

The Government of Japan submits its response to the request of the Committee on the Elimination of Racial Discrimination (hereinafter “the Committee”), dated 25 June 2024 (REF: CERD/EWUAP/2024/CS/cs/ks), pursuant to Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter “the Convention”) and Rule 65 of the Rules of Procedure of the Committee on the Elimination of Racial Discrimination (CERD/C/35/REV.3).

1. Overview

In accordance with paragraph 1 of Article 1 of the Convention, the Government of Japan understands the Convention applies to “racial discrimination” against groups of people or individuals belonging to the groups who are generally considered to share biological characteristics and those belonging to the groups who are generally considered to share cultural characteristics. In this regard, the amended Immigration Control and Refugee Recognition Act (hereinafter “the amended Act”) has no discriminatory provisions based on these characteristics. Therefore, the Government of Japan understands that the amended Act does not constitute “racial discrimination” as provided for in the Convention.

Moreover, while the General Recommendation of the Committee cited in the letter itself is not legally binding, in light of the views expressed in General Recommendation No.30 (2004), the amendments to the Immigration Control and Refugee Act (hereinafter “the Immigration Control Act”) do not discriminate against any particular groups of non-citizens.

Nevertheless, the Government of Japan, as a State party to the Convention, submits the following information as requested by the Committee, in good faith and with a view to facilitating a constructive dialogue with the Committee, and to provide a sincere explanation to the stakeholders.

It should be noted that, as explained in the following subsections, the provisions of the amended Act would not have disproportionate impacts on the human rights of non-citizens with status of permanent residence living in Japan, notably the rights protected under the Convention. In this connection, appropriate measures have already been taken to address the Committee’s concerns.

2. Permanent residence system under the Immigration Control Act

In principle, in order for a foreign national to obtain permission for permanent residence under the Immigration Control Act, the following three requirements must be met:

- (i) the foreign national’s behavior is good;
- (ii) the foreign national has sufficient assets or skills to make an independent living; and

(iii) the foreign national's permanent residence seemingly conforms to the national interests of Japan.

In order to clarify these requirements and ensure the predictability for foreign nationals and persons associated with them, the Immigration Services Agency has prepared and published "the Guidelines for Permission for Permanent Residence"¹ (hereinafter "the Guidelines.")

The Guidelines provide that a foreign national must, in principle, continuously reside in Japan for at least ten years, and that the foreign national must continuously reside in Japan for at least five years during the ten year period with a working or residency status and properly fulfill public obligations, such as tax payments, to meet the requirement that "the foreign national's permanent residence seemingly conforms to the national interests of Japan."

On the other hand, with regard to "the general requirement to continuously reside in Japan for at least ten years," the Guidelines treat foreign nationals who fall under the following categories as special cases, whereby the status of permanent residence may be granted even with a stay of less than ten years.

- A spouse of a Japanese national, a permanent resident, or a special permanent resident who has been in a substantial marital relationship for three years or longer and who continuously resides in Japan for at least one year. A biological child of a Japanese national, a permanent resident, or a special permanent resident who continuously resides in Japan for at least one year.
- A foreign national who continuously resides in Japan for at least five years with the status of "Long-Term Resident".
- A foreign national recognized as a refugee or granted complementary protection who continuously resides in Japan for at least five years after the recognition of the status.

Thus, it should be noted that the Guidelines do not impose uniform requirements of continuously residing in Japan for at least ten years on all applicants for permanent residence.

3. Corrections regarding the information the Committee received

Some of the information the Committee received is incorrect, even when limited to the main points. Therefore, the Government of Japan provides below accurate information regarding the main points made in the Committee's letter.

¹ Link: https://www.moj.go.jp/isa/applications/resources/nyukan_nyukan50.html

(1) The Diet passed the amended Act at the 213th session of the Diet, and it was promulgated on 21 June 2024.

(2) Under the amended Act, the status of “permanent residence” will not be revoked merely for forgetting to carry their residence card or file an application for a renewal of the validity period of the residence card.

(3) The amended Act does not stipulate mere failure to pay taxes and other public dues as grounds for revocation of the status of permanent residence, but restricts revocation of the status to malicious cases. These include a case of intentional non-payment of taxes and other public dues despite the person concerned having the ability to pay.

In other words, the amended Act does not prescribe non-payment of taxes and other public dues under unavoidable circumstances, such as illness or unemployment, where a fault cannot be attributed to the individual as grounds for revocation of the status of permanent residence. In such a case, the status of permanence resident will not be revoked.

(4) The amended Act also does not stipulate minor infringements of laws and ordinances as grounds for revocation. It stipulates only cases where an offender is sentenced to imprisonment for certain serious offenses, including robbery, as grounds for revocation. Thus, in cases where an individual commits crimes of negligence or is sentenced to a fine, the resulting punishment would not constitute the grounds for revocation.

These grounds for revocation are additionally introduced because it is impossible to take measures against permanent residents who repeatedly commit certain serious offenses, unless their case meets the grounds for deportation as a result of having been sentenced to imprisonment for a period exceeding one year without stay of execution and this situation should be addressed by the amended Act.

(5) With regard to the revocation of the status of permanent residence, the amended Act stipulates that “if revoking the status of permanent residence, the Minister of Justice shall grant a permission ex officio for a change of status, unless the Minister finds it inappropriate for the individual to continue residing in Japan.” Under this provision, even if the case of a foreign national with the status of permanent residence meets the grounds for revocation of his or her status of residence, the Minister of Justice, in principle, shall grant a different status of residence, such as “Long-Term Resident,” rather than immediately revoking the status of residence and expelling the individual from Japan. This allows such individuals to continue to stay in Japan with a residence status.

(6) The amended Act stipulates that if an official of the government or of a local public entity becomes aware of a permanent resident who they believe falls under any of the grounds for revocation of the status of residence, that permanent resident “*may be* reported” (emphasis added). In short, the amended Act requests but does not require the

officials to report the individual to the Immigration Services Agency.

That provision stipulates that, due to the difficulty for the Immigration Services Agency to understand the status of the fulfilment of public obligations in individual cases, the officials may report when they become aware, in the course of performing their duties, of foreign nationals who may fall under any of the items for revocation of their status of residence.

(7) Even if the status of permanent residence is revoked, in principle, his or her spouse or child residing in Japan with the status of “Spouse or Child of Permanent Resident” can continue to reside with the same status or that of “Long-Term Resident.” Thus, in principle, the new provisions regarding the grounds for revocation of the status of permanent residence do not apply to spouses or children of permanent residents.

4. Outline of the amended Act (The rights protected under the Convention are not disproportionately affected)

(1) Under the current Immigration Control Act, all foreign nationals with status of residence, including those with the status of permanent residence, are subject to residency management in accordance with the Immigration Control Act, which includes revocation of the status of residence and initiation of deportation procedures. For example, under the Immigration Control Act, if foreign nationals, including permanent residents, have been sentenced to imprisonment for a period exceeding one year, they may be deported from Japan.

(2) In recent years there have been instances where some permanent residents do not properly fulfill their public obligations after obtaining permission for permanent residence. At the same time, under the current Immigration Control Act, due to the lack of procedures to review the status of permanent residence, the Government of Japan was not able to properly manage the status of residence of these permanent residents once they had been granted the said status.

The amended Act aims to optimize the system pertaining to the permission for permanent residence. The addition of the grounds for revocation of the status of permanent residence under the amended Act enables the Minister of Justice to revoke the status of permanent residence only for malicious behavior of permanent residents, including the following: intentional non-payment of taxes and other public dues despite having the ability to pay; non-compliance with obligations under the Immigration Control Act; and serious offenses, including robbery and murder, which would serve as the grounds for immediate deportation from Japan if committed by individuals with status of residence other than permanent residence.

In other words, the amended Act does not affect the majority of permanent residents who properly fulfill their public obligations and live in compliance with Japanese laws and regulations.

(3) In addition, the Immigration Control Act provides that permanent residents have

opportunities to state their opinions and produce evidence in person or through their representatives during their revocation procedure. Thus, this procedure protects the rights of foreign nationals through due process of law and enables the Immigration Services Agency to accurately ascertain the facts and carefully determine the necessity of revocation of the status of residence. This procedure remains unchanged by the amended Act.

The amended Act also provides that when revoking the status of permanent residence, the Minister of Justice shall, in principle, change the status of residence. Accordingly, permanent residents who are subject to revocation of the status of residence will not be immediately deprived of their rights to reside in Japan and can continue their residence. This makes it possible to give due consideration to the stability of permanent residents' lives in Japan.

Furthermore, if a permanent resident is dissatisfied with the decision to change or revoke the status of residence, he or she may seek a court's decision by initiating administrative legal proceedings.

(4) Therefore, the amended Act has no discriminatory impact on permanent residents residing in Japan in any way.

5. Information on measures relating to the amended Act (Appropriate measures have already been taken to address the Committee's concerns)

With regard to the concerns expressed by the Committee, members of the Diet, during the deliberations on the bill to amend the Immigration Control Act, made a revision so that in applying the provisions concerning the revocation of the status of permanent residence due consideration would be given to individual circumstances, including payment records for taxes and other public dues, current living conditions, and other factors, from the perspective of ensuring permanent residents' proper status of residence. In addition, the Diet adopted a supplementary resolution for the amended Act that obliges thorough examination of individual circumstances of permanent residents, including the stability of their lives and the seriousness of the violation of laws and regulations committed, in order to avoid unreasonable infringement of their interests. The supplementary resolution also provides for publication of new guidelines on specific instances where the status of permanent residence could be revoked, for the purpose of careful application of the provisions and to give due consideration to the status of residence of their family members.

The Government of Japan intends to operate the permanent residence system appropriately based on the above-mentioned amendments and the supplementary resolution and has already taken appropriate measures to address the concerns of the Committee.

6. Periodic reports

As the Government of Japan informed the Committee in its communication ref. YA/UN/112 dated 5 April 2024, it decided to opt in to the simplified reporting procedure that the Committee adopted at its 110th meeting. The Government of Japan understands that, as stated in the Committee's letter ref. CERD/2023/SP/MJA/ks dated 6 November 2023, under the simplified reporting procedure States parties would not be required to submit a report in the traditional manner.