

The treatment of the Korean minority in Japan: An assessment in the light of the relevant international human rights obligations

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Abstract: This article provides an analysis of Japan's treatment of its Korean minorities, particularly Zainichi Koreans, or Koreans "residing in Japan," against the backdrop of international human rights law. Despite Japan's reputation as a highly developed country in virtually all areas, systemic discrimination of Koreans was and still is present. Colonial time inequality and post-war policies shaped the social and legal marginalisation of Koreans, namely through the deprivation of their citizenship, turning them into aliens in their own country. The study examines the evolution of Japan's legal framework, including the 1952 Alien Registration Act, the Nationality Law, and the 1946 Constitution, highlighting how these policies institutionalised ostracisation. The domestic law and practice are then assessed in the light of Japan's international human rights obligations. Its aim is to evaluate discrepancies between Japan's obligations and its domestic laws and practices concerning minority rights. Through an examination of the reports of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination spanning three decades, the research illustrates Japan's struggle to adapt national laws and practices to international standards in the sphere of minority rights. In particular, early concerns centred on legal discrimination, such as restrictions on movement, while recent reports emphasise the rise in hate speech and racial violence against Korean minorities.

Keywords: minority rights; discrimination; international human rights law; coloniality; Japan.

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1. Introduction

Japan has been part of the most economically and socially developed countries in the world for decades. According to a 2024 report published by Forbes, Japan has been ranked second best country to live in overall, beating other countries such as Canada, Denmark, or the US (Bloom 2024). Its quality of life resonates with other appealing scores, such as its freedom. With a score of 96/100 according to Freedom House, Japan can be considered one of the freest countries in the world, with its citizens enjoying top-tier political rights (40/40) and civil liberties (56/60). However, some categories of that score might give out details about a potential crack in this perfect picture. “Do laws, policies, and practices guarantee equal treatment of various segments of the population?” This question obtained three out of four points, suggesting room for improvement. One aspect of Japanese society that can explain this abnormal imperfect score lies in its treatment of minorities. Various minority groups have suffered from diverse forms of discrimination, including on legal, political, social, and professional grounds. Inequality is what transpires from those discriminations, with the Japanese society systemically prioritising Japanese nationals’ rights over minority rights. These minorities include groups such as the Indigenous Ainu people, the social outcast Burakumin people, as well as descendants of colonial subjects living in Japan, called *Zainichi*, or “foreign citizens staying in Japan,” which can refer to Korean as well as Chinese nationals. *Zainichi* Koreans will be the focus group of this research, as well as the broader Korean population living in Japan. As of 2008, this part of the Japanese population amounted to nearly 600,000 Korean nationals and around 300,000 naturalised Koreans (Tomonari 2013, 6). Although Chinese people have become the largest minority group in Japan in 2007 (Tomonari 2013, 5), which brings new dynamics to Japan’s immigration mix, this article will rather focus on the long-lasting issues that face Koreans and the institutional and legal treatment of their rights in Japan.

Those issues will be assessed in the light of Japan’s international human rights obligations which are relevant for the purpose of the protection of minorities and minority rights. In this respect, it must be noted that Japan signed on 30 May 1978 and ratified on 21 June 1979 the two international covenants concluded in 1966 within the United Nations’ (UN) framework, the International Covenant on Civil and Political Rights¹ (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Furthermore, on 15 December 1995, Japan also acceded the

¹ The ICCPR, further elaborates on the civil and political rights and freedoms guaranteed by the Universal Declaration of Human Rights. Articles of this Covenant protect rights and liberties such as self-determination, privacy, equality under the law, and liberty of movement. In particular, Article 27 stipulates that “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.”

UN Convention on the Elimination of All Forms of Racial Discrimination (CERD), which had been concluded in 1965. By contrast, Japan has not signed nor ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), which was concluded in 1990.

These acts lawfully stipulate Japan's commitment to the protection of both nationals and foreigners' human rights within Japanese jurisdiction. However, previous research on the issue of the protection of Zainichi Koreans' rights suggest some discrepancies between Japan's formal commitment to respecting international human rights treaties and its actual domestic laws and practices. For example, the recently elected President of the International Court of Justice Yuji Iwasawa wrote in 1986 that "the legal treatment of Koreans in Japan is one of the major international human rights law problems facing Japan today" (Iwasawa 1986, 131). One might think that nearly 40 years later, the issue of legal discrimination against the minority group would be somewhat resolved in a country as highly regarded as Japan. However, as proven by the growing presence of far-right groups hostile to Zainichi Koreans – and other minorities –, the situation and its resolution remain complex. According to a 2013 report by Hurights Osaka, one such group, *Zaitokukai* (Association of Citizens against the Special Privileges of the Zainichi) has been holding anti-Korean marches in Tokyo since 2012. Therefore, between legal and social, discrimination appear to be rampant in the case of Zainichi Koreans. Of course, this issue is not homebound to the capital: 66% of surveyed Zainichi Koreans in Japan's Kansai region in 2012 reported having experienced discrimination (Chae 2024). Moreover, as many of them are registered as permanent residents rather than Japanese citizens, Korean permanent residents still enjoy fewer rights than their Japanese nationals counterparts. These include for example limits to political participation and access to public sector jobs, as well as naturalisation barriers and education recognition. In this respect, this research argues that past and present Japanese laws and policies have directly and indirectly restricted Zainichi Koreans' rights. Despite its commitment to international human rights frameworks, Japan's difficult alignment of its domestic laws and practice with its international obligations can be linked to various growing and alarming discriminations faced by Zainichi Koreans today. To assess the situation, this paper aims at exploring Japan's long-lasting societal issue of harmonising its domestic laws and practices with its duty to uphold international human rights obligations. Investigating Japan's complex position will require from this paper to first look into Japan's historical approach to Korean minorities in its pre-war empire and its post-war shift towards national homogeneity. The evolution of the legal treatment of Zainichi Koreans will guide this historical overview and provide context for the contemporary situation regarding Koreans' position in Japan. The research will then look into the 1946 Constitution, the way in which it dealt with the issue of minority rights in post-war Japan, and its effects on Zainichi Koreans' place in

society. These historical, legal, and political frameworks will then provide the tools for analysing the discrepancies between, on the one hand, Japanese domestic laws and practices and, on the other hand, Japan's international engagement to uphold the rights enshrined in the ICCPR. Therefore, the research aims at not only investigating the current issues regarding Korean minorities in Japan, but also confronts them against the backdrop of Japan's international legal obligations.

2. Japan's historical treatment of Korean minorities

2.1 Colonial period and interaction with Korean nationals

Korean communities in Japan take their origins from migration movements that followed Japan's annexation of Korea in 1910 and subsequent colonial rule. These migrations took the form of voluntary and involuntary transfers, leading to over two million of Korean immigrants living in Japan by the end of the war, while around three quarters of them were repatriated to Korea in half a decade (Iwasawa 1986, 133). During Japan's golden age of colonialism, in the first half of the 20th century, its empire was home to some hundred million people, of which 30 per cent were ethnic minorities (Yamanaka 2004, 161). In order to manage such diversity, scholars and thinkers of the Meiji Government contributed to what would become a pillar of Japan's domestic management of diversity: assimilation. The general idea was to unite the people under one national identity. This trend was inscribed in a broader societal transformation of Japan through industrialisation and modernisation which sought uniformity and unity in order to increase its domestic economy, as well as its military and intellectual influence on the world stage. During this colonial time, Japan had even endorsed the role of a regional leader in Pan-Asianist movements, which pertained to a general set of ideas that called for the solidarity of Asian nations specifically against the influence of the West in the late nineteenth to mid twentieth centuries. Originating from Meiji Restoration Japan, it developed as a belief that Japan needed to lead its Asian neighbours to progress and liberate them from underdevelopment – which was deemed a result of western domination. In Japan, Pan-Asianism contributed to its imperial course into the twentieth century, giving justification for its military expansionist agenda, eventually leading to its participation in World War II. Pan-Asianist ideas fuelled Japan's imperialist ideology and gave excuses to control regions like Korea and Taiwan, eventually mimicking the very model of Western colonialism it claimed fighting (Duara 2001, 110). Pan-Asianist idealism of equality and unity among Asian populations became known as the "Greater East Asia Co-Prosperity Sphere", and was first formally articulated in 1940 by Japanese Foreign Minister Matsuoka Yōsuke. The sphere was a political and economic concept with the aim of being free from Western colonial influence, under the guise of promoting mutual economic and cultural development (Acharya 2010, 1004).

However, what could be considered by Benedict Anderson as an “imagined community”² only contributed to Japan’s policy of assimilating its annexed population while proving Japan’s superiority and leading position. Despite Japan’s take at colonialism aiming at a united heterogeneous people, it unfortunately once again mimicked the discrimination and unequal treatment visible in Western imperial colonies. Its treatment of Koreans is a prime example, as underscored by Iwasawa in his discussion of their status under colonial rule. Although Koreans were legally regarded as Japanese nationals, they were classified as *gaichijin* (those of colonial origins), as opposed to *naichijin* (those of Japanese ancestry) in family registries (Iwasawa 1986, 144). Japan’s society was still one of deep divisions between ethnicity, class, region, history, and gender (Yamanaka 2004, 163). This differentiation between “native Japanese” and “colonised Japanese” written in official registries allowed for a wide range of unequal treatments that systematically kept Koreans – as well as Chinese and Taiwanese citizens – in the lower classes of society. Types of citizenship therefore were the main factors in octroying rights to individuals. For example, Korean nationals’ movements were controlled by the Government, allowing them or not to leave the Korean peninsula or access Japanese territory. Voting rights were also different for Korean citizens whether they lived in Korea or in Japan, limiting suffrage rights only to those living in the inner territory. These discriminations socially and effectively kept in place Koreans below ethnic Japanese citizens, leaving them performing low-paid labour – including forced labour –, and mostly uneducated.

2.2 Consequences of the post-war period

With Japan’s loss in World War II, a shift occurred in Japan’s policy towards its colonial subjects. The official assimilation approach to Japan’s diversity changed to a clear separation between Japanese nationals and foreigners – especially ex-colonial subjects. Japan’s defeat and subsequent American occupation brought the end of the Japanese empire and its colonies – including Korea. Decolonisation, under the American lead, could take place. As previously mentioned, over three quarters of the Korean population was repatriated to Korea, leaving around 600,000 of them in Japan for diverse reasons (Yamanaka 2004, 164). Despite the American-led deconstruction of Japan’s empire and its switch from multicultural pride to homogenous harmony, the country remained significantly heterogeneous. Japan’s population was “recategorised” through the Alien Registration Law of 1947. With the help of family registers (*koseki*), the new Government recognised two groups of people: citizens and aliens, like Koreans, who

² According to Anderson, imagined communities are social constructs where members of a nation perceive themselves as part of a collective, despite not personally knowing most of their fellow members. He argues that nations are “imagined” because the sense of unity and shared identity is built through shared symbols, narratives, and practices rather than direct interpersonal relationships.

had to register as foreign citizens (Chung 2023, 202). The registers were thus used to trace back the ethnic background of citizens in order to deprive of their citizenship those that did not descend from Japanese lineage, no matter how long or for how many generations they had been in Japan. This was reinforced by the Nationality Law of 1950, which was a revision of the same 1899 Law. It ensured the retainment of *jus sanguinis* (law of blood) through paternal heritage to determine citizenship. Chung's article further identifies what she refers to as a "citizenship-as-identity" paradigm, which allowed for the systemic isolation of Zainichi Korean and other former colonial subjects in post-war Japanese society. The paradigm consists of three steps: repatriation, the closing of borders, and denationalisation (Chung 2023, 201). The 1947 Alien Registration Law laid the groundwork for the subsequent Alien Registration Act of 1952, which continued to regulate the status and rights of foreign residents in Japan. Former colonial subjects, now referred to as aliens, were relegated to foreigners' status despite their long-standing residence in Japan. The largest group of aliens were Zainichi Koreans, who remained stateless until the creation of the two new Koreas at the end of the Korean War. A substantial consequence of the new Alien Registration Act was the requirement for colonial subjects to carry their alien registration card at all times, as laid out in Article 13. The San Francisco Peace Treaty or Treaty of Peace with Japan, signed in 1951, marked the end of the allied occupation of Japan and the country's regaining of full independence, allowing it to enter the international community again (Yamanaka 2004, 161). However, as mentioned above, this also marked the Zainichi Koreans' formal deprivation of their Japanese citizenship, providing the legal framework for it. If Zainichi Koreans desired to regain Japanese citizenship, the only way was through naturalisation, a very difficult process with a high rejection rate (Chung 2023, 202).

Iwasawa underscores Article 2(a) of the Peace Treaty in which Japan recognised the independence of Korea and renounced all right to the territory. The underlying meaning points to a fracture not only with the territory of Korea, but also with its population. In executing this separation, Japan's Government not only deprived Zainichi Koreans of their Japanese citizenship, but it did not provide them with a Korean one, leaving them stateless. This action fits in the whole post-war process that allied denationalisation due to decolonisation with an increase of rights to Japanese nationals over foreigners, contributing to a new pride of homogeneity of the Japanese people: one nation, one people (Yamanaka 2004, 165). The assumed policy of alienage thus helped to socially and politically exclude minorities and institutionalised the association of nationality with ethnicity.

It is worth noting that the statelessness of Zainichi Koreans was partially resolved in 1965 with the Treaty on Basic Relations between Japan and the Republic of Korea, which provided South Korean citizenship to most

ethnic Koreans in Japan. It also allowed for first and second generations of Zainichi to obtain permanent residence. This did not prevent the continuing effect of ostracisation of the minority. Up until the 1980s, Koreans could not enjoy the same social benefits as their Japanese citizens counterparts, such as national health insurance or workers' pension (Yamanaka, 2004, 164).

3. The Constitution and the position of minorities

Since its return to the international scene in the 1950s, Japan went through an unprecedented economic growth, never experienced by any other countries. It propelled it to the ranks of the Western nations that once occupied its territory and shaped its 1946 Constitution. Known as the McArthur Constitution, or Showa Constitution, it was designed according to American and other Western values, creating a body of laws that resembled those of France, Germany, or, of course, the US. Some of its symbolic values include pacificism, the renunciation of war, but also individual rights, marking a shift from collective view of the Japanese people to individuality. Exiting World War II, the drafting of this new Constitution took place at the same time as the birth of the UN, to which Japan became a member in 1956. Both the new Constitution and the UN's Universal Declaration of Human Rights (UDHR) of 1948 echo to values enshrined in the Potsdam Declaration of 1945, namely the respect of fundamental human rights (para 10). This Declaration laid the ground for the temporary occupation and the future independence of Japan with the objective of leading it to the path of peace and making sure it would become an ally unlikely to wage war again. In this respect, it must be noted that several articles of the new Constitution point to these fundamental rights. For example, Article 13 recognised the "right to life, liberty, and the pursuit of happiness," echoing Western treaties. For its part, Article 14 guarantees equality under the law and protects people against discrimination on the basis of race, social status, or family origin.

However, it appears that, notwithstanding the formal recognition of the principle of equality in the Constitution, minority rights are still underdeveloped and overlooked in the Japanese legal system. In this regard, it must be noted that several domestic laws, especially those pertaining to citizenship, have allowed for various unequal treatment of minorities, especially Zainichi Koreans and Chinese people. Japan's situation is complex because inequality does not stem from discriminatory laws, rather from the lack of anti-discriminatory ones. As it has been observed, "no Japanese public institution, including the local government, the Immigration Bureau, schools, companies, hospitals, and police, are designed to accommodate or serve non-Japanese populations" and the reason is that "there is no anti-discrimination law to stop rampant racism in housing and the job market" (Shin 2010, 339). This lack of protection led these communities to be excluded from the public sector, jobs, housing, social services, or political representation (SPICE 2010). Marginalisation

indeed also affected Koreans in housing, as they were and still are often concentrated in ethnic enclaves, as well as in education, with Korean youth frequenting less desirable ethnic schools,³ which undermines their chances of gaining a higher education and future employment (Carvalho and Yamamoto 2018, 128). Regarding job opportunities and Zainichi Koreans' position in the public sector, discrimination on nationality enabled local Governments to simply reject this part of the population. This was the case in 2005 when one Zainichi woman was denied a managerial position at the Tokyo Metropolitan Government due to her origins (Dunlop 2011, 309). There had been efforts to remediate the issue of national discrimination, as with modifications to the Nationality Law in 1982, which sought to equalise the situation between nationals and non-nationals. However, although it officially improved eligibility to the pension system and healthcare to foreigners like Zainichi Koreans, difficult requirements kept maintaining these populations off those services (Dunlop 2011, 292, Takao 2003, 528). These conditions still affect the overall Zainichi Korean's economic and social situation, putting them at a disadvantage and contributing to the cycle of inequality. In order to get out of the position of foreign residents, tough naturalisation policies are in place, though the difficult process requires deep cultural assimilation and the renouncement of original citizenship (Cidale 2024). To add on the pressure on Korean citizens in Japan, external tensions galvanise the situation, especially the distrust in some of Zainichi Koreans due to the post-colonial separation between North and South Korea, as those that have been living in Japan for generations belong to neither and yet face stereotypes and discrimination (SPICE 2010).

Overall, it appears that, while racial discrimination is prohibited by Article 14 of Japan's Constitution, the different treatment of minorities, such as Zainichi Koreans, prove a discrepancy in the commitment to equality set forth by this very Constitution. This discrepancy is only highlighted even more if one compares the domestic laws and practices in force against Japan's commitment to the UN's international human rights treaties.

4. The treatment of the Korean Minority in Japan in the light of international human rights law

4.1. The (uncertain) role of international human rights treaties in the Japanese legal system

There is an even greater discrepancy to notice in the relation between Japan's domestic laws and practices and their compatibility with its

³ Ethnic Korean schools were originally designed for the Zainichi community after World War II as a way to provide education in the Korean language and about Korean culture. They are usually affiliated with the South Korean regime (*Kankoku Gakko*) or the North Korean regime (*Chosen Gakko*), with the latter facing hardship towards recognition by the Japanese Government, being categorised as "miscellaneous schools."

commitment to international human rights standards. As seen previously, Japan is part of the UN and thus has ratified a number of treaties enshrining the principle of equality of individuals, and engaged with the fight against discrimination and the overall protection of minorities. Such treaties include the ICCPR, the ICESCR, and the CERD. Regarding domestic legislation, Article 98(2) of the Constitution of Japan of 1946 provides that “treaties concluded by Japan and established laws of nations shall be faithfully observed.” Under this new Constitution, the predominant view interprets this article as giving treaties authority over national laws. In this respect, it is important to note that, as highlighted by the Asia-Pacific Human Rights Information Center, “under the Japanese legal system, a ratified treaty has the same legal status as a domestic law, and also takes precedence over all related laws with the exception of the Constitution” (2013). According to this, these ratified treaties should prevail over national laws. Therefore, the Government and Japan’s courts have most often taken a position in favour of treaties (Iwasawa 1986, 136).

However, Iwasawa addressed a general concern regarding the applicability of the UDHR, the ICCPR, and the ICESCR in relation to Japan’s domestic laws. And indeed, the ICCPR, in particular, has been subject to a variety of concerns from the UN’s Human Rights Committee over time. It has delivered reports that are relevant to this research, as Japan has not consistently succeeded in eradicating systemic and social discriminations of minorities, including Koreans. As it turns out, the situation has worsened over time. According to official reports from the Human Rights Committee, but also from the Committee on the Elimination of Racial Discrimination, Japan has struggled to fully commit to the primacy of international treaties over its national laws, reverberating into greater social issues over time.

4.2. The concerns regarding Japan’s enforcement of international human rights law

Despite Japan’s position at the UN and the ratification of the abovementioned treaties, concerns were reported over the effective compliance with its duties over the years. As far as relevant for the purpose of the present research, it must be noted that Article 27 of the ICCPR protects the rights for members of ethnic or linguistic minorities to enjoy their own culture, religion, or language. However, the reports provided by the Human Rights Committee have shown relevant failure from the Japanese Government in complying with this obligation.

In monitoring the implementation of the ICCPR under Article 40, the Committee provides input for the evaluation of Japan’s handling of minority rights as human rights in the past 30 years in the case of Koreans. The choice of analysing three decades provides this paper with enough gap in time to witness important changes in Japan’s society. In this

period of time, the discrimination experienced by Korean communities has shifted from a legal setback to a societal, gangrened issue, that takes its root from the difficult adaptation of national law to international obligations. Additionally, this research takes into consideration the reports of the Committee on the Elimination of Racial Discrimination within the same period, concerning the implementation of the relevant obligations enshrined in the CERD, and which identified the same problematic issues highlighted by the Human Rights Committee.

The Human Rights Committee has expressed its concerns over the treatment of Korean minorities since 1993, when it issued its considerations on the first report submitted by Japan. First, from a general point of view, the Committee expressed its fear that the ICCPR would correctly and effectively “prevail in the case of conflict with domestic legislation” (para. 8), which was a concern already expressed by Iwasawa in 1986. With specific regard to the case of Korean permanent residents, the Committee expressed concerns over discrimination against them, as well as other minorities. These include Japan’s legal enforcement of the requirement for alien permanent residents to carry documentation at all times and its incompatibility with the ICCPR, as underscored by the Committee (para. 9). This obligation dates back to the Alien Registration Act of 1952, which was still in effect in 1993. According to the Committee, this legislation infringed on Koreans’ freedom of movement in Japan, especially Zainichi, who had been living for generations in Japan and were arbitrarily deprived of their citizenship prior to the ICCPR. This law was therefore incompatible with Article 12 of the ICCPR, which provides that “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement.” In its suggestions and recommendations, the Committee put forward the need to abolish such discriminatory laws, as they are incompatible with the values of equality and protection of all under the law, as laid out in Articles 2, 3, and 26 of the ICCPR (para. 17). The main problems identified at the time of the report were legal matters, as they influenced directly the imbalance between Japanese nationals and Korean permanent residents’ rights. However, already in 1993, the Committee was advising Japan to influence the public opinion so change could happen, hinting at the importance of changing not only laws, but the people’s view of Koreans’ rights.

Despite this, the Human Rights Committee reported a very similar situation in its report over the application of the ICCPR issued in 1998. Although it congratulated the Japanese Government for improving its human rights legislation, the situation regarding the treatment of Korean minorities remained much the same. Rampant issues emanating from Japanese laws incompatible with the provisions of the ICCPR include restrictions on individuals’ rights according to Japan’s laws (para. 8), “reasonable discrimination” (para. 11) used by Japan to target certain groups, as well as the Immigration Control and Refugee Recognition

Act, the enforcement of which may prevent second and third-generation permanent residents with no re-entry permit to return to Japan after they leave (para. 18) – a situation which especially applies to Zainichi Koreans. Similarly, the Committee highlighted once again in the report that the Alien Registration Law's requirement for alien permanent residents to always carry registration was still incompatible with the provisions. Overall, most issues identified in the previous report were not addressed by Japan, allowing for the spreading of discrimination to other spheres of society. Moreover, despite the Ministry of Justice's dealing of "the elimination of discrimination and prejudice against students at Korean schools in Japan," the same report expressed concerns over discrimination against members of the Japanese-Korean minority who are not Japanese citizens, "including the non-recognition of Korean schools" (para. 13). The analysis of the Committee's observations showed that, apart from an unequal treatment of Koreans' civil rights and protections compared to Japanese citizens, it seemed as if the Committee began to worry about other social issues, notably education, which the Government was failing to protect. Additionally, discrimination in education transpired in the considerations of the Committee on the Elimination of Racial Discrimination in 2001. It reported "violent actions against Koreans, mainly children and students" (para. 14) as well as the non-recognition of Korean Schools' diplomas as "resident Korean students receive unequal treatment with regard to access to higher education" (para. 16). Therefore, those two reports from the 1990s, reinforced by the 2001 report of the Committee on the Elimination of Racial Discrimination, highlight long standing issues regarding the legal treatment of Zainichi Koreans, especially their specific requirements and the need for change in various legislations.

Ten years later, the first subject of concern of the Committee was the lack of implementation of the 1998 recommendations, reflecting on the long-lasting issues of Japan's commitment to the ICCPR's provisions (2008, para. 6). Additionally, education also remained an issue. The Committee highlighted the lack of State funding for schools teaching in the Korean language compared to those teaching in Japanese, as well as again the problem of recognition of diplomas from Korean-language schools (para. 31). The disproportionate funding to certain schools underscores the general assimilative incentive from the Japanese Government to favour Japanese education rather than those of minorities, along with political distrust of some Korean schools affiliated with the North Korean regime. This contradicts Article 27 of the ICCPR, which ensures the enjoyment by minorities of their own language. Despite progress being made, the 2008 report showcases what looks like institutional and systemic discrimination that maintain a favouring of the Japanese majority and an ostracisation of the Korean minority. Education as a social right was threatened for Koreans, as highlighted also in the report from the CERD in 2010. Once again, this Committee underscored the differential treatment of schools for foreigners and Zainichi Koreans (para. 22(d)). It also subsequently warned

of the “continued incidence of explicit and crude statements and actions against groups, including children attending Korean schools” (para. 13). This hints at a greater issue regarding hate speech that will only grow more alarming in future reports from both Committees.

And indeed, it is in its 2014 report that the Human Rights Committee expressed alarming concerns regarding growing social discriminations towards Korean communities. Apart from yet again worries about the general non-implementation of previous recommendations by Japan (para. 5), the Committee was apprehensive of the rise in hate speech and racial discrimination that grew in Japan targeting ethnic minority groups such as Koreans. Such communities were subject to harassment and violence, sometimes through acts of extremist demonstrations, while the Government provided insufficient legal protection to them (para. 12). One example of racial discrimination provided by the Committee was the use of signs with “Japanese only” written on them, which directly violates values of both the Japanese Constitution and the ICCPR. Many of such signs spawned in Japan as the country attracted more foreigners, reflecting Japan’s preference towards unity, ethnic majority, and rejection of non-Japanese people. The Otaru Onsen Case⁴ is one such example, although it showcased above all how racial discrimination in itself is not punishable by Japanese law (Webster 2002). The Committee elaborated as a response to this issue as it further emphasised still in paragraph twelve of the report that propaganda advocating for racial superiority or discrimination should be prohibited by Japan’s domestic laws, as well as being identifiable by the judiciary. Here the general concerns of the Committee were significantly less linked to a fear of legal imbalance and inequality between members of society but increasingly more connected to social insecurity of minorities like Koreans. It is worth noting that the sixth periodic report was published two years after the Japanese Government stopped requiring from alien permanent residents that they carry registration at all times. Instead, Japanese and non-Japanese residents were recorded alongside in the new *juminhyo* system.⁵ Despite this effort, the 2014 report still points out blatant cases and uses of discriminatory practices and acts, only highlighting better how the deep-rooted discriminatory laws of Japan had already created room for the oppression of Koreans – Zainichi and new migrants alike. The problem was no longer only institutional, but social. It is once again worth noting how the same issues of discrimination were monitored

⁴ The Otaru Onsen Case involved a Japanese public bathhouse (“Onsen”) in Otaru, Hokkaido, that denied entry to non-Japanese customers, including naturalised Japanese citizens in the early 2000s. This policy was justified by the bathhouse as a means to address the disrespectful behavior of some foreign visitors, particularly Russian sailors. The case gained significant attention when three foreign residents filed a lawsuit in 2001, citing racial discrimination under Japan’s Constitution and international human rights treaties. The Sapporo District Court ruled in 2002 that the bathhouse’s policy violated the plaintiffs’ dignity but did not rule it illegal under Japanese law.

⁵ The Law for Partial Amendment to the Basic Resident Register Act in 2012 allowed for both foreign and Japanese residents to be registered under the same system.

by the CERD too the same year, only reinforcing urgency of the situation. It especially warned about the overall growing hostility towards foreigners, with a special emphasis on Korean minorities, which take the form of rallies and racist demonstrations (para, 11). Finally, the most recent report, dating back to 2022, has similar views as the 2014 one. Yet, it is more extensive. As part of the fight for equal rights, the Committee identified the current effect of discriminatory policies towards Zainichi Koreans, in particular in “social security schemes and the exercise of political rights” (para, 42). This demonstrates a constant ineffectiveness from the Government in properly dealing with the political and social integration of minorities, especially those that have been residing in Japan for generations. As permanent residents without recognised citizenship of their country of birth, Zainichi Koreans are still deprived of certain political rights, which is at the essence of what this treaty should provide. Similarly, in the 2018 report from the CERD too, concerns were raised about the Zainichi’s lack of voting rights (para. 21). On another note, positive change is acknowledged, as the Government adopted measures and acts aimed at reducing violence and discrimination targeting minorities – especially Koreans – which have become an even broader issue (Hate Speech Elimination Act 2016). The report however calls for further, more impactful action. It recognises the need for a legal framework in order to make anti-discrimination legislation more effective (UNHRC 2022, para. 9). Especially, the Committee identified a set of actions in order to properly decrease cases of discrimination. These include criminalising acts of hate speech and training members of the law and of the judiciary in recognising such acts (para, 13). The urgency and close detail brought by the Committee is justified by its increasing concerns over the rise in a generalised and peculiar anti-Korean feeling that targets this minority whether they are Japanese nationals of Korean origins (Zainichi), or from new waves of Korean immigrants. The report mentions racially discriminatory acts such as demonstrations, protests, and political speeches, including ones as part of election campaigns (para. 12). Furthermore, as emphasised in the observations from the CERD too, “Korean women suffer multiple and intersecting forms of discrimination based on nationality and gender” (2018, para. 21) highlighting the discriminations that galvanise the intersections of multiple anti-Korean feeling through hate speech.

The societal problem of racism against Koreans and other minorities provides a fertile ground for crimes of such sort. In September of 2022, a Korean woman sued her employer after the company in question had repeatedly distributed in their workplace slanderous magazine articles directed at Chinese and Korean nationals (Negishi 2022). Just a month prior, the Kyoto District Court found a man guilty after he set on fire several buildings of an ethnically Korean district (Harrison et al. 2022). Although the judge in this case recognised the crime as being motivated by prejudice and crime, the mention of hate crime did not appear in the ruling. Recent cases such as these only further implicate the growing

hostility against Koreans, as well as they underscore the lack of legal acknowledgment of racial motivation in hate crimes. This justifies how extensive the 2022 report is and should call for the Japanese Government to take further action.

For the past decade, far-right hate groups with a specific anti-Korean agenda have been growing in Japan, adding on the persecution faced by Zainichi Koreans. The lack of prosecution of crimes directed at them as hate crimes further agonise the situation, with hate groups such as Zaitokukai still gaining traction today. In an atmosphere of growing xenophobia and neonationalism without fear of “hate crimes” labels, they freely advocate for the cancellation of the equal rights acquired by Zainichi Koreans (Sharkey 2021). Sharon Yoon, a professor of Korean studies at Keough School of Foreign Affairs, underscores another dangerous medium of hate: the publication of hate books and comic books that galvanise the movement. One such comic book entitled *Kenkanryu* (meaning “Hating the Korean Wave”) was published from 2005 to 2015, which sold over 300,000 copies in the three months following its release (Sharkey 2021). It seems increasingly clearer that this trend of a more “comfortable” and accepted hatred of minorities in the public and private sphere correlate with a certain laxism in sentencing hate crimes as such, which ultimately reverberate in Japan’s lacking in complying with UN norms and recommendations.

4.3. Evaluation and criticisms

The evolution of concerns expressed by the UN’s Human Rights Committee, bolstered by those of the CERD too, testify of a long-lasting effect of institutionalised ostracisation of Zainichi Koreans, which extended to Koreans in Japan in general, as foreign workers and students from Korea are targeted as well. The question then becomes “Korean-ness” in general. The reports show that the legal issues of the 1990s that clearly discriminated against Koreans were replaced by greater, and even more serious, social problems. One early concern shared by both Committees was the access to and protection of education in the Korean language, which is part of the enjoyment of one’s language as a minority, as guaranteed by Article 27 of the ICCPR. Moreover, the answer to this concern should be part of a greater plan of equal education to both Japanese nationals and Korean permanent residents, and should therefore be implemented by the Government, including financially, as pointed at in the 2008 report. Evolving from legal to social, the fairly recent issues raised by the two Committees regarding the question of Koreans pertain to hate speech, racism and hate crimes at different levels of society today. This hate transpires from individuals, the media, and the political and private spheres. Although it no longer is solely a question of discrepancies between domestic laws and international commitment to human rights instruments, the discrimination now directed at virtually all Korean minorities in Japan cannot be considered without its relation to systemic

discrimination. It originated from unequal laws and alienating policies that took too long to be changed – if changed at all. The Alien Registration Act, along with instituted discrimination under the guise of “public welfare”⁶ or through clearly segregating laws, have shamelessly sought to maintain a hierarchy dating back to colonial times, relegating Koreans to second-class citizens. Leaving racism to ferment, the Japanese Government allowed xenophobia to spread out durably through societal norms, exemplified by grassroots movements with populist and nationalist views and racist groups using the “Korean scapegoat” as an identifiable target for hate speech and racism. They are a proof that the attitude of Japanese courts towards not recognising the “hate” factor of certain crimes contribute to a society where it became somewhat acceptable to promote the idea of removing the rights of a part of the population (Sharkey 2021), while the groups promoting these ideas enjoy the protection of their rights of association and free speech by the Japanese law (Shibuichi 2015, 736). Additionally, it is worth reiterating the existence still today of laws that keep Zainichi Koreans away from politics and social benefits, with the sole justification that they are not considered citizens of their country of birth and residence.

Since at least 1993, the Human Rights Committee encouraged Japan to abolish such discriminatory laws, and its Government to influence the public opinion. It had already recognised the virtuous effect of public opinion in not only changing more effectively laws, but also in making them acceptable to the general Japanese population. Opinions about Korean minorities had to change in order to foster the right environment for political and legal improvement. Instead, Japan slowly enacted more equal policies without effectively making its population agree with them. As a result, society kept running on a century-long incentive of assimilating the people, echoing the idea of “one nation, one people” (Yamanaka 2004, 165), which promoted a unity that failed to provide the necessary frameworks to guarantee the rights of Zainichi Koreans. When Japan finally eliminated some of its unequal laws, the social repercussions were already engrained in society.

Looking further, it is important to see how discrimination against Koreans and anti-foreigner feeling in Japan go hand-in-hand. The situation of Koreans cannot be seen as a singular instance, but as a singular case in a broader context. In the case of the Otaru Onsen lawsuit, the “Japanese only” sign was not aimed at Koreans, for example – at least not directly. It targeted people that did not look like the Japanese majority, making it a clear case of racial discrimination. However, the fact that this was not found illegal by a court under Japanese law is where abuse starts being

⁶ The dangerous vagueness of the use of “public welfare” by the Japanese Government appear in all five analysed reports, demonstrating the insufficient efforts by the Japanese Government to comply with the Covenant’s recommendations.

welcome. It gives way for further “door policies,” such as passport control. Then it does not take long to become a tool for some to refuse entry to Korean citizens – as well as any unwanted nationality. Korean minorities then become one of many that can be discriminated against, however, the scope of the discrimination directed at them is important enough for the Human Rights Committee and the Committee on Discriminations to emphasise their community singularly in the analysed reports.

Over the chosen period of three decades, the situation of human rights in Japan seems to have worsened, with reports becoming more extensive with concerns and recommendations. As the UN advanced towards more effective human rights frameworks and instruments over time, it seems contrary that a country like Japan lacks the sufficient protection of minorities expected from its Government. Japan is economically, socially, and politically advanced, and its constitutional values align with the UN’s human rights framework. As seen in the introduction of this paper, it reaches a nearly perfect score in terms of freedom. It is highly democratic and has been politically stable for decades. Despite this picture, Japan suffers from xenophobia as in other parts of the world, with Koreans being the prime target of discrimination.

The number one issue highlighted in the 1993 and 1998 reports of the Human Rights Committee is the lack of primacy given to international human rights law, as guaranteed by the ICCPR, over national law, which is a principle reiterated by Japan’s own Constitution. As this easily identifiable problem faded in later reports, the primary issue became a need for social change through education and awareness campaigns. Yet not effective enough, it becomes Japan’s best lead in tackling xenophobic attitude in the Human Rights Committee’s 2022 report (para. 13(c)). It could be most effective in tandem with legal change and the attribution of more political rights, such as voting rights, to Zainichi Koreans. Changing laws alone is less likely to work, as this paper showcases the growth of social persecutions despite some improvement at the institutional level. Educating people on equality and acceptance as the Government passes legislation that makes this ideal a reality therefore seems like a safer bet than expecting people to become more accepting of diversity solely through the publication of new laws.

5. Concluding remarks

In conclusion, Japan’s historical and contemporary treatment of its Korean minorities highlights a persistent struggle to balance notions of national homogeneity and domestic laws with international human rights obligations. From the colonial era’s systemic inequalities to the post-war period’s institutionalised alienation and statelessness of Zainichi Koreans, these policies have left a profound impact on Japanese society. This societal impact left Japan’s legal treatment of

Zainichi Koreans incompatible with its international human rights engagement, in particular with the ICCPR. While progress was made in aligning domestic laws with international treaties, reducing while not eradicating discriminatory laws, deep-seated societal issues have grown and remain. The rise of hate speech, racial discrimination, and xenophobia reflects the strong influence of these historical injustices, revealing a still existing gap between Japan's legal commitments and the real experiences of Korean minorities, which extend to newcomers as it did to Zainichi.

As reflected in the most recent reports by the Human Rights Committee and the CERD, addressing these issues requires from Japan to not only enforce stronger legal protections against hate crimes and discrimination but also foster a sense of inclusive society through education and public awareness campaigns. Bridging the gap between law, social inclusion, and protection of minorities would not only enhance Japan's domestic harmony but also solidify its reputation as a regional leader in human rights on the global stage.

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