

The Right of Ethnic Minorities to Education in Japan: Its Realities and International Human Rights Standards

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Key Words right to education, equality, children, ethnic minorities, international human rights standards

I . Introduction

Japan is no longer a monocultural and monolingual country. In fact, given the existence of indigenous peoples and foreign residents, it has never been so. Nevertheless, an ideologically constructed and widespread myth of homogeneity persists. The education system, designed and established over half a century ago to exclusively accommodate children of Japanese nationals, has not been changed to meet the radical demographic changes in schools. Increasing numbers of children of foreign nationals fall through the cracks of the nation's school system and remain out of school. Some of them have been absorbed into the child labor market. Yet, the government does not recognize its responsibility to ensure education to foreign children on an equal basis as its nationals. Japanese children belonging to ethnic minority groups, such as naturalized ethnic Koreans and children of international marriages are also marginalized and struggle to keep their identity and build self-esteem.

This essay is an attempt to clarify the significant gap between the existing education system of Japan and international human rights standards by examining the current situation facing children of foreign nationals and Japanese of different ethnic origin or cultural background from the majority. Based on these observations, it could be argued that the system itself is a manifestation of institutional racism, and the policy of assimilation and exclusion should be replaced by a policy based on human rights and respect for diversity. Actions should be taken immediately not only to improve the situation of those children but also to reform the system in such a way that the right to education would be ensured equally to all children regardless of their nationality, ethnicity or legal status.

So-called national minorities such as indigenous Ainu and Okinawans are ethnic and linguistic minorities entitled to protection by the existing international human rights law, and the preservation and promotion of their group identities have been an integral part of their struggle. This issue, however, is not going to be addressed in this paper because of its nature, which does not fall within the scope of this paper.

II . Ethnically diverse Japan

Japan now has over two million documented foreign residents from all over the world that account for nearly two percent of the total population.¹ In addition to the so-called ‘old-comers’, namely Koreans and Chinese brought from Japan’s colonies before the end of World War II and their descendants, ‘newcomers’, most of whom are migrant workers, have also been living in Japan.² The number of newcomers rose sharply following revisions to the Immigration Control and Refugee Recognition Law in 1990 that grants permits for doing unskilled work exceptionally to Japanese descendants from South American countries such as Brazil and Peru, up to the third generation and their spouses.³ Due to the restrictive immigration policy, many migrant workers from other countries are compelled to work without legal status or protection, often in unstable

1 In addition to 2,217,426 registered residents, there were 113,072 ‘overstayers’ without visa status at the beginning of 2009, according to the Justice Ministry’s latest statistics. <http://www.moj.go.jp/PRESS/090710-1/090710-1.html> retrieved 1/Feb/2010.

2 Due to the blood lineage-based nationality law, foreigners remain foreigners over generations, unless they choose to be naturalized.

3 Out of the total 2.2 million registered foreign residents in 2008, Brazilians accounted for 14 percent at 313,000 -- the third largest nationality group after Koreans and Chinese, according to the Justice Ministry. <http://www.moj.go.jp/PRESS/090710-1/090710-1.html> retrieved 1/Feb/2010.

and exploitative employment. The human rights situation of foreigners has been and still is much worse than that of nationals.

The number of children of foreign nationals has also steadily increased “unexpectedly” in view of the government and business sector that regarded migrant workers simply as a flexible labor force, not as human beings. Due to scarce job opportunities in their home countries, many settled and started to raise families. According to the latest survey of the Ministry of Education, Culture, Sports, Science and Technology (hereafter Education Ministry), about 219,000 foreigners aged between 5 and 19 live in Japan. About 132,000, or 60 percent, are aged 5 to 14 (mostly primary and middle school age), and 87,000, or 40 percent, are aged 15 to 19 (mostly high school age).⁴ Over 30 percent of those aged 5 to 14 are Brazilians and Peruvians. In addition to these foreign children, a number of Japanese children have different ethnic, cultural or linguistic background from the mainstream Japanese, due to increasing ‘international marriages’ and naturalization of their parents. The education of such children belonging to ethnic minorities in Japan, whether ‘old-comers’ or newcomers, is in a dire situation as seen below.

III. Present situation of minority children’s education

Human rights of foreigners are not recognized or protected by any national law. There is no legislation that outlaws discrimination, either. There is no notion of minority rights in the legislation or administration. The term ‘people’ as holders of freedom and human rights was narrowly interpreted by the government as the ‘people of Japan’ namely nationals when the Constitution was enacted soon after WWII. This interpretation still prevails despite Japan’s accession to international human rights treaties that contradict such interpretation and administrative systems and actions based on it. In Japan, the right to education is ensured exclusively for citizens. Foreign children are not subject to compulsory education provided by the Fundamental Law of Education. Foreign parents, by law, do not have a duty to send their children to schools. Private schools catering for foreign and ethnic minority children are not recognized as legitimate schools under the School Education Act, even if they offer courses based on their motherland’s standard curriculum plus Japanese-language training to help students adjust to Japanese society. Those ‘ethnic schools’ categorized as ‘miscellaneous’ or non-

⁴ The latest figure as of 31 December 2008 released by the Education Ministry.
<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001031723> retrieved 29/Jan/2010.

accredited schools are exempted from benefits that Japanese private schools enjoy in terms of state subsidies, tax breaks and other preferential treatment.

The government claims that “foreign children, if they wish, are allowed to enroll in public schools, where they can receive free education on an equal basis as Japanese children. At the same time, foreign children are given the option of choosing ethnic schools. Therefore, the education system of Japan is quite open in conformity with the concept of respecting ethnic cultures.”⁵ However, enrollment in public schools is considered as a favor and not a duty of public authorities. So-called ‘illegal migrants’ tend not to apply for their children’s enrollment out of fear of deportation. Moreover, the monocultural curriculum is basically designed to educate only nationals in the Japanese language. For minority children, it is assimilative. Most of them, therefore, suffer tremendously from difficulties and disadvantages at either public schools or ethnic schools. Being indifferent to minority children’s education, the government has not undertaken an extensive survey. Facing rising criticism and complaints both from within and outside the country, it has recently started to examine the situation and think about ways to improve it. The problems afflicting minorities’ education may be summarized as below.

(1) Public schools

According to the Education Ministry, approximately 67,000 foreign pupils/students were attending public schools in 2008,⁶ over 40% of whom needed Japanese language training.⁷ The government claims that maximum consideration and assistance have been given to foreign children at public schools.⁸ Yet, Japanese language training is the only measure taken by the government for those children, and 15% of them have not received such training.⁹ Even when it is given, the quality is very poor due to lack of training and skills on the part of teachers. The Education Ministry admits that Japanese language training has to be improved both in quantity

5 In its official response to the questions raised by the United Nations Committee for the Elimination of Racial Discrimination in the process of reviewing Japan’s periodic report on the implementation of the Treaty. See the Ministry of Foreign Affairs’ website: <http://www.mofa.go.jp/mofaj/gaiko/jinshu/iken.html> retrieved 15/Jan/2010. The government of Japan repeated the same claim in its latest periodic report to the same Committee (UN Doc.CERD/C/JPN/3-6 of 16/Jun/2009, paras.24 and 55).

6 Education Ministry’s website: <http://www.e-stat.go.jp/SG1/estat/List.do?bid=000001015813&cycode=0> retrieved 10/Feb/2010

7 The number of such children had steadily increased and it surpassed 28,000 in 2008. See the Education Ministry’s website: http://www.mext.go.jp/b_menu/houdou/21/07/_icsFiles/afieldfile/2009/07/03/1279262_1_1.pdf retrieved 11/Feb/2010.

8 *op.sit.*5.

9 Education Ministry’s website: http://www.mext.go.jp/b_menu/houdou/21/07/_icsFiles/afieldfile/2009/07/06/1279262_2_1.pdf retrieved 11/Feb/2010.

and quality.¹⁰ No language training is offered for foreigners before enrolling in public schools. The language problem coupled by the pressure to assimilate creates other problems such as under-achievement, isolation from or bullying by other students and dropping out of schools. Public schools do not make much effort to prevent dropouts, since they are not legally responsible for foreign children's education. Many drop out before finishing middle school. While over 97 percent of Japanese children enroll in high school every year, less than 50 percent of foreign children of 'newcomers' do.¹¹

(2) Ethnic Schools

There are about 200 private schools established to accommodate children of foreign nationals and ethnic minorities in Japan, with approximately 24,000 pupils/students enrolled. They are a safe haven for such children, particularly those whose Japanese language proficiency is low. The biggest problem facing those schools is lack of official recognition and state subsidies, as stated above. Some prefectural governments and municipalities give voluntary contributions to those recognized as 'miscellaneous schools', but these remain much lower than those given to Japanese private schools. Non-accredited schools of smaller scale are excluded from any public subsidies. The financial burden on the parents is so heavy that a significant number of children have no choice but to leave when the economic situation of their parents worsens. This is what actually happened to many Brazilian children last year when their parents were laid off. A number of Brazilian schools were forced to close down due to the drastically decreasing number of pupils. Even before the so-called 'sub-prime loan shock' hit Japan, the number of children attending ethnic schools was on the decrease. Donations to schools for old-comers' children are not tax-deductible like those to 'international schools' catering mainly for Westerners, because their existence, in the eyes of the government, is not as beneficial to the society as 'international schools'.¹²

(3) Consequences

The Consequences of these problems are manifold and serious. Many children are the victims of

10 *op.sit.*7.

11 On the average of Japanese children, see the Education Ministry's website:

http://www.mext.go.jp/b_menu/toukei/chousa01/kihon/kekka/k_detail/_icsFiles/afiedfile/2009/12/18/1288104_1.pdf retrieved 10/Feb/2010. The figure on foreign children is an estimate by NGOs based on some local governments' survey and other sources. See the "NGO Report Regarding the Rights of Non-Japanese Nationals, Minorities of Foreign Origins, and Refugees in Japan" submitted by the Solidarity Network with Migrants Japan in February 2010 to the 76th Session of the UN Committee on the Elimination of Racial Discrimination, on the UN website: <http://www2.ohchr.org/english/bodies/cerd/cerds76.htm> retrieved 20/Feb/2010.

12 Comment made by the Education Ministry, Office on International Education (Mainichi Shinbun Newspaper 12/Aug/1997)

some forms of violation of their right to education, even if they are enrolled in public schools. Most of the dropouts remain totally deprived of this right. The number of children staying out of school is estimated to have reached 40,000 in 2007.¹³ The total number of foreign children attending schools has been on the decrease since 1997 despite the fact that the number of foreign children of school-age living in Japan has increased.¹⁴ Major reasons are either the burden of tuition of ethnic schools or difficulties they face at public schools.¹⁵ For many children who quit ethnic schools because of economic reasons, transferring to public schools is not an option.

A significant number of children attending public school are unable to speak either their parents' mother tongue or Japanese well enough for learning or even thinking. They tend to have problems with self-esteem. Some even remain illiterate. Many face a bleak future with limited options. It is well known through a number of empirical studies and individual experiences that the disruption or curtailment of children's education has long term adverse effects on their lives in many ways.¹⁶

IV. International Human Rights Standards

The right to education is one of the fundamental and most important human rights. The right to education of children belonging to ethnic, linguistic or religious minorities, including foreign children is doubly protected by two different but closely related frameworks under international human rights law: (1) by the foremost principle of equality and non-discrimination that applies

13 The figure obtained by comparing the number of children of school-age (*op.sit.* 4) and the number of children enrolled in schools of some kind. See the statistics of the government of Japan: <http://www.e-stat.go.jp/SG1/estat/List.do?bid=000001011217&cycode=0> retrieved 10/Feb/2010. For instance, in Hamamatsu, Shizuoka Prefecture, where Brazilians comprise half of the foreign population, it was estimated that 20.9 percent of non-Japanese primary- and middle school-aged children were not enrolled in any school in 2002. (Daily Yomiuri 9/May/2004)

14 This can be said by doing the same comparison as above for each year.

15 On Brazilian Children, see Lilian Terumi Hatano, 'Multiculturalization of the Japanese Society in case of education for Brazilian Children' Ritsumei Linguistic and Cultural Studies No.17-3 (2006) <http://web.kyoto-inet.or.jp/people/ukiuki/ritsumeit2006.pdf> pp.9-10. The Education Ministry's survey of a limited scale also indicates similar results. See its website: http://www.mext.co.jp/a_menu/shotou/clarinet/003/001/012.htm retrieved 29/Jan/2010.

16 On the negative effect on foreign children in Japan, see for instance Takashi Miyajima and Haruo Ohta (ed.) *Gaikokujin no kodomo to nihon no kyoiku: Fushugaku mondai to tabunka kyousei no kadai (Foreign Children and Education System of Japan: Children out of Education and The Challenge of Multicultural Coexistence)* (Tokyo: University of Tokyo Press, 2005) pp.92-93, 130-135; Mutsumi Shimizu, *Nyuukamaa no kodomo tachi (Children of Newcomers: Their Daily Life inbetween School and Family)* (Tokyo: Keisoh Shobou, 2006)

to all human rights, and (2) by minority's special rights. Indicated below are the relevant provisions and their interpretation by the United Nations treaty bodies that monitor States Parties' implementation of the treaties, such as the UN Human Rights Committee and other committees bearing the names of the treaties. The treaty bodies' interpretation is not legally binding but States Parties are required to respect and rely on it in its treaty interpretation and implementation.

(1) Right to education and equality principle

The principle of equality and non-discrimination is clearly and repeatedly stipulated in the Universal Declaration of Human Rights (UDHR) and major international human rights treaties. The principle should be strictly applied in ensuring the right to education. It is no longer disputable at least at the UN forums that foreigners should not be excluded or discriminated against in the enjoyment of human rights including social and economic rights. Treaties that contain provisions on the right to education are the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC). Article 26 of the International Covenant on Civil and Political Rights (ICCPR) recognizes freedom from discrimination as an independent right that applies to economic, social and cultural rights set forth in the ICESCR including the right to education. While states are free to choose measures to enforce the right, for instance by subsidizing private schools, it should be done without discrimination or exclusion.¹⁷

The above mentioned treaties obligate States Parties to ensure the right to education equally to each child within their jurisdiction "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."¹⁸ In addition, the UNESCO Convention against Discrimination in Education and the International Convention

17 See the UN Human Rights Committee "General Comments No.18" para.12.

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument) retrieved 30/Oct/2009.

18 The relevant provisions are found in the ICESCR Articles 2 and 13-1, CERD Article 5, and CRC Articles 2-1 and 28. The CRC Article 28-1 obligates State Parties to (a) make primary education compulsory and available free to all; (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; and (c) make higher education accessible to all on the basis of capacity by every appropriate means.

on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW) contain similar provisions, although Japan has ratified neither of them. The UNESCO Convention (Article 1-1) clarifies what constitutes prohibited discrimination in education, such as deprivation of educational opportunities, limiting any person or group of persons to education of an inferior standard, and segregation in education. The ICPMW Article 30 obligates States Parties to ensure equal access to education both to children of nationals and those of migrant workers. It further prohibits refusal or limitation of access by reason of the irregularity of the child's or parent's stay or employment.¹⁹

Equality in the availability of and accessibility to education is not enough. Equality has to be ensured in terms of the content and quality of education. Education of the same high quality should be accessible to all including indigenous and ethnic minority children, without discrimination or exclusion. What is provided to children belonging to majority populations or dominant groups should be made available for minority children, such as education in their mother tongue, learning their mother tongue or inherited language, and the history and culture of the ethnic or national group that the children belong to. These are taken for granted by the children of the mainstream group but are not always available for minority children. In this connection, the CRC Article 29-1 provides that one of the objectives of education should be “the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.” By the same token, the ICESCR obligates the States Parties “to have respect for the liberty of parents (or legal guardians) to choose for their children schools, other than those established by the public authorities and to ensure the religious and moral education of their children in conformity with their own convictions.” (Article 13-3) The condition created by the ICESCR for private schools to be an alternative to public schools is to “conform to such minimum educational standards as may be laid down or approved by the State”. The minimum standards are normally construed as the teaching of the official language of the society and general curriculum that covers the ordinary set of subjects. Exclusion of private schools established by foreign nationals and ethnic minorities from their recognition as legitimate schools by law, even when they meet these standards, contravenes this provision.

¹⁹ It reads: Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

(2) Minority Rights

Persons belonging to ethnic, linguistic or religious minorities are entitled to special rights in addition to the ordinary set of human rights and fundamental freedoms, as stipulated by the ICCPR (Article 27) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.²⁰ Special rights are granted mainly for the purpose of protecting the existence and cultural identity of the group or community, fair representation in the decision-making process and for achieving equality with the majority. The ICCPR's treaty body has confirmed and stressed that holders of minority rights are not limited to citizens, and foreigners, regardless of the length of their stay or residency, should be able to enjoy the rights set forth in the Declaration.²¹ It goes without saying that children belonging to ethnic, linguistic or religious minorities are the holders of these rights.²² Even for naturalized ethnic minorities, learning their language, history and culture is very important in maintaining their group identities. According to the Declaration,

States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards. (Article 4-2)

States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. (Article 4-3)

States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole. (Article 4-4)

20 The latter is a resolution of the United Nations General Assembly not equipped with legally binding force. It is still the only UN instrument which addresses the special rights of minorities in a separate United Nations document, whose content was endorsed by the UN Human Rights Commission (ICCPR treaty body). It means the provisions of the Declaration represent the international human rights standards on the rights of ethnic, linguistic or religious minorities that should be observed by the UN member states.

21 The United Nations Human Rights Committee "General Comment No. 23: The rights of minorities (Art. 27)" (UN Doc. CCPR/C/21/Rev.1/Add.5 of 8/Apr/94, para.5.1)

22 The Convention on the Rights of the Child, Article 30 clarifies it as follows: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority, or who is indigenous, shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language."

The phrase ‘where appropriate’ in the above provision weakens the state obligation. The ICPMW Article 45-3 also has a negative impact on the migrant children’s right to learn their mother tongue and culture at school by limiting it to those with legal status.²³ On the other hand, the UN is moving forward to consolidate its protection of minority’s right to education including the right to mother tongue teaching and learning.²⁴

V. Actions required for addressing the problems

Regretfully, it is almost common in many parts of the world that human rights of non-nationals, inter alia their social and economic rights, are much less protected than citizens’. Yet the disparity in the enjoyment of the right to education is unjustifiably large between Japanese children and minority children. The Japanese courts, nevertheless, are often reluctant to apply treaty provisions and other international human rights standards in making decisions. Basically endorsing the central and local governments’ argument, they have dismissed complaints from minorities.

Government action for ensuring the right equally for all both in law and in fact is crucial. The relevant treaty bodies have repeatedly expressed concerns and urged the government to improve the situation. While the government has never admitted that the education system is discriminatory, it gradually started to take some steps to assess and ameliorate the situation. Action has been too slow and too little in the eyes of the people concerned, though. The government has shown its intention to take some measures to help children of South Americans brought here by government policy. On the other hand, the predicament of children of migrant workers without legal status and children of ‘old-comers’, particularly ethnic Koreans, does not seem to attract much attention. Measures as listed below are required to make the realities accord with international human rights standards, as recommended by the treaty bodies concerned and the UN Forum on Minority Issues.²⁵

23 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW), Article 45-3 that applies only to migrant workers and their family members with legal status reads: States of employment shall endeavour to facilitate for the children of migrant workers the teaching of their mother tongue and culture and, in this regard, States of origin shall collaborate whenever appropriate.

24 The United Nations Forum on Minority Issues organized in 2009 by the Human Right Council discussed the issue of minorities’ right to education extensively and compiled a list of recommendations for a better protection of the right (UN Doc. A/HRC/10/11/Add.1 of 5/Mar/2009).

25 See the treaty bodies’ concluding observations on the periodical reports submitted by the Government of Japan available at the UN website: <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/JPIIndex.aspx> retrieved 30/Oct/2009. For “Recommendations of the UN Forum on Minority Issues”, see the UN Doc.A/HRC/10/11/Add.1 of 5 March 2009.

(1) To carry out a thorough and detailed nationwide survey of the status of minority children's education and child labor so that effective measures could be developed. The result should be made known to the public in order to raise awareness.

(2) To review, enact and amend legislation where necessary to affirm the right to education for all, eliminate discrimination and guarantee equal education in its substance for all members of minorities including foreigners.

(3) To recognize ethnic schools meeting minimum standards as legitimate schools and provide the same level of public subsidies as private schools serving Japanese children, by relaxing the criteria for approval.

(4) To review and change the curriculum of public schools so as to meet the actual ethnic composition of learners by introducing bi-lingual and multicultural education, as much as possible, that would cater to the needs of minority children on a basis of equality with other learners. Education should also address prejudices and ignorance of children and teachers belonging to dominant groups about other countries, peoples, cultures and religions.

(5) To create conditions enabling representatives of minorities to participate in a meaningful way in the development and implementation of policies and programs that concern them.

VI. Conclusion

The problems facing children of foreign nationals and ethnic minority groups emanate from the fundamentally racist nature of the education system of Japan. Yet, children of ethnic (and often linguistic and religious) minorities, whether foreign or Japanese in terms of nationality, are racialized as an extra burden or problem. They are unfairly punished for being 'aliens' or different from the majority. Schools are implicated in the socio-economic structure that reproduces the marginalization of ethnic minorities. A radical rethinking of the basic immigration policy and attitude toward foreign residents and their family members is a pressing need. Japan should remind itself that it has pledged internationally in the Article 98 of its Constitution that it shall 'faithfully observe' the treaties it concluded.

Regretfully, the state's immigration policy and its treatment of 'aliens' and ethnic minorities still

remain the last domain where international human rights law faces difficulties in regulating. Immigrants and migrant workers, however, have the right to freedom from discrimination and the right to demand that the host country treat them equally to citizens in the enjoyment of human rights.

Japan will be pressed even more with the need for building a multicultural society, particularly when the central government and the business sector plan to introduce 10 million foreign workers to supplement the labor shortage as Japan's population is graying and shrinking. A multiethnic and multicultural society, in its true meaning, however, cannot happen without ensuring equal protection of human rights and dignity to all and eliminating unjustifiably large economic disparities between the majority and minorities.