even in a case where the Japanese husband is responsible for the degradation of marital relationship, including in cases of domestic violence, if they are separated for certain period of time, the Immigration Bureau may consider that “the practical basis for the marriage in social life has been dissolved” and extension of the status of residence as “Spouse or Child of Japanese National,” may not be permitted.

Moreover, the Immigration Control and Refugee Recognition Act (hereinafter, the “Immigration Control Act”) still provides for the system of revocation of the status of residence (if a woman staying in Japan as the

⁵⁴ Website of the Lighthouse: Center for Human Trafficking Victims https://jammin.co.jp/charity_list/150727lighthouse/

⁵⁵ *Supra.* note 50)

“Spouse or Child of Japanese National,” “has been residing for six months or more without continuously engaging in activities as a person with the status of a spouse (except where there is a justifiable reason for residing without engaging in the activities)” or “has not notified the Minister of Justice of the place of residence (except where there is a justifiable reason for not giving notification) within 90 days,” the Immigration Bureau can revoke her status of residence⁵⁶. Consequently, it is difficult in effect for an immigrant woman to escape from a perpetrator, ask the police for protection, and report acts of misconduct to the police.

The Immigration Bureau points to “cases where the person needs a temporary shelter or protection because of violence by her spouse (so-called domestic violence),” as a specific example of cases in which the status of residence will not be revoked. But except for cases of physical domestic violence where there are medical certificates and photographs to prove injuries, psychological, economic, sexual or other various forms of non-physical domestic violence may not be correctly identified as domestic violence cases. In particular, foreign women suffer various forms of domestic violence in addition to those suffered also by Japanese women, such as holding their passport, not allowing them to have their own money, forcing them to assimilate into Japanese culture including food and custom, prohibiting them from associating with people from their home countries, prohibiting the use of their mother tongue, prohibiting them from sending money to their family or making phone calls to their family, prohibiting them from returning home, refusing to pay expenses to return home, etc., and these are unlikely to be taken into account⁵⁷.

The Immigration Bureau revoked the status of residence of 50 persons (30 females and 20 males) in total during the two years of 2013 and 2014 on the grounds of falling under Article 22-4 (1) (vii) of the Immigration Control Act, while there are only two cases during the three years from 2012 to 2014 where they did not revoke the status certifying that “justifiable reasons” exist (both cases involved a woman of Chinese

⁵⁶ Article 22-4 (1) (vii)/(ix) of the Immigration Control Act

⁵⁷ The JFBA/ Booklet “How to Utilize Concluding Observations and Future Issues: In Light of the Examination on the Seventh and Eighth Reports” (dated April 18, 2017) p.35

nationality who was living separately from her spouse because of violence by the spouse)⁵⁸.

In addition, according to the statistics of the Cabinet Office, the number of requests for advice received by the Spousal Violence Counselling Centers nationwide from people with insufficient Japanese language ability was 1,700 (of which 1,658 were from women) in FY2014⁵⁹, while the number of those recognized as victims of domestic violence by the Immigration Bureau during the year 2014 was only 95. This also gives us a glimpse of the reality where victims of domestic violence cannot even escape⁶⁰.

Further, according to the questionnaire survey conducted by the Catholic Commission of Japan for Migrants, Refugees and People on the Move from November 2014 through January 2015, there are cases where: “When I was staying at my sister’s house after I had cancelled the lease to my apartment where I had been living with my Japanese husband because he had left home and his whereabouts were unknown, I had a visit from an immigration officer. I was told that it was a problem that I was living separately from my husband despite my status of residence as ‘Spouse or Child of Japanese National,’ and my status was revoked and changed to ‘short stay’” and “As I was abandoned by my husband after he had behaved violently, I temporarily returned to the Philippines with my child and stayed there for over half a year and then came back to Japan again. When I took the procedure to renew my status of residence, it was revoked on the grounds that I was not living with my husband, etc., and changed to “designated activities” status for a one-month period for preparation to return to the home country.” These are case examples in which the status of residence was revoked on the grounds that they were not living with their husband despite the fact that there were reasons such as disappearance of

⁵⁸ House of Councilors “Written Answer to the Question Concerning the Bill to Partially Revise the Immigration Control and Refugee Recognition Act and the Resident Status Revocation System under the Act Submitted by Ms. Mieko Kamimoto, Member of the House of Councilors” (dated July 28, 2015)

<http://www.sangiin.go.jp/japanese/joho1/kousei/syuisyo/189/toup/t189207.pdf>

⁵⁹ Cabinet Office, Gender Equality Bureau “Results of Number of Requests for Advice, etc., Received by the Spousal Violence Counselling Centers Relating to Violence from Spouse” (dated July 29, 2015)

http://www.gender.go.jp/policy/no_violence/e-vaw/data/pdf/2014soudan.pdf

⁶⁰ The JFBA/ Booklet “How to Utilize Concluding Observations and Future Issues: In Light of the Examination on the Seventh and Eighth Reports” (dated April 18, 2017) p.35

the husband, or violence or abandonment by the husband, etc. It is pointed out that “It is considerably doubtful whether to properly implement the exclusion clause in the provisions which stipulates “except where there is a justifiable reason.”⁶¹.

Not only cases of domestic violence but also cases in which the Japanese husband is responsible for the degradation of marital relationship should be excluded from revocation of residence status, and the practice to guarantee the residence during the process of divorce such as mediation or lawsuit, and to grant a long-term status of residence such as “long-term resident,” taking the past record of residence into consideration should be established⁶².

ii) Violence and Discrimination against Minority and Indigenous Women

The Government of Japan has no special support system for women who are generally at a disadvantage, including women of Ainu, Buraku, Korean residents, Ryukyu/Okinawan, and indigenous and immigrant women, etc. Only a few consultative institutions can respond to consultations from immigrant women in foreign languages. The Government of Japan has been consistently indifferent towards the protection of the rights of minority women, and no consideration has been made for development and implementation of women’s policies and related measures in Japan⁶³.

The Government of Japan mentioned about multiple discrimination in the Third Basic Plan for Gender Equality in 2010 and the Fourth Basic Plan for Gender Equality in 2015. However, we would have to say that specific policy measures are inadequate in either Plan, as being limited to “providing appropriate support including training of interpreters in their mother tongue who have specialized knowledge regarding spousal violence,” and “promoting human rights education and enlightenment, etc., from a perspective of respecting human rights.”

⁶¹ Catholic Commission of Japan for Refugees, Migrants, and People On The Move “Opinion letter concerning the reform bill of the Immigration Control Act toward expansion of the system of revocation of status of residence.”(dated April 7, 2014)

⁶² JFBA “President’s Statement upon Commencement of the Resident Card and Resident Registration System for Foreign Nationals” (dated July 9, 2012)
<http://www.nichibenren.or.jp/activity/document/statement/year/2012/120709.html>

⁶³ The JFBA/ Booklet “How to Utilize Concluding Observations and Future Issues: In Light of the Examination on the Seventh and Eighth Reports” (dated April 18, 2017) p.14

The Government of Japan argues that “minority women are included in the target of the women’s policies,” but at the same time, it adheres to a policy of “not to establish a special framework of policies but address them in the general framework” and has not even conducted a survey of their actual conditions.

iii) Trial Cases of Multiple Discrimination and Limitations of Judicial System

a. On June 19, 2017, the Osaka High Court upheld the District court decision which ordered payment of 770,000 yen in compensation in a lawsuit seeking compensation of 5.5 million yen filed by a Korean woman against a former chairperson of a group which advocates xenophobia claiming that she had been defamed by his hate speech based on gender and ethnic discrimination⁶⁴. The ruling acknowledged that the hate speech by the defendant was “categorized as multiple forms of discrimination based on race and gender,” furthering the District court decision which categorized the hate speech against the plaintiff as discrimination based on only race. This ruling is the one and only decision in Japan which acknowledged an act of tort based on multiple discrimination.

b. Yet, remedies through judicial procedures are insufficient as described below.

First, Japanese courts generally award extremely low payments as consolation money. In the case above, the amount of compensation awarded was only 770,000 yen (consisting of 70,000 yen for attorneys’ fees and 700,000 yen for compensation) against the plaintiff’s demand of 5.5 million yen, which cannot be said to sufficiently compensate for the emotional distress suffered by the plaintiff.

Secondly, judicial procedures take a long time and require a huge amount of willpower on the part of the victims. In the case above, the plaintiff initiated the lawsuit in August 2014, and it took about two years to reach the District court decision and about three years until the high court ruling.

Moreover, under the existing laws, it is possible to pursue civil and

⁶⁴ (Ne) No.2767 of 2016

criminal liabilities for hate speech targeting specific individuals as defamation and/or insults, but it is not possible to pursue liabilities if hate speech is directed towards many unspecified people.

- c. As described above, remedies through current judicial procedures have limitations.

It is therefore necessary to introduce prompt and effective procedures for human rights remedies by a national human rights institution independent from the Government of Japan in conformity with the Paris Principles.

3. Issue of “Comfort Women” for the Japanese Army

- i) The Government of Japan has repeatedly received suggestions not only from the UN Human Rights Committee but also from other treaty bodies, that measures in support of “comfort women” are inadequate, as well as having repeatedly received recommendations to protect the honor of the victims and ensure full recovery of damages.

The Government of Japan argues that the Asian Women’s Fund has made dedicated efforts by having carried out atonement projects in the Philippines, the Republic of Korea, Taiwan, the Netherlands and Indonesia. However, the Fund’s projects were not financed by government funds but by private donations, so it lacked the formality of state compensation for victims. Therefore, in the Republic of Korea and Taiwan where atonement projects were carried out, the majority of the people identified as “comfort women” refused the projects of the Fund. In Indonesia, atonement projects were not carried out for individuals. China, East Timor, etc., were not included as recipients of atonement projects initially when the Fund was dissolved in March 2007. The amount of compensation itself was inadequate under the atonement projects⁶⁵.

Therefore, the UN treaty bodies mentioned above have repeatedly recommended the Government of Japan admit its legal responsibility and take state-led legislative and administrative measures separately from the

⁶⁵ JFBA “Report of the Japan Federation of Bar Associations in response to the Comments by the Government of Japan concerning the Conclusions and Recommendations of the Committee against Torture (CAT/C/JPN/CO/2) (Alternative Report)” (dated July 16, 2015)
https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_ja2015.pdf (Japanese)
https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_en2015.pdf (English)

Fund.

Further, the JFBA has also repeatedly requested the Government of Japan take suggestions by the treaty bodies solemnly and fulfill its legal obligations by admitting its legal responsibility and apologize as promptly as possible, creating victim relief legislation, taking measures to reinstate their dignity, providing monetary compensation and establishing an investigative body to reveal the truth⁶⁶.

- ii) On December 28, 2015, the Japan-ROK Foreign Ministers' Meeting was held in Seoul where an agreement was reached announcing that the issue of "comfort women" was resolved finally and irreversibly⁶⁷.

In this agreement, the Government of Japan stated that "the issue of comfort women, with an involvement of the Japanese military authorities at that time, was a grave affront to the honor and dignity of large numbers of women" and "expresses ... most sincere apologies and remorse." Further the Government of Japan promised that it would contribute funds to the foundation established by the Government of the ROK for the purpose of providing support for the former "comfort women" through budgetary measures of the Government of Japan. And then the governments of Japan and the ROK announced that they "confirm that this issue is resolved finally and irreversibly."

Based on this agreement, the Government of the ROK established the "Reconciliation and Healing Foundation" for the purpose of supporting former "comfort women" in July 2016, and in August of the same year, the

⁶⁶ JFBA "Japan Federation of Bar Associations Report on Response to the Second Report of the Japanese Government under Paragraph 1 of Article 19 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (dated February 25, 2013)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_ja2013.pdf
(Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_en2013.pdf (English)

JFBA "Japan Federation of Bar Associations Report on Response to the Seventh, Eighth and Ninth Report of the Government of Japan of the International Convention on Elimination of All Forms of Racial Discrimination" (dated March 19, 2014)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_ja_7.8.9.pdf
(Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Racial_discrimination_en.7.8.9.pdf
(English)

JFBA "Report of the Japan Federation of Bar Associations in response to the Comments by the Government of Japan concerning the Conclusions and Recommendations of the Committee against Torture (CAT/C/JPN/CO/2) (Alternative Report)" (dated July 16, 2015)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_ja2015.pdf
(Japanese)

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/alternative_report_en2015.pdf (English)

⁶⁷ Website of the Ministry of Foreign Affairs of Japan http://www.mofa.go.jp/mofaj/a_o/na/kr/page4_001667.html

Government of Japan contributed 1 billion yen to the Foundation through its budgetary measures and a certain amount of money was paid to some of the former “comfort women” and their bereaved families.

Concerning the Agreement, there are arguments for and against in both countries, and criticism persists that it does not reflect the will of the victims in light of previous recommendations of the treaty bodies. With respect to this point, the Committee on the Elimination of Discrimination against Women indicated in its Concluding Observations on the Combined Seventh and Eighth Periodic Reports of Japan made in 2016 (CEDAW/C/JPN/CO/7-8, para28) that it “regrets” that “the announcement of the bilateral agreement with the Republic of Korea, which asserts that the ‘comfort women’ issue ‘is resolved finally and irreversibly’ did not fully adopt a victim-centered approach,” and urged to recognize “the right of the victims to a remedy, and accordingly provide full and effective redress and reparation, including compensation, satisfaction, official apologies and rehabilitative services,” etc. The JFBA also requests the Government of Japan accept such recommendations in good faith and realize them as priority issues⁶⁸. The Government of Japan should address this issue sincerely considering the feelings of the victims, based on the recommendations by the international community towards resolving this issue.

- iii) The JFBA has been previously requesting not to make remarks which impair the dignity of former “comfort women.”⁶⁹

However, there are still many statements made daily in Japan that deny the facts of harm done towards the victims and that insults the victims. In particular, it is commonly stated that “there was no coercion” and “they were prostitutes who worked of their own will.”

On March 16, 2007, the (then) Abe Cabinet approved at the Cabinet meeting a written answer that “among the materials discovered by the

⁶⁸ JFBA “President’s Statement on the Concluding Observations of the Committee on the Elimination of Discrimination against Women” (dated March 16, 2016)

https://www.nichibenren.or.jp/activity/document/statement/year/2016/160316_2.html

⁶⁹

JFBA “Report for the Preparation of the List of Issues on the 7th Periodic Report of the Government of Japan based on Article 40(b) of the International Covenant on Civil and Political Rights”(dated July 24, 2017) p.11

https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/Alt_Rep_JPRep7_ICCPR_en.pdf

Government of Japan by the publication of investigation results on the said day (note: August 4, 1993 on which the Kono Statement was released), the Government did not find a description which directly proves that there was so-called coercive recruitment by the military or government authority.”⁷⁰ Since then, this view has become the grounds for politicians who deny the facts of harm done towards the victims focusing on whether or not “coercion” was made, and not on the main fact that there were human rights violations where victims were forced to engage in activities at the “comfort stations” against their will. Furthermore, in June 2013, the (then) Abe Cabinet admitted that they had obtained materials related to the “records of the temporary court-martial at Batavia” which indicated the coercive recruitment by the military at the time of the release of the Kono Statement⁷¹, and it became clear that the Cabinet decision in 2007 was wrong, but this has not been corrected.

And in May 2013, a then minister stated that “it is also true, though a sad fact, that the comfort women system was legal during the war,”⁷² and the person in the position of co-leader of a public political party and Osaka mayor remarked that “everyone understands that the comfort women system was necessary” and “the ‘comfort women’ system was necessary for the military. I suggested to the U.S. commander of Marines at Okinawa to make use of the adult entertainment business.”⁷³

Further, a spokesperson for South Korea’s Ministry of Foreign Affairs in a press conference on June 29, 2017 demanded that the statement by the Consul General of Japan in Atlanta that “the comfort women were not taken by force and were not sex slaves”⁷⁴ be retracted and that Japan take

⁷⁰ Written Answer to the “Question Concerning PM Abe’s Recognition of the ‘Comfort Women’ Issue Submitted by Ms. Kiyomi Tsujimoto, Member of the House of Representatives” (dated March 16, 2007)

http://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b166110.htm

⁷¹ Shimbun Akahata “‘Comfort Women’ Issue: Answer to Mr. Akamine, Evidence of Coercion in Government Materials” (dated June 19, 2013)

http://www.jcp.or.jp/akahata/aik13/2013-06-19/2013061901_01_1.html

⁷² Cabinet Office “Outline of the Press Conference by Inada Minister of State for Regulatory Reform” (dated May 24, 2013)

http://www.cao.go.jp/minister/1212_t_inada/kaiken/2013/0524kaiken.html

⁷³ JFBA “President’s Statement to Request Retraction of Mr. Toru Hashimoto’s Remarks on the Japanese Military ‘Comfort Women’ and ‘Adult Entertainment Business’ and Apology” (dated May 24, 2013)

https://www.nichibenren.or.jp/activity/document/statement/year/2013/130524_3.html

⁷⁴ According to Reporters Newspapers (electronic edition) of Georgia, USA, the Japanese Consul General in Atlanta

recurrence prevention measures⁷⁵.

In November 2017, the incumbent mayor of Osaka expressed an opinion about “comfort women” that “they were (not sex slaves but) public prostitutes in the battlefields” corresponding to municipalization of the Japanese Military’s “comfort women” statue by its sister city, San Francisco⁷⁶.

Such remarks as above have been made by cabinet ministers, local government officials and other public officials such as administrative officers, etc., holding positions of responsibility.

iv) Japan implements a “textbook authorization system,” under which textbooks for elementary, junior high and high schools are prepared by private publishers, and are reviewed by the Minister of Education, Culture, Sports, Science and Technology as to whether the textbooks are appropriate as school textbooks. For public schools, the local education boards must select textbooks and for private and national schools, and their school principals must select textbooks from among such authorized textbooks.

And as for junior high school history textbooks, all publishers included accounts of “comfort women” in their textbooks in the FY1997-edition. However, attacks on the publishers became intensified from those who deny the harm caused, and the term “comfort women” disappeared from the text of the FY2006-edition textbooks.

At present, the only textbook which covers the issue of “comfort women” is the authorized textbook “*Tomo ni Manabu Ningen no Rekishi* (Human History We Learn Together)” published by ‘Manabisha’ (Tokyo). This textbook introduced the so-called “Kono Statement” in 1993 in which the Government of Japan officially acknowledged and apologized for the fact that the Japanese military had been involved in the establishment and

urged the City Council of Brookhaven, Georgia, to back off its decision to accept installation of a statue representing the “comfort women” in a park and thereby made such remarks. The Newspaper reported on the 23rd that the Consul General said that “the comfort women were paid prostitutes,” but the Government of Japan protested that “he did not say ‘paid prostitutes.’” While the Newspaper corrected that it was “a (Reporter) paraphrase” of his comments, it then pointed out that “the Consul General denied that they were sex slaves.”

⁷⁵ JIJI.COM News “Consul General in Atlanta Should Retract Comments, Korea on ‘Denial of Coercive Recruitment’” (dated June 29, 2017) <http://archive.fo/pUBGW>

⁷⁶ The Asahi Shimbun Electronic Edition “Osaka Mayor Indicates Termination of Sister City Relationship: ‘Relationship of Trust Destroyed’” (dated November 24, 2017) <http://www.asahi.com/articles/ASKCS3DVMKCSPTIL00S.html>

operation, etc., of comfort stations and those women had lived at comfort stations under a coercive atmosphere. However, in the authorization process the publisher was requested to add an account that “at present, the Government of Japan expresses the view on the issue of ‘comfort women’ that ‘no materials have been discovered which directly prove that there was so-called coercive recruitment by the military or government authority” and the textbook was authorized only after complying with such a request.

As for high school history textbooks, 13 out of a total of 19 textbooks in world history, Japanese history and politics/economics to be used from FY2018 contain accounts of “comfort women.” Out of these, two textbooks from Company A, which referred to the issue of post-war reparations with respect to which former “comfort women” had filed a lawsuit against the Government of Japan for compensation without mentioning the “Japan-ROK Agreement,” received examiner’s comments that it may “lead to misunderstanding by students,” etc., and both were authorized only after inserting accounts of the Japan-ROK Agreement. One textbook in politics/economics, which initially referred to that former “comfort women” had filed a lawsuit against the Government of Japan for compensation, received a comment from the Government in the authorization process that “this is not based on the collective view of the Government of Japan”. This resulted in the addition of the phrase that “the Government of Japan takes the position that all reparation issues have been legally resolved.” in the textbook⁷⁷

The Government of Japan should not prevent publishers from appropriately incorporating the issue of “comfort women” into textbooks to ensure that historic facts would be objectively presented to students and people.

C. The Ainu

I. Conclusions and Recommendations

The Government of Japan should:

1. Promote new legislation such as an anti-discrimination law prohibiting

⁷⁷ The Nikkei Electronic Edition “Detailed Description of Security-related Laws: High School Geography/History and Civics” (dated March 25, 2017) <https://www.nikkei.com/article/DGXLZO14497040U7A320C1CR8000/>

discrimination against the Ainu, as well as comprehensively promote integrated policies that bring together social, cultural, political and educational aspects.

Also, it should prepare and publish a roadmap to realize such policies to enable third party verification.

2. Conduct research on the remains and burial artifacts, etc., relating to the Ainu both in and outside Japan, and proceed promptly with confirmation and repatriation of such remains and burial artifacts, recurrence preventions measures, etc., based on the research.
3. Bearing in mind the history of discrimination against the Ainu, improve and strengthen opportunities to learn the history, culture and other aspects about the Ainu in public education.
4. Guarantee opportunities for the Ainu to receive education in their own language as well as promote concrete measures for that purpose.
5. Further enhance economic support in order to guarantee the right of the Ainu to access higher education.
6. In order to fully recognize the indigenous status of the Ainu, use the term “*Ainu minzoku* (Ainu ethnic group)” instead of “*Ainu no hitobito* (Ainu people)” in documents, etc.

II. Concerns and Recommendations of the Committee

1. The Committee recommends in its Last Concluding Observations as follows (Paragraph 20):

“(b) Enhance and speed up the implementation of measures taken to reduce the gaps that still exist between the Ainu people and the rest of the population with regard to employment, education and living conditions;”

2. The said Concluding Observations (said Paragraph) recommend as follows:

“(c) Adopt appropriate measures to protect the rights of the Ainu people to land and natural resources, and foster the implementation of measures aimed at the realization of their rights to their culture and language;”

III. Statements of the Government Report

The Government of Japan states as follows:

1. According to the Hokkaido Ainu Living Conditions Surveys conducted seven times from 1972 to 2013, the Ainu people’s living standard continued to improve as explained below, although the gap between the Ainu people and other

residents who reside in the same district has not yet completely diminished (Paragraph 18).

2. According to the Survey, with regard to “the state of discrimination since one’s earliest recollection to today,” 33.0% of Ainu questionnaire respondents answered that they had experienced discrimination at school, in employment, in marriage or in other situations, or they knew of someone who had experienced such discrimination (Paragraph 22).
3. The percentage of those who advance to high school had shown a steady increase since the commencement of the Survey in 1972, but it indicated a downward trend from the previous survey in 2006, resulting in a growing gap. Access to college education has steadily improved (Paragraph 19).
In order to eliminate the existing gap in educational opportunities, the government of Hokkaido Prefecture offers entrance allowances and grants (loans for college) to encourage Ainu students to attend high school and college (Paragraph 23).
4. As for the Ainu language, the government holds the “Languages and Dialects in Danger Convention” including other dialects, etc., in danger of extinction and has formed the “Research Council on Endangered Languages and Dialects” aiming to help share information about efforts made in the relevant regions (Paragraph 25).
5. In accordance with the “Human Rights Education and Encouragement Act” enacted in November 2000, the government formulated the “Basic Plan for Promotion of Human Rights Education and Encouragement” as a Cabinet decision in March 2002, calling for active promotion of efforts toward the elimination of prejudice and discrimination in relation to human rights issues surrounding the Ainu etc., and the progress is reported to the Diet on a yearly basis (Paragraph 201).
6. Junior high school textbooks in social studies include statements concerning the Ainu (Paragraph 210).
7. The Government of Japan designated the Foundation for Research and Promotion of Ainu Culture to promote Ainu culture as a designated corporation pursuant to the law, and provides subsidies for projects conducted by the said Foundation, including a “radio course in the Ainu language,” an “advanced course in the Ainu language,” and a “speech contest in the Ainu language”

(Paragraph 222).

IV. Facts

1. Currently, measures are being promoted based on the Act on the Promotion of Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition, etc. (so-called “Ainu Culture Promotion Act”). Further, on June 6, 2008, the “Resolution Concerning the Ainu” was unanimously adopted by the Diet, and in response to the recommendations of the “Advisory Council for Future Ainu Policy,” the Council for Ainu Policy Promotion chaired by the Chief Cabinet Secretary has convened since December 2009 up to present.

However, the social, cultural, political and educational gaps between the Ainu and the rest of the population as well as discrimination against them have not been eliminated, as indicated also in the report of the Government of Japan under III.

2. Although it is not mentioned both in the Last Concluding Observations and the Government Report, the so-called “issue of remains and burial artifacts” has been discussed by the Council for Ainu Policy Promotion as one of the past human rights violation against the Ainu.

The issue of remains and burial artifacts refers to the issue that researchers, etc., mainly in the fields of anthropology from both Japan and overseas excavated grave sites of the Ainu from the 19th century to the 20th century and remains and burial artifacts were taken by universities and individuals without permission, and recently, legal procedures have been taken to repatriate the remains, as well as human rights restoration measures, etc.

According to the “Result of Re-investigation of the State of Storage of Remains of the Ainu at Universities, etc.,” (dated May 23, 2017) by the Ministry of Education, Culture, Sports, Science and Technology in April 2017⁷⁸, there are 12 universities nationwide, including Hokkaido University, which store remains, of which remains of 1,676 bodies have been individually identified (including 38 personally identifiable bodies) while there were 382 boxes of remains which have not been individually identified.

Major future challenges include further investigations and repatriation of such remains and burial artifacts, etc., human rights restoration measures, and

⁷⁸ Website of the Prime Minister’s Office <http://www.kantei.go.jp/jp/singi/ainusuishin/dai9/sankou4.pdf>

recurrence prevention measures.

The “Report on the Round Table Regarding the Future Investigation and Research on Ainu Remains and Burial Artifacts” (dated April 7, 2017) compiled by the Ainu Association of Hokkaido and the Anthropological Society of Nippon, etc.,⁷⁹ includes evaluation of previous research on Ainu remains and burial artifacts and descriptions of how future investigation and research should be conducted, and it is necessary to shape specific measures toward human rights restoration and recurrence prevention in relation to past research.

3. Opportunities to learn the history, culture and other aspects about the Ainu in school education are extremely inadequate including in Hokkaido. Moreover, opportunities for the Ainu to receive education in their own language are currently not guaranteed in school education.
4. The percentage of Ainu who advance to high school declined as of the 2013 survey compared to the 2006 survey to 92.6% while it was 98.6% for the entire population. The percentage of those attending college is also low at 25.8% in comparison to 43.0% for the entire population and it has been pointed out that it remains imperative to eliminate the educational gaps which are determining factors in improving their position in the society⁸⁰.
5. As aforesaid, the “Resolution Concerning the Ainu” was adopted unanimously by the Diet on June 6, 2008. In light of the “UN Declaration on the Rights of Indigenous Peoples,” the Resolution recognizes the Ainu as indigenous people who have inhabited in and around the northern region of the Japanese archipelago, particularly in Hokkaido, having their own unique language, religion and culture, and states that the Government of Japan further promotes the existing Ainu policies and endeavors to establish comprehensive policy measures.

However, as mentioned earlier, a former municipal assembly member of Sapporo City posted on Twitter in August 2014 that “the Ainu no longer exist now as an ethnic group,” and further in March of the following year, he stated on his website that “Ainu are not indigenous people,” etc.,⁸¹ Such problems of hate speech against the Ainu have been repeated.

⁷⁹ Website of the Prime Minister’s Office <http://www.kantei.go.jp/jp/singi/ainusuishin/dai9/sankou5.pdf>

⁸⁰ Website of the Ainu Association of Hokkaido <https://www.ainu-assn.or.jp/ainupeople/life.html>

⁸¹ Website of Yasuyuki Kaneko <http://ykaneko.net/article/ainu-isnot-indigenious-people.html>

Remarks to deny the indigenusness of the Ainu have been repeatedly made several times since that time, and there cannot be said to be adequate common understanding in Japan that the Ainu are indigenous people.

V. Opinions

1. In response to the recommendations in the Last Concluding Observations, “(b) Enhance and speed up the implementation of measures taken to reduce the gaps that still exist between the Ainu people and the rest of the population with regard to employment, education and living conditions” (Paragraph 20), and in light of the Resolution Concerning the Ainu adopted by the Diet, a basic act to eliminate discrimination against the Ainu comprehensively and fundamentally and correct disparities needs to be enacted.

2. Moreover, along with such enactment of a basic act as mentioned in 1 above, it is required to promote policies to eliminate discrimination and gaps in terms of social, cultural, political and educational aspects including employment more comprehensively and promptly.

For that purpose, a roadmap to realize such comprehensive policies should be prepared and published to enable third party verification.

3. Further, with respect to 1 and 2 above, it is necessary to ensure participation by the Ainu materially and on a continuous basis.

More specifically, it is crucial to further promote ways to enable the Ainu to participate in the national and local government and Diet discussions as well as in the process of implementation policies independently as concerned parties.

4. In order to eliminate discrimination and correct disparities, it is necessary to further enhance and strengthen opportunities to learn the history, culture and other aspects of the Ainu in mainly public education such as school education.

At the same time, it is necessary to take measures to guarantee opportunities to learn as the Ainu in the Ainu language mainly in the settings of school education.

5. In addition, it is necessary to further promote measures including economic support to adequately guarantee their rights to receive higher education as the Ainu.

More specifically, while the government of Hokkaido Prefecture offers assistance for Ainu students to advance to high school, through the Hokkaido

Ainu Program to Encourage and Assist Children to Attend High School, etc.,⁸² further efforts are necessary to correct disparities including attendance at colleges.

6. As for the issue concerning remains and burial artifacts, the Government of Japan should promptly proceed with the repatriation of remains, etc., known so far as well as proceed with investigations on the state of remains and burial artifacts both in and outside of Japan and take measures for restoration such as repatriation as quickly as possible.

At the same time, past violation of rights should be reviewed and recurrence prevention measures should be taken.

7. In light of the aforesaid Resolution at the Diet, the term “*Ainu no hitobito* (Ainu people)” currently used by the Government of Japan as the uniform designation should be changed to “*Ainu minzoku* (Ainu ethnic group)” to proceed with the policies comprehensively on the premise of indigenoussness of the Ainu, as the former term gives the wrong impression that it does not fully recognize the indigenous status and the ethnic identity of the Ainu, which have been deprived historically.

D. Descendants of Discriminated Burakumin

I. Conclusions and Recommendations

The Government of Japan should:

1. Identify discrimination against the Burakumin as discrimination based on “descent” under Article 1 (1) of the Convention;
2. Effectuate the Act on the Promotion of the Elimination of Buraku Discrimination enacted on December 16, 2016 and establish a legal system for relief of victims of discrimination against the Burakumin and restriction of discrimination against the Burakumin.

II. Concerns and Recommendations of the Committee

The Committee states in its Last Concluding Observations as follows (Paragraph 22):

“Situation of the Burakumin

22. The Committee regrets the position of the State party, which excludes the

⁸² Website of Hokkaido Prefecture http://www.pref.hokkaido.lg.jp/ks/ass/koukou_fy29_1.pdf

Burakumin from the application of the Convention on the grounds of descent. It is concerned that the State party has not yet adopted a uniform definition of Burakumin, as raised by the Committee in its previous concluding observations. The Committee is concerned about the lack of information and indicators to assess the impact of the concrete measures implemented by the State party upon the termination of the Dowa Special Measures in 2002, including measures to counter discrimination against the Burakumin. The Committee is further concerned about the persistent socioeconomic gaps between the Burakumin and the rest of the population. The Committee is also concerned at reports on illegal access to the family registration system, which may be used for discriminatory purposes against the Burakumin (art. 5).

Bearing in mind its general recommendation No. 29 (2002) on descent, the Committee recalls that discrimination on the grounds of descent is fully covered by the Convention. The Committee recommends that the State revise its position and adopt a clear definition of Burakumin in consultation with the Buraku people. The Committee also recommends that the State party provide information and indicators on the concrete measures taken upon the termination of the Dowa Special Measures in 2002, in particular on the living conditions of the Burakumin. The Committee further recommends that the State party effectively apply its legislation to protect the Burakumin from the illegal access to their family data which may expose them to discriminatory acts, investigate all incidents relating to illegal abuses of family registration and punish those responsible.”

III. Statement of the Government Reports

Despite the repeated recommendations by the Committee to the Government of Japan, no reference is made to the Burakumin issue by the Government of Japan in its Reports.

IV. Facts

1. The Government of Japan still maintains its position that discrimination against the Burakumin is not included in discrimination based on “descent” provided under Article 1, Paragraph 1 of the Convention. Despite the fact that the Committee adopted the General Recommendation No. 29 (2002) as a uniform view on the term, descent under the said paragraph that “discrimination based on ‘descent’ includes discrimination against members of communities based on

forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights”⁸³ which means that discrimination against the Burakumin is also included in discrimination based on descent, the Government of Japan maintains its view which is contrary to the General Recommendation No.29 on descent provided for under the said paragraph.

2. Under Paragraph 17 of the Comments by the Government of Japan regarding the Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD/C/JPN/CO/7-9)” submitted to the Committee in August 2016, (hereinafter referred to as “Comments by the Government of Japan”)⁸⁴, the Government of Japan states that “The roadmap for the resolution of the Dowa issue is now being implemented, in line with ‘the Basic Plan for Promotion of Human Rights Education and Encouragement’ approved by the Cabinet in March 2002, by promoting measures for human rights education and awareness-raising, comprehensively and systematically.” However, this Basic Plan referred to by the Government of Japan is merely a basic plan for general human rights education and encouragement, not prepared as a basic plan for human rights education and encouragement based on the reality of discrimination against the Burakumin.
3. The Government of Japan states in Paragraph 22 of the Comments by the Government of Japan that “In order to eliminate a sense of discrimination related to Dowa issues, the Human Rights Organs of the Ministry of Justice hold lecture meetings and training workshops, distribute promotional pamphlets, and carry out promotional activities at various events under the slogan of ‘Eliminate Prejudice and Discrimination against Dowa Issues’ as one of annual priority matters of promotional activities.” However, despite such promotional activities by the Government of Japan, there was an incident of hate speech openly discriminating against the Burakumin in January 2011 in front of the Suiheisha Museum in Gose City, Nara Prefecture, which is a museum of Burakumin issues and Suiheisha (Levelers) movement (movement for elimination of discrimination against the Burakumin). On June 25, 2012,

⁸³ http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_GEC_7501_E.doc

⁸⁴ (Tentative translation) <http://www.mofa.go.jp/mofaj/files/000190405.pdf>
(English Original) <http://www.mofa.go.jp/mofaj/files/000190869.pdf>

the Nara District Court upheld the claim for 1.5 million yen in compensation for defamation against the speaker of that hate speech incident⁸⁵. Besides, there are still frequent cases of incitement related to Burakumin discrimination on the Internet or through direct speech and action.

4. In December 2016, the Act on the Promotion of Elimination of Buraku Discrimination (so-called “Buraku Discrimination Elimination Promotion Act”) was enacted, but this is a basic law focused on consultation, education, promotional activities and implementation of fact-finding investigations by the government. No legal restrictions including prohibition of discrimination against the Burakumin and a victim relief system has been introduced yet.

V. Opinion

The Government of Japan should recognize that discrimination against the Burakumin falls under discrimination based on descent prohibited by the Convention, and develop a basic plan for human rights education and encouragement based on the reality of discrimination against the Burakumin to establish a relief system for victims of discrimination against the Burakumin.

E. South Americans of Japanese Descent

I. Conclusions and Recommendations

The Government of Japan should:

1. Make efforts to improve unstable forms of employment in order for South American workers of Japanese descent to work in Japan with a sense of security, such as prohibiting repetition of short fixed-term employment.
2. Make efforts to prevent industrial accidents by instructing employers to implement safety education and ensure use of safety equipment and protectors.

II. Statements of the Government Reports

It is stated in Paragraph 45 that “the Government of Japan has formulated the Guidelines for Employers’ Appropriate Measures to Improve Employment Management of Foreign Workers, and, targeting employers of such foreign workers, disseminates information about and raises awareness of appropriate employment management, and also visits employers to offer guidance.”

⁸⁵ Website of the Civic Action Committee for Enactment of Anti-discrimination Law
<http://www.sabekin.net/wp/wp-content/uploads/2012/07/cf1698ab8f78a4fbb699ca2d9be1b4b92.pdf>

III. Facts

1. By the amendment of the Immigration Control Act in 1990 in the face of labor shortages, foreign nationals of Japanese descent were granted the status of residence as long-term resident. Consequently, a number of South American workers of Japanese descent moved to Japan for work. Many of them are employed indirectly through a temporary employment agency as a regulating valve for employment for companies to adjust production schedules. In many cases, they work under a condition where extremely short fixed-term employment for one or two months is repeated and are forced to endure unstable employment situations without knowing when their contracts might be terminated.
2. It is often the case that South American workers of Japanese descent cannot resist unfair violations by their employer of their rights because exercising rights as a worker would result in termination of employment. Therefore, South American workers of Japanese descent often suffer unfair violations of their rights such as cases where they cannot take paid leave which is a legal right, or where their wages are lowered unilaterally, etc. Further, there are also cases where the employment of female workers is terminated on the grounds of pregnancy. Instruction and supervision by the Government of Japan to employers with respect to such violations of rights are inadequate, and remedies in relation to such violations are not sufficiently pursued.
3. The number of industrial accidents involving South American workers of Japanese descent remains high. Contrary to the statement in the Government Report, it is often the case that guidance visits are conducted at business facilities where foreign workers work only after a serious industrial accident has occurred.

IV. Opinions

1. The Government of Japan should promote policy measures so that South American workers of Japanese descent can work with a sense of security by restricting employment in the form of repeated short fixed-term contracts and promoting permanent employment.
Further, in cases of unfair violations of rights against South American workers of Japanese descent, the government should instruct and supervise the employer to ensure remedies.

2. The Government of Japan should make efforts to prevent industrial accidents by instructing and supervising business establishments at which South American workers of Japanese descent are working to ensure that safety and health education is provided to workers and that such business establishments install safety equipment and use protectors as necessary.

F. Muslims

I. Conclusions and Recommendations

The Government of Japan should take measures to ensure that its law enforcement officials will not rely on ethnic or ethno-religious profiling of Muslims.

II. Concerns and Recommendations of the Committee

The Committee states in its Last Concluding Observations as follows (Paragraph 25):

“Ethno-religious profiling of members of Muslim communities

25. The Committee is concerned about reports of surveillance activities of Muslims of foreign origin by law-enforcement officials of the State party, which may amount to ethnic profiling. The Committee considers the systematic collection of security information about individuals – solely on the basis of their belonging to an ethnic or ethno-religious group – to be a serious form of discrimination (arts. 2 and 5).

The Committee urges the State party to ensure that its law-enforcement officials do not rely on ethnic or religious profiling of Muslims.”

III. Statements of the Government Reports

The Government of Japan states that “With regard to Paragraph 25 of the concluding observations (omitted), the police perform their duties impartially and neutrally in accordance with the provisions of the law, and in fact do not perform surveillance of Muslims of foreign origin, which may constitute ethnic or ethno-religious profiling.” (Paragraph 142)

IV. Facts

1. Muslim Surveillance Incident

In October 2010, there was an incident in which internal information of the Tokyo Metropolitan Police Department Public Security Bureau leaked onto the Internet via file sharing software.

Consequently, it was revealed that the police conducted extensive surveillance operations targeting Muslims residing in Japan.

2. Court Decision

In response to this incident, victims affected by leaks of personal information filed a state redress lawsuit against the Government of Japan (National Police Agency) and the Tokyo Metropolitan Government (Tokyo Metropolitan Police Department).

The Tokyo District Court ruled that the collection, management and use of information by the police was constitutional, while it was negligent in the leak of information, and awarded damages of 5.5 million yen per plaintiff. The Tokyo High Court of second instance upheld the original decision.

In the final appellate instance at the Supreme Court, it was contested whether the activities of the police to collect, manage and use such information was unconstitutional and unlawful or not.

The Supreme Court dismissed the appeal on the grounds that the case does not involve a constitutional question.

V. Opinions

The systematic and exhaustive information collection activities by the police targeting Muslims residing in Japan falls under violation of obligations under the Convention.

The Government of Japan should ensure the police discontinue the systematic and exhaustive information collection activities on the grounds that those people are Muslims.

Further, the Government of Japan should prepare guidelines to prohibit profiling by the police based on religious or ethnic origin and ensure full dissemination to police officers that profiling based on religious or ethnic origin is not allowed.

The court should comply with the international human rights standards so that relief would be available to individuals from the court in cases of violation of international human rights law.

G. Returnees from China

I. Conclusions and Recommendations

The Government of Japan should continue to conduct a survey on the living conditions and other aspects of returnees from China, and examine the

necessity for further support measures to help the returnees in their livelihood (financial independence) and self-support (education, lifestyle).

II. Facts

1. Before the World War II, Japan established “Manchukuo” in the northeastern region of China on March 1, 1932, and many Japanese migrated there as pioneers under the “Twenty-year, One Million Family Plan to Send Agricultural Migrants to Manchuria.” With Soviet Union’s entry into the war against Japan on August 9, 1945, many Japanese who had migrated there found themselves caught up in the war and many lost their lives because of starvation or illness during the evacuation. There were also many Japanese who were orphaned after being separated from their families and raised by Chinese foster parents or otherwise forced to stay behind in China. Such people are called “war-displaced women, etc.,” or “war-displaced orphans” (hereinafter collectively referred to as “war-displaced persons”). Until the restoration of diplomatic ties with China in 1972, the way back to Japan remained closed to such war-displaced persons. Even after the normalization of diplomatic ties, there were various obstacles until “search missions in Japan” began in 1981, and their permanent return to Japan was significantly delayed. As a consequence, the age of those who returned from China (hereinafter “returnees”) at the time of their return was quite advanced typically in their 40s or 50s, and besides, they had forgotten their mother tongue after living in China for so many years and faced difficulties in learning Japanese as they had to start learning it from the beginning. Also because of their advanced age in addition to the difficulties in learning the language, they faced difficulties in finding employment, and a large majority of the returnees ended up receiving public assistance.
2. The Government of Japan established the “Center for Promotion of Settlement of Chinese Returnees” in February 1984, but it provided only three to six months of Japanese language education, which was insufficient for the returnees to acquire a level of Japanese language proficiency to be able to find employment. In 1988, the “Center for Self-Support Training for Chinese Returnees” was established and started providing Japanese language education which lasts for approximately one year, but this too was not 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 (hereinafter “the Assistance Act”) was enacted and special measures for the national pension was introduced, allowing for periods of legal exemption from premium payments, as well as late payments. Returnees were also eligible for loans for late payments, but the measures were insufficient as assistance, as loan repayments would be deducted from their pensions.

III. Opinions

1. In March 2004, the JFBA urged the Government of Japan to fully promote measures to facilitate the return of war-displaced persons, provide welfare payments to the returnees (the amount of which should not be lower than the wage census based on age and education), set up a special pension system (the pension amount equivalent to or more than the average pension amount received by other Japanese nationals), and provide education support, livelihood support as well as other measures since the state bore full responsibility for the creation of the war-displaced people⁸⁶.
2. The Government of Japan amended the Assistance Act in 2007 and launched new support measures as from April 2008. The contents of the new assistance measures consisted of full funding of national pension, fixed welfare support payments and new policies to assist self-support. However, an income threshold was set for these measures, and therefore, they did not provide uniform remedies for all returnees. Some of the returnees complained that the measures were insufficient. In particular, there were problems including children of war-displaced persons not being covered by the assistance measures (so-called issue of the second generation), and support payments to spouses of war-displaced persons were terminated in case of death of the war-displaced persons.
3. In October 2014, spouse support payments to spouses of war-displaced persons started as a result of amendment of the Assistance Act and certain improvements were made, but amounts are typically below the payment standards (which amounts not lower than the wage census based on age and education as requested by the JFBA as for welfare support payments and

⁸⁶ JFBA “Case of Petition for Human Rights Remedy on the Issue of War-Displaced Persons in China and Returnees from China (Recommendation)” (dated March 24, 2004)
https://www.nichibenren.or.jp/activity/document/complaint/year/2004/2004_4.html

spouse support payments). As for pensions, a special pension system requested by the JFBA (the pension amount equivalent to or greater than the average pension amount received by other Japanese nationals) has not been developed as well.

4. The Government of Japan conducted a survey on living conditions in FY2015 after the commencement of spouse support payments for the first time in seven years⁸⁷, in which approximately 70% of the returnees replied that it was good that they had returned. On the other hand, only 20% of the returnees are well-off, and as for worries about the future, the most frequent answers were “worries about health,” followed by “worries about (finances) life in old age.”
5. Therefore, the Government of Japan should continue to conduct a survey on the living conditions of the returnees and examine the necessity to provide and review support measures to help the returnees in their livelihood (financial independence) and self-support (education, lifestyle) measures based on their actual conditions.

H. Issues of Refugees

I. Conclusions and Recommendations

The Government of Japan should:

1. Permit provisional stay of applicants for refugee status (including those currently in litigation) and also allow them to work after at least six months following the application and avoid detention to the maximum extent possible.
2. In refugee recognition procedures, carry out an examination by interpreting Article 3 of the Convention Relating to the Status of Refugees (“Refugee Convention”) in accordance with the international standard.
3. Establish refugee recognition procedures conducted by a third-party organization independent of government ministries supervising immigration control or foreign policies.
4. Rectify the situation where opinions of refugee examination counselors for refugee recognition are overturned by the Minister of Justice without

⁸⁷ Website of the Ministry of Health, Labor and Welfare <http://www.mhlw.go.jp/stf/houdou/0000171057.html>

giving any justifiable reason.

5. Conduct a survey on the living conditions of refugees and take active measures to improve their living standards and secure employment.

II. Concerns and Recommendations of the Committee

The Committee recommends in its Last Concluding Observations as follows (Paragraph 23):

“In the light of its general recommendation No.22 (1996) on refugees and displaced persons and bearing in mind its general recommendation No.34 (2011) on the discrimination against people of African descent, the Committee recommends that the State party take measures to:

- (a) Promote non-discrimination and understanding among its local authorities and communities with regard to refugees and asylum seekers;
- (b) Guarantee that detention of asylum seekers is used only as a measure of last resort and for the shortest possible period. The State party should give priority to alternative measures to detention, as provided for in its legislation;
- (c) Develop a statelessness determination procedure to adequately ensure the identification and protection of stateless persons.

The State party should also consider acceding to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.”

III. Statements of the Government Reports

The Government of Japan states that it makes efforts to improve the treatment of refugee applicants, referring to the system of provisional stay to permit temporary stay of those in the process of application for refugee status, the prompt processing while setting the standard processing (examination) period at six months, and the introduction and expansion of the refugee examination counselor system⁸⁸ at the stage of administrative review (Paragraphs 83 and 85).

Further, the Government of Japan states that it has recognized 660 persons as refugees so far and additionally 2,446 persons have been permitted to stay for safeguarding purposes, as well as it attempts to accept Indochinese refugees and refugees from Myanmar for resettlement (Paragraphs 88-90).

Further, the Government of Japan states that “applicants for the recognition of

⁸⁸ Website of the Ministry of Justice http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan58.html

refugee status are also provided with funds to meet their living, housing (including provision of temporary living) and medical expenses as needed, while they are waiting for the results of their applications” (Paragraph 100).

In addition, the Government of Japan reports on measures taken for refugees including Indochinese refugees and refugees admitted for resettlement, their living conditions, as well as livelihood support, employment support, and promotion of mutual understanding through communications with local residents (Paragraphs 94, 95 and 97-99).

Also, the Government of Japan states that it has not positively considered acceding to the 1954 Convention Relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness, pointing out that it gives due consideration to the prevention of statelessness, as well as that it helps clarify the facts and details regarding legal residence permission of those without nationality and enables them to travel, etc. (Paragraph 91).

IV. Facts

1. Permission for Provisional Stay

With the permission for provisional stay, a foreign national who applies for refugee recognition can lawfully stay in Japan without being detained while his/her deportation procedures are suspended. However, an extensive range of exceptions exists in the system of permission for provisional stay, including (1) cases where an application for refugee recognition is submitted after a lapse of six months following disembarkation in Japan and (2) cases where there are reasonable grounds to suspect that the applicant might flee⁸⁹. In 2016, the Government of Japan granted provisional stay permission to 58 people out of 930 people who applied for provisional stay⁹⁰.

2. Refugee Examination Counselor System

Refugee examination counselors are appointed by the Minister of Justice, and clerical support to refugee examination counselors is provided by the Ministry of Justice Immigration Bureau.

There are cases where some refugee examination counselors made remarks to applicants for refugee recognition, “You are not a refugee,” or “You have too

⁸⁹ Article 61-2-4 (1) of the Immigration Control Act

⁹⁰ Ministry of Justice Immigration Office “Number of Persons Recognized as Refugees, etc., in 2016” (dated March 24, 2017) http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00122.html

much energy for a refugee. A true refugee is less energetic” during the interview, or said to the applicant claiming to be a rape victim, “Were you targeted because you look beautiful?”

And in September 2017, a group of attorneys summarized cases of problematic remarks and behaviors of refugee examination counselors including those mentioned above, documented them and submitted the documented report to Minister of Justice⁹¹.

Further, since 2013, there have been 13 cases where the Minister of Justice overturned the opinions of the refugee examination counselors that recognition of refugee status is appropriate and the application was rejected as a result⁹².

3. Status of Refugee Recognition

In 2016, 10,901 persons applied for recognition of a refugee status in Japan, but only 28 persons (0.2%) were recognized as refugees in the same year, and the total number of those who were permitted to stay for safeguarding purpose was 125 (1%) including 97 persons who were granted a special permit to stay⁹³.

4. Circumstances of Applicants for Refugee Recognition

Most applicants for refugee recognition without status of residence have experienced detention at immigration detention facilities. At a facility of the immigration authorities, refugee applicants may see a visitor only through a glass partition even if it is a spouse, parent or child. Such visitation is allowed only on weekdays and is limited to within 30 minutes per day.

As a means to terminate such detention, provisional release may be granted, but the Immigration Bureau has discretion to decide whether or not to grant such release. Some refugee applicants are detained for over a year at such facilities of the immigration authorities before provisional release is granted.

Refugee applicants without a work permit are neither allowed to engage in work nor eligible to receive public assistance even if a provisional stay or provisional release is granted. Moreover, refugee applicants without a regular

⁹¹ Japan Lawyers Network for Refugees “Request Concerning Problematic Remarks and Behaviors of Refugee Examination Counselors” (dated September 12, 2017) http://www.jlnr.jp/statements/2017/jlnr_suggestion_20170912.pdf

⁹² The Tokyo Shimbun “40% of ‘Appropriate’ Refugees Denied Recognition: Minister of Justice Do Not ‘Respect’ Expert Examination” June 11, 2017 Morning Edition Front Page)

⁹³ Ministry of Justice Immigration Office “Number of Persons Recognized as Refugees, etc., in 2016” (dated March 24, 2017) http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri03_00122.html

status of residence cannot join the National Health Insurance scheme.

5. Treatment of Refugees

At the RHQ Support Center⁹⁴, support for settlement is provided to those recognized as refugees and their families and refugees admitted for resettlement, including Japanese language education, livelihood guidance and employment assistance. Such settlement support is provided as a six-month full-time course or one-year evening course for those recognized as refugees and their families, and as a six-month full-time course for refugees admitted for resettlement.

V. Opinions

1. Permission for Provisional Stay

Permission for provisional stay does not function adequately. The Government of Japan should permit provisional stay of refugee applicants, make positive use of measures as an alternative to detention such as provisional releases, and avoid detention of refugee applicants to the maximum extent possible⁹⁵.

2. Refugee Examination Counselor System

Since the clerical support to the refugee examination counselors is provided by the Immigration Bureau, the refugee examination counselor system cannot be said to be neutral. The Government of Japan should establish refugee recognition procedures by a third-party organization independent from government ministries supervising immigration control or foreign policies so that they will not be affected by policy or diplomatic considerations.

Even if the refugee examination counselor system is maintained, since some refugee examination counselors are unfit as an interviewer because of their strong prejudice against refugee applicants or inadequate understanding of the circumstances of the applicants, the Government of Japan should conduct training for refugee examination counselors so that they will understand the circumstances of refugee counselors. Further, it should respect the opinions of refugee examination counselors for refugee recognition and rectify the situation where such opinions are overturned by the Minister of Justice without giving any justifiable reason.

⁹⁴ Website of the Foundation for the Welfare and Education of the Asian People
<http://www.rhq.gr.jp/japanese/known/rhq.htm>

⁹⁵ JFBA, "Proposal Concerning the Refugee Recognition System and the Status of Applicants for Refugee Recognition" (dated February 21, 2014) http://www.nichibenren.or.jp/library/ja/opinion/report/data/2014/opinion_140221_2.pdf

3. Status of Refugee Recognition

The Government of Japan should expedite the refugee recognition procedures while avoiding methods such as restricting the number of applications or simplification of examination.

The refugee recognition rate in Japan is significantly low, which is caused by the fact that it interprets Article 3 of the Refugee Convention more strictly than the international standard in its refugee recognition procedures. Therefore, in the course of the procedures, the Government of Japan should carry out examination by interpreting the said article in accordance with the international standard.

4. Circumstances of Applicants for Refugee Recognition

Since support for living, housing and medical expenses provided to refugee applicants is inadequate, the Government of Japan should provide livelihood security also to refugee applicants without status of residence and allow them to engage in work after at least six months following the application.

5. Treatment of Refugees

Since the support for settlement by the RHC Support Center is not sufficient for those recognized as refugees to master Japanese, they have difficulty in getting a job due to lack of Japanese language skills. The Government of Japan recognizes that there are cases where refugees settling here face various challenges in their daily life due to differences in language and customs⁹⁶. However, the Government of Japan has not conducted any survey on the living conditions of refugees in recent years.

Therefore, the Government of Japan should conduct a survey on the living conditions of refugees to take active measures for improvement in their living standards and securing employment⁹⁷.

I. Technical Interns

I. Conclusions and Recommendations

The Government of Japan should immediately abolish the Technical Intern

⁹⁶ The Seventh to Ninth Government Periodic Report, Paragraphs 51 and 52.

⁹⁷ JFBA, "JFBA Report on the Seventh to Ninth Reports of the Government of Japan Submitted under the International Convention on Elimination of All Forms of Racial Discrimination" (dated March 19, 2014)
https://www.nichibenren.or.jp/library/ja/kokusai/nhumanrights_library/treaty/data/Racial_discrimination_ja_7.8.9.pdf

Training Program, and, in terms of acceptance of foreign unskilled workers, start considering a new labor acceptance program overcoming the structural problems which cause human rights violation against workers⁹⁸.

II. Concerns and Recommendations of the Committee

The Committee states in the Last Concluding Observations as follows (Paragraph 12):

“The Committee is ... (omitted) ... also concerned about reports that the rights of foreign technical interns are violated through the non-payment of proper wages, and that these people are subject to inordinately long working hours and other forms of exploitation and abuses (art. 5). ... (omitted) ... The Committee also recommends that the State party take appropriate steps to reform the technical intern training program in order to protect the working rights of technical interns.”

III. Statements of the Government Reports

The Government of Japan states in its Periodic Report that it does not recognize the Technical Intern Training Program as falling under racial discrimination (Paragraph 46), and further states that (1) the Act on Proper Technical Intern Training and Protection of Technical Intern Trainees was enacted, under which measures will be taken such as establishment of the Organization for Technical Intern Training and the Technical Intern Training Program will be properly administered (Paragraph 47), and (2) in case of any misconduct at training implementation organizations and so forth, measures are taken to suspend acceptance of technical interns, and 273 implementation organizations were subject to such suspensions in 2015 (Paragraph 48).

IV. Facts

1. The Government of Japan revised the Immigration Control Act and relevant ministerial ordinances earlier in July 2009 (effective in July 2010), strengthening the sanctions against violation, including the extension of the suspension period to five years of an acceptance organization in cases of

⁹⁸ JFBA “Proposal for Abolishment of the Technical Intern Training Program” (dated April 5, 2011)

https://www.nichibenren.or.jp/library/ja/opinion/report/data/110415_4.pdf

JFBA “Opinion Requesting for Prompt Abolishment of the Technical Intern Training Program” (dated June 20, 2013)

https://www.nichibenren.or.jp/library/ja/opinion/report/data/2013/opinion_130620_4.pdf

JFBA “President’s Statement on the ‘Bill on Proper Technical Intern Training and Protection of Technical Intern Trainees’” (dated April 24, 2015) https://www.nichibenren.or.jp/activity/document/statement/year/2015/150424_2.html

JFBA “President’s Statement on the Enactment of the ‘Act on Proper Technical Intern Training and Protection of Technical Intern Trainees’” (dated November 24, 2016)

https://www.nichibenren.or.jp/activity/document/statement/year/2016/161124_2.html

serious human rights violation such as taking away passports and not paying wages, as well as offering technical interns the protections under the acts and ordinances of labor standards from the first year of entry into Japan. Further, it reinforced supervision and guidance by the Labor Standards Inspection Offices and established the mutual notification system with immigration organizations. However, the existing situations of human rights violations against technical interns have not been improved by such reforms of the system⁹⁹.

2. At present, the Government of Japan has enacted the new Technical Intern Training Act (enforced in November 2017), incorporating provisions for further reinforcement of supervision of acceptance organizations as well as prevention of and protection from human rights violations. However, the structural problems of the Technical Intern Training Program remain unsolved. Moreover, no measures have been taken against the collection of guarantee money or penalties, from technical interns by the sending organizations. It also remains difficult for technical interns suffering human rights violations to ask for protection, improvement and/or remedies for themselves because no such system is in place. In addition, the said Act has an aspect aiming at expansion of the problematic Technical Intern Training Program such as allowing extension of the training period, on the premise of continuation of the Technical Intern Training Program.
3. The Government of Japan states that it notified 273 organizations of their “misconduct” in 2015, which increased by 13.3% compared to 241 organizations in 2014 and by 18.7% compared to 230 organizations in 2013. Even after the enforcement of the current system in 2010 reflecting the system reform in 2009, the number of organizations notified of misconduct was on the increase¹⁰⁰. Further, in 2016, 239 organizations were notified of “misconduct” and the number remains high¹⁰¹.
4. During the supervision and guidance conducted against training implementation organizations by the Labor Bureaus and Labor Standards

⁹⁹ JFBA “JFBA Report on Response to the Seventh, Eighth and Ninth Report of the Japanese Government of the International Convention on Elimination of All Forms of Racial Discrimination” (dated March 19, 2014)

¹⁰⁰ Ministry of Justice “‘Misconduct’ in 2015” (dated February 26, 2016)
http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00107.html

¹⁰¹ Ministry of Justice “‘Misconduct’ in 2016” (dated March 8, 2017)
http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00124.html

Inspection Offices nationwide in 2015, 5,137 workplaces received such supervision and guidance, and acts of violation of the labor standards laws were recognized in 3,695 workplaces, which account for 71.4% of them¹⁰². In 2016, acts of violation of the labor standards laws were recognized in 4,004 workplaces, which account for 70.6% of 5,672 workplaces subjected to the supervision and guidance¹⁰³, and acts of legal violation are widespread in many workplaces.

V. Opinions

1. The reason why the previous reform of the system did not lead to improvement of the situation of human rights violations lies in the structural problems of the Technical Intern Training Program. Despite the fact that the purpose of the Program is overseas transfer of Japanese technology through acquisition of skills by foreign nationals, in reality, it is operated as a system to solve the shortage of unskilled workers. Such gap between the purpose of the program and the reality is a structural problem of the Program.
2. Because of the nominal purpose of the Program, technical interns are not allowed to switch workplaces and easily subjected to control by the acceptance organization, which makes it difficult to build labor relationships on an equal basis. Collection of guarantee money by the relevant organizations causes a situation where it is difficult for technical interns to seek remedies in case of violation of their rights due to fear of forfeiture of the guarantee money, and this is also conducive to human rights violations against technical interns.
3. The amendment of the Act in July 2009 did not lead to improvement of the situation of human rights violations against technical interns because these problems were not improved. The aforesaid problems are not improved at all under the newly enacted Technical Intern Training Act, either, and it cannot be expected that this will lead to improvement of the situation of human rights violations against technical interns.
4. The structural problems of the Technical Intern Training Program have been a

¹⁰² Ministry of Health, Labor and Welfare “Situation in 2015 of Supervision, Guidance and Notification to the Organizations Implementing Technical Intern Training Is Published” (dated August 16, 2016)
<http://www.mhlw.go.jp/stf/houdou/0000133506.html>

¹⁰³ Ministry of Health, Labor and Welfare “Situation in 2016 of Supervision, Guidance and Notification to the Organizations Implementing Technical Intern Training Is Published” (dated August 9, 2017)
<http://www.mhlw.go.jp/stf/houdou/0000174090.html>

hotbed of human rights violations in the past and are likely to remain so in the future as well, so the Program should be immediately abolished. Even if it is necessary to accept foreign workers as an emergency measure, a system should not be designed based on the Technical Intern Training Program.

5. The Government of Japan is temporarily accepting foreign construction workers who have completed the Technical Intern Training Program as an emergency and provisional measure (to be terminated in FY2020) in order to respond to the temporary increase of construction demand for the development of facilities related to the Tokyo 2020 Olympic and Paralympic Games, but this system should not be considered on the premise of continuation of the Technical Intern Training Program¹⁰⁴.

J. Foreign Students

I. Conclusions and Recommendations

The Government of Japan should:

1. For acceptance of foreign students, make further efforts to create an environment where they can concentrate on their studies without concerns by providing livelihood support to them, enhancing the scholarship programs and so forth.
2. Grasp the situation of labor by foreign students with permission to engage in activities other than that permitted by the status of residence previously granted, and supervise their employers to ensure compliance with the Labor Standards Act and other relevant laws, as well as conduct supervision to prevent exploitation of foreign students by educational institutions having cozy ties with brokers and employers.

II. Facts

1. As a part of the global strategy to open up Japan to the whole world and expand flows of people, goods, money and information between Japan and countries in Asia and other regions of the world, the Government of Japan developed the 300,000 Foreign Students Plan in 2008¹⁰⁵ promoting active

¹⁰⁴ JFBA “Opinion on the Proposal Concerning the Foreign Construction Worker Acceptance Program” (dated July 24, 2014) https://www.nichibenren.or.jp/library/ja/opinion/report/data/2014/opinion_140724.pdf

¹⁰⁵ Website of MEXT http://www.mext.go.jp/b_menu/houdou/20/07/08080109.htm

Website of Study in Japan Comprehensive Guide <http://www.studyjapan.go.jp/jp/toj/toj09j.html>

acceptance of foreign students. Such efforts are commendable as meaningful in that they will expand the opportunities for people across the world to know about Japan through such foreign students and contribute to internationalization of Japan. However, in reality, livelihood support and scholarship programs to help foreign students concentrate on their studies without concerns are insufficient.

2. Besides, it should be noted that the acceptance of foreign students under this plan has an aspect of functioning and expanding as a system to respond to the needs of the industry attempting to utilize foreign students as a labor force in reality. As a result, over 200,000 foreign students are currently working with “permission to engage in activities other than that permitted by the status of residence previously granted,” accounting for approximately 20% of the total number of foreign workers. Moreover, the number of foreign students who have joined the workforce has doubled in the past five years.
3. In practice, employment of foreign students with permission to engage in activities other than that permitted by the status of residence previously granted is utilized as a system which allows them to work with few restrictions on the types of jobs they can engage in, including as unskilled workers. With this as a backdrop, in the countries from which such students are sent, there are organizations which induce them to study in Japan by emphasizing the fact that there are opportunities for the students to work in Japan. Furthermore, some educational institutions accepting foreign students in Japan seem to admit such students mainly for the purpose of employment by introducing them to employers or mediating between them and employers.
4. In such cases, not only is the status of residence of “Student” not used for the intended purpose to study in Japan, but the foreign student is placed under the control of the educational institution which he/she is enrolled, because the permission to engage in activity other than that permitted by the status of residence previously granted is given only if the student has the status of residence of “Student” which is tied to such educational institution. Further, the organizations (brokers) which make arrangements in the sending countries for students to study at such educational institutions are also involved in relation to which the foreign students tend to be put in a vulnerable position as well. Situations are now common in which foreign students are treated virtually as

workers and exploited as follows: the payment of large fees and guarantee money is demanded from the students by brokers; Japanese educational institutions not only charge them tuition fees but also take away their passports and deduct unreasonably high dormitory expenses; students end up neglecting studies due to long work hours beyond the legal limitations; the educational institutions specify where to work, students who assert their rights are forced to leave school and return to their home country.¹⁰⁶ There are also cases where foreign students are compelled to go underground and overstay their visas.

III. Opinions

1. The study in Japan program is indispensable for internationalization of Japan, and many foreign students come to study in Japan as a result of public relations activities by the Government of Japan towards people overseas for the purpose of accepting foreign students. Therefore, the Japanese government has a responsibility to create an appropriate environment where foreign students who came to Japan can concentrate on studying by enhancing the scholarship programs and so forth.
2. However, as aforesaid, such a structure prone to exploitation of foreign students by brokers in their sending countries, violation of their rights by Japanese educational institutions and employers, restriction of freedom of job selection remains neglected. Therefore, we request that the government investigate the actual situation and take appropriate measures in order to regulate brokers and educational institutions which abuse study in Japan programs and aim at forcing foreign students to work¹⁰⁷.

¹⁰⁶ Yasuhiro Idei “*Rupo Nippon Zetsubou Koujou* (Reportage: Japan Despair Factory)” (Kodansha, 2016)

¹⁰⁷ The JFBA proposes, with respect to acceptance of unskilled workers, in the “Proposal for Abolishment of the Technical Intern Training Program” (dated April 15, 2011; https://www.nichibenren.or.jp/activity/document/opinion/year/2011/110415_4.html) the necessity of the following five points:“(1) guarantee of the fundamental rights and prohibition of discriminatory treatment, (2) ensuring freedom of job selection, (3) eliminating brokers in sending countries, (4) eliminating exploitation by acceptance organizations in Japan, and (5) consideration of entry and stay in Japan accompanying the family. Considering that many of the foreign students are working as unskilled workers, the same points should be secured from the perspective of accepting unskilled workers.”