

RELEASE OF:

**JCLU SUBCOMMITTEE FOR THE RIGHTS OF FOREIGNERS
PROPOSED OUTLINE FOR
THE LAW ON THE ELIMINATION OF RACIAL DISCRIMINATION (Ver. 2)**

Since the release of this Subcommittee's "Proposed Outline for the Law on the Elimination of Racial Discrimination (Ver. 1)", we have received a large number of opinions and our efforts have been broadcast overseas. This reinforced our appreciation of the heightened interest concerning racial discrimination in Japan and the need for the enactment of legislation. In particular, we received the valuable opinions of foreigners residing in Japan as well as others who are subjected to discrimination.

As the result of an internal study based upon these opinions, we revised a part of the Proposed Outline Ver. 1, and added a line of thought concerning remedial measures that include penal provisions.

Specific remedial procedures are slated to be handled primarily by a Human Rights Commission pursuant to the Human Rights Protection Bill which is scheduled to be resubmitted to the Diet by the government; these procedures are premised on the provisions on remedial procedures contained in that Bill. (However, questions persist concerning the independence of the Human Rights Commission under this Bill, and we will continue to seek the establishment of a truly independent body.)

This proposal concludes this Subcommittee's internal study concerning the Law on the Elimination of Racial Discrimination. The Japan Civil Liberties Union will now commence discussions to finalize the Proposed Outline as the JCLU's formal proposal. Upon the announcement of this Ver. 2, JCLU members have raised questions concerning: (a) whether criminal penalties are necessary to ensure the effectiveness of the elimination of racial discrimination when no such penalties exist for other discrimination cases such as sexual discrimination and discrimination against persons with disabilities, (b) the clarity of the constituent elements of criminally punishable acts, and, (c) based on the viewpoint of protecting the freedom of expression, making racially discriminative expressions subject to investigations which may be conducted compulsorily and to "special remedial procedures" such as recommendations. The JCLU will continue to discuss these issues.

We hope that this matter will be discussed widely both in and out of the JCLU with this Proposed Outline as a springboard, and that there will be increased momentum for the enactment of a law on the elimination of racial discrimination.

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RELEASE OF:

Ver. 1

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 the substantive law that will be applicable to such a body.

This Subcommittee has targeted the enactment of a 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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JCLU SUBCOMMITTEE FOR THE RIGHTS OF FOREIGNERS

**PROPOSED OUTLINE FOR
LAW ON THE ELIMINATION OF RACIAL DISCRIMINATION (Ver. 2)**

Article 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.

Article 2 Definitions

In this Law, the term “Race” shall mean race, color of skin, ethnicity or nationality (including nationality held in the past).

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. Provided, however, that the foregoing shall exclude instances in which said rules or standards are objectively justifiable for a reasonable purpose, and the means for achieving said purpose is both necessary and appropriate;
- (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).

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.

Article 3 General Prohibition of Discrimination

No person shall engage in Racial Discrimination.

Article 4 Specific Areas

[Labor and Undertaking of Public Service]

- 1) 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
- 2) Job placement organizations, job training organizations and organizations granting qualifications must not engage in Racial Discrimination.
- 3) 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.
- 4) National and local public entities must not engage in Racial Discrimination in matters of hiring, promotions and other employment conditions. Provided, however, that the foregoing provisions shall not apply to differentiation based on nationality with regard to the following persons:
 - (1) Ministers of state, vice ministers, and administrative vice ministers;
 - (2) Supreme Court justices and chief judges of high courts;
 - (3) Prosecutor-General and superintending prosecutors;
 - (4) Ambassadors and envoys;
 - (5) Persons commensurate to the foregoing who are directly involved in the formation of national will and engaged in duties designated as to be assumed only by nationals under the express provisions of law.

[Medical Treatment and Social Security]

- 1) All persons shall have the right to enjoy physical and mental health to the maximum level attainable, free of Racial Discrimination.
- 2) 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.
- 3) 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.
- 4) 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.
- 5) 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]

- 1) No person shall suffer Racial Discrimination in any form or at any stage in education.
- 2) 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.
- 3) 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, financial institutions, 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.

Article 5 Prohibition of Discrimination or Facilitating of Racial Discrimination by Public Officials

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

“Facilitate” 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.

Article 6 Punitive Provisions

- 1) Public Officials shall be punished when engaging in or facilitating Racial Discrimination in violation of Article 5.
- 2) In addition to the foregoing paragraph, persons who have engaged in direct or indirect discrimination shall be punished.

Article 7 Responsibilities of National and Local Public Entities, Business Enterprises and Private Citizens

- 1) 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.
The national government must seek the opinion of the Human Rights Commission prior to implementing measures and policies related the human rights.
- 2) 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.
- 3) Business enterprises and other organizations, in their activities and relationships with members, employees and the like, shall be responsible for promoting measures and policies for the elimination of Racial Discrimination as part of their social responsibilities.
- 4) All private citizens shall regularly enlighten themselves in order to deepen understanding among races, and shall strive to eliminate Racial Discrimination.

Article 8 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.

Article 9 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.

Article 10 Concept of Remedial Measures

When Racial Discrimination is committed in violation of this Law, the victim shall be entitled to take general civil litigation actions based on tort such as seeking injunctive relief and compensation for damages, and shall also be entitled to seek relief from the Human Rights Commission.

Relief from the Human Rights Commission shall be provided fundamentally through the procedures prescribed in the Human Rights Protection Bill (the outline of which procedures are indicated in the text boxes hereinafter). In addition, special rules related to Racial Discrimination are stipulated as follows.

1. Commencement of Remedial Procedures

According to the Human Rights Protection Bill:

- (1) Any person who has suffered or is likely to suffer from an infringement of human rights shall be entitled to petition the Human Rights Commission and seek the enactment of appropriate measures to remedy or prevent sufferings caused by such infringement of human rights.
- (2) Upon receiving a petition under the preceding paragraph, the Human Rights Commission must, without delay, conduct necessary investigations and enact appropriate measures concerning such human rights infringement case.
- (3) The Human Rights Commission shall be entitled to conduct necessary investigations and enact appropriate measures on its own initiative.

Special Rules under this Law:

Victims as well as any person belonging to the Racial Group subjected to discrimination and public interest NGOs are entitled to petition the Human Rights Commission.

When a petition is filed by persons other than victims, the petitioner shall be entitled to seek the suspension of Racial Discrimination and other measures, but shall not be entitled to seek compensation for damages.

In the case of the preceding paragraph, the Human Rights Commission must hear the opinion of the victim in order to commence remedial procedures, and after commencing remedial procedures, shall be entitled to end the remedial procedures in consideration of the intent or interests of the victim, the seriousness of the matter, and other relevant factors.

2. General Investigation and General Remedial Measures

According to the Human Rights Protection Bill:

When the Human Rights Commission finds it necessary in order to perform its duties related to the relief or prevention of sufferings caused by infringements of human rights, it shall be entitled to conduct necessary investigations.

When the Human Rights Commission finds it necessary in order to remedy or prevent sufferings caused by infringements of human rights, it may enact the following measures:

- (1) Provide advice, refer victims to relevant authorities or groups, help victims obtain legal aid, and otherwise provide assistance;
- (2) Provide instructions, enlightenment and other guidance to perpetrators;
- (3) Coordinate the relationship between victims and perpetrators;
- (4) Provide notice to relevant authorities;
- (5) File criminal complaints.

3. Special Investigations

According to the Human Rights Protection Bill:

In order to conduct the necessary investigation with regard to cases involving infringements of human rights (excluding, however, certain acts), the Human Rights Commission shall be entitled to conduct the following:

- (1) Summoning and questioning of the parties related to the case;
- (2) Ordering the submission of documents and other items relevant to the infringement of human rights concerned;
- (3) Entering locations where the infringement of human rights concerned actually took place or is found as likely to have taken place, as well as to examine documents and other items.

Special Rules under this Law:

All Racial Discrimination is subject to special investigations.

4. Special Remedial Procedures

According to the Human Rights Protection Bill:

The Human Rights Commission shall be entitled to enact the following measures with regard to cases involving infringements of human rights (excluding, however, certain acts):

- (1) Mediation or arbitration;
- (2) Recommendation for the suspension of the infringement of human rights or the execution of other measures necessary in the relief and prevention of sufferings;
- (3) Public announcement of the content of the recommendation if the recommendation is not complied with;
- (4) If a recommendation is issued, at the request of the victim of the infringement of human rights, allowing the victim to view or delivery to the victim certified copies of the materials in its possession;
- (5) If a recommendation is issued, intervention in litigation based on a claim arising from the infringement of human rights concerned.

Special Rules under this Law:

All Racial Discrimination is subject to special remedial procedures.

5. Suits Seeking Injunction of Racial Discrimination

According to the Human Rights Protection Bill:

When the Human Rights Commission has issued a recommendation to a person who engaged in certain acts facilitating discrimination against an indefinite and large number of individuals, and that person has failed to comply with the recommendation, the Human Rights Commission shall be entitled to initiate litigation against said person seeking to stop the acts or ordering the person not to commit the same or similar acts in the future, when it finds so necessary in order to prevent such acts.

Special Rules under this Law:

All Racial Discrimination is subject to injunctive litigation.

The Human Rights Commission, when seeking to initiate a suit, must first hear the opinion of the victim of the Racial Discrimination which was the subject of the recommendation concerned.

Persons who engage in the acts subject to the injunction in violation of a court order shall be punished.

Article 11 Prohibition of Prejudicial Treatment

No person shall engage in the prejudicial treatment of a person who exercises the rights prescribed under this Law or files a petition related to the infringement of rights (including victims when petitions are filed by parties other than victims), based on such exercise of right or such filing of petition.