

RELEASE OF:
PROPOSED OUTLINE FOR LAW ON THE ELIMINATION OF RACIAL
DISCRIMINATION
(Draft Proposal Ver. 1 of JCLU Subcommittee for the Rights of Foreigners)

After much discussion, Japan ratified the International Convention on the Elimination of Racial Discrimination in 1996. However, the position of the Japanese government has been that, "We do not recognize that the present situation of Japan is one in which discriminative acts cannot be effectively restrained by the existing legal system or in which explicit racial discriminative acts, which cannot be restrained by measures other than legislation, are conducted; therefore a law prohibiting racial discrimination and other legislation is not considered necessary." (Comments of the Japanese Government on the Concluding Observations of the United Nations Committee on the Elimination of Racial Discrimination regarding report and examination of the Japanese Government).

Nonetheless, as the number of foreigners living in Japan continues to increase year to year, in reality there exists strongly-rooted racial discrimination here, which includes discrimination against foreigners in labor, housing, the provision of services, and various other areas. In the Hamamatsu Jewelry Store foreigner exclusion case and the Otaru Onsen racial discrimination case, claims seeking compensation from the proprietors of discriminating businesses were upheld based on the International Convention on the Elimination of Racial Discrimination. However, such cases are just the tip of the iceberg. Relief under the Convention and in the courts, by themselves, are clearly inadequate for the elimination of discrimination. To truly do away with discrimination, we need to specify and define clear rules as to what constitutes unacceptable discrimination, clarify the responsibility of national and local governments in the elimination of discrimination, and enhance relief measures.

As evidenced by discrimination against foreigners, the existing mechanism for the protection of human rights centered on the Constitution and the courts is inadequate to provide relief for actually occurring abuses of human rights, and as such there are heightened calls for the creation of new mechanisms. Currently, debate is underway concerning the establishment of a domestic human rights body, but the fact of the matter is that nearly no debate has ensued concerning substantive law that will be applicable to such a body.

This subcommittee has targeted the enactment of substantive law for the elimination of racial discrimination as one facet of new and effective human rights protection mechanisms, and the members set forth below have prepared a draft proposal outline therefor. 'Buraku' discrimination and other serious discrimination based on traits other than race also exist in Japan, but we believe that the coverage of all discrimination under one law is not necessarily appropriate since each form of discrimination has its own characteristic aspects. As such, this subcommittee focused on the issue of discrimination against foreigners, and drafted a special law concerning racial discrimination which also addresses discrimination against foreigners. Premised on the establishment of a truly independent national human rights body, for the

time being we will assume that such a body will implement the racial discrimination elimination law. While it is necessary to also examine and propose specific relief procedures, initially we will propose the substantive law as a springboard for debate, and subsequently we will examine procedural issues.

Furthermore, the repeal of the nationality clause of the Livelihood Protection Law and measures for the realization of civil service employment rights are necessary in the event this racial discrimination elimination law is enacted. In addition, depending on the manner in which relief measures are prescribed, reservations concerning Article 4(a) and (b) of the International Convention on the Elimination of Racial Discrimination may have to be withdrawn.

This proposed outline was prepared as a springboard for debate, and we request your opinions towards improving the proposed outline.

March 15, 2003

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1. Purpose

This Law seeks to contribute to the realization of a society that respects those human rights recognized under the Constitution and international law, by eliminating racial discrimination through the prohibition of racial discrimination by all persons and the enactment of measures designed for the relief and prevention of harms therefrom.

2. Definitions

In this Law, the term “Race” shall mean race, color of skin, ethnicity, nationality or national origin.

In this Law, the term “Racial Group” shall mean any group comprised of persons who share a specific Race.

In this Law, the term “Public Official” shall mean any staff member of national or local public entities, and persons otherwise engaged in civil service pursuant to law or ordinance.

In this Law, the term “Racial Discrimination” shall mean the following actions:

- (1) (Direct Discrimination) Treating any person at a disadvantage to others in the same circumstances, based on Race;
- (2) (Indirect Discrimination) An apparently neutral rule or criterion would put a person belonging to a specific Racial Group at a disadvantage compared with other persons;
- (3) (Harassment) Acts related to Race, that have the purpose or effect of intimidation, insult, derision, or the creation of an otherwise unpleasant environment, or that have the purpose or effect of damaging the dignity of specific person(s) shall be deemed as discrimination under Paragraph (1).

The following acts shall not constitute Racial Discrimination:

- (1) To the extent necessary for the purpose, differing treatment in cases where different treatment based on nationality is truly unavoidable;
- (2) In cases in which by the nature of a certain occupation, characteristics related to a specific Race correspond to definitive working conditions, the purpose for the establishment of said conditions is just, and the conditions are proportionate to the purpose, the differing treatment based on said characteristics;
- (3) Special measures enacted for the purpose of preventing or rectifying disadvantages related to Race.

General Prohibition of Discrimination

No person shall suffer Racial Discrimination.

Specific Areas

[Labor]

Employers must not engage in Racial Discrimination in the following matters or otherwise in connection with labor contracts:

- (1) Recruitment and hiring;
- (2) Work hours, wages, days off and leave, work safety and sanitation, and other labor conditions;
- (3) Assignments and promotions;

(4) Education and training;

(5) Benefits;

(6) Mandatory retirement, resignations and dismissals

Job placement organizations, job training organizations and organizations granting qualifications must not engage in Racial Discrimination.

Labor unions, employer groups, and other occupational groups must not engage in Racial Discrimination for entry into said groups and in the treatment as members of such groups. National and local public entities must not engage in Racial Discrimination, including in matters of hiring and promotions.

[Medical Treatment and Social Security]

All persons shall have the right to enjoy physical and mental health to the maximum level attainable, free of Racial Discrimination.

All persons shall have the right to receive medical treatment as required in emergencies to sustain life and prevent irreversible health injuries, free of Racial Discrimination. Such emergency treatment must not be refused based on grounds of undocumented residency or employment.

All persons shall have the right to participate in health insurance, welfare pension insurance, National Health Insurance, and the National Pension Plan free of Racial Discrimination.

All persons shall have the right to receive livelihood protection (seikatsu-hogo) free of Racial Discrimination. Provided, however, that the foregoing provision shall not apply to foreigners who have resided in Japan for less than one year.

All persons shall be able to enjoy rights related to child welfare, maternal and child health, pediatric healthcare, healthcare for infectious diseases, welfare services for the disabled, welfare services for seniors, public health, and the like, free of Racial Discrimination.

[Education]

No person shall suffer Racial Discrimination in any form or at any stage in education.

National and local public entities must utilize all appropriate methods in an effort to fulfill the special needs associated with specific Racial Groups, including opportunities to receive ethnic education, education of native languages, and education of the Japanese language.

In no form and at no stage will education include content which encourages Racial Discrimination. In particular, school-based education must be oriented towards the elimination of racial discrimination.

[Housing]

No person shall suffer Racial Discrimination in the disposal (including purchase and sale) of, or the use (including renting) of, real estate for business use or housing for oneself or one's family.

[Provision of Goods, Etc.]

No person shall suffer Racial Discrimination in connection with the receipt of any goods or services provided for public use including retailers, transportation, accommodation, food and beverage establishments, playhouses, and parks.

[Participation in Groups]

No person shall suffer Racial Discrimination in joining, withdrawing or in the treatment as a member of those groups for which the public are eligible to become members.

Prohibition of Discrimination and Incitement of Discrimination by Public Officials

Public Officials must not engage in Racial Discrimination in their positions as persons engaged in public service.

Public Officials must not incite Racial Discrimination against any person. Incitement shall mean working to cause or bring about the likeliness of a decision to carry out a specific act against a person, regardless of whether through instructions, orders, solicitations or other methods.

Responsibilities of National and Local Public Entities

The national government shall be responsible for the comprehensive promotion of policies for the realization of the human rights recognized under the Constitution and international law through the elimination of Racial Discrimination.

Local public entities, in an effort to eliminate Racial Discrimination in regional societies, shall give due consideration to the effect of this Law in the administration and affairs of the local public entity, shall enact ordinances, and shall otherwise be responsible for the comprehensive promotion of policies for the elimination of Racial Discrimination at local public entities.

Publicity and Promotion of Awareness of the Law

National and local public entities must widely promote awareness of this Law by adopting adequate and affirmative publicity measures, and must provide all persons with easy access to information concerning this Law.

International Human Rights Law as a Supplemental Means for the Interpretation of the Law

In the interpretation and application of this Law, consideration shall be given to general interpretations and applications internationally recognized in connection with the International Covenant on Human Rights, the International Convention on the Elimination of Racial Discrimination, and other conventions related to human rights.