

A ROUGH DRAFT. NOT FOR CITATION OR CIRCULATION.

A COMPARISON OF THE LEGAL FRAMEWORK REGARDING FOREIGN
AND ETHNIC MINORITY CHILDREN'S RIGHT TO EDUCATION IN THE
UNITED STATES AND JAPAN

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Introduction

The Japanese government officially observes that foreign children do not have a right to education in Japan. Although they can attend Japanese public schools if they ask to¹, they cannot learn either the Japanese language sufficiently or their heritage language² almost at all. Some of them attend foreign or ethnic schools. However the Japanese government discriminates against these schools and never acknowledges them as schools that have legitimate status. The government insists that students who graduate from foreign elementary schools in Japan cannot enter Japanese junior high schools even if students have Japanese nationality.

In 2006, I was consulted by a resident Korean³ mother whose son in the sixth grade attended a Korean elementary school. The local city official in Tokyo who was in charge told her that if her child wanted to enter a Japanese junior high school, he should leave the Korean school and enter a Japanese elementary school.

However, indeed, the most serious problem regarding foreign children in Japan is

¹ The treatment varies depending on the local government, when a child is not documented. And if a child has a valid residential status, some governments or schools request child's parent to sign a promise to obey Japanese school rules.

² The explanation of "heritage language" and mother tongue is presented endnote 2.

³ Resident Korean means a Korean who has lived in Japan since before 1952 or since when s/he was born. I write their historical background the third section in this paper.

that many of these children, particularly those who are not good at Japanese, do not attend any school at all. According to a survey of twelve local towns by the Ministry of Education, Culture, Sports and Technology (MEXT) published in August 2007⁴, 60% foreign children attend Japanese schools, 20% attend foreign schools, and 20% do not go to school or cannot be contacted. The rate of students who do not attend schools increases as children become older. In Toyohashi-city, Aichi prefecture in south central Japan, the percentage of children not attending any school at the elementary education level was 25%, and the percentage of those at the secondary education level was 45.5% in 1999. Although the rate of Japanese students receiving high school education was 92.9% in 2000⁵, the rate of foreign students who go to high school was estimated less than half of this⁶. The appalling neglect of the education of children of foreign or ethnic origins by the Japanese government prompted some resident Koreans and an embassy official from Latin America to say “The Japanese government deals with foreign children as invisible persons or nonpersons”.

I assert that the Japanese government law regarding foreign and ethnic children’s right to education violates international human rights law. In this paper, I compare and contrast laws that concern the foreign children’s right to education in the United States and these laws in Japan from the view of international human rights law. I also examine the laws that relate to ethnic minorities’ right to learn their heritage language. It has become clear that although the United States is certainly not one of the countries that is actively pushing legislation to protect the rights of foreign and minority children to education, Japan is far worse than the United States regarding the lack of legal provisions for foreign and minority students.

⁴ The web site of the Ministry of Education, Culture, Sports and Technology.

⁵ The web site of the Ministry of Education, Culture, Sports and Technology.

⁶ Solidarity Network with Migrants Japan, 2006, *Living Together with Migrants and Ethnic Minorities in Japan*.

This paper is divided into the following four sections.

1. Foreign and ethnic children's right to education in international human rights law
2. The law in the United States on foreign and ethnic children's right to education
3. The law in Japan on foreign and ethnic children's right to education
4. The present movement and lawyers in Japan

1, FOREIGN AND ETHNIC CHILDREN'S RIGHT TO EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW

In the first place I explore the standards regarding foreign and ethnic minority children's right to education in international human rights law.

1) The International Covenant on Civil and Political Rights 1966⁷

The article 27 of the Covenant says, "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

The Committee for Civil and Political Rights in the United Nations observes that just as "persons belonging to such minorities" need not be nationals or citizens, they need not be permanent residents in its General Comment No. 23, 5-2 in 1994. The committee goes on to say that "positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group"

⁷ By 2007 160 countries have ratified. The web site of the United Nations.

in 6-2.

Moreover, the article 4-3 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992, which developed the article 27 of the Covenant, says “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.”

In final text of the Commentary to the Declaration in 2001, the Chairperson of the Working Group on Minorities says the following:

- i) The Declaration builds on and add the rights contained in International Bill of Human Rights and other human rights instruments by strengthening and clarifying those rights which make it possible for persons belonging to minorities to preserve and develop their group identity (4).
- ii) One of the requirement is non-assimilation and its corollary, which is to protect and promote conditions for the group identity of minorities (27).
- iii) Minority group requires not only tolerance but a positive attitude towards cultural pluralism on the part of the State and larger society. Denying minorities the possibility of learning their own language and of receiving instruction in their own language would be a violation of obligation to protect their identity (28).
- iv) Language is among the most important carriers of group identity. In line with general requirement in article first that States shall encourage the promotion of the linguistic identity of the minority concerned, measures are required for persons belonging to minorities to learn their mother tongue or to have instruction in their mother tongue (59).

2) The Convention on the Rights of the Child 1989⁸

Article 28-1 of the Convention says as follows:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- i) Make primary education compulsory and available free to all;
- ii) 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;
- iii) Make higher education accessible to all on the basis of capacity by every appropriate means;
- iv) Make educational and vocational information and guidance available and accessible to all children;
- v) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Moreover the article 30 of the Covenant says “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.”

3) International Covenant on Economic, Social and Cultural Rights 1966⁹

⁸ All members of the United Nations have ratified except the United States and Somalia. The web site of the United Nations.

The article 13 of the covenant is read as follows:

- i). The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
- ii). The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions

⁹ By 2007 157 countries have ratified. The web site of the United Nations.

of teaching staff shall be continuously improved.

iii). The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

iv). No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

4) The International Convention of Elimination of All Forms of Racial Discrimination 1965¹⁰

The article 2-2 of it states, “States parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.”

5) Section Summary

As indicated in the international laws cited above, the standard of international

¹⁰ By 2007 180 countries have ratified. The web site of the United Nations.

human rights law observes that all children including foreign children have right to education and that especially the primary education should be compulsory and available for free to every child. Additionally, minority children including foreign children have right to learn their heritage language or to obtain instruction in their heritage language with other members of the group that children belong to. Learning heritage language is the most important carriers of developing and protecting children's identity with dignity and self-respect. To guarantee this right, offering bilingual courses in public school or establishing public bilingual schools is one possible strategy. Alternatively, the government could also support private ethnic schools or private language schools that teach minority languages.

Japan ratified all these treaties. The United States have not ratified both the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. However, the United States have ratified both the International Covenant on the Civil and Political Rights and The International Convention of Elimination of All Forms of Racial Discrimination 1965. These two international human rights laws the United States ratified sufficiently requested parties to guarantee foreign children's right to education and ethnic minority children's right to learn heritage language. Therefore, both countries are obligated to guarantee foreign children's right to education and ethnic minority children's right to learn heritage language.

2. THE LAW IN THE UNITED STATES ON THE FOREIGN AND ETHNIC MINORITY CHILDREN'S RIGHT TO EDUCATION

The United States is multiethnic society. According to the national census in 2005, the following is its racial composition of about 296,000,000 people: Whites 75%, Latino 12.5%,

African American 12.3%, Asian 3.6%, and Native American 0.9%¹¹. Additionally documented immigrants are 10,640,000 in 2001. The U.S. Immigration Bureau estimates 7,000,000 undocumented foreigners exist. The population of people whose native language is not English is 5,000,000 in 2004, and for 70% of this population, Spanish is their primary language¹².

2-1. Foreign children's right to education

The United States does not have direct text regarding foreign children's right to education in its constitutional law.

The Supreme Court held that "illegal aliens" were covered by the Equal Protection Clause, as they were clearly "persons" as referred to in the Fourteenth Amendment of the constitutional law¹³, regardless of their immigration status in the case of *Yick Wo v. Hopkins*[118 U.S.356(1886)]. The supreme court ruling on *Plyler v. Roe* [457 U.S.202 (1982)] held that the Texas law, which denied children of undocumented immigrants the benefit of public education, violated the Equal Protection Clause of the U.S. Constitution.

In spite of the court ruling in the *Plyler* case, California's Proposition 187, which denied access of children of undocumented immigrants to public education, was passed in 1994. The Federal District Court issued a permanent injunction barring implementation of Proposition 187 in 1998.

Although these court decisions would seem to make clear that state laws denying

¹¹ The web site of U.S. Census Bureau.

¹² U.S. Department of Education.

¹³ Amendment 14, Section 1, the second sentence: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

public education to undocumented children are unconstitutional, a similar state law, Proposition 200 was passed by voters in Arizona in 2004. The state act was challenged, and the first decision was not preferable for undocumented people. The fights are continuing in some courts.

On the other hand, several state regulations have a direct reference to foreign children's right to education. For example, in Pennsylvania the state law, 22 PA Code 4.26 (2001), requires that students with limited English proficiency and foreign children that are learning who are staying illegally are the object of compulsory education¹⁴.

Accordingly foreign children can request the local education board to provide public compulsory education as well as Americans. Substantially or reflectively they have the right to education in the United States. However whether undocumented children can receive public education or not is now debated in court and local legislatures.

There is no direct article that endorses foreign children's right to education in constitutional law or federal law, and thus the court cannot prevent states from making state law denying public education to undocumented children.

2-2 Minority children's right to learn their heritage language

Until the first half of the twentieth century, several states such as California and Texas had state laws prohibiting teaching Spanish in public and private schools. These laws were grounded in the idea that immigrant children should be assimilated to the United States of Anglo-American to follow the idea of "Anglo conformity"¹⁵.

Under this system, many children of immigrants could not follow their class in

¹⁴ As the federal and state governments' policy to undocumented immigrants are getting stricter now, actually these regulations are not so functional.

¹⁵ Baker, 1993, *Foundation of Bilingual Education*.

English. Although Anglo-American children received twelve years of education on average, Latino children received only eight years of education on average in Texas, New Mexico, California, Arizona and Colorado in 1960¹⁶.

In the 1960s, the civil rights movement led by the African-Americans helped promulgate key legislation to promote racial equality. Congress passed the Civil Right Act of 1964 which prohibited racial discrimination. The section 601 states: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”.

The National Education Association, which was the largest teachers’ group, addressed this problem in the 1960’s. It issued several reports on problems of education in the United States and held a symposium, entitled, “Children Speaking Spanish in Public Schools in the South West Area” in 1966. Four members of Congress who joined the symposium submitted bills of bilingual education in 1967. Finally Title Seven of Elementary and Secondary Education Amendment, what is called the “bilingual education act”, passed in 1967.

The act states that the federal government should provide financial aid to school districts which offered bilingual courses for children who did not speak English as native language. Although the act had a weak point in that it did not define what the bilingual education is, or determine whether the foreign children had a right to receive bilingual education, passing of this act was a significant first step to support bilingual education in the United States. The act also began to undermine the English-only instruction law which

¹⁶ James Crawford, 1999, *Bilingual education: History Politics Theory and Practice*.

still remained in many states¹⁷.

The Supreme Court decision in *Lau v. Nichols* (414 U.S. 563) in 1974 produced a significant impact on federal and state governments, local assemblies, and state courts regarding their handling of the issue of bilingual education. The Supreme Court held that the school system's failure to provide English language instruction denied "meaningful" opportunity to participate in public education program in violation of the Civil Rights Act of 1964. The judges recognized that equality is not provided by offering the same facilities, textbooks, teachers and curriculum and ordered school districts to take "affirmative steps to rectify the language definitely in order to open its instructional program to those students". This demand of the court constituted an access right for minorities but did not create a constitutional based federal entitlement of bilingual education.¹⁸

Six months after the decision, the Equal Educational Opportunities Act of 1974 passed. The act requested school districts to take adequate action in order to overcome linguistic obstacles. In the same year, the bilingual educational act was revised to make it clear that children whose English ability was not sufficient should learn not only English but also their heritage language.

From the 1980s, pressures to make English the official language and deny bilingual education have become more vocal and organized. The English-Only movement insisted government support of other languages would divide the nation. The movement has had some success at the state and local level. In some states such as California and Arizona, in the latter half of 1980s, state laws which made English the common language were

¹⁷ Ovando, 2003, *Bilingual education in the United States*.

¹⁸ 414 U.S. 564.

Jill Norgren and Serena Nanda, 2006, *American Cultural Pluralism and Law*.

Colin Baker, 1993, *Foundations of Bilingual Education*.

Mitsuko Suefuji, 2006, *Bilingual Education in the United States*.

established.

In the latter half of the 1980s, the movement of English Plus was organized. The movement succeeded in establishing some English-plus state acts, for example, in New Mexico in 1989.

In California, the bilingual state act was repealed and the new act was enacted to teach English using only English in 1998. However, each school district decided independently whether it would continue bilingual education or not.

On the other hand, there are about 5,000 ethnic schools in the U.S. These schools cater to various ethnic communities. They include: Arab, Africans, Asians, Japan, Jewish, Russian, Polish, Latin American, Dutch, Bulgarian, Irish, Rumanian, Serbian and Turkish. Maintained by communities who have lost or losing their heritage language, the schools mostly teach their heritage language and use it as a medium of instruction. Some of them provide bilingual education.¹⁹

There is no federal law regarding ethnic schools. Some states classify ethnic schools as private schools in their official school education system, and others classify ethnic schools only as non-accredited educational institutions. Some ethnic schools obtain subsidies from state government and others do not.

2-3 Section Summary

In the United States, some progressive bilingual educational acts have been issued, resulting in the creation of effective bilingual education programs. However, federal and state laws and policy on foreign children's right to education and minority children's right

¹⁹ Colin Baker, 1993.
Fishman, 1989.

to learn heritage language have been fluctuating. From the view of international human right law, the United States government should enact the federal law which includes the article granting and ensuring these rights.

3. THE LAW IN JAPAN ON FOREIGN AND ETHNIC MINORITY CHILDREN'S RIGHT TO EDUCATION

Currently, over 2,000,000 foreigners live in Japan. The rate is 1.63% of all Japanese population, 127,000,000 in 2006. About 600,000 people are Koreans, about 560,000 people are Chinese and 310,000 people are Brazilians. Additionally, undocumented people who reside in Japan are estimated 170,000.²⁰ It should also be noted there are more than 500,000 persons of ethnic backgrounds who have Japanese nationality²¹. Most of them are Korean Japanese. Considering this, the population of Korean ethnic people in Japan is more than 1,000,000.

In 1895 Japan obtained Taiwan as its colony, having defeated China in the First Sino-Japanese War. In 1910, in the aftermath of the Russo-Japanese War, Japan annexed Korea. Colonization of Korea and Taiwan prompted a forced migration of people residing in Taiwan and Korea to Japan. During the colonial period, the Japanese government forced Japanese language on people in Taiwan and Korea in support of its assimilation policy. The Japanese colonial administration prevented teaching Korean and Chinese language at schools. Later, Koreans were prohibited from speaking Korean in public.

After the end of World War II in 1945, Korea and Taiwan won their independence, and they began to teach Korean and Chinese. However, Koreans who remained in Japan during

²⁰ The web site of Japan Immigration Bureau.

²¹ Masataka Okamoto, 2004, *Racial discrimination in Japan*.

the postwar period had to struggle to maintain their heritage language. About 700,000 Korean stayed after the liberation of Korea in 1945. They remained in Japan mainly because Korean War broke out and Korea was divided into two countries.

In April 1952, when the San Francisco Peace Treaty became effective, the Japanese government expropriated the people from former colonies of Japanese nationality without giving them a choice to decide on their nationality. The Japanese government treated them as foreigners with no rights and offered no compensation for its exploitation during the colonial period. The government decided in 1947 to define Koreans as foreigners under the alien registration law despite their Japanese nationality, which the Japanese government had offered during the colonial period. The Japanese government forced them to carry the alien registration cards with them all the time under the threat of criminal punishment. Koreans in Japan were forced to offer their fingerprint every three or five years. The Japanese government has also discriminated against them in the area of political, economic and social life. For example, it had a law to exclude foreigners from living in public housing, the health-care insurance systems, the national pension system and opportunities of working as government officials. Although some policies were revised in recent years, owing to pressures from resident Korean groups, progressive Japanese citizens' groups, and international human rights groups, severe discrimination against resident Koreans in Japan has persisted until now.

In 1950, the nationality law was revised and the principle of *jus sanguinis* (law of blood) was adopted. According to this law, descendants of foreigners are defined as foreigners no matter for how many generations they have lived in Japan.

It should also be noted that the Japanese law of nationality stipulates strict conditions for nationalization. It forced foreigners to relinquish their real ethnic name and

adopt a Japanese name. This rule was finally modified in the 1980s.

In other words, the Japanese government forced Korean residents to select one from the following three options: (1) They live in Japan as foreigners without rights; (2) They abandon their ethnic identity, and assimilate into the Japanese society as Japanese; or (3) They go back to Korea. This policy has provoked anger of resident Koreans in Japan who deemed it as unfair. Infuriated, many of them have refused to obtain Japanese nationality. They have also demanded the Japanese government to provide redress and reparation for its colonial rule and its continuous mistreatment of resident Koreans as foreigners without the rights and privileges Japanese citizens enjoy.

Until the 1970s, the ethnic minority population, namely the Koreans, constituted the vast majority (90%) of the foreign population in Japan. Since around the 1980s when Japan suffered from labor shortage, immigrants and undocumented foreign workers increased rapidly in Japan. The Japanese government adopted policy to accept immigrant workers of Japanese origin from South America. They were the descendants of Japanese emigrants who settled in South America from 1908 to 1950s. Regardless of their immigration status (whether they were legal or not), foreign workers in Japan tend to work under inferior working conditions.

3-1 The history of foreign and ethnic minorities' right to education including right to learn their heritage language

Korean people established about 600 Korean ethnic schools by themselves immediately after the war in order to recover their ethnic language and culture that they were deprived of during the colonial period and to pass them on to their children. In 1948 and 1949, the Japanese government ordered them to close their schools. The government

insisted that Koreans were still Japanese nationals so they had to go to Japanese schools. In 1952, the government expropriated Japanese nationality from resident Koreans in Japan. In 1953, the government announced that Korean children lost the obligation and right to compulsory education because they became foreigners and if they wanted to attend Japanese schools, each principal of the school could allow them on the condition that they obey the Japanese law and the principle of assimilation.

The government eliminated Korean ethnic schools from the Japanese school education system. The government has never validated them as schools that have legitimate status. Owing to organized efforts by resident Koreans, Korean ethnic schools obtained the license to be “miscellaneous schools”. These “schools” are not regular schools recognized by national Japanese, but merely educational institutions recognized by local governments. They were in the same category as cooking schools or driving schools that taught specific skills. The only advantages that Korean schools could enjoy were subsidies from local government and certain types of tax exemption.

In 1965, the Ministry of Education issued the instruction to prefectural governments that they should not recognize Korean ethnic schools even as miscellaneous schools. The Japanese government stated that Korean schools’ aim was to cultivate the Korean nationality and ethnicity, and thus, they have no positive significance to Japan. Moreover, the Japanese government repeatedly submitted a cabinet bill that gave the Japanese government the authority to license or close foreign and ethnic schools beginning 1966. However, the Diet did not pass the bill. What prompted the Japanese government to take these actions was its deep-seated hostility and fear towards the resident Korean population in Japan.

Since the 1960s, the movement to upgrade foreign and ethnic schools as Japanese

regular schools intensified. All Korean ethnic schools were approved to become a miscellaneous school and received subsidies from local governments. However the subsidies which foreign and ethnic schools receive are far less than those given to Japanese schools. For example, a Japanese public elementary school receives about 9,000 dollars for each student per year, and a private elementary school receives about 2,500 dollars per student as of 2006. A Korean school receives between 130 and 900 dollars per student in the same year.

The vigorous movement to endorse Korean education by certain groups of resident Korean parents and progressive Japanese teachers led some public schools in Kyoto-Osaka area to offer extracurricular classes to teach Korean students their heritage language and culture by Korean teachers. Osaka prefecture has recognized the importance of offering these classes to nurture resident Korean children's identity and self-respect. Therefore Osaka prefecture and several cities pay for the salary for Korean teachers, although their pay is much lower than regular teachers who teach standard subjects. Currently there are 170 schools that offer these classes for resident Korean students.

Another major minority group that has faced problems of their children's education is Brazilian immigrants of Japanese descent. The number of Brazilian schools has rapidly increased since the 1990s, mostly because their children could not learn their language, Portuguese, and their culture in Japanese schools.

Currently there are over 210 foreign and ethnic schools in Japan, including 95 Brazilian schools, 73 Korean ethnic schools with the affiliation of the pro-North Korean group, 5 Korean ethnic schools with the affiliation of the pro-South Korean group and other national or ethnic schools (such as 5 Chinese schools, 3 Peruvian Schools, and 2 Indian

schools and about 30 international schools)²².

3-2 The laws regarding the foreign children's right to education and minority children's right to learn their heritage language

The article 26 of the Constitutional law 1947 says "All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free." This is the official translation of the Cabinet office of Japan, however, in Japanese version, the word "all people" is changed to "all Japanese nationals". Most scholars of Japanese constitutional laws insist the word should be interpreted "all people including foreigners" but the Japanese government still insists only "Japanese nationals" have an educational right.

The articles of the 1947 basic education law also stipulated the right to education for only "Japanese nationals". The article one of this law prescribed the aim of education being to educate Japanese nationals, so that they grow up to be healthy physically and mentally. The government insists this law applies to only the Japanese.

The article one of the 1947 school education law defines what constitutes a regular school. To be recognized as a regular school, a school must follow the educational curriculum provided by the Japanese government for Japanese schools and use textbooks approved and designated by the Ministry of Education, Culture, Sports, and Technology (the MEXT). All the officially approved textbooks are written in Japanese. Therefore it is almost impossible for foreign and ethnic schools to become one of the Japanese regular schools.

²² Journal Io, 2006, Foreign and ethnic schools in Japan

In Japan, ratified international law becomes domestic law automatically. Therefore international human rights laws which stipulates foreign and ethnic minority children's right to education I described in the earlier section of this paper, are obviously laws that are effective in Japan. However Japanese government dose not obey these international human rights laws. Additionally Japanese courts hardly use international human right law for their decisions, even though many Japanese attorneys allege the international human rights law in courts.

The Japanese court has not yet issued any ruling on foreign and ethnic minority's right to education. Regarding foreigners' right generally, the supreme court held that a foreigner could have the Japanese constitutional rights as long as the nature of the right allowed in the Ronald McLean case regarding political right on October 4th 1978. Considering the nature of an educational right as fundamental and natural right which all international human rights law acknowledges, I argue that all persons including foreigners possess the constitutional right to education.

3-3 Section Summary

The present Japanese educational law essentially denies the foreign and ethnic minority children's rights. In doing so, Japan violates its obligation to ensure the foreign and minority people's right to protect their identity. This is the situation the Chairperson of the Working Group on Minorities of the United Nations described in his remark in 2001: "Denying minorities the possibility of learning their own language and of receiving instruction in their own language would be a violation of obligation to protect their identity". The Japanese government must create an education system which guarantees every child's right to education and establish respect for each ethnic and each country's

identity to meet the standard of international human rights law.

Recently the Japanese government began to pay more attention to the problem of foreign children not attending schools pressured by two major groups in Japan. One is a powerful corporate group that represents many major Japanese companies, called, “Keidanren”. The other is a group of coalition of local governments that aims to cope with various problems concerning foreign residents. These groups constitute new pressure groups to work on the issue of the education of foreign children, while existing activist groups such as resident Korean groups or progressive teachers’ groups continue their efforts.

4. THE PRESENT MOVEMENT AND LAWYERS

Finally I discuss the movement for changing the Japanese government policy and enacting the educational law for foreign and ethnic minority children, especially the activism initiated by lawyers.

4-1 The problem of requiring foreign students to take the qualifying examinations that makes them eligible to take university entrance examinations

In March 2003, the MEXT attempted to relax the pre-existing requirement for students attending foreign schools that use English as the language of instruction to take the qualifying examination, passing of which makes them eligible to take college entrance examinations. This action was prompted by the requested from the United States government that wanted to facilitate the entrance of American students in Japan to Japanese universities.

The fact that MEXT eliminated this requirement only for students who attended schools that use English as the language of instruction, and not for those who attended other foreign and ethnic schools caused outrage, and lawyers, university professors, some local governments, and certain politicians began to organize to have the MEXT eliminate this requirement for students attending any foreign and ethnic school. The strong pressure from this movement led the MEXT in September 2003 to relax this requirement for all foreign students attending foreign and ethnic schools.

The key to the success of this movement was the organizing of lawyers who eventually joined the activist lawyers' group to address the issue which was formed in May 2003. These lawyers became representatives of Korean students who attended Korean ethnic high schools in several areas such as Tokyo, Osaka, Kyoto, and Aichi. They aggressively negotiated with the MEXT and all national universities and colleges²³.

In September 2005, these activist lawyers who began to work also on the broader issue of the education of foreign and minority children held the first nationwide forum on the issue of foreign and ethnic schools in Kobe. The activist lawyers' group constituted the foundation from which concerned lawyers, professionals, and activists organized a nationwide group that aims to create a more solid legal framework that supports foreign

²³ More than half private and public universities and colleges already had allowed foreign and ethnic school graduates to apply for entrance examinations when the MEXT issued the directive regarding foreign schools which use English as the language of instruction in March 2003, as a result of the pre-existing movement to eliminate the requirement for students attending foreign schools to take the qualifying examination before taking college entrance examinations.

and ethnic schools. The group is called, “Gaikoku jin gakko, minzoku gakko no seido teki hosho wo jitugensuru netto waaku” 外国人学校・民族学校の制度的保障を実現するネットワーク.

4-2 The objectives of the group

This group is the first nationwide group seeking the improvement of all foreign and ethnic schools. It is particularly significant that this group also included the issues with the education of Latino children in Japan because there was no such nationwide group supporting Latino schools in the past.

The group focuses on the issue of foreign and ethnic schools; however, it has also handled the larger issue of foreign and ethnic children’s rights to education including the issue of learning both their heritage language and Japanese language in Japanese schools.

Its objectives are stated in its official document in 2006 as follows.

- 1) Enactment of a foreign and ethnic minority’s fundamental education law guaranteeing the right to education including the right to learn their heritage language based on Japanese Constitution and International Human Rights Law
- 2) Legal revision to recognize foreign and ethnic schools as formal schools, to acknowledge the graduation requirement of these schools officially, to allot subsidies from the national government and at least all other privileges such as granting tax exemptions that Japanese schools enjoy.
- 3) Enactment of foreign and ethnic minority’s fundamental education regulations

- 4) Revising the standard pertaining to the institutionalization of foreign and ethnic schools as ‘miscellaneous schools’ and support them by providing subsidies, making unused public school buildings and facilities available for free, and providing school meals by local governments
- 5) Equal treatment regarding students season tickets, school insurance, school hygiene facilities, scholarship system and the right to participate in national and local school events and championships from all concerned offices and institutions

The following is the preamble to the document listing the proposal suggested by the group in 2007. This shows how activist lawyers and others think Japan should cope with the issue of diversity.

Currently, the Japanese society meets not only Korean residents resulting from the Japanese colonial ruling but also foreign newcomers, and the multinational, multicultural changes are progressing rapidly.

These changes press Japanese society to change into a “multinational multicultural living together education” based on the “multinational multicultural society” escaping from the “national education” based on the “racially homogeneous nation” which have shackled most of Japanese so far.

In addition, the deployment of multinational multicultural education based on equality will bring in diverse cultures for all children and all people in Japan regardless of citizenship, nation or

race. It will eventually lead to new social and world views seeking living together and peace instead of prejudice or hatred.

Accepting diverse nations and cultures, and allowing equal rights for education for each child will be essential elements in creating a new and complex cultures and enriching minds and lives of people in the society and communities.

4-3 The organization of the group

The group appoints two joint representatives and sixteen members of the acting committee. Nine out of sixteen committee members are attorneys. The two joint representatives and the steering committee have several meetings a year. A general meeting for all the members is held once a year. The group also holds several public discussion sessions a year inviting foreign and ethnic school officials and other concerned citizens.

In 2006, it set the following action assignment for next few years.

- 1) It will create a citizens' network separate from "foreign and ethnic school associations" and "a lawyers volunteer group to consider the problems of foreign and ethnic schools" in cooperation with them.
- 2) It will decide a medium and long term strategy.
- 3) It will network with foreign and ethnic school officials, scholars, teachers, NGOs and others.
- 4) It will make a mailing list for information and discussion.
- 5) It will hold a national multi-ethnic education forum with a series of rotating local executive committee.

- 6) It will advocate the foreign and ethnic minority's right to education
- 7) It will negotiate with the Diet, central and local governments, national and local assembly members, and parties.
- 8) It will perform international human rights activities.
- 9) It will carry out public relation activities.
- 10) It will make a network to support foreign and ethnic schools in each local area and work with the local government.
- 11) It will strengthen cooperation with teachers and NGOs addressing foreign and ethnic children education in Japanese schools and Japanese language classes in public schools or neighborhoods.
- 12) It will make a project team to study field surveys and to do a comparative analysis of foreign education systems.

Attorneys in the group work together with other members who are not lawyers. As legal professionals, they research laws and regulations that concern foreign and ethnic schools and they also write up proposals for new legislation.

4-4 The third nationwide forum in Tokyo (November 2007)

This November the group will hold the Third National Forum in Tokyo. The participants include: lawyers, university professors, Diet members, local government officials, foreign and ethnic school officials and students, a representatives from the Brazilian embassy, Consulate General of the Republic of Peru, and other activist. They will discuss the

possibilities for legal reforms to help support foreign and ethnic schools. The proposals adopted by the forum will be submitted to the Japanese government. This forum is crucial to make progress on this issue. It helps to better organize various groups that are concerned and to publicize this issue widely among Japanese and foreign citizens.

ENDNOTES

1, Minority and nationality

“Ethnic minorities” are not only composed of citizens of the state where they live, as the Chairperson of the Working Group on Minorities in the United Nations explained in final text of the Commentary to the Declaration in 2001.

Foreigners means that they are not citizens or nationalities of the state where they live. Foreigners are national or ethnic, or religious or linguistic minorities with few exceptions.

Indigenous peoples are surely considered minority peoples. In this paper, however, I could not discuss the problems that concern indigenous peoples in both countries.

2, The heritage language and mother tongue or native language

Although the word mother tongue is sometimes used in the United Nations, I think that “heritage language” is better and more correct word as an object of the human right. ‘Heritage language’ means the language which is necessary for communicating with one’s parent, grandparent and other members of a minority community that a person belongs to and for inheriting their language and culture, in order to establish and protect one’s identity with dignity and self-respect. The word commonly is used in Canada regarding bilingual education.

On the other hand, “mother tongue” or native language means a language that a

person naturally and factually acquires ordinary by one's parent in one's childhood. Actually, however, some minority children's "mother tongue" is not the language that their parents are using but the language of their living country. For example, many Brazilian parents in Japan are so busy working hard in factories from Monday to Saturday that they cannot teach their children their native language. Many children before school age are watching Japanese TV alone in their home all day waiting for their parents. In case they attend Japanese school, they are surrounded far more by the language of the country where they live both owing to Japanese media and their schools. So many Brazilian families have a serious problem of breakdown between parents who can only speak Portuguese and children who cannot speak Portuguese well.

To offer one more example, most of Korean residents' mother tongue is Japanese except for some of second generation. Under the colonial rule, the Japanese Government prohibited Korean people from using or learning their language. After the liberation of Korea from the Japanese colonial rule in 1945, the Japanese government has continued its assimilation policy and discrimination against Koreans in Japan. Therefore many Korean parents could not or did not teach their children Korean language.