

NGO Information for
International Covenant on Civil and Political Rights
130th Session (12 Oct – 6 Nov. 2020)

JAPAN

July 23 ,2020

Citizens' Group for Deliberation of the Japanese Constitutional Issues
(CGDJCI)

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The Government of Japan should revise the Constitution of Japan that does not recognize the protection of the Japanese people's life and property

1. Relevant ICCPR Articles

Article 1-1, Article 2-2, and Article 9-1

2. Summary

The Constitution of Japan, Article 9, Paragraph 2 does not recognize the right of belligerency of the State and prohibits the Japanese people from resisting an invasion of a foreign aggressor in order to protect their own life and property. [Article 9-(2): In order to accomplish the aim of the preceding paragraph, land, sea, and air forces as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.] Therefore, should a country invade Japan, all that the Japanese people can do is unconditionally surrender, and put their fate into the hands of foreigners. Moreover, if Japanese citizens living abroad should be involved in a war or civil conflict and faced with imminent danger to their lives, Japan is prohibited to use substantial means to protect its overseas citizens. Thus, the Constitution of Japan deprives its people of the most fundamental human right—the right to life, and therefore, the Japanese Government must amend this defect to the Constitution.

3. The issue in question—The Japanese Constitution does not guarantee the Japanese people's right to life

3-1. The stipulation that prohibits a war of self-defense

(1) The Preface to the Constitution of Japan states, “.....We have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world.” This statement is based on an irresponsible illusion, that countries worldwide unanimously respect “justice and faith” and will never wage war and so Japan has no need to protect itself. This line of thinking is totally unrealistic and far from reality--Japanese people are in fact forced to abandon their essential right to life and property.

(2) Article 9 of the Japanese Constitution stipulates:

- 1) Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.
- 2) In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

Thus, the Japanese Constitution does not recognize the right of belligerency and prohibits the Japanese people from maintaining war potential and taking protective action against foreign invaders.

3-2. Japan's Self-Defense Forces are not sufficiently equipped for national defense

(1) The Self Defense Forces are not a military organization, but a part of the police

Usually, the military uses any means of force except those prohibited by international law (those means that are mentioned on a list of negative acts).

However, by restricting the Japan from maintaining any war potential, the Japanese Self-Defense Forces are in fact a part of the police, and not military, and they are permitted to take actions only on a list of positive actions. In the case of dealing with an enemy invasion, the Japanese Self-Defense Forces must consider in detail which police power on the positive list their prospective action is based on before shooting anti-ship or anti-air missiles. Under an actual attack, there is hardly time for such deep consideration and Japan will not be able to effectively cope with an enemy attack.

(2) The Self-Defense Forces are permitted to fire only in the case of legitimate self-defense

As the right of belligerency is not recognized in countering foreign aggressors, members of the Japan Self-Defense Forces can fire only in a limited capacity--for their own self-defense. If a JSDF member kills an enemy soldier to protect Japanese civilians, he will be charged with murder, according to Japanese law. On overseas missions, JSDF members have no guarantee of military status. Even if JSDF members rush to rescue Japanese citizens in danger for their lives amid war or rioting in overseas countries, they are allowed to do nothing and have no physical means to save Japanese

citizens--because they have no legal grounds to use force.

(3) The Self-Defense Forces cannot attack enemy bases

Since the right of belligerency is not recognized, the Japan Self-Defense Forces cannot forcibly stop an enemy's missile attack, even when it is clearly anticipated through their satellite reconnaissance. Japanese satellite reconnaissance is used merely to show Japan is under attack by enemy missiles.

4. Conclusion and recommendation to the CCPR

The Constitution of Japan does not permit Japan to possess war potential for the sake of self-defense or the right of belligerency as means of self-defense. Therefore, the Constitution deprives the Japanese people of their means for survival, which clearly violates the following Articles of the International Covenant on Civil and Political Rights:

Article 1-2): ...In no case may a people be deprived of its own means of substance.

Article 2-2): Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Article 9-1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

According to the Committee of the International Covenant on Civil and Political Rights, the Constitution of Japan is not allowed to deprive its people of the right to life. We recommend that the Government of Japan immediately revise the Preface and the Article 9, Paragraph 2 of the Constitution of Japan so that the Japanese people may possess substantial means to protect their country, their lives and their property.

The Necessity of the Establishment of a Legal Framework Allowing Response to National Emergencies

1. Relevant ICCPR Article

Article 4-1

2. Summary

In Japan, under present conditions, each disaster and infection control measure is legally established on an individual basis. This hinders prompt implementation of disaster and infection control measures, allowing for unnecessary damages. This situation is an emergency, in that it poses a threat to the lives of people. Out of a concern that Japan lacks a legal system for coping with such emergencies, this proposal requests that the Japanese government will establish by amendment of the Constitution a clause for emergencies and to institute a legal system.

3. The Constitution of Japan is unable to respond to emergencies that threaten the Japanese people

In Japan, serious disasters such as localized downpours and earthquakes occur year after year and some people have difficulties evacuating when they occur.

The WHO declared a pandemic on March 12, 2020 over the novel coronavirus, the cause of COVID-19.^{1 2}

The Great East Japan Earthquake of March 11, 2011 is still fresh in our memory. Every year, localized downpours lead to collapsed homes, isolation due to flooded roads and deaths. When serious disasters occur, the Self-Defense Force is sent on disaster relief missions at the request of governors but SDF troops are not permitted to engage in activities other than those set forth by law, which hinders rescue.

The revised law on special measures against new types of influenza, which came into effect in Japan on March 13, 2020, permits the declaration of a state of emergency against the new coronavirus³ and, on April 7, the Japanese government issued a

¹ <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

² <https://twitter.com/WHO/status/1237777021742338049>

³ https://japan.kantei.go.jp/98_abe/statement/202003/_00001.html

declaration of a state of emergency.⁴ This law, however, only adds the new coronavirus infection as an applicable disease to the law on special measures against new types of influenza, which is already in force. Future epidemics, of any new infectious disease, will require a new amendment each time. This will hamper timely implementation of preventative measures, leading to cases that could have been avoided.

Article 4 Paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) provides, “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.” In Japan, however, no legal system exists that is capable of completely respond to emergencies that threaten the survival of the people.

Accordingly, we request that the Constitution be amended and the development of laws for comprehensive responding to emergencies that threaten the survival of the Japanese people.

4. Conclusion and recommendations to the CCPR

In preparation for emergencies, such as large-scale natural disasters and infections, that are difficult to respond to with the current legal system, we request that the CCPR issue the following recommendations to the Japanese government:

- 1) The Japanese government should amend the Constitution of Japan and establish a provision that allows comprehensive responding to emergencies;
- 2) The Japanese government should develop laws to allow comprehensive responding to emergencies;
- 3) Revision of legislation should be made to allow the Self-Defense Forces discretion in responding to disasters.

⁴ <https://japan.kantei.go.jp/ongoingtopics/COVID19Response/COVID19April7BasicAPolicies.pdf>