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Japan

Submission of Information to the Human Rights Committee for
Consideration of the List of Issues Prior to Reporting

Discrimination against foreign citizens in access to public service jobs
Article 26, ICCPR

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Submitted by:

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1. Proposed Questions

- (1) Ask the Japanese government to provide a list of job categories in national and local public services to which foreign citizens have no access or have limited opportunities for promotion, and to explain the legal grounds and rationale for the same.
- (2) In particular, ask the Japanese government to explain why teachers at public schools who are non-citizens are not eligible for management positions, and why firefighters are required to have Japanese nationality.

2. Background

Foreign Citizens in Japan

The total population of Japan including foreign citizens is 126.82 million (January 2017). There are 2.38 million foreign residents, 45 percent of whom are comprised of “Special Permanent Residents” who are originally from former colonies of Japan and their descendants (339,000), and other “Permanent Residents” (727,000).

As Japan’s Nationality Act is based on the principle of *jus sanguinis*, children of foreign citizens who are born in Japan are not entitled to Japanese citizenship solely by virtue of being born in Japan. Today, Special Permanent Residents are in their fourth and fifth generations but continue to be foreign citizens. Discrimination on the basis of nationality must therefore be scrutinized carefully in this context.

Limitation of Access by Foreign Citizens to Public Service Jobs

The Japanese government has limited foreign citizens from engaging in public service based on an opinion issued by the Cabinet Legislation Bureau on 25 March, 1953. The opinion states as follows.

While there is no explicit statutory provision that stipulates that having Japanese nationality is a general requirement in order to serve as a public official in Japan, as a matter-of-course principle relating to public officials, it should be interpreted that Japanese nationality is required in order to become a public official who engages in the execution of public authority or in partaking in the formation of state decisions, and that Japanese nationality is not required in order to become other types of public officials.

Foreign citizens have been restricted from working in public service based on this general rationale known as the “matter-of-course principle”, without any grounds set forth in law or ordinances.

CERD’s Recommendation

As an example of limited access by foreign citizens to public service, the Committee on the Elimination of Racial Discrimination recommended the Japanese government to

review its position so as to allow competent non-citizens to act as mediators in family courts, in its concluding observations in 2010 at paragraph 15 (CERD/C/JPN/CO/3-6) and in 2014 at paragraph 13 (CERD/C/JPN/CO/7-9). However, the Japanese government has failed to take any action to review its position with respect to this issue.

Recent Survey Result

According to the first ever comprehensive survey conducted by the Japanese government on human rights conditions of foreign residents (2017), 25.0 percent of foreign residents who had sought a job or worked in the past 5 years replied that they had been denied a job because they were not Japanese, and 17.1 percent replied that they had incurred a disadvantage in promotion because they were not Japanese (multiple answers allowed). Such a result underlines the need to eliminate obstacles to access by foreign citizens to public service jobs in order to change the discriminatory environment of the Japanese society.

3. Specific Issues

A. Teachers at Public Schools

In Japan, compulsory education is 9 years: 6 years elementary school and 3 years junior high school. Most of the compulsory education is offered through public schools. As of May 2016, the total number of elementary school teachers was 416,973, out of which 411,949 or 98.8 percent worked at public schools. Out of the 251,978 teachers working at junior high schools, 236,864 or 94.0 percent worked at public schools. The number of high school teachers was 234,611, out of which 173,322 or 73.9 percent worked at public schools.

In March 1991, the Ministry of Education (currently the Ministry of Education, Culture, Sports, Science and Technology) issued a notice to the governors of each prefecture entitled “Notice regarding the Hiring of Persons Not Having Japanese Nationality as Public School Teachers”. The notice instructed that foreign citizens be allowed to take recruitment exams for school teachers and that those who passed the exam be hired as “full-time instructors without a fixed term”. As a result, Japanese citizens hired as “teachers” were capable of being promoted to management positions such as supervisors, vice principals and principals, but foreign citizens hired as “instructors” were prohibited from being placed in management positions.

There is no logical reason for eliminating foreign citizens from taking management positions at public schools. Such a discriminatory treatment in relation to promotion violates Article 26 of the ICCPR, as well as Article 14 of the Constitution of Japan which provides for equal protection under the law, and Article 3 of the Labor Standards Act which prohibits discriminatory treatment based on nationality with respect to working conditions. A Korean teacher working at a Japanese public school who was denied promotion due to his nationality filed a petition with the Japan Federation of Bar

Associations (JFBA) seeking relief for a human rights violation.¹ In March 2012, after due investigation, the JFBA issued a recommendation to the government to amend the “Notice regarding the Hiring of Persons Not Having Japanese Nationality as Public School Teachers” and delete the direction to hire non-citizens as “full-time instructors”. However, the government has ignored the JFBA’s recommendation to this date.

B. Firefighters

Another type of public service to which access by foreign citizens is largely limited is firefighters. Firefighters are recruited by each local government. The number of personnel working at fire departments including firefighters was 162,124 as of April 2015. Local governments conducting recruitment examinations for firefighters generally limit applicants to Japanese citizens. However, there are no laws or ordinances that set forth such limitation. The rationale can only be found in the afore-mentioned “matter-of-course principle”.

Firefighters have authority under the Fire Service Act to have the right of way, set a fire defense cautionary area and order evacuation, and use or dispose of private property when it is necessary in order to engage in firefighting activities. In addition, the Civil Protection Law authorizes firefighters to lead the evacuation of residents under the direction of the fire chief in armed attack situations.

Apparently, due to the granting of such authority, firefighters are considered to be engaged in the “execution of public authority” as referred to in the “matter-of-course principle”, and thus required to have Japanese nationality. However, in light of firefighters’ mission to securing people’s safety and protecting their property at times of emergency, it is difficult to find any logical reasoning in requiring Japanese nationality. At the time of the Great East Japan Earthquake, many foreign countries sent relief teams to Japan who engaged in relief activities in the affected areas. It was never questioned at the time that those activities were carried out by foreign citizens.

A conceivable argument is that there is a concern that public officials who are foreign citizens may not carry out their duties faithfully at times of emergency as they may not be allegiant to Japan. However, what is legally required of public officials is to respect and uphold the Constitution of Japan and applicable laws and ordinances, and comply with superiors’ directions. This is a matter that is not dependent on that person’s nationality.

¹ In accordance with the JFBA’s internal rules, the JFBA investigates petitions of human rights violations and issues recommendations or takes other measures when deemed appropriate. The recommendations are not binding.