

Lawyers Association of Zainichi Koreans (LAZAK) Submission to the Universal Periodic Review of Japan (3rd Cycle) on Discrimination against Korean Residents in Japan

March 30, 2017

1. Introduction

As of June 30, 2016, around 400,000 Koreans live in Japan as foreign nationals with permanent resident status¹. Approximately 350,000 are individuals who had been forced to live in Japan in the first half of the twentieth century when Korea was a Japanese colony, and their descendants.

These 350,000 Koreans are 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. In other words, prior to the WWII, Koreans in Japan had the right to vote as Japanese citizens².

Japanese government deprived Korean and Taiwanese residents of their Japanese citizenship without their consent after the Treaty of San Francisco became effective in 1952³⁴.

After depriving Korean residents in Japan of their Japanese nationality, Japanese government has restricted the human rights of Koreans in Japan.

This report describes the conditions of continuing discrimination against Koreans in Japan.

2. Relevant Recommendations from the Second Cycle of UPR

Following are the recommendations from the Second UPR of Japan, which are yet to be effectively implemented: A/HRC/22/14, recommendations 147.34 (Canada), 147.35 (South

¹ In addition, there are Japanese nationals with ethnic-Korean roots. These Korean-Japanese includes persons who naturalized from Koreans to Japanese and their descendants, and persons whose Korean parents or grandparents married Japanese citizens. Japanese government has not collected statistics on Japanese nationals with Korean ethnic roots, and there is no official government statistic for the total number of ethnic Korean residents who have Japanese nationality.

² In fact, prior to 1945, 383 persons living in Japan who originated from the Korean Peninsula ran for office in the National Diet or local assemblies, and 96 of them were elected.

³ Although the Treaty of San Francisco that was concluded in 1952 did not include any specific clause on the citizenship of those Koreans who would continue to reside in Japan, revocation measure was executed under an official notice from the head of the Civil Affairs Bureau in the Ministry of Justice on April 19, 1952. Because this notice was issued without legal basis, it may be in violation of Article 10 of the Constitution of Japan, which states, “the conditions necessary for being a Japanese national shall be determined by law.”

⁴ Supreme Court of Japan has continued to approve the revocation measure. *See* Supreme Court decision of April 5 1961, available at: http://www.courts.go.jp/app/hanrei_en/detail?id=17.

Africa), 147.36 (Switzerland), 147.37(Uzbekistan), 147.40 (Iran (Islamic Republic of)), 147.63 (Cuba), 147.64 (Palestine), 147.84 (Namibia), 147.85 (Norway), 147.91 (Democratic People’s Republic of Korea), 147.92 (Tunisia), 147.160 (Germany), 147.161 (Libyan Arab Jamahiriya), 147.163 (Myanmar), and 147.166 (Sudan). Please refer to **Annex** of this report for the content of each recommendation.

3. Denial of rights as national or ethnic minority

(1) Background

Japanese government has continually denied that Korean residents are national or ethnic minority as defined in Article 27 of the ICCPR or the UN Declaration on Minority Rights⁵. Moreover, Japan has enacted no measures for establishing the conditions necessary for protection and promotion of the cultural and linguistic identity of Korean residents⁶.

(2) Implementation Status

Implementation status: Not implemented (0%)

Evaluation of the Mid-Term report: In the Mid-Term Report, Japanese government did not address Korean residents of Japan as a minority⁷.

(3) Recommendations

- Japanese government should establish a comprehensive basic law for protecting the rights of residents from the former colonies of Japan such as Korean, and their descendants, in order to ensure protection of rights that is generally equivalent to the protection provided to Japanese citizens. The above basic law should recognize Korean residents, and their descendants as minority in accordance with the ICCPR and the UN Declaration on Minority Rights, and should include specific measures for creating the conditions necessary for the protection and promotion of the ethnic, cultural, and linguistic identity

⁵ For example, a government report submitted to the UN Human Rights Committee in 2012 made no mention of Korean residents in the section concerning Article 27 of the International Covenant on Civil and Political Rights. <http://www.mofa.go.jp/mofaj/files/000054775.pdf>

⁶ The position of the Japanese government seems to be that in order for Korean residents to be considered a minority under Article 27 of the ICCPR, they must have Japanese citizenship. This is a violation of international human rights law, as described in paragraph 5 of the General Comment No. 23 issued by the UN Human Rights Committee, which provides that “A State party may not, therefore, restrict the rights under article 27 to its citizens alone.”

⁷ Japanese government reported only on policies related to the Ainu indigenous people with respect to ethnic minority. See “Mid-term Report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review,” January 2017, response to recommendation 161(Libyan Arab Jamahiriya), available at <http://www.mofa.go.jp/mofaj/files/000225031.pdf>

of Korean residents.

- Japanese government should ensure the systematic establishment of ethnic classes at schools which study the language, culture, and history of Koreans in Japan, at a minimum at schools where a certain threshold number of Koreans are enrolled.

4. Lack of a comprehensive anti-discrimination law

(1) Background

Discrimination against Koreans and other foreign nationals or racial and ethnic minorities remains, particularly in the field of housing, employment and marriage⁸.

No survey has been conducted of such discrimination experiences by the Japanese government, and no attempt has been made to make the problems of discrimination based on race or nationality visible⁹.

(2) Implementation Status

Implementation status: Not implemented (0%)

Evaluation of the Mid-Term report: Despite the claim of the Japanese government,¹⁰ Article 14, Paragraph 1 of the Constitution does not serve as a provision for remedying discrimination against Korean residents and other foreigners or racial and ethnic minorities. Regulations that prohibit discrimination in limited fields does not fully address the widespread discrimination based on nationality and race in Japanese society.

Despite to the claim of the Japanese government¹¹, the employees of the Human Rights

⁸ Although neither the national government nor local governments conduct regular investigations of the actual conditions of housing discrimination against foreigners, according to a questionnaire survey conducted of foreign residents in 2009 by the City of Osaka, more than 30% of the foreign residents living in Osaka who responded to the survey reported that they had experienced some kind of discrimination or unpleasant experiences in relation to housing and tenancy, and approximately 40% reported having such experiences in relation to employment and hiring.

⁹ Japanese government conducted its first survey of the actual circumstances of discrimination against foreigners in November 2016, but the result of the survey is not yet published at the time of this submission.

¹⁰ Japanese government claims that Article 14, Paragraph 1 of the Constitution prohibits racial discrimination, and that regulations prohibiting discrimination have been established in highly public fields such as employment, education, medical care and traffic respectively. *See*, the government of Japan, “Mid-term Report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review,” January 2017, response to recommendations 35 (South Africa) and 64 (Palestine), available at <http://www.mofa.go.jp/mofaj/files/000225031.pdf>

¹¹ Japanese government states that the human rights protection organization of the Ministry of Justice has appropriately addressed individual cases of human rights violations. *Id.* Response to recommendations 34 (Canada).

Bureau which handles human rights complaints, and the human rights commissioners who provide short-term consultation regarding individual cases, are all persons who have Japanese nationality, and because they lack sufficient knowledge regarding the actual conditions of discrimination faced by Koreans, other foreigners, and other minorities are reluctant to consult with them. In addition, because the requirements for complaints of human rights violations are narrow, sufficient action is not taken against discrimination on the basis of race or nationality¹². An additional problem is that when a complaint of human rights violation is dismissed, no reason for the dismissal is given to a complainant.

In addition, because the warnings of the Human Rights Bureau do not have a legally binding effect, there are persons who have been issued warnings by the Human Rights Bureau due to racial discrimination or similar reason, and publicly reject the warning and continue to engage in repeated racially discriminatory speech and acts¹³.

(3) Recommendations

- Japanese government should regularly conduct investigations into the actual circumstances of discrimination based on race and nationality, and collect comprehensive, reliable and up-to-date statistical data on socioeconomic indicators, disaggregated by nationality and ethnic origin.
- Japanese government should establish a comprehensive anti-discrimination law that prohibits direct and indirect discrimination based on race. It should also establish an independent domestic human rights organization in accordance with the Paris Principles, so that victims of discrimination based on race or nationality can seek appropriate legal remedies.

5. Korean residents are not even permitted to vote in local elections.

(1) Background

In Japan, the right to vote in both national and local elections is granted only to persons who

¹² In one example, Makoto Sakurai, the former chairman of the racist group called Zaitokukai stood in front of the Tokyo headquarters of the Korean Residents Union in Japan in July 2016, and conducted a street protest that included discriminatory statements against Koreans in Japan such as the following:

"All of you are going back to Korea eventually. Go back now." "The members of the Korean Residents Union should leave Japan immediately." "Look at how many criminal Koreans we have."

Despite this, the complaint of human rights violation that was filed by the Korean Residents Union in Japan was dismissed by the Human Rights Bureau.

¹³ For example, Mr. Sakurai of the Zaitokukai received a warning in December 2015 from the Human Rights Bureau regarding his racially discriminatory behavior in front of Korea University. However he refused to accept it, and distributed a video on the internet of himself as he tore up and threw away the warning.

have Japanese nationality¹⁴. Supreme Court has ruled that the decision of whether or not to grant the right to vote in local elections to Korean residents of Japan rests with the national legislature¹⁵.

Because the Japanese Nationality Act is based on strict blood lineage, a child whose parents are both foreign nationals does not receive Japanese citizenship even if born in Japan. As a result, the descendants of the Korean residents who were stripped of their Japanese citizenship in 1952 do not receive Japanese citizenship unless one of their parents is married to a Japanese person¹⁶.

While the Japan Nationality Act provides for naturalization, the naturalization process has also been administered in an ethnocentric and racist manner¹⁷.

Under this election system and the system of the Nationality Act, Korean residents in Japan do not have the right to vote in either national or local government elections, despite the fact that the majority of them were born, raised, and live in Japan, must pay taxes, and bear all other obligations that Japanese citizens do.

In Republic of Korea, the Public Offices Election Act was revised in 2005, granting the right

¹⁴ Article 9, Paragraph 1 of the Japan Public Offices Election Act prescribes that "Japanese citizens aged 18 years and older have the right to vote for members of the House of Representatives and the House of Councillors". Article 9, Paragraph 2 of the same law prescribes that "Japanese citizens aged 18 years and older who have continuously maintained an address in a municipal district for three months or longer shall have the right to vote for the members and chairperson of that municipal government assembly". Article 11 of the Local Autonomy Act prescribes that "Japanese citizens who are residents of a regular municipality shall, based on the provisions of this Act, have the right to participate in elections of the municipal government to which the citizens belong". Moreover Article 18 of the same law prescribes that "Japanese citizens aged 18 years or older who have continuously maintained an address in a municipal district for three months or longer shall, based on the provisions of other acts, have the right to vote for members and chairperson of the assembly of the municipal government to which the citizens belong".

¹⁵ Supreme Court decision of February 28 1995, available at http://www.courts.go.jp/app/hanrei_en/detail?id=201

¹⁶ Under this Nationality Act, there are 4th generation and 5th generation Korean residents who live in Japan but maintain foreign nationality. In fact, among the Koreans whose Japanese citizenship was revoked in 1952, there are Korean families who have now lived in Japan for more than 100 years.

¹⁷ The government of Japan has unrestricted and broad discretion regarding whether or not to permit naturalization. For example, naturalization procedures had required ethnic and cultural assimilation with the Japanese people, such as requiring that names be changed to Japanese names, as a condition for naturalization until 1990s. While nearly all former colonial powers have established special provisions to ease naturalization requirements for residents from their former colonies, the Japan Nationality Act does not prescribe any. 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. Among OECD member nations, Japan is the only one which adopts a blood lineage system, does not recognize dual citizenships, and provides no voting rights of any kind to foreigners.

to vote in local elections to foreign nationals who have acquired the right of permanent residence. The position of the Japanese government is problematic from the standpoint of reciprocity.

(2) Implementation Status

Implementation status: Not implemented (0%)

Evaluation of the Mid-Term report: Japanese government has not presented any information concerning the right of foreigners to vote in local elections. Denial of local voting rights to former colonial citizens including Korean residents violates article 2 and 26 of the ICCPR, Article 2 and 5(c) of the ICERD, and the UN Declaration on Minority Rights¹⁸.

(3) Recommendation

- In light of the history and actual living conditions, Japanese government should guarantee the right to vote, at least in local government elections, for permanent foreign residents, including residents from the former colonies of Japan such as Korean.

6. Restrictions on the right to engage in public service

(1) Background

Japanese government has taken the position that "Japanese citizenship is a requirement in order to be a public servant who is involved in the exercise of government authority or the formation of public will", and the Supreme Court has supported this interpretation¹⁹. As a result, Korean residents and other foreign nationals cannot become national public servants, and in most local governments, their appointment or promotion to management positions is restricted^{20,21}.

¹⁸ Commentary on the Declaration provides as follows (E/CN.4/Sub.2/AC.5/2005/2, para 50) :

"Barriers to the acquisition of citizenship for members of minorities should be reduced. Forms of participation by resident non-citizens should also be developed, including local voting rights after a certain period of residence and inclusion of elected non-citizen observers in municipal, regional and national legislative and decision-making assemblies"

¹⁹ Supreme Court decision of January 26 2005, available at http://www.courts.go.jp/app/hanrei_en/detail?id=732.

²⁰ In one example, when a nurse who was a Korean resident with special permanent resident status was refused permission to take the management selection examination due to the lack of Japanese citizenship, the Supreme Court ruled that measures which restrict advancement to management positions only to employees who are Japanese citizens are reasonable and valid (Supreme Court decision of January 26 2005, available at: http://www.courts.go.jp/app/hanrei_en/detail?id=732).

²¹ Japanese government has unrestricted and broad discretion regarding whether to permit naturalization. For example, naturalization procedures had required ethnic and cultural assimilation with the Japanese people, such as requiring that names be changed to Japanese names, as a condition for naturalization until recently. Even now, some Koreans have to change their last name at the timing of naturalization, because Japanese government does

In addition, foreign nationals are completely excluded from positions as civil and domestic relations conciliators²², judicial commissioners²³, and fire department personnel, as well as human rights commissioners²⁴, welfare commissioners²⁵, commissioned child welfare volunteers²⁶, and similar public posts.

Excluding all foreign public servants from management positions despite the fact that they have work responsibilities which in no way differ from those of Japanese persons, and possess the same level of abilities, is irrational and represents an excessive limitation on the freedom of foreigners to choose their professions. Moreover, majority of foreign public servants are Koreans who had their citizenship unilaterally revoked in 1952 or their descendants, and most of them were born in Japan, live among Japanese culture, speak perfect Japanese, and have the same community lives as Japanese persons. The different treatment given Koreans in Japan is discrimination based on ethnic origin that violates Article 5 (c) and Article 5 (e) and (i) of the

not allow certain Chinese characters corresponding to names of some Koreans to be used as last names after naturalization. Until now, application for naturalization of some Koreans are denied because of their affiliation of Korean ethnic groups, such as Mindan (Korean residents Union in Japan). 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. While nearly all former colonial powers have established special provisions to ease naturalization requirements for residents from their former colonies, the Japan Nationality Act does not prescribe any. Among OECD member nations, Japan is the only one which adopts a blood lineage system, does not recognize dual citizenships, and provides no voting rights of any kind to foreigners.

²² A civil and domestic relations conciliator is appointed by the Supreme Court from an attorney recommended by a bar association. A civil and domestic relations conciliator is assigned to mediate and coordinate discussions between parties to reach an agreement in the court.

²³ A Judicial commissioner is appointed by a district court from an attorney recommended by a bar association. A judicial commissioner is assigned to act as an assistant of a court to coordinate discussion between parties in a settlement procedure of a summary court.

²⁴ Based on the Civil Rights Commissioner Act, human rights commissioners are civilian volunteers who provide human rights consultations and engage in activities to expand awareness of human rights. The human rights commissioner system was established with the aim of expanding awareness of human rights in a broad range of fields, and protecting human rights to prevent human rights violations in local communities. Although human rights commissioners are not paid, as of January 2017, approximately 14,000 have been commissioned by the Minister of Justice and are assigned to municipalities around the country.

²⁵ Welfare commissioners are commissioned by the Minister of Health, Labor and Welfare, and work for the interests of the residents in local communities by providing consultations and necessary assistance, and by promoting social welfare.

²⁶ Commissioned child welfare volunteers provide consultations, support, and other services for protecting children and responding to concerns over child-raising or during pregnancy so that children in a community can live in good health and safety.

ICERD²⁷.

(2) Implementation Status

Implementation status: Not implemented (0%)

Evaluation of the Mid-Term report: Japanese government has not presented any information concerning the right of foreign nationals to serve in public positions.

(3) Recommendations

- All laws, administrative rules, and operating systems which prohibit the promotion of foreign nationals to local public servant management positions should be abolished.
- All laws, administrative rules, and operating systems which prohibit appointment of foreign nationals to positions as members of mediation committees, judicial commissioners, fire department personnel, and similar posts should be abolished.

7. Hate Speech and Hate Crimes²⁸

(1) Background

Since the start of the 21st century, Japan has seen rapid growth of xenophobia directed at Koreans and other ethnic minorities in Japan. Recently there have been street demonstrations attacking Koreans in Japan organized by xenophobic groups that recruit members via the internet²⁹. Many of the incidents called for the expulsion of or harm to all members of specific ethnic minorities. These demonstrations included hate crimes attacking Korean schools, and repeated calls to "die" and "kill" in areas where many Korean residents of Japan live³⁰. The Internet is filled with anonymous discriminatory postings directed at Koreans and other ethnic minorities.

Japanese government has taken no effective action against the spread of hate speech before 2016. For example, Japan continued to claim that existing laws were sufficient to address hate speech³¹.

²⁷ See CERD/C/JPN/CO/7-9, para13.

²⁸ For the conditions of hate speech in Japan up to July 2014, refer to the following.

http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_NGO_JPN_17699_E.pdf

²⁹ When the Ministry of Justice investigated incidents of hate speech during the period from April 2012 to September 2015, it found a total of 1,152 incidents. Based on this investigation, the Ministry of Justice described hate speech as "not presently subsiding" in the investigation results report that was released in March 2016. <http://www.moj.go.jp/content/001201158.pdf> (available in Japanese language only).

³⁰ For examples in the period up to July 2014, refer to the following shadow report created by LAZAK:

<http://www.lazak.jp/2014/09/10/LAZAK%20%5BCERD%20Shadow%20Report%5D%202014.07.%81iEnglish%20ver%81j.pdf>

³¹ CERD/C/JPN/7-9, para 86.

New law was enacted in June 2016 addressing hate speech against Koreans and other foreigners in Japan³²³³. However this law provides guiding principle only, and contains no provisions that prohibit hate speech. The law prescribes educational activities and the preparation of a consultation system by national and local governments aimed at the elimination of hate speech, however it has not yet led to any specific measures for educational activities or creation of a consultation system on either local or national government level.

Following the establishment of the law, street protests inciting discrimination against Koreans and other foreigners continue to take place³⁴. There is widespread false information about crimes committed by persons of Korean or Chinese ancestry at the times of earthquakes or other disasters³⁵.

Even following the enactment of this law, almost no action has been taken against the flood of hate speech on the Internet targeting Koreans in Japan. Recently in particular, there have been numerous incidents of false news that were created to incite discrimination against Koreans in Japan³⁶.

³² The new law was established thanks to advocacy activities by Koreans in Japan and their supporters, and international pressure including recommendations from the UN treaty bodies. For the recommendations of the Human Rights Committee, refer to CCPR/C/JPN/CO/6, para 12. For the recommendations of the Committee on the Elimination of Racial Discrimination, refer to CERD/C/JPN/CO/7-9, para 11.

³³ Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan. English text of the law is available at: http://www.moj.go.jp/ENGLISH/m_jinken04_00001.html

³⁴ In one example, Makoto Sakurai, the former chairman of the racist group Zaitokukai in July 2016 stood in front of the Tokyo headquarters of the Korean Residents Union in Japan and conducted a street protest that included discriminatory statements against Koreans in Japan. He made discriminatory statements such as the following:

"All of you are going back to Korea eventually. Go back now." "The members of the Korean Residents Union should leave Japan immediately." "Look at how many criminal Koreans we have."

³⁵ For example, when the Great East Japan Earthquake occurred in March 2011, rumors circulated on SNS among those affected by the disaster claiming that gangs of foreign thieves were rampaging through the affected areas, and that foreigners were looting money and property from dead bodies. According to the results of a survey conducted by scholars, 51.6% of survey respondents said that they had heard rumors of crimes committed by foreigners in the disaster-affected areas, and 86.2% believed this information. In fact, the Japanese police confirm that these rumors were not true and that public order was maintained. See Julian Ryall, "Rumours after 2011 Japan earthquake pinned blame on Chinese, Koreans for crimes that didn't happen," South China Morning Post, March 16 2017, available at:

<http://www.scmp.com/print/news/asia/east-asia/article/2079137/rumours-after-2011-japan-earthquake-pinned-blame-chinese-koreans>

³⁶ In one example, an article published in January 2017 falsely claimed that a Korean man had raped two Japanese girls in a department store but was found innocent by a Korean court. The article circulated on the Internet and was shared approximately 20,000 times on Twitter and Facebook. See Kota Hatachi, Daichi Ito, and Craig

In addition, media and corporations frequently spread information that encourage discrimination against Koreans in Japan³⁷. Neither central nor local government has taken any concrete action against online hate speech and fake news inciting discrimination against Korean residents.

(2) Implementation Status

Implementation status: Partially implemented

Evaluation of the Mid-Term report: The establishment of the law in June 2016 is not sufficient to eliminate hate speech. Despite the claim of the Japanese government³⁸, Japan does

Silverman, “This Unemployed Guy Made Japanese Fake News And Ended Up Losing A Bunch Of Money”, BuzzFeed News, Feb 9 2017, available at:

https://www.buzzfeed.com/kotahatachi/fake-in-japan?utm_term=.dxR4bNjbb#.tkvXYLvYY

³⁷ For example, a subsidiary of DHC Corporation – a major Japanese cosmetics manufacturer – created an informational program which falsely suggested that certain Koreans living in Japan were secretly responsible for crimes and acts of terrorism despite a complete lack of any supporting facts. This program was broadcast on the station Tokyo MX. See PHILIP BRASOR, “Japan enters the post-truth age with distorted MXTV report on Okinawa protests,” The Japan Times, Feb 4 2017, available at:

<http://www.japantimes.co.jp/news/2017/02/04/national/media-national/japan-enters-post-truth-age-distorted-mxtv-report-okinawa-protests/#.WNeaYBjCP-Y>

In another example, at Fuji Corporation in Osaka, since around 2013, an employee submitted a daily work report with comments that incited discrimination against Koreans living in Japan such as the following:

[Koreans] are a lying people ... Koreans never take responsibility for their lies ... I am shocked by the deductions they get as special privileges for living in Japan. They do not pay resident tax or income tax, and get money illegally through the problematic public assistance system. For these people living in Japan, I think Japan must truly be a comfortable country. Because their lives are being supported by hard-working Japanese people, we should end the special privileges that produce conditions like reverse discrimination

The report was then distributed to all employees by the company president. See Daniel Krieger and Noriko Norica-Panayota Kitano, “Japan combats rise in hate speech,” Aljazeera America, Nov 30 2015, available at <http://america.aljazeera.com/articles/2015/11/30/japan-encounters-rise-in-hate-speech.html>

In February 2017, it became clear that the managers of a kindergarten in the city of Osaka handed parents copies of a statement slurring Korean residents of Japan and Chinese, describing Korean residents and Chinese people as those with “wicked ideas,” calling the latter shinajin, a derogatory term for Chinese. See Kyodo, “Nationalist Osaka preschool draws heat for distributing slurs against Koreans and Chinese,” The Japan Times, Feb 17, 2017, available at:

<http://www.japantimes.co.jp/news/2017/02/17/national/osaka-preschool-scrutinized-passing-slurs-koreans-chinese/>

³⁸ Japanese government claims that “The Government of Japan recognizes that racially discriminatory motive is proven as vicious motive accordingly in the criminal trials in Japan and that the court takes it into consideration in sentencing.” See, the government of Japan, “Mid-term Report on the progress made in the implementation of the recommendations issued at the second cycle of the Universal Periodic Review,” January 2017, response to

not have a hate crime law that would require heavier sentences for crimes that are based on racially discriminatory motives, and whether or not to consider discriminatory motives is left to the discretion of the judge. LAZAK has been unable to find any cases of crimes committed against Koreans in Japan in which consideration of racially discriminatory motive resulted in a heavier than usual sentence.

(3) Recommendations

- Based on the anti-hate speech law, the national and local governments should take actions to establish consultation systems and carry out educational activities effectively. The necessary resources for carrying out the above activities should be allocated.
- The national and local governments should prohibit demonstrations, gatherings, use of public facilities, and other acts by organizations that encourage or incite racial discrimination.
- For hate speech on the internet, the national and local governments should create a system which can order internet-providers and other entities to delete hate speech without waiting for the affected group to file a claim. The national and local governments should create a system which, in the case of false information that incites discrimination against minority groups, will declare that the information is false immediately at the time when the false nature of the information becomes known, and which can order internet-providers and other entities to delete such information.
- Japanese government should withdraw its reservations on subparagraphs (a) and (b) of Article 4 of ICERD. It should recognize hate speech is an illegal act or crime that must be punished under the law, and endeavor to formulate legislation that directly and legally restricts and punishes this behavior.

8. Exclusion of Korean Schools from the High School Tuition-waiver Program

(1) Background

(i) Exclusion of Korean Schools from the High School Tuition-waiver Program

Following the end of World War II, Koreans residing in Japan established Korean schools to educate their children³⁹. Classes are taught mostly in Korean at Korean schools and, Korean history and society are parts of curricula⁴⁰.

recommendation 34 (Canada), available at <http://www.mofa.go.jp/mofaj/files/000225031.pdf>.

³⁹ Nowadays, Korean schools are located throughout Japan, also maintaining relations with the DPRK with which Japan has no diplomatic relation.

⁴⁰ But education on Japanese history and the structure of Japanese society suggests a degree of similarity with the Japanese education system.

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.

Japan introduced 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.

This program covered students who attend 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 affiliation⁴².

Although foreign schools have been also covered by the tuition free program⁴³, Korean schools

⁴¹ 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, 49,62,70 and 82). However, as is the case with driving schools, 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.

⁴² Article 2, item 5 of the Law to provide high school enrollment support fund, and article, and Article 1 section 2 of the implementing regulations of the Law.

⁴³ Foreign schools are covered by the tuition free program, if the school meet one of the following three criteria: (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 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). 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.

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.” It is clear that the revision of administrative rules was influenced by the political situation with

were excluded from the high school tuition-waiver program because of the diplomatic tension with the DPRK.

As of July 2016, approximately 3,000 high school graduates of Korean schools were estimated to be excluded from the high school tuition-waiver program, many high school students are excluded from the high school tuition-waiver program as of now.

The exclusion of Korean students from the high school tuition-waiver program because of the diplomatic tension with the DPRK is racial discrimination against the right to education⁴⁴.

(ii) Decrease in Financial Support from Local Government

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 support⁴⁵, with the result that 8 out of twenty-seven prefectures with Korean schools did not include financial support for Korean schools in their 2013 budgets. 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 issues as reasons for halting financial support, and it is clear that political considerations are influencing the governments' decision to halt financial support. In March 2016, Education Minister issued the guideline, saying local governments should be more cautious about providing subsidies to Korean schools, and Ibaraki prefecture stopped subsidy after the guideline.

To extend the responsibilities for foreign political incidents, over which children have no power, is a violation of the right to education of Korean residents attending Korean schools⁴⁶.

(2) Implementation Status

Implementation status: Not implemented (0%)

Evaluation of the Mid-Term report: Japanese government has not presented any information concerning exclusion of Korean schools from tuition-waiver program, or decrease in financial support from local government.

(3) Recommendations

- The Japanese government shall include Korean schools as recipients of the high school tuition-waiver program.

the DPRK.

⁴⁴ CERD/C/JPN/CO/7-9, para 19.

⁴⁵ Osaka Korean School brought a lawsuit against the Osaka Prefecture and the Osaka city seeking the cancellation of administrative activities which stopped the subsidy to the Korean School. On 26th January, 2017, the Osaka District Court ruled a decision to reject all of the Osaka Korean School's claims. The case is pending at the Osaka High Court.

⁴⁶ CERD/C/JPN/CO/7-9, para 19.

- The Japanese government shall ensure that local governments shall retract their decision to halt or abolish financial support to Korean schools and must resume financial support to Korean schools.