**Revised Alternative Report**

**To the Sixth Periodic Report of Japan**

**on the International Covenant on Civil and Political Rights**

**－Suggested List of Issues to Country Report Task Force on Japan–**

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**Japanese Association for the Right to Freedom of Speech**

**(JRFS)**

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**CONTENTS**

Ⅰ Introduction P2

Ⅱ Terms Violations and Adaptation Provisions P6

* The Case of Itabashi High School Graduation Ceremony

ICCPR Article 2, 5, 18, 19, 20, 21, and 25

* Enactment of a law establishing the “Hinomaru” flag as national flag and the song “Kimigayo” as national anthem in 1999 and subsequent imposition of the flag and the song with disciplinary measures

ICCPR Article 18 : Freedom of thought, conscience and religion P16

* The Public Office Election Law

ICCPR Article 19 : freedom of speech and expression P18

A：Restrictions on freedom of speech and expression under the Public Office Election Law P18

B：Restrictions on Political Acts of State Personnel P20

C: Illegal Information Collection by Japanese Self-Defense Forces (SDF) Intelligence Unit P21

* ICCPR Article 20 : Discriminatory expression and propaganda for war P23

A:Revision of Article 9, contrary to the ICCPR P23

B:Interference of education board in the adoption textbooks in Tokyo, Osaka and Kanagawa

P26

* Often administrative authorities obstruct peaceful actions of citizens P27

ICCPR Article 21 ：Right to organize

* The problem of the right of political participation P28

ICCPR Article 25: Right to political participation

※reference document １ P31~33

※reference document 2-① P34

※reference document 2-② P35

※reference document 3-① A/HRC/22/NGO/162 Address P36

※reference document 3-①3-②:A/HRC/22 JRFS Oral statement P 36

※reference document 3-③*Concluding observations* P37

※reference document 4：JRFS’s Report /CESCR /the 3rd periodic report/Japan (30/04/2013) P38~41

**Ⅰ Introduction**

1. For preparing the 6th Periodic Report of Japan on ICCPR, the head of Human Rights and Humanitarian Affairs Section of the MOFA has not heard any NGOs supporting the victims of police persecution for having distributed opinion flyers.
2. **Problem of preparation of CCPR/C/JPN/6**

On August 8, the Cabinet Meeting decided to appoint, breaking the custom, Ichiro KOMATSU, current Ambassador of Japan in France, to the post of Director of the Cabinet Legislation Bureau. Mr. Komatsu is known as a proponent of the revision of the Constitution and the exercise of the right to collective defense.

On August 6, a new escort carrier “Izumo” was inaugurated. Two days later, it was revealed that the “bill on confidentiality” to be introduced to the Diet extraordinary session this autumn provides for “special secret” and “severe punishment” of public servants who violate the confidentiality provisions.

(1) The Government of Japan is still refusing to ratify the First Optional Protocol even after the East Japan Great Earth Quake of March 11, 2011 and the subsequent devastating explosion of the Fukushima Daiichi Nuclear Power Plant, although the ratification has already been decided unanimously by a Cabinet Meeting back in 1979. In addition, the Government is promoting the perilous revision of Article 9 of the Constitution with the aim of again making Japan a war waging country. This is tantamount to a humanitarian crime and a violation of the Universal Declaration of Human Rights as well as of Article 20 of ICCPR, a criminal act committed by a state.

(2) The Human Rights and Humanitarian Affairs Section of the MOF, since Mr. Koji Abe replaced Mr.Junya Matsuura in the post of the head of section in 2011, has been hostile to the implementation of the international human rights instruments and avoid dialogue with the NGOs that hold negative opinions about the Government actions regarding human rights.

(3) Japanese Association for the Right to Freedom of Speech submitted a report regarding the cases of police persecution against the distribution of political flyers (※**reference document 1** :

:The Oishi Case and the Cases of Horikoshi and Arakawa Suppression of Freedom of Expression in Elections Is it a crime to distribute leaflets!?(Joint report: JWCHR/ NGO in Special Consultative Status with the ECOSOC) to the 7th Human Rights Council Meeting held on the eve of the UPR of the First Report of Japan held in May 2008. “We call for an immediate recommendation for the grave violation of human rights occurred successively by the suppression of distributing leaflets in Japan, which is a member of the Human Rights Council”It also lobbied for the victims of six cases of persecution during the fifth consideration of the ICCPR Committee

(※**reference document 2-① and②**).

As a result, the Human Rights Committee, in the paragraph 26 of the concluding observations CCPR/C/JPN/CO/5, recommended “the State party to should repeal any unreasonable restrictions on freedom of expression and on the right to take part in the conduct of public affairs from its legislation”. These restrictions include in particular the provisions of the Law on Public Office Election banning the document distribution and door-to-door visit during election campaign period as well as Article of the Law on State Personnel. Paragraphs 7, 8, 9, 10 and 18 of the concluding observations CCPR/C/JPN/CO/5 also relate to the six cases of police persecution against flyer distribution.

(4) The Head of Human Rights and Humanitarian Affairs Section as well as the Ambassador in charge of Human Rights and Humanitarian Affairs should immediately inform the heads of other sections and staff of MOFA, the personnel of other ministries, Diet members and local assembly members in charge of human rights, but they have failed to do it so far.

(5) A cell set up within the Human Rights and Humanitarian Affairs Section to implement the human rights conventions, especially the ratification of the First Protocol establishing an individual complaints mechanism should be functioning by now. However, it refuses any dialogue with the NGOs in favor of the immediate ratification. In addition, the “Human Rights Consultation” held twice a year since 2007 will end this September although it has provided opportunities to bring together Human Rights and Humanitarian Affairs Section Head and other Government representatives and civil society representatives and to allow them to have dialogue.

(6) In September 2009, the MOFA made an advanced announcement of a hearing for the preparation of the third Government Report on International Covenant of Economic, Social and Cultural Rights (ICESCR). Many NGOs and citizens’ groups including our association were heard during one-day hearing.

(7) Given primary importance of education of children for building peace in Japan and the world, our association submitted a report and spoke for the withdrawal of Japan’s reservation on the ICESCR Article 13, 2-B and C that establish the right of all children living in Japan to free primary and secondary education.

(8) We also participated in the preliminary consideration of UPR Report of Japan organized by the UPR-Info last year prior to the Third Report of Japan on ICESCR held April 2013 for the first time in 12 years. We then proposed a recommendation for the repeal by the Government of the reservation in question and about 10 days later, the Government in a Cabinet Meeting, decided to ratify the First Protocol. The first Protocol was ratified in the 33rd year after the ratification of the ICESCR.

(9) However, since March 2011, the Government has been stubbornly refused to implement human rights conventions including the ICCPR. The recommendations made by the Human Rights Committee are published only on the MOFA webpage, difficult to access. No other effort of diffusion of the recommendations has been made so far. The brochure “Universal Declaration of Human Rights and International Human Rights Bill” whose copies were placed in the lobby of MOFA building have been withdrawn despite that there still is a massive stocks of them in storage house.

(10) If NGOs were heard for the Second UPR Report of Japan, although our association had made a prior request to speak on the paragraph 26 of the ICCPR, Koji Abe, head of Human Rights and Humanitarian Affairs Section, did not instructed the officer in charge of amending related laws in the Ministry of Internal Affairs and Communication (MIAC) to attend the hearing.

(11) At the consideration of the Second UPR Report of Japan, a delegate from Uzbekistan asked whether the arrest of citizens who distributed flyers did constitute a practice of censorship, an official of the Japanese police who had prepared a reply to that question made a false statement saying that “ the arrest has not to do with the nature of the flyers but the place where they were distributed” . As NGOs were not allowed to reply, the Committee recommendations did not include any mention about the cases of flyer distribution. In addition, the MOFA has not informed the person in charge in the MIAC. It has also failed to implement any of the recommendations of the Committee including the paragraph 26 **(**CCPR/C/JPN/CO/5**) ,**

**（※reference document 3-①**:A/HRC/22/NGO/162 : Written statement submitted by the Japanese Association for the Right to Freedom of Speech. 25/02/2013

**※reference document 3-②**：Oral statement of the Japanese Association for the Right to Freedom of Speech on The 22nd regular session of the Human Rights Council at 14th March 2013.

4 Concluding observations: CCPR/C/JPN/CO/5 Japan2008 para26,

**※reference document 3-③**:Concluding Observations of the Committee on Economic,Social and Cultural Rights : Japan. 2001/09/24. Nuclear, Community Services, to Assist Poorer Earthquake Victims)

(12) The head of Human Rights and Humanitarian Affairs Section has declined any request of our association to meet separately from other NGOs.

(13) It is indispensable for recovery of human rights of the victims of police persecution for having distributed flyers and establishing true democracy in Japan to set in place a mechanism of individual complaints to ensure the independence of Japanese judiciary and to abolish Public Office Election Law and the State Personnel Law**.**

**※reference document 4**：JRFS’s Report to the Committee on Social, Economic and Cultural Rights :The consideration of the third periodic report of Japan

**Ⅱ TERMS OF VIOLATIONS AND ADAPTATION PROVISIONS**

* **The Case of Itabashi High School Graduation Ceremony**

(ICCPR　 Article 2, 5, 18, 19, 20, 21, and 25)

1. **CCPR/C/JPN/CO/5** **:** Paragraph 10 of the concluding observations

**2. CCPR/C/JPN/6: Response of the Government and Statement in Sixth Periodic Report of Japan**

**B.Concept of “public welfare” in the Constitution of Japan：Paragraph 5, Paragraph 6.**

**CCPR/C/JPN/6 Japanese report: Paragraph 3 and 4**

**CCPR/C/JPN/6 English report: Paragraph 5 and 6**

**C. Relationship between the Covenant and Japanese laws, including the Constitution：Paragraph7, Paragraph 8**

**CCPR/C/JPN/6 Japanese report: Paragraph 5 and 6**

**CCPR/C/JPN/6 English report: Paragraph7, Paragraph 8**

**Para. 5** : As explained in previous periodic reports, the concept of “public welfare” in the Constitution of Japan is embodied in more concrete terms by court precedents for respective rights based on their inherent nature, and the human rights guaranteed by the Constitution and the restrictions on human rights imposed under the Constitution closely resemble those under the Covenant. Under no circumstance, therefore, could the concept of public welfare allow the state power to arbitrarily restrict human rights, or allow any restrictions imposed on the rights guaranteed by the Covenant to exceed the level of restrictions permissible under the Covenant.

**Para. 6**: Typical judicial precedents concerning “public welfare” being an inherent restriction which coordinates the conflicts among fundamental human rights are mentioned in the previous periodic reports. One of the recent rulings worth summarizing here is a judgment rendered by the Petty Bench of the Supreme Court on July 7, 2011. The defendant (a former high school teacher) was opposed to standing and singing the national anthem at the graduation ceremony of the high school, and he called out loudly to the parents in the school gymnasium used as the place for the ceremony, urging them not to stand and sing the national anthem, and shouted out against the vice-principal and other teachers who tried to stop his behavior, causing a tumultuous situation in which the opening of the graduation ceremony was eventually delayed. The Supreme Court rendered the following opinion and judged that the defendant had committed a crime of forcible obstruction of business. “While the freedom of expression must be respected as a particularly important right in a democratic society, article 21, paragraph 1 of the Constitution does not guarantee the freedom of expression absolutely without any reservation, but allows such restrictions that are necessary and reasonable for public welfare. When it comes to the means to announce one’s opinions outside, no means would be allowed should they unreasonably harm the rights of others. The act of the defendant in this case was conducted in an undue manner that did not fit the occasion and caused a considerable disturbance to the smooth performance of the graduation ceremony, while it should have been performed in a calm atmosphere. As such an act is impermissible in light of general societal norms, it evidently involves illegality.”

**3. Current Situation**

**（１）Summary of the Case**

At the graduation ceremony held on March 11, 2004 at Itabashi High School, Mr. Katsuhisa FUJITA, former employee of the high school invited to attend the ceremony distributed copies of a weekly magazine article criticizing the circular 10/23\* to the parents assembled in the gymnasium, venue of the ceremony. He then requested the parents to remain seated when singing the national anthem. A Tokyo Assembly member who entered the gymnasium right after that asked the school principal and his assistant make Fujita leave the gymnasium. Fujita had then to leave the school 15 minutes before the end of the ceremony.

Half a month later, the school principal and the Tokyo Board of Education submitted a “report of the damage by intruding in buildings” to the police. Tokyo district prosecution in December 2004 indicted him for having obstructed the ceremony by using force and demanded 8 months of forced labor for the accused. Eventually, the Supreme Court on July 7, 2011, handed down its decision supporting the judgments of the Tokyo District Court (May 30, 2006) and the Tokyo High Court (May 29, 2008) that sentenced him guilty and punished him with a fine of 200,000 yen (about 2,000 $US). The Supreme Court failed to take into account the claim of Fujita based on Article 19 of the ICCPR and to provide him relief for human rights violations. It also ignored the fact that the source of the sound of the IC recorder\*\*, evidence introduced by the prosecution had been falsified\*\*.

As Japan has not yet ratified the protocol of the ICCPR regarding individual reporting, Fujita cannot communicate his case to the CCPR for obtaining redress for the violation of his human rights. In addition, the unfair court decision has encouraged the local education boards in Tokyo, Osaka and Yokohama in imposing “Hinomaru flag and Kimigayo song” as national emblems.

The article Fujita distributed reported the punishment of teachers in Tokyo public schools who did not stand up to sign “Kimigayo” at school ceremonies by virtue of the circular 10/23. To date, the number of teachers in Tokyo public schools who were punished for similar reasons has exceeded 700 in total. Tokyo board of education on the pretext of “training” of these teachers, imposes them self-criticisms for not standing and ideological change, while denying them pay rise or to have a class in charge. Most of the punished teachers have retired since 2004. Normally, Tokyo board of education re-hires retired teachers who wish to continue to work until they receive pension, but these punished teachers are denied re-hiring and left without any income until the age of 65, when they start receiving a pension.

More than 20 groups of punished teachers have filed a civil suit against Tokyo Metropolitan Authority for the imposition of “Hinomaru flag and Kimigayo song” and illegal disciplinary measure by the circular 10/23. However, most of them lost the cases, failing to obtain redress for ICCPR violations.

The circular 10/23 applied to teachers and other personnel of public high schools in and around Tokyo has had a chilling effect on teachers, students and their parents across the country, especially in the areas affected by the nuclear accident in Fukushima. The atmosphere in Japanese society as a whole has become that of prewar Japan under the rule of the repressive Peace Preservation Law.

\*The circular 10/23 (Guidelines for the Use of “Hinomary and Kimigayo” issued by Tokyo Education Board):

1. Hoisting of the national flag

The national flag shall be used in entrance and graduation ceremonies in the following manner:

(1) The national flag shall be hoisted on the stage facing the audience in the ceremony hall.

(2) The national flag shall be hoisted together with the flag of Tokyo: the national flag on the left side of the stage and the Tokyo flag on the right side.

(3) The national flag, when hoisted outdoor, shall be placed on the hoisting pole, at the entrance of school site or school building or any other place where it is sufficiently visible and identifiable by students, their parents and other persons visiting the school.

(4) The national flag shall be hoisted on the days of the ceremonies, from the commencement of the class for students till the end.

2. Singing of the national anthem

　The national anthem shall be sung at entrance and graduation ceremonies in the following manner:

(1) To mention the “singing of the national anthem” in the ceremony program.

(2) The master of ceremony shall announce the “singing of the national anthem” and request the audience to rise.

(3) In the ceremony hall, the teachers and other school personnel shall rise facing the national flag and sing the national anthem.

(4) Singing of the national anthem shall be accompanied by piano.

3. Preparations of the ceremonies

　The school ceremonies shall be prepared in the following manner:

(1) If the graduation ceremony is held in the gymnasium, a rostrum shall be placed on the stage for the presentation of certificates.

(2) If the graduation ceremony is held elsewhere, a rostrum shall be placed at the front side of the hall for the presentation of certificates.

(3) The chairs shall be placed so that the students shall be seated facing the front of the hall.

(4) The teachers and other personnel shall be dressed suitably for the ceremony to be conduct in solemn and fresh atmosphere.

The circular 10/23 is based on the Guidelines for Education and Teaching (for high school )issued by the ministry of education that says in its chapter IV “Special functions” that “at entrance and graduation ceremonies, because of their significance, instructions shall be given to ensure that the national flag be hoisted and the national anthem be sung.

\*\* Falsification of evidence (IC recorder) by the prosecution

On the day of the graduation ceremony, an employee of Tokyo education board followed Fujita from his arrival at school till he was forced to leave the gymnasium. The employee secretly recorded Fujita’s speech including the conversation with the graduating students who had been waiting for him in a corridor. The record was presented to the police as evidence and was later used in the trial of Fujita.

The prosecution prepared two reports based on the same record on the IC recorder, one before the indictment and the other after the indictment. Although the reports were based on the same record, their contents were different, but the tribunal adopted them both as evidences.

The first report contained the words of Fujita saying “Hey, why are you driving me out?” but the second report did not. The defense lawyer asked for and got a copy of the IC recorder but could not find Fijita’s words on the recorder copy. After a research, it was revealed that the record on the IC recorder might have been falsified.

However, the legitimate doubt of falsification of that important evidence was not taken seriously by the judiciary and the Supreme Court eventually endorsed the decisions of the District Court and High Court judging Fujita guilty.

（**２**）The Case of Itabashi High School : detailed explanation

**Speech and behavior of Fujita**

On March 11, 2004, at 9:30 am: Fujita distributed the copies of the article in question to the parents seated in the gymnasium waiting for the ceremony to start. About a minute after he had finished distributing the copies to the parents, he said loud to the parents: “I wish that you will remain seated when singing the national anthem”.

The assistant school principal came to him, caught him by upper arm and said “Stop that!” Fujita replied “I am done” and added “take your hand off me”. The assistant principal, looking embarrassed, let him go and asked him to leave the gymnasium. Fujita asked him: “why are you trying to kick out a former teacher?” The assistant principal then asked him whether he would be quiet and Fujita answered “Of course”.

When he was about to walk towards the seats reserved to guests, the principal stood in his way. Fujita told him that the assistant principal authorized him to attend the ceremony and the principal nodded. Then a representative of the education board and Tsuchiya, member of Tokyo Assembly stood before him. The Assembly member shouted at the principal: “It is the principal who must decide!”. “Take this man out of this place!” The principal hurriedly executed the order.

Fujita gave up the idea of attending the ceremony. Before leaving the gymnasium, he said to the parents: “You now see how terrible it is”.

Tsuchiya’s assistant shouted at Fujita: “We will kill you!!” His voice was recorded on the IC recorder. When Fujita was out of the gymnasium, walking to the school gate, the assistant came running towards him and told him, excited: “Wait a minute. What do you have to make all this fuss?” Fujita did not respond and left the school quietly. It was 9:45 am.

**Surveillance by the Tokyo Education Board**

The Tokyo education board had sent five employees to the graduation ceremony at Itabashi High School. They were attending the ceremony as guests but actually were there to see whether the circular 10/23 was strictly observed. One of them had been instructed to watch Fujita. He had bought an IC recorder that he carried in his breast pocket, followed Fujita and secretly recorded his speech. He later handed it t the prosecution as evidence for the charges against Fujita.

**TV coverage**

As the Tokyo education board knew in advance that Tsuchiya (close ally of current Tokyo Governor in the Tokyo Assembly) was attending the ceremony as a guest, it had decided to let TBS (a TV station) cover the ceremony and informed the principal of Itabashi High School about the media coverage.

In the morning of the day of the ceremony, the principal at a staff meeting announced the TV covering the ceremony. The staff asked him questions and as a result, it was decided the TV would cover the arrival of Tsuchiya and other guests but would not film the graduates in the ceremony. The TV crew filmed the graduates until they entered the gymnasium and left accordingly. The film was aired later.

**Entry of the graduates**

Normally, to make a smooth entering into the gymnasium, graduates line up by class in the martial arts hall next to the gymnasium. On that day, 280 graduates were made to wait in a corridor about 50 meters from the gymnasium to avoid any contact with the TV crew. Because of this change, the ceremony started one or two minutes late.

**Ceremony**

The ceremony started about two minutes behind the schedule and the MC announced the singing of the national anthem. About 90 percent of the graduates then sat down one after another and did not sing. The principal ordered the graduates who were seated and did not sing to stand up and sing. The assistant principal also told them: “Stand up except those who have particular ideology or belief”. Tsuchiya, shouting loud at the graduates: “Aren’t you ashamed of doing this as Japanese”, was taking pictures with his cell phone.

For the graduates, the special feature of the ceremony was the singing of “Tabidachi no hini (on the day of departure)”, the song they had chosen together to sing, to the accompaniment of piano played by a totally blind girl. They were successful in singing that song and received a big applause of the students and parents.

**(3) Political and Historical Background**

August 13, 1999: Enactment of the law on National Flag and National Anthem

Article 1 defines Hinomaru flag as national flag and Article 2 Kimigayo as national anthem. Then Prime Minister Obuchi said in a Diet deliberation of the Law: ”School has the responsibility to instruct children and students about national flag and anthem. Such instruction is provided with the aim of allowing children to acquire essential and basic knowledge as Japanese citizens. I do not believe that it is intended to restrict their freedom of conscience”. He also added:” the Government does not have the intention, in enacting this law on national emblems, to make it mandatory to hoist the national flag. And therefore, I do not think that there will be a change in the way the national flag is handled now”

January 20, 2000: Setting up of research committees on the Constitution in the House of Representatives and the House of Councilors, a concretization of the move towards the revision of Article 9 of the Constitution.

May, 2003：Tokyo Education Board set up the headquarters for graduation ceremony

October 2003: Issuance of the circular 10/23

10 teachers punished for not rising when singing Kimigayo song.

December 2003: The Government sent self-defense troops to Iraq to support the U.s. war on Iraq

March 2004：Nearly 300 teachers punished for violating the circular 10/23

March 11: Itabashi High School graduation ceremony

The incident was reported first by Sankei Newspaper and later by all newspapers.

March 13: Tokyo education board reported the incident to the local police.

March 16: Tokyo Assembly’s Special Committee on budget convened with the presence of the Governor Ishihara. Tsuchiya questioned Yokoyama, the President of Education Board, about the circular regarding the use of the national flag and the national anthem. Yokoyama replied that the education board would “take a legal action” for the case of Itabashi High School.

2006 : Revision of the Basic Law on Education

August 7: Setting up of the “Councils on the Constitution” in both Houses with the aim of revising Article 9.

April 2008: Final judgment recognizing the unconstitutionality of sending the self-defense troops to Iraq(violation of Article 9).

February [2009: Withdrawal of Japanese self-defense troops from Iraq.](http://ja.wikipedia.org/wiki/2009%E5%B9%B4)

**(4) Excerpt from the Minutes of Tokyo Assembly Session on March 16, 2004**

**Tsuchiya**: At the graduation ceremony in Itabashi High School, most of the students did not stand up while the teachers without exception stood up when singing the national anthem. How does the education board intend to cope with this aberrant situation?

**Yokoyama**(Education board president): The fact that most students did not rise to sing the national anthem shows that education activities are not conducted normally according the ministerial guidelines. We will therefore quickly investigate into the incident. At the same time, to avoid that this inappropriate situation spreads to other schools, we have sent a notice on March 11 to all Tokyo metropolitan high schools reminding them the need for conducting properly the graduation ceremony.

**Tsuchiya**: In Itabashi High School, on that day, shortly before the ceremony began, a former teacher distributed copies of a magazine article on the punishment of 10 teachers who opposed the forces use of Hinomaru and Kimigayo and made a speech criticizing the guidelines for conducting the graduation ceremony. The former teacher in question, despite the order of the principal to stop, obstructed the function. I believe that a severe legal measure should be taken against such act. What do you think?

**Yokoyama**: The former teacher ignored the order of the principal and distributed copies of the magazine article to the parents of the graduates. He shouted loud that the graduation ceremony was aberrant. Such act constitutes a serious obstruction of the conduct of the ceremony. We sure will take a legal action against it.

**Tsuchiya**: If this incident is a result of a teacher arbitrary injecting his opinion or belief to his students or instructing them to stick excessively to the freedom of their inward thoughts, it poses a really serious problem. Any teacher involved in such an incident should be punished. What is your opinion about it?

**Yokoyama**: Yes, if a teacher tries to use his students to concretize his own thoughts or belief, it will be a sordid act unworthy of a teacher and it would naturally be subject to disciplinary measures.

**(5) Opinion of Professor Dirk Vorhoof of Ghent University, Belgium submitted to the Supreme Court:**

In the light of the facts of the present case as a whole, to prosecute the accused for forcible obstruction of business constitutes an unjustifiable act, both unnecessary and inappropriate committed by public authority. It is clear that it cannot be deemed necessary in a democratic society. From the perspective of the International Covenant regarding freedom of expression, the verdict of guilty and sanctions against the accused has undoubtedly a “shriveling effect” not only on the right to freedom of expression of the accused but on the same right of the people other than the accused who contest the coercive nature of the circular 10/23 ordering the teachers in all Tokyo public high schools to sing “Kimigayo”, standing facing the “Hinomaru”.

Expelling the accused from the gymnasium and of course the indictment and the verdict of guilty are measures that have a broad impact. Such measures require a clear justification related to obvious obstruction or instigation of violence against the imminent or proceeding ceremony.

Considering the present case, what the accused basically wanted was to protest the imposition of the national flag and national anthem in school ceremonies. There is no above-mentioned clear justification in the present case. There is nothing whatsoever that shows that the act of the accused to express his opinion to the parents waiting for the start of the ceremony threatened to induce confusion or violence.

In addition, the indictment and the verdict of guilty for forcible obstruction of the business by the application of the Penal Law Article 234, considered in comparison with the realities of the case as a whole, is an unnecessary and disproportionate sanction: it can be considered as a violation of the International Covenant on human rights guaranteed by Article 19 of the ICCPR and Article 10 of the European Convention on Human Rights. In the light of the true facts in the present case, it is obvious that there was no “urgent social need”, sufficient to justify the indictment and verdict of guilty of Fujita. Given the importance of the right to freedom of expression and the International Covenant related to the present case, the indictment and the verdict is tantamount to a violation of the right to freedom expression guaranteed by Article of the ICCPR.

Considering the “shriveling effect” the prosecution and the verdict of the present case may have on the accused and the people involved in the public debate on this issue, the verdict of guilty rendered to the accused, even limited to a fine, constitutes an unnecessary and inappropriate interference with his right to freedom of expression.

**4. Matters to be included in the List of Issues**

1. Does the Government recognize the importance in preparing the periodic report, of making good use of the webpages of the Foreign ministry and other ministries to announce widely to the civil society the holding of hearings, of hearing as many organizations and citizens possible and reflecting their opinions in the report to improve the situation around human rights? Is there any mechanism in place for organizing public hearings?
2. In preparing the report, who was in charge of hearing NGOs and citizens? How were the hearings announced? When and where were they organized? How many groups and individuals were heard? How were their opinions examined.
3. Does the Government have the complete list of the human rights NGOs in consultative status with ECOSOC based in Japan? How did the Government inform them about the hearings and how many of them has it heard?
4. The Government should report about the daily dialogue it holds with Japan-based human rights NGOs in consultative status with ECOSOC as well as concrete plans for improving that dialogue in future, if any. Has there been any improvement since the fifth report?
5. The Government fails to ensure easy access of the citizens to the periodic reports based on Article 40 of the ICCPR. For the sixth report, it is put on the webpage of the Foreign Ministry (only in tentative translation in Japanese) but it is very difficult to get to the document for those who are not familiar with Internet. The Government should inform the citizens all the mechanism that accompanies the ICCPR.
6. There is a big difference between the Japanese version of the sixth report published on the webpage of the Foreign Ministry and the official version of the same report in English. The former comprises 263 paragraphs while the latter contains 339 paragraphs. The Government should explain the reason for such difference between the Japanese and English versions.
7. The Government should also explain the substantial difference in contents of these two different versions.
8. Although the citizens on August 13, 2013 called the Foreign Ministry and indicated the problem, no correction has been made on the webpage. The Government should immediately make necessary corrections in the Japanese version.
9. Does the Government have the intention to make the corrections required and to present apologies?
10. On the webpage of the Office of High Commissioner for human Rights, Japan’s report is carried in three languages: English, French and Spanish. On the webpage of the Japanese Foreign Ministry, the citizens have access only to the Japanese version which is very different from the official report prepared in English. As the ICCPR is applied to non-Japanese residing in Japan and given a large number of foreigners working in Japan, the report should be published at least in these languages.
11. Does the Government have any plan to translate all U.N. documents in Japanese as German Government does for German citizens?
12. What are the special responsibilities for a member of the Human Rights Council like Japan in ensuring the observance of the international instruments on fundamental human rights and the implementation of the HRC’s recommendations?
13. Does the Government think that Japan is fulfilling its international obligations defined by Article 2 of the ICCPR, especially relating to effective remedy for the violations of civil rights?
14. Does the Government support the understanding that the ICCPR have the precedence over the Japanese Constitution in terms of guarantees of basic human rights, as Article 98 -2 of the Constitution provides for the obligation of compliance with the ICCPR?
15. Why does the Japanese Supreme Court not refer to the ICCPR in its decisions regarding the universal human rights?
16. Has the Supreme Court ever considered the possibility of adding “ICCPR violation” as valid reason for appeal? If not, what is the opinion of the Director of the Cabinet Legislation Bureau about this matter?
17. Does the Government support the understanding that the ratification of the First Optional Protocol is indispensable for separating the judiciary from the legislature and the administration and establishing the rule of law?
18. How does the Government inform and train the personnel of tribunals, prosecution and the police about the ICCPR and the HRC recommendations?
19. How does the Supreme Court intend to apply the ICCPR as well as HCR general comments and recommendations to the cases tried by each level of judiciary mechanism?
20. How are the ministers and public personnel trained about the ICCPR and HCR general comments and recommendations, especially the Foreign Minister, human rights and other ambassadors posted abroad?
21. Are all the Foreign Ministry personnel trained about the ICCPR and HRC recommendations?
22. Is there any judgment by a tribunal of first or second instance that referred to the ICCPR?
23. Has the Government or the Japanese Bar Association provided any training to all lawyers about the HCR recommendations following the fifth report by Japan in 2008?
24. How is the Government informing or training Prime Minister, Justice Minister, the staff of Cabinet legislation bureau, the personnel of Ministry of Interior and members of the Diet about the HRC recommendations of 2008?
25. How are the personnel of the Education Ministry and of 47 prefectural education boards informed of and trained about the ICCPR and HRC recommendations?
26. How are the 47 governors and members and staff of local assemblies informed of and trained about the 2008 HRC recommendations?
27. How are human rights NGOs citizens’ groups and individual citizens informed of and trained about the 2008 HRC recommendations?
28. How are the presidents and members of 47 prefectural education boards informed and trained about the ICCPR and 2088 HRC recommendations?
29. The Government should make a detained report about the actions taken with the aim of establishing an independent national human rights institution based on Paris principles.
30. How are children, students, young people and their parents informed of and trained about the ICCPR and 2008 HRC recommendations? Give examples of the use of mangas, Internet, TV and DVD for information purposes if any.
31. How are the personnel of the Defense Ministry and Self-Defense Soldiers informed of and trained about the ICCPR and 2008 and 2010 HRC recommendations?
32. How are the employees of Human Resource Center for Peace Building and Japan International Cooperation Agency informed of and trained about the ICCPR and HRC recommendations?
33. How are the political parties, trade union officers and employees informed of and trained about the ICCPR and HRC recommendations?
34. How are the employees and shareholders of public corporations and independent administrative entities informed of and trained about the ICCPR and 2008 HRC recommendations?
35. How are the owners and workers of multinational companies and other private corporations informed of and trained about the ICCPR and 2008 HRC recommendations?
36. The Government should report whether the ICCPR and ICESCR were discussed or taken into account in the elaboration of the law of 1999 on independent administrative institutions and in the designation of public service corporations and public utility foundations of 2006.
37. How are the nurses (organized in 47 prefectural nursing associations) and medical doctors (organized in the Japan Medical Association) informed of and trained about the ICCPR and HRC recommendations?

* **Enactment of a law establishing the “Hinomaru” flag as national flag and the song “Kimigayo” as national anthem in 1999 and subsequent imposition of the flag and the song with disciplinary measures**

**ICCPR Article 18 : Freedom of thought, conscience and religion**

1、**CCPR/C/JPN/CO/5**

No mention

2**、CCPR/C/JPN/6**

No mention

3、 **Current Situation**

(1) Hinomaru and Kimigayo

A year after the publication of the brochure “Universal Declaration of Human Rights and International Human Rights Covenants”, in 1999, the Government, ignoring strong opposition of the Japanese people, enacted a law establishing the “Hinomaru” flag used during the World War II as national flag and the song “Kimigayo” glorifying the Emperor responsible for that war as national anthem. When the law was deliberated in the Diet, the then Prime Minister and other senior governmental officials, considering the variety of opinion in the population stated repeatedly that the hoisting of Hinomaru and singing of Kimigayo would not be obligatory and that the law would not change the responsibilities and duties of teachers involved in the use of the national emblems.

(2) **Imposition of Hinomaru and Kimigayo in public schools**

Nevertheless, for about 10 years, there is a growing pressure on both teachers and children in public elementary and junior high schools to rise before the Hinomaru flag and sing Kimigayo song. Those teachers who do not stand up are punished more frequently.

a. Example of Tokyo

In 2003, the Governor and Board of Education of Tokyo issued a notice instructing the hoisting of Hinomaru and singing of Kimigayo at entrance and graduation ceremonies in public high schools. Since then, teachers who do not stand up to sing Kimigayo have been punished with disciplinary measures such as admonition, suspension, pay cut. So far, 450 teachers have been punished and 750 teachers in total have filed complaint and are fighting in court.

b.Example of Osaka

In Osaka Prefecture, the Prefecture Assembly adopted a local law imposing on teachers and school staff the singing of Kimigayo in standing position in school ceremonies. Later, an order was issued to specifically instruct the teachers to stand up and sing Kimigayo song in school ceremonies. Many teachers who have refused to obey have been punished.

(3) **Judicial precedents**

The Supreme Court ruling of January 16, 2012, recognizing that the refusal to stand is based on teachers personal vision of history and of the world, annulled the disciplinary measures (pay cut and suspension ) applied to teachers on the ground that they constitute an abuse of discretional powers by the administration. As of July 12, 2013, 25 Tokyo public high school teachers have won the lawsuits (30 cases ) against the Tokyo Metropolitan Authority and had the disciplinary measures annulled.

However, it must be point out that in these trials, no judge did resort to the ICCPR. Teachers continue to have their freedom of conscience, speech and expression violated and freedom of education is being threatened. The chilling effect of the strong disciplinary measures, threats of non-reemployment, reduction of pay and pension etc., used to intimidate teachers who refuse to obey have spread nationwide to children and their parents.

(4) **Violation of ICCPR Article 18 and 19**

1)Violation of freedom of thought, conscience and religion

Opinion varies considerably among the Japanese people about the Kimigayo song , due to the fact that it was used in the past for promoting a particular vision of history and militarist education. To stand before the Hinomaru flag is part of the expression of respect to the Emperor and His Rule, and therefore the prejudicial measures applied to teachers who refuse to stand up constitute a violation of freedom thought, conscience and religion, contrary to ICCPR Article 18.

2)Violation of freedom of opinion and expression

ICCPR Article 19-1 provides the right to have an opinion. It prohibits the acts threatening somebody on the ground of his (political or historical) opinion or any action to force him to have or not to have an opinion.

The 2011 general opinion 34 of the Committee （CCPR/C/GC/34）, regarding Article 19 expressed the Committee’s concern regarding the laws on matters such as disrespect of authority, irreverence to flag or symbols” and they should not be subject to severe punishment. Imposition of singing Kimigayo and punishment of teacher who do not stand for singing constitute prejudice on the ground of irreverence to flag or other symbols are therefore contrary to Article 19.

4、**Matters to be included in the List of Issues**

(1） The Government should report in detail about the resources allocated to the diffusion of the ICCPR and the Committee’s recommendations to local education boards as well as about the policies concerning the diffusion.

(2.） The Government should report about whether it plans to take any measures to local education boards to prevent that singing of Kimigayo song in standing position is imposed on teachers at ceremonies in public elementary and secondary schools and that prejudicial treatment is made to teachers who do not rise, sing or accompany Kimigayo song.

* **The Public Office Election Law**

**ICCPR Article 19 : freedom of speech and expression**

**A：Restrictions on freedom of speech and expression under the Public Office Election Law**

1、**CCPR/C/JPN/CO/5**

Paragraph 26 of the concluding observations (CCPR/C/JPN/CO/5)

Recommendations by UN Human Rights bodies regarding the cases of distribution of flyers

--(CCPR/C/JPN/CO/5)Paragraph 7: absence of information on domestic court decisions, other than Supreme Court judgments finding no violation of the Covenant, which make direct reference to

provisions of the Covenant.

--(CCPR/C/JPN/CO/5)Paragraph 8: No ratification of the First Optional Protocol.

--(CCPR/C/JPN/CO/5)Paragraph 9:Non-establishment of an independent national human rights institution outside the Government, in accordance with the Paris Principles.

--(CCPR/C/JPN/CO/5)Paragraph 10: Concern that the concept of “public welfare” is vague and open-ended

--(CCPR/C/JPN/CO/5)Paragraph 18: Problems regarding the condition of detention of suspects

**2、CCPR/C/JPN/6**

The Government reported : “The Supreme Court has ruled that the provision of the Public Office Election Law do not violate Article 21 of the Constitution which guaranteed freedom of expression”.

**3、Current Situation**

Of six cases of police persecution for flyer distribution, four cases already resulted in Supreme Court Ruling after the 2008 HRC recommendation (※reference document 2-②, starting from the “third case”). As for the first case, it ended with an unfair decision of the Supreme Court. Please refer to the Alternative Report to the Six Periodic Report of Japan on the ICCPR, submitted by the “Support Group for the Case of Itabashi High School Graduation Ceremony and “Freedom of Expression”.

Cases of leaflets distribution HRC was concerned about in CCPR/C/JPN/CO/5,

para. 26

Concluding Observations by HRC on the 5th Periodic Report by the Japanese Government refers to the concept of “public welfare” in para. 10, and “freedom of expression” in para. 26. In para. 26, they expressed their concern about unreasonable restrictions placed on human rights according to three domestic laws, the Public Officers Election Law, the National Civil Service Law and Laws on Trespassing.

In response, the Japanese government has commented in their 6th Periodic Report, on restrictions on “freedom of expression” under the Public Offices Election Act in para. 215, and under the National Civil Service Law in para. 216. However, they do not make any mention of the two cases in which the citizens were convicted on grounds of trespassing for putting leaflets critical of the government into residents’ mailboxes.

(a) The Case of Distributing Anti-War Leaflets in Tachikawa (case 2th ※referencedocument 2-**②)** (11/4/2008 Second Petit Bench of the Supreme Court)

(b) The Case of Distributing Opposition Party Report in Katsushika （case 2th ※referencedocument 2-②）（ (30/11/2009 Second Petit Bench of the Supreme Court)

“public welfare” is used as a pretext to suppress “freedom of expression” in these two cases.

The people who had distributed the leaflets critical of the government were criminalized, not on grounds of the content of the handouts, but of the way they were publicized, which would never have been questioned in ordinary circumstances. The same legal framework was used in the case of Itabashi High School Graduation Ceremony.

The Supreme Court’s decision on each of these three cases includes exactly the same wording, in its main text, which reads: “While the freedom of expression must be respected as a particularly important right in a democratic society, article 21, paragraph 1 of the Constitute

The Supreme Court’s decision on each of these three cases includes exactly the same wording, in its main text, which reads: “While the freedom of expression must be respected as a particularly important right in a democratic society, article 21, paragraph 1 of the Constitution does not guarantee the freedom of expression absolutely without any reservation, but allows such restrictions that are necessary and reasonable for public welfare.

4、**Matters to Be Included in the List of Issues**

(1） The Government and the MOFA Human Rights and Humanitarian Section should provide the

HRC with the detailed report regarding the works done so far since the consideration of the previous UPR report for the revision of the Public Office Election Law as well as the planned works to be done in future.

(2) To inform the HRC of how the Government educates and diffuses among the MOFA staff about the human rights conventions and HRC recommendations.

Also to inform the HRC of how the Government educates and diffuses among the staff of Ministry of Education, prefectural education boards, Ministry of Justice, Ministry of Defense and other ministries, local public employees, human rights committee members and the civil society.

(3) To report the HRC in detail the curriculum and hours assigned to the education and training of students and teachers of law faculties about international conventions and Committee Recommendations.

(4) To report the HRC in detail how and why the questions on the international human rights

conventions were withdrawn from the National Bar Examination and about the future plan of the examination.

(5) To report to the HRC in detail about the content of education regarding “International Human Rights Laws” in the training programs of legal apprentices and about the diffusion of such education.

**B：Restrictions on Political Acts of State Personnel**

1、**CCPR/C/JPN/CO/5**

Please refer to Paragraph 26 (reference document 3-1)

**2、CCPR/C/JPN/6**

**Summary**

In Japan, under the State Personnel Law and the National Personnel Agency (NPA) Rules, any political act that might affect political independence of a public employee is restricted. Door-to-door visit aimed at soliciting support or non-support of any particular candidate or political party as well as distribution of documents or drawings with any political objectives are subject to punishment as infringement of these restrictions placed on political acts. The Government believes that these restrictions are minimum necessary set in place to maintain political neutrality of state employees who are involved in the management of the administration to serve the public in general and therefore they do not contradict the ICCPR.

3、Current Situation

The Government has not undertaken any work to revise the laws and the NPA rules that impose unfair restrictions on political activities of general state employees. On October 30, one day before the consideration of Japan’s UPR report, our association projected CG images of secretly-taken video at the United Nations in Geneva as part of a NGO parallel event, as material evidence of a crime committed by the police in the case of persecution of Mr. Horikoshi. The images were also diffused through Internet. A month later, on December 7, Japanese Supreme Court endorsed the High Court Ruling judging Mr. Horikoshi innocent.

The Supreme Court decision totally ignored the ICCPR, but it put into question Article 102 of the State Personnel Law that prohibits any political activity of general state employee through the penal provisions of NPA Rules as well as the 1974 Supreme Court Ruling on Sarufutu Case that supported the application of the repressive article 102. At the same time, the disclosure of massive video tapes taken secretly by police agents presented to the Court as evidence in Horikoshi Case, proved how easy it is to totally visualize the criminal judiciary.

Unfortunately, Mr. Ujihashi, then assistant to a Section Head in the Health Ministry, accused of the similar charges, was sentenced guilty on the same day as Mr. Horikoshi. He was fined 100,000 yen for having distributed in plain clothes and on a holiday flyers that had nothing to do with his duties. In appearance, he could hardly be identified as public employee and could not “affect the neutral management of public duties and the confidence of the public in it”.

4、**Matters to be included in the List of Issues**

The Government should report any work it has undertaken so far since its previous UPR report for the revision of the related laws.

**C: Illegal Information Collection by Japanese Self-Defense Forces (SDF) Intelligence Unit**

1、 CCPR/C/JPN/CO/5

No mention

2、 CCPR/C/JPN/6

No mention

3、**Current situation**

Shigeru Ishiba, General Secretary of the Liberal Democratic Party (LDP) , party of Abe Cabinet, on July 26 expressed the intension to introduce to the next ordinary session of the Diet a bill on national security that would allow the exercise of the right of collective defense that is contrary to Article 9 of the Constitution and Article 19 of the ICCPR.

Ishiba was the prime responsible for the decision of dispatching SDF troops to Iraq soon after the U.S., disregarding the U.N. Resolution, waged was against Iraq in March 2003. The dispatch of DF troops to Iraq was declared as violation of Article 9 in 2008 by Nagoya High Court.

However, Ishiba has not yet been taken to court for promoting the anti-constitutional decision of sending SDF soldiers to Iraq.

Ishiba, then Director of Defense Agency, in March 2003 reorganized the investigation team belonging to the SDF intelligence organization to place the team under the direct command of the Agency Director. It was known later that the team illegally conducted organized nationwide investigation of rallies and street actions of citizens’ groups ( 289 individuals and groups in the country) that opposed the war on Iraq. Today, a lawsuit is proceeding in Sendai District Tribunal.

The information collected by the SDF included the list of organizations participating in antiwar rallies and their leaders as well as press reporters who covered the SFD. There were also pictures of participants in antiwar demonstrations. The document compiled by the SDF team headquarters ( located in Ichigaya, Tokyo) between November 2003 and February 2004 entitled “Activities of Domestic Forces Opposing SDF Expedition” as well as a 166-page document prepared by Tohoku regional team (based in Sendai City) that summarizes the antiwar activities in the prefectures in Tohoku Region, but most of the documents are painted black.

The Defense Agency was upgraded into a ministry in [2007 and became the largest organisation of public employees.](http://ja.wikipedia.org/wiki/2007%E5%B9%B4)  The defense budget amounts to 4.6 trillion yen and the personnel cost of the Defense Ministry alone accounted in 2012 for 40 % of both the total State personnel cost and the national defense expenditure.

For more than half a century, the Defense Agency had not been changed its legal place in the State administrative organization. In January 2007, under the first Abe Cabinet, it was transformed into the Ministry of Defense and in September of that year, Ishiba was nominated Defense Minister and held the post for about a year.

4、**Matters to be included in the List of Issues**

(1) Prime Minister Shinzo Abe, LDP General Secretary Shigeru Ishiba and Minister of Defense should report whether they know the MOFA brochure “Universal Declaration of Human Rights and International human Rights Covenants” published in 1998 and whether they have read it and have a good knowledge of these instruments.

(2) Prime Minister Shinzo Abe, LDP General Secretary Shigeru Ishiba and Minister of Defense should report about their understanding of universal fundamental human rights.

(3) The Government should report in detail whether it has educated the SDF members who are State employees about human rights conventions and recommendations including ICCPR , the budget allocated to this education and any progress in this area.

(4) Ishiba who was Director of the Defense Agency in 2003 should report whether at current stage, he understands that information collection by SDF members of information about citizens’ activities constitutes a violation of Article 19 of the ICCPR.

* **ICCPR Article 20 .: Discriminatory expression and propaganda for war**

**A: Mal-revision of Article 9, contrary to the ICCPR**

1、**CCPR/C/JPN/CO/5**

No observation.

2、**CCPR/C/JPN/6**

No mention.

3、**Current Situation**

(1) In 1998, the MOFA published a brochure “Universal Declaration of Human Rights and International Covenants on Human Rights” to observe the 50th anniversary of the Universal Declaration of Human Rights. The brochure explains Article 20 of the ICCPR as follows: “Our country does not have any national law to implement the ban on ‘propaganda for war’. From the beginning, it goes without saying that freedom of expression must not be unfairly affected by this provision. The decision to make this provision into a national law may be at the discretion of each State Party, taking into consideration the guarantee of freedom of expression. Considering the fact that our country has given up the recourse to war by Article 9 of its Constitution, there is no need for punishing by law something abstract such as ‘propaganda for war’”.

\* Article 9:

“*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) 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*](http://en.wiktionary.org/wiki/belligerency) *of the state will not be recognized”*

(2) Since 1998, Japanese judiciary has refuse to follow the UN in valuing more and more human rights. The Director of Supreme Court sitting on top of the State power and other judges give decisions that remind many citizens of the judiciary during the WWII.

On July 22, Prime Minister Abe held a press conference on the LDP’s victory in the House Councilors’ election and referred to the revision of the Constitution in relation to the exercise of the right to collective defense, banned by Article 9.

The right to collective defense is the right of a country to use force in the event that an ally, the U.S. for Japan, is attacked. Under the current Constitution instituted on the basis of the repentance of the aggression that took 20 million human lives in Asia during the WWII, the Government of Japan, in the light of Article 9 that stipulates renunciation to war, has strictly refrained from using this right, understanding that the use of this right would exceed the minimum necessary limit for national defense.

On April 17, 2008, Nagoya High Court handed down its decision for the case regarding the expedition of SDF troop to Iraq in 2003 during the Iraqi war. It said: “The operations of SDF troops, in particular those of Air SDF in Iraq for the transport of U.S. soldiers, are part of use of armed forces by other countries and therefore contrary to Article 9-1 of the Constitution”. This high court ruling was final. (SDF soldiers were sent to Iraq in December 2008 and withdrew in February 2009)

While the prime responsible for deciding to sent SDF troops to Iraq was Mr.Shigeru Ishiba, the actual responsibility was in the hands of Yukio Takeuchi, then administrative Vice-Minister of Foreign Affairs. He would be held responsible for ordering the SDF expedition in violation of the Constitution. However, after his retirement from the MOFA, he became the judge in the Petty Bench of the Supreme Court. He was in charge of 5 out of 6 cases examined by the Supreme Court regarding the distribution of flyers critical to the Government , the planned revision of Article 9 and SDF dispatch to Iraq. He judged guilty all the defendants except for Mr. Horikoshi.

In December last year, Mr. Horikoshi was definitively sentenced innocent. However, he had secretly been videotaped for months by a total of over 170 policemen in 2003, was arrested and detained. He was indicted on the day following his arrest. Despite the existence of massive amounts of videotapes evidencing the crime committed by the police, those involved in the investigation, arrest and indictment of Mr. Horikoshi have not taken to justice. Those responsible for the persecution of Mr. Horikoshi , including the policemen and Mr. Yuuki Furuta of the Supreme Public Prosecutor’s Office, have never been judged for their violation of Mr. Horikoshi’s human rights. The Supreme Court continues to completely ignore the ICCPR. Even in the tribunal of first instance, there has been no judgment applying Articles 19 and 25 of the ICCPR.

(3) Violation of Article 9 and ICCPR Article 20

The Government and the Defense Ministry on July 26 issued an interim report for the revision of “the Guidelines of Defense Plan”, the first of the kind under Abe Government, and held on July 27 a press conference in Manila during Prime Minister’s tour in the region.

The interim report is “almost an exhaustive rearmament program, overtly setting forth the policy of consolidation of the Japan-U.S. military alliance and strengthening of the SDF on the ground of negative change in “security environment” due to North Korea and China.

The report stipulates the strengthening of “capability of attacking enemy bases” meaning capacity to directly strike the “enemy” missile launching sites and enhancement of SDF’s “marine functions” on the pretext of defense of remote islands, introduction of drones to watch troops of other countries as well as the abolition of “three principles concerning arms export”. These measures point to rearmament, contrary to public opinion, the Constitution and all international human rights conventions.

Before Abe Government, the successive Government of LDP has deceived the population, claiming that the SDF are “minimum necessary” and that they are for defensive defense. The interim report however throws into relief the perilous ambition of the Abe Cabinet that wants to change drastically and very quickly the national institutions, exploiting the territorial conflicts with South Korea and China and the threats from North Korea, to make it possible for Japan to wage aggressive wars.

The interim report mentions the “need for improving capabilities for responding to ballistic missile attack”, supposing a North Korean missile attack. Prime Minister Abe also said that F35 fighter planes that Japan continues to buy from the U.S. will be used to strike enemy bases. Equipping the SDF with such offensive capabilities is contrary to the principle of defensive defense, since it would make Japan capable of launching a first strike.

The Abe Government is considering the exercise of the “right to collective defense”. The successive LDP Governments have excluded the resort to that right because it contradicts the Constitution, but the interim report does not deny its use.

4、 **Matters to be included in the List of Issues**

(1) Has the Government ever questioned whether the malrevision of Article 9 would constitute a violation of the ICCPR Article 20?

The “Board of inquiry into Constitution” set up in 2000 and the “Committee for Reviewing the Constitution” established in the two Houses in 2007, do they have the understanding that the planned amendment of Article 9 could be contrary to the Constitution?

(2) The MOFA’s brochure on the Universal Declaration of Human Rights and ICCPR, in its page 11, it says regarding the prohibition of propaganda for war that Japan has renounced to war by stipulating it in article 9 of the Constitution and therefore there is no need to punish something abstract like “propaganda for war”. Is the Government aware that the ill-revision(malrevision)

of Article 9 constitutes a violation of Article 20 of the ICCPR?

(3) Does the Government have the plan to institute a law prohibiting war propaganda and hate speech. If yes, please describe it concretely?

**B**:**Interference of education board in the adoption textbooks in Tokyo, Osaka and Kanagawa**

1、CCPR/C/JPN/CO/5

No observation.

2、CCPR/C/JPN/6

No mention.

3、Current Situation

Regarding the adoption of high school textbooks, in Tokyo and Yokohama City last year and Osaka Prefecture and Osaka City this year, the education board try to interfere with the selection of history textbooks by exerting pressure on individual schools through school principal. Similar move has been seen in Kanagawa Prefecture-run high schools.

4、Matters to be included in the List of issues

(1) Report the number of high schools and students in the country that use the History Textbook A selected in 2012.

(2) In selecting textbook of Japan’s history to be used in public high schools, what parts in that book that specifically poses problem to education boards of the prefecture and city of Osaka?

(3) In the adoption of textbooks for Japanese history, is there any precedent of a change of a selected textbook by another one due to the pressure of the competent education board? If yes, which education board?

(4) The Ministry of Education recognizes the right to decide the teaching curriculum of each individual school. Then why does it allow the education boards the right to adopt textbooks instead of according this right to the teachers?

To report the education boards that have decided resort to that right and why.

(5) Has the Ministry of Education ever instructed in writing the educations board that are not involved in teaching about the fact that non-recognition of the right to adopt textbooks they select affects considerably the “sound development of critical powers of children”?

(6) Some local education board (Tokyo, Yokohama, Osaka etc.) on the ground of “problematic” description of imposition of “Hinomaru” and “Kimigayo” in textbooks, took an arbitrary act against school principals. Such an arbitrary act by the administration constitutes, as was determined by Ienaga Ruling (3rd) issued in 1993, an abuse of authority.

(7) Are the presidents and members of education boards elected or appointed? If appointed, by whom? Please specify whether the presidents and embers of education boards have ever been elected after the WWII? If they are not at all elected, please explain the reasons for this.

* **Often administrative authorities obstruct peaceful actions of citizens**

**ICCPR Article 21 ：Right to organize**

1、**CCPR/C/JPN/CO/5**

No mention

2、**CCPR/C/JPN/6**

No mention

3、**Current situation**

Since March 11, 2011, a large number of citizens have organized rallies , marches and other peaceful actions in different cities across the country to protest the government or municipality authorities and or demand the closure of nuclear power plants and opposing burning disposal of radioactive debris.

In November 11, 2012, Tokyo Metropolitan Authority set a limitation on the use of public parks, after declining the request to use Hibiya Park for a rally. The Government has filed a suit against the citizens who set up a tent on a wide street in from of the Ministry of Economy and Industry although they had not hindered the people’s passage. Often administrative authorities obstruct peaceful actions of citizens when they protest the government and sometimes arrest peaceful demonstrators.

4、**Matters to be included in the List of Issues**

(1) Collective demonstrative action is guaranteed by Article 21 of the ICCPR and except for exceptional cases affecting public order, the right to such action cannot be restricted. How does the Government understand this right?

(2) During the House of Councilors election campaign I last July, when Prime Minister Abe took the street to speak, some body in the audience showed a small placard with a few questions. He was surrounded by security police agents and had his placard confiscate. About a week later, he received his placard on his workplace. Please investigate this case and report to the Committee. Also please report whether the security police has the intention to review unnecessary restriction on citizens’ activities to demand closing of nuclear plants.

(3) To report in detail about the actual information and education for police and prosecution agents regarding the human rights instruments.

* The problem of the right of political participation

**ICCPR Article 25: Right to political participation**

1、**CCPR/C/JPN/CO/5**

paragraph 26

2、 **CCPR/C/JPN/6**

**Summary:**

The report indicates no change but states the following: “the essence of the prohibition of election campaign by door-to-door visit in the Public Office Election Law and the banning provision of election campaign by documents or pictures is as stated by Article 19. These provisions are aimed mainly at ensuring justice in the election. The Supreme Court has decided that these provisions are not contrary to Article 15 of the Japanese constitution.

3、 **Current Situation**

(1) The Government totally disregards the paragraph 26 of the 2008 Recommendation. In the Tokyo gubernatorial election in last December, a campaigner in the opposition distributed flyers in letter box on the doors of condos. He was arrested and detained. His case was not an insolate case. There are many other unfair arrests on the ground of flyer distribution for violation of the Public Office Election Law.

As the Government has continued door-to-door visits and flyer distribution, the population have has their right to participate in public affairs neglected. As a result the turnout has hit the lowest ever after the WWII: 59.32% for the House of Councilors election on July 21, 2013; 59.32% in the general election of December 2012; 52.97% in the simultaneous prefectural governors and city mayors elections of April 2011.

Normally, door-to-door visits and dialogue between voters and candidates offer the opportunities for each individual to obtain raw information about the politics and this is the foundation of grassroots democracy.

During nearly 70 years of postwar period, over 90,000 people have been arrested for violation of the Public Office Election Law. The chilling effect is widespread and citizens are today used to obey to bad laws. In that context, even after the ratification of 1979, the Government has repeatedly revised the election system to the worse such as introduction of single seat constituencies.

The election turnout continues to decline in each election. One month after the big earthquake on March 11, 2011, a simultaneous local election was held and the turnout was the lowest since the WWII. In the election of Chiba Prefectural Assembly, the turnout for young adults in their twenties was only 20%.

Teachers are instructed not to teach the importance of election in class because it may impose any particular thought on children. The Ministry of Culture and prefectural boards of education are watching on it, restricting freedom of thought and conscience as well as freedom of speech and expression.

On the other hand, in Fukushima Prefecture, the education board through pupils of public schools distributed illegal flyers to their parents during the general election period in last December. The flyer in question presented the candidates belonging to the ruling parties and was issued as extra-reference document for civic class. However, neither the education board nor school principals have been arrested for violation of the Public Office Election Law.

Since the Great Earth Quake of March 11, 2011, several hundreds thousand who became “refugees “ of earthquake and nuclear power plant accident, many temporary workers and the elderly who suffer poverty, it has become very difficult to have access to reliable and concrete information. Political flyers are therefore very efficient means of information for those who do not have access to Internet, who are isolated having lost their families or who were forced to live away from their home country.

However, the Japanese election system includes many restrictions including those before the start of the campaign. During a short campaign period of 10 days, door-to-door visits are totally forbidden. Even free distribution of political flyers made by individual citizens to support candidates they support is outlawed.

Flyers with the name of a candidate are authorized but in very limited number. Voters can hardly know about each candidate, his or her profile, policy promises. They cannot make informed choice of candidate. This is especially true in the case of general election, like that of last December, that was held near the year-end, following the sudden dissolution of the House of Representatives. The election was announced 12 days before, and during these 12 days, voters had to choose the candidate among those representing 16 parties.

The turnout was the lowest since the WWII (59.32%).

(2) Widespread practice of vote buying

During the House of Councilors election in last July, it was revealed that the LDP had requested as much as 471 million yen donation from the national association of general contractors.

According to the international covenants on human rights, priority should be given to the rehabilitation of victims of earthquake and nuclear power plant accident, closure of these plants, reconstruction of local economies and assistance to 20 million poor. However, the Government has not set out any policy in that direction. On the contrary, it is promoting war policies in total disregard of human rights considerations.

The landslide victory of the LDP in the House of Councilors election, the budget for large-scale public works projects has been increased generously.

4、**Matters to be included in the List of Issues**

(1) To report the cases of arrest and the result of trials regarding the Public Office Election Law since 2008 and the cases of application of the international covenants on human rights.

(2) To report the number of cases of violation of provisions banning particular election campaign activities in the elections held at different levels since the last periodic report, including the number of cases of arrest, detention and arrest for these charges.

(3) Is the Government aware that donation by enterprises to political parties may constitute bribery if the latter ask for return? Enterprise donations violate Article 25 of the ICCPR for it affect fair election.

(4) To report about the activities conducted by the Ministry of Internal Affairs, prefectures and municipalities for diffusing the conventions and recommendations regarding human rights.

(5) Why the Ministry of Foreign Affairs fails to inform those in charge in the ministry of Internal affairs about the conventions and recommendations regarding human rights?

(6) To report actual education and training activities on human rights conventions and recommendations, and the scope of that education for Supreme Court Director, judges, investigators as well as judges and staff of each local tribunal.

(7) To report about the diffusion and education on human rights convention and recommendations to president and members of each of 47 prefecture election boards.

(8) To report in detail the information activities about human rights conventions and recommendations by the Ministry of Education and prefectural education boards in primary, secondary and higher education institutions.

(9) To report actual activities of information about human rights conventions and recommendations to local residents associations and heads of elderly associations nationwide.

(10) To report actual activities of information about human rights conventions and recommendations to policemen at each level.

(11) To report actual activities of information about human rights conventions and recommendations to Ministry of Justice, Human Rights Bureau, Human Rights Conciliators.

※**reference document 1**

**Japanese Association for the Right to Freedom of Speech　(JRFS)**

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**HUMAN RIGHTS COUNCIL**

**Seventh session**

**Written statement submitted by THE JAPANESE WORKERS’ COMMTTEE FOR HUMAN RIGHTS (JWCHR), a non-governmental organization in special consultative status**

**The Oishi Case and the Cases of Horikoshi and Arakawa**

**Suppression of Freedom of Expression in Elections**

**Is it a crime to distribute leaflets!?**

Mr. Tadaaki Oishi is a city councilman in Bungo-Takada City, Oita Prefecture in Japan. He has published a weekly district newsletter called *Minnano Takada* (Everyone's Takada) in which he has written articles about his policies and reports about the business of the city council.  To date, 1813 issues of *Minnano Takada* have been published. He started this work at the age of 29 when he first ran for the Takada City Council. The residents of Takada have always welcomed his newsletters and have found him to be a positive force on the city council. So far he has required the mayor to spend taxes justly, and has investigated corruption cases many times. In his city as well as in the whole of Japan, the gap between the rich and the poor has widened in recent years. Mr. Oishi has acted to shrink this gap and eliminate poverty. In addition, he has spoken out against the war in Iraq.  It seemed that the police have inspected Mr. Oishi's political ideas and actions in detail in an apparent attempt to deprive him of his seat on the city council.

 In April 2003, in preparation for the upcoming city council elections, he distributed newsletters to his supporters. In May 3, 2003, he was arrested and detained for 21 days for distributing 18 copies of a one-page document which included the following: "Please ask your family members, acquaintances and friends right away to vote for Oishi." "Please let me continue to serve." "We are running late in our efforts for this election. I ask for your support." After that he was prosecuted for three violations of the Public Offices Election Law (door-to-door canvassing, distribution of illegal documents, and pre-election campaigning).

 In Mr. Oishi's trial in the District Court of Oita, he pleaded not guilty because the Public Offices Election Law of Japan violates the Constitution of Japan as well as the International Covenants on Human Rights by prohibiting pre-election campaigning and door-to-door campaigning as well as by restrictions on the distribution of campaign literature. In June 27, 2005, Ms. Elizabeth Evatt, a former member of the UN Human Rights Committee, testified at the court.  She stated unequivocally, "The Japanese Public Offices Election Law restricting freedom of expression is incompatible with either article 19 or 25 of the International Covenant on Human Rights. The application of this penalty does not conform to either article 19 or article 25 of the Covenant."

 Despite Ms. Evatt's testimony and the doubts cast upon the testimony of the police, in January 13, 2006, the District Court of Oita demanded a 150,000 yen fine and that Mr. Oishi's electoral rights be suspended for three years. He appealed the decision of the District Court.

In February 19, 2007, there was a city council election in Bungo-Takada City. In spite of the actions taken by the police against Mr. Oishi, he was elected with more votes than any other city council members, as he had been in the last election.  In fact, he received 30% more votes than he had in the last election. The residents of Bungo-Takada obviously consider him an effective and indispensable member of the city council.

In September 7, 2007, the High Court of Fukuoka upheld his conviction but decided to lessen his penalty to simply a 150,000 yen fine and no suspension of electoral rights. The High Court's judgement included the following: "Ms. Elizabeth Evatt's opinion is one of insights about what an election system should be, and isn't able to be equated with the formal view of the UN Human Rights Committee". And, "the Japanese Public Offices Election Law is compatible with articles 19 and 25 of the International Covenants on Human Rights".

Mr. Oishi appealed once more and his case was considered by the Supreme Court of Japan. In January 28, 2008, the Supreme Court of Japan dismissed Mr. Oishi's appeal. The judgment said that "the Japanese Public Offices Election Law is compatible with articles 19 and 25 of the International Covenants on Human Rights". As a result, the 150,000 yen fine against Mr. Oishi was upheld.

**We call for an immediate recommendation for the grave violation of human rights occurred successively by the suppression of distributing leaflets in Japan, which is a member of the Human Rights Council.**

In Japan entering 21st centuries, the suppression of distributing leaflets like the case of “The White Rose”, which occurred at the Munich University during the Second World War where, by reason of distributing antiwar leaflets, young people were executed by beheading five days after their arrest, takes place successively.

Of course, there exists no such execution in Japan but distributing political leaflets becomes subject to guilty by district courts, high courts and even the Supreme Court.

Akio HORIKOSHI, a government official, was arrested in March 2004 by reason of having distributed leaflets saying “Respect the Constitution !”, which allegedly committed the Government Officials Act, near his home on holiday at the general election in previous November. And he was convicted of 100,000 yen fine and two years’ suspension of sentence by the Tokyo District Court in June 2006. But he appealed to the Tokyo High Court. Those who have appealed to the High Court are not only HORIKOSHI who was found unfair guilty, but also the prosecution, appealing to the High Court by protesting that “the sentence was unreasonable”.

At the time the police put a tail on him for 29 days consecutively and a total of 171 policemen took a picture secretly by video camera which was installed in their shoes with a hole. And they submitted it as evidence to the Court. But the Court and the high prosecution have not released but nine video tapes as evidence out of 33 tapes.

In December 2003, when a priest Yosei ARAKAWA distributed news leaflets of a ward assembly at an apartment, he was arrested for trespassing at its corridor by a resident’s report to the police. And he was detained at the police station for 23 days and indicted. He was found innocent at the first trial and many editorials of media supported this decision. But the prosecution appealed the case to a high court without submitting any new evidence and, in December 2007, the Tokyo High Court reversed the lower judgment and imposed a fine on him.

In Japan, the prohibitions of pre-election campaigning and door-to-door visit, and the restriction of distributing leaflets were brought at the same time with the enforcement of the General Election Law in 1925. After the Second World War, although the right to vote was enlarged to women and adults over 20 years old, the prohibition of door-to-door visit and the restriction of political and election campaigning still remain unchanged. Whenever a democratic grass-rooted election campaigning demonstrated its influence, successive ruling parties repeatedly strengthened the restriction against it and violated its fundamental human rights.

After the War, those who were convicted of violation of the Public Offices Election Law (prohibitions of door-to-door visit and distributing leaflets) have reached more than 90,000.

※**reference document 2-①**

We Demand the Early Ratification

of Optional Protocol to the International Covenant on Civil and Political Rights and a Recommendation for the Prohibition of Propaganda for War

13 October 2008

**Japanese Association for the Right to Freedom of Speech (JRFS)**

In Japan of the 21st century, a case similar to “the White Rose” that young men were arrested and beheaded by reason of distributing leaflets that appealed against war at the University of Munich during the Second World War, is taking place in succession.

Although being not beheaded, people who distributed political leaflets are charged and convicted by a law of the violation of the Constitution and the International Covenant on Civil and Political Rights (ICCPR) in sequence in district courts, high courts and Supreme Court.

The act that in the back six cases were regarded as “criminal” is an act on politics and the election, which is the principle of democracy in democratic countries. And this act should be constantly and positively performed by the effort of the nation and admired in democratic society. But in postwar Japan, 90,000 people were convicted by the violation of the Public Offices Election Law, which restricts canvassing door to door and distributing leaflets.

The Japanese court of law should make a judgment based on the Constitution that clearly guarantees “freedom of speech.” And, trials in Japan do not make full use of the Universal Declaration of Human Rights and there often happens suppression cases that seriously violate human rights.

When the Japanese government ratified the Universal Declaration of Human Rights in 1979, the government said it would “ratify the optional protocol as early as possible,” but it is not yet ratified, and it is not utilized in judgment.

The human rights of victims must be restored and relieved soon.

As the background of these suppression cases, a group of the ruling political party which plans to make of Japan a country that can dispatch troops overseas, by revising Article 9 of the Constitution for the worse, seems to assault on the movement of expression by leaflets, which is handy and low-priced means of communication for citizens. While violating such important and fundamental human rights, they are just going to abolish Article 9 of the Constitution, which declares the renunciation of war, by depending on the number of members of the Diet. This is “propaganda for war” that violates Article 20 of the ICCPR.

What the Japanese government prepares to become a country that can again dispatch troops overseas is a serious problem for international peace, and also an important problem as its qualification of a member of the Human Rights Council.

At the 60th anniversary of the Universal Declaration of Human Rights, we call for the Human Rights Committee to investigate the problem of a serious violation of human rights in Japan, which is contrary to the current of international peace and the respect of human rights, and to take recommendation measures for the government immediately.

※**reference document ２－②**

**Six cases of the suppression against distributing leaflets in japan**

**The first case**

Just after the outbreak of Iraqi War, Tadaaki Oishi, a member of a city council of the Japan Communist Party, who had been elected at top in the municipal election in April 2003, was arrested after the election (May 2003) by reason of distributing newsletters to his supporters eight days before the notification, violating the Public Offices Election Law (a provision prohibiting a door-to-door canvassing and distribution of leaflets). He was detained and forced confession for 21 days, and indicted. At the first trial, he was sentenced to depriving of his civil rights for three years and to a 150,000 fine. At the second trial, he was also sentenced to a 150,000 fine, but the suspension of his civil rights was withdrawn. And he submitted the grounds of an appeal to the Supreme Court in last November, but the appeal was turned down in this January and his guilt was established. In the decision, it is understood that the provisions of the Public Offices Election Law “do not violate Articles 19 and 25 of the ICCPR, therefore the appeal is not suitable for its reason by lacking in premises.” And the sentence was unfairly handed down, without saying the reason why the provisions do not violate the ICCPR.

**The second case**

In February, 2004, three members of a citizen’s group who distributed leaflets titled “No Dispatching the Self-Defense Force troops to Iraq !” in the postboxes of a SDF housing complex in Tachikawa, were arrested for housebreaking. For two months of the arrest, the SDF Intelligence Security Command conspired with police and kept watch on citizens, and their arrest was contrived. The detention period lasted two months. Contrary to the first trial, the second trial at the Tokyo High Court found them guilty. And in this April, the Supreme Court turned down the appeal without oral proceedings, and a 200,000 yen fine or 100,000 yen was established for the three.

**The third case**

Akio Horikoshi, a government employee, was tailed since the election of April 2003 by police, and in the general election of November, he distributed leaflets saying “Let’s protect the Constitution” around home being far from his working office on holiday. As a result, he was arrested by reason of the violation of the National Public Service Law in March 2004 and indicted two days later. In 2006, a district court found him guilty of a 100,000 yen fine and two years’ suspension of sentence. He immediately appealed to a high court, and it is on trial now. At the general election, a total of 171 police officers tailed him for 29 days continuously, and pirated him by a video camera that was put in a tiny-holed bag. The 33 videotapes photographed by the illegal investigation were produced as evidence. But the trial is performed as refusing disclosure of 24 among 33 videotapes that the prosecutor assumed evidence.

**The forth case**

In March, 2004, at the graduation ceremony of the municipal high school, Katsuhisa Fujita, an ex-teacher, who appealed to the guardians of the students to stay seated when singing the national anthem “Kimigayo” in unison, by distributing copies of a weekly magazine, was accused of obstructing proceedings of the ceremony by the principal and then charged of obstructing official duty by force. The public prosecutor who indicted this case is a person in charge of the public security, who also arrested and indicted above three people of the citizen’s group. In May, the ex-teacher was sentenced to a 200,000 yen fine even at the Tokyo High Court that he appealed to the Supreme Court.

**The fifth case**

In December, 2004, Yosei Arakawa, a monk, who distributed leaflets of the Japan Communist Party to mailboxes of a housing complex, was arrested by a resident report to the police and detained in the police station for 23 days. And then he was indicted for trespassing.At the first trial, he was found innocent, and this judgment won the full support of the editorials of nationwide newspapers. But the prosecutors appealed to a higher court without indicating any new evidence, and, in December, 2007, the Tokyo High Court unfairly found him guilty of a 100,000 yen fine. He is now on trial of the Supreme Court.

**The sixth case**

In the general election of September, 2005, Shinichi Ujihashi, a government employee, who dropped leaflets into mailboxes of a housing complex far from home, was arrested for trespassing. And after identified as a government employee, he was indicted for the violation of the National Public Service Law.

On September 19, last month the Tokyo District Court unfairly found him guilty of a 100,000 yen fine. He immediately appealed to a high court.

※**reference document 3-①** A/HRC/22/NGO/162 : Written statement submitted by the JRFS 25/02/2013

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/114/39/PDF/G1311439.pdf?OpenElement>

※**reference document 3-②**

**Japanese Association for the Right to Freedom of Speech (JRFS)**

**Oral Statement**

**The 22nd regular session of the Human Rights Council**

**Tsuneko Kakiuchi**

**Japanese Association for the Right to Freedom of Speech**

General Secretary

**March 14, 2013**

My requests to the Human Rights Council are:

1. To immediate send to Japan a special rapporteur on the freedom of expression;
2. To urge the Japanese Government to ratify the First Optional Protocol to the ICCPR (International Covenant on Civic and Political Rights )(individual communications) without delay;
3. To ensure that paragraph 26 of the HRC general recommendation issued after the consideration of the 5th report of Japanese government is implemented and Public Office Election Law (provision regarding the ban on distribution of documents and door-to-door visits) and National Public Personnel Law (Article 102 on National Personnel Agency Rule 14-7) be abolished.

I first want to point out that the Japanese Government made a deceptive reply during the consideration of its UPR report on October 23, 2012. I then will make three requests to the Human Rights Council.

During the debate on October 30, 2012, the delegate of Uzbekistan said that indicting somebody for distributing tracts critical to government may constitute exercise of censorship. The Japanese Government had obviously prepared a reply to that type of question. It stated that “the problem is not the substance of the tract but the place where the tract was distributed. The decision is made fairly taking into account the feeling of the residents of that place, the evidences and the relevant laws”. As a result of this, the issue of political tract distribution was not taken up in the recommendations of the Working Group to the present session of the Human Rights Council.

I want to stress that all the cases of people arrested, indicted and tried guilty by the court so far concern the distribution of political tracts that are critical to the government.

Recently, at a dialogue meeting with the NGOs, I raised the same question but the Government representative made a similar deceptive statement. Last December, the Supreme Court handed down its judgment on the two cases of tract distribution that completely ignored the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and particularly the paragraph 26 of the general recommendation issued after the consideration of the 5th report of Japanese government on ICCPR by UNHRC in 2008.

※**reference document 3－③**

**Japanese Association for the Right to Freedom of Speech　（JRFS)**

NGO in Special Consultative Status with the ECOSOC

**— a Japanese national organization whose goal is to establish a lasting world peace, which could be attained in Japan through the establishment of the universal fundamental human rights, especially the right to freedom of speech.**

**◇　*Concluding observations of the Human Rights Committee：Japan CCPR/C/JPN/CO/5　2008***

26. The Committee is concerned about unreasonable restrictions placed on freedom of

expression and on the right to take part in the conduct of public affairs, such as the prohibition of

door-to-door canvassing, as well as restrictions on the number and type of written materials that

may be distributed during pre-election campaigns, under the Public Offices Election Law. It is

also concerned about reports that political activists and public employees have been arrested and

indicted under laws on trespassing or under the National Civil Service Law for distributing

leaflets with content critical of the government to private mailboxes. (arts. 19 and 25)

**The State party should repeal any unreasonable restrictions on freedom of expression and on the right to take part in the conduct of public affairs from its legislation to prevent the police, prosecutors and courts from unduly restricting political campaigning and other activities protected under articles 19 and 25 of the Covenant.**

* ***Concluding Observations of the Committee on Economic,Social and Cultural Rights : Japan. 2001/09/24.***

**NUCLEAR ：** 22. The Committee is concerned about reported incidents in nuclear power stations and the lack of transparency and disclosure of necessary information regarding the safety of such installations, and also the lack of advance nationwide and community preparation for the prevention and handling of nuclear accidents.

49. **The Committee recommends increased transparency and disclosure to the population concerned of all necessary information, on issues relating to the safety of nuclear power installations, and further urges the State party to step up its preparation of plans for the prevention of, and early reaction to, nuclear accidents.**

**COMMUNITY SERVICES：** 27. The Committee is concerned that despite large resettlement programmes planned and executed by Hyogo Prefecture in the aftermath of the great Hanshin-Awaji earthquake, the population most affected has not always been consulted adequately, and as a consequence many single older persons now live in environments totally unfamiliar to them with little or no personal attention. Apparently, little or no psychiatric or psychological treatment is being offered for people who have lost their families. Many resettled earthquake victims who are over 60 years of age lack community centres, access to health centres and outpatient nursing.

54. **The Committee recommends that the State party encourage Hyogo Prefecture to step up and expand its community services, in particular to older and disabled persons.**

**to ASSIST POORER EARTHQUAKE VICTIMS：** 28. The Committee notes with concern that the poorer sections of the population in the Hanshin-Awaji areas affected by the earthquake are finding it increasingly difficult to finance their building reconstruction. Some were forced to sell their property in order to pay off their existing mortgages without being able to rebuild their houses.

**55. The Committee recommends that the State party, in line with its obligations under article 11 of the Covenant, speedily take effective measures to assist poorer earthquake victims in meeting their financial obligations to public housing funds or banks, undertaken to reconstruct their destroyed houses, in order to help them avoid having to sell their properties to meet continuing mortgage payments.**

**※reference document 4**

Report to the Committee on Social, Economic and Cultural Rights

the consideration of the third periodic report of Japan

**Japanese Association for the Right to Freedom of Speech (JRFS)**

Tsuneko Kakiuchi

General Secretary

April 30, 2013

1. **Fukushima**

Japanese Government has infringed the Universal Declaration of Human Rights as well as Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

It should be held responsible and taken the International Criminal Court for not having observed the recommendations included in the Concluding Observation of the CESCR on Japan issued on September 24, 2001 (paragraphs 22 and 26). This failure led to the level-7 severe accident of TEPCO Fukushima Daiichi Nuclear Power Plant that contaminated almost all Japan’s land and waters and exposed the people of Fukushima and other areas to radiation. It should be also noted that since the Great Hanshin-Awaji Earthquake of 1995, Japan entered a seismically active period.

We do believe that if the government had “disclosed to the population concerned all necessary information on issues relating the safety of nuclear power installations” as recommended by the CESCR 12 years ago, the tribunals would not have allowed the construction of nuclear plants. If the government had “stepped up its reparations of plans for the prevention of, and early reaction to, nuclear accidents” as recommended by the CESCR, over 1000 deaths related to the explosions of the nuclear plant and massive heath damage caused by radiation exposure could have been prevented and there would not have been such an extensive radiation contamination of soil and water in the disaster-stricken areas.

Nuclear power generation inevitably causes radiation exposure of plant workers and produced materials for making atomic bombs. Once an accident occurs in the plant, it may turn the vast surrounding areas inhabitable for hundreds years or more. Nuclear industry is clearly violates Articles 1, 6, 7, 10, 11, 12, 13 and 15 of the ICESCR. We call on the United Nations to outlaw the nuclear industry, to develop plans to close down all nuclear power plants and quickly embark on the process of elimination of nuclear weapons.

**2. Deplorable Governmental Financial Policy**

Under a deplorable economic policy that has impoverished the population, the Financial Services Agency has (FSA) destroyed local economy and established a mechanism to channel citizens’ properties to speculative market.

**In April 1997**: the consumption tax rate was raised from 3 to 5 percent.

**In April 1998**: the national health insurance coverage rate was brought down from 80 to 70% of medical fees. The number of suicides exceeded 30,000 a year. The suicide rate (number of suicides per 100,000) in Japan is twice that of the U.S. and three times that of the U.K.

**In June 1998**: the Financial Supervisory Agency was established under the Prime Minister’s Office (its director is a governmental official).

**In 2000**: The Financial Supervisory Agency was reorganized into the Financial Services Agency. Besides its director, a state minister in charge of financial services supervises the administrative matters.

**From 2006**: sharp increase in the number of private sector officers and workers (including lawyers, registered accountants, university professors, employees of independent administrative agencies etc.) hired by the Ministries and other governmental bodies. The Financial supervisory Agency hired a large number of bank clerks and the Securities and Exchange Surveillance Commission recruited many securities dealers.

In 2001 alone, 9 local credit unions and 37 credit cooperatives went bankrupt. Most of them had long supported the management of small and medium-sized local enterprises. The Fukushima Bank, the second largest of local banks, and Chubu Bank were given the FSA “order of early improving its management” and Ishikawa Bank, one of the major local banks applied for rehabilitation scheme.

Most of small and medium-sized enterprises that had borrowed money from these local banks and had been hard hit by the economic recession at that time immediately faced crisis of their management. Their debts were transferred to the Resolution and Collection Corporation (RCC) whose prime objective was to collect loans from failing financial institutions.

This was done under the government of Koizumi whose policy was to early resolve massive bad loans. The FSA, claiming to achieve sound management of banks, checked up the accounts of credit unions and cooperatives applying the “audit manual” they use for larger city banks. This led to the bankruptcy of nearly 60 credit unions and cooperatives in two years. Meanwhile, the government injected taxpayers’ money in failing large banks, set up the “Banks’ Shareholdings Purchase Corporation”, allowed the purchase by the RCC of bad loans owned by large banks and extended generous assistance to big banks in various ways. The FSA at that time publicly declared that the simultaneous “audit” of local banks and credit unions and cooperatives was aimed at sorting out local financial institutions in view of the abolition of blanket government protection of bank deposits. As small local banks and credit unions fail one after another due to the government policy, small and medium-sized entrepreneurs are having increasing cash-flow problems and go bankrupt. Lawsuits lodged by credit union members who want the money they invested returned have revealed the reality of these unions that were forced to purchase speculative bonds in their desperate attempt to withstand the management crisis.

1. **Imposition of Hinomaru Flag and Kimigayo Song Glorifying Imperial Rule**

In 1999, a law was instituted to make Hinomaru flag the national flag and Kimigayo song the national anthem of Japan.

Since 2004, the Tokyo Board of Education, following the instruction of the Ministry of Education and Science, has applied disciplinary measures to the teachers who refuse to stand up before the Hinomaru Flag and sing Kimigayo song at ceremonies in public schools. The flag and the song were used as national emblems in the war of aggression waged by Japan and glorify the Emperor Hiroshito, responsible for that war. The number of teachers punished for disobedience now amounts to 450 in total. The punishment consists of reducing salary or denial of re-hiring after retirement at 60 years of age(as the state-run old age pension system now provides pension to 65 years or older instead of 60 years as it used to be before, re-hiring beyond 60 years is in principle guaranteed to any teacher over 60 who wants to continue to work) Discontent with such unfair treatment, some teachers filed lawsuits for annulment of disciplinary measure applied to them.

1. **State Universities turned into “Independent Administrative Institutions” in 2004**

The state considerably reduced the funding for these universities: each university has to make effort to find funding for its research activities. The freedom of science and conscience is threatened by the power and money. It becomes increasingly difficult to sustain research activities in basic sciences.

The annual government grant for management is automatically reduced by 1% each year. Some universities are no more able to hire adequate number of teachers and staff due to lack of budget, especially in liberal arts faculties.

1. **Perilous Twist in the Basic Law on Education in 2006**

Article 1: Education shall aim at the full development of personality, striving for the rearing of the people, sound in mind and body, who shall love truth and justice, esteem individual value, respect labor and have a deep sense of responsibility, and be imbued with the independent spirit, as builders of peaceful state and society.

The passage “who shall love truth and justice, esteem individual value, respect labor and have a deep sense of responsibility, and be imbued with the independent spirit” was removed and replaced with “who are imbued with the qualities necessary for those who form a peaceful and democratic state and society”.

Article 10 providing that “education shall not be subject to unreasonable control, and that the entire country will bear direct responsibility” was entirely removed and replaced with Article 16 “Education shall not be subject to improper control and shall be carried out in accordance with this and other acts; education administration shall be carried out in a fair and proper manner through appropriate role sharing and cooperation between the national and local governments”.

1. **Trans-Pacific Partnership Agreement in 2013**

The current LDP government of Abe was elected with a promise that Japan would not join the TPP negotiations. However, few months after the election, despite a mounting opposition in the country including national federation of agricultural cooperatives and national medical association, the government began the procedure for joining the negotiations.

This agreement, with its Investor State Dispute Settlement provision, gives unreasonable advantages to foreign corporations with the risk of infringing the sovereignty of Japan. It would also open the Japanese domestic markets, in particular rice market, to cheap foreign agricultural products and cause tremendous damage to Japanese agriculture. Liberalization and deregulation it would entail would also affect Japan’s food safety, health care, etc.

After refuting the 2001 CESCR recommendations, the Japanese Government has been hostile to the Universal Declaration of Human Rights and the International Covenants on human rights. After March 11, 2011 in particular, the police, the prosecution and the justice work together as one to enhance the repressive system. We request the CESCR to issue strong recommendations to press the government to radically change its attitude and comply with the international human rights instruments.