

# JAPAN

NGO Report

to the Committee on Civil and Political Rights

in advance of the review of

the seventh periodic report of JAPAN ( CCPR/C/JPN/7 )

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Right to Participate in Public Life

It Is Not Discriminative Not to Give Local Suffrage

to Foreign Nationals

自治基本条例に反対する会

[ Civil Society against Basic Autonomy Ordinance ]

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President MURATA Haruki

## **Right to Participate in Public Life**

### **It Is Not Discriminative Not to Give Local Suffrage to Foreign Nationals**

#### **1. Relevant Article of ICCPR and paragraphs of the Government report**

- Article 25 of ICCPR
- “Reply to paragraph 28 of the list of issues” paragraph 223, 224 and 225 of the seventh periodic report of JAPAN (CCPR/C/JPN/7)

#### **2. Main Points**

- (a) In Japan, as soon as a person acquires nationality, all political rights are given to him/her. This is the most advanced and impartial system in the world.
- (b) In Japan any person is eligible to acquire Japanese nationality, regardless of race, color of skin, genealogy or racial or ethnic origin. There exists no discrimination in the acquisition of nationality.
- (c) Article 25 of ICCPR states “Every citizen shall have the right and the opportunity  
“. Regarding political rights and local suffrage in Japan, the relationship between Japanese nationals and foreign nationals is equivalent to the “*distinctions*” between citizens and non-citizens as stated in Article 1-2 of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).  
*Article 1-2. This Convention shall not apply to distinctions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.*

Therefore, it is not at all discriminative not to give local suffrage to foreign nationals in Japan. (Underlined by the author)

#### **3. Background**

##### **(a) The Constitution of Japan does not allow foreign nationals local suffrage.**

The assertion made by those who promote to give foreign nationals local suffrage is full of fallacies. The greatest ground for their assertion is Article 93 Section-2 of the Constitution of Japan, which states that “the residents of local government bodies shall directly elect officials of each local government body.” They maintain: “From

this provision, the meaning of ‘residents’ here is not thus limited to persons who hold Japanese nationality.”

However, this interpretation of the Constitution is wrong. This Constitution was promulgated in 1946, less than a year after Japan was defeated in World War II. The Japanese Archipelagoes was rendered scorched land. At that time, residents in Japan from former colonial countries, mainly two-million Koreans, hoped to return to their newly independent homeland. None of them thought of using suffrage in Japan.

“Residents of local government bodies” stated in Article 93 Section-2 does not at all suppose that foreigners are included. The true meaning of Section-2 is “the residents not of other local governments but Japanese residents residing in that local government shall elect officials of that local government.” Namely, residents of a certain local government are not eligible to elect officials of other local government.

**(b) The Supreme Court decision does not allow foreign nationals to use local suffrage.**

Those who promote local suffrage for foreign nationals also rely on the Supreme Court decision dated February 28, 1995, made in the legal action concerning the election of a local government by “special permanent residents” of Korean residents in Japan who were born in Japan and have established their lives in Japanese society:

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

However, their assertion is false and sophistic. In 1990, “special permanent residents” of Korean residents in Japan filed opposition to each of the electoral administrative committees of Osaka City, asking election committees to register them on the electoral roster, based on Article 24 of the Public Offices Election Act. The electoral administrative committees turned down this opposition and in November 1990, Korean residents in Japan filed a law suit at the Osaka District Court, asking

the decision of turndown to be cancelled. As a result, on June 29, 1993, plaintiff's claim was rejected, On February 28, 1995, the Supreme Court turned down the appeal. The main part of the verdict is as follows:

*“The Constitution stipulates, based on the principle of the people’s sovereignty, that the right to ultimately decide appointment and dismissal of officials lies in the people. It is stipulated in the Preamble and Article 1 of the Constitution that sovereignty rests on “Japanese nationals”. The people as stated in terms of the principle of the people’s sovereignty clearly means Japanese nationals or the people with Japanese nationality. In this context, the stipulation of Article 15 Section-1 of the Constitution, which guarantees the right to elect and discharge officials, applies in the nature of the right, strictly to Japanese nationals, and it is reasonable to interpret that the guarantee of the right abovementioned does not extend to foreign residents in Japan.” (Underlined by the author)*

**(c) It is a universal fact that suffrage is the people’s proper right. In addition, it is easy to acquire nationality in Japan.**

As mentioned before, it is clearly stated in the Constitution and the verdict of the Supreme Court that suffrage including local one is proper to the people. This is the same of the United States, China, Russia and many other countries. In Germany and France, suffrage is mutually admitted only within the EU countries, but not in relations with countries outside the EU.

In Japan, moreover, the acquisition of nationality is a very easy process and every year several thousand people apply for Japanese nationality, of whom 95% or more are accepted and acquire nationality. There are only six conditions necessary for the acquisition as stated below:

The Nationality Law Article5. (\*1)

- (i) *Having continuously had a domicile in Japan for five years or more;*
- (ii) *Being twenty years of age or more and having the capacity to act according to his/her national law;*
- (iii) *Being a person of good conduct;*
- (iv) *Being able to make a living through his/her own assets or abilities, or through those of a spouse or of another relative his/her making a living with;*
- (v) *Not having a nationality or having to give up his/her nationality due to the acquisition of Japanese nationality; and*

(vi) *On or after the date of promulgation of the Constitution of Japan, not having planned or advocated the destruction of the Constitution of Japan or the government established thereunder with force, and not having formed or joined a political party or other organization planning or advocating the same.*

Moreover, in Japan, as soon as a person acquires Japanese nationality, he/she is fully eligible to use all the political rights. For instance, he/she can run for Diet and hold any public office. In fact, there are several cases of those who became Diet members shortly after the acquisition of Japanese nationality.

#### **4. Conclusions**

It is neither discriminative nor a breach of ICCPR not to give suffrage to foreign nationals in Japan. If only a person acquires the nationality, he/she can use all political rights.

Note:

(\*1) The Nationality Law      <http://www.moj.go.jp/ENGLISH/information/tnl-01.html>