Joint NGO Report

for the Human Rights Committee

in response to the List of Issues Prior to Reporting
CCPR/C/JP/QPR/7

<PART 2>

submitted by Japan NGO Network for the Elimination of Racial Discrimination (ERD Net)

November 2020

Japan NGO Network for the Elimination of Racial Discrimination (ERD Net) is a network of NGOs working for the elimination of racial discrimination in Japan. Since the launch of networking in 2007, it has continually intervened the review of human rights situations of Japan by the HR Committee, CERD and other UN human rights mechanisms.

Contact: International Movement Against All Forms of Discrimination and Racism (IMADR）
imadrjc@imadr.org

NGOs contributing to the Report

The International Movement Against All Forms of Discrimination and Racism (IMADR)
Japan Network towards Human Rights Legislation for Non-Japanese Nationals & Ethnic Minorities
Solidarity Network with Migrants Japan (SMJ)
Human Rights Association for Korean Residents in Japan
Research-Action Institute for Ethnic Korean Residents (RAIK)
Korea NGO Center
Center for Minority Issues and Mission
Buraku Liberation League (BLL)
Association of Indigenous Peoples in the Ryukyus (AIPR)
All Okinawa Council for Human Right (AOCHR)
JNATIP Japan Network Against Trafficking In Persons
Japan Lawyers Network for Refugees
Kanagawa MINTOREN
Yokohama City Liaison Committee for Abolition of the Nationality Clause
Hyogo Association for Human Rights of Foreign Residents
National Network for the Total Abolition of the Pension Citizenship Clause

(in random order)

Joint NGO Report of ERD Net <PART 2>

Table of CONTENTS

reference	issue	page
LOIPR para 28	Right to participate in local politics	3
LOIPR para 29	Rights of minorities – Ryukyus as indigenous	5
LOIPR para 30	**RIGHTS of MINORITIES** - Exclusion of Korean high school students	8
LOIPR para 30	Discrimination against minorities under the COVID-19 pandemic	12
LOIPR para 30	Exclusion of tuition-free measures to preschool facilities	14
LOIPR para 30	Minority status and rights of ethnic Korean residents	16
LOIPR para 30	Right of re-entry to Japan of ethnic Korean residents	19
LOIPR para 30	Denial of the right to ethnic education	22
LOIPR para 30	Restriction on the appointment of foreign nationals as local governmental employees	24
LOIPR para 30	Discrimination in the appointment of foreign nationals as teacher	26
LOIPR para 30	Exclusion of older ethnic Korean residents from the pension system	27
Article 26	Equality before the law – racial profiling	30
Article 26	Unequal treatment of migrants in the emergency measures	32
Article 12	Unequal treatment of migrants at the border in the COVID-19 pandemic	34

1. Related paragraphs and articles: LOIPR para 28, Right to participate in public life (arts. 25 and 26)

2. Issues: Denial of the right to participation in local politics, and to vote in referenda

3. Suggested recommendations:

1) State party is recommended to recognize the right of foreign residents, including ethnic Korean residents who satisfy certain requirements on resident status and age, to participate in local politics as part of the right to participation in political life.

2) State party is recommended to dismiss the "obvious legal principle" used to justify the nationality requirement, excluding foreign residents from participating in local political life and assuming public roles in local communities.

4. Background:

Denial of the right to participation in local politics

The Government of Japan does not guarantee the right to participate in local politics for foreign residents with permanent resident status (1,105,665 persons as of end of December 2019), including ethnic Korean residents.

The Local Autonomy Act in Japan defines "resident" in Article 10 as "a person who has a residence within an area of a municipality shall be the resident of that municipality as well as of the prefecture in which the municipality is located." Also, with the repeal of the Alien Registration Act in July 2012, foreign nationals who reside in Japan for over 3 months with a registered address are registered in the Basic Resident Register along with Japanese nationals. Article 10 of the Local Autonomy Act also stipulates that residents have the right to receive services provided by the municipality they belong on an equal basis as well as the obligation to share the burdens as stipulated by law. Based on this article, the participation of foreign residents in local politics should be recognized as a right.

The right of foreign residents including ethnic Korean residents to participation in local politics has been under discussion since the 1990s. The Supreme Court in its judgement in February 1995 stated that the Constitution did not prohibit the granting of the right to participate in local politics to foreign residents. But Article 11 of the Local Autonomy Act limits the exercise of the right to participate in local politics to "residents of municipalities who are Japanese nationals," and excludes the participation of foreign residents.

The problem is not just about the inability of foreign residents to exercise the right to vote and be elected in local elections. At the local level, specially appointed part-time (unpaid) national civil servants performing public roles such as Human Rights Volunteers, Welfare Commissioners and Child Welfare Volunteers are selected from the local residents. Yet, they are selected from the registered voters' list. Foreign residents, therefore, are unable to assume such public roles and participate in the local community.

The right of foreign residents with permanent and long-term resident status, including ethnic Korean residents, to participate in local politics, as well as to be selected to positions such as Human Rights Volunteers, Welfare Commissioners and Child Welfare Volunteers must be guaranteed.

Denial of right to vote in referenda

In addition to elections of heads or members of councils of local governments, various municipalities are holding "referenda" to ask for the residents' views on important policy matters that have a direct impact on their lives, such as mergers and abolishment of municipalities, construction of public facilities, construction of

nuclear power plants, and waste disposal. Because local referenda are held according to local ordinances legislated by the municipalities, some allow the participation of foreign residents. In 2002, a referendum was held on the merger of municipalities in Maibara, Shiga Prefecture, and foreign residents with permanent resident status were allowed to vote for the first time. In two and half years since then, foreign residents with permanent resident status were allowed to vote in referenda on the mergers or abolishment of municipalities in approximately 150 municipalities. In Osaka Prefecture, which has the largest population of ethnic Korean residents in Japan, so far 7 municipalities have held referenda in which foreign residents with permanent resident status were allowed to vote.

However, the participation of foreign residents in local referenda is not a right guaranteed by law in Japan. Whether foreign residents can vote or not is determined by the discretion of the local municipality which is holding a referendum. This is the reason why foreign residents continue to be excluded from some referenda on important policy matters at the local level.

A referendum was held in November 2020 on whether to reorganize Osaka City into 4 special wards and to merge the City with Osaka Prefecture to create an Osaka Metropolis. The population of Osaka City was approximately 2.73 million as of end of December 2019, of which 146,000 (5.3%) were foreign residents. Yet, foreign residents were not allowed to take part in this vote on whether Osaka City would be effectively dismantled or maintained which would have a serious impact on the lives of the residents. The reasons for the exclusion explained by Osaka City was that the referendum was based on the Act on the Creation of Special Wards in Large Urban Areas legislated by the national government, and according to its provisions, the voters in the referendum is limited to people with the right to vote under the Public Officers Election Act.

A civil society campaign calling for the amendment to the Act to enable foreign residents to participate in the planned referendum in Osaka City was organized, collecting 32,000 signatures in support. Despite such efforts, Osaka City Mayor Ichiro Matsui said at a press conference, that “if you want to participate in the referendum, you should get a Japanese nationality,” and emphasized his stance of excluding foreign residents. The right of all foreign residents with permanent and long-term resident status including ethnic Korean residents to participate in local referenda should be guaranteed.

5. Prepared by: Korea NGO Center

1. **Related paragraphs and articles:** LOIPR para 29, Rights of minorities

2. **Issues:** Failure by the government of Japan to recognise the peoples in the Ryukyus as indigenous and their rights for self-determination

3. Suggested recommendations:

1) State party is recommended to recognise the peoples in the Ryukyus, including those in the Amami archipelago, which was a part of the Ryukyu kingdom, as indigenous and protect, respect, promote and realise their rights in full accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
2) State party is recommended to implement, promptly and thoroughly, all recommendations issued by the UN Treaty Bodies in this regard.
3) State party is recommended to take all measures to precisely explain about the languages, culture and history, including the discrimination suffered by the peoples in the Ryukyus, in the textbooks used at least in the compulsory education in Japan. Promptly take measures to preserve, record and inherit indigenous languages including through interviews to their speakers.
4) State party is recommended to immediately stop militarisation of the lands of the peoples in the Ryukyus and start de-militarisation process. In particular, immediately halt and cancel the construction of the new US airbase in Henoko, Nago city, for which no consent is given by the peoples in the Ryukyus.
5) State party is recommended to carry out comprehensive study about the gravity and the impact including situation of the victims, concerning crimes, accidents and environmental destruction committed and caused by US military and their personnel, and, if necessary with the government of the US, provide appropriate remedies to all victims.
6) State party is recommended to take appropriate measures, with the view to prevent reoccurrence of these incidents, carry out comprehensive consultation in cooperation with the representatives of the peoples in the Ryukyus and take appropriate measures that reflects the views of the peoples in the Ryukyus.

4. Background:

Various problems addressed by the questions of the Committee in the §29 of the LOIPR is attributed to the fundamental issue that the Government of Japan has so far failed to recognise the peoples in the Ryukyus as indigenous and protect their right to self-determination. The Association of the Indigenous Peoples in the Ryukyus (AIPR) has been submitting reports to different UN bodies including Treaty Bodies explaining historical context and highlighting human rights violations suffered by the peoples in the Ryukyus[1].

Although recommendations were issued by these bodies to Japan, to recognise the peoples in the Ryukyus as indigenous, each time Japan was reviewed by these bodies, the Government of Japan has so far completely failed to do so. In contrast, the Government of Japan is still rejecting to recognize the peoples in the Ryukyus as indigenous, whereby labelling them merely “residents of Okinawa prefecture” or “nationals of Japan” and completely failing to understand the crucial difference between ethnicity and nationality and the importance of the proper recognition of the indigenous peoples. At the same time, the failure of Japan to properly and clearly recognize the peoples in the Ryukyus as indigenous contributed to the confusion among the UN Treaty Bodies that used terms such as “Okinawa (Ryukyu)” or “Ryukyu/Okinawa” referring to the indigenous peoples in the Ryukyus. “Okinawa” is merely the name of the prefecture, unilaterally given by Japan to a part of the Ryukyu kingdom after it colonized the kingdom, while also being the name of the biggest island in the Ryukyu

archipelago (Okinawa island).

Today, there are many migrants from Japan (Yamato) living in the Ryukyu archipelago, which are included in the Okinawa prefecture, as such recognizing themselves as residents of Okinawa (prefecture). It is therefore quite important and crucial that proper distinction is made between "peoples in the Ryukyus" who are indigenous and "residents of Okinawa (prefecture)" who are not indigenous, by all parties including the Human Rights Committee and other Treaty Bodies. There are no indigenous peoples of "Okinawa (prefecture)". Against this backdrop, the rights of the peoples in the Ryukyus to self-determination is far from realization and related problems concerning their land, resource and education in their languages are deteriorating.

In particular, in February 2018, the Government of Japan has pushed through the landfill into the Henoko-Oura Bay, Nago city in the Okinawa island in the Ryukyus, despite the opposition from the peoples in the Ryukyus. The area including the bay is declared as "Hope Spot" by a US-based NGO "Mission Blue" in recognition of the area's significant biodiversity, and rare coral populations.[2] It is concerned that the landfill pushed through by the Government of Japan in the Bay will cause severe red soil erosion, water pollution as well as impact on the fishery as due to the change in the tide. If the new airbase is constructed on the site reclaimed from the Henoko-Oura Bay, the base i.e. its land will be claimed as the one belonging to the Government of Japan and offered to the US military. By the occupation and usage of the base as well as surrounding area by the US military, the peoples in the Ryukyus will lose access to the land, sea and air space in the area, which will have significant impact on the life as well as cultural activities of the peoples.

Furthermore, due to the concentration of the presence and bases of the US military in the Okinawa island, peoples on the island have been suffering from the crimes and accidents caused by the US military. Cases highlighted in the below table are those recorded since 2017, but they are merely the tip of the iceberg.

Incident/ Crimes committed by US military personnel

2020.05 Armed robbery by two US military personnel (army and air force) at the currency exchange in the Chatan Township [3]

2020.05 Assault against a women by a US military personnel in a restaurant in the Okinawa city [4]

2019.04 Murder of a women by a US marine personnel in the Chatan township [5]

2018.09 Invasion into a private property (house) by a drunk and half-naked US military personnel in Yomitan village, a female high school student and her 5-month-old sister had to run away barefoot [6]

Accidents caused by US military personnel

2020.07 Wildfire caused by real ammunition shooting exercise at the camp Hansen in the Okinawa island [7]

2020.01 Fall of practice materials thrown out during parachute exercise on the private land outside the US airbase in the Iejima [8]

2019.12 Landing of three star shells shot by 60mm mortar on the private land in the Kin township [9]

2019.06 Fall of parts of the US military CH53R large transport helicopter on the ground of a junior high school in Urazoe city[10]

2018.06 Clash of a F-15 fighter belonging to US military Kadena base on the sea near Naha city[11]

In addition, pollution of drinking water by the organofluoride compound (per- and polyfluoroalkyl substances, PFAS) including perfluorooctanesulfonic acid (PFOS) related to the US military bases has been problematic. In April 2020, there was an incident at the US Futenma airbase whereby in total, 227,100 liter of

form extinguisher including PFOS leaked, of which 143,830 liter has leaked to outside the base.[12] Concerns over the issue of water pollution as well as other problems caused by the US military have been raised since long time. However, no decisive measures or solutions are found due to the obstacles related to the US Japan Status of Forces Agreement (SOFA) and non-disclosure of relevant information by the US military.

In Japan, the number of persons who do not have any knowledge about the indigenous peoples in general, or about indigenous peoples in the Ryukyus and their history, is increasing due to the lack of proper education and especially the failure of the Government of Japan to recognize the peoples in the Ryukyus as indigenous.

Concerning the indigenous languages in the Ryukyus, four are listed as "definitely endangered" and two as "severely endangered" by the UNESCO.[13] While the number of the speakers of these languages is decreasing, combined with their aging, the Government of Japan has not taken any measures to preserve, record or inherit these languages at all. As the languages are dying, it is urgently required from the Government of Japan to not only carry out study on the actual situation of these languages, but also to take concrete measures including interview surveys with speakers of the indigenous languages, to preserve, record and inherit them. It is also needed that proper understanding is taught in the compulsory education in Japan about the concept of indigenous peoples in accordance with international standards, about the indigenous people of Ainu as well as in the Ryukyus, including their history, languages and culture.

5. **Prepared by:** Association of Indigenous Peoples in the Ryukyus (AIPR)

---

[1] Alternative report to the Committee on the Elimination of Racial Discrimination (CERD) for the review of 10th and 11th periodic of Japan (CERD/C/JPN10-11)96th session (6-30 August 2018) July 2018 (p.1-4): https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_NGO_JPN_32100_E.pdf; Alternative report to the UN Human Rights Committee For the adoption of the List of Issues Prior to Reporting (LOIPR) on JAPAN At the 121st session of the Committee (16 October 10 November 2017); Joint Civil Society Report on Racial Discrimination in japan to the Committee on the Elimination on Racial Discrimination(CERD) for its Consideration of the Tenth and Eleventh Combined Periodic Report of Japan(CERD/C?JPN/10-11), August 2018: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/JPN/INT_CERD_NGO_JPN_31918_E.pdf

[2] https://storymaps.arcgis.com/stories/2bb54fad01b34076a9ce8cb885533958

[3] https://ryukyushimpo.jp/news/entry-1160005.html (Japanese)

[4] https://ryukyushimpo.jp/news/entry-1131020.html

[5] https://ryukyushimpo.jp/news/entry-977065.html

[6] https://www.okinawatimes.co.jp/articles/-/317555

[7] https://ryukyushimpo.jp/news/entry-1153255.html

[8] Page not found

[9] https://www.asahi.com/articles/ASMD563K3MD5TPOB008.html

[10] Page not found

[11] https://www.okinawatimes.co.jp/articles/-/265235

[12] https://www.okinawatimes.co.jp/articles/-/560194

[13] http://www.unesco.org/languages-atlas/index.php

1. Related paras and articles: LOIPR para 30, Rights of minorities, arts. 26 and 27

2. Issues: The exclusion of Korean school students from the High School Tuition Support Fund Program

3. Suggested recommendations:

State party is recommended to revises its position concerning funding from the High School Tuition Support Fund Program to ensure that Korean school students have equal educational opportunities without any discrimination.

4. Background:

The Government of Japan has excluded students of ten Korean high schools from the Tuition Support Fund Program started in 2010, while it has included students of other forty-two foreign schools such as Chinese and Brazilian schools.[1] As of March 2020, the number of Korean school students the Government excluded from the Program reached several thousands, and the total amount of damage exceeded one billion yen (approx. 9,447,150 USD). The Committee on the Rights of the Child (CRC), the Committee on Economic, Social, and Cultural Rights (CESCR), and the Committee on the Elimination of Racial Discrimination (CERD) have issued recommendations in total five times urging the Government to rectify the discrimination against Korean school students.[2] Two countries have issued similar recommendations to the Government at the twenty-eighth session of Universal Periodic Review (UPR).[3]

The Government states that Korean schools are "currently not eligible for the Support System as they are not confirmed to meet the criteria stipulated by the relevant laws and regulations" in its Seventh Periodic report.[4] The report also states that the decision "has nothing to do with the nationality of students or political or diplomatic considerations."[5] However, we consider that it is false for two reasons below.

First of all, the Government postponed the application of the Program to Korean school students for political and diplomatic reasons such as the military tension between Japan and the Korean peninsula, while applying the Program to students of other foreign schools. The Government legally excluded Korean school students from the Program in February 2013 by revising its ministerial ordinance that deleted the third category for foreign schools, which had been the criteria for applying the Program to Korean school students. That is to say, the deletion of the criteria by the Government was the exact reason for its exclusion of Korean school students

---

1 The Japanese government has expanded compulsory education to high school level since 2010 by enforcing "Tuition Waiver and Tuition Support Fund Program for High School Education", which exempted tuition fees for students of Japanese public high school and provided funds equivalent to tuition fees of Japanese public high school for students of private high schools, including technical schools and foreign schools that are accredited as "miscellaneous school".

As for foreign schools, they were categorized into three types to be the subject of the Program, which were (i) a school whose curriculum is equivalent to the one of high school in its native country, (ii) an international school certified by the international educational evaluation institution, (iii) a school the Minister of Education certified that it has curriculum equivalent to the one of high school level. The Government has designated twenty national schools such as Chinese and Brazilian as the first category and 22 international schools as the second category as subjects of the Program as of March 2020.

2 See CRC/C/JPN/CO/4-5, para 39 (c), CERD/C/JPN/CO/10-11, para 22, CERD/C/JPN/CO/7-9, para 19, E/C.12/JPN/CO/3, para27, CERD/C/JPN/CO/3-6, para 22(e).

3 See A/HRC/37/15, para161.145, para161.151.

4 See CCPR/C/JPN/7, para 235

5 Ibid.

from the Program. Masahiko Shibayama, the then Minister of the Ministry of Education, Culture, Sports, Science and Technology (MEXT), stated in the Diet in March 2019 as follows, "We will not designate Korean schools as the recipients of the Program regardless of the existence of the confirmation whether the schools carry out appropriate school management under the relevant regulations, because we deleted the provision under which the schools made the application of the Support Fund."[6] The Government acknowledged that it shut the door for Korean schools to apply for the Program because it deleted the criteria for the schools.

Secondly, the Government stated that it would delete the criteria because "there is no progress of the Abduction issue (between Japan and DPR Korea)."[7] [8] It meant that it excluded Korean schools from the Program for political and diplomatic reasons contrary to its report.[9]

In conclusion, the reason for the exclusion of Korean school students from the Program lies the deletion of the criteria by the Government based on political and diplomatic issues. The act of the Government has denied the rights of Korean school students for more than ten years to have equal educational opportunities.

5. Submitted by: Human Rights Association for Korean Residents in Japan

---

6 See https://kokkai.ndl.go.jp/#/detail?minId=119815104X00320190319&spkNum=33&single (Written in Japanese).

7 In September 2002, the leader of the DPRK met with the Prime Minister of Japan in Pyongyang and officially apologized for abducting Japanese nationals in the 1970-80s. Since then, harsh DPRK-bashing has occurred all over Japan. It caused hate speeches and hate crimes against Zainichi Koreans and Korean school children.

8 At the press conference by Hakubun Shimomura, the then Minister of MEXT, on 28th Dec 2012. See https://warp.ndl.go.jp/info:ndljp/pid/11373293/www.mext.go.jp/b_menu/daijin/detail/1329446.htm (Written in Japanese).

9 Regarding this issue, the Japan Federation of Bar Associations (JFBA) issued the presidential statement, which urged the MEXT to withdraw the deletion of criteria. JFBA stated in the statement that the deletion of criteria refuses to provide subsidies based on being no progress to resolve the abduction issue, which has nothing to do with the right of the child to receive education (See Annex 1). The Japan Times, one of the leading English Newspapers in Japan, said in its editorials in 2013 that the exclusion of Korean schools from the Program constitutes discrimination and that the Government should withdraw the decision to exclude the schools (See Annex 2).

Annex 1

Statement of President of the Japan Federation of Bar Associations objecting to exclusion of Korean Schools from applying Free High School tuition policy

The Ministry of Education, Culture, Sports, Science and Technology (MEXT) announced a proposed amendment to ministerial ordinance on December 28th, 2012, which amends a part of enforcement regulations regarding tuition waiver for public high schools and tuition support fund for private high schools. As for the high schools where foreign students are enrolled such as international schools and ethnic schools, the current enforcement regulations define the subject for the policy as either high schools that are confirmed through its embassy to have curriculum equivalent to that of high schools in its native state, or high schools that are certified by international evaluation body, while the rest of the schools that are evaluated as having curriculum equivalent to that of Japanese high schools can be the recipient of the subsidies, whether or not Japan has diplomatic relations with its native state, after the minister of the MEXT designates each school individually. The proposed amendment is to delete the grounds for the individual designation.

Regarding the purpose of this revision, the minister of MEXT, Hakubun Shimomura, stated at the press conference on December 28th, 2012, that the proposed amendment is aimed at deleting the grounds for designating Korean schools because there is no progress to resolve the Democratic People's Republic of Korea's (DPRK) abduction of Japanese citizens, which makes it clear that this proposed amendment is aimed at excluding Korean Schools from applying the Tuition Waiver Program for High School Education.

As we stated in the "Statement on Subject High Schools of the Free Tuition Bill" on March 5th, 2010, the main purpose of this bill is "to contribute to the creation of equal educational opportunities by alleviating the financial burdens of high school education", which is also demanded by Article 28 of Convention on the Rights of the Child. Considering the fact that Convention on the Rights of the Child as well as International Bill of Human Rights (International Covenant on Civil and Political Rights) guarantee the right to receive education with ethnic identity being maintained, the current ministerial ordinance which would include international schools and ethnic schools is in a right direction. Furthermore, it is revealed through the process of the deliberation on the bill that, as the Government's collective view, the designation of high schools for foreign students should not be judged by diplomatic concern but should be judged objectively through educational perspective.

On the contrary this proposed amendment is to refuse to provide subsidies based on the grounds that there being no diplomatic relations between Japan and DPRK or no progress to resolve the DPRK's abduction issue, either of which has nothing to do with the right of the child to receive education. It is a discriminative treatment which is prohibited by Article 14 of the Constitution of Japan.

Korean Schools in Japan completed applying for the designation based on the current bill legitimately by the end of November, 2011, this upcoming amendment is to extinguish the regulations considered as the grounds for applying and refuse the Korean Schools' application retroactively after more than two years from the application, which poses serious doubt on its procedure.

The Japan Federation of Bar Associations strongly urges that the proposed amendment be withdrawn whilst the review of the application from Korean schools be concluded promptly based on the current law and screening standard.

February 1st, 2013
Kenji Yamagishi
President of Japan Federation of Bar Associations

Annex 2

Students are not political pawns

Because of North Korea's provocations following its third nuclear test on Feb. 12, the general affairs section of the board of education of Tokyo's Machida City on March 27 made a unilateral decision — unknown to board members or the city assembly — to not provide personal safety alarms to students at a pro-North Korean school in the city.

After reports of the decision surfaced April 4, the board of education was inundated with protest telephone calls and emails, prompting it to reverse the decision. On Monday, the first day of the new school year, the board sent alarms to the Nishi-Tokyo Korean Second Elementary and Junior High School, where 68 students study.

Even if the decision was made without the knowledge of the city government and the members of the board of education, they must accept responsibility for the poor judgment shown by the general affairs section, which smacked of discrimination against students of the Korean school. The head and workers of the general affairs section should be disciplined for their actions.

According to the school, the general affairs section's chief and other employees visited the school on March 28 and cited the current political situation and citizens' feelings stemming from North Korea's provocations as the reason for not providing alarms to its students. In doing so they demonstrated their complete failure to understand the principle that all students must be treated equally regardless of their nationality or ethnicity.

It should have been clear to them that punishing children in Japan for the provocative actions of Pyongyang is both utterly ludicrous and ethically repugnant.

In 2004, the board started providing safety alarms, each costing around ¥300, to first-year students of municipally run elementary schools. In a threatening situation, children activate the alarm, which sets off a loud noise to attract help.

The board has been giving out the alarms to students of private schools and the Korean school upon request. In February, the Korean school asked the board for 45 alarms.

After the board received more than 1,300 protest telephone calls and email messages, the board members held an emergency meeting and reversed the original decision by the general affairs section. They should be praised for their quick action to uphold the principle that it is the board of education's responsibility to ensure the safety of all children living in Machida City. They also agreed that the general affairs section should have consulted with them before making its original decision.

What happened in Machida is part of a bigger, very disturbing trend that is sweeping the country. Several prefectural governments have stopped subsidizing pro-North Korean schools. On Feb. 20, the Abe administration excluded pro-North Korean high schools from the government's tuition-waiver program. These decisions should be reversed. It is wrong to use children as political pawns, and doing so will only fan anti-Korean discrimination in Japan.

Treat all students equally

The education ministry on Feb. 20 revised an ordinance to exclude so-called Korean high schools or pro-North Korea high schools from the government's tuition-waiver program. This change will cause various problems.

First of all, the revision violates the principle of an education program designed to ensure that all high school students in Japan receive an education regardless of the financial condition of their families. Excluding children attending Korean high schools also violates the principle of equality under the law as stipulated by Article 14 of the Constitution.

The government will have difficulty justifying the decision as not discriminatory to students of Korean high schools because the tuition-waiver program covers so-called international schools and schools with close ties to China and South Korea as well.

The decision could also fan prejudice and intolerance in Japanese society toward people who have different views, especially with regard to historical issues.

Education minister Mr. Hakubun Shimomura said on Dec. 28 that the government would not be able to get the public to support a tuition-waiver program that includes pro-North Korea schools, because they have close ties with the General Association of Korean Residents in Japan (Chongryon), which acts as North Korea's de facto diplomatic mission in Tokyo, and because there has been no progress toward resolving the issue of Japanese nationals abducted by North Korean agents in the 1970s and '80s.

The Democratic Party of Japan government introduced the tuition-free program from fiscal 2010. There are 12 Korean high schools in Japan with about 1,800 students, including both South Korean and Japanese nationals, but two of the schools are virtually closed. Most national and private universities regard graduates of these high schools as having the same qualification as graduates of Japanese high schools and allow them to take their entrance exams.

The DPJ government chose not to act on the tuition waiver for Korean high schools while it was in power. The education ministry's move last week reflects Prime Minister Shinzo Abe's tough stance against North Korea's rocket launches and nuclear-weapons tests as well as the abduction issue.

Even if pro-North Korea high schools were covered by the tuition-waiver program, the schools themselves would not be financially supported by the Japanese government. The beneficiaries are individual children who have to pay tuition. The ministry's decision targets them.

Children attending Korean high schools have had nothing to do with North Korea's nuclear weapons program or the abduction of Japanese nationals. Excluding them will not help to resolve these problems. The right of foreign residents of Japan to study their own languages and history of their countries at schools they have established also should be upheld. That said, it would be helpful if Korean schools made greater efforts to make themselves transparent through class visits and other activities.

The government should heed the words of Mr. Shigeru Yokota, the father of Ms. Megumi Yokota, who was abducted in 1978 by a North Korean agent. Tokyo Shimbun quoted him as saying: "It is unreasonable to discriminate against second- and third-generation Koreans living legally in Japan. I would like Korean schools to sufficiently teach the abduction issue. But I think it is unreasonable to make the children take responsibility (for the abductions)."

The government should also consider what the international community will say about the decision. Criticism of Japan will likely be strong.

1.Related paras and articles: LOIPR para 30, Rights of minorities, article 26 and 27

2. Issues: Discrimination against minorities in the COVID-19 pandemic

3. Suggested recommendation:

The State party is recommended to ensure adequate financial support to minority children without any discrimination concerning measures against the COVID-19 pandemic.

4. Background:

A. Discrimination in the provision of the "Emergency Student Support Handouts for Continuing Studies"

On 19 May 2020, the Government of Japan announced the establishment of the scheme of the Emergency Student Support Handouts for Continuing Studies, which aimed to provide cash handouts to students in higher education institutions who face financial difficulties as a result of the COVID-19 pandemic in order to prevent their school dropouts.[1] We consider that the scheme violated the ICCPR articles 26 and 27 for the following three main reasons.

Firstly, the Government excluded students of Korea University from the list of recipients of the Handouts. When the scheme started, the Government designated students attending universities, junior colleges, technical colleges, vocational schools, and Japanese language institutions as recipients of the Handouts. But it excluded students of Korea University and some departments of foreign universities from the scheme, because they are categorized as "miscellaneous schools" under the School Education Law. The Government eventually included the departments of foreign universities into the scheme, but it maintained the exclusion of Korea University. It was because, according to the Government, the school does not have any scholastic connection with any Japanese universities such as school transfer. However, it has granted graduates of Korea University the qualifications for entering graduate schools in Japan and taking an examination to be a licensed social worker. It suggests that the Government recognizes Korea University as a higher educational institution. The exclusion of students attending Korea University from the scheme can amount to discrimination based on race, ethnic or national origin, since they are ethnic Korean residents ("Zainicih Koreans") who belong to minority groups in Japan.

Secondly, the scheme established additional criteria for international students to have excellent grades. The scheme conditioned that the average grades of international students for the previous school year must be 2.30 or higher to apply for the handout.[2] However, the financial difficulties of international students have nothing to do with their academic performance. This criterion for international students can amount to discrimination based on nationality.[3]

B. Discrimination on the scheme of the "Ensuring learning for primary / secondary and post-secondary students"

On 5 June 2020, the Government of Japan announced a new scheme of the "Ensuring learning for primary/secondary students" to financially support all primary, junior high, high, and special needs education schools in Japan.[4] The aim of the scheme is to provide funds to those schools so that each

school can both ensure the learning of children and take measures to prevent the contagion of COVID-19.

However, the Government unilaterally excluded foreign schools accredited as "miscellaneous schools" from the scheme, despite the fact that it demands all schools including "miscellaneous schools" to refrain from opening their schools under the Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response.[5] The exclusion of foreign schools accredited as "miscellaneous schools" from the scheme for prevention of COVID-19 and for ensuring the learning of children is unreasonable. It can amount to discrimination based on race, ethnic or national origin.

5. Prepared by: Human Rights Association for Korean Residents in Japan

---

[1] Under the scheme, students who are exempt from residence tax can receive 200,000 Japanese yen (approx. 1,857 USD), while students of other households can receive 100,000 Japanese yen (approx. 928 USD). See Emergency Student Support Handout for Continuing Studies: Application Guide (for Students): https://www.mext.go.jp/content/20200527_mxt_gakushi_01_000007490_01.pdf

[2] See page 5 of the Application Guide.

[3] Civil Society in Japan announced a joint statement regarding this issue. See NGO Joint Statement, *Calling for the Provision of the "Cash Handouts to Support Students" to All the Students in Need,* https://imadr.net/wordpress/wp-content/uploads/2020/05/V2-Statement-on-Cash-Handouts-for-Students-in-Need.pdf

[4] See page 2 of the MEXT FY 2020 Second Supplementary Budget: https://www.mext.go.jp/en/content/20200720-mxt_kokusai-000005414_2.pdf

[5] As of May 2019, there are more than 120 foreign schools accredited as "miscellaneous schools" with approximately 25,000 children.

1. **Related paras and articles:** LOIPR para 30, right of minorities (Articles 26 and 27)

2. **Issues:** Exclusion of Tuition-free Measures to Preschool/Daycare Facilities belonging to Foreign National Schools including Korean kindergartens

3. **Suggested recommendations:**

State party is recommended to reexamine its "Tuition-free Measures to Preschool/Daycare Facilities" and take necessary measures to apply them to children attending foreign and national schools.

4. **Background:**

"Tuition-free Measures to Preschool/Daycare Facilities" (hereinafter the "Tuition-free System") came into effect on October 1, 2019[i]. The basic principle of this system is to "provide support to ensure the growth and well-being of all children" (Article 2, paragraph 2 of the Amended Support Act).

In spite of this, in the statutory system, the children who attend preschool/daycare facilities belonging to foreign national schools (e.g. Korean schools, Brazilian schools and international schools) that fall into the category of Miscellaneous Category Schools (Article 134, paragraph 1 of the School Education Act), are ineligible for the "Tuition-free System".[ii]

According to the Japanese government, the ineligibility which these children are subject to has been justified for the reason that "Miscellaneous Category Schools "are providing wildly diverse education without established standards relating to their distinctive schooling including preschool education. Additionally, they are not included in non-licensed childcare facilities as defined in the Child Welfare Act", hence the preschool/daycare facilities belonging to the "Miscellaneous Category Schools" are not deemed "facilities where the quality of preschool education provided is properly guaranteed by law".

Nevertheless, even the non-licensed childcare facilities, which concerns against them had been raised regarding ensuring the quality because of their diverse operations, became eligible for the Tuition-free System by considering the the fact that such facilities offer child care services and early childhood education for children in need and the voices of users. However, foreign and international schools categorized as "miscellaneous schools" are excluded formally from the System without being taking into account such fact, which is nothing but an unreasonable handling.

Excluding the children attending the preschool/daycare facilities of foreign national schools on the ground that these schools are classified as "miscellaneous category", constitutes discrimination, which is prohibited under Article 14 of the Constitution of Japan, Article 2, paragraph 1 of the International Covenant on Civil and Political Rights, Article 2, paragraph 2 of the International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, and Article 2, paragraph 1 of the Convention on the Rights of the Child. Therefore, this discriminatory handling should be amended as soon as possible.

In light of the basic principle of this Tuition-free System that is to "provide support to ensure the growth and well-being of all children", the reason to exclude foreign and national kindergartens, where children belonging to minorities can positively develop their identity through learning languages and cultures of their own roots, cannot be found.

Against this backdrop, children attending foreign and national kindergartens should be included to "Tuition-free System" and necessary measures should be taken including the revision of law[iii].

５． **Prepared by:** Human Rights Association for Korean Residents in Japan

---

[i] Under the “Tuition-free System”, there is no fee for kindergarten, day care centers and centers for early childhood education and care for ages 3 to 5. (For ages 0 to 2, there is no fee for the households with exemptions from municipal residence tax.) For the children between 3 years old to 5 years old using unlicensed childcare institutions, up to 37000-yen is exempt per month for their tuition fees. (As for the children aged 0 to 2 years using unlicensed childcare institutions, only households with exemptions from municipal residence tax are eligible up to 42000-yen exemption per month for their tuition fees.)

[ii]As of May 2019, the number of kindergartens attached to foreign and national schools categorized as miscellaneous schools was 89. 40 out of 89 kindergartens attached to Korean schools. In contrast, the number of child facilities which the “Tuition-free System” are applied is about 55000 whether child facilities are licensed or not. (“School Basic Investigation” by the Minister of Education, Culture, Sports, Science and Technology and “Management Fact-Finding for kindergartens and nurseries”)

[iii] In this connection, at the House of Representatives’ Education, Culture, Sports, Science and Technology Committee meeting held on November 27, 2020, the Minister of Education, Culture, Sports, Science and Technology stated that they would be reviewing through the end of the year how the Government and the municipalities could cooperate to help support the “so-called quasi-preschools” including the Miscellaneous Category Schools, to which the Tuition-free System does not apply, because these facilities were, through various historical developments indigenous to each distinct region, conceived to be playing a vital role even today by meeting the needs of the local communities and parents/guardians.

1. Related paras and articles: LOIPR para 30, Rights of Minorities (Articles 26 and 27 of the Covenant)

2. Issues: Minority status and rights of ethnic Korean residents

3. Suggested recommendations：

1) The State party is recommended to explain the basis for not recognizing foreigners living in Japan, such as ethnic Korean residents who are from Japan's former colonies, migrant workers, international marriage migrants, refugees etc. and their descendants, as ethnic minorities stipulated in Article 27 of the Covenant, in accordance with General Comment No.23 of the Committee.
2) The State party is recommended to explain the rationale for the current legal system that denies or limits the covenant rights of ethnic Korean residents, especially the rights of ethnic minorities stipulated in Article 27. Similarly, please explain the rationale for the discriminatory legal system against foreigners such as migrant workers, international marriage migrants and refugees and their descendants.

4. Background:

<Non-recognition as an ethnic minority>

Article 27 of the Covenant stipulates the status and rights of ethnic, religious and linguistic minorities. However, regarding ethnic Korean residents (with South Korean, "Chosen," or Japanese nationality), the Government of Japan has maintained that "In Japan, the right to share one's own culture, believe in and practice one's own religion or use one's own language is not denied at all to anyone. Given this context, Japan believes it is not necessary to judge whether or not Korean Residents in Japan and their descendants are recognized as ethnic minorities according to the Covenant. " (Government of Japan Response, March 29, 1993; 7th Government of Japan Report, para 230, 2020.)

However, the Japanese government's claim is an interpretation that clearly contradicts the Committee's General Comment No. 23 (April 6, 1994), which clearly states:

"Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly contend, on that basis alone, that they have no minorities." (para. 4); and

"The existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by objective criteria." (para. 5.2)

The Government of Japan should recognize foreigners such as migrant workers, internationally married migrants, refugees and their descendants, in addition to ethnic Korean residents, (approx.. 4.1 million people*), as "ethnic minorities" stipulated in Article 27 of the Covenant.

*Note: The number of foreigners living in Japan and Japanese nationals / dual citizens with foreign roots is ① Foreigners with a status of residence of more than 3 months: 2,933,137 (as of the end of December 2019), ② "Unregistered" foreigners for whom status of residence is not recognized: 82,892 (as of January 1, 2020), ③ Foreigners who have acquired Japanese citizenship: 568,242 (cumulative total of persons who were naturalized, up to 2019), ④ Children born from international marriages between foreign and Japanese nationals: 547,908 (cumulative total from 1992 to 2017, as published in government statistics), for a total of 4,132,179. In other words, the ethnic minorities covered by Article 27 of the Covenant includes more than 4.1 million foreigners and people with foreign roots in Japan, in addition to Ainu and Ryukyu peoples.

<Restriction or exclusion of basic rights>

Most ethnic Korean residents, who are from the former colonies and their descendants, are 2nd-, 3rd-, and 4th-generation Koreans who were born in Japan, and the 5th- generation is now being born.

Ethnic Korean residents, who came from a former colony, should by right be guaranteed Covenant rights equivalent to Japanese nationals, or dual citizens of Japan and Korea, as seen in former colonizing nations of Europe and the United States. However, ethnic Korean residents are still restricted or excluded from the following rights:

a. Denial of the "right to reside," by a deportation clause (Article 22) in the Special Act on Immigration Control (*Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan*).
b. Denial of the "right of re-entry" to Japan, by Article 26 of the Immigration Control Act (*Immigration Control and Refugee Recognition Act*) and Article 23 of the Special Act on Immigration Control. (See report below)
c. Denial of the "right to livelihood protection," due to failure to amend laws.
d. When the nationality clause was abolished, many elderly people and people with disabilities were left with no pension. (See the report below)
e. Appointments as civil servants and public-school teachers are restricted by nationality clauses, not in law, but by administrative memorandums. (See report below)
f. Denial, by law, of the right to participate in local government, such as the right to vote in local elections, or to represent the community on education committees or as civil welfare officers. (See the report below)
g. Denial of rights as an ethnic minority, especially the right to use one's ethnic name, and the right to receive ethnic education (mother language / mother culture). (See the report below)

In its 7th report, the Government of Japan stated that ethnic Korean residents are "not discriminated by nationality" in their rights to participate in local government (para. 223-225), employment (para. 231), medical care (para. 232), school education (para 233), tuition-free high school (para. 235), or social security (para 236).

However, as described in a. to f. above, it is clear that Koreans living in Japan are treated differently from Japanese nationals. The Government of Japan must give a rational explanation as to the grounds for these "differentiated treatments."

Regarding the rights of ethnic minorities in g. above, the Committee on the Elimination of Racial Discrimination has repeatedly recommended to the Government of Japan in past reviews that it "facilitate education in and teaching of minority languages for children belonging to minorities." (CERD Concluding observations on the combined seventh to ninth periodic reports of Japan, Sep.26, 2014)

In General Comment No. 23, the Committee also called on the State party as follows.

> "A State party is under an obligation to ensure that the existence and the exercise of this right [under Article 27] are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party." (para. 6.1)

However, in Japan, the right to receive ethnic education (heritage language / heritage culture education) of ethnic Korean residents are not clearly stated anywhere in the legal system. Rather, measures are taken to effectively hinder or limit this right. (See report below)

Furthermore, discriminatory policies similar to those taken toward ethnic Korean residents are adopted toward other foreigners, such as migrant workers, international marriage migrants and refugees living in Japan, as well as their descendants. But the Committee has stated clearly in its General Comment No.23 as follows:

> "This article [Article 27] establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant. " (para. 1)

" Just as they need not be nationals or citizens, they need not be permanent residents. Thus, migrant workers or even visitors in a State party constituting such minorities are entitled not to be denied the exercise of those rights." (para 5.2)

The Government of Japan must explain the rational grounds for the denial or restriction of these rights (a to g above) to foreigners and their descendants.

5. Prepared by: Research-Action Institute for Ethnic Korean Residents, Center for Minority Issues and Mission

1. **Related paras and articles:** LOIPR para 30, Rights of Minorities (Articles 26, 27 and 12 of the Covenant)

2. **Issues:** Right of re-entry to Japan for ethnic Korean residents under the COVID-19 pandemic

3. **Suggested recommendations:**

1) The State party is recommended to take urgent measures to protect the special permanent residence status of Koreans in Japan, whose re-entry deadlines have expired because they could not re-enter Japan due to the COVID-19 pandemic.

2) The State party is recommended to revise the Immigration Control Act (*Immigration Control and Refugee Recognition Act*) and the Special Act on Immigration Control (*Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan*) to guarantee the "right of re-entry" of foreigners such as ethnic Korean residents.

4. **Background**:

<Foreigners who cannot re-enter Japan due to the COVID-19 pandemic>

Japan is currently denying entry to Japan from 152 countries, including the United States and the EU states, due to the pandemic of novel coronavirus infections. Of the foreigners who have a living base in Japan, those who have the residential status "special permanent resident", "permanent resident", "spouse of Japanese national", "spouse of permanent resident", and "settled resident" are in principle permitted re-entry to Japan. However, foreigners with the residential status "study abroad," "skill training" and “technical / specialist in humanities / international services” cannot re-enter Japan unless "special circumstances" are recognized.

Therefore, although they traveled abroad with a re-entry permit, or a deemed re-entry permit* under the Immigration Control Act and the Special Act on Immigration Control, many foreigners have been unable to re-enter Japan due to the closure of airports because of the novel coronavirus. The total number of foreigners who left Japan before April 2, 2020, and cannot re-enter is said to be 191,000 people, including 103,000 permanent residents and spouses of Japanese nationals and 88,000 international students and businesspeople (as of July 1, *Nikkei Shimbun* newspaper, July 28).

*Note: Article 26, Paragraph 1 of the Immigration Control Act stipulates that if a foreigner with a status of residence in Japan leaves Japan with the intention of re-entering Japan, the government can "grant permission to re-enter Japan." In other words, it is a "re-entry permit system" at the discretion of the government. In addition, the "deemed re-entry permit system" has been in effect since July 2012, and if you show your passport, residence card or special permanent resident certificate when you leave Japan, you will be "permitted to re-entry”. (Immigration Control Act, Article 26-2). However, this is a simplified procedure within the framework of the "re-entry permit system" at the discretion of the government.

It is unclear how many of these 190,000 foreigners have had their re-entry deadline expire while in their country of stay, but it is certain that there will be a large number.

According to the Immigration Control Act and the Special Act on Immigration Control, if one’s re-entry deadline passes while in another country of stay, one loses residential status and must return to Japan as a new entrant to the country. Therefore, as an emergency measure, the Government of Japan has simplified the visa application procedure for these "new immigrants = former resident status holders" at the Japanese embassy or consulate in the country of stay. For "permanent residents", if one applies for a visa as a "settled resident" at the

Japanese embassy or consulate in one's country of stay, that person can complete procedures as a "permanent resident" upon entering Japan (according to a June 26 of 2020 notice from the Immigration and Residency Control Agency of Japan). This is a time-limited measure for "permanent residents" whose re-entry expiration date is after January 1, 2020, and will remain in place until one month after the date on which the immigration restrictions are lifted, so it is effective as a remedy for the time being.

However, no such remedy has been provided (as of August 1) for "special permanent residents," such as ethnic Korean residents. When an NGO (Solidarity Network with Migrants Japan) inquired about this to the government, the replies received were: "We have not taken the same measures as for permanent residents, because there would not be many cases where the validity period expires, "; and "It is difficult to answer at this stage whether it is possible to take similar measures." (Written reply of Ministry of Justice, August 8, 2020). In other words, whereas under the Immigration Control Act, at the discretion of the government, it is possible to take temporary measures, such as allowing those who leave Japan as a "permanent resident" to apply for a visa as a "settled resident" at a diplomatic mission abroad, then re-apply as a "permanent resident" when re-entering Japan. In the case of "special permanent resident", they say, the same is not possible because of stipulation in another law, the Special Act on Immigration Control.

<Special Permanent Residents Re-entry Expiring>

The maximum period of "re-entry permit" for special permanent residents such as ethnic Korean residents in Japan is 7 years, and the maximum period for "deemed re-entry permit" is 2 years. The number of special permanent residents "departing from Japan" has been, in 2014: 128,861, 2015: 118,036, 2016: 124,998, 2017: 124,675, 2018: 129,305, and most of these (about 95) left Japan with a "deemed re-entry permit".

Among special permanent residents leaving Japan in 2018, an estimated 10,000 to 18,000 will reach the "expiration two years after deemed re-entry" between January and December 2020. Even if most of them have already returned to Japan, or even if the bans on departure from their country of stay and entry to Japan would be lifted in a short period of time, some special permanent residents will see their deemed re-entry permit expire while still in the country of stay and lose their permanent resident status.

<Denial of right of re-entry of Special Permanent Residents and Permanent Residents>

The core of the problem is that the "right to re-entry" is not recognized for foreigners who have a living base in Japan, including special permanent residents and permanent residents. If a foreigner is guaranteed "re-entry right", even if there is an administrative re-entry deadline, he/she could re-enter Japan with the same status of residence he/she had, as a right, and continue to live in Japan. However, the Immigration Control Act does not recognize the "re-entry right" of foreigners, and states that "permission/non-permission of re-entry is at the discretion of the sovereign state."

On the other hand, Article 12.4 of the Covenant stipulates that "No one shall be arbitrarily deprived of the right to enter his own country." In 1998, at the 4th Review of Japan, the Committee dismissed the claims of the Government of Japan and found that the re-entry permit system of Article 26 of the Immigration Control Act did not conform to Article 12 of the Covenant, saying, "The Committee strongly urges the State party to remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents like persons of Korean origin born in Japan." (CCPR Concluding observations [CCPR/C/79/Add.102]; para. 18.)

In the following year, the Committee stated in General comment No. 27, which set out the interpretative criteria for Article 12 of the Covenant, as follows.

a. The wording of Article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). (General comment No.27 [CCPR/C/21/Rev.1/Add.9]; para.20)

b. The term "his own country" is not limited to “country of his nationality,” but should be interpreted as "country of residence" in the case of permanent and long-term residents who "have a special relationship with the country". (para.20)
c. The concept of arbitrariness in this context is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. (para.21)

The Government of Japan must immediately provide relief measures for ethnic Korean residents who have lost their special permanent resident status due to expiration of their re-entry period due to the COVID-19 pandemic. Furthermore, the Immigration Control Act and the Special Act on Immigration Control must be amended based on Article 12 of the Covenant.

5. Prepared by: Research-Action Institute for Koreans in Japan, Center for Minority Issues and Mission

1. **Related paras and articles:** LOIPR para 30, Rights of minorities (arts. 26 and 27)

2. **Issues:** Denial of right to ethnic education for ethnic Korean residents – focusing on ethnic education classes

3. **Suggested recommendations:**

1) The State party is recommended to conduct a regular survey regarding the situation of children with foreign backgrounds including resident Korean children with the objective of protecting their rights.
2) The State party is recommended to implement policies to protect the education of native language and culture (heritage language and culture) in the elementary and secondary education with government funding.
3) The State party is recommended to immediately implement policies to eliminate bullying and hate speech against children with foreign backgrounds.

4. Background:

[The non-attendance at schools of children with foreign backgrounds]

The population of foreign nationals residing in Japan reached 2.93 million as of December 2019, an increase of 810,000 from 2.12 million in 2014. They comprise 2.24% of the total population. The number of non-Japanese children going to elementary to senior high schools (6 to 18 years of age) is 197,124, and children of international couples of Japanese and foreign nationals (with Japanese or dual nationalities, 6 to 18 years of age) number 283,920.

The situation requires addressing the increasing needs of children with diverse backgrounds and cultures in school education. But the Japanese government has not sufficiently addressed those needs.

According to the Survey on Acceptance of Students who require Japanese Language Education (conducted in 2018) published by the Ministry of Education, Culture, Sports, Science and Technology (MEXT), there were 33,470 children (elementary school to senior high school) needing Japanese language education in 2008, and by 2018, the number had increased by 52% to 50,759. Also, among senior high school students requiring Japanese language education, the dropout rate is 9.6%, and only 42.2% of them go on to higher education, such as universities. According to the Survey on School Attendance of Foreign Children conducted by the MEXT in May-June, 2019, of the 114,214 foreign children who should be attending elementary or junior high schools, 9,768 (approximately 8.5%) were not attending or it was not possible to confirm whether they were attending schools.

The Government of Japan in its response to the Committee's List of Issues prior to Reporting, states that, "Regarding school education, in the case that the children of foreign nationals, including ethnic Korean residents, wish to attend public compulsory education schools, they are accepted free of charge, and can enroll at a school for foreign nationals if they wish to" (para. 233). But the proportion of 8.5% of non-attendance and unconfirmed whether attending indicates that the right to education of children with foreign backgrounds is not sufficiently protected, due to insufficient Japanese language education and education programs using multiple languages.

[Insufficient systems and programs for learning native language and culture]

The right stipulated under Article 27 of the Covenant to "enjoy their own culture, to profess and practice their own religion, or to use their own language" is not fully protected for minority children including resident Korean children.

The Japanese government states that children of foreign nationals "can enroll at a school for foreign nationals if they wish to" (para. 233). However, the government categorizes schools for foreign nationals as "schools in the miscellaneous category," namely schools that follow their own curricula that is not based on the

Japanese government's course of study. As such these schools are excluded from the government's protection and support. Therefore, parents who send their children to these schools must bear a larger burden, such as paying a higher tuition than parents sending their children to Japanese schools.

Also, there are no curricula for learning the culture and languages related to the children's backgrounds for children going to public schools as part of the government educational policy. The Japanese government has stated that, "it is also possible to use the Period for Integrated Studies to learn about the native languages and native cultures of foreign students, in keeping with the actual circumstances of communities and those of such students. Incidentally, learning about native languages, native cultures, etc. can also be included in extracurricular activities" (Seventh to ninth periodic reports, CERD/C/JPN/7-9, 2013, para. 128). But in fact, only a few local governments conduct such programs, and in those municipalities that do, management remains unstable due to lack of government financial support.

For example, in Osaka, many schools have "ethnic classes" in which resident Korean children and others can learn their native language and culture after school. As of 2018 there are 106 such schools in Osaka City, and 69 in Osaka Prefecture (elementary and junior high schools). These classes were conducted for resident Korean children since Japan's defeat in WWII in 1945, but they now have become places to learn the native language and culture of children with other foreign backgrounds. There are approximately 2,500 children learning at these ethnic classes (as of 2019). But the government does not support these classes financially, and they are managed by the budget of the Osaka City Board of Education. Therefore, many of the instructors who teach the children are part-time contract workers, and their working conditions are not fully protected.

The government should explicitly refer to the right to learn the native language and culture (heritage language and culture) of children with foreign backgrounds and should ensure opportunities for learning the native language and culture with government funding.

[Lack of response to human rights violations including bullying and hate speech]

The government's lack of clear position or policies on the protection of the rights of children with foreign backgrounds is partly to blame for the prevalence of bullying against children of foreign nationals in schools. In March 2019, a Kurdish girl who graduated from an elementary school in Kawaguchi City, Saitama Prefecture revealed that she had been subjected to bullying for 6 years since the first grade. She stated that she was "called names," "locked up in the toilet," "kicked in the back many times," and that "the head master did not believe her."

Also, as the hate speech against Korean residents intensified, some local council members put pressure to close the ethnic classes in Osaka. There are also comments and hate speech blaming the ethnic classes spreading on the internet from those who misconstrue the programs of these classes as being hostile to Japan.

The national and local government should take immediate steps to eliminate such bullying and hate speech against minority children.

5. Prepared by: Korea NGO Center

1. Related paras and articles: LOIPR para 30, Minority Rights (Articles 2 and 26 of the Covenant)

2. Issues: Infringement of rights against ethnic Korean residents in Japan—Restrictions on their appointment as local government employees

3. Suggested recommendations:

1) The State party shall conduct a national municipal survey to understand institutional differences among local governments in the appointment of foreign nationals.

2) The State party shall abandon the “natural matter of course” doctrine established to exclude foreign national staff and, thereby, eliminate the nationality clause in local governments for hiring staff, and eliminate hiring restrictions in municipalities.

3) The State party shall abolish the rule in Article 9 of the National Personnel Agency Regulations that "those who do not have Japanese nationality" cannot take the employment examination for the hiring of national civil servants.

4. Background:

Currently, 2.93 million foreign residents live in Japan, accounting for about 2.3% of Japan's total population of 125.96 million. With the declining birthrate and aging population, the realization of a symbiotic society that includes foreigners has become a major issue in the capital region, as well as in regional cities.

In Japan, there are no legal provisions to exclude foreign nationals from national and local public service employment, other than in the area of foreign affairs. However, in 1953, the Government of Japan stated, "Although there is no clear provision in law, it should be understood as a natural matter of course that in order to become a public servant involved in the exercise of public authority or participation in the formation of national intentions, Japanese citizenship should be required,” thus excluding foreign nationals from employment as national civil servants.

This view, which has been called the "natural matter of course" doctrine, states that foreign nationals can be excluded without explicit provisions of the law, and represents a denial of the rule of law. This is clearly contrary to Article 26 of the Covenant, which states, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."

In 1973, the Government of Japan expanded the scope of "natural matter of course," from the previous "exercise of public authority or formation of national intention" to "exercise of public authority or participation in the formation of intention of local public bodies," whereby foreign nationals would now be excluded from local public servant positions, because Japanese citizenship is required.

Some local governments have a nationality clause in the recruitment guidelines for staff recruitment and do not allow foreign nationals to take the examination. Alternatively, some local governments allow foreign nationals to take the examination, but have set restrictions on their appointments to positions where they would "exercise public authority or participate in public will formation." For example, in Yokohama City, foreign nationals are excluded from work that involves unilateral restriction of the rights and freedoms of citizens, unilateral imposition of obligations and burdens, and forcible enforcement, because these are "exercising public authority”. They also cannot be promoted to positions higher than a section chief where the work involves exclusive authority in planning, proposing, or decision making, or chief where the work involves participation in decisions about the city's basic policy, because these would constitute "participation in public decision-making."

According to the "National Questionnaire of Local Governments on Foreign Residents," conducted by Kyodo News in 2016, only 23.4% of prefectures and 32.2% of municipalities make it possible for foreign residents to take the public service exams for administrative (general office work) positions. According to the same survey, there are only 195 foreign nationals employed by prefectures (full-time), and 3,015 (full-time) at the city/ward/town/village municipal levels. For example, in the case of Hiroshima City, the ratio of foreign residents to the total population is 1.36%, but only 1 of the 14,579 city employees, or 0.006%, is a foreign national.

There is no nationality clause in the National Civil Service Law. However, Article 9 of the National Personnel Agency rules stipulates that "those who do not have Japanese nationality" cannot take the employment examination, and foreigners are uniformly excluded.

At the 4th periodic review of Japan in August 2018, the Committee on the Elimination of Racial Discrimination recommend "…that the State party ensure that Koreans who have lived in Japan for many generations be allowed the right to vote in local elections, and serve as national public servants who can also engage in the exercise of public authority or decision-making," and that it "[a]llow non-citizens, especially long-term foreign residents and their descendants, to also have access to public positions that engage in the exercise of public authority or public decision-making" (CERD/C/JPN/CO/10-11, para. 22, 34(e)).

In accordance with this recommendation, the Government of Japan must abolish the "natural matter of course" doctrine and remove nationality clauses and appointment restrictions in the recruitment of foreign nationals as national and local civil servants.

5. Prepared by: Kanagawa Minto Ren, Yokohama City Liaison Committee for Abolition of the Nationality Clause

1. **Related paras and articles:** LOIPR para 30, Minority Rights (Articles 2 and 26 of the Covenant)

2. **Issues:** Infringement of rights against ethnic Korean residents—Discrimination in the appointment of foreign nationals as teachers

3. Suggested recommendations:

1) The State party is recommended to abolish the practice of fixing the treatment of ethnic Korean residents and other foreign national teachers, such as their rank and wages, at levels below Japanese citizents, and change the system to enable foreign nationals to get the same jobs as Japanese teachers.

2) The State party is recommended to open the way for foreign teachers in public schools to take up positions as principals, vice-principals, head teachers, instructors, and teachers.

4. Background:

The Ministry of Education, Culture, Sports, Science and Technology, which is the ministry in charge of education policy of the State party, has not been willing to work on solving the problem even after receiving the concluding observations of the Committee on the Elimination of Racial Discrimination in August 2018 (CERD/C/JPN/CO/10-11,para.22,34(e)).

Japanese schools have the positions of principal, vice-principal, chief teacher, teacher, and instructor. However, foreign teachers in public schools can only take the position of instructors at the bottom. This is because foreigners are excluded from the positions of principal through teacher.

Japanese citizens are hired as teachers if they pass the teacher employment examination. After being hired, it is possible to be promoted to the principal. On the other hand, even if a foreigner gains a teacher's license and even passes the teacher employment examination like a Japanese citizen, they can only be appointed as instructors and will remain in this position until retirement, and cannot be promoted.

There is thought to be 300 or more ethnic Korean residents in Japan and other foreign nationals who hold teaching jobs in public schools across Japan, but the difference between the lifetime earnings of a person who remains an instructor and one who rises to the position of principal is said to be 10 to 20 million yen (approx. USD90,000-180,000). In this way, foreign faculty members are placed at a financial disadvantage.

The Government of Japan insists that "public servant positions involving the exercise of public authority or participation in public will formation are restricted to Japanese nationals" (CERD/C/JPN/CO/10-11, para.81), but this is not based in law. The government’s claim that this is a "natural matter of course", is equivalent to saying that it is "natural" to discriminate against foreigners.

Article 4 of the Covenant on Economic, Social and Cultural Rights states, "…the State may subject such rights only to such limitations as are determined by law…", but the Government of Japan violates the rights of foreigners by administrative notices, etc., regardless of the law.

The Government of Japan is dragging in the present the same state-controlled education system of the militaristic era before the defeat of Japan in 1945. It is thought that there is an idea that only teachers who are national citizens can perform educational activities in the execution of nationalist education. Similarly, foreign teachers are considered to be an obstacle in promoting education that respects the imperial family, fosters patriotism, and fosters children who pledge allegiance to the nation. Therefore, foreign teachers are only assigned to the lowest-rung jobs in school education.

5. Prepared by: Hyogo Association for Human Rights of Foreigners in Japan

1. Related paras and articles: LOIPR para 30, Rights of minorities (arts. 26 and 27)

2. Issues: Exclusion of older ethnic Korean residents and ethnic Korean residents with disabilities from the pension system

3. Suggested recommendations:

The State party is recommended to immediately put in place transitional measures to eliminate discrimination in the pension system against older ethnic Korean residents and ethnic Korean residents with disabilities.

4. Background:

1) Discrimination based on nationality in the Japanese pension system

The Japanese pension system can be separated into an employees' pension scheme for workers and a residents' pension scheme for everyone else. Before the defeat of Japan in 1945, the pension schemes had a nationality clause which made foreign nationals ineligible. However, during the reforms under the occupation after WWII, orders were issued to prohibit discrimination based on nationality. The nationality clause in the employees' scheme was abolished and the scheme was opened to foreign nationals.

In April 1952, the Peace Treaty with Japan came into force and Japan regained its sovereignty. The Japanese government declared that people originally from the former colonies including Korea lost their "Japanese nationality" and became foreign nationals. More than 90% of the foreign nationals residing in Japan at that time were those whose foreign status was created in this way.

In 1959, the National Pension Act for the residents' pension scheme was legislated for the first time, but the "nationality requirement" brought back, discriminating ethnic Korean residents.

This discriminatory system came under scrutiny by the rapid increase of Vietnamese refugees and the launch of the G6 Summit in 1975. Because Vietnamese refugees were foreign nationals, they were ineligible for public housing or child allowances for single-mother households. This situation came under international criticism. Later, the Japanese government ratified the Covenants and the Refugee Convention, which led to the abolishment of the nationality requirement in the National Pension scheme and child allowance in 1982.

However, some people remain ineligible for the National Pension scheme, even after the elimination of the nationality requirement.

2) Discrimination in the pension scheme due to the lack of transitional measures after elimination of the nationality clause

Under the Japanese National Pension scheme, a person has to pay contributions for at least 25 years from age 20 to 60 in order to receive old age pension payments from age 65. Due to this requirement, foreign nationals who were 35 or older at the time of the elimination of the nationality clause were unable to pay contributions for the period of 25 years, therefore they have been unable to receive old age pension benefits.

Also, under the Japanese National Pension scheme, people who became disabled before the age of 20 can receive disability pension benefits once they become 20, without having paid contributions. However, foreign nationals with disabilities who were over 20 at the time of the elimination of the nationality clause have been unable to receive any benefits, because they were ineligible at the time they became 20 years of age and the elimination of the nationality clause was not retroactively applied.

This means that foreign nationals born in 1926 or earlier, and foreign nationals with disabilities who were over 20 years of age when the nationality clause was abolished were systematically excluded from the pension scheme and remain so today.

Necessary transitional measures were taken when the schemes were created, when Okinawa was returned under Japanese sovereignty, and at the time Japanese left behind in China after WWII and their descendants returned to Japan. However, when the nationality requirement in the pension scheme was eliminated, the Japanese government failed to take similar measures, resulting in the exclusion of the abovementioned people from the pension scheme.

The Human Rights Committee has previously recommended that the government make transitional arrangements for Korean residents "with a view to ensuring that non-citizens are not discriminatorily excluded from the national pension scheme" (para. 30) in its concluding observations issued in October 2008. Similar recommendations have been repeatedly made in the country visit report by Mr. Doudou Diène, the former Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance in June 2006, the concluding observations of the Committee on the Elimination of Racial Discrimination in September 2014 and August 2018.

3) The non-recognition of discrimination by the Japanese government against ethnic Korean residents who are ineligible for pension

The Japanese government, in its response to NGOs in preparation of the Seventh Periodic Report, stated that "the Japanese National Pension scheme includes foreign nationals, and as a principle, pays benefits to those who have paid contributions. It does not discriminate based on nationality." This explains only the current system and is a false explanation that ignores the existence of foreign nationals, mostly ethnic Korean residents, who are ineligible for pension, because of the failure to put in place necessary transitional measures when the "nationality clause" was eliminated.

When ethnic Korean residents who are ineligible for pension requested the Ministry of Health, Labor and Welfare to take measures to remedy the situation in February 2020, the International Pension Division of the Ministry responded that "regarding welfare measures for those who are ineligible for pension because they did not have Japanese nationality, it is important to take note of the consistency of the social security system and the social welfare system as a whole, as well as to continue to consider the matter based on various discussions including those among the Members of the Diet."

Each time the request is made, the government repeats that it is "considering" the matter, but when asked about the contents of the consideration, no concrete answer is given.

During the discussions in the Diet at the time of the ratification of the Refugee Convention in 1981, a Diet Member raised that "transitional measures that were taken for Japanese nationals at the time of the creation of the pension scheme should be considered when applying the scheme to foreign nationals." The Minister of Health and Welfare responded that "those issues should be addressed before acceding, but there is not enough time. Japan will accede to the Convention without reservations, but as these are transitional measures for those who have similar qualifications as Japanese nationals, they should be taken care of as soon as possible." The Diet adopted a supplementary resolution stating that the foreign nationals who remained ineligible because of the lack of transitional measures were "issues to be considered." 38 years since then, the situation of discrimination against Korean residents who remain ineligible for pension continues to be neglected, using the "consideration" as an excuse.

Further, in all of the 6 court cases brought by older foreign nationals and those with disabilities who are ineligible for pension, the Japanese Supreme Court held that the failure to take retroactive measures was not unconstitutional. Because the Japanese government has not ratified the First Optional Protocol of the Covenant, which has been ratified by 116 states, as of March 2020, foreign nationals who are ineligible for pension do not have access to the individual communication system under the Covenant.

4) Ethnic Korean residents who are ineligible for pension are also excluded from other benefit schemes

Meanwhile, on April 1, 2005, the government enacted the Act on Payment of Special Disability Benefits for Specified Disabilities for Japanese nationals with disabilities who had been ineligible for disability pension benefits because they had not joined during the voluntary enrollment period. Ethnic Korean residents with disabilities who had been ineligible for disability pension benefits were again excluded from this scheme. Article 2 of the Supplement of the Act states that welfare measures for people with disabilities who are not entitled to basic disability pension benefits because they did not have Japanese nationality shall be considered in the future, and necessary measures would be taken according to its result, when it is deemed necessary. Again, the government tries to evade the issue by "considering" and no measures have been adopted, although 15 years have passed since the adoption of the law.

In October 2019, the Japanese government created the Temporary Support Allowance for Pensioners at the time the consumption tax was raised to support low-income pensioners. However, ethnic Korean residents who are ineligible for pension are again excluded from this scheme, because "they are not pensioners" even though they are similarly affected by the consumption tax raise.

The delay in the Japanese government's response means that there will be fewer people affected as they grow older. It is difficult not to suspect if the government is delaying for that purpose. The transitional measures taken for Japanese nationals were funded from the treasury. Resident foreign nationals have a duty to pay taxes just as Japanese nationals, but their rights remain restricted.

The nationality requirement was removed in 1982 at the time of the ratification of the Refugee Convention, because having a nationality requirement in the pension scheme was by itself discrimination against foreign nationals. The failure to take transitional measures for ethnic Korean residents who were ineligible at the time and the continuing negligence are a violation of Article 26 of the Covenant and clear discrimination based on nationality.

5. Prepared by: National Association for the Complete Elimination of the Nationality Clause in the Pension System

1. Related paras and articles: The right to privacy (Art 17) and Equality before the law/no discrimination (Art 26)

2. Issues: Racial profiling by law-enforcement officers

3. Suggested recommendations:

1) The State party is recommended to conduct a survey on ethnic and religious profiling and on surveillance on foreigners by law enforcement officers.
2) The State party is recommended to consider the formulation of legislations and guidelines for group surveillance and systematic collection of individual security information to ban racial profiling, that includes remedy to victims of racial profiling as well as training program for law enforcement officers.
3) The State party is recommended to ensure that victims of racial profiling by law enforcement officers have an access to effective remedial procedures.

4. Backgrounds:

In its seventh periodic report to the Human Rights Committee (CCPR/C/JPN/7, para 199), the Government of Japan (hereafter the Government) denies the practice of racial profiling by law enforcement officers.

In reality, however, it was practiced by the police on Muslims and those from Islamic countries. A massive information leak containing sensitive personal information through the internet in October 2010 revealed that Japanese police has conducted systematic and extensive surveillance and information gathering targeting Muslims and those from Islamic countries. In 2014, the first trial on the litigation for the state compensation confirmed that leaked information had been from the Metropolitan Police Department and that the police authorities conducted surveillance over the all Muslims and those from Islamic countries residing in Japan.

Yet, law enforcement officers reportedly practice discriminatory policing against migrants and minorities. Most recently, police officers assaulted a Kurdish man in Shibuya-ku, Tokyo on May 22, 2020. According to the media coverage, a Kurdish man was stopped and asked questions by the police while driving. When he refused to answer, the police officer said, “How come you think you can beat me?” and started to use undue force against him. The police officers kicked his leg and ordered him to sit down on the street, then started to give him abusive words. While the Kurdish man did not resort to violence, the police reportedly continued to use undue force and seized him by his neck. He got injury that took a month to heal. He has lodged a criminal complaint against the two police officers for using undue force against him under Art 195 of the Penal Code.

see the motion picture: https://www.youtube.com/watch?v=zM0XyVZ9pjM
see the news article:
https://www.reuters.com/article/us-minneapolis-police-protests-japan-idUSKBN23D0JG

This case may violate Article 26 of the Covenant that prescribes equality and non-discrimination before the law. It may also constitute a practice of racial profiling by the law enforcement officers since the police officers used undue force.

With no official survey made in regard to practice of racial profiling by law enforcement officer in

Japan, the Government has failed to grasp the real situations on which it could develop necessary programs or measures including training for law enforcement officers and remedy to those whose rights are violated. At the same time, with no legislative facts, discussions on legislation regarding racial profiling amongst concerned bodies have not started. Now is the time for the Government to take initiatives

5. Prepared by: International Movement Against All Forms of Discrimination and Racism

1. **Related paras and articles:** Article 26 Equality before the law

2. **Issues:** Unequal treatment of migrants during the COVID-19 pandemic

3. **Suggested recommendations**:
   a) The State party shall provide the Special Cash Payments and other relevant public support to those who are not subject to the resident registration system including applicants for refugee status, those under provisional release or others with irregular status, and short-term residents, in view of their impoverished situation as the result of the COVID-19 pandemic.
   b) The State party shall provide the Emergency Student Support Handout[1]to those foreign students who have difficulty in continuing their studies, regardless of their grades and attendance rate and on the same basis as Japanese students. The State Party shall ensure that students of Korea University, located in Tokyo since 1956, whose student body consists mainly of resident Korean students, are provided with the same benefits in an equitable manner.
   c) The State party shall apply the welfare benefit scheme to all foreigners in need, especially because many people with irregular status such as applicants for refugee status suffer not only from poverty, but also from aggravated injuries or illnesses due to having no access to health insurance; public assistance shall be provided to them so that they will have access to free or low-priced medical care and treatment. In regard to the application process for the government support programs implemented in response to the pandemic, the State Party is encouraged to make the process less complicated for the sake of non-Japanese speakers, relax some recipient qualifications, and put into practice its commitment to "leave no one behind."
   d) The State party shall ensure stable housing for those migrants who are in danger of losing their housing by accommodating them into public housing or other measures, regardless of their status of residence.
   e) The State party shall be flexible in giving residence permits to those migrants who have lost their jobs under the pandemic and support them in job searching.
      As part of its immigration policy, the State party shall collect disaggregated data on the unemployment rate and residence statuses of migrant workers who lost their jobs during the pandemic.

4. Background:
   a) The Special Cash Payments[2] is the government's benefit program to provide 100,000 yen (approximately 950 USD) in cash per person as its response to the economic impact of the COVID-19 pandemic in Japan. All persons registered with the Basic Resident Registration System as of April 27, 2020 are eligible. However, the undocumented and short-term residents (of less than 90 days) do not qualify for the program and are thus ineligible for the benefits; furthermore, given their residence status, they are not permitted to work. Support from civil society organizations also tend to be disrupted by the pandemic. Thus, these individuals are really faced with scarcity, and are in need of food to eat.
   b) In response to situations involving a sharp drop in household income or a sharp drop in or cancellation of part-time work income due to the pandemic, the Ministry of Education, Culture, Sports, Science and

[1] The Ministry of Education, Culture, Sports, Science and Technology, https://www.mext.go.jp/content/20200527_mxt_gakushi_01_000007490_01.pdf

[2] Ministry of Internal Affairs and Communications, https://kyufukin.soumu.go.jp/en/

Technology (MEXT) has established the "Emergency Student Support Handout for Continuing Studies" program for students of universities and other higher education institutions. However, while applications from Japanese students are examined solely on the basis of their financial conditions, foreign students are treated unequally with additional requirements including (1) excellent academic performance and (2) an attendance rate of 80% or more per month.

Korea University, whose student body consists mainly of resident Korean students, has been denied various subsidies and scholarships due to the discriminatory policies of the Japanese government. Even in the grave situation of the pandemic, it is being excluded from the public support program.

c) d) f) "COVID-19 and the Human Rights of Migrants: Guidance"[3] released by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in April 2020, states that migrant workers and their families are held in unstable working conditions and are disproportionally affected by unemployment and the reduction in employment opportunities as a result of the pandemic. It then states in its section on "right to decent work and social protection" that access to and use of social protection measures must be made available to them regardless of their residence status.

The section on "border control" also states that regularization and the timely extension of residence and work permits should be considered during the pandemic.

The Government of Japan should carry out its immigration policy under the COVID-19 pandemic in line with the above guidelines.

5. **Prepared by:** Solidarity Network with Migrants Japan (SMJ)

[3] OHCHR, "COVID-19 and the Human Rights of Migrants: Guidance", 7 April 2020 available at <https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf>

1. Related paras and articles: Challenges following the List of Issues Prior to Reporting (LOIPR)
Article 12(2) of the ICCPR: Everyone shall be free to leave any country, including his own.
Article 12 (4) of the ICCPR: No one shall be arbitrarily deprived of the right to enter his own country.

2. Issues: The unequal treatment of migrants at the border during the COVID-19 pandemic

3. Suggested recommendations:
In accordance with the UN Human Rights Committee's concluding observations on the fourth periodic report of Japan, the State party is recommended to abolish the reentry permit system.

4. Background:
Following the outbreak of the novel coronavirus (COVID-19) and the accompanying pandemic, many countries, including Japan, implemented strict border control measures on people seeking to enter and exit the country.

Policies implemented by Japan discriminated against regular migrants settled within the country and did so under the guise of protecting its borders.

In the beginning of the pandemic, the Japanese government identified a list of countries most affected by the virus and implemented a travel ban to and from those countries. Realizing that this would result in many people becoming stranded, the government sought to put in place relief measures to mitigate the fallout. It was at this point that the unfair treatment of regular migrants becomes evident.

First, the government arranged charter flights to rescue people stranded abroad. However, this was limited to Japanese citizens and a few other nationalities. With few exceptions, regular migrants whose livelihoods are based in Japan were not given such an option.

Furthermore, reentry after the outbreak was conditional. Those returning to Japan were only allowed to reenter after undergoing PCR testing and promising to self-isolate at home for two weeks. However, this conditional reentry was only limited to citizens and special permanent residents. Regular migrants who had somehow made it back to the borders of Japan after the implementation of the travel ban were not given this option. This applied unilaterally and irrespective of whether they had traveled abroad before the outbreak or not.

The havoc this unfair treatment brought upon regular migrants is unsurprising. Many lost their jobs, enrolment status in schools, and even residence status because they could not reenter. There is even one example in which a regular migrant could not attend his own mother's funeral service.

The "Re-entry Permit System" is problematic the most. In the name of promoting convenience, through the 2012 revision to the Immigration Control Act, the government implemented a "Special Re-entry Permit System" which stipulated that "foreign nationals with valid passports or residence cards (Special Permanent Resident Certificate for special permanent residents) do not need a reentry permit if reentering within 1 year (2 years for Special Permanent Residents) of departure from Japan."

However, since the beginning of the COVID-19 pandemic, some of the Permanent Residents and Special Permanent Residents who had traveled abroad lost their residence status, because they were unable to return to Japan by their reentry date due to the landing restrictions imposed by the government. NGOs called on the government to implement relief measures in the form of either special measures to extend the "Special Re-entry Permit System" or procedures whereby individuals could regain their residence status. As a result of this outcry, procedures for Permanent Residents to restore their residence status were announced, but there has not been relief for all of the damages suffered while their rights were curtailed with the loss of their residence status. Not a single relief measure has been announced for Special Permanent Residents.

It is clear that the Japanese government's stance is to continue denying Permanent Residents and Special Permanent Residents the right to enter the country without proper "permission" from the government, all in the name of prioritizing immediate improvements to convenience.

5.Prepared by: Solidarity Network with Migrants Japan (SMJ)