
Discrimination Against Koreans in Japan: Japan's Violation of the International Convention on the Elimination of All Forms of Racial Discrimination

**Lawyers Association of *Zainichi* Koreans (LAZAK)
Shadow Report to the 7th-9th Periodic Reports of Japan**

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Reporting Organization

Lawyers Association of *Zainichi* Koreans (“LAZAK”) was established in May 2001 by Korean and Korean-Japanese lawyers and legal apprentices, who reside in Japan. The term “*Zainichi* (“residing in Japan”) Korean” includes those who live in Japan and maintain the nationality of the Republic of Korea (“ROK”) or the Democratic People's Republic of Korea (“DPRK”) as well as Japanese nationals who are of Korean descent and regarded their ethnicity as Korean. Currently more than 100 *Zainichi* Korean lawyers and legal apprentices belong to LAZAK. Towards the abolition of discrimination against *Zainichi* Koreans and protection of ethnic human rights in Japan, members of the LAZAK have provided legal support for litigation related to human rights of *Zainichi* Koreans. Besides that, LAZAK has published several books related to *Zainichi* Koreans and built relationships with Korean lawyers all over the world. Because of these activities, LAZAK was awarded a human rights prize from National Human Rights Committee of the ROK Government in 2007.

Introduction

I. Historical Background of *Zainichi* Koreans

It is estimated that there are approximately one million Korean residents living in Japan on a permanent basis, including those holding Japanese nationality (there is no official statistics by the Japanese government on the total number of Koreans with Japanese nationality) as of 2014. Among them, 430,000 Koreans are living in Japan as foreign nationals with permanent residency as of December 2013.¹ Approximately 370,000 of these 430,000 Koreans are individuals who had been forced to live in Japan in the first half of the twentieth century,² when Korea was under Japanese colonial rule, and their descendants. They have been given special permanent residency status, a category separate from general permanent residency status.³

As mentioned above, *Zainichi* Koreans who hold special permanent residency, numbering approximately 370,000 today, currently reside in Japan as foreign nationals. They include individuals who held Japanese nationality between 1910 (beginning of Japanese colonial rule in the Korean Peninsula) and 1952 (signing of the Treaty of San Francisco and the formal recovery of Japanese political independence), as well as their descendants. Although the Treaty of San Francisco did not include specific clause on the citizenship of those Koreans who would continue to reside in Japan, the Japanese government nonetheless deprived Korean and Taiwanese residents of their Japanese citizenship after the treaty became effective. This revocation measure by the Japanese government, executed under an official notice from the head of the Civil Affairs Bureau in the Ministry of Justice on 19 April 1952, was a one-sided procedure that ignored the opinions of residents from former colonies of Japan. Moreover, the measure was applied to a small group (approximately 500,000) within the population in Japan at the time (approximately 85 million), specifically targeting individuals from Korea and Taiwan on ethnic or racial grounds. Accordingly, though executed before the formation of the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), the revocation measure by the Japanese government was in effect a form of racial discrimination. Additionally, this measure was put into action by an official notice from the head of the Civil Affairs Bureau in the Ministry of Justice without legal basis. This is in violation of Article 10 of the Constitution of Japan,

¹ The Ministry of Justice, Statistics on Foreign Residents, Table 13-12-01-1:
<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001118467>

² *Id.*

³ There are two types of permanent residency status in Japan; special permanent residency and general permanent residency status. See, in general, Miki Y. Ishikida, *Living Together: Minority People and Disadvantaged Groups in Japan*, 3-2-1 (2005):

http://www.usjp.org/livingtogether_en/ltKoreans_en.html#mozTocId637851

which states “the conditions necessary for being a Japanese national shall be determined by law.” Yet, the Supreme Court of Japan has continued to approve the revocation measure.⁴

When the Treaty of San Francisco came into effect, Koreans residing in Japan lost their Japanese nationality overnight. Despite such circumstances, the government of Japan has restricted *Zainichi* Koreans' human rights. In this capacity, *Zainichi* Koreans have been subject to deportation like other foreign nationals, and the government of Japan has added nationality requirements to social security and welfare provisions and excluded *Zainichi* Koreans from public office. Such measures of exclusion employed by the Japanese government have only encouraged discrimination based on nationality and ethnicity in the private sector.

In 1991, the Japanese government established a special permanent residency system for individuals born in former Japanese colonies before the Japanese defeat in 1945 (Koreans and Taiwanese) and their descendants. However, the Japanese government discriminates against special permanent residents in areas of social security and public office on grounds of their lack of Japanese nationality. It is to be noted that not all individuals who had been living in Japan before 1945 were given special permanent residency status (reasons for denial include not being physically present in Japan at any time between 1945 and 1952); some are residing in Japan under general permanent residency status or other residence qualifications.

In Japan, nationality is defined by the Nationality Act. Japan's Nationality Act strictly applies *jus sanguinis* (right of blood), and, as a rule, children born in Japan do not receive Japanese nationality if their parents are foreign nationals. Likewise, descendants of *Zainichi* Koreans who had been deprived of their Japanese nationality in 1952 on ethnic or racial grounds do not receive Japanese nationality unless one of their parents is married to a Japanese national. The principle of *jus sanguinis* in Japan's nationality law functions to exclude *Zainichi* Koreans from Japanese nationality on ethnic and racial grounds. In this sense, Japan's nationality law may be described as ethnocentric or racist.

Under such nationality law, there are cases of fourth- or fifth-generation *Zainichi* Koreans who remain foreign nationals. Among *Zainichi* Koreans who had been deprived of their Japanese nationality in 1952, there are families with the history of more than a hundred years of residence in Japan.

While Japan's nationality law provides for naturalization, the naturalization process, too, has been administered in an ethnocentric and racist manner. Until recently, the Japanese government had an unrestrained and broad authority over the naturalization process, requiring ethnic and cultural assimilation into the larger Japanese populace; adopting Japanese-style

⁴ See, for example, Supreme Court, grand bench, 5 April 1961, 15 *Minshu* 657:
<http://www.courts.go.jp/english/judgments/text/1961.04.05-1955.-O-.No.890.html>

names is only one such example.⁵ In Japanese society, there is a strong tendency to regard naturalization as ethnic and cultural assimilation into the larger Japanese populace, in addition to legal acquisition of nationality. Also, there are no specific provisions in Japan to ease naturalization requirements for former colonial subjects that exist in other former imperial powers.

II. Distinction of *Zainichi* Koreans Based on Nationality is Racial Discrimination

The ICERD does not apply to distinctions between citizens and non-citizens (Article 1.2). Article 1.2, however, shall not be applied to distinctions concerning special permanent residents and *Zainichi* Koreans with an equivalent status on grounds of their lack of Japanese nationality. Distinctions between citizens and special permanent residents (and those with an equivalent status) constitute a form of distinction based on ethnic or racial origin and shall be characterized as “racial discrimination” under Article 1.1. As explained above, *Zainichi* Koreans had been deprived of their Japanese nationality in 1952 based on their ethnic or racial origin and were since institutionally excluded from Japanese nationality as a result of ethnocentric and racist nationality law and its enforcement.

The legal status of *Zainichi* Koreans since 1952 has improved thanks to civil society organizations supporting *Zainichi* Koreans and the ratification of treaties such as the International Covenant on Civil and Political Rights (“ICCPR”) and the Convention Relating to the Status of Refugees (“Refugee Convention”) by the Japanese government. Yet, as mentioned above, *Zainichi* Koreans with special permanent residency status continue to experience discrimination in areas of social security and employment in public office. This constitutes racial discrimination for reasons stated above.

III. Aggravation of Discrimination against *Zainichi* Koreans in Recent Years

Colonial rule gave birth to a feeling of contempt and supremacy over Koreans in Japanese society. Even today, there remains a significant degree of discriminatory sentiment toward Koreans, due in no small part to the Japanese government’s unwillingness to address the sentiment and to institute a comprehensive anti-discrimination law.

In addition to the existing discriminatory sentiment, in recent years there has been an increasing number of discriminatory practices in the face of Japan's deteriorating diplomatic relations with the DPRK and the ROK. Specifically, the Japanese government has excluded *chōsen gakkō* (“Korean schools”) from the newly instituted high school tuition-waiver

⁵ See CERD Committee, Concluding Observations, Japan, (March 12, 2010) CERD/C/JPN/CO/3-6 (“CERD 2010 Concluding Observations”) at ¶16.

program. Hate crimes and hate speech targeted toward *Zainichi* Koreans by xenophobic groups are also becoming a serious issue.

IV. Organization of the Report

Each member of LAZAK is participating as an attorney for various lawsuits concerning *Zainichi* Koreans' human rights. This report serves to offer information on the issue of discrimination against *Zainichi* Koreans – specifically, (i) exclusion of elderly *Zainichi* Koreans from the national pension scheme, (ii) limited employment of foreign nationals in public office, (iii) exclusion of Korean schools from the high school tuition-waiver program, and (iv) hate speech targeted toward *Zainichi* Koreans. These constitute parts of human rights issues that members of LAZAK have been involved as attorneys or involved parties.

LAZAK expects that the UN Committee on the Elimination of Racial Discrimination (“CERD Committee”) express concern regarding the human rights violations that *Zainichi* Koreans face and recommend the government of Japan to take necessary measures to comply with its obligations under international human rights laws.

Exclusion of *Zainichi* Koreans from the National Pension Scheme

I. Issue Summary

Zainichi Koreans over the age of 60 as of April 1, 1986 and *Zainichi* Koreans over the age of 20 with disabilities as of January 1, 1982 are unable to enroll in the national pension scheme, effectively excluding them from the Old Age Pension (Rōrei Fukushi Nenkin) and Basic Disability Pension (Shōgai Kiso Nenkin) programs.

This exclusion of *Zainichi* Koreans from the national pension scheme is in violation of Article 5(e)(iv) of the ICERD. The government of Japan has an obligation to revise related regulations without delay and remedy the situation, in order that the aforementioned population can receive pension benefits.

II. Japanese Government Response

According to the January 2000 Japanese government report to the CERD Committee referred to by the January 2013 report, there is no discrimination based on race or ethnicity in the National Pension Law because there is no nationality clause.⁶ In its January 2013 report to the CERD Committee as well as its January 2000 report and August 2008 report, there is no mention of elderly and handicapped *Zainichi* Koreans who are excluded from the national pension scheme.

III. Legal Framework

1. Related ICERD Articles and the CERD Committee General Recommendations

The most relevant article pertaining to the pension exclusion issue is Article 5(e)(iv).

The CERD Committee General Recommendation 30 emphasize that “[the Article 1.2 of the ICERD] should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights”.⁷ It also establishes that “the implementation of legislation [must] not have a discriminatory effect on non-citizens.”⁸

⁶ See the Government of Japan, Second Periodic Reports of Japan to the CERD Committee (January 13, 2000) CERD/C/350/Add.2 (“Japan CERD Report 2000”) at ¶134.

⁷ CERD Committee, General Recommendations 30 at ¶3.

⁸ *Id* at ¶7.

2. Positions of the CERD Committee and Other UN Bodies

In its 2009 Concluding Observations, the UN Human Rights Committee (“Human Rights Committee”) expressed the following concerns:

[A]s a result of the non-retroactivity of the elimination of the nationality requirement from the National Pension Law in 1982 combined with the requirement that a person pay contributions to the pension scheme for at least 25 years between the ages of 20 and 60, a large number of non-citizens, primarily Koreans who lost Japanese nationality in 1952, are effectively excluded from eligibility for pension benefits under the national pension scheme. It also notes with concern that the same applies to disabled non-citizens who were born before 1962 owing to a provision that non-citizens who were older than 20 years at the time when the nationality clause was repealed from the National Pension Law are not eligible for disability pension benefits (art. 2 (1) and 26).⁹

The Human Rights Committee further recommended the government of Japan to “make transitional arrangements for non-citizens affected by the age requirements stipulated in the National Pension Law, with a view to ensuring that non-citizens are not discriminatorily excluded from the national pension scheme.”¹⁰

In his 2006 report on his country visit to Japan, Doudou Diène, the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, recommended that the “Government [of Japan] 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.”¹¹

IV. Background Information

1. History of the Exclusion of Elderly and Handicapped *Zainichi* Koreans From the National Pension Scheme

The National Pension Law enacted in 1959 included a nationality requirement, and foreign nationals (many of whom were *Zainichi* Koreans whose Japanese nationality had been revoked in 1952) could not enroll in the national pension scheme. The nationality requirement in the National Pension Law was abolished in 1982 following the ratification of the Refugee Convention in 1981. Foreign nationals are now eligible for pension benefits if

⁹ Human Rights Committee, Concluding Observations, Japan (October 30, 2008), CCPR/C/JPN/CO/5 at ¶30.

¹⁰ *Id.*

¹¹ UN Economic and Social Council, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, (January 24, 2006), E/CN.4/2006/16/Add.2 at ¶56.

they have paid their insurance fee for more than twenty-five years. With the amendment in 1985, the law also made it possible for foreign nationals to receive pension benefits even if they have not paid their insurance fee for twenty-five years. Meanwhile, foreign nationals over the age of 60 as of April 1, 1986, were excluded from receiving pension benefits.

Additionally, under the National Pension Law of 1959, which provided for Basic Disability Pension to Japanese nationals with disabilities, foreign nationals were excluded from receiving pension benefits. Although the amendment of 1982 abolished the nationality clause, those who had lost qualification to receive benefits before January 1, 1982 due to the nationality clause and foreign nationals with disabilities over the age of 20 as of January 1, 1982 were excluded from receiving a Basic Disability Pension.

As explained by the January 2013 Japanese government report to the CERD Committee,¹² the ratio of Korean population within the entire foreign population is becoming gradually smaller year by year. It becomes apparent, however, that discrimination against Koreans is fundamentally different from that against other foreign nationals when their age distributions are compared. Specifically, *Zainichi* Koreans constitute the only foreigners group that is aging at the same rate as the Japanese population, and the vast majority of elderly foreign residents in Japan excluded from the national pension system are *Zainichi* Koreans. For example, among 30,630 foreign residents in Japan as of December 31 2013, 25,721 of them hold Korean nationality.¹³ Though no comparative data is available on persons with disabilities, it is estimated that the majority of foreign nationals with disabilities over the age of 20 as of January 1, 1982, was *Zainichi* Koreans.

As a result of the above exclusionary measure, approximately 20,000 elderly *Zainichi* Koreans and 5,000 *Zainichi* Koreans with disabilities were forced to live without pension as of July 2002.¹⁴ Japanese government has not even conducted research on the number and situation of *Zainichi* Koreans living without pension. Many *Zainichi* Koreans who are excluded from receiving a pension payment are former colonial subjects of Japan and their descendants, and their Japanese nationality was revoked in 1952. Differential treatment for these individuals on the basis of nationality constitutes de facto racial discrimination based on their geographic origin and ethnicity. Despite the fact that they were born in Japan, speak Japanese fluently, maintain economic life in Japanese society, pay taxes to the national and local government, and lead life no differently from the rest of residents of Japan, *Zainichi* Koreans are excluded from the national pension scheme based on their geographic origin and,

¹² See the Government of Japan, Seventh to Ninth Periodic Reports of Japan to the CERD Committee (January 14, 2013) CERD/C/Japan/7-9 (“Japan CERD Report 2013”) at ¶35.

¹³ The Ministry of Justice, Statistics on Foreign Residents, Table 13-12-02-1: <http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001118467>

¹⁴ “Sakaguchi Tentative Plan” regarding the issue of disabled persons without pension (July 2002). (無年金障害者に対する「坂口試案」2002年7月)

facing unstable prospects after retirement.

2. Exclusion of *Zainichi* Koreans From the National Pension Scheme is Racial Discrimination

The aforementioned measure to exclude certain groups of elderly foreign nationals and foreign nationals with disabilities from the national pension scheme has disproportionately affected *Zainichi* Koreans – people with a former colonial background. This constitutes racial discrimination, which has “an unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin.”¹⁵

Although maintaining the revenue source for the national pension scheme and ensuring appropriate administration of pension may be the bases for justifying the regulations excluding foreign nationals, it is not necessary to wholly exclude foreign nationals over a certain age to that end. It may have been possible to seek measures less restrictive to the rights of foreign nationals; for instance, foreign residents qualified to reside in Japan for an extended period and *Zainichi* Koreans who had lost Japanese nationality against their will as a result of the 1952 notice by the Japanese government could have been made exempt from the exclusionary regulations.

The Japanese government’s reluctance to remedy *Zainichi* Koreans' situation is in a stark contrast with remedial actions the government took for certain groups of the Japanese population. For example, residents of the Ogasawara Islands and Okinawa could not enroll in the national pension scheme when it was introduced in 1959, as the islands were not territories of Japan until their return in 1968 and 1972, respectively. Following the reincorporation of the Ogasawara Islands and Okinawa, the government of Japan employed special measures for the islands' residents; for example, the government paid for the residents' outstanding pension premiums from the national treasury. In addition, the government employed transitional measures to ensure that displaced Japanese from World War II in China and abduction victims returning from the DPRK could receive pension in 1996 and 2003 respectively.

In the past ten years, there have been a number of remedial measures intended for individuals with no or less than full amount of pension for not paying pension premiums: (1) Special Handicapped Persons Provision System, effective from 2005, intended for individuals such as students and housewives, whose enrollment in the national pension scheme was optional, who acquired disabilities before their enrollment in the national pension scheme; (2) it was decided that, for the Basic Old Age Pension, effective from 2008 onward, the national treasury would pay for outstanding pension premiums from displaced Japanese who

¹⁵ CERD Committee General Recommendations 14 at ¶2.

permanently returned to Japan from China after the national pension scheme became effective, and remedial measures were taken for individuals with no or less than full amount of pension for not paying pension premiums.

Despite the fact that the government of Japan could have predicted the economic and psychological damages that elderly and handicapped *Zainichi* Koreans without access to the national pension scheme would incur, the government has not revised the legislative measure that excludes *Zainichi* Koreans.

3. Exhaustion of Domestic Judicial Remedy

Elderly *Zainichi* Koreans and people with disabilities have filed multiple lawsuits against Japan on the grounds that discrimination in the national pension scheme based on nationality had no reasonable justification and violated the equality principle of Article 14 of the Constitution of Japan, Article 26 of the ICCPR, and the equal protection clause found in Article 2.2 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). Although the lawsuits reached the Supreme Court of Japan, the Court has decided in favor of the government in all cases.¹⁶

None of the rulings considered the circumstances under which *Zainichi* Koreans excluded from the national pension scheme had a former colonial background and had been unilaterally deprived of their Japanese nationality in 1952, and these *Zainichi* Koreans were treated as ordinary foreign nationals. The court further noted that the exclusion of certain groups of foreign nationals from the national pension scheme did not violate the Constitution of Japan, the ICCPR, or the ICESCR, reasoning that the legislature possessed a broad discretion to determine whether or not special measures for foreign nationals are necessary in the process of revising the National Pension Law.¹⁷

¹⁶ On December 25, 2007, the Supreme Court affirmed the judgment of Osaka High Court dismissing claims of *Zainichi* Koreans with disabilities against the government (unpublished). On December 25, 2007 and on February 3, 2009, the Supreme Court affirmed the judgments of Osaka High Court respectively dismissing the claims of elderly *Zainichi* Koreans against the government. On February 6, 2014, the Supreme Court affirmed the judgment of Fukuoka High Court dismissing the claims of elderly *Zainichi* Koreans against the government (unpublished).

¹⁷ See, for example, Osaka High Court, November 15, 2006 (unpublished). This judgment is affirmed by the Supreme Court on December 25, 2007.

V. Suggested Recommendations

Considering the issues discussed above, the Japanese government should seek a transitional measure for foreign nationals affected by the National Pension Law's age requirement so that foreign nationals are not excluded from the national pension scheme.

Exclusion of Korean Residents and Other Foreign Nationals From Public Office

I. Issue Summary

In Japan, foreigners including *Zainichi* Koreans are not eligible for government jobs without legitimate reasons. Even in the public jobs open to foreigners, their promotion opportunities are largely restricted without legitimate reasons. These restrictions against foreigners, especially against *Zainichi* Koreans constitute racial discrimination based on Korean ethnic origin, and the Japanese government shall eliminate barriers that obstruct such opportunities for appointment and promotion as government officials.

II. Japanese Government Response

In its January 2000 report to the CERD Committee referred to by its January 2013 report states “Japanese nationality is required for civil servants who participate in the exercise of public power or in the public decision-making, but it is understood that Japanese nationality is not necessarily required for civil servants who do not engage in the above-mentioned work. Korean residents in Japan have been employed as civil servants according to the above-mentioned principle.”¹⁸

III. Legal framework

1. Related ICERD Articles and the CERD Committee General Recommendations

The most relevant articles about this problem are Article 2(1)(c), Article 5(c), and 5(e)(i) of the ICERD.

The CERD Committee General Recommendation 30 establishes that the government should “[r]emove obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health”.¹⁹ It also regulates that the government should “[t]ake measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with

¹⁸ Japan CERD Report 2000 at ¶30.

¹⁹ CERD Committee General Recommendations 30 at ¶29.

discriminatory purposes or effects”.²⁰

2. Positions of the CERD Committee and Other UN Bodies

In its 2010 Concluding Observations, the CERD Committee stated: “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).”²¹ The CERD Committee further recommended 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”.²²

IV. Background Information

The Japanese government restricts the foreign nationals from working as public officials mainly under the following circumstances.

1. Limitations on Promotion to Managerial Positions

In Japan, many local governments restrict their employees who do not hold Japanese nationality from the opportunities of promotion to managerial or superior posts. This treatment has been eventually upheld as constitutional by the Japanese judiciary. For instance, in 1994, a Korean nurse with special permanent residency status working for a hospital operated by the Tokyo Metropolitan was denied the eligibility for the examinations for management section by the Personnel Commission of the Tokyo Metropolitan Government, because she did not have Japanese nationality. In this case, the Supreme Court stated that it is not contemplated under national legislation that foreign nationals may take office as local government employees “who are engaged in performing duties that involve exercise of public authority, such as directly creating rights and obligations of inhabitants or defining the scope thereof, or decision-making or participation in the decision-making process relating to important policies of an

²⁰ *Id* at ¶33.

²¹ CERD Committee, Concluding Observations, Japan (April 6, 2010) CERD/C/JPN/CO/3-6 (“CERD 2010 Concluding Observations”) at ¶15.

²² *Id.*

ordinary local public body [hereinafter referred to as “local government employees with public authority”].²³ Then, the decision continued that a local government, by its own discretion, may establish “an integrated management appointment system consisting of the posts of local government employees with public authority and the posts to be assumed for the purpose of acquiring necessary job experience for promotion to these posts, aiming to ensure appropriate personnel management”. According to the Supreme Court’s reasoning, a local government which takes a measure to allow only Japanese employees to be promoted to managerial posts in such an integrated management appointment system shall be deemed to distinguish between Japanese employees and foreign employees based on reasonable grounds; therefore, such measure is not unlawful discrimination. The Court further stated that “[t]his reasoning also applies to employees having the status of special permanent resident”.

Another example of the restrictive treatment of foreign governmental employees is the case of public schools. In 1991, the Minister of Education, Culture, Sports, Science and Technology issued notification toward local governments and clarified that foreign nationals are eligible to take an employment examination to become a teaching staff in public schools. Nevertheless, the notification did not describe the positions of foreign employees as “teachers”, which are applicable for Japanese nationals, but rather as “full-time lecturers without term limits”. The theory of this distinction was the “commonly understood principles of law” regarding government officials, which is that individuals need Japanese nationality, as a matter of course, to be appointed to civil servant positions in which they would wield public authority, or would be involved in determining the policies of a local government. As a result, since the promotion to principal or various leadership positions is only opened for “teachers”, foreign employees in public schools are incapable of being promoted to managerial positions in numerous local governments.

This current situation that overly restricts foreigners’ promotion opportunities is unacceptable in relation to their right to choose their occupation. It should be said that there is no reasonable ground to exclude foreign public employees who daily engage in the same kinds of jobs with equivalent talents as Japanese employees from managerial posts. Furthermore, it should not be overlooked that the majority of foreign public officials in Japan are *Zainichi* Koreans, who have been arbitrarily deprived their Japanese nationalities once acquired under Japanese colonial rule, and their descendants. Most of them were born in Japan, live in Japanese culture, speak

²³ Supreme Court, grand bench, January 26, 2005, 59 *Minshu* 128:
<http://www.courts.go.jp/english/judgments/text/2005.01.26-1998.-Gyo-Tsu-.No..93.html>

perfect Japanese, lead their social lives in the environment nothing different with Japanese nationals. The distinction between these Korean residents and Japanese nationals may outwardly seem to be based on nationality; but in fact, it clearly constitutes discrimination based on race and ethnicity. For this reason, it violates Article 5(c) and 5(e)(i) of the ICERD.

2. Restrictions on Conciliation Commissioners and Judicial Commissioners

Japan's civil dispute resolution system has a conciliation procedure for civil and family affairs in addition to the formal litigation procedure. In the conciliation process, the conciliation body consisting of one judge and no less than two members of the conciliation committee, who were chosen from non-judiciary citizens, is in charge of the case. The body, based on the agreement of the parties, attempts to reach a settlement of the case utilizing counsel and advice. As a general practice, the appointment process of lawyers who are qualified for members of the conciliation committee is as follows: first, each bar association recommends candidates from among its member attorneys at the request of a family or district court, and then the Supreme Court appoints the recommended candidates as members.

In addition, in the expedited and modified proceedings in summary courts, the court, by its own discretion, may have a judicial commissioner to assist an attempt to arrange a settlement or to attend the trial to hear his or her opinions on the case. In general, lawyers are assigned as judicial commissioners by summary courts based on the recommendations of the relevant bar associations.

In March, 2003, the Hyogo Bar Association recommended a lawyer who does not hold Japanese citizenship to the Kobe Family Court as a member of the conciliation committee; but the court rejected its appointment. Also, in March 2003, the Tokyo Summary Court declined to appoint a foreign lawyer, who was recommended by the Tokyo Bar Association, as a judicial commissioner. Until July 22nd, 2014, in total for 25 times, 31 lawyers holding foreign nationality – all of them are *Zainichi* Koreans – were recommended for members of conciliation committee or judicial commissioners by each of the local bar association; but regretfully, the nomination was rejected by courts in every case. In this sense, the Supreme Court upheld its position that “it is presumed that a public officer who engages in acts involving the exercise of public power or in decisions on policies of importance, or who participates in these activities will be appointed from among persons of Japanese nationality, and Japanese nationality is required for a person to be appointed as a conciliation commissioner or judicial

commissioner, because these commissioners fall under the category of the said public officer.”²⁴

However, the roles and duties of conciliation or judicial commissioners are, with their expert knowledge or experience in social life, to encourage the parties’ mutual concession in settling the dispute and to assist the judge. They never engage in acts involving the exercise of public power. It is apparent that a person of advanced integrity and insight, who is familiar with the Japanese social system, culture, and general opinions of its citizens, is capable of performing these duties, regardless of their nationality. These Korean lawyers who were rejected the nomination have grown up in Japan as members of Japanese society for many years and passed the bar exam just like other Japanese lawyers. There is no legitimate reason to differentiate lawyers with Japanese nationality and those without with respect to the qualification for conciliation or judicial commissioners. As we have discussed above, the restrictive treatment against *Zainichi* Korean due to their lack of Japanese nationality, especially against those who were born during the Japanese colonial era, constitutes racial discrimination based on national or ethnic origins.

3. Exclusion From Other Governmental Positions

In addition to these problems, a large number of local governments disqualify foreign nationals’ eligibility for firefighters who engage in fire extinguishing activities. However, according to the purpose of their jobs to ensure the safety of individuals and to protect property in emergency, no justifiable reason requires that the nationality of firefighters be a concern for its qualification. Some other official positions – such as Civil Rights Commissioner (*jinken yogo iin*), Commissioned Welfare Volunteers (*minsei iin*), and Commissioned Child Welfare Volunteers (*jido iin*) – do not engage in any kind of activities that entail the exercise of public power as a nature of their duties. Therefore, it is irrational to exclude foreign residents who are also members of local communities along with Japanese nationals.

Thus, it is clear that the current practice of the Japanese government to exclude *Zainichi* Koreans who were born during the Japanese colonial period and their descendants from these governmental jobs is in violation of Articles 5(c) and 5(e)(i) of the ICERD.

²⁴ Response of the General Secretariat of the Supreme Court to the inquiry from the Japan Federation of Bar Association (“JFBA”) on October 14, 2008, cited in the JFBA Opinion Paper Requesting Appointment of Foreign Nationals as Conciliation Commissioners and Judicial Commissioners: http://www.nichibenren.or.jp/en/document/opinionpapers/20090318_2.html

V. Suggested Recommendations

In view of the foregoing, LAZAK request the CERD Committee to issue the following recommendation to the Japanese government:

- The Japanese government shall eliminate its legislation, administrative rules and practice which implicitly or explicitly prohibit foreigners from being promoted to managerial positions in local government offices.
- As for specific public jobs such as conciliation commissioners, judicial commissioners and firefighters, Japanese Government should eliminate every legislation, administrative rules and practices that prohibit foreigners to be appointed to these occupations.

Exclusion of Korean Schools (*chōsen gakkō*) From the High School Tuition-waiver Program

I. Issue Summary

The government of Japan is excluding Korean schools (*chōsen gakkō*) from the high school tuition-waiver program. Many local governments, too, have halted or abolished financial support for Korean schools for political reasons. Such measures discriminatorily violate the right to education of students attending Korean schools based on their ethnic origin as *Zainichi* Koreans. The government of Japan and local governments should rectify such discriminatory treatment.

II. Japanese Government Response

In its January 2013 report to the CERD Committee, the Japanese government stated as follows:

Some schools for foreign nationals, such as international schools, are approved as miscellaneous schools by prefectural governors; and their independence is respected.²⁵ For the stage of upper secondary education, a system to eliminate tuition fees for public high schools and supply support funds to students of national and private high schools, etc. (free tuition fee at public high schools/high school enrollment support fund system) was started in April 2010 in order to reduce the burden of education expenses on households.²⁶ This system covers students who are enrolled in (1) national, public, or private high schools, (2) secondary education schools (latter course), (3) schools for special needs education (upper secondary school), (4) colleges of technology (from the first to third year), (5) advanced courses at specialized training colleges, or (6) schools for foreign nationals approved as miscellaneous schools which are designated by the Minister of Education, Culture, Sports, Science and Technology as having curricula equivalent to the high school curricula, irrespective of their national affiliation. Incidentally, schools for foreign nationals approved as miscellaneous schools which have curricula equivalent to high school curricula include (a) those which can be confirmed through an embassy as having curricula equivalent to those of Japanese high schools, (b) those which can be confirmed as having obtained certification from an internationally-proven school evaluation organization, and (c) those which have been

²⁵ Japan CERD Report 2000 at ¶132

²⁶ *Id* at ¶133.

designated by the Minister of Education, Culture, Sports, Science and Technology as those which are recognized to have curricula equivalent to those of Japanese high schools in addition to those listed in (a) and (b).²⁷

In its March 2014 reply to the list of issues from the Human Rights Committee, the Japanese government explained about the reason for the exclusion of Korean schools from the tuition-waiver program as follows:

As a result of an examination as to whether Korean schools satisfy the requirements for eligibility for the tuition-waiver program (high school tuition support fund), it became clear that those schools are closely related to the Chongryon (chosen-soren) and are under the influence of the association concerning their educational content, personnel affairs and finances. Therefore, it was not found that those schools conform with one of the criteria for designation, “proper school management based on laws and regulations,” and it was concluded that they do not satisfy the requirements for eligibility for the tuition-waiver program.²⁸ If ... diplomatic relations with North Korea are resumed in the future, their eligibility will be re-examined under the current system.²⁹

III. Legal Framework

1. Related ICERD Articles and the CERD Committee General Recommendations

The most relevant article pertaining to Korean schools and the high school tuition-waiver program is Article 5(e)(v).

The CERD Committee General Recommendation 30 recommends “[removing] obstacles that prevent the enjoyment of economic, social and cultural rights by non-citizens, notably in the areas of education, housing, employment and health.”³⁰

2. Positions of the CERD Committee and Other UN Bodies

In its 2010 Concluding Observations, the CERD Committee expressed its concern about acts that have discriminatory effects on children’s education including (1) the differential treatment of schools for foreigners and descendants of Koreans in Japan,

²⁷ *Id* at ¶134.

²⁸ The Government of Japan, Replies of Japan to the List of Issues of the Human Rights Committee (March 6, 2014), CCPR/C/JPN/Q/6/Add.1. (“2014 Japan’s Reply to the Human Rights Committee List of Issues”) at ¶29.

²⁹ *Id* at ¶30

³⁰ CERD Committee General Recommendations 30 at ¶29.

with regard to public assistance, subsidies and tax exemptions, and (2) the approach of some politicians suggesting the exclusion of North Korean schools from current proposals for legislative change in the State party to make high school education tuition free of charge in public and private high schools, technical colleges and various institutions with comparable high school curricula.³¹

In addition, the CERD Committee recommended that, “in the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, [. . .] the State party ensure that there is no discrimination in the provision of educational opportunities and that no child residing in the territory of the State party faces obstacles in connection with school enrollment and the achievement of compulsory education” and that “the State party to consider providing adequate opportunities for minority groups to receive instruction in or of their language.”³²

In its Concluding Observations, the Committee on Economic, Social and Cultural Rights (“CESCR Committee”) also expressed its concern “at the exclusion of Korean schools from the State party’s tuition-waiver programme for high school education, which constitutes discrimination.”³³ The CESCR Committee thus recommended the following: “Recalling that the prohibition against discrimination applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination, the Committee calls on the State party to ensure that the tuition-waiver programme for high school education is extended to children attending Korean schools.”³⁴

IV. Background Information

1. History and Development of Korean Schools (chōsen gakkō)

Following the end of World War II, Koreans residing in Japan established Korean schools to educate their children. Today, Korean schools are located throughout Japan, also maintaining relations with the DPRK with which Japan has no diplomatic relation. Classes are taught mostly in Korean at Korean schools and, though Korean history and society are parts of curricula, education on Japanese history and the structure of Japanese society suggests a degree of similarity with the Japanese education system.

³¹ CERD 2010 Concluding Observations at ¶22.

³² *Id.*

³³ CESCR Committee, Concluding Observations, Japan (June 10, 2013) E/C.12/JPN/CO/3 at ¶16.

³⁴ *Id.*

In Japan, facilities in which foreign nationals provide independent education in their native language, including Korean schools, cannot be authorized schools because “school” is defined as an educational facility that uses certified textbooks written in the Japanese language (Fundamental Law of Education Articles 1, 34, and 62). As is the case with driving schools, however, facilities that provide education similar to school education can be authorized as “miscellaneous schools” by a prefectural governor, and many of educational facilities intended for foreign nationals, including Korean schools, fall under the category of miscellaneous schools under prefectural governor's authorization.

Foreign schools, including Korean schools, cannot receive subsidies from the national treasury except for the high school tuition-waiver program. While foreign schools are receiving some financial support from local governments (with varying amounts), the amount given is dramatically lower than that given to Japanese schools.

Moreover, Korean schools receive various forms of discriminatory treatment: (1) graduates of Korean schools are ineligible for entrance exams for Japanese universities, and (2) contrary to donations to international schools with authorization from Western evaluation organizations, donations to Korean schools are excluded from preferential tax treatment.³⁵

2. Exclusion From the High School Tuition-waiver Program

As described in **II** above, Japan introduced the high school tuition-waiver programme in April 2010. While the program covered foreign schools authorized as miscellaneous schools, Korean schools were the only ones excluded from its coverage.

Eligibility for the high school tuition-waiver program for foreign schools is approved by any of the three categories between (a) and (c) in the Japanese government report shown in **II**. Korean schools do not satisfy category (a) on the grounds that, in the absence of a diplomatic relation with the DPRK, the country's curricula cannot be certified; without authorization from any internationally recognized school evaluation organizations, Korean schools do not satisfy category (b); accordingly, Korean schools must (c) be recognized by the Minister of Education, Culture, Sports, Science, and Technology in order to become eligible for the high school tuition-waiver program.

Although ten Korean schools had applied for recognition until the application deadline (November 30, 2010), the Minister failed to offer a conclusion for more than two years. Meanwhile, two other foreign schools that submitted their application after

³⁵ CERD 2010 Concluding Observations at ¶22.

the Korean schools became recipients of the high school tuition-waiver program through a designated process.

Moreover, on February 20, 2013, the Minister of Education, Culture, Sports, Science, and Technology revised the ministerial code to remove (c), excluding Korean schools from the program. Upon the ministerial code revision, the Minister stated his view that “it is not possible to expect people's understanding for Korean schools at this point considering the fact that the abduction issues have not seen much progress and that the schools' intimate relationship with the General Association of Korean Residents has an influence on their education content, human resources, and fiscal policy.” Also, Japanese government explicitly states in its March 2014 reply to the list of issues from the Human Rights Committee that if diplomatic relations with North Korea are resumed in the future, eligibility of Korean schools for the program will be re-examined under the current system.³⁶ It is clear that the revision of administrative rules was influenced by the political situation with the DPRK.

Due to the above measure, approximately 3,000 high school graduates of Korean schools were estimated to be excluded from the high school tuition-waiver program, and as of July 24, 2014, approximately 1,800 high school students are estimated to be excluded from the high school tuition-waiver program.

The exclusion of *Zainichi* Korean students from the high school tuition-waiver program has disparate impact against Koreans in Japan, and the diplomatic tension with North Korea cannot justify such discriminatory treatment against children who are not to blame for the political situation.

3. Decrease in Financial Support from Local Governments

While prefectures and municipalities had long been providing Korean schools with financial support, their support has started to dwindle or be terminated in the wake of the high school tuition-waiver program's exclusion of Korean schools. Specifically, the termination of financial support by Osaka Prefecture and the city of Osaka in 2011 triggered a nation-wide movement for termination and abolishment of financial support, with the result that 9 out of twenty-seven prefectures with Korean schools did not include financial support for Korean schools in their 2013 budgets. (**Appendix**). There is also a growing movement for halting financial support at the municipal level. Many local governments cite the DPRK's nuclear programs and lack of progress in abduction

³⁶ 2014 Japan's Reply to the Human Rights Committee List of Issues at ¶29.

issues as reasons for halting financial support, and it is clear that political considerations are influencing the governments' decision to halt financial support.

To extend the responsibilities for foreign political incidents, over which children have no power, is a violation of the right to education of *Zainichi* Koreans attending Korean schools.

V. Suggested Recommendations

Children's universal right to education should not be affected by a diplomatic situation with any particular country. For reasons stated above, LAZAK request the CERD Committee to issue the following recommendation to the Japanese government:

- The Japanese government shall include Korean schools as recipients of the high school tuition-waiver program.
- The Japanese government shall ensure that local governments shall retract their decision to halt or abolish financial support to Korean schools.

Appendix

The list of Japan's local governments that cut the subsidies for Korean schools (2009 - 2013)

	2009	2010	2011	2012	2013
Name of Local Government (start year of subsidy)	Total amount of subsidy	Total amount of subsidy	Total amount of subsidy	Total amount of subsidy	Total amount of subsidy
Tokyo (1995)	23.5 million	0 (Included in the budget)	0 (Included in the budget)	0 (Excluded from the budget)	0 (Excluded from the budget)
Saitama (1982)	9 million	0 (Included in the budget)	0 (Included in the budget)	0 (Included in the budget)	0 (Excluded from the budget)
Osaka (1988)	185 million	87 million	0 (Excluded from the budget)	0 (Excluded from the budget)	0 (Excluded from the budget)
Miyagi (1992)	1.5 million	1.5 million	0 (Included in the budget)	0 (Excluded from the budget)	0 (Excluded from the budget)
Chiba (1985)	5.6 million	5.6 million	0 (Excluded from the budget)	0 (Excluded from the budget)	0 (Excluded from the budget)
Hiroshima (1992)	13.8 million	10.1 million	9.6 million	0 (Included in the budget)	0 (Excluded from the budget)
Niigata (1993)	11.5 million	11 million	11 million	0 (Included in the budget)	0 (Included in the budget)
Kanagawa (1977)	72.5 million	63 million	63 million	63 million	0 (Excluded from the budget)
Yamaguchi (1992)	2.4 million	2.4 million	2.3 million	2.2 million	0 (Excluded from the budget)

*Based on a survey by Human Rights Association for Korean Residents in Japan (HURAK)
All the currency unit is Japanese yen (1 euro ⇨138 yen, 1 dollar ⇨101 yen [as of 2 July 2014])*

Hate Speech Targeting Koreans in Japan

I. Issue Summary

Hate crimes and hate speech targeting ethnic minorities, especially Koreans in Japan, have become a grave problem recently. The Japanese government, however, has not taken any specific measures to prevent hate speech against minorities. Nor has it conducted any studies on hate speech. Rampant hate speech cannot be controlled through the voluntary effort of civil society. The Japanese government should withdraw its reservation on Article 4(a) and 4(b) of the ICERD and take effective measures to regulate hate speech.

II. Japanese Government Response

The Japanese government has made reservations on Article 4(a) and 4(b) of the ICERD. In its report submitted to the CERD Committee, the Japanese government reported that it “does not believe that, in present-day Japan, racist thoughts are disseminated and racial discrimination is incited, to the extent that the withdrawal of its reservations or legislation to impose punishment against dissemination of racist thoughts and other acts should be considered, especially at the risk of unduly stifling legitimate speech.”³⁷ The Japanese government has reported that it will conduct various activities through the Human Rights Organs of the Ministry of Justice, and will “take up issues of foreign national’s rights more frequently at various training sessions.”³⁸

III. Legal Framework

1. Related ICERD Articles and the CERD Committee General Recommendations

The most relevant articles pertaining to hate speech are Article 2.1, Article 4 and Article 5(a) and 5(b) of the ICERD. The Japanese government has made reservations on Article 4(a) and 4(b) to the effect that “Japan fulfills the obligations under those provisions to the extent that fulfillment of the obligations is compatible with the guarantee of the rights to freedom of assembly, association and expression and other

³⁷ Japan CERD Report 2013 at ¶84.

³⁸ 2014 Japan’s Reply to the Human Rights Committee List of Issues at ¶80.

rights under the Constitution of Japan”. The most relevant CERD Committee General Recommendations pertaining to hate speech are 30 (Discrimination against Non-citizens) and 35 (Combatting racist hate speech).

2. Positions of the CERD Committee and Other UN Bodies

In its 2010 Concluding Observations, the CERD Committee encouraged the Japanese government to examine the need to maintain its reservations to Article 4 (a) and 4(b) of the ICERD.³⁹ Specifically, the CERD Committee recommended the Japanese government to take the following three actions to prevent hate speech:⁴⁰

- (a) Remedy the absence of legislation to give full effect to the provisions against discrimination under article 4;
- (b) Ensure that relevant constitutional, civil and criminal law provisions are effectively implemented, including through additional steps to address hateful and racist manifestations by, inter alia, stepping up efforts to investigate them and punish those involved;
- (c) Increase sensitization and awareness-raising campaigns against the dissemination of racist ideas and to prevent racially motivated offences including hate speech and racist propaganda on the Internet.

In its 2014 Concluding Observations, the Human Rights Committee “expresses concern at the widespread racist discourse against members of minority groups, such as Koreans...inciting hatred and discrimination against them, and insufficient protection granted against these acts in the criminal and civil code. The Human Rights Committee also expresses concern at the high number of extremist demonstrations authorized, the harassment and violence perpetrated against minorities, including against foreign students”.⁴¹ Specifically, the Human Rights Committee recommended the Japanese government to take the following three actions to prevent hate speech:⁴²

³⁹ CERD 2010 Concluding Observations at ¶13.

⁴⁰ *Id.*

⁴¹ Human Rights Committee, Concluding Observations (Advance Unedited Version), Japan, (July 24, 2014) CCPR/C/JPN/CO/6 at ¶12.

⁴² *Id.*

- (a) Prohibit all propaganda advocating racial superiority or hatred that incites to discrimination, hostility or violence, and should prohibit demonstrations that intended to disseminate such propaganda.
- (b) Allocate sufficient resources for awareness-raising campaigns against racism and increase its efforts to ensure that judges, prosecutors and police officials are trained to be able to detect hate and racially motivated crimes;
- (c) Take all necessary steps to prevent racist attacks and to ensure that the alleged perpetrators are thoroughly investigated and prosecuted and, if convicted, punished with appropriate sanctions.

IV. Background Information

1. Rise of Xenophobia in Japan

Xenophobia targeting ethnic minorities, primarily Koreans, has spread rapidly in Japan since the 2000s. Anonymous discriminatory remarks against ethnic minorities, especially Koreans, are rampant on the Internet. Hostile demonstrations and rallies targeting Korean residents in Japan have been gathering steam.

Xenophobic groups have mobilized members through the Internet and have repeatedly held demonstrations and rallies filled with hate speech and intimidation against Koreans. A group called “Zaitokukai” is the largest among them. The group, formed in 2006, aims to deprive of special permanent residency status those long-term Koreans and Chinese residents who are descendants of individuals forced to live in Japan before WWII, and the group opposes granting these residents various rights including welfare entitlements. As of July 24, 2014, its membership has grown to more than 14,000 and its branches are located in various regions in Japan⁴³.

Zaitokukai, in collaboration with other xenophobic groups, has repeatedly held demonstrations and rallies filled with hate speech and intimidation against Korean communities, including Korean schools and Korean towns (examples of xenophobic demonstrations are described in Section 2. **Cases – Escalation of Hate Speech**). These xenophobic groups have spread their ideas and gained support through the Internet by announcing demonstrations and attacks beforehand, encouraging

⁴³ Zaitokukai’s website, available at <http://www.zaitokukai.info>. Note that member registration is free of charge, and does not require personal information (such as real name or physical address) except for an e-mail address.

participation, and releasing videos filmed by group members of their hate speech and attacks on various websites.

One of the main reasons for the recent rise of xenophobic movements against Korean residents in Japan is the Japanese government's failure to take effective measures to prevent racial discrimination against Korean residents and its ongoing discriminatory policies against those residents. For example, in its 2001 Concluding Observations, the CERD Committee expressed concern about discrimination affecting the Korean minority and made recommendations such as penalizing racial discrimination and taking measures to prevent high-level public officials from making discriminatory statements.⁴⁴ The Japanese government, however, did not take these measures. The discriminatory policies and discriminatory statements by high-level public officials continue. In 2010, the CERD Committee made similar recommendations, including the adoption of legislation outlawing direct and indirect racial discrimination and taking measures to prevent high-level public officials from making discriminatory statements.⁴⁵ Between 2001 and 2010, especially after the abduction of Japanese citizens by the DPRK government was officially revealed during the Japan-DPRK summit of September 2002, hatred against the DPRK has been fueled by media. In response, the Japanese government reinforced its discriminatory policies against Koreans in various ways, such as excluding Korean schools from the government's tuition-waiver program beginning in 2010. This strengthening of institutional discrimination against Korean residents by the government coupled with media coverage inciting hatred and discrimination against Koreans have encouraged and fueled the activities of xenophobic movements.

2. Cases – Escalation of Hate Speech

Xenophobic groups, such as Zaitokukai, have recently mobilized hundreds of people and held marches and rallies blasting hate speech in Korean towns, mainly in Tokyo and Osaka. A group of scholars found that in 2013 there were at least 360 instances of street marches or vehicles mounted with loudspeakers blasting hate-filled slogans all around Japan.⁴⁶

The marches and rallies are regularly filmed by the organizers of

⁴⁴ CERD Committee, Concluding Observations, Japan (April 27, 2001) CERD/C/304/Add.114 at ¶12.

⁴⁵ CERD 2010 Concluding Observations at ¶9.

⁴⁶ Norikoe Net homepage: <http://www.norikoenet.org/fact.html>. Norikoe Net was established in September 2013 having co-representatives of Korean human rights activists, former prime minister, lawyers, researchers etc.

demonstrations and rallies, and videos are released on the web by group members. Many videos are publicly accessible as of 24 July 2014. Below are examples of hate speech and hate crimes targeting Koreans in Japan.

(1) Hate Crime Targeting Koreans Schools in Kyoto

On 4 December 2009, members of Zaitokukai and other xenophobic groups showed up in front of the gate of Daiichi Kyoto Korean primary school and blasting hate speech using microphones. They also damaged school facilities such as a platform and a speaker. They said, for example:⁴⁷

“Korean schools, they aren’t school at all!”, “You are North Korean institute for training spies!”, “Promises are only made between humans, so nothing can be made between humans and Koreans!”, or “Go back to the Korean Peninsula, and eat shit!”

These members of xenophobic groups have again rallied around the school chanting hate speech on 14 January and 28 March 2010. Police officers were present on the site but took no action to prevent the hate speech.

The school filed a criminal complaint, and four perpetrators were arrested and prosecuted with the crimes of obstruction of business by force, contempt and property damage. They were convicted at the Kyoto District Court and were sentenced to one to two years imprisonment with probation. The sentence is almost the same as the similar criminal cases that do not involve racial motivation, and discriminatory motivation was not at all reflected in the judgment.

Meanwhile, the Korean School sued Zaitokukai and participants of the demonstrations in front of the school for compensation and an injunction against rallies using hate speech around the school. The Kyoto District Court in October 2013 issued a judgment granting compensation and an injunction against demonstrations within 200 meters of the school. The court found that the demonstration was motivated by racial bias and considered such bias as an aggravating factor to increase the amount of compensation under Article 6 of the ICERD. This is the very first judgment by the Japanese judiciary in which an act of hate speech was recognized as racial discrimination. The judgment of the Kyoto District Court has also pointed out that acts of hate speech targeting an unspecified number of persons or groups cannot be addressed under the current legal system in Japan, unless a new law is enacted. The case was

⁴⁷ For video of Zaitokukai’s attack on Korean schools in Kyoto with English subtitles, see <https://www.youtube.com/watch?v=8C1NbntrWDI>.

appealed by the members of xenophobic groups but the Osaka High Court affirmed the judgment on 8 July 2014. The members of xenophobic groups appealed the ruling, and the case is pending at the Supreme Court as of 20 July 2014.

(2) Hate Speech Referring to a “Massacre” of Koreans in Osaka Korean Town

Xenophobic groups organized a hate speech demonstration on February 24, 2013 in Tsuruhashi, a Korea town located in Osaka. Around 100 supporters gathered and blasted hate speech targeting Koreans over loudspeakers. They said, for example:⁴⁸

“Koreans are cockroaches and they must get out of Japan!” “Koreans are prostitutes who will do anything for money!” “Korean residents are illegal immigrants and criminals!” “Fucking Koreans must die!” “If [Koreans] behave with this arrogance further, [we Japanese] will carry out Tsuruhashi Massacre like Nanking Massacre!”⁴⁹

Police officers were present on the site but took no action to prevent the hate speech of the participants.

(3) Hate Speech Referring to “Extermination” and “Gas Chambers” in Tokyo Korean Town

Xenophobic groups organized a hate speech demonstration on February 9, 2013 in Shin-Okubo, a Korea town located in Tokyo. Around 200 supporters gathered and blasted hate speech targeting Koreans over loudspeakers. For example, they said:⁵⁰

“Koreans are parasites, cockroaches and criminals. Koreans are the enemy of Japan!” “Get maggot Koreans out of Japan!” “Koreans are murderers and rapists!” “Exterminate Koreans!” “Clear the land of Shin-Okubo and make it a gas chamber! Get Koreans into the gas chambers!”

Police officers were present on the site but again condoned the hate speech of the participants. These demonstrations have been repeatedly organized and at least nine of them were held in Shin-Okubo between January 2013 and June 2013. The most recent demonstration was organized on 11 May 2014 in Shinjuku, only 200 meters away from the Korea town in Shin-Okubo.

⁴⁸ <https://www.youtube.com/watch?v=xq8oAZ0sQLM>

⁴⁹ <https://www.youtube.com/watch?v=GoTBRpcaZS0>

⁵⁰ https://www.youtube.com/watch?v=4ySNSac_X_w

3. Damage and Harm of Hate Speech

Due to hate speech made by xenophobic organizations, many Korean residents in Japan feel physically threatened. In addition, hate speech has a huge negative psychological impact especially among Korean students. Korean immigrants are not the only victims of hate speech; naturalized Korean Japanese and their descendants, who have lived as Japanese nationals and hold Japanese nationality, also feel threatened by hate speech targeting Koreans. According to a survey of around 200 young generation Korean residents and Korean Japanese under 30 years old, conducted by Organization of United Korean Youth in Japan (Zainichi Korean Seinen Rengo) between June 2013 to March 2014, around one-third of them reported changes in their lifestyles to avoid hate speech such as avoiding discussions on history about Korea or Japan and avoiding expression of their opinions on the Internet. Loss of self-esteem was also reported. For example, responses included “I became fearful of Japanese people”, “I tend to avoid being known to Japanese people as Korean or Korean Japanese”, and “I feel negative about my Koreanness”.⁵¹

In addition, after the hate speech demonstrations became common, the number of customers visiting Korea towns dropped sharply, and the sales of Korean restaurants and Korean shops in Korea towns plummeted accordingly. For example, the number of Japanese customers visiting Shin-Okubo in 2014 was less than one-third of the number in 2012. More than 150 Korean stores and restaurants in Shin-Okubo have closed or changed ownership over the past year and a half.

4. Japanese Government’s Complicity and Inaction

Despite widespread hate speech and its enormous damage to Korean residents, the Japanese government has not taken any effective measures to prevent hate speech. Under Articles 2.1(b)(d) and 4(c) of the ICERD, the Japanese government should not permit public facilities to be used by xenophobic groups inciting racial discrimination. However, the Japanese government not only ignores the provisions of the ICERD but also condones and protects activities of xenophobic groups by avoiding the application of current laws.

In its March 2014 reply to the list of issues from the Human Rights Committee, the Japanese government has reported that it will conduct various activities through the

⁵¹ Organization of United Korean Youth in Japan (Zainichi Korean Seinen Rengo), “Questionnaire about Discrimination against Korean Youths Regarding Hate Speech Against Korean Residents and Internet Use (Interim Report) (June 2014)

Human Rights Organs of the Ministry of Justice and will “take up issues of foreign national’s rights more frequently at various training sessions.”⁵²

While the Human Rights Organs of the Ministry of Justice have conducted various training for decades, it has not sufficiently prevented hate speech or discrimination against ethnic minorities. Rather, hate speech has recently been widespread throughout Japan. In addition, the Japanese government has not yet conducted research on the situation or on the gravity of hate speech with respect to the number of participants, the participating organizations, the time and place of demonstrations, the content of hate speech, the response of police officers, or the damage and harm to hate speech victims. It is clear that the measures taken by the government are not effective to prevent hate speech.

Japan has not yet enacted any legislation to regulate hate speech. The Japanese government has argued that there is no need for additional legislation to prevent discriminatory speech because (i) if discriminatory ideas are aimed at a certain individual or group, it is possible to penalize them under existing crimes such as the crime of defamation, insult, damage to reputation/obstruction of business, or the crime of intimidation under the Penal Code, and (ii) a claim for damages is also possible under the Civil Code.⁵³

As for civil suits, there are too many hurdles for victims to bring a lawsuit. First, it normally takes several years to obtain final adjudication in a civil case. Second, victims have to bear the cost of legal fees. Third, victims bear the burden of proving all elements of any tort claims. Fourth, victims may be targeted for subsequent hate speech attacks if their personal information becomes public by bringing a lawsuit. Finally, few court cases take discriminatory motive into account as a factor to increase damages.

As for criminal cases, the Penal Code only criminalizes acts such as defamation and insults directed at specific individuals. Hate speech targeting Koreans or Chinese as a whole is not covered by the Penal Code. Thus, hate speech repeated in Korean towns in Tokyo and Osaka such as speech threatening to “exterminate Koreans” cannot be regulated under the existing law.

Even if speech is directed at a certain individual or group, current law is insufficient to ensure protection for hate speech victims. Under the current Japanese laws, although victims can file a complaint with the police or prosecutors, prosecutors have discretion as to whether or not to bring an action, and they are reluctant to do so.

⁵² 2014 Reply to the Human Rights Committee List of Issues at ¶80.

⁵³ The Government of Japan, Comments of States Parties on the concluding observations adopted by the Committee: A. The initial and second periodic reports of Japan, CERD A/56/18 at ¶5 and 6.

Also, even in the case where the crimes listed in the current Penal Code such as defamation and obstruction of business can be applied, the police tend to avoid applying the Code against participants of hate speech demonstrations.

What is worse, the police have conducted investigations and arrests against the members of the civil society organizations participating in the counter-racism movements which have been active since around 2013. This police practice has chilled such counter-racism demonstrations by civil society organizations. In many scenes of hate speech demonstrations, a group of police officers protected the participants of hate speech demonstrations by preventing the participants of counter-racism demonstration from approaching the former. Police officers, crossing arms, surround the participants of counter-racism demonstrations. When participants of counter-racism demonstrations protest against the police officers, the police forcibly take them to the place away from hate speech demonstrations. If they do not stop protesting, the police officers strongly instruct them to “stop the provocative activities”. If they do not stop, the police issue warnings to arrest the participants of counter-racism demonstrations. In sum, the police tend to protect xenophobic demonstrations and suppress civil society organizations’ protests against hate speech. By doing so, the Japanese government condones and implicitly protects hate speech used in xenophobic demonstrations and rallies.

V. Suggested Recommendations

LAZAK suggests that the CERD Committee issue the following recommendations to the Japanese government in its concluding observations:

- Withdraw its reservations on Article 4(a) and 4(b) of the ICERD.
- Comply with Articles 2.1 and 4(c) of the ICERD. Specifically, prohibit the use of public facilities by groups promoting or inciting racial discrimination.
- Acknowledge the severity of the issue and the increases both in number of hate speech cases and in gravity of such cases, and conduct a thorough research on discriminations against ethnic minorities, especially hate speech.
- Acknowledge that hate speech is a crime or an illegal act, and take concrete measures to combat hate speech. Such measures include the enactment of laws prohibiting all forms of discrimination and acts of hate speech.
- Prepare and implement a concrete national action plan for education addressing the issue of hate speech that incorporates international human rights standards.