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# Interplay Between Human Rights Activities and Legal Standards of Human Rights: A Case Study on the Korean Minority in Japan

## I. An Invisible Minority

As of December 1990, 687,940 Koreans lived in Japan as aliens.<sup>1</sup> In addition, there are Japanese nationals of Korean descent (either naturalized<sup>2</sup> or born to marriages between Japanese and Koreans<sup>3</sup>) and illegal immigrant Koreans. The total population of the ethnic Korean minority in Japan is presumably between 800,000 and 900,000. Thus, although Koreans constitute the largest ethnic minority in Japan, they comprise somewhat less than 0.8 percent of the population. When compared with other countries, which generally have minority populations exceeding several percent, this figure indicates that Japan is a *relatively* homogeneous country in terms of ethnicity.

Presence of the Korean minority in Japan does not disrupt this appearance of relative homogeneity. It, in fact, is reinforced by the similarity in physical appearance and in languages, religions, and cultures of Japanese and Koreans. In the ancient period, many people migrated from the Korean peninsula to Japan, established local powers and inter-

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\* Professor of International Law, University of Tokyo, Faculty of Law. Professor Onuma's name is printed according to *East Asian* customs whereby surname precedes given name.

1. Figure provided to author by the Japanese Ministry of Justice, Immigration Bureau in February 1992.

2. Although the accumulated figure of naturalized Koreans is available, no figure for the living naturalized Koreans is available. As of 1990, the number of Koreans naturalized since 1952 was approximately 150,000.

3. In 1986, the Japanese nationality law changed its principle from *jus sanguinis a patre* to *jus sanguinis* based on the equality of sex. Moreover, the number of Koreans marrying Japanese, which surpassed 50 percent in 1976, reached 73 percent in 1990. STATISTICS AND INFORMATION DEPT., MINISTER'S SECRETARIAT, MINISTRY OF HEALTH AND WELFARE, 1 VITAL STATISTICS 1989 JAPAN 370-71 (1991) and Pak Sun Il, *Kekkon Juman Jidai*, SENURI, March 1992, at 61. In this way, the number of Korean descendants who acquire Japanese nationality by birth has been increasing year by year.

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mingled with aborigines. For most of their histories both nations adopted elements of Chinese civilization, including Chinese characters, Confucianism, and political institutions. Korean culture itself also had a considerable degree of influence upon Japan. On the other hand, members of the Korean minority have assimilated to Japanese society partly due to their lengthy residence in Japan and partly due to the strong pressure for assimilation coming from the overwhelming majority of Japanese.

Because of these factors, for most people the very existence of Koreans as an ethnic minority has long been invisible. In this way, the myth of "monoethnic Japan" or "homogeneous Japan" has prevailed. This myth has been referred to repeatedly, and used to explain the efficiency, economic strength, low crime rate, and other characteristic features of Japanese society. I do not deny that Japanese society is relatively homogeneous not only in terms of ethnicity, but also in terms of language, culture, religion, and other ways of life. However, I do argue that for a long time the myth of monoethnicity has prevented the Japanese from addressing the very problem of the Korean minority and has rendered its solution extremely difficult.<sup>4</sup>

## II. Nationality<sup>5</sup> of the Korean Minority and the Harsh Regime of 1952

Although almost ninety percent of Korean residents in Japan are second-, third-, or fourth-generation Koreans, the overwhelming majority do not possess Japanese nationality. This conspicuous feature illustrates the problem of the Korean minority in Japan, although some other countries also have nationality laws based on the same principle as Japan's: *jus sanguinis*. The following legal and historical factors have contributed to this situation.

First, in the prewar period, because Korea was under Japanese rule, Koreans were Japanese nationals under international law. When Korea became independent under separate regimes (Republic of Korea and Democratic People's Republic of Korea) in 1948, Japan did not take any measures affecting the nationality of Koreans. Instead, the Japanese government denationalized them when the San Francisco Peace Treaty between Japan and the majority of the Allied Powers came into effect in 1952.<sup>6</sup> The Japanese government claimed that Koreans should lose Japanese nationality because: (1) the peace treaty brought their prewar legal status to an end in the formal sense; (2) the treaty provided that

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4. For a detailed account, see ONUMA YASUAKI, *Tan-itsu Minzoku Shakai No Shinwa Wo Koete* [Beyond the Myth of Monoethnic Japan] 320-25 (1986).

5. In this article, "nationality" is, unless indicated otherwise, used to designate the legal status of being a member of a state. Nationality in this sense should, according to modern politico-legal thought, include political rights, and thus, coincide with the concept of citizenship, although this was not the case for most colonial peoples.

6. Circular No. 438 of April 19, 1952 of the Director of the Civil Affairs Bureau, Office of the Attorney General.

Japan recognized the independence of Korea and renounced all rights, title and claim to Korea; and (3) therefore, Koreans should be liberated from the personal jurisdiction of Japan.<sup>7</sup>

Second, because Koreans had bitter experiences under Japanese rule, they detested anything related to Japan. Although some 500,000 Koreans, a quarter of the prewar Korean population, remained in Japan after the war, this was due exclusively to the harsh economic situation then prevailing in Korea. Most Koreans in Japan regarded Japan as merely a temporary home and intended to repatriate when that situation improved. Obsessed by an idea that equated nationality with national or ethnic identity, the Koreans detested the thought of acquiring Japanese citizenship, which they considered an act of betrayal to their own national integrity.

This idea, or more correctly, emotional reaction, persists among first-generation Koreans and, to a certain degree, among second- and third-generation Koreans. As late as 1990, when human rights activists proposed draft articles of the law concerning the status and treatment of persons originating from former colonies,<sup>8</sup> many Korean human rights activists opposed an article that would provide Koreans a right to opt for Japanese nationality. Although the Japanese government certainly must be criticized for denying Koreans the right to opt for Japanese nationality in 1952, few Koreans would have opted for Japanese nationality at that time.

This antagonism to Japanese nationality has been reinforced by longstanding government practice that demands complete assimilation as a precondition to granting naturalization. Japanese nationality law has certain requirements (such as minimum five years residence in Japan) for naturalization that resemble requirements in other countries. In addition to these written requirements, however, the Japanese government "suggested" adopting a Japanese name in order to be naturalized. Even though most Koreans applying for naturalization use Japanese names in their ordinary lives (mainly to avoid social discrimination), it is offensive for the Japanese government to "suggest," i.e., to require in an implied manner, that Koreans adopt a Japanese name.<sup>9</sup> This practice, based on the myth that members of Japanese society must be one hundred percent Japanese (monoethnicity!), certainly has

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7. The constitutionality of Circular No. 438 was approved by the Supreme Court Judgment of April 5, 1961 (SAIKO SAIBANSHO MINJI HANREISHU) (3) 657, translated in 8 JAPANESE ANN. OF INT'L L. 153-72 (1964). For a critical view of this judgment, see Iwasawa, *infra* note 17.

8. A part of these draft articles have been translated into English and published as an appendix to this article. The author is deeply grateful to those at Accent on Language, New York, for their translating the proposal of April 23, 1990 and the draft articles.

9. Naturalization is not a right of an individual applying for it. It is a grant from a state to a person, and as such, subject to the discretion of the state. Given this, even a "suggestion" or an administrative guidance can have a strong influence on the applicant.

strengthened the Korean perception that they cannot live as Japanese nationals and also retain their Korean identity.

Due to these factors, most Koreans in Japan have lived as aliens. This has given the Japanese government ample justification for discriminatory treatment. Under international law, states have wide discretion in the treatment of aliens. In any country, aliens are subject to restriction of their civil and political rights, denied certain categories of economic and social rights, required to register with certain authorities, and are handicapped in many other areas. So, the Japanese government has argued, there is nothing wrong with restricting rights of Koreans. If Koreans want to enjoy various rights to the same extent as Japanese nationals, they can do so as naturalized citizens. So long as they remain aliens, the Japanese government has argued, it cannot be helped that their rights are restricted.

Based on this justification, the Japanese government carried out harsh and discriminatory policies against Korean residents up to the 1970s. There were several reasons for these harsh policies. First, such government policies merely reflected prejudices and biases deeply rooted in Japanese society as a whole. Since the Meiji Restoration, Japan has carried out the wholesale westernization of its society. During this process the West has been regarded as *the* model, the source of thousands of values, whereas Asians and Africans have been despised and regarded with contempt, considered underdeveloped and uncivilized. In a word, Japan has accepted, together with many other Western ideas and thoughts, the Eurocentric view of the world including the idea of white supremacy. Koreans, engaged mainly in manual labor, were poor and less educated. Thus, they have been a major target of this deeply rooted bias.

Second, some Koreans engaged in illegal and violent activities immediately after the end of World War II. Because pre-war discrimination was extremely severe, repercussions after liberation were violent. Many Koreans disregarded the jurisdiction and authority of the Japanese government. Some were allied with the Japan Community Party and engaged in a paramilitary struggle against the regime. The Japanese government as well as the Japanese people, already prejudiced, became even more harsh toward Koreans.

Third, until the 1960s, a pro-North Korea organization, the *Soren*, was powerful and influential among Korean residents in Japan. Its leaders have been *de facto* organs of North Korean authorities and are believed to engage in various subversive activities. Korean national schools, run in Japan by the *Soren*, provided basically the same education as those in North Korea. Japanese government officials, especially the police and immigration authorities, were nervous about the possibility of subversive behavior. Consequently, they resisted attempts to modify strictly security-oriented provisions of the Immigration Order and the Alien Registration Act, which were modeled on American laws reflecting McCarthyism and anti-enemy suspicions.

In 1965, Japan and the Republic of Korea (ROK) "normalized" their relations and concluded the Agreement on the Legal Status and the Treatment of the Nationals of ROK Residing in Japan.<sup>10</sup> Nevertheless, although Korean residents of Japan with ROK nationality were accorded the "permanent resident status by treaty," their status did not improve much. Because they already had *de facto* permanent status, the only substantial improvements were, first, to make more rigid the prerequisite for deportation on the charge of criminal offenses and, second, to make ROK nationals formally eligible for national health insurance. Except in these limited areas, the stern policy continued.

### III. New Waves and the Resultant 1982 Regime

In the 1970s, with the legal and factual changes both within Japan and surrounding Japan, the harsh institutions based on the nationality settlement of 1952 gradually diminished in power. These changes have come to be known as the "1982 Regime."

#### A. New Waves Among Koreans

The 1970s marked a steady increase in the power of second- and third-generation Koreans. Moreover, the *Mintoren*, a new organization composed of Korean and Japanese human rights activists was born. The *Mintoren*, engaged in various types of activities, based on new ideas that the former Korean organizations had ignored. The activists demanded equal rights based on common membership in local communities. Because Koreans, as permanent members of the society, share the same burdens as the Japanese, they asked, "Why not the same rights as inhabitants?"

Second- and third-generation Koreans, unlike first-generation Koreans, do not regard Japan as a temporary residence. They consider themselves permanent members of Japanese society and, therefore, seek to abolish ethnic discrimination. Otherwise, it would accompany them for life and be unendurable. They also have less antagonism than the first generation against anything Japanese. The number of Koreans becoming naturalized has increased steadily from approximately 2,000 per year in the 1950s to 3,400 in the 1960s, 4,700 in the 1970s, and 5,900 in the 1980s.<sup>11</sup> Intermarriage with Japanese also increased steadily. The ratio of Koreans marrying Japanese passed fifty percent in 1976 and reached seventy-three percent in 1990.<sup>12</sup>

Most importantly, second- and third-generation Koreans share the legal culture with the contemporary Japanese. They regard ethnic discrimination as a violation of human rights guaranteed by the Japanese Constitution and by international human rights law. While the first-gen-

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10. Agreement on the Legal Status and Treatment of Nationals of the Republic of Korea Residing in Japan, June 22, 1965, Japan-Korea, 584 U.N.T.S. 3.

11. ONUMA, *supra* note 4, at 337-38.

12. See *supra* note 3.

eration Koreans believed that it was useless to protest against discrimination, second- and third-generation Koreans tend to think that they can redress discrimination through a "struggle for rights," because they have observed that Japanese citizens have been successful, at least to a certain extent, in their own struggles.

### B. New Waves in Japan

Japan itself began to change in the 1970s and people in Japan became more aware of human rights activism abroad. Up until the 1960s, few movements, including human rights movements, paid attention to rights of aliens and minorities. However, with the invigoration of various new types of movements in the late 1960s and early 1970s (e.g., anti-Vietnam War, anti-pollution, and anti-immigration policy movements), a certain segment of the population began to take up seriously the issue of the Korean minority. Although Japan was prospering and the general human rights situation was improving steadily, status of aliens, particularly resident aliens, had not improved. Abroad, however, there had been active moves for the development of human rights, both in international society and in the developed nations. Adoption of the International Covenants on Human Rights in 1966, increasing criticism of apartheid in international fora, civil rights movements in the U.S., and the call to rescue Indo-Chinese refugees after the fall of Saigon in 1975 were leading examples. Human rights activists in Japan argued for the improvement of the treatment of Koreans, often by citing human rights conventions, domestic laws, court decisions in other countries, and general trends.

Although the official reaction of the Japanese authorities was slow, the situation gradually improved through the 1970s. In 1976, the Yokohama District Court held the dismissal of a Korean worker null and void, finding that the dismissal was based on discrimination as to nationality and consequently violated Article 3 of the Labor Standards Law and Public Policy.<sup>13</sup> Aliens became eligible for scholarships of the Japan Scholarship Society, a semiofficial nationwide scholarship sponsoring organization, in 1975, and became eligible to practice law in 1977. In 1978, the Supreme Court confirmed the principle that even aliens were entitled to freedom of political activity.<sup>14</sup> In the following year, Japan ratified the two International Covenants on Human Rights,<sup>15</sup> and two

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13. Judgment of June 19, 1974, Yokohama District Court, 744 HANREI JIHO 29.

14. In this case (McLean case), the Supreme Court upheld the government's action to deny the renewal of the defendant's stay in Japan. However, as a matter of principle, it acknowledged that even aliens were entitled to freedom of political activity guaranteed under Art. 21 (freedom of expression) of the Japanese Constitution. *McLean v. Setoyama*, reported in 23 JAPANESE ANN. INT'L L. 176 (1980) (Japan S. Ct. 1978).

15. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 GAOR Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights, G.A. Res.

years later ratified the Refugee Convention.<sup>16</sup> The impact was enormous.

In order to comply with the international conventions, the Japanese Diet revised social welfare laws that had hitherto limited eligibility for benefits to Japanese nationals. Nationality requirements for eligibility for publicly or semi-publicly owned housing and for public loans were abolished.<sup>17</sup> The Alien Registration Law also was amended in 1980, 1981 and 1982. By these amendments, certain requirements—and the penalties for noncompliance with these requirements—were softened.

The most conspicuous change was the amendment of the Immigration Control Order. The Japanese government, which had submitted a bill containing provisions restricting political activities of aliens from 1968 to 1972 and had been rejected, submitted a bill without any such provisions. Instead, the bill provided that permanent resident status would, upon application, *ipso jure* be granted to habitually resident Koreans.<sup>18</sup> This provision was welcomed, if not explicitly, by the *Soren*, which had vigorously opposed the “permanent resident status by treaty.” When the bill was adopted and came into effect in 1981, most Koreans who identified themselves as nationals of the Democratic People’s Republic of Korea applied for permanent resident status. Some 240,000 were granted the status, thus rendering overwhelming majority of Korean residents either “permanent residents by treaty” or ordinary permanent residents.<sup>19</sup> Thus, the new Immigration Control Law represented the “new waves” not only in the Japanese government and among people in general, but also in the Korean community, which had accepted the actuality of its firmly settled residence in Japan, and abandoned its longstanding implicit commitment to repatriation.

#### IV. Further Efforts to Improve the Human Rights Situation of the Korean Minority.

Although the 1982 Regime substantially improved the legal status of the Korean minority, many important issues were left unresolved. First, in

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2200A (XXI), 21 GAOR Supp. No. 16, at 49, U.N. Doc. A/6316 (1966) (*entered into force* Jan. 3, 1976).

16. Convention Relating to the Status of Refugees, 189 U.N.T.S. 137, *entered into force* for Japan, Jan. 1, 1982.

17. For a detailed account, see Iwasawa Yuji, *Legal Treatment of Koreans in Japan: The Impact of International Human Rights Law on Japanese Law*, 8 HUM. RTS. Q. 131, 158-74 (1986).

18. Provisions 7-10 of the Supplementary Provisions, Immigration-Control and Refugee-Recognition Act (Cabinet Order No. 319 of 1951, as amended by Law No. 85 and 86 of 1981).

19. Before the “normalization” between Japan and the ROK, most Koreans held the so-called 126-2-6 status, a “provisional,” yet actually *quasi* permanent resident status. Most Koreans with the ROK nationality have acquired the “permanent resident status by treaty” (some 350,000 as of 1990). However, many Koreans with the DPRK nationality did not want to change their nationality to acquire that status, and remained as 126-2-6 aliens until the revised Immigration Law offered them the permanent resident status, which was to be granted *ipso jure* upon application.



the domain of alien registration, two major annoying features have been softened but not abolished. One of the frustrating features was the fingerprinting requirement. All aliens above the age of sixteen, who reside in Japan for more than one year, must have their left index finger fingerprinted at their registration and at its renewal which comes every five years.<sup>20</sup> Because fingerprinting is required for criminal suspects, many resident aliens perceive this requirement an indignity. Likewise, the requirement to carry the Alien Registration Certificate at all times<sup>21</sup> was retained. This requirement has been particularly annoying to Koreans because: (1) even merely negligent failure to carry the Certificate has been subject to criminal sanction; and (2) the Japanese police, eager to keep a close eye on the pro-North Korean *Soren*, have often abused this requirement by harassing innocent Koreans.

Second, in the domain of immigration control, even those with permanent resident status may be deported if they are convicted of a crime.<sup>22</sup> Although this is a universal feature found in any country, its application to the Korean minority can result in tragedy. As noted earlier, due to the nationality law based on *jus sanguinis*, and the somewhat justifiable reluctance to undergo naturalization on the part of Koreans, even second-, third- and fourth-generation Koreans usually are not Japanese citizens. However, such Koreans who happen to commit crimes in Japan are no different from Japanese who commit crimes. The Japanese society, where they have been born and fostered, should treat them just as it treats Japanese by giving them an opportunity of rehabilitation. To punish them and to deport them subjects them to double jeopardy—if not technically, actually.

Third, in the domain of socio-economic and cultural life, many restraints remained untouched. Mining rights, possession of ships and aircraft, licenses for radio stations and other property rights or professions are denied to aliens. In addition, aliens are not eligible to hold public offices that exercise public authority or make national (or public) policy. The constitutionality of this exclusion is at best dubious. Although it is too vague to exclude aliens categorically from public service posts, it has been construed in a loose manner. The Ministry of Education, for example, has taken the position that aliens are not eligible to become public school teachers. Although the appointment of public school teachers is within the authority of municipal educational committees, the Ministry of Education sent notices to municipalities dis-

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20. Alien Registration Law art. 14 (Law No. 125 of 1952, as amended by Law No. 75 of 1982).

21. Alien Registration Law art. 13.

22. "Permanent residents by treaty" who are sentenced to penal servitude or to imprisonment for more than seven years are subject to deportation. For those with (ordinary) permanent resident status, the threshold is the sentence by a court over one year penal servitude or imprisonment, but the practice has tended to hold the threshold at approximately five years in order to minimize the difference between "permanent residents by treaty" and ordinary permanent residents.

couraging them from hiring alien teachers.<sup>23</sup>

In the area of social customs and conventions, discriminatory practices persisted, although far less than before. Leading companies were still reluctant to employ members of the Korean minority and many landlords were unwilling to rent houses or apartments to them. Most Koreans used Japanese names in their daily lives. Few affirmative action programs were offered, either on the national or on the municipal level, to encourage and facilitate ethnic education or cultural activities.

The anti-fingerprinting movement, which reached its climax in 1985, exemplified a keen desire of the Korean minority for the equitable treatment that must be accorded to them as permanent members of Japanese society. In 1985, out of some 360,000 aliens who were to renew their alien registration, more than 10,000 refused or reserved fingerprinting. Those who were prosecuted challenged the constitutionality of the fingerprinting requirement. They cited Article 13 of the Japanese Constitution, which provides for the right to life, liberty, and the pursuit of happiness; Article 31, which provides for due process; and Article 14 of the Constitution, as well as Articles 2(1) and 26 of the Civil and Political Rights Convention, all of which guarantee equal protection.

Many lawyers, both academic and practicing, international and constitutional, published books, articles and essays in various media, criticizing the existing law. Thousands of meetings and demonstrations by Korean and Japanese human rights activists were held. Japanese media also criticized the government position. Human rights activists resorted to international human rights enforcement mechanisms. They complained about discriminatory treatment by the Japanese government in meetings of the U.N. Subcommission on Prevention of Discrimination and Protection of Minorities by making use of U.N. Resolution 1503 and other procedures.<sup>24</sup> They also sent information to expert members of the Subcommission and the Human Rights Committee, established under the Civil and Political Rights Covenant, and invited them to investigate the situation in Japan.

These combined efforts exerted strong pressure upon the Japanese government. Although judicial challenges were not successful,<sup>25</sup> major

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23. In 1982, Special Law Concerning Appointment of Alien Professors at National and Municipal Universities (Law No. 89 of 1982) was enacted. Although there had been a few alien professors in public universities, this law made it unequivocally clear that public universities may appoint alien professors with the same rights and privileges as the Japanese professors. Nevertheless, the Ministry of Education did not change its longstanding position to bar aliens from becoming teachers in primary and secondary public schools, and sent a notice (Personnel No. 128) on September 13, 1982, to confirm its position.

24. U.N. ESCOR Comm'n on Human Rights, 13th mtg. at 4-5, para. 12-16, U.N. Doc. E/CN.4/Sub.2/1984/S.R. 13, (Aug. 17, 1984) (Statement by Mr. Kim of the Minority Rights Group).

25. Tokyo District Court Judgment of August 29, 1984, 1125 HANREI JIHO 101, translated in 29 JAPANESE ANN. OF INT'L L. 238-49 (1986). In other similar cases, defendants were adjudged guilty and were amerced in the sum of ten thousand yen, which, in fact, was nominal.

media, which reported the judgments, emphasized the need for revision of the existing law. At international fora, the Human Rights Committee of 1981 criticized the Japanese government for its failure to recognize the existence of minorities within the meaning of the Civil and Political Rights Covenant.<sup>26</sup> The Japanese government had been well known for its strong susceptibility to external pressures and criticism. Consequently, critical remarks made by nongovernmental organizations to the U.N. Subcommission on the Prevention of Discrimination and Protection of Minorities no doubt pressured the Japanese government to amend the fingerprinting law.

In 1985, the Japanese government changed the procedure for fingerprinting. Instead of revolving fingerprinting, used on criminal suspects, a simple flat fingerprinting method was introduced. In addition, a colorless ink was adopted in place of a thick black ink. These changes were designed, according to the Japanese government, "to mitigate the uncomfortableness felt by aliens at the time of fingerprinting," but actually were off the mark. Although violent protests abated, criticism persisted from every sector: Korean residents in Japan; human rights activists at home and abroad; both governments and peoples in the Korean peninsula; and the media.

#### V. New Developments from 1990 Onward

The persistent criticism resulted in two conspicuous developments in 1990. First, human rights activists used the Japan-ROK Agreement of 1965, which provided for a consultation between the two governments within twenty-five years as to the status of the third-generation ROK nationals to call attention to the problem. The human rights activists in Japan who had been working on the draft articles of a law concerning the status of persons from former colonies, published their proposal in April 1990. Their purpose was to invite the attention of both the government and the people of Japan to fundamental problems relating to the Korean and Taiwanese minorities in Japan, and to exert pressure on the government to improve their status. They had close consultations with human rights activists in South Korea and made public their appeal and proposal simultaneously in both countries. They also held an international symposium in June 1990 and made public the detailed draft articles and commentaries. This movement involved not only human rights activists, but also leading supra-partisan politicians, journalists, firm executives, lawyers, professors, novelists, movie directors and other opinion leaders, regardless of their political beliefs.

The proposals included, *inter alia*, (1) guarantee of permanent resident status immune from deportation except for the offenses involved in foreign invasion or insurrection; (2) non-application of fingerprinting

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26. Hum. Rts. Comm., 14th Session, 319th mtg. at 4, para 18, U.N. Doc. CCPR/C/SR.319 (Nov. 6, 1981); Hum. Rts. Comm., 14th Session, 320th mtg. at 2, para. 5, at 8-9, para. 42, U.N. Doc. CCPR/C/SR.320 (Nov. 11, 1981).

requirements and of the obligation to carry the alien registration certificate at all times; (3) national treatment in the application of all social welfare programs and war-related compensations; (4) affirmative action programs in the field of employment; (5) opening public service posts except for those explicitly reserved for nationals, such as members of the parliament, ministers, judges and similar high ranking public officials; (6) guarantee of ethnic education; (7) establishment of a cultural fund to be used for the preservation and development of ethnic minority cultures; and (8) establishment of an advisory committee to the Prime Minister in charge of matters within the domain of this proposed law.

Because this proposal draws support from a wide range of influential persons in both Japan and South Korea, its impact upon Japanese decision-makers was substantial. In an agreement made on January 10, 1991, between the Japanese Foreign Minister and the ROK Foreign Minister, the Japanese government promised to abolish deportation (except for the crimes relating to vital national interests) and the fingerprinting requirement for ROK nationals in Japan within two years.<sup>27</sup>

Because resident aliens other than ROK nationals are no different from the latter in terms of their permanent membership in Japanese society, abolition of the fingerprinting requirement should not be limited to ROK nationals, but should be extended to all permanently residing aliens. The Ministry of Justice shares this view and has tried to persuade the reluctant National Police Agency. According to a December 1991 news report, the view of the Ministry of Justice is likely to prevail within the Japanese government.<sup>28</sup>

Another important event in 1990 was an amendment to the Immigration Control Act. Since its enactment, the basic system governing aliens' entry and sojourn had been the institution of residence status. This status of residence had been enumerated in sixteen categories in art. 4(1) of the Act. Each category was accompanied by the period of stay, which ranges from within sixty days to permanent. The status of residence authorizes aliens to stay in Japan, but also restricts activities including choice of jobs. For example, if an alien with the status of art. 4(1) IV, who is staying in Japan for the purpose of sightseeing, engages in labor, he or she may be deported.

The institution of the status of residence, modeled on the U.S. Immigration Law, revealed many flaws in practice. First, the categories became irrelevant to actualities of aliens and their activities because of the changes in Japanese and international society, especially in problems of economic activity. While some categories became dead letters, others became too narrow to correspond to the actual needs of an expanding and developing economy. Second, because provisions specifying each category were written in general terminology, the actual criteria for

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27. Foreign Press Center Japan (ASN), Press Release No. 0015-19 of January 10, 1991, at 1-2 (Translation of Foreign Ministry Release).

28. ASAHI SHINBUN, December 26, 1991, at 2.

granting or rejecting a status of residence were not clear. The immigration office has been criticized constantly for its arbitrary use of discretionary power and its lack of transparency in its decision-making process. Third, a large number of different types of aliens were "specifically authorized" to stay by the Minister of Justice, under the Ordinance of the Ministry of Justice, pursuant to art. 4 (1) XVI of the Immigration Act. These aliens included: (1) family members of permanent residents; (2) language instructors specifically authorized to be employed; and (3) students of Japanese language schools. Because such various types of aliens were addressed under the discretionary power of the Minister of Justice, criticism of its abuse was harsh. Finally, differences between permanent resident aliens, who are not subject to any restrictions on their activities, and aliens who stay on a temporary basis and are subject to restrictions on their activities, were not clearly shown in the old system.

The amendments improved the law in the following respects. First, Annexed Tables were adopted to provide for statuses of residence or aliens' personal relationship more explicitly and precisely than the old provisions. Some of the administrative criteria used for granting or refusing status of residence were explicitly enumerated. Transparency in the decision-making process certainly increased. Second, Annexed Tables consisted of Table I, which provides for the status of residence for short-term residents and visitors with specified activities, and Table II, which provides for the aliens' personal relationship or status of residence for permanent or long-term resident aliens without any restriction as to their activities. This classification contributes to the understanding that permanent or long-term resident aliens are, like Japanese citizens, ordinary members of Japanese society whose rights and duties are, in principle, the same as the Japanese. Third, within Table I, many up-dated categories were introduced to meet actual demands of contemporary daily life. Finally, because Table II provides for the status of permanent or long-term resident aliens with detailed subcategories, abuse of the discretionary power of the Ministry of Justice is less likely.

Even with these and other improvements, there remain many problems. Affirmative administrative and legislative measures to encourage equal employment opportunities for the Korean minority and to promote their cultural activities, including ethnic education, are important goals to pursue. Also important is to provide a right to opt for Japanese nationality, without having to abandon their ethnic identity. Other tasks to be pursued are exemplified in the proposal of April 1990 (see Appendix to this article).

It is undeniable, however, that the status and treatment of the Korean minority has been improved steadily over the past twenty years. One of the most important factors that brought forth this progress has been the persistent efforts made by both Korean and Japanese human rights activists. They have used various types of laws, norms and enforcement mechanisms of human rights to pursue their goals. They

include the Japanese Constitution; domestic laws; domestic court decisions; human rights conventions that Japan ratified; human rights monitoring bodies such as the U.N. Human Rights Subcommission and the Human Rights Committee of the Civil and Political Rights Convention; domestic laws and court decisions in other countries such as Race Relations Act of the U.K. and decisions of the United States Supreme Court; and various resolutions adopted by the United Nations General Assembly, international organizations such as the ILO, and international conferences. Because Japanese courts have tended to refrain from giving judgments that render existing laws and administrative measures unconstitutional, judicial challenges generally have been unsuccessful. However, courts are only one of many battlefields. Even unsuccessful judicial challenges attract the attention of the media and ordinary people, reveal problematic features of the existing institutions, and give ample opportunities for legislative and administrative change. Biases and prejudices, deeply rooted in society, are shaken by these various types of challenges and movements, and thus begin to loosen their holds, if not disappear.

Lobbying the members of the parliament and internationally concerted actions by human rights activists are important but have been pursued insufficiently in Japan. The relative success in solving the problem of repatriation of Koreans left in Sakhalin by the supra-partisan organization of the members of the Diet reveals this body's critical role.<sup>29</sup> The problem of Korean minority in Japan must be solved through such combined efforts involving human rights activists, opinion leaders and even possible allies in the government itself.

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29. For a detailed account, see my forthcoming book on the Koreans left in Sakhalin (*SAHARIN KIMIN: SENGO SEKIMIN NO TENKEI*), published by Chuo Koronsha.

## APPENDIX

Proposals on Improvement of Treatment of Koreans<sup>30</sup> Residing in Japan

—Toward an Open Japan and Brighter Future for East Asia—  
April 23, 1990

**Basic Perceptions**

Japan in the 1990's is faced with many tasks to be accomplished. One of these tasks is to liberate itself from the pervasive, persistent and tenacious myth of monoethnicity, and refashion Japan into an open society that exhibits tolerance toward ethnic minorities. The coexistence of various ethnic groups in one country has now become the norm in today's world that is characterized by deeper economic, cultural, and information interdependence and interpenetration. Every country, while facing its own peculiar problems and difficulties, has nevertheless recognized the existence of ethnic pluralism within its own borders, is making various efforts to achieve the goal of "living together."

This year, 1990, marks 80 years since the annexation of Korea to Japan (the ultimate cause of the presence of Koreans in Japan today), 45 years since the Korean people became independent, and 25 years since the signing of the treaty between Japan and the Republic of Korea in 1965. Irrespective of one's philosophical position regarding these issues, surely none will deny that the treatment of Koreans residing in Japan has, to date, left much to be desired.

By circular decree of the Director of the Civil Affairs Bureau in 1952, Koreans residing in Japan lost the Japanese nationality which they had enjoyed up until that time. Since then, these people, including second- and third-generation Koreans born and raised in Japan, have been treated as aliens. The Japan-ROK Legal Status Agreement of 1965 provided for a "permanent resident status by treaty," and persons of (North) Korean nationality have also moved to permanent resident status by the 1981 revision of the Immigration Act. These "permanent residents" are nevertheless subject to deportation.

The "loss" of nationality resulting from the circular decree of the Director of the Civil Affairs Bureau is an extremely problematic measure. There is no nationality provision in the San Francisco Treaty cited as the basis of this decree, nor are the mother countries of the people affected—namely the Republic of Korea and the Democratic People's Republic of Korea—parties to that treaty. It is customary, in terms of international norms, that people such as Koreans residing in Japan, for whom there is a basis for belonging to two different countries based on

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30. The term *Kankoku Chosenjin* is rendered simply "Korean(s)" in this translation. Where necessary, *Kankoku* is rendered "ROK," and *Chosen* is rendered "(North) Korea."

blood lineage on the one hand, and habitual residence on the other, be given an opportunity to choose their nationality. But in Japan this has not been done.

Japan has a naturalization system (*kika seido*). To date, however, this system has in practice required Koreans residing in Japan to abandon their ethnic pride and to become completely Japanese. Consequently, there remains a sense of revulsion toward "naturalization," even among second- and third-generation Koreans in Japan who have become fully established members of Japanese society. There are many other problems which arise from the existing legal system which has treated Koreans residing in Japan as aliens subject to deportation, unless they be willing to become completely Japanese. This system must by all means be radically revised.

The Japan-ROK Legal Status Agreement does not set forth the legal status of "third-generation Koreans in terms of Treaty," but this generation is already being born, making the resolution of its legal status an urgent task. Together with the problem of Koreans remaining in Sakhalin and the problem of atomic bomb victims residing in the Republic of Korea, the ROK government considers this as one of its most serious problems with Japan. The Japanese government also considers this to be one of the most important diplomatic issues of the year.

The Japanese Diet is now said to be in a "twisted" state, with the ruling party holding a majority of seats in the Lower House, and the opposition parties holding a majority in the Upper House. The Immigration Act as it pertains to the legal status of Koreans residing in Japan was formerly a point of contention between the ruling party, and the opposition parties. In addition, the Liberal Democratic Party (LDP) has emphasized good relations with the Republic of Korea and the Japanese Socialist Party has emphasized good relations with the Democratic People's Republic of Korea. The treatment of Koreans residing in Japan, however, should be addressed by Japan in terms of its contributions to the world community, not only in economic fields, but also in the fields of culture and human rights, while placing a high value on its relations with both "South" and "North" Korea. If this can be done, then the ruling and the opposition parties should be able to draw upon their respective legacies and formulate a constructive, mutually complementary policy toward Koreans residing in Japan.

### **Principles on Which Solutions Should Be Based**

I. The problems involving Koreans residing in Japan will be resolved only when it becomes possible for them to live as members of Japanese society, on the same level as the Japanese, while maintaining their ethnic pride. Revising their legal status will lay a sure foundation for realizing this goal. The revision, therefore, must be based on the realization that Koreans residing in Japan are in fact permanent resident members of Japanese society. It must also be a revision that will stand up to the



scrutiny of future generations. The "third-generation" who are to be most strongly affected by the revision will become adults in the 2010's. The revision therefore must bring about a system which is grounded in present reality, is fully cognizant of future trends, and will be judged from the perspective of the 2010's to have been a wise legislative reform.

II. The causes of the presence of Koreans residing in Japan are to be found in the annexation of Korea to Japan in 1910 and Japan's subsequent colonial administration. The international political climate at the time of the annexation notwithstanding, being ruled over by a foreign people is in and of itself a thing to be abhorred. And even if it be arguable that the Republic of Korea, the Democratic People's Republic of Korea, and the Koreans residing in Japan themselves bear some degree of responsibility for the condition in which Koreans in Japan now find themselves, it is nevertheless undeniable that the greatest responsibility for this state of affairs lies with the Japanese government and with the Japanese society in which Koreans residing in Japan are immersed. Legislation affecting Koreans residing in Japan must be squarely founded upon an unqualified recognition of these facts.

III. The reform in the legal status of Koreans residing in Japan must not impede or obstruct either the normalization of relations between Japan and the Democratic People's Republic of Korea or the reunification of the Korean peoples, but rather must contribute to the achievement of these tasks. Therefore, even if the said reform in legal status is occasioned by the consultation stipulated in the Japan-ROK Legal Status Agreement, that reform must be applicable to all Koreans in Japan, including those of (North) Korean nationality, and it must issue in legal institutions<sup>31</sup> which guarantee an equal status between those of ROK nationality and those of (North) Korean nationality. The reform, furthermore, must give due consideration to the existence of those of Korean ancestry who have already obtained Japanese citizenship or who will do so in the future. This inclusiveness is necessitated both by the fact that Japan's colonial administration was implemented throughout the entire Korean peninsula, and by the fact that the hardships imposed in Japanese society are no different for Koreans residing in Japan, whether they be of ROK or (North) Korean nationality or have Japanese citizenship.

IV. The reform in the legal status of Koreans residing in Japan must be realized in legal institutions which fully respect their independent will and aspirations. The circular of the Director of the Civil Affairs Bureau of 1952 was a measure taken unilaterally by the Japanese government. Nor did the Japan-ROK Legal Status Agreement of 1965 adequately respect the independent will and aspirations of Koreans residing in

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31. Where it occurs in this translation, the term "legal institutions" is a rendering of *seido*, which is usually translated "system," a rendering thought to be misleading here. In certain contexts herein, *seido* is rendered "institution" or "institutional."

Japan. The reform called for here must be based on such independent will and aspirations. It must also create an institutional structure which will give Koreans residing in Japan freedom of choice.

### Specific Policies

#### 1. Permanent Resident Status as Permanently Domiciled Aliens

What form then should the legal status of Koreans residing in Japan be as founded upon the basic perceptions and principles set forth above? It should be such that, after establishing the institutional means for honoring their ethnic pride, it recognizes their status as permanently domiciled aliens having basically the same rights as Japanese nationals, recognizes the acquisition of Japanese citizenship (merely by making application therefor and not by means of "naturalization" (*kika*)), and leaves that choice entirely up to Koreans residing in Japan. The acquisition of Japanese citizenship, as an available option, has been looked upon as taboo. This has been so in part because of the reaction within the Korean society in Japan and within their countries of origin toward "*kika*" in particular and Japanese citizenship in general. And in part it is fostered by certain notions which persist within the Japanese government, namely perspectives concerning the public peace and the myth of monoethnic Japan. We believe that we must now repudiate and dismiss this taboo. In view of what is achievable at this point in time, however, the specific policies or measures which we are proposing at this time are limited to guarantees of rights as permanently domiciled aliens.

The most important legal-status reforms which should be implemented over the next year (1991) is to guarantee the full rights of Koreans residing in Japan as permanently domiciled aliens. What is desired for them who live in Japanese society as permanently domiciled aliens is the guarantee of the same rights in general as Japanese nationals, excluding certain areas like participation in government at the national level and the qualification to be appointed to public offices directly concerned with matters of national polity. This naturally follows from the fact that permanently domiciled aliens in Japan, as permanent constituent members of Japanese society no less than Japanese nationals, bear the same duties and obligations that Japanese nationals bear. In this day of deepening interdependence, a common feature among the advanced nations is that differences in status between nationals and permanently domiciled aliens continues to shrink. Permanent-resident status, together with guarantees of the rights stipulated in Section 2 below, should naturally be recognized for all Koreans residing in Japan as permanently domiciled aliens, and to their descendants.

This degree of liberality in guaranteeing rights to permanently domiciled aliens should be favorably comparable to the laws affecting aliens in the advanced countries of Europe and America, and should enable Japan to hold its head up among the nations of the world. In view of the fact that Koreans residing in Japan possess two qualifica-

tions, namely (1) that they were formerly under the Japanese colonial rule, and hence held Japanese nationality, and (2) that they are permanently domiciled aliens who have completely established their lives in Japanese society, the following proposals fall into two categories, namely (A) those which pertain exclusively to Koreans residing in Japan, and (B) those which pertain commonly to all permanently domiciled aliens in Japan, including those of other (United States, etc.) nationality. The proposals in category (A), moreover, should basically be applied also to those of Taiwan origin, and to their descendants.

## 2. Specific Provisions To Be Implemented

### A. In Social, Economic, and Cultural Life Fields

#### (1) Affirmative Action Programs To Eliminate Hiring Discrimination

\* \* \*

#### (2) Liberalization in Area of Public Service Personnel, Particularly Those Engaged in Education

\* \* \*

#### (3) Guarantees for Ethnic Education

\* \* \*

#### (4) Guarantees for Establishment of Cultural Funds and Participation Therein by Koreans Residing in Japan

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### B. Areas of Residence, Leaving and Entering Country

#### (1) *De facto* Non-Application of Deportation

\* \* \*

#### (2) Making System for Reentry into Country Same Form as Passports for Japanese Nationals

\* \* \*

### C. Granting Immunity to Permanently Domiciled Aliens from the Fingerprinting Requirement and the Obligation To Carry Alien Registration Card at All Times Stipulated under Alien Registration Act

\* \* \*

### D. Establishment of Official Advisory Council (*shingikai*) for Policies Concerning Permanently Domiciled Aliens

\* \* \*

The proposals set forth above were originally drafted by a study group represented by Onuma Yasuaki. Then, opinions were heard from the entire body of signatories, certain revisions were made based on those opinions, and the proposals were finalized. The signatories to these proposals represent a wide range of nationalities, philosophies, and beliefs. Hence they do not necessarily agree in their views on every word and clause contained in the proposals. Moreover, the granting of the right to permanently domiciled aliens to participate in local government, such as has already been recognized by a considerable number of countries in Europe, is not contained in these proposals, and some other issues which remain concerning the treatment of Koreans residing in

Japan are not dealt with. These issues must be dealt with in the near future. For the present, our proposals are limited to those set forth above. Furthermore, the domestic bill which is ancillary to these proposals (i.e. that which is to be enacted in 1990 or 1991 for the purpose of improving the legal status of Koreans residing in Japan, to be announced on June 2 at the Zendentsu Rodo Kaikan) is a trial draft of the study group members who wrote the original draft of these proposals, and is not necessarily based on the common views of all of the signatories. Nevertheless, the signatories are in full agreement on the fundamental provisions of these proposals. It is therefore strongly hoped that the Japanese Diet, representing the Japanese people, will accept these proposals, and enact legislation that reflects the spirit and import of these proposals. The signatories, moreover, believe that the responsibility for resolving the problems connected with Koreans residing in Japan lies not only with the Japanese government, but also with Japanese society at large. Every single person in Japanese society—particularly the one in charge of personnel in a major company, or the one having many opportunities of direct contact with Koreans residing in Japan—is therefore strongly urged to act according to the spirit of these proposals.

April 23, 1990

Signatories

(Names of the Signatories)

\* \* \*

Representative for Signatories and Drafters: Onuma Yasuaki  
Secretary-General: Kim Kyong Dok

DRAFT PROPOSALS ON THE SPECIAL MEASURES ACT  
Concerning Legal Status and Treatment of Persons From Former Colonies

June 2, 1990

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*Special Measures Act Concerning Legal Status and Treatment of Persons From Former Colonies (Draft)*

*Preamble*

We, the Japanese people,

do acknowledge that Japan, by taking possession of the Korean Peninsula and Taiwan, did commit very blameworthy acts against the people of these regions, including persons who were forcibly removed from those regions and brought to Japan, and do deeply regret these acts,

do acknowledge that persons from the Korean Peninsula and Taiwan who live permanently in Japan, together with their descendants, bear the same duties and obligations as members of Japanese society that the Japanese nationals do,

do recognize that Japan bears a historical obligation both to guarantee that these persons of Korean and Taiwanese origin shall be able to live together with the Japanese nationals, with the same fundamental human rights as those of the Japanese nationals, being respected, preserving their dignity as individuals and taking pride in their ethnic heritage, and to establish legal institutions and to foster an environment that are conducive to the performance of this guarantee,

do firmly believe that these undertakings are necessary for Japan to enjoy friendly relations in the future with its neighboring countries, and for Japan to occupy an honored place in the international society,

and do hereby enact this legislation.

*Article 1* PURPOSE

The purpose of this legislation is to establish the legal status and to provide for the treatment of persons from former colonies who live permanently in Japan, to guarantee that these persons shall be able to live together with the Japanese nationals, with their fundamental human rights being fully respected, their dignity as individuals being preserved, and their pride in their ethnic heritage being respected.

*Article 2* DEFINITIONS

1. Persons from former colonies, in this legislation, shall refer to persons who were deemed to have lost their Japanese citizenship with the coming into effect of the Treaty of Peace with Japan (Treaty No. 5, 1952), and to their lineal descendants, both of whom fall within the purview of any of the following paragraphs.

(1) Persons who have been granted a permanent-residence authorization in accordance with the Special Immigration Act (Legislation No. 146, 1965) Made in Conjunction with the Implementation of the Agreement between Japan and the Republic of Korea Concerning the Legal Status and Treatment of Republic of Korea Nationals Domiciled in Japan

(2) Persons who have been granted a permanent-residence authorization in accordance with the Immigration and Refugee Recognition Act (Government Ordinance No. 319, 1951; hereinafter abbreviated "Immigration Act")

(3) Persons residing in Japan according to the provisions of the Law Concerning Measures Taken by Order of the Ministry of Foreign Affairs Based on Matters Concerning Decrees Made in Conjunction with the Acceptance of the Potsdam Declaration (Legislation No. 27, 1952; referred to as "Law No. 126, 1952" in the following paragraph), Article 2, Section 6

(4) Children of the persons falling within the purview of Law No. 126, 1952, Article 2, Section 6, and born in Japan on or after the date that Law went into effect

(5) Persons other than those provided for in the foregoing paragraphs who have lived continuously in Japan between April 28, 1952, and the date this legislation goes into effect (including their lineal descendants born in Japan between April 29, 1952, and the date this legislation goes into effect)

(6) Persons who are the lineal descendants of those provided for in the foregoing paragraphs and who were born in Japan or who were born outside of Japan of mothers who had left the country after obtaining reentry permits but entered Japan during the valid period of the reentry permit of the mother

2. Japanese nationals (*kokumin*), in this legislation, shall refer to persons holding Japanese citizenship.

### *Article 3* SPECIAL PERMANENT-RESIDENCE RIGHT (EIJUKEN)

1. Persons from former colonies have the right to live permanently in Japan (this right being called the "special permanent-residence right" in the next section).

2. Persons from former colonies can, any time after this legislation goes into effect, by procedures established by order, claim that the Minister of Justice verify that they hold the special permanent-residence right.

### *Article 4* SPECIAL CASES OR EXEMPTIONS UNDER IMMIGRATION ACT

1. Persons from former colonies shall be subject to deportation under the provisions of Article 24 of the Immigration Ordinance, irrespective of the provisions of that article, only if, for reason of an act committed on or after the date that this legislation goes into effect, that person has

been subjected to a penal action of no less severity than incarceration for a crime set forth in the Criminal Code (Law No. 45, 1907), Volume 2, Chapter 2 or Chapter 3 (excluding, however, cases in which a suspended sentence has been passed or the penal action enforced is for a crime set forth in the Criminal Code, Article 77, Section 1, Paragraph 3).

2. The Minister of Justice, when an application is made by a person from a former colony for a permit to reenter the country under the Immigration Act, Article 26, Section 1 (including permits for multiple reentries, and so below), must grant such permit, irrespective of the provisions of the said section. It may refuse such permit, however, in cases where the applicant for the reentry permit falls within the purview of any of the following paragraphs.

- (1) Persons charged with crimes punishable by death, life imprisonment, or long-term imprisonment of two years or more, or persons suspected of having committed such a crime and concerning whom the Minister of Justice has been notified by the proper authorities that a warrant for arrest (*taihojo*), summons (*koinjo*), warrant for detention (*koryujo*), or court custody order (*kanteiryuchijo*) has been issued
  - (2) Persons who have been subject to a penal action of severity no less than incarceration, until the enforcement of that action is completed or until that action is no longer being enforced
  - (3) Persons other than those described in the foregoing two paragraphs concerning whom the Minister of Justice has sufficient reason to show that there is a danger of them committing an act or acts which would immediately and significantly imperil the interests or public safety of Japan
3. The Minister of Justice must confer with the Minister of Foreign Affairs before finding that the conditions provided for in Section 2, Paragraph 3 above obtain.
4. The Minister of Justice, when granting the permit stipulated in Section 2 above, shall have a reentry permit stamped into the passport when the person from a former colony to whom the permit pertains holds such passport, or, when the person does not hold a passport, or is unable to obtain a passport because he or she does not hold citizenship or for some other reason, shall have a permanent-resident alien passport issued in lieu of the reentry permit. In such cases, the said permit shall become effective from the time that it is stamped or issued.
5. The Minister of Justice, when granting the reentry permit stipulated in Section 2 above, shall make their period of validity five years, commencing on the date the said permit was issued.
6. The Minister of Justice, when an application is made by a person from a former colony who exited the country after obtaining a reentry permit for an extension in the valid period of the said permit, while that person is out of the country, shall grant such extension if the remaining period of validity is less than one year, for an additional period not

exceeding five years and not exceeding ten years from the date that the permit was issued.

7. The permit noted in the previous section shall be registered in the passport or permanent-resident alien passport, and the procedures pertaining thereto shall be delegated to Japanese consulates, etc.

8. The Minister of Justice may cancel the reentry permit of a person from a former colony who has obtained such a permit, while that person is in Japan, in either of the following cases.

- (1) When the said person is found, after being issued such reentry permit, to come within the purview of any of the paragraphs under Section 2
- (2) When, after being issued such reentry permit, any of the paragraphs under Section 2 becomes applicable

#### *Article 5* SPECIAL CASES OR EXEMPTIONS UNDER ALIEN REGISTRATION ACT

1. When a person from a former colony is registered under Article 4 of the Alien Registration Act (Law No. 125, 1952), the categories listed in Paragraphs 9 and 19 of Section 1 of that article shall not be registered, irrespective of the provisions of that article.

2. Persons from former colonies shall not be subject either to the provisions under Section 1, Article 13 of the Alien Registration Act requiring the alien registration card to be carried at all times, or to the provisions of Section 2 of that article.

3. Persons from former colonies shall not be subject to the provisions of Article 14 of the Alien Registration Act.

4. In the event that a person from a former colony falls within the purview of any of the paragraphs under Section 1 of Article 18, Paragraphs 1 through 3 under Article 18-2, or Article 19, he or she shall be levied a civil penalty of 5000 yen or less, irrespective of those provisions.

#### *Article 6* SOCIAL SECURITY AND SOCIAL WELFARE

1. Persons from former colonies shall have the same status as Japanese nationals under the administration of laws or ordinances pertaining to social security and social welfare.

2. Persons from former colonies shall be deemed to have the same status as Japanese nationals under the National Pension Act (Law No. 141, 1959), retroactively from the ratification of that Act, and shall come under the provisions of that Act, as established by order.

#### *Article 7* POSTWAR COMPENSATIONS

1. Persons from former colonies shall have the same status as Japanese nationals in the application of laws and ordinances pertaining to relief for war victims.



2. Persons from former colonies shall have the same status as Japanese nationals under the legislative acts listed below, retroactively to the effective dates of such legislation, respectively, and shall come under the provisions of such legislation, as established by order.

\* \* \*

*Article 8* EMPLOYMENT PROMOTION, ETC.

1. State and local municipalities (*kokyodantai*) must comprehensively and effectively promote whatever measures are necessary to promote the employment and occupational stability of persons from former colonies, advising and encouraging employers to keep the percentage of these persons in its employ from falling below the percentage that such persons constitute within the total population of Japan.

2. Employers must grant the same opportunities to persons from former colonies that they do to Japanese nationals, both in the solicitation and hiring of workers, and must also afford the said persons the same treatment as Japanese nationals in terms of position, promotion, and wages or other work conditions.

3. Persons from former colonies shall be able to serve as national public service personnel and local public service personnel, with the exception of those positions or persons noted below.

(1) Diet members; (2) ministers of state; (3) judges; (4) public prosecutors; (5) diplomats; (6) members of Japan Self Defense Forces; (7) any person, besides one holding any position noted above, who performs duties in which he or she directly is involved in the formation of national policy (*kokka ishi*), and exercises discretion having a large bearing on the determination thereof, or who performs duties which, according to the express provisions of the law, should only be performed by a Japanese national.

4. Persons from former colonies shall have the same status as Japanese nationals in the application of laws or ordinances which either prohibit aliens from conducting business or procuring assets or limit their ability to do so.

*Article 9* EDUCATION

1. Persons from former colonies shall have the right to receive education concerning the language, culture, and history of the ethnic group (*minzoku*) to which they belong. This education must conform with spirit both of the International Covenant on Civil and Political Rights (Treaty No. 7, 1979) and of the Fundamentals of Education Act (Law No. 25, 1947).

2. State and local municipalities shall fully exercise their good offices—in terms of the application of laws and ordinances, public administration, and public finance—to insure that persons from former colonies who receive education at schools which provide the education provided for in Section 1 above, even when the such schools have not been

authorized under Article 1 of the School Education Act (Law No. 26, 1947), not suffer any disadvantage, *de jure* or *de facto*, respecting either their qualification to matriculate at schools provided for in that article or any other matter concerning school education.

3. State and local municipalities must comprehensively and effectively promote whatever measures are necessary to realize the rights set forth in Section 1 above in school education and in societal education.

#### *Article 10* FUND

1. The Living Together Japan-East Asia Ethnic Culture Fund (*Tomo ni Ikiru Nihon Higashi Ajia Minzoku Bunka Kikin*) (hereinafter abbreviated "Fund") shall be established for the purpose of supporting the succession, nurturing, and development of the ethnic cultures of persons from former colonies, and for the purpose of conducting activities to deepen the understanding by the Japanese people of the history, life, and culture of such persons.

2. The participation of persons from former colonies in the establishment, management, and operation of the Fund shall be guaranteed.

#### *Article 11* ENLIGHTENMENT

State and local municipalities, in order to achieve the purpose set forth above in Article 1, must take every opportunity to provide guidance to citizens, employers and all kinds of groups, and must promote enlightening activities, so that persons from former colonies suffer no disadvantage for reason of not holding Japanese citizenship, and that good relations are promoted between such persons and Japanese nationals.

#### *Article 12* OFFICIAL ADVISORY COUNCIL

1. An official council (*shingikai*) called the Council Concerning Treatment of Persons From Former Colonies (hereinafter abbreviated "Council") shall be set up under the Prime Minister's Office for the purpose of studying and deliberating on matters concerning the legal status and treatment of persons from former colonies.

2. The Council may respond to inquiries from the Prime Minister, or when necessary, make recommendations to heads of relevant administrative bodies, on matters concerning the legal status and treatment of persons from former colonies.

3. The Council shall be able to secure any necessary cooperation from heads of relevant administrative bodies in obtaining information and materials, and hearing opinions or explanations, etc.

4. The Council shall be made up of no fewer than 15 and no more than 20 members.

5. The members shall be appointed by the Prime Minister from among persons who have served in positions connected with the legal status

and treatment of persons from former colonies and persons of learning and experience. No fewer than five of these member positions shall be filled by persons from former colonies.

6. The members shall serve in a part-time capacity.

7. Necessary matters concerning the composition and administration of the Council other than those set forth in the preceding sections shall be determined by order.

*Article 13* INTERPRETATIVE PROVISIONS

1. Persons who were deemed to have lost their Japanese nationality when the treaty of peace with Japan went into effect and their descendants who presently hold Japanese citizenship, shall be able to enjoy the rights and benefits established by the provisions of Articles 8 through 11.

2. None of the provisions of this legislation shall be understood to deny or limit the rights of aliens living in Japan who are not persons from former colonies.

**Supplementary Provision**

This legislation shall go into effect on a date to be set by cabinet order within one year from the date of its promulgation.