

**PARALLEL REPORT
FOR THE CONSIDERATION OF THE 6th PERIODIC REPORT
OF THE GOVERNMENT OF JAPAN SUBMITTED TO
THE HUMAN RIGHTS COMMITTEE**

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(JWCHR)**

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Introduction

The Japanese Workers' Committee for Human Rights (JWCHR) was established in 1993 as the "Executive Committee for Appealing to International Public Opinion about Human Rights Violations in Japanese Workplaces," and obtained special consultative status from the UN Economic and Social Council in February 2004. This organization as a member of civil society has made oral statements at the Human Rights Council, submitting reports related to the situation of human rights in Japan and actively attending the conferences of UN Treaty bodies.

After the examination of the 5th periodic report of Japan to the Committee in 2008, it was a matter of time to realize the items of "transparency of interrogations," "national human rights institution," and "individual communication system" introduced in the manifesto of the new government started by a change of administration. Under these circumstances, a lot of members of civil society that had continued their activities welcomed the situation in which the human rights situation in Japan would approach that of international level as much as possible. But, in 2012, the government stepped down from the administrative power because of political turmoil without putting these problems into practice and the Conservatives, which held onto power for a long time after the war, returned to power.

The present government avoids dialogue with civil society that has been appealing for an international standard of human rights in Japan: the abnormal attitude of the head of the Japanese delegation which seemed to refuse constructive talks at the consideration of the 2nd Periodic Report of Japan at the Committee of Torture; the policy "no duty to obey" that was approved by the Cabinet for the recommendations expressed after its consideration. This attitude seems quite negative and backward.

We, JWCHR, would like to report various human rights situation in Japan for the examination of the 6th Periodic Report of Japan and continue working on the improvement of human rights, ensuring the outcome that we have already obtained.

1. Various Specific Reports for Drafting of the List of Issues

(Articles 2, 6, 10, 18, 19 and 21)

I . Concept of public welfare in the Japanese Constitution - Obstacle to the Implementation of ICCPR (Article 2-2)

A. Conclusion and Recommendation

The Government, despite repeated expression of concern and strong recommendation by the Committee, still continues to restrict human rights recognized in the Covenant on the ground of public welfare, exceeding those permissible under the Covenant. The continued disregard of the recommendation is in violation of art. 5.1, which stipulates "no restriction upon any of the fundamental human rights" and art.2, which requires each State to take the necessary steps to adopt necessary measures to give effect to the rights.

The Government should revise promptly the law that may lead to unfair restrictions by using the concept of public welfare and the court should make sure that domestic law including the constitution be applied and interpreted in compliance with the Covenant.

B. Concerns and Recommendations of the Human Rights Committee

In CCPR/C/C/79/Add.102 dated 19 November 1998, the Committee reiterates its concern that the concept of "public welfare" may permit unfair restrictions. It also stated, "Following upon its previous observations, the Committee once again strongly recommends to the State party to bring its internal law into conformity with the Covenant."

In the previous consideration of the Third Periodic Report of Japan, the Committee stated, "it is also not clear whether the "public welfare" limitation of articles 12 and 13 of the Constitution would be applied in a particular situation in conformity with the Covenant."(A49/40 Para105) It also said, "The Committee regrets that there appears to be a restrictive approach in certain laws and decisions as to respect for the right to freedom of expression."(para.111) Yet there was no improvement after that. The Committee thus decides to make recommendation, which is believed to have stronger impact than the expression of the concern.

However, there has been no development to correct the situation in question. Again in the Concluding Observation concerning the Fifth Periodic Report of Japan (CCPR/C/JPN/CO.5), the following concern and recommendation are presented:

“10. While taking note of the State party’s explanation that “public welfare “cannot be relied on as a ground for placing arbitrary restrictions on human rights, the Committee reiterates its concern that the concept of “public welfare “is vague and open-ended and may permit restrictions exceeding those permissible under the Covenant (art. 2).

The State party should adopt legislation defining the concept of “public welfare “and specifying that any restrictions placed on the rights guaranteed in the Covenant on grounds of “public welfare” may not exceed those permissible under the Covenant.

C. Response in the 6th Periodic Report of Japan

In the Fifth Periodic Report, the Government touched upon the concept of public welfare briefly by mentioning the explanations in the communications on numerous occasions and its supplementary explanation and repeated the comment in the Fourth Periodic Report. However, it does not say anything about the improvement and or the progress toward the implementation of the Committee's recommendation.

The Government submits the following information in the 6th Periodic Report.

"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."(CCPR/C/JPN/6)

The Government introduced the following ruling of the Supreme Court a couple years ago. “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. (CCPR/C/JPN/6)

We would like to raise objection to the above ruling of the Supreme Court and the comment of the Government as follows.

The acts of standing up to the national flag and of singing the national anthem at the commencement or the graduation ceremony at schools are requested by the authority for teachers and students to show their respect for the country which is symbolized by the flag and the anthem. So the Governmental authority forces upon them to accept certain ideology of the Government. This act of forcing certain ideology is definitely incompatible with freedom of expression.

General Comment on Article 19 states "the Committee expresses concern regarding laws on such matters as, lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honor of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration."(CCPR/C/GC/34)

Nevertheless, the Supreme Court ignored the fact that "forced singing of the national anthem" is in conflict with freedom of thought and conscience in its ruling. It crushed small protest of the defendant against the forced singing of the national anthem by applying the concept of public welfare, and approved to penalize him.

The ruling also conceals the fact that the case is about violation of articles 18 and 19 of the Covenant. As is well known by the Committee, freedom of election activities is severely restrained in the Public Offices Election Law of Japan. The Committee recommended the revision of legislation in the Concluding Observation after considering the 5th Periodic Report of Japan in 2008.

As the Supreme Court established a precedent that the law is constitutional, many innocent people have been arrested, prosecuted and punished on the charge of distributing illegal documents and handouts etc., which should have been regarded as normal act of expression. Even today, there is no end to those who have gone through the cycle of arrest, prosecution and punishment. The concept of public welfare is Supreme Court's weapon to restrict human rights while we see no sign of improvement so far.

D. Our Opinion

1. In the 6th Periodic report, the Government explains as follows.

"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."

However, reality presents a different picture in the court proceedings.

2. For example, in a case where right guaranteed in the Covenant is also guaranteed in the Constitution, some judges rule that restriction is inevitable in view of the concept of public welfare without relying on the principle of proportionality. And they further argue that because restriction is compatible with the Constitution, the restriction is also compatible with the Covenant. The Supreme Court seems to approve of it.

In short, they totally disregard general principles recommended in General Comments and Concluding Observations on individual complaints. They consider human rights in terms of legal concept that prevails in domestic law.

3. The Committee is of the opinion that restrictions may only be imposed only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. It also emphasizes that restrictions are not allowed on other grounds, such as those which would justify restrictions to other rights protected in the domestic law.

Therefore, even when the right protected in the Covenant is guaranteed in the Constitution of Japan, it is not allowed to restrict the right based on the concept of "public welfare", because the concept of public welfare is not prescribed in the covenant for specific purposes and needs.

4. Since the "public welfare" theory of the Constitution of Japan is based on "reasonable relation of purpose and means", and the "balance of interest", the consideration tends to be influenced by judge's personal sense of values, making it less clear or transparent.

Consequently, there is a greater risk of giving priority to national interests over human rights of individuals, permitting restriction. We present some judicial precedents of a textbook screening case and election campaign case later in this Report to show that the trend exists in Japan.

5. Meanwhile, the Committee observes that "restrictive measures must conform to the principle of proportionality. When State party invokes a legitimate ground for restriction of freedom of expression, it has to bear scrutiny by demonstrating the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct

and immediate connection between the expression and the threat.” Thus protection of right in the Covenant is greater than that of the Constitution which can be restricted by the concept o

6. Every State party to the Convention is bound to respect freedoms of opinion and expression. The obligation is a legal liability in the Covenant, and restrains contracting States including a judicial department as a whole.

Moreover, the realization of right in the Convention must have an unconditional and immediate effect, and failure to fulfill obligations may not be justified by any domestic political, social, cultural, or economic reasons.

Therefore, the Government should follow the recommendation of the Committee and revise promptly domestic law which restricts the right guaranteed in the Convention while the court of justice should interpret and apply domestic law in compliance with the Convention.

II. Treatment of Inmates Sentenced to Death (Article 6)

A. Our Conclusion and Recommendation

Two aged death row inmates, namely Mr. Masaru Okunishi (87 yrs.-old) of the Nabari poisoned wine case and Mr. Iwao Hakamada (77 yrs.-old.) of the Hakamada case, have been held in solitary confinement for 40 years or longer. Both have appealed for retrial after they were sentenced to death in 1972 and 1980. One is in the critical condition on oxygen after tracheotomy while the other has been mentally disturbed with the conditions of prison reaction. In conjunction with the above cases, we would like the Committee to make the following recommendations independently from the improvement of general medical service.

1. Urge the Government to make the arrangement so that they may receive the best medical treatment including those at external medical institution immediately, the cost of which should be borne by the State.
2. That execution of their sentences should be cancelled while the retrial should open promptly.
3. the Government should ensure that families of death row inmates and lawyers be informed of specific medical treatment so that families or lawyers may contact doctors or specialist in charge and that fully- informed consent may be obtained.

B. Concerns and Recommendations of the Committee

In Para 16 of the Concluding Observation (CCPR/C/JPN/CO/5), the Committee observed human

approach about the treatment of death row inmates, but nothing was mentioned about their medical treatment.

C. Response of the Government and the 6th Periodic Report of the State Party

Para 107-109, 113 of the 6th Periodic Report

(3) Treatment of inmates sentenced to death

(a) Grounds for detention of inmates sentenced to death and their general treatment

(b) Outside contacts for inmates sentenced to death

87. Inmates whose death sentence has become final and binding are detained in detention houses until the time of execution. They are treated in a manner nearly equivalent to that for unsentenced persons. For example, they have no obligation to work, and they are allowed to buy food and drink at their own expense. In order to help inmates sentenced to death stabilize and control their emotions, they are allowed to seek counseling or teachings from religious leaders or voluntary prison visitors.

88. As inmates sentenced to death are placed in an extreme situation where they must wait for execution of the death penalty, they are afflicted by extraordinary mental instability and emotional distress. It is therefore necessary to pay due consideration to their mental stability, not just to ensure their detention in a strict manner.

89. Based on this standpoint, the Act on Penal Detention Facilities and Treatment of Inmates and Detainees allows inmates sentenced to the death penalty to contact the following individuals in principle: (i) relatives, (ii) persons with the necessity to have a visit in order to carry out a business pertaining to an important concern of the inmate sentenced to death, and (iii) persons whose visit is deemed instrumental to help the inmate sentenced to death maintain peace of mind, and contacts with other individuals are permitted at the discretion of the warden of the penal institution when the visit or other contact is reasonably deemed to be necessary for the maintenance of a good relationship with this individual or for any other reasons and when it is deemed that there is no risk of causing disruption of discipline and order in the penal institution.

(e) Elderly persons and persons with mental disorders

93. While no Japanese law stipulates any special treatment concerning execution of the death penalty by reason of the fact that an prisoner sentenced to death is an elderly person, article 479, paragraph 1 of the Code of Criminal Procedure stipulates that, when the person who has been sentenced to death is in a state of insanity, the execution shall be suspended by order of the Minister of Justice. The mental condition of a prisoner sentenced to death is carefully considered at all times and, where needed, mental care is provided by a physician from an expert standpoint. If it is determined, based on these factors, that the prisoner is in a state of insanity, the execution of the death penalty is

suspended.

D. Our Opinion

1. Government's report does not reflect the reality

Government reports that due consideration is given to their mental stability (para108), that the execution of the death penalty is suspended if the prisoner is in a state of insanity (para113) and that mental care is provided by a physician from an expert standpoint (para113).

However, the fact is that substantial number of death row inmates have been driven to insanity or into mental derangement by cruel treatment of the authorities, such as many years' solitary confinement, unreasonable restriction on communication with the outside.

Moreover, circumstances surrounding medical treatment are not clear or transparent. Even when a death row inmate was determined and declared insane, no measure was taken to suspend the execution.

2. Mr. Masaru Okunishi in the Nabari Poison Wine Case

(1). The courts noted no substantiated evidence three times.

Since the incident took place in 1961, the courts have repeatedly pointed out that prosecutors relied too much on his confession and that no sufficient evidence was presented to establish his guilt three times from 1964 through 2005 as listed below. Each time, prosecutors made new arguments, owing to which death sentence has been maintained.

This is a very serious case in which a man has been tossed about between non-guilty and death sentence over the half century since the incident took place.

March 28, 1961 the incident took place (arrested, prosecuted)

Dec.23, 1964 First trial at Tsu District Court "non guilty" sentence (released)

Sept. 10, 1969 Second trial at Nagoya High Court "death penalty" sentence (detained)

June 15, 1972 Third trial at Supreme Court of Justice "final-appeal dismissed" (death penalty finalized)

* With a counsel's support in 1977, filed fifth appeal for retrial.

April 10, 2002 Filed 7th appeal for retrial

April 5, 2005 Nagoya High Court decided to reopen the court for retrial (execution suspended)

Dec.26, 2006 Nagoya High Court cancelled the ruling for retrial.

April 5, 2010 Supreme Court reversed the cancellation

May 25, 2012 Nagoya High Court decided to cancel the retrial. (Execution was reinstated.)

Mr. Okunishi was transferred to an outside medical institution on May 27, 2012 then to Hachioji medical prison on June 11.

May 2, 2013 He was temporarily at the point of death. He is still in critical condition.

(2) Handcuffed in Bed with Serious Illness

In 2012, Mr. Okunishi was 87 years old. He had difficulty with swallowing food. Right after he was informed of the Nagoya High Court's decision to cancel the re-trial, his condition took a sudden turn for the worse. Quickly he was transferred to an outside hospital. In that hospital, he was given oxygen through the nose and antibiotics intravenously while he was on urinary catheter. Yet he had to suffer another inhumane treatment from the authority.

The Nagoya prison placed a handcuff on his right wrist, connected to an arresting rope, which was connected to a prison officer's wrist at the other end, while they were fully aware that Mr. Okunishi lay in bed on the death's door. Although Mr. Okunishi complained of pain and the counsel and the supporter protested, the prison refused to remove the handcuff before he was transferred to the Hachioji medical prison in June. Nagoya prison justified its inhuman treatment as a lawful one in compliance with Article 78 of Act on Penal Detention Facilities and Treatment of Inmates and Detainees, which stipulates "Prison officers may, pursuant to a Ministry of Justice Ordinance, use arresting ropes or handcuffs in cases where either they escort inmates... Nagoya prison said that any inmate who is out of prison should be escorted back to the prison.

3. Mr. Iwao Hakamada of the Hakamada Case

(1) World's longest detained death row inmate

He has been in prison for 47 years since he was first arrested on the charge of arson and murder in 1966. He is recognized as the world's longest detained death row inmate on the Guinness world record.

(2) Psychiatric Disorder and Lack of Communication with the Outside World

---- prolonged solitary confinement and severe psychiatric disorder----

Since his death sentence was finally confirmed in 1980, Mr. Hakamada has been acting erratically and strangely. On the pretext that he himself refuses to see anybody, the prison authority put him in solitary confinement. Even his family members have not been allowed to see him over a long period of time.

Later on, he was diagnosed as prison reaction or delusional disorder with the background of detention by three doctors who saw him directly. However, Tokyo prison has been infringing on the right of Mr. Hakamada to receive medical treatment by arguing that there is no condition which requires the treatment.

Moreover, no measure was taken to suspend the execution for an inmate who is diagnosed as insane either. Recently, he shows signs of having dementia and diabetic. While Hideko, his elder sister by blood, filed an application to be appointed as his guardian, the Tokyo court of domestic relations dismissed the application. She filed an immediate appeal.

III. Treatment of Death Row Inmates- Part Two (Article 10)

A. Our Conclusion and Recommendation

With regard to Mr. Masaru Okunishi of the Nabari poisoned wine case, the strict confidentiality has not been secured for his meetings with the legal counsel concerning retrial. Moreover, those death row inmates who are appealing for retrial are not allowed to meet their supporters. And exchange of letters and supplies of provisions are also forbidden. Therefore, we request that the Committee will make the following recommendations.

1. When a death row inmate appoints a legal counsel for retrial, his right should be secured to meet the counsel without presence of a prison officer's presence.
2. When a death row inmate has a sympathizer or a group of people who support his appeal for retrial, the court authority should secure the inmate's right to meet them, to exchange letters with them, and to receive provisions from them,

B. Concerns and Recommendations of the Human Rights Committee

(CCPR/C/JPN/CO/518 December 2008) Para 17.

17. The Committee notes with concern that an increasing number of defendants are convicted and sentenced to death without exercising their right of appeal, that meetings of death row inmates with their lawyer in charge of requesting a retrial are attended and monitored by prison officials until the court has decided to open the retrial, and that requests for retrial or pardon do not have the effect of staying the execution of a death sentence. The State party should introduce a mandatory system of review in capital cases and ensure the suspensive effect of requests for retrial or pardon in such cases. Limits may be placed on the number of requests for pardon in order to prevent abuse of the suspension. It should also ensure the strict confidentiality of all meetings between death row inmates and their lawyers concerning retrial. (art.6 and 14)

C. Response of Government and the 6th Periodic Report of Japan

None

D. Our Opinion

Decision for retrial of Mr. Masaru Okunishi was revoked in 2012. Since then, his meeting with his lawyer has been observed and monitored by the prison official despite the fact that he is the party in interest filing an appeal for retrial.

The 6th Periodic Report of Japan (CCPR.C.JPN.6) states "the Act on Penal Detention Facilities and Treatment of Inmates and Detainees allows inmates sentenced to the death penalty to contact the following individuals in principle: (i) relatives, (ii) persons with the necessity to have a visit in order to carry out a business pertaining to an important concern of the inmate sentenced to death, and (iii) persons whose visit is deemed instrumental to help the inmate sentenced to death maintain peace of mind"(Para 109)

However, contrary to the above statement, the number of people he is allowed to see is limited, virtually one single person, when he needs most the support in terms of material as well as spiritual for the peace of mind.

IV. Substitute Detention System and Disclosure of Evidence (Article 10)

A. Our Conclusion and Recommendation

In view of the fact that the police continue to use substitute detention system for interrogation of suspects for confession, we urge the committee to reiterate the recommendation in Para 18.

Especially, we would like to have the Committee recommend that the Government should adopt the full disclosure system of the evidence which ensures that all suspects, defendants and lawyers are guaranteed the right of access to all evidence related to their cases.

B. Concerns and Recommendations of Human Rights Committee (December 2008)

Concluding Observation (CCPR/C/JPN/CO/5)

18. The Committee reiterates its concern that, despite the formal separation of the police functions of investigation and detention under the Act on Penal Detention Facilities and Treatment of Inmates and Detainees, the substitute detention system (Daiyo Kangoku), under which suspects can be detained in police detention facilities for a period up to 23 days to facilitate investigations, without the possibility of bail and with limited access to a lawyer especially during the first 72 hours of arrest, increases the risk of prolonged interrogations and abusive interrogation methods with the aim of obtaining a confession (art. 7, 9, 10 and 14).

The State party should abolish the substitute detention system or ensure that it is fully compliant with all guarantees contained in article 14 of the Covenant. It should ensure that all suspects are guaranteed the right of confidential access to a lawyer, including during the interrogation process, and to legal aid from the moment of arrest and irrespective of the nature of their alleged crime, and

to all police records related to their case, as well as to medical treatment. It should also introduce a pre-indictment bail system.

C. Response of the Government, 6th Periodic Report of Japan and Government's Comment on the Concluding Observation of the Committee

(1) The detention of suspects is decided following adequate judicial review, and the place of detention is determined by a judge.

(2) The substitute detention system has been well-controlled legally through separation of the functions of investigation and detention which allows police to treat detainees with full respect of their human rights through monitoring by the Detention Facilities Visiting Committee and complaints mechanism.

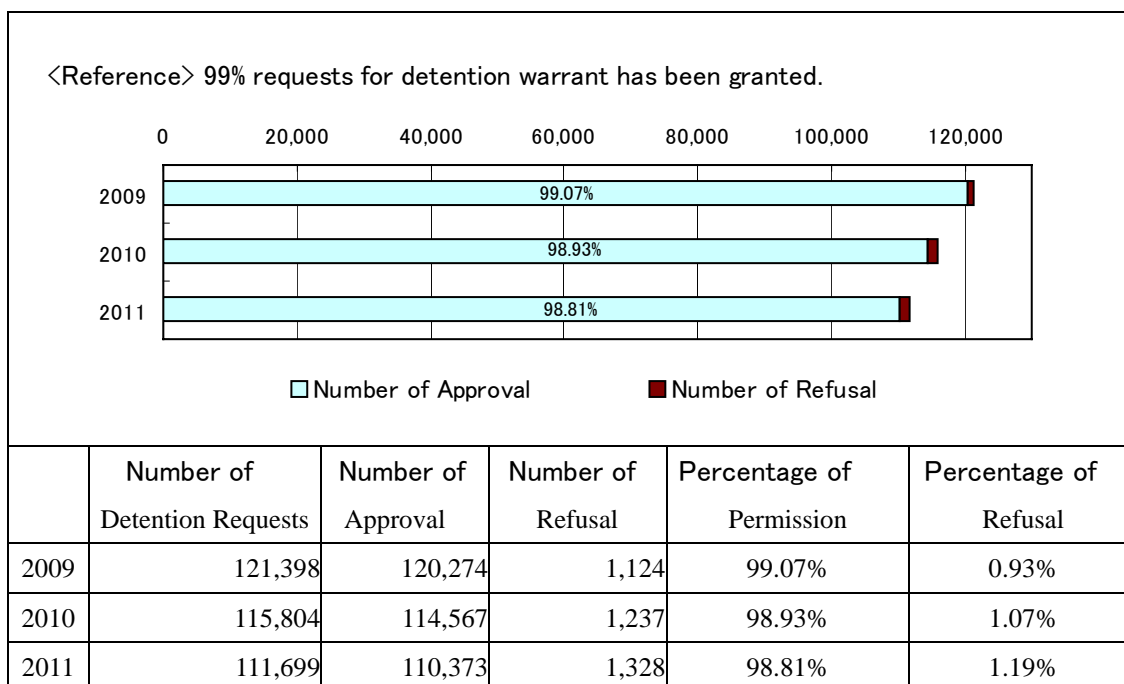
(3) Government states that the prosecutors should disclose evidence for clarifying issues in dispute and preparing for the defense of the accused.

D. Our Opinion

1. We do not believe that the judicial review system is strong enough to control the abusive use of the substitute detention system. As the matter of fact, judicial reviews are not really working. Out of all the detention requests, only one percent is rejected.

Judicial courts routinely grant permission to the request for 20-day-detention on the basis of public prosecutor's written opinion that the suspect may destroy evidences while he or she is not detained and police report which is not submitted to the court.

Prolonged body restraint has become a breeding ground for false confession while some people call it hostage justice. Especially when a male office worker is arrested on the charge of sexual molestation, he chooses to admit his guilt for fear of 20-day detention which means that he will be absent from the job and that he will lose the job.



(Figures are taken from 2010, 2011 and 2012 versions of White Paper on Crime published by Ministry of Justice)

2. Insufficient Disclosure of Evidence.

The revised Code of Criminal Procedure still maintains that disclosure of evidence remains restricted by the decision of a public prosecutor. Neither of the accused and their counsels have no access to the evidence including the list of evidence in the hands of prosecutors. Especially in the case of retrial, to which the revised code of Criminal Procedure does not apply, evidence is mostly at the discretion of prosecutors and the court.

In 2011 and 2012 two of the death row inmates were proven innocent and their death sentences were revoked in the Fukawa case and the murder of TEPCO female office worker. In the course of retrial, it was revealed that evidence of innocence was hidden.

In the Fukawa case, following evidences were hidden over thirty years. (1) Eyewitness account that a witness saw a different person from the accused near the crime scene, (2) the postmortem certificate which indicates that the cause of death was strangulation rather than manual strangulation, to which the accused confessed. (3) Sample hair collected at the crime scene does not belong to the accused but to the victim and someone else who was more likely to be the perpetrator.

In the murder case of TEPCO female office worker, two weeks after the case was disclosed on March 19, 1997, the crime lab expert was of the opinion that blood type of saliva found on the victim's body was type O. The suspect was arrested on May 20th, but his blood type is type B. Investigative organizations could have the knowledge that the accused was not the real perpetrator. The expert evaluation has also been hidden over 15 years.

In September 2010, the news exposed that a prosecutor of Osaka District Public Prosecutors Office tampered with the evidence of floppy disk, causing great shock to Japan. Yet, this was not an unforeseen incident but it revealed the intrinsic nature of a criminal investigation organization in Japan. As mentioned above, prosecutor and police appear to think that anything goes to have a suspect or the accused convicted. They treat the evidence as if they are the personal possession of their own ignoring the fact that the tax money was used to collect evidence. They have been tampering with, fabricating and hiding the evidence for some time.

V. Interrogations and False Confession

A. Our Conclusion and Request

We would like to have the Committee reiterate the previous recommendation in Para 19 of the Concluding Observation. (Art.7, Art. 9, Art. 14)

B. Concerns and Recommendations of the Human Rights Committee

CCPR/C/JPN/CO/5 (Concluding Observation dated December2008) Para 19

19. The Committee notes with concern the insufficient limitations on the duration of interrogations of suspects contained in internal police regulations, the exclusion of counsel from interrogations on the assumption that such presence would diminish the function of the interrogation to persuade the suspect to disclose the truth, and the sporadic and selective use of electronic surveillance methods during interrogations, frequently limited to recording the confession by the suspect. It also reiterates its concern about the extremely high conviction rate based primarily on confessions. This concern is aggravated in respect of such convictions that involve death sentences (art. 7, 9 and 14).

The State party should adopt legislation prescribing strict time limits for the interrogation of suspects and sanctions for non-compliance, ensure the systematic use of video-recording devices during the entire duration of interrogations and guarantee the right of all suspects to have counsel present during interrogations, with a view to preventing false confessions and ensuring the rights of suspects under article 14 of the Covenant. It should also acknowledge that the role of the police during criminal investigations is to collect evidence for the trial rather than establishing the truth, ensure that silence by suspects is not considered exculpatory, and encourage courts to rely on modern scientific evidence rather than on confessions made during police interrogations.

C. Response of the Government and 6th Periodic Report (CCPR/C/JPN/6)

The Police and Public Prosecutors each set up their own guidelines to promote the proper interrogations in which strengthened supervision, strict management of the time and length of interrogations are emphasized. The audio and visual recording of police and prosecutor's interrogations has been expanded since it was first launched on the experimental basis several years ago. At the same time, Ministry of Justice is deliberating legislation to establish a new criminal justice system including the audio and video recording of interrogations.

D Our Opinion

1. Under those measures, interrogations are monitored by police or prosecutor's office insiders, the system will not function as effective deterrent against false confessions. Recently, another case of false confession caught the public attention, which was called the case of computer virus remote control.

From June 2012 through September 2012, there were several cases of intimidation through announcement of murders, bombings and attacks on the websites or by e-mails. It turned out that the perpetrator passed the computer virus randomly to others' computers, through which he sent out the malicious messages. Four men were suspected and arrested in the series of incidents. But in October, the real perpetrator came out to distribute an e-mail to several mass media in which he admitted his guilt. After the truth became clear and confirmed, the National Police Agency admitted that they erroneously arrested those four men.

What is important here is that two of four suspects were driven to make false confession. In their confession statements, they even elaborate on the "motives "for the crimes which they never committed. In the case 19-year old boy, he mentioned the handle name which only the real perpetrator and the police knew. He was obviously coaxed into saying things that he did not know at the time during interrogation.

2. There is a statistics which seems to sustain the position that public prosecutors are drawing up the defective confession in terms of arbitrary property. Followings are the result of the public prosecutors' opinion poll after the incident of public prosecutor's alteration of evidence mentioned earlier. The Supreme Public Prosecutor's Office released the results of questionnaire covering all 1444 prosecutors in March 2011, which shows that some have prepared the dubious statement of confession following their bosses' instructions as they found it hard to raise objection to their boss.

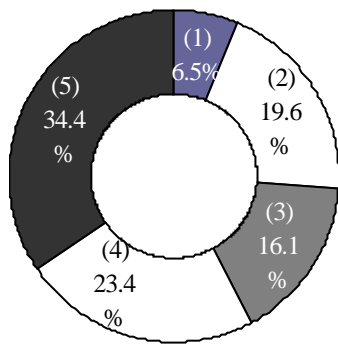
“Have you ever been instructed by your boss to write the statement of confession with a different content from what the accused told?” Yes 26.1%

"Have you ever seen or heard interrogations which may cause problems later on with regard to arbitrary property?" Yes 27.7%

"Do you feel the whistle blowers or those who appealed to the management directly on dishonest acts are at disadvantage in personnel rating or promotion?" Yes 22.8%

We believe that these figures support our complaint that substantial number of confessions is extorted by public prosecutors.

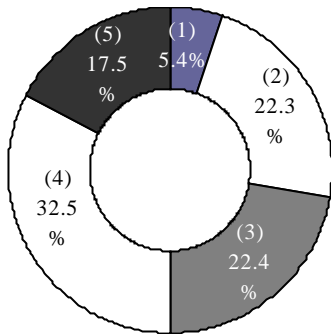
Have you ever been instructed to write the statement of confession with a different content from what you heard ?



(1) Yes, definitely..	6.5%
(2) Yes, to a certain degree..	19.6%
(3) I cannot say Yes or No.	16.1%
(4) No, but it is a very limited case..	23.4%
(5) Definitely No..	34.4%

yes	26.1%
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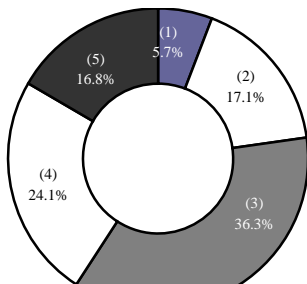
Have you ever seen or heard interrogations which may cause problems later on in terms of arbitrary property ?



(1) Yes, definitely..	5.4%
(2) Yes, to a certain degree..	22.3%
(3) I cannot say Yes or No.	22.4%
(4) No, but it is a very limited case..	32.5%
(5) Definitely No..	17.5%

yes	27.7%
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"Do you feel the whistle blowers or those who directly appealed to the management on dishonest act are at disadvantage in personnel rating or promotion?"



(1) Yes, definitely..	5.7%
(2) Yes, to a certain degree..	17.1%
(3) I cannot say Yes or No.	36.3%
(4) No, but it is a very limited case..	24.1%
(5) Definitely No..	16.8%

	yes	22.8%
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3. Police makes experimental use of audio or video recording system selectively to the extent that it does not hamper the functioning of the interrogation. Police recorded the scene of an interrogator reading out loud the written confession to the suspect and that of the suspect signing the confession. This kind of recording may give an impression to members of lay-judges that the confession was made voluntarily.

With regard to Public Prosecutor, out of total 2,465 lay-judges cases, only 399 cases (16%) were recorded in their entirety. (The Supreme Public Prosecutors' Office "verification concerning audio/visual recording of interrogations by prosecutors")

4. At Legislative Council's Special Committee of New Age Criminal Justice System, two plans are being discussed in parallel. One is recording of all the process of interrogation with all lay-judges on their mind. The other is it should be up to the interrogator to decide whether or not recording should be made.

Recently, at the initial discussion of the working group, strong objections were raised against full recording. Exemptions were proposed such as "when an interrogator is concerned that recording may hamper the interrogation, he can suspend the recording at his discretion, which, we believe, will take the tooth out of the new legislation.

Incidentally at the same meeting, a police leader made interesting comments as follows in opposition to the full recording: "I am of the opinion that we would have huge problems if full recording of the entire interrogation becomes legal requirement. I would like to point out three aspects of police interrogation as the one working at crime scenes every day.

Firstly, recording would make it difficult for both parties of the interrogator and the suspect to make frank exchange of communication between the two. It is the human nature that one does not want to say things which would place him or her at disadvantage. Even more so when he is aware that the crime he committed could lead to serious punishment such as death penalty. Honesty, in this case, is not a virtue for him to follow... It is important that we appeal to his conscience to obtain the truth from the suspect, but this is not an easy thing to do.

An interrogator throws many questions of different kinds, not only about the act of crime but also his background, his family the suspect cares, his childhood and growing up, unhappy experiences behind the crime, and worries in his efforts to establish communication with the suspect. From time to time, the interrogator even reveals his personal experiences.

During the whole process of the dialogue, the interrogator carefully observes facial expression and gestures to catch the shift in mood and emotions he desperately tries to hide and eventually to touch a string in the suspect's heart. Through such process, the suspect comes to express his

honest feelings gradually. Finally he opens up to tell the story of his crime, details of which only the perpetrator knows after overcoming the fear and apprehension of the punishment.

I think it is absolutely impossible for any set of interrogator and criminal to reveal the privacy in front of the camera and to build a rapport between them." (Remark of Mr. Iwase, Vice Inspector General of the Metropolitan Police Department in July 2011 at the second meeting)

The Aichi Prefecture Police, which is well known for its technique of weakening suspects into confession offers following tips.

- Get to know your suspect. Take hold of his childhood, family background, personality, family life, personal circumstances, and hobby, and so on as much as possible.

- Detect what is on the mind of the suspect (learn the mind reading).

- Need to be a sympathetic listener of the suspect's account from time to time.

- The interrogator should strip himself down. Forget you are a police and he is a suspect. Talk about your childhood, school life, and private life with the suspect at the same footing of human being and build rapport with him.

These statements show how much Japanese Police clings to the traditional method of reaching the truth by building human relationship between the interrogator and the suspect rather than relying on scientific and objective evidence.

5. Even at the court of justice, some accused are judged guilty on the ground of their own confessions. Read the following case histories.

◆The Ashikaga Case

This is a case in which Mr. Toshikazu Sugaya was arrested and prosecuted on the charge of obscenity kidnapping, murder, abandoning of the body of 4-year-old girl in 1990 and he was sentenced to life in prison. Investigating authority in those days used undeveloped technique for DNA test which showed that the blood belonged to Mr. Sugaya. The Police then forced him to confess the crime using the above mistaken test result. The court ruled that he was guilty on the ground of his confession and the DNA test result.

When he filed a request for retrial in 2002, he was given the second DNA test which showed that the type of DNA present which was considered to be the perpetrator's body fluid is different from that of Mr. Sugawara.

Prosecutors also accepted this finding, suspended the execution and released him before the opening of the retrial was decided. Then prosecutors made the closing argument of his innocence. He was confirmed not guilty ultimately in 2010. The judgment of non-guilty pointed out clearly that the confession was fabricated and false.

◆The Hakamada Case

Presently, Mr. Hakamada is filing the second application for retrial. Mr. Norimi Kumamoto, former judge, who wrote the guilty sentence in the lower court 1968, confessed in tears that he wrote the guilty sentence although he believed that Mr. Hakamada was innocent. His confession was widely broadcasted by TV.

◆Confession of Mr. Kumamoto, a former judge (summary)

"I was the chief judge of this case. I had serious doubts of the prosecutor's evidence being fabricated and I felt confident that Mr. Hakamada was innocent. However, I could not persuade senior judges. Beaten by the majority of two to one, I had to write the guilty sentence though reluctantly. I was so frustrated and so angry that I added a few sentences to the judgment in order to convey my anger that I had to deliver death sentence to an innocent man. They went something like the following. "Prosecutor was too anxious to obtain confession to make reasonable efforts in the search of material evidence. "From the view point of securing the proper procedures...the authority must take a hard look at its investigation." "However, regret remained and I had to resign from the position of a judge after that. Not a day has passed since then without remembering frustration and anger I had on that day. And I had my family broken up."

The higher court also ruled that Mr. Hakamada was guilty on the ground of his confession even after the court confirmed that the evidence of trouser that he was supposed to wear at the time of his crime was much too small for him.

◆The Case of Nabari Poisoned Wine

Although he won the decision of retrial in the 7th application for retrial, in 2006, after the Public Prosecutor raised the objection to the decision and the retrial was revoked in 2006. In that decision, the judge describes that his decision was made principally on the ground of the confession of the accused as follows;

"What he confessed was the serious crime of murder, which, everybody knows, would be punished by death. However desperately he wanted to escape from the pain, it is difficult to imagine that he made the false confession with deadly result so easily. (Decision on appeal to 7th retrial decision, December 26, 2006, Nagoya High Court)

VI. Investigation of Thoughts of Citizens and Workers, Violation of Privacy (Article 18)

A. Our Conclusion and Recommendation

In 2012, Mayor Hashimoto of Osaka City ordered approximately 30,000 city employees to fill out "the questionnaire concerning labor-management relation".

The questionnaire asked many questions including his thoughts, mottos, beliefs, details of friends he has, what he knows about the political views of his friends and acquaintances. The workers were forced to reveal privacy in wide range of their life. It was extremely painful for the city workers to answer those personal questions. It is in violation of Article 7, Article 17, Article 19 as well as Article 18.

In 2004, Japan Ground Self Defense Forces Intelligence Unit was illegally monitoring and collecting information on anti-war demonstrations and meetings as part of anti-JGSDF movement. The secret monitoring was disclosed by Japan Communist Party which found about the internal document. JGSDF continues to monitor civil movement. On the pretext that JGSDF needs to watch anti-JGSDF activities, JSDDF covers almost all civil movements, by monitoring demonstrations and meetings, which we believe, is in violation of Article 17, Article 18, Article 19, Article 21 and Article 22.

We would like to have the Committee make the following recommendation.

It is in violation of the Covenant to investigate the thoughts and privacy of workers or to monitor citizens' political activities such as demonstrations and meetings. The State and Osaka City should apologize to those who were subjected to unreasonable demands and surveillance as well as to take the measures to prevent the recurrence. JGSDF should stop the surveillance of the civil movement immediately.

B. Concerns and Recommendations of Human Rights Committee

None

C. Response of the Government and 6th Periodic Report of Japan

None

D. Facts

◆The Case 1, Osaka Committee on Labor Affairs declared Osaka City Questionnaire on the Thoughts of City Employees as unfair labor practice on March 25, 2013. 55 city employees, some of whom are no longer working for the city, filed a lawsuit against Osaka City demanding compensation for their mental distress. The case is still pending.

1. Who Were To Be Surveyed, How to Answer, Period of Duration

Instructions from Chief of General Affairs Dept. of Osaka City addressed to Chiefs of All

Department states as follows.

“To all City Employees: This is a work order which all employees of Osaka City (with the exception of irregular workers) are expected to follow and answer the questions

How to Answer: Respondents should write names, workers' ID numbers, Department which he or she works for, type of work, Employee status and fill out the answer to the questions in the space provided.

The period: From February 10, 2013 through February 16, 2013

2. Work Order to Answer the Questionnaire

Hashimoto Toru, Mayor of Osaka City, stated as follows in the memo titled as "With regard to questionnaire" addressed to all city employees;

"This inquiry is not optional. This is mayor's order which I expect all to answer questions truthfully and correctly. If you do not answer truthfully, you may be subject to penalty."

After the questionnaire incident, city workers complained that they suffered severe mental pains saying that they were under the strong pressure by such words as work order, penalty, and dismissal.

3. Points in Question in the Questionnaire

1) Forced confession of labor union activities and political activities

The Questionnaire includes the following questions.

Q6. Have you ever participated in the union activities sponsored by the Osaka City Union concerning labor conditions? (Even if you are presently non-members of the union, you have to answer from the past experiences.)

Q7. Have you participated in the support campaign for a certain politician (including the act of giving the addresses of your acquaintances or of listening to the political figure's speech on the street)? (Regardless of union membership, all city workers are required to answer.)

Q8. Have you ever been requested by your colleague to vote for a certain politician? (Regardless of you being a union member, all city workers are required to answer.)

2) The Questionnaire encourages respondent to be an informer about who invited him to labor and political activities. The following options are additionally provided in the answer column to those questions mentioned above.

(1) If you answered yes, did you go there on your own initiative or by someone else's invitation?

(2) If you are invited to participate, who invited you?

Those questions are highly problematical. For example, when A answered that he did not participate in the political or union activity, B answered that he was invited by him to join. Apparently A is not telling the truth. Each question is provided with following comment which shows the way to give

personal information anonymously.

"You do not have to write the name of the person who invited you. Instead you can inform the name anonymously to the address noted herein "The address given was Osaka Information, Lawyer Nomura Shuya (located in Tokyo) with details of surface mail address, fax numbers and e-mail address.

3) Investigation into the Conversation at the Workplace

There were more of the questions in the total of 21 categories including the followings.

Q12 "Have you ever talked about election at your work place? (Mark all that apply. Everybody should answer whether he or she is a member of the city union.) In that conversation, did you feel that you are suggested to vote for a particular person?"

◆Case 2 Japan Self-Defense Force (JSDF)'s Monitoring of Citizens' Movements (and Law Suit Demanding Injunction)

1. History of the case: 107 citizens took legal action to seek injunction of JSDF's monitoring of citizens' movements against deployment of JSDF members in Iraq while claiming the damages caused by monitoring.

Although the State refused to admit to both the fact of monitoring and the existence of internal document, Sendai District Court recognized that JSDF collected information and prepared the document, and delivered the ruling that JSDF acted illegally. The court ordered JSDF to pay five of the plaintiffs the compensation. However Sendai Court did not grant injunction. So Both citizens and JSDF appealed.

2. Testimony of the Captain of Information Collecting Unit of JSDF-

All civil and labor movements are targeted for surveillance.

During 2003 through 2004, Mr. Takeshi Suzuki, Captain of the Information Collecting Unit appeared before the court. In answer to the plaintiff's attorney's question, he repeatedly said, "I cannot say a word about the issue in question here in the court." He also said, "I can make a general statement about the activities which are more likely to be monitored."

- Campaign Activities to Oppose Iraqi War outside the city
- Indoor meetings to oppose Iraqi War
- Signature campaign activities for elimination of nuclear weapons
- Propaganda activities of labor unions for annual spring wage round
- Phone calls of noise complaints to military post

VII. Article 19 Freedom of Expression - With Special Thanks to the Committee (Article 19)

A. Concerns and Recommendations of the Committee

Concluding Observation (CCPR/C/JPN/CO/5) dated 18 December 2008, Para 26

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 (art. 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.

B. 6th Periodic Report of Japan

(Para 266 and 267)

2. Restrictions on political activities by national public employees

266. While the freedom of expression guaranteed under the Constitution of Japan is allowed also for national public employees, the National Public Service Act and the NPA Rule 14-7 currently in effect impose restrictions on political acts likely to be detrimental to the political neutrality of national public employees. Therefore, it is considered to conflict with such restrictions to make house-to-house visits with the intention of supporting or disapproving any specific candidate or political party, or to distribute documents or drawings with political purpose. As these restrictions are the minimum necessary restrictions to maintain the political neutrality of national public employees who are engaged in public administration as the public servants of all citizens, as is imposed by the National Public Service Act and the NPA rule based on the delegation under said Act, these restrictions are considered not to cause violation of the Covenant.

267. According to the Supreme Court's judgment in 1974, prohibiting acts of posting or distributing documents with political purpose is constitutionally permissible insofar as such prohibition is a reasonable, necessary, and unavoidable restriction

C. Our Report

Finally concerns and recommendation in the Concluding Observation dated December 2008 has been implemented in the Japanese legal system. The Supreme Court of Japan made an unprecedented ruling of not guilty making a progress in the human rights conditions. Concern and Recommendations in the Concluding Observation (CCPR/JPN/CO/5) Para 26

Para 26 states as follows;

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 (art. 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

With all the proper nouns withheld, it is clear to us that the recommendation refer to the cases of Horikoshi, Setagaya, Katsushika handbill distribution, Tachikawa Anti-war handbill and Oita Prefecture Oishi city assembly man election, in which ordinary citizens were accused, arrested and prosecuted in violation of National Public Service Act.

◆Increasing number of free speech suppression cases and court of justice

From 2004 through 2005, in addition to the Horikoshi case (March 2004), the Setagaya case (September, 2005) mentioned above, there were a case of Tachikawa anti-war flyers, in which three men posted anti-war campaign flyers in the postboxes and were arrested and prosecuted with the charge of trespassing (February, 2004) and another case of Katsushika in which a man was distributing flyers with a city counsel's report in the City Assembly and was arrested and prosecuted with the charge of trespassing.

Following the United States attack on Iraq in 2003, the Koizumi cabinet in those days deployed troops of the Self-Defense Forces in Iraq. In the conservative political circle, many voiced the need for revision of the Constitution, especially for revision or elimination of Article 9 (Pacifism). The next Abe Cabinet anxiously passed the Act of Procedure for the Revision of Constitution in 2007.

With the background, some citizens were strongly against revision of the Constitution. In their efforts to let the public know their position for their support, they posted flyers to each house. The security police of the Tokyo Metropolitan Police took a hostile view of them. After consulting with the Public Prosecutors, the security police arrested and prosecuted those anti-war and pro-peace Constitution activists.

Both cases of Tachikawa and Katsushika were ruled not guilty in the first instances. Yet Higher Court overthrew the previous rulings and gave them guilty sentences.

On the other hand, with regard to the cases of Horikoshi and Setagaya, which involves national public employees, the rulings were guilty from the first instance. Despite the fact that all they did were distributing politically motivated handbills, they were charged with violation of the National Public Service Law.

In the case of Oita Oishi, city council Oishi remained guilty all the way up to Supreme Court. He was charged with violation of the Public Offices Election Law only because he handed out the newsletter of his support group to his supporters before the local election was publicly notified.

However, while the Horikoshi case was appealed at High Court, the above-mentioned "Concerns and Recommendations" was issued. Defense lawyers immediately brought them into the court and made good use of them in their discussion.

They argued that this was a case of suppression to the freedom of speech in violation of the Covenant and presented the Human Rights Committee's concerns and recommendations. Then they demanded that Japan should comply with the international standards of human rights.

Supreme Court ruling which bound public employees over 40 years

National Public Service Law prohibits almost all national public employees' political activities, and it is specifically provided that they are restricted even when they are off-duty. However, in the above-mentioned two cases, the accused distributed flyers in the casual clothing without showing any sign of his being a "government official", in the places unrelated to their work while they were off-duty. Nobody thought they were public employees. If anyone noticed them; he must have thought that he just saw ordinary citizens. There was no turmoil or confusion either.

However, Supreme Court judgment (in 1974, so-called the Sarufutsu case) ruled that National Public Service Law was not in violation of Article 21 of the Constitution. Although there was no prosecution on the ground of the prohibitive regulation of the Law because of its unpopularity and much criticism the logic of Supreme Court continued to restrict the freedom of Japanese public employees' speech and expression. Let us introduce the judgment as follows though it is rather long.

The judgment starts with the need to restrict public employees' political activities, i.e., the purpose of regulation. It says "If and when public employees are allowed to be politically active and their political activities are left alone, their political neutrality would naturally be lost.

Then, a possibility emerges that performance of their duties, eventually; operation of the administrative body where they work might be slanted according to their ideology. As a result, it is inevitable that the public confidence in the neutrality of the administration would be lost. "Public employees' political bias easily invites unjust political intervention into the administrative body. As a result, we would have a greater risk of losing the neutrality in the management of administration. Not only that, if such tendency grows larger, serious political confrontation will be developed within the administrative organization whose fundamental duty should be to serve the entire people of

Japan with the political neutrality.

"Thus, there is a risk that efficient and steady operation of the administrative bodies would be hindered, which would lead to the disruption in the implementation of the national policy which is determined through the political process of parliamentary democracy."

"The restrictive measure of public employees' political activities is exactly for prevention of harmful effects so that the common interest of Japanese people including public employees shall be protected as required by the Constitution in the secured neutrality of administration, where the public can trust and put its confidence."

And the judgment went on to say, "Although interest of public employees' participation are lost by the restriction,

The benefit acquired is even more important in comparison with the merit lost because the restriction maintains the neutrality of all public employees as well as the neutrality of administrative bodies so as to secure the confidence of the citizens. Benefits are in the interest of the entire nation."

The judgment gave priority to the national interest of the neutral public employees over the freedom of expression (freedom of political participation), which means that the interest of those who regulate comes first.

Above-mentioned two cases of public employees' arrest and prosecution took place after 30 years of the Supreme Court judgment on the Sarufutsu Case. Security police brought up the old judgment from the dusty warehouse in order to suppress the people's activities of speech.

Gratitude to the Committee's 2008 Concluding Observation for Making a Hole in the Wall of Tradition

This time, the Horikoshi case is ruled not guilty. The High Court judgment started with the statement that the freedom of expression guaranteed in Article 21 of the constitution is the foundation of democracy. If the freedom is restricted, the democracy of determining the national policies based on the will of people will not function. And the judgment further goes on to say that political activities or the freedom of political activities should be protected as much as possible even if the person in question is a public employee.

From this point of view, the judgment points out that Mr. Horikoshi's job requires no discretion and that he is not a management level employee. Such is Mr. Horikoshi, even if he posted political newsletters into the post boxes on holidays independently from his employer or his job, there would be no risk of endangering the people's confidence in neutrality of the administrative body. In conclusion the High Court delivered the sentence of acquittal.

The High Court judgment is very much influenced by the Concerns and Recommendations in the 2008 Concluding Observations. The judgment states, "When we look at the progress or changes in the political and social situations to surmise the changes in the legal consciousness of the people, it is

observed that democracy in our country has grown mature, and rooted steadily. As its manifestation, so-called Freedom of Information Act was enacted in connection with the people's right to know. Or along with the rapid progress of an information society by the spread of Internet, people acquire information daily wide variety of the information, including restriction of the freedom of speech in non-democracy states. People of Japan come to realize the unique importance of freedom of expression as the cornerstones of democracy.

Furthermore, on the international scene, so-called cold war is long over while the conflict of ideology between right and left has calmed down considerably in the domestic scenes. In addition, globalization progresses in all political, economic, and social scenes. Today, the people of Japan realize and accept that it is necessary to see things from the viewpoint of so-called global standard in their life.

Thus, we should say that legal consciousness of the people has gone through a great change from the time of Sarufutsu judgment as explained in the postscript. The same should apply to the people's view of public employees and their duties' business. This is the part which reflects most the concerns and recommendations of the Committee showing the standard of Article 19 of the Covenant.”

Not countering the fair and reasonable argument, the Supreme Court sustained the sentence of acquittal under the strong pressure from the support of the public and mass media. This is the first case that Supreme Court acquitted of the charge in the criminal cases related to the freedom of speech and expression. The big wind hole was made in the National Public Service Law which bound the public employees' foot and hand restricting them from political activities and the judgment of Sarufutsu case, which affirmed it unconditionally, and one big step forward is made in the human-rights situation concerning the freedom of speech and expression. With due respect to the members of the Committee, we are more than pleased to report this favorable change to which the Concluding Observation after the review of 5th Periodic Report of the State Party contributed a great deal.

VIII. Pre-election Campaigning and Political Activities (Article 19)

A. Conclusion and Recommendations

1. The Government of Japan should stop immediately the criminal investigation and prosecution on the ground of the Public Offices Election Law which in itself is in violation of art.19 and art.25, of the Covenant and should take necessary measures accordingly.
- 2 The Government of Japan should abolish provisions of the Public Offices Election Law which are in violation of art.19 and art.25 of the Covenant.

B. Concerns and Recommendations of the Committee

2008 Concluding Observation Para 26→ Refer to "Report 7 on Art.19, Gratitude to the Committee for Recommendation in previous chapter and General comment No.34

Limitative scope of restrictions on freedom of expression in certain specific areas

37. Among restrictions on political discourse that have given the Committee cause for concern are the prohibition of door-to-door canvassing, restrictions on the number and type of written materials that may be distributed during election campaigns and blocking access during election periods to sources, including local and international media of political commentary, and limiting access of opposition parties and politicians to media outlets. Every restriction should be compatible with paragraph 3. However and it may be legitimate for a State party to restrict political polling imminently preceding an election in order to maintain the integrity of the electoral process.

C. Response of the Government and the 6th Periodic Report of Japan

(Description of the 6th Periodic Report Para 261-265, 313, and 314)

1. Restriction under Public Offices Election Law

215. The Public Offices Election Law prohibits election campaigns from using door-to-door canvassing and political literature and illustrations before the start of the period permitted for the campaign.

In election campaigns, door-to-door canvassing is apt to lead to bribery, influence peddling, or other types of corruption and thereby may be harmful to the peaceful lives of the electorate, and propaganda using political literature and illustrations before the specified period is likely to bring about unfair or unnecessary competition, possibly leading to corrupt acts and inequality due to difference in individual financial abilities, since such propaganda activities entail considerable efforts and costs. Because of these negative effects, door-to-door canvassing and campaigns using political literature and illustrations before the specified period are restricted by law.

As these restrictions are solely intended to ensure the fairness of elections, the Supreme Court's ruling states that these restrictions are not in violation of the provision of article 21 of the Constitution of Japan which guarantees the freedom of expression.

In this way, the Public Offices Election Law limits the period for election campaigns and restricts means used for election campaigns in order to ensure fairness of elections and ensure that campaigns are carried out on equal footing to the extent reasonably possible. While subject to the restrictions on election campaigns, everyone is basically free to engage in any political activities.

For political rights in Japan, please refer to the paragraphs for article 25 below.

248. As stated in the previous reports;

“The objectives of the prohibition of election campaigns using door-to-door canvassing and the prohibition of political literature and illustrations before the period specified for election campaigns under the Public Offices Election Law are as explained in the comments for article 19. As the provisions for such prohibition are solely intended to ensure the fairness of elections, the Supreme Court’s ruling shows that they are not in violation of the provision of article 15 of the Constitution of Japan, which guarantees the freedom of expression. It is as the 19th article, these regulations aim at securing the justice of an election chiefly, and judgment that it is not what breaks Article 15 of the Constitution of Japan which guarantees suffrage also in the Supreme Court is just going to be shown.”

D. Opinion

The Committee's recommendation to repeal prohibitions of Public Offices Election Law and the standards specified in the general comment 34 have given the great courage to the citizen of Japan who are seeking the free election.

However, criminal investigation and arrest, prosecution, and guilty sentences still continue on the pretext of violation of the Public Offices Election Law while those people only participated in ordinary election activities as referred in the following example.

Moreover, even if we show to the Police, Prosecutor and the courts of justice that prohibitions in the Japanese election law is considered incompatible with the Covenant in General Comment 34, none of them know what is all about the Covenant. Many campaign workers are participating in election campaigns and political activity, still with fear of getting arrested. Therefore, we request the Committee to make recommendations as stated in A "Conclusion and Recommendation"

<<Examples>

Case 1: The case of Councilman Izutsu of Kakogawa City: Mailing of document

When an independent councilman Yoshiteru Izutsu mailed his newsletters to his supporters in 2008 that expressed his view that the change of power to the opposition party should take place at the Lower House election in 2008, the police considered it violation of the Public Offices Election Law, and arrested him. The court fined him 500,000 yen and suspended his civil rights for three years.

Ms. Yasuko Inoue was arrested at home while she was putting literature in envelopes at her house at night, which police searched in the presence of her frightened child. In front of the child, police threw abusive language at her to force her to make confession, which caused a great damage to the mental stability of the child. In this case, total six of them including citizens and the councilman were arrested and searched.

Case 2: The case of Mr. Kanji Kato of Kobe City: Plastering of Posters

During the Upper House election in 2010, in order to catch the attention of pedestrians for one hour at a crossing, Mr. Kanji Kato tried to tape a poster to the street light. His action was considered a violation of the Public Offices Election Law, and he was arrested. He was detained more than 20 days. The case was not indicted.

Case 3: The case of Kasamatsu-cho, Gifu: mailing of political literature

In 2013 during the election campaign for the Governor of Gifu Prefecture, one member of a town assemblymen posted supporters' association news to the mailbox at the residences of his acquaintances and members. He was then called to the police every day during the election, and the police visited about 90 households to collect information. All distributed materials were recovered. Criminal investigation lasted during the election and ended on the day following the voting day in the midst of protest from the citizens.

Case 4: The case of Yabu City: Mailing of literatures

In the election of city councilmen in 2012, police learned that the letters to the members of the alumni in the name of former high school teacher volunteers contained the message of request for a vote to some candidates. The police repeatedly requested three former teachers to come to the police station. Police searched the house of one former teacher. Police interviewed tens of former teachers. Letters were retrieved. Police also walked into the Post Office for investigation. Criminal investigation lasted more than half a year, and is still continuing.

The former teachers and their families who were repeatedly requested to appear at the Police and whose houses were searched had to undergo a big mental pain.

IX. The Right of Peaceful Assembly (Article 21)

A. Conclusion and Recommendation

We need to let you know the infringement of the right to peaceful assembly guaranteed in Article 21 of the Covenant. Anti-Nuclear Power Plant Alliance was refused the permission to use the Hibiya Park as for their peaceful assembly. Moreover, Japan Teachers Union has been refused to use hotel facilities for their meeting because the hotel was afraid of opposition's disturbance against them. This has nothing to do with the Government or public institutions. But Japan Teachers Union has had great difficulty in finding the facilities to hold their annual peaceful assembly for years as the matter

of fact. Therefore, we propose that the Committee makes the following recommendations.

1. The Government should take the necessary steps to prevent the State or Local Governments from refusing the use of public facilities for peaceful assembly of the citizens on the ground other than those allowed in Article 21 of the Covenant.
2. The Government should take the required measure using the police etc. as so that private persons, such as a hotel, may not fear the action of those who are opposed to the meeting and may not refuse the use of their facilities to those who sponsor peaceful meetings.

B. The Concerns and Recommendation of the Committee

Not mentioned

C. Responses of the Government and 6th Periodic Report of Japan

(Actions taken by the Government and others)

1. Use of Public Facilities,

. Tokyo Metropolitan Government's Refusal to Allow the Anti-Nuclear Power Alliance to Use Hibiya Park

(Action taken by Tokyo and the Court of Justice): the Anti-Nuclear Power Alliance requested permission for the temporary use of Hibiya Park as the starting point of their demonstration on November 11, 2012. Tokyo Metropolis refused it on October 31, 2012.

The Alliance filed a request at Tokyo District Court to issue decision that Tokyo Metropolis has obligation to allow the use of Hibiya Park. The District Court dismissed the request. Immediate appeal was made at Tokyo High Court, which also turned down the appeal. As the result the Alliance could not specify the starting point of the demonstration in the petition for demonstration presented to the Public Safety Commission, which refused to give permission of the demonstration. The demonstration had to be cancelled. To the best of our knowledge, the government has not taken any measure.

2. Hotels refused to rent the facilities to Japan Teachers Union for their meeting in fear of their opponent's action • The Case of Japan Teachers Union vs. Hotel on the refusal to use hotel facilities

(Actions of Court and the Government): Japan Teachers Union planned to hold a national meeting on February 2 to February 3, 2008 for two days at Grand Prince Hotel New Takanawa and the hotel accepted the reservation at the time. However, in November of 2007, the hotel changed its mind and sent a notice for annulment of contract to the Union including the use of hall on the ground of strong possibility that active right wing organizations will cause the trouble to the neighborhood residents in their protest activities against the Union, especially undesirable effects on people involved in the

entrance examination which will take place in these days.

In answer to the Union's complaints, Tokyo High Court gave the order of provisional disposition which declared that the cancellation was invalid, and that the Hotel has obligation to let the Union use the hotel facilities, but the hotel ignored it.

On February 18, 2008, at Lower House Budget Committee, Justice Minister Kunio Hatoyama was questioned about the above matter, to which he said he could not answer on the individual matter but he said that he could make a general statement. He said, "Whatever conflict it is, the ruling of the court should be respected because it was the result of fair discussions in due process. So should any party concerned want to ignore the proper process, I call it unacceptable action in a law-abiding state.

Moreover, Health, Labor and Welfare Minister Yoichi Masuzoe expressed the view that there is strong possibility that cancellation of 190 rooms by the Hotel can be in violation of Hotel Business Law.

The Prince Hotel explained its disregard for the order as follows. "The order came in only three days prior to the opening of the meeting. Police did not contact us on how to counter the actions of right wings. Without their support we found it extremely difficult to deal with turmoil caused by the meeting at our hotel.

In August 2008, Japan Teachers Union lodged a criminal complaint against the Hotel. On March 17, 2009, Security Division of Metropolitan Police gave prosecutors files on Prince Hotel, President and 4 employees with the charge of violation of Hotel Business Act. July, 2007, the case is in suspension of prosecution.

The 6th Periodic Report of Japan states, "As stated in the previous report."

The 5th Periodic Report of Japan mentioned only about the abolition of Infectious Disease Prevention Law.

The 4th Periodic Report of Japan said, "As reported in the 3rd Periodic Report, the right guaranteed in the Covenant is also guaranteed in Article 21, 1 of the Constitution. Restrictions on the right (Article 5 of Subversive Activities Prevention Law, and Article 19.1.3 of Infectious Disease Prevention Law, etc.) are the minimum, which would not violate the Covenant. And there was no reference to the cases above-mentioned.

D. Opinion

In Japan, we hardly come across cases in which the Government is directly involved with infringement of the freedom of assembly. But, there are reportedly many cases in which local governments or private business like hotels refuse the use of their facilities such as halls in recent years.

1. In the case of the Anti-nuclear Power Alliance's failed attempt to use Hibiya Park, the court supported the decision of disapproval. The reasons given by the court were that there was a possibility that 10,000 demonstrators cannot fit in the park, and that the leadership of the Alliance may not control the demonstration of such size. However, the Anti-Nuclear Power Alliance had a respectable record of keeping 200,000 demonstrators under control in July 2012 in an orderly manner in front of the Prime Minister's official residence at the height of anti-nuclear mood.

Considering that the request was for the use of short period as the starting point and that many would not stay in the park long, judgment of the court was unfair and unjust.

2. Apart from those, the residents of Hakone, Kanagawa Prefecture formed a group called "Hakone Article 9 Association" "to preserve the peace clause of Article 9 of the Constitution of Japan. But when they wanted to have a meeting or do some activities, they reportedly had to hide the name of the group to use the town facilities.

When they set up Hakone Article 9 Association in October of 2005, they wanted to celebrate the occasion in the town's Culture Center. So they applied to the Board of Education for permission to use the Culture Center. The Board of Education ordered them not to distribute hand-outs which appealed the need for preservation of the Article 9 and demanded to see the contents of the handouts. The Board of Education said, "It is a one-sided idea to think Article 9 should be maintained. Hakone Article 9 Association is like a political party. Do not appeal to participants about Article 9." On the other hand, the Board of Education denied the allegation by saying "We did not see the handouts preliminarily." They explained, "We just told them to stop making loud noise about the one-sided ideas."

The Article 9 Group decided to swallow the demand of the Board and to have the meeting without the discussion on the Article 9. Since then they continued to use the facilities under the name of Hakone Association so that their activities would not be disturbed. But the name Hakone Association was not good enough. The new trouble broke up. According to the Group, they put up the poster on the bulletin board of Social Education Center in the summer of 2006 with the statement that Article 9 is in a critical situation. The Center covered the statement with a sheet of paper. The then director of the Center explained, "We did it because the statement was not neutral."

3. The case of Japan Teachers Union is a case where a private business refuses the use of its facilities. So far we have never heard that the Government took any remedial action to correct the situation.

2. Foundation of fair and independent domestic Human Rights institution, not one focusing on social integration matters

(Article 2)

A. Conclusion and Opinion

The government of Japan (GOJ) should immediately establish an appropriate institution to monitor Human Rights in the nation, in accordance with Paris Principles. The institution must have the following capacity and nature for protection and relief of Human Rights.

(How to manage the institution)

*To be independent from the governmental authority concerning setting estimate and selecting staff

*To exchange ideas and suggestions with NGOs and citizens and to be capable to make a management, operation and activity fairly, reflecting their opinions

*To set up a totally new organization which the existing one (human-rights protection system in the Ministry of Justice) has not just slipped into

(Authorization and Capability)

*To have power to study and examine on Human Rights violations by public authority and to make recommendation over it

*To be able to raise opinions on governmental policies

(Content of stipulations)

*To show clear definitions on what Human Rights violation is

*As to acts regarded as Human Rights violations, the stipulation should not contain too broad and/or obscure matters that may effect as discouragement.

(Procedure)

*Appropriate procedures must be guaranteed in the process of Human Rights relief

B. The general comments by the Human Rights Committee on CCPR in October 2008

C, No.9 about foundation of Human Rights institution

“9. The Committee notes with concern that the State party has still not established an independent national human rights institution (art. 2).

The State party should establish an independent national human rights institution outside the Government, in accordance with the Paris Principles (General Assembly resolution 48/134, annex), with a broad mandate covering all international human rights standards accepted by the State party and with competence to consider and act on complaints of human rights violations by public authorities, and allocate adequate financial and human resources to the institution. “

C. Written statement in the sixth periodic report of GOJ as of April 2012

“II General Comments

With regard to the establishment of a new human rights institution, there have been debates concerning various issues such as the scope of human rights infringements that are eligible for remedy by the institution, measures to guarantee the independence of the institution and details of the authority of its investigations. At the moment, therefore, a bill for a new human rights institution has not yet been resubmitted to the Diet. The Government considers the establishment of a national human rights institution independent from the Government to be a critical issue and is continuing efforts to prepare for the establishment of the institution.”

D. Opinions

1. The Cabinet submitted a bill on establishment of Human Rights committee in November 9, 2012. But it was abandoned in just a week due to dissolution of the House of Representative in November 16.

The bill of 2012 was one that was submitted for the first time in 10 years since proposition of the bill on protection of Human Rights in 2002 and its withdrawal in 2003. For 7 years after the bill of 2002 was discarded, the GOJ had not seemed to take any specific action for setting up Human Rights Committee in the nation. However, the Ministry of Justice submitted an interim report and announced its basic policies concerning the issue of foundation of a Human Rights relief institution in 2010 and 2011. There held many discussions over these report and policies, both pros and cons ideas were shown, in the nation. Finally the bill of 2012 was proposed.

Though GOJ proposed the bill, JWCHR could not appreciate the government because its content had problems as follows.

2. The bill of 2012 was not sufficient yet in the following points:

(1) There is a part we can observe vestiges of issue of social integration.

i In 1 of Article 2 of the bill, it says “no one should not make action interfering specific person’s human rights unlawfully such as unjust abusing, discriminating and other” and thus it raises issue of unjust discrimination and other at first.

ii 2 of Article 2 prohibits certain actions escalating and inducing discriminations. Here “discriminations” are also concerned much.

iii As you see, we can only understand the bill was something that focuses on prohibiting discrimination, does not target whole kinds of Human Rights infringements. But there is no legislation seen stipulating discrimination is the worst Human Rights violation.

For example, in the sixth periodic report of April 2012, the percentage of Human Rights violation cases dealt with by a currently existing Human Rights Protection system was shown. In that part, “The number of cases handled by the Organs in 2010 is as follows:

Assault and maltreatment (e.g.: violence by a husband against his wife, child abuse):

4,788 cases (22 per cent);

Security of residence and living (e.g.: disputes among neighbors concerning noise):

3,889 cases (18 per cent);

Coercion and compulsion (e.g.: compelled divorce, harassment in the workplace):

3,564 cases (16 per cent);

Bullying in schools: 2,714 cases (13 per cent).”

The percentage of discrimination cases was not stated above and by that it infers the number of discrimination cases is not so large to be pointed out as the worst issue.

iv Nevertheless issue of discrimination was raised especially, stating “unjust discrimination”, “encouragement of discrimination”, “induction of discrimination.” We cannot do anything but contemplate that the reason of that is because there has been tragic special past in Japan on the issue of discrimination in background over submission of the bill.

In other words, concerning eradication of feudal discrimination left in Japan as in other countries, (we call it the issue of social integration hereafter) Human Rights infringement were rather made

repeatedly under the name of issue of social integration as a historical fact. As to social integration, there was a public recognition that it should be erased. So, special legislations had been completed one after another since 1969, and economic preferential treatment was taken for integrated areas and residents there. The living environment was improved and activities for Human Rights enlightenment were done. By these measures, living standards of the area and the residents became high and discrimination awareness was changed into better, and then, the special measures came to the end in March 2002.

However, in the process of the above, a part of antidiscrimination groups and its supporters pointed out very small actions of civilians as discriminatory and put stigma of making discrimination. They enforced the civilians regretting what the civilians did to them, and, under the idea of enforcement of reflection, they held violations, detention, insults, extortions, harassment, unfair treatment and etc. over and over again. It was the situation.

Besides, a part of antidiscrimination groups and administration were in collusion and local administration had lost soundness of the economy for a long time. These were historical facts. When those who experienced the above historical events see the bill setting discriminations as the highest target, they cannot get rid of a sense of caution impressed by the facts. They feel afraid that, with the bill implemented, human rights violations may occur again as a way of accusing discrimination as they had, and that tyrannical victims of discriminations may be justified under the name of prohibiting discrimination in the mechanism of national human rights institution.

v. First of all, there is a background that foundation of national human rights institution was requested in accordance with Paris Principles internationally. But in case of Japan, there is more. People who desired for continuation of special measures on the issue of social integration won the cabinet's decision in 1996 that encouraging human rights education program as general measures, reconstructing the form of special projects as measures upgrading local areas. These people were those who did not welcome the end of special measures in March 2002 stated above and had a purpose to keep ensuring advantages from administration, and put political pressure on the GOJ. As a result, the bill for Human-Rights protection legislation was submitted in 2002.

vi Therefore, human-rights protection legislation had problems, too, and so, opposition was strong. That's why the legislation was abandoned.

vii As you see, to set Human Rights institution in Japan it needs to figure out how to make a law without causing reoccurrence of ill effect of the issue of social integration. For that, the bill should not put priority on reducing discrimination but cover broadly the whole kinds of Human

Rights infringements and be able to materialize eradication of them. Such laws are ones the GOJ needs to establish. Not to turn Human Rights protection institution into one violating human rights, it is important to be careful to establish a truly agreeable Human-Rights protection institution, learning from the bitter past.

viii As stated above, the bill of 2012 was enough to induce a sense of caution on the residue of the issue of social integration, and so, not sufficient to be legislated. The GOJ should create a legislation that is separated from the issue of social integration. When it could do that, there is high possibility to set up a new Human-Rights institution in the nation.

ix For the Human Rights Committee, we would like to request understand the historical facts having created backgrounds in which much difficulty lies in setting Human Rights institution within the nation. The issue of social integration has finished its period when needs interference by administrative measurements. Recommendations to ask for interfering on the issue of social integration is inappropriate, we consider, because it is presented without full understanding of Japanese history possessing ill effect of the issue of social integration in Japan.

For the GOJ, we advise it should announce separation from the issue of social integration and it should propose the law clearly stating separation from the issue of social integration as for foundation of Human Rights institution in the nation.

(2) The bill of 2012 sets a human rights relief institution as an external ministerial of the Ministry of Justice and, in that, it cannot be regarded as an independent institution. Besides, the MOJ is a ministry that controls detention and a prison house, and so, human rights violations tend to be held a lot there. Because the bill sets the institution within an external ministerial of that ministry, the effectiveness of Human Rights system is also concerned.

3. From the above, when evaluating the proposition of the bill by the GOJ, it is too early to say that the GOJ made a certain effort toward a foundation of new human rights institution. The background that makes difficult to produce national human rights institution, that is, concern about reoccurring of the ill effect by the issue of social integration, still lies among citizens deeply. The GOJ understands that. While understanding it, the government could not separate from people who want continuation of administrative measures on the issue of social integration, and in the end, it made insufficient legislation. We would like the GOJ to be separate from the social-integration issues and put importance only on the ideal of Paris Principals. We want the government's effort for foundation of a new national human rights institution. For that, we raised an opinion in the above A.

3. Immediate Ratification of the First Optional Protocol to the Covenant on Civil and Political Rights

(Article 2)

~ establishment of receiving and considering individuals communications procedures (article 2-3)

A. Conclusion and Opinion

The Japanese government should immediately ratify the first Optional Protocol (OP1) to the Covenant, and then, it should install a system supporting communication from individuals and promote implementation of agreement in OP1 nationally.

B. UN Human Rights Committee's Concern and Recommendation

“The Committee notes that one of the reasons why the State party has not ratified the first Optional Protocol to the Covenant is the concern that such ratification may give rise to problems with regard to its judicial system, including the independence of its judiciary.”

“The State party should consider ratifying the Optional Protocol, taking into account the Committee's consistent jurisprudence that it is not a fourth instance of appeal and that it is, in principle, precluded from reviewing the evaluation of facts and evidence or the application and interpretation of domestic legislation by national courts.”

C. Statements in the fifth periodic report by the government of Japan (GOJ) under article 40 paragraph 1(b) of the ICCPR and reaction of the Japanese government

Although the Human Rights Committee has recommended repeatedly for Japan to ratify, the government of Japan have not done it. As a result, among all 156 state parties of ICCPR, while as much as two thirds and more, 68 %-plus of all, have acceded the OP1, GOJ is already delayed in implementation of the Covenant nationally. The reason is due to being unready for ratification, using one pretext or another though calling itself an advance nation in human rights issues.

In the sixth periodic report by the Japanese government, it wrote “The Government considers the individual communications procedure set forth in the Optional Protocol to the Covenant to be

noteworthy in that it effectively guarantees the implementation of the Covenant. With regard to the acceptance of the procedure, the Government is making an internal study of various issues including whether it poses any problem in relation to Japan's judicial system or legislative policy, and a possible organizational framework for implementing the procedure if we were to accept it. In this process, the Division for Implementation of Human Rights Treaties was set up in the Ministry of Foreign Affairs (MOFA) in April 2010. The Government will continue to seriously consider whether or not to accept the procedure, while taking into account opinions from various quarters."

The following is, again, a part of the written statement in the fifth periodic report by the government of Japan on ICCPR the Human Rights Committee observed in 2008, 5 years ago. "However, the GOJ is presently giving serious and careful consideration, while observing operation of the system, to whether or not to conclude the Optional Protocol, as concerns have been raised that this system may give rise to problems with respect to the Japanese judicial system, including the independence of the judiciary as guaranteed by the Constitution. Since December 1999, the GOJ has been examining individual specific cases raised in accordance with this Optional Protocol and has been regularly holding study meetings attended by the concerned bureaus of the MOFA and the MOJ to investigate the effects that introducing this system would have in Japan."

D. The reasons why Japan hesitates to ratify

Common claims in the above two periodic reports of GOJ are as follows.

- (1) The Government is "carefully considering whether or not to accept the procedure, because this system may give rise to problems with respect to the Japanese judicial system, including the independence of the judiciary, and, whether it poses any problem in relation to Japan's judicial system or legislative policy."
- (2) Therefore, "With regard to the acceptance of the procedure, the GOJ has been examining individual specific cases raised in accordance with this Optional Protocol and has been regularly holding study meetings to investigate the effects that introducing this system would have in Japan", and, "making an internal study of various issues including a possible organizational framework for implementing the procedure if we were to accept it." Through the above government's claims, we can say that the Japanese government just keeps considering whether or not it accepts for a long time, and there is no certain, visible progress. JWCHR has requested the implementation of individual communications procedure of relevant ministries, one of foreign affairs and one of Justice. GOJ replied that some concerns are left such as issues

on compatibility with domestic laws, of manpower and an estimate for the system, and huge tasks to translate in Japan where English is not a common language while saying that GOJ has not observed any strong objection to accede to the procedure and that it completed preparations for acceptance.

Though the Democratic Party that took power in the government 3 years ago, the party raised the idea of setting up of mechanism to report human rights violation by individual communications as their policy, materialization of the Covenant was pushed aside after the party lost in the previous election for the House of Representatives.

The GOJ had put “a possible impingement of judicial independence” as an ostensible reason, but in reality, under the situation concerning Human Rights in Japan, it is afraid of being pointed out and corrected for its various breaches of the ICCPR, as violation of the agreement with the system of individual communications. One called *Daiyo Kangoku*, substitute prison before trial, and heavy dependence on obtaining confessions in criminal justice system has let GOJ fall far behind the international standard especially. From the above, the government’s policies putting far too little priority on acceptance of individual communications is what delayed ratification of GOJ.

E. Necessity to ratify OP 1

Japan’s Supreme Court has so far supported domestic laws that violate ICCPR as they are not a breach of the constitution. Because there is a need to ratify OP 1 immediately and exercise the Covenant appropriately in the nation in a specific case as an effective way to correct such a wrongly understood method, JWCHR makes the suggestion in the first paragraph A.

JWCHR, as one of NGOs submitting counter reports to GOJ’s, has collected signatures from groups asking the government to accelerate the ratification of OP 1. This action has been done every year with relevant NGOs and umbrella organizations, and 22,915 groups are in favor of this so far.

4. Regulate the Upper Limit of Overtime Work for the Prevention of “Karoshi” and Realization of Society of Gender Equality

(Article 3)

A. Point at Issue

On the Article 3 the Rights for Gender Equality

The Sixth Periodic Report of Japanese Government points out 15 priority fields to make out the mechanisms for the promotion of the realization of a gender-equal society. In this report we will comment on (c) Gender equality for men and children; (d) Securing equal opportunities and treatment between men and women in employment; (e) Men's and women's work-life balance.

According to "The Global Gender Gap Report 2012," announced on October 24, 2012 in World Economic Forum (WEF), Japan was placed 101 in 135 countries. Women hold low status especially in the economic activities because people work according to the logic of corporations which is based on the work style of men.

According to "the Fundamental Survey of Social life, 2011" carried out by the Ministry of Internal Affairs and Communications, as for the full-time regular workers in Japan, men worked 53 hours a week and women worked 44 hours. Compared to regular workers in Western countries, men in Japan work about 10 hours longer a week and 500 hours longer a year. In Western countries women work from 0.9 to 0.95 times as much as men, but in Japan women work 0.83 times as much as men.

"The Fundamental Survey of Workers, 2010" by the Ministry of Internal Affairs and Communications shows that men work 46 hours a week and women work 34 hours a week, meaning the gender gap of working hours amounts to 12 hours a week. In this survey women work 0.74 as much as men a week.

B. Concern and recommendations of the Committee

“The Committee notes with concern that, despite numerical targets for the representation of women in public offices, women hold only 18.2 per cent of the seats in the Diet and 1.7 per cent of Government posts at the level of directors of ministries, and that some of the numerical targets set in the 2008 programme for accelerating women’s social participation are extremely modest, such as the

5 per cent target for women's representation in positions equivalent to directors of ministries by 2010 (art. 2 (1), 3, 25 and 26)."

"The State party should intensify its efforts to achieve equitable representation of women and men in the National Diet and at the highest levels of the Government and in the public service, within the time frame set in the Second Basic Plan for Gender Equality adopted in 2005, by adopting special measures such as statutory quota and by reviewing numerical targets for women's representation."

"The Committee is concerned about reports that women hold only 10 per cent of management positions in private companies and earn on average only 51 per cent of men's salaries, that women account for 70 per cent of informal workers and as such are excluded from benefits such as paid leave, maternity protection and family allowance, are vulnerable to sexual harassment owing to their unstable contractual situation, and that they are often forced to work as part-time workers to sustain family life (art. 2 (1), 3 and 26)."

"The State party should take measures to promote the recruitment of women as formal workers and to eliminate the gender wage gap, including (a) require all companies to take positive action to ensure equal employment opportunities for women; (b) review any deregulation of labour standards resulting in longer working hours; (c) further increase the number of child-care facilities, with a view to enabling women as well as men to balance work and family life; (d) relax the conditions for equal treatment of part-time workers under the revised Part-Time Workers Law; (e) criminalize sexual harassment at the workplace; (f) extend the prohibited forms of indirect discrimination under the Law on Equal Opportunity and Treatment of Men and Women to include the different treatment of employees on the basis of their status as heads of household or as part-time or contract employees; and (g) adopt effective measures to prevent indirect discrimination."

C. Response of the Japanese government and

D. Opinions

The Sixth Periodic Report of Japanese Government says about the working conditions of women "(60) The proportions of female employees among all people in Japan is on a rising trend, and women's entry into the labor market is progressing." In Japan, however, men work extraordinarily long hours, so that women usually takes the responsibility of house work almost single-handed and this situation makes women difficult to keep working as regular workers. Most women therefore retire when they get married or when they have their children. When they want to work after several years, they are usually forced to work as part-time workers. This is not only what women choose but also the corporations choose as strategy. As a result, now, almost as much as half (44

percent) of female workers work as part-time workers working less than 35 hours a week.

In Japan it is difficult for women to work as long as men, so that women usually work for short length, and that women's proportion of part-time worker is bigger. This fact leads to an extraordinarily big gender gap in wages unusual in Western countries. According to "the Wage Survey in Private Companies, 2010" by the National Tax Administration Agency, women's average wage is 53 percent of men's. If we multiply this figure by 74 percent of gender gap of working hours, women's income would amount only 39 percent of men. This means Japanese way of working based on the logic of corporations and men's working style produce the enormous gender gap in the participation in the labor market. The Sixth Periodic Report of Japanese Government admits that the proportion of women working in managerial position such as chief clerks, chief of a section, and head of a department, stays as low as 11.1 percent, 5 percent, and 3.1 percent respectively.

The stress due to excessive working for long hours brings about various obstacles in keeping healthy. In Japan, Karoshi, death from overwork, has been a social issue in a quarter of a century. Karoshi and Karo (overwork) suicides are not in the decrease yet. On the contrary, the number of the claims for overwork death and suicides caused by mental illness is on the increase from 648 cases to 2,170 cases between 1999 and 2011. (The number includes other cases than death cases.)

Working for long hours not only causes a great number of Karoshi and Karo suicides, but also brings about serious distortion in both occupational and social lives. Because of overtime work and holiday work people cannot spare enough time for partners and family members, and also for childcare and for elder cares. Furthermore, it will be difficult to keep good relationship between family members. To have insufficient free time will hinder people from participate in social activities. It will put the community in danger in keeping sustainable. The way of Japanese working style of "men overwork, and women work part-time" will make difficult for men to participate in both family and community activities and for women to participate in economical and occupational work. This is the biggest obstacle to realize gender equal society.

The Sixth Periodic Report of Japanese Government states in "Other related efforts" that "For the purpose of curbing long hours of work, securing the health of employees, and achieving a work-life balance, the Act for Partial Revision of the Labor Standards Act entered into force on April 1,2010." This act brings up the percent of legal extra wage from 25 percent to 50 percent regarding to overtime more than 60 hours a month. (Small and medium enterprises are excluded.) This, however, does not regulate the upper limit of overtime work. In Japan it is estimated that people work

overtime without pay for 250 hours to 300 hours a year for one person. With regard to unpaid work, the bringing up of overtime pay leads to nothing. So, this does not strengthen the overtime work regulation. Furthermore, "the regular wage" which is the base of extra pay does not include various allowances so that the extra pay below 60 percent would be a cheap cost for corporations than the cost of employing more workers.

E. Proposals for Solution

In the situation of frequent occurrence of Karoshi and Karo suicides, the Government of Japan has conducted various measures for the sake of "measures for overwork" and "work-life balance." Still the government has avoided regulating the upper limit of overtime work. The Labor Standards Law describes that employers cannot let people work more than 8 hours a day and 40 hours a week. Nevertheless employers can conclude an agreement with the union or the representatives of the workers organizing more than half of the workers and report to the Labor Standards Inspection Office, and then they can let the employees work unlimitedly. This was enforced in 1947, and has never been revised since.

For the prevention of Karoshi and realization of society of gender equality, the regulation of the upper limit of overtime work provided in Article 36 of The Labor Standards Law should be revised.

In Japan the movement for the enactment of "the Fundamental Law for Prevention of Karoshi" has bulged throughout Japan since November 2011. This movement was organized by National Liaison of Karoshi Defence Lawyers and National Assembly of Karoshi Families. These organizations are working on the signature collecting aiming at "one million signatures." Now, February of 2013, they collected 440 thousand signatures, and the Diet Members Alliance has started. We sincerely hope that Committee on Civil and Political Rights will make appropriate recommendations that can support for the realization of this law.

5. “Comfort Women” Issue

(Articles 7 and 8)

A. Point at issue

Article 7 and 8 concerning prohibition of torture or cruel, inhuman or degrading treatment

B. Concern and recommendations of the Committee

“The Committee notes with concern that the State party has still not accepted its responsibility for the ‘comfort women’ system during the Second World War, that perpetrators have not been prosecuted, that the compensation provided to victims is financed by private donations rather than public funds and is insufficient, that few history textbooks contain references to the ‘comfort women’ issue, and that some politicians and mass media continue to defame victims or to deny the events.”

“The State party should accept legal responsibility and apologize unreservedly for the ‘comfort women’ system in a way that is acceptable to the majority of victims and restores their dignity, prosecute perpetrators who are still alive, take immediate and effective legislative and administrative measures to compensate adequately all survivors as a matter of right, educate students and the general public about the issue, and refute and sanction any attempt to defame victims or to deny the events.”

C. Response of the Japanese government and statements in its 6th periodic report

Notwithstanding that the Government was recommended as mentioned above by the Committee, it stated that it is not bound to obey the Committee’s recommendations because they have no legal obligation (the reply of the Aso cabinet for a question provided by Kuniko Tanioka, a member of the House of Councilors, as of January 5, 2009), and has not taken any measures towards resolving this issue. In addition, Tooru Hashimoto, the Mayor of Osaka, recently said, “the Comfort Women System was necessary,” rendering much more pain to the victims. However, the Abe cabinet has not yet expressly criticized against it.

In the 6th periodic report of the Government published in April 2012, the Government stated on this issue as follows, ignoring the Committee’s recommendations.

1. As this issue arose before Japan’s accession of the Covenant, it is not appropriate to

mention the issue in the report.

2. Japan caused tremendous damage and suffering to the people of Asian countries by its past colonial rule and aggression, and Japan has therefore expressed its deep remorse and apology.
3. Recognizing the problem having injured the honor and dignity of women, the Government expressed its sincere apologies and remorse to the victims as so-called comfort women.
4. This issue has been legally settled by the conclusions of the San Francisco Peace Treaties and bilateral peace treaties. However, the Government, with its financial support, determined to support the Asian Woman's Fund (AWF), which provided direct payment funded by contribution of Japanese people to the victims.
5. While the Fund was dissolved in 2007, the Government will make its efforts to gain a better understanding for the sincere feelings expressed by Japanese people towards the projects of the Fund.

D. Opinions

As shown in item C, the Japanese government has no intention of obeying the Committee's recommendations. As a result, it is strictly demanded that such attitude of the Government be corrected at the time of the examination of its 6th periodic report.

Furthermore, the report no doubt shows insincere contents, ignoring the Committee's concern and recommendations mentioned in item B. This attitude that refuses a dialogue with the Committee has to be considered as a controversial matter, but we are going to state some problems in the contents of the Government's report as follows.

1. Regarding the comment, "As this issue arose before Japan's accession of the Covenant (1979), it is not appropriate to mention the issue in the report."

This is the issue that was recommended as a problem concerning Article 7 and 8 by the Committee. Article 8 stipulates that no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. This means that responsibilities of those who forced someone to put in slavery, created slavery and performed it into operation should be pursued, and also the relief has to be applied for its victims. As the issue of the military "comfort women" arose as a result of slavery, which is prohibited in the Covenant, created and performed by the Government itself, the Japanese government has now an obligation of punishment for perpetrators and of redress for the victims.

In addition, the prohibition of slavery has already been established as an international

customary law at the time of the creation of the military sexual slavery, namely, Article 8 is codified by the customary law, the Government, at that time, owed the same legal responsibility as stipulated in Article 8.

Accordingly, the Government is not able to refuse the examination at the Committee by reason of that this issue arose before Japan's accession of the Covenant.

2. Regarding the comment, “Japan has already expressed its apology by ‘Murayama statement’ and ‘Kono statement’.”

It was “Murayama statement” made by then Prime Minister Murayama in 1995 in which the Japanese government acknowledged and apologized for the facts of its colonial rule and aggression in World War II. But, as the issue of “Comfort Women” is concerned, it was “Kono statement” in which then Chief Cabinet Secretary Kono expressed the apology of the Government. So we argue against “Kono statement” as follows.

The statement acknowledged the facts: the deep involvement of the Japanese army in the creation and management of the military sexual slavery; the forcible engagement of the government authorities in collecting women; and the miserable days of lives of the victims deprived of freedom in brothels. The statement also expressed the examination of taking necessary measures showing the government's apology and the lessons Japan had learned in the past.

Therefore, if the Government remains consistent for its policy, namely, maintaining the statement as a fundamental position of the Government, and also refuting any opinion against the statement, it may be accepted as the Government has sincerely apologized.

However, the Government did not make any objection or sanction against a lot of critical comments, which were uttered after the announcement of the statement, by the government authorities and also members of the ruling party, saying that it was a mistake for the Government to acknowledge its responsibility in the statement. In particular, the comment, “Women were not forced to be brought against their will by the government authorities” is regarded as “They were prostitutes who went to work by their will,” that accelerates the impairment of their dignity. This comment is common to Prime Minister Abe's own opinion, and is also reiterated by high-level local officials and politicians such as Shintaro Ishihara, the former Governor of Tokyo and Tooru Hashimoto, the Mayor of Osaka, whose remarks are affecting a significant impact on the Japanese society. In addition, by *de facto* pressure of the government authorities, there is no description of this issue in history textbooks of compulsory education. As a result, children grow without studying it in school. And, the mass media seldom reports the truth to citizens, so that they have no opportunity to

know the real situation of “Comfort Women” system.

Consequently, as the Government has not yet sincerely apologized for them, it has to apologize with clear and not vague expression and it is indispensable for the Government to be consistent for maintaining its attitude.

3. Regarding “legally settled” by bilateral peace treaties, agreement and instructions with countries concerned and San Francisco Peace Treaty.

By Article 14(b) and 19 of San Francisco Peace Treaty, Japan and the Allied Powers waived each other all claims of reparations concerning the War. And, even for other countries not entering the Treaty, Japan took the same measures after it concluded the peace treaties with them.

Accordingly, even if the victims appeal to file a lawsuit against Japan, for the reason that the country to which they belong waived the claims of reparations, it is considered that the Japanese court was released from the obligation to meet the claims. In other words, the Japanese government explains that it was “legally settled.”

However, this is the problem within the national law. As far as the international law is concerned, Japan bears state responsibility for the commitment of the creation and management of the military sexual slavery that was in violation of then international law. In order to meet its responsibility in the international law, it is definitely required for Japan to take effective measures for the redress such as apology and compensation for the victims. The policy of “already settled” does not meet a legal solution that has been demanded in the international society.

With development of the theory that emphasizes human rights in the international law, it is generalized that any country committing grave violation against human rights cannot avoid its responsibility even from the Treaty as the violation of *jus cogens*.

Under the conviction of such international law as *jus cogens*, the international society has repeatedly urged the Japanese government to take legal responsibility for the creation and management of the “comfort women” system in which dignity of women was deprived. Namely, the act against humanity committed by the Government cannot be forgiven as “legally settled” even in the national law.

On 27 April 2007, in the trials of Chinese victims who were forced to be brought against their will, and the victims of “comfort women.” the Supreme Court judged that to waive all claims of reparations stipulated in San Francisco Peace Treaty is to lose the right to appeal to the court, but not to extinguish the right to claim itself. It is necessary for Japan to provide them effective compensation based on the right to claim as the fulfillment of its legal

responsibility.

4. Regarding “the obligation for the compensations has been already terminated by AWF.

AWF gave financial payments to “comfort women,” which were raised in donations from Japanese people, not by public funds. Therefore, a lot of victims refused to receive the payment on the basis that they could not understand it as the evidence of apology expressed by the Government.

On the other hand, the Government denied the payment by public funds to each victim on the basis of the “legally settled” policy, but this attitude was expressed in the former Concluding observations of the Committee as “The compensation provided to victims is financed by private donations rather than public funds and is insufficient.” The Committee also recommended, “Japan should take immediate and effective legislative and administrative measures to compensate adequately all survivors as a matter of the rights.” Accordingly, “The problem was settled by AWF” does not meet the recommendations, rather ridicules the Committee. Furthermore, the following remark of the Government is completely against the essentials of this issue: “In order to gain a better understanding of Japanese citizens’ sincere feelings, as shown through various projects implemented under the Fund, the Government of Japan intends to continue its efforts.”

Many Japanese people demand the Government of sincerely taking adequate measures for redress of the victims.

Now, it is only the Republic of Korea among the counties that received suffering in the colonial rule, which demands the Japanese government of its apology and reparations for the victims. That is why there are so many victims who came from the Korean Peninsula and the following reason. Of course, other counties that suffered are by no means satisfied with the measures taken by the Government.

Between Japan and the Republic of Korea, there was a bilateral treaty titled “the Agreement between Japan and Korea concerning the settlement of problems in regard to property and claims and economic cooperation,” in which Article 2 (1) provided that “The two Parties confirm that the claims between the Parties have been settled completely and finally.” By this provision, the Japanese government insisted that the right to claim was abandoned by this Agreement.

On the contrary, the Korean government insisted that the problem on the right to claim of the victims “comfort women” was not the subject to the consultation on the course of the negotiation of the Agreement, ensuring that this was fundamentally the problem on the right to claim for the act against humanity that the Japanese government committed during the

War, and that the right to claim could not be abandoned and was still in valid legally. There existed, therefore, a dispute in respect of the interpretation of Article 2 (1). According to the Agreement, Article 3 was provided for the settlement if it raised a dispute concerning the interpretation of the Agreement. However, on 30 August 2011, as the Korean government failed to take such procedures, the Korean Constitutional Court judged that the Korean government had not made efforts to settle the dispute concerning the Agreement was in violation of the Korean Constitution. In these circumstances, as the Korean government bears legal obligation for the settlement of the issue, it strongly urges Japan to settle it since this decision.

E. Proposals for Solution

The Government of Japan should make the political decision in accordance with the previous recommendations of the Committee and also should:

1. acknowledge the truth of the damage and sincerely apologize for the victims;
2. compensate them for the damage by public funds as the evidence of apology;
3. instruct publishing companies to include this issue in history textbooks;
4. make the government's position clear by refuting attempts to deny the facts and to criticize such measures taken by the Government.

6. War crimes and crimes against humanity will not be acquitted— Apology and compensation are needed for victims of the Public Order Maintenance Law

(Articles 7 and 18)

A. Points at Issue

The Public Order Maintenance Law, which was enacted in March 1925 and abolished in October 1945, is the worst law of oppression of human rights, under which the state power committed all kinds of assault and acts of physical/mental cruelty to nationals who protested the power. It violates the Articles 7 and 18 of International Covenant on Civil and Political rights.

Several hundreds of thousands of nationals were suspected and investigated by the Special Higher Police and military police. They were seized, arrested, and captured without a warrant; assaulted, beaten, and threatened; and were kept under constant surveillance even after they were released. 75,681 people were taken into custody domestically, while 11,681 in colonial Korea. The numbers of those who stood trial were 5,162 and 4,462 respectively. More than 95 people (Novelist Takiji Kobayashi was one) domestically were killed by the police's outrages including torture in the process of investigation. More than 360 people died in prison of repeated torture, abuses, malnutrition, diseases resulting from unsanitary environments where they were captured for a long time. A wide variety of people ranging from socialists to religious leaders, scholars, and intellectuals, regardless of the differences in belief or thought were victimized.

The Public Order Maintenance Law originally stipulated, "Those who organize an organization or participate therein which aims to change national polity or to deny the system of private ownership shall be sentenced to imprisonment or confinement of ten years or less" but the maximum punishment became death penalty in 1928. Once suspected, anyone were taken to the police and arrested, subjected to a house search, kept in custody for a long time, all without any warrant. Confessions were forced by torture, assault, rape, etc. which was banned even by the criminal law at that time. Before long they were suspected of violators of the Public Order Maintenance Law. Especially in case of women victims, unspeakable acts were rampant in the investigation rooms. Rape and bodily abuse were everyday matter.

We remember an infamous "Yokohama Incident" (a case of horrible false charge). Sixty or more (no one knows the accurate number) scholars and editors were arrested and tortured cruelly (women were unbearably humiliated). Four died in prison, weakened one died after being released, 32 were injured, and 12 became senseless during the torture. Retrial began after the war, but the case was "dismissed" without the court deciding guilty or innocent. The reason was that "The charge of 'defamation of loyalty' of which the suspects had been tried was abolished in the midst of trial and

the prosecutor's right of prosecution was lost, so it is impossible to continue." We have to conclude that by acquitting the court avoided the retrial itself and the crimes and responsibilities of a nation which fabricated such a serious case.

Those victimized by the Public Order Maintenance Law have not been given any apology, vindication of honor, or compensation from the Government. Many of them are now deceased. The victims demand urgent apology and compensation.

B. No recommendation or concern from the Human Rights Committee

We request that the Committee strongly recommend the Government observe the Covenant. "Conclusions" by the Committee against Torture point out: "the lack of information on the direct applicability of the Convention" (Paragraph 11); and "The Committee notes with concern that acts amounting to torture and ill-treatment are subject to a statute of limitations," "The State Party should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention," and "acts amounting to torture and ill-treatment, including attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted, and punished without time limitations"(Paragraph 12).

C. Responses by the Japanese Government

In those days under the Public Order Maintenance Law, it was thought natural for a nation to silence criticism in order to carry out an aggressive war, and the Government did not have the slightest idea that to do so was the most serious human rights infringement. The residue of this idea has been consistently passed down the post-war Governments. Many of the ex-officials of the Special Higher Police who committed the power crimes authorized by the Law, however, were released from prison soon after the war, took higher positions in the Government, and influenced the internal affairs thereafter. Meanwhile, the Government insists that they will not assume responsibilities for the Public Order Maintenance Law because it was long time ago, before the war, and that they will only be responsible for the period after 1979 when the Covenant was ratified. An international rule (The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, which came into force in 1970) provides that statutory limitations are not applicable to war crimes and crimes against humanity, but the Japanese Government abstained when the Convention was adopted, and has not ratified since. It has not affirmed historically or morally that it committed a crime against humanity when it oppressed people with the Public Order Maintenance Law.

D. Opinions

Sixty-eight years have passed since the Second World War ended, but Japan has yet to straighten out its war crimes. We cannot make the 21st Century years of peace and human rights unless we adequately straighten out the wrong-doings during the aggressive war such as military sexual slavery and forced labor. Human rights infringements by the Public Order Maintenance Law before the war and those inflicted on people in colonized districts such as sexual slavery are two sides of the same coin. We think it natural that the Government makes an apology and compensation to foreigners who suffered from assaults and invasion of the Japanese military force as well as domestic nationals oppressed by the wartime state power. Its purposes are to look the history in the face and not to repeat the wrongdoings in the past. What Germany and Italy did after the war are perfect examples. The People's Republic of China, the United States of America, and Canada all recorded brilliant achievements in the modern history of human rights. China, which had fought with invasion and assaults by Japan, eventually forgave the crimes committed by Japanese low-rank soldiers and crimes against humanity, in the name of peace and democracy, and as an execution of "a policy of generosity for solidarity." The latter two countries apologized for their policies of putting Japanese residents in concentration camps during the war, and compensated for them. On the contrary, Japan, which is supposed to have been transformed from Emperor-system militarism with Meiji Constitution into a society of peace and democracy with the current Constitution, neither has apologized nor compensated its wartime victims—victims of the Public Order Maintenance Law and foreign victims under invasion and colonization. For Japan not to repeat the same wrongdoings, it must start with an apology and compensation for its victims. In this connection, we believe heartily that international pressures including recommendations from the Committee help the State Party

E. Suggestions for rectification

League Demanding State Compensation for the Victims of the Public Order Maintenance Law aims at the human rights redress of victims who were oppressed by the Law and whose freedom and honor were violated. Every year the League has collected signatures and submitted them to the Diet since 1974. The total number of the signatures is over 8,400,000. Three hundred eighty-nine local assemblies in 42 Prefectures have adopted position documents. We demand an enactment of "Law for State Compensation for the Victims of the Public Order Maintenance Law" as soon as possible. However, for a starter, the following three petitions must be adopted by the Government. We have worked on these for nearly 40 years.

- (1) The Government should agree that the Public Order Maintenance Law was a bad law against humanity.

- (2) The Government should make an apology and compensation for the victims of the Law.
- (3) The Government should investigate the actual conditions of the victims, and make the findings public.

We request that the Committee strictly examine human rights conditions and how the Covenant is being implemented in Japan in view of the international standards.

7. Forced Worship of the National Flag (“Hinomaru”) and the National Anthem (“Kimigayo”) at Public Schools in Tokyo

(Articles 18 and 19)

A. Issues

1. Violations of Articles 18 and 19 of the International Covenant on Civil and Political Rights by the Tokyo Board of Education’s directive forcing teachers, school staff, students and other participants to stand up facing the national flag and to sing the national anthem at entrance and graduation ceremonies at schools
2. Disregard by the Japanese Government of the above mentioned human rights violations

B. Concerns and Recommendations of the Human rights Committee

Nothing has been mentioned on this problem so far.

C. The State Report

It makes no reference to this issue.¹

On the occasion of the fifth review (October, 2008), several NGOs reported on coercion of the national flag and anthem, but the Japanese Government does not refer to the issue in its sixth report.

D. Actual cases of coercion of the national flag and anthem at schools in Tokyo

On October 23, 2003, the Tokyo Board of Education issued a directive (hereafter the 10.23 directive²) to coerce the worship of the national flag Hinomaru (hereafter “Hinomaru”) and the national anthem Kimigayo (hereafter “Kimigayo”) on teachers and other school staff (hereafter teachers), and many who disobeyed have been punished ever since. We will present the actual cases of violations of human rights against teachers, students and civilians in the following paragraphs.

D-1 Violations of Teachers’ Human Rights

D-1-(1) Teachers are punished if they disobey the order of duty.

Teachers at public schools in Tokyo are forced by the principals’ order of duty to stand up facing “Hinomaru” and sing “Kimigayo” at the entrance and graduation ceremonies. The music teachers are ordered to accompany the anthem on the piano. Their rights to refuse the order are not guaranteed regardless of their beliefs, thoughts or religious faiths. All those who have disobeyed the order are punished without any exception. The total number of the teachers who have been given some sort of

punishments since the issuance of the 10.23 Directive has amounted to 450 as of May 2013³.

D-1-(2) The number of the punished teachers in Tokyo is by far the highest in Japan.

The total number of the punished teachers nationwide from 2003 through 2013 concerning “Hinomaru & “Kimigayo” is 610, and Tokyo accounts for more than 70%⁴. Also the known number of the punished teachers in Tokyo during the 13 years from 1989 through 2002 is 21. Compared with these numbers, the number 450 of the punished teachers during the 10 years from 2003 through 2013 is outstanding, and shows the harshness of human rights violations in Tokyo.

D-1-(3) The punishments become more severe cumulatively.

Teachers are given the order of duty twice a year, at entrance and graduation ceremonies, and the punishments become more severe each time they disobey, starting with reprimand, rising to salary cut and then to suspension from work. In other prefectures the punishment is just a reprimand even for the fourth disobedience, while the corresponding punishment in Tokyo is suspension from work for one month. The cumulative punishments are designed to afflict teachers psychologically and economically so that they would change their attitudes and obey the order.

The Supreme Court ruled in January 2012 that the imposition of punishments severer than the reprimand was an abuse of discretion, setting a certain limitation on the cumulative punishments.

D-1-(4) “Seminar for Prevention of Recurrence” to make teachers abandon their thoughts, beliefs, conscience and religious faith.

Besides being given punishments, the teachers who refused to obey the order to stand up, sing or play the piano are made to attend training programs named “Seminar for Prevention of Recurrence,” in which the instructors repeatedly tell the trainees “the duty to obey orders from their superior.” In order to finish the seminar, the trainees are required to write their ideas on the issue or repentance for their disobedience. Since April 2012 the seminars have been given more frequently than before, and a lecture on “duty to stand and sing” has been added. The trainees are forced to submit a report called “reflection sheet” and are checked whether they regret their disobedience or not.

D-1-(5) Increase of mental illness among teachers owing to the stress from the directive

If someone disobeys the order to stand up and sing at a certain school, all the teachers working there are forced to attend seminars on duty held within the school. At some schools, teachers who have refused to stand up are not allowed to be a homeroom teacher, which is regarded as a highly rewarding job in Japanese school culture, and teachers take pride in assuming the task.

The number of those who fell ill with psychological disorder has drastically increased since the issuance of the directive. In one case, a teacher was reproached for several hours by the principal for

“disgracing the school by not standing up,” and was forced to take sick leave because of mental distress. In another, a music teacher who was ordered to play the piano to accompany the singing of the national anthem suffered from suicidal thoughts and also took sick leave. While the number of the teachers on sick leave for psychological disorders was 171 in 2002, it jumped to 259 in 2003.

D-1-(6) Economic disadvantages caused by the punishments

During the period of suspension from work, which ranges from one month to six months according to the frequency of the refusal to stand up, the salary is not paid. In the cases of salary cut, one-tenth of the salary is cut for one, three and six months. In the case of reprimand, the time of promotion is delayed. In any case, the punished teachers suffer economic loss not only from the punishment itself, but also from its influence on bonus, pension and retirement allowance.

D-1-(7) Rejection of post-retirement re-employment for the punished teachers

Although teachers in Tokyo had been guaranteed re-employment when they reached the retirement age before the 10.23 Directive, employment for the punished teachers has been canceled since its issuance. Some of the re-employed teachers were dismissed one day before the school year was to start. While those who have been punished for other reasons are re-employed, none who refused to obey the directive has passed the re-employment test.

D-2 Human Rights Infringements Against Students

Since the issuance of "the 10.23 Directive", human rights violations against students in the name Of “instruction” have markedly increased.

D-2- (1) Cases of coercion of the national flag and anthem on students

In 2004, at the graduation ceremony at I Senior High School, many students sat down in protest when the chorus of the anthem began. The school principal, the vice principal and a member of the Tokyo Metropolitan Assembly attending the ceremony as a guest shouted at them ordering to stand up right away. In 2005, at the graduation ceremony at H High School, the vice principal shook one of the students by the shoulders to make him stand up. In 2004, at H School for the Disabled, the vice principal tugged the hand of a student who remained seated. In 2007, at MI School for the Disabled the administrators made a student stand up by raising the student's buttocks. In 2004, at MA School for the Disabled, the principal and staff visited the family of a student who had declared that he would not stand up during the anthem at the coming ceremony, and pressured him to stand up. They even tried to make an inquiry about the family’s “thought background”. In 2004, at an elementary school in M city they examined the loudness of the students’ singing voice of the national anthem. They ordered the students who were singing in a low voice to put their fist into

their mouth so that they could open their mouth wide and sing loud enough. Also there is a case reported that some school administrators surrounded an elementary school student who did not stand up on his religious belief, and urged him to stand up.

D-2-(2) Prohibition of the explanation of “freedom of thought and conscience”

In 2004, Tokyo Board of Education issued “strict warning” or other disciplinary actions against nearly 70 teachers for telling their students that they have freedom of thought and conscience before the ceremony began. In 2005, the Board of Education issued "the 3.11 notice" that prohibited teachers from explaining the freedom to students. Furthermore, in 2006, by "the 3.13 directive," the board manifested that they were going to intensify the "guidance" to the students to stand up and sing. No alternative measures have been taken to guarantee the students' right to conscientious refusal to stand up and sing.

D-2 (3) Infringements of the human rights against the students with special needs

Some of the cases are reported in which life, health and security of children were neglected.

Case 1: The alarm of the respirator of a student sounded during the singing of the anthem at a school for the disabled. When a nurse crouched over to take care of him, the vice principal ordered her to stand up. **Case 2:** The principal ordered a teacher to put a diaper on a student so that she might not go out of the hall to help him use the bathroom. **Case 3:** Teachers were accused of their bending postures for looking after the severely disabled students, or of coping with the students' trouble during the singing of “Kimigayo”.

The Tokyo Board of Education commanded all the metropolitan schools to present diplomas to students on the platform where “Hinomaru” was raised. As a result, students who could go to receive the diploma by themselves using a wheel chair if on a flat floor now need help to go up to the platform, and thus being deprived of the right to proudly move on their own. Furthermore, children-centered seat layout was strictly forbidden and all the seats of the people in the hall were turned to the national flag.

D-2 (4) Infringements of the rights of minority students

Forced respect for “Hinomaru & Kimigayo”, the once symbols of Japanese Imperialism and the aggressive wars, is unacceptable especially for the students whose ethnicity is rooted in those countries Japan invaded in the past, and those who have suffered from the old Japanese caste (“Buraku”) discrimination. In some high schools, students with these backgrounds even boycotted the ceremony in protest against coercion.

D-2 (5) Infringement of the students' rights to freedom of expression

When students at a high school held a debate session concerning "the directive," the teachers who attended the assembly were punished for leading the discussion, and the students were forced to cancel the second session they had planned.

Graduation ceremonies of students' own planning and conducting were also prohibited. The draft of the speech by the representative of graduating students was censored by teachers beforehand. The students' works and products that once beautifully decorated the platform and the ceremony hall were thoroughly removed. Thus the Tokyo Board of Education has restricted the students' right to express their opinions freely on the issue of "Hinomaru & Kimigayo".

D-3 Human Rights Violations against Citizens

D-3-(1) Pressure for conformity to stand up and sing "Kimigayo"

Since the Directive, it has been prohibited by the Board for each school to announce before the opening of a ceremony that the right to freedom of thought and conscience is guaranteed to every participant in singing "Kimigayo". Citizens attending the ceremony have been under the strong pressure for conformity when asked to stand up and sing "Kimigayo" in the ceremony. Once one of the formal guests did not stand up at the singing of "Kimigayo", the person has never been invited again since then. Also, the president of Parent-Teacher-Association who had made some critical comment on "the Directive" was forced to resign after the ceremony.

D-3-(2) Arrest of those who passed out leaflets

On the graduation day, many citizens were found at the school gates handing out the leaflets to the students and parents, informing them of the problems involved in the 10.23 Directive and their opinions against the coercion of "Hinomaru & Kimigayo". They were monitored by the school administrators and the security police. At N high school, a citizen was arrested on the pretext of having stepped into the school ground (March, 2005). There were many cases of obstruction of their activities by police including tailing.

D-3-(3) Criminal punishment for holding and expressing an opinion

In addition, there was a case in which an act of expressing an opinion against the coercion of "Hinomaru & Kimigayo" was punished as a crime on the ground that it was conducted "in an undue manner that did not fit the occasion." This has caused a "chilling effect" on expressing one's opinion against the coercion.

In March 2004, Mr. F, a former teacher and one of the formal guests for a high school graduation ceremony, handed out to the parents awaiting the ceremony copies of the Article which criticized "the Directive", and called for them to remain seated at the time of singing "Kimigayo" because teachers were to be punished if they didn't stand up and sing "Kimigayo". He finished his speech

18 minutes before the opening of the ceremony without any incident. The next moment he was forced by the school administrators to leave the ceremony hall, and finally walked out of the school ground. Then the ceremony began 2 minutes behind schedule, and 90% of the students remained seated at the time of singing “Kimigayo”, but the ceremony proceeded smoothly and successfully till the end.

However, 9 months later, Mr. F was indicted on the charge of “forcible obstruction of business” for having “caused a considerable disturbance to the smooth performance of the graduation ceremony.” In 2011, the Supreme Court justified the restriction on “the right to freedom of expression” based on “public welfare”, affirming the lower court’s conviction of a 200,000 yen fine¹⁰.

The voice against the coercion of “Hinomaru & Kimigayo” was suppressed by the public authorities including the school administrators, Tokyo Metropolitan Assembly members, Tokyo Education Board, the police and the prosecution, and the Supreme Court justified the conviction without considering the importance of the right to freedom of expression under Article 21 of the Japanese Constitution, and Article 19 of ICCPR. This clearly is a violation of human rights that cannot be overlooked.

D-4 Human Rights Violations Spreading Nationwide

In Hokkaido, Hokkaido Board of Education conducted investigations in all public schools on what teachers thought of “Hinomaru & Kimigayo” as well as on their union activities. In Kanagawa Prefecture, Kanagawa Board of Education enforces “Survey on Names of Those who did not Stand Up” at all public schools every year, ignoring the recommendations made by the Personal Information Protection Review Board in 2007 and the Personal Information Protection Council in 2008¹¹.

In Osaka, in 2011, so called “Ordinance for Standing Up for “Kimigayo”¹² was passed under the leadership of Mayor Hashimoto (then Governor), which requires every employee of Osaka City or Prefectural Government to stand up at the time of singing “Kimigayo”, the first of its kind across the country. In 2012, “Fundamental Ordinance on Public Employees” and other regulations on education were enacted, which allow dismissal of those who disobey the same order three times. Teachers who did not stand up and sing “Kimigayo” were asked, in the training session after punished, to sign a written pledge “I will never repeat disobedience to the order”, and at the third disobedience they are to be dismissed. In 2011 and 2012, 49 teachers were reprimanded for disobedience to the order to stand up for “Kimigayo”. Violations of freedoms of thought and conscience, and expression have been increasing both in number and in intensity at public schools throughout Japan.

D-5 The Historical Background Regarding the Issue of “Hinomaru & Kimigayo”

D-5 (1) The Wars of aggression into Asia

and the role which “Hinomaru & Kimigayo” played in the war

Japan, as an absolutistic imperial state, made its way into the construction of a modern state after the Meiji Restoration in 1868, but “Tenno” or the Emperor, as the only sovereign, presided over sovereignty of the state. He was “sacred and inviolable” presence, whereas people were all “subjects” of the Emperor.

The aim of school education was to bring up people as “subjects” who devoted their lives to the Emperor. School ceremonies held on national holidays aimed to arouse the feelings of worship and awe of the Emperor, a living god, and to develop the spirit obedient to the ruler.

“Kimigayo” or “The Reign of the Emperor”, which has been the national anthem since the prewar period, is a song of celebration for the Imperial Family with the words “A thousand years of happy life be thine! ...” (The reign of the Emperor will last and prosper forever....)

The national flag “Hinomaru” or “The Rising Sun” was noticeably raised without any exception at the ceremony hall and the school gate on the occasion of a school event. It symbolized Japan, an imperial state.

“Hinomaru” always appeared when soldiers charged at the enemy position, and it was a flag which symbolized Japan’s invasion and rule over Asia. Many people in Asian countries invaded by Japan during the Second World War still have the feeling of rejection against “Hinomaru,” Japan’s national flag.

Such past causes different opinions about “Hinomaru & Kimigayo” among Japanese people nowadays. Some people strongly oppose the uniform coercion of the flag and anthem.

D-5 (2) How “Hinomaru & Kimigayo” were treated in school education after the war

After Japan’s defeat in World War Two, the new Japanese Constitution was established in 1946, and Japan became a country based on the principle where sovereign power resides in the people. In 1947, the Fundamental Law of Education was enacted, and the aim of education was transformed from the development of ‘subjects’ loyal to the Emperor into “the full development of personality.” Most teachers deeply regretted as “crimes” that they had provided militaristic education for children and had driven them to battlefronts, and they made a pledge, “Never send our children to the battlefield again.” Thereafter, through the regret about militaristic education, they started a movement for “entrance and graduation ceremonies without ‘Hinomaru & Kimigayo’” throughout the country.

In contrast to prewar education, all of the school events, including entrance and graduation ceremonies, became completely free from the commitment of the state, and were held by each

school independently. However, in 1989, “the official guidelines for school teaching” or “the Course of Study” designated by the Education Ministry was revised, and then “raising the national flag and singing the national anthem” at entrance and graduation ceremonies became an obligatory stipulation, stricter than before. After that, the Education Ministry urged the local education boards to put it into practice without fail.

Particularly, after the Law Regarding the National Flag and Anthem was legislated in the Diet in 1999, according to the Ministry’s strong guidance demanding 100% practice of “raising the national flag and singing the national anthem,” the coercion of “Hinomaru & Kimigayo” at entrance and graduation ceremonies was intensified. After the revision of the Fundamental Law of Education in 2006, patriotic and nationalistic education was promoted than ever.

D-6 Intensification of Nationalistic Education in Tokyo

D-6 (1) The nationalistic trend in Tokyo’s educational administration

Shintaro Ishihara, the former Tokyo governor, dictatorially promoted nationalistic education in Tokyo.

In 2001, he deleted the words “respect for the Constitution of Japan and the Fundamental Law of Education” and “respect for the Convention on the Rights of the Child” from the educational objectives of Tokyo, and instead, inserted the words such as “Patriotism.” This meant that he intended to introduce chauvinistic nationalism into education.

In July, 2003, a few Tokyo Metropolitan Assembly members and some staff members of the Metropolitan Education Board with news reporters suddenly visited Tokyo Metropolitan T School for handicapped students and confiscated teaching materials, criticizing the school’s sex education for children with mental retardation for being “extreme.” The teachers concerned were reprimanded. This incident was the beginning of a serious intervention in the contents of education by the administration in collusion with external political forces.

The coercion of “Hinomaru & Kimigayo” in Tokyo took place in the process of a series of measures taken by the educational administration under the metropolitan government led by Ishihara.

D-6 (2) The 10.23 Directive and the coercion of “Hinomaru & Kimigayo” on teachers

On October 23rd, 2003, the Tokyo Metropolitan Board of Education issued a directive to the principals of Tokyo Metropolitan Schools titled “With Regard to the Practice of Raising the National Flag and Singing the National Anthem at Entrance, Graduation and Other Ceremonies (Directive)” in the name of Yokichi Yokoyama, Superintendent of Schools. It notified the principals to make all of the teachers know that they should be reprimanded if they disobeyed the principal’s working order. Moreover, in practicing the ceremony, all members of the school staff should stand up for the

national flag at the center stage, and should sing the national anthem played on the piano by a music teacher, according to “the attached guidelines concerning the raising of the national flag and the singing of the national anthem at entrance, graduation and other ceremonies.” In the guidelines, there were other provisions such as “a music teacher should play the national anthem on the piano,” “the diploma should be handed over on the stage,” and so forth.

Consequently, as mentioned in D-1-(1), no fewer than 450 school staff members (mostly teachers) in total have been reprimanded by May, 2013, for disobeying the working order.

D-7 Court Decisions

D-7-(1) Filing of the lawsuits

In Tokyo more than 750 teachers in total have filed several forms of lawsuit, believing that the order of duty to force them to stand up facing “Hinomaru” and sing “Kimigayo” or to accompany the singing on the piano infringes on their historical views, thoughts, religious faith, or conscience as educators.

D-7-(2) Decisions of Lower Courts

On September 21, 2006, the Tokyo District Court ruled in favor of the teachers in the “Preventive Lawsuit,” which was filed by 401 teachers “for the confirmation of non-existence of duty to stand up facing the national flag and sing the anthem or accompany the singing on the piano”, and “for the prohibition of punishments”.

Also on March 10, 2011, the Tokyo High Court revoked all the punishments on the 168 plaintiffs as an abuse of discretion, admitting “they refused to stand up or play the piano from compelling motives to be faithful to their thought and conscience.” It thus relieved the plaintiffs’ human rights. At the Supreme Court, however, both decisions were overturned.

D-7-(3) The Supreme Court Decisions

On February 27, 2007, the Supreme Court made a ruling on a case, which had been filed by a music teacher before the issuance of the 10.23 Directive, regarding the punishment on her for refusing to accompany the singing of the national anthem on the piano. The ruling denied the existence of violation by the public authority of freedom of thought and conscience, stating that “the piano accompaniment is an external action, and therefore its enforcement cannot be regarded from general and objective point of view as to be inseparably related to the violation of the internal thought and conscience of the teacher.” Thereafter most of the lower courts adhered to this logic, and continued to make decisions against the teachers.

Regarding the lawsuits related to the 10.23 Directive, a series of Supreme Court decisions were made from May 2011 onward. They differed a little from that of the Piano Case mentioned above,

admitting that coercion of the expression of respect for the national flag and anthem indirectly restricts the freedom of thought and conscience. But they concluded that the directive was constitutional, because “in case of indirect restriction it is not necessary to apply strict scrutiny standard but rational basis test is enough, and rationality and necessity of the restriction in this case is acknowledgeable.”

However, in one of those cases, which had been filed for the revocation of the punishments, the Supreme Court ruled on January 16 2012, that “as a rule, reprimand cannot be judged illegal, but salary cut and severer punishments are illegal because they are too severe and constitute abuse of discretion.” Of the four steps of punishments - dismissal, suspension, salary cut and reprimand-, they drew a line between salary cut and reprimand. This is the present attitude of the Supreme Court regarding this issue.

E. Our Opinions

E-1 On Court Decisions

E-1-(1) Coercion of the national flag and anthem and the Constitution of Japan

It is a violation of “freedom of thought and conscience”, guaranteed by Article 19 of the Constitution of Japan, and Article 18 of the ICCPR, for the public authority to coerce teachers to express respect toward the national flag and anthem at school events, and to punish them when they disobey. The punishments also constitute abuse of discretion, and should be revoked as illegal.

E-1-(2) Judicial Passivity

The courts in Japan have the authority to examine and judge the constitutionality of the performances by legislative or administrative bodies. They are, however, traditionally quite nervous and too prudent in the use of the authority. The reason for such attitude is explained as follows; the Diet, the Cabinet and Local governments are constructed based on the support of the majority of the nation, and therefore their judgments should be respected as far as possible. But such understanding of the role of judicial bodies necessarily leads to the disregard for the human rights of the minority, since the public authorities are composed of the majority. The court, the guardian of the Constitution and bastion of human rights, should perform its professional responsibilities more positively.

E-1-(3) Problems of the Supreme Court Decisions

The logic of the decision in the Piano Case separated “the external action of accompanying the national anthem on the piano” from “the thought and conscience of the player,” and ruled that coercion of the external action does not constitute an infringement of thought and conscience. There

have been severe criticisms against the ruling from academic and legal communities. Accordingly, the decision was altered in practice and the Supreme Court now admits that “coercion of the expression of respect toward the national flag and anthem constitutes indirect restriction on thought and conscience.” However, it still regards the coercion as constitutional, stating that “indirect restriction does not require strict scrutiny standard but just judgment on rationality and necessity of the restriction based on the rational basis test.”

In the examination of restrictions on fundamental human rights, the judicial bodies should apply the strict scrutiny standard, the notion developed in the common law system in the United States. It has also been applied in the reviews by the Human Rights Committee.

The Supreme Court, however, trying to avoid its application, made up a concept of “indirect restriction.” Despite that the teachers cited Article 18 of the ICCPR as a ground for their arguments, the Supreme Court completely neglected the Covenant.

The Supreme Court has continued to give decisions upholding the restrictions on human rights imposed from administrative necessity, applying the concept of “public welfare” inappropriately.

E-1-(4) Inadequate logic of abuse of discretion

The Supreme Court has placed a certain limitation on the punishments as shown in D-7-(3). As stated above, however, while the Tokyo High Court had revoked all the punishments as illegal because they constitute abuse of discretion, the Supreme Court did not choose to uphold the attitude, but admitted the legality of the punishments. We cannot but strongly criticize the Supreme Court’s insensitivity to freedom of thought, conscience and religious faith.

E-2 Problems with the Japanese Government’s Report

E-2-(1) No reference to the cases of human rights violation

The information in relation to the Application of Article 18 simply reads, “as stated in the previous report”. The phrase is just the same as used in the 5th periodic report of 2006. This is tantamount to reporting that there has never been a case of violating freedom of thought and conscience. In fact, however, public school teachers have been under orders to stand up and sing the national anthem, facing the national flag, or to play the song on the piano if they are music teachers, and they will be given punishments if they disobey, according to the 10.23 Directive.

As the Supreme Court concluded in 2012, to stand up facing a national flag and sing or play the national anthem is an act to express one’s respect for the state. Thus forcing teachers to do so is equivalent to violating their freedom of thought and conscience guaranteed by Article 18 of ICCPR or Article 19 of the Constitution of Japan. Nevertheless, the government report does not refer at all to this clear case of human rights violation, which has lasted for as long as ten years in Tokyo since October, 2003 and has arisen in Osaka since 2010. This failure is very problematic, because it

reveals the Japanese Government does not acknowledge the fact that obliging teachers to stand up and sing the national anthem or to play the song is a violation of Article 18 of ICCPR.

E-2-(2) Justification of human rights restrictions by the concept of “public welfare”

Furthermore, the government report states that “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.” To support this argument, the report refers to the Supreme Court’s judgment that the defendant opposing the standing up and the singing of the national anthem at high school graduation ceremonies has committed the criminal offence of “obstructing business by force.”

However, standing up to sing the national anthem, facing the national flag, is an act to express one’s respect for the state symbolized by the flag and the song. Thus, requiring teachers to do so is the imposition by public authorities of acts based on a certain thought, which violates their rights to freedom of thought and conscience. Nevertheless the Supreme Court upholds the lower court’s criminal conviction against the defendant mentioned above. Because of this defect, the Supreme Court’s ruling itself violates Article 18 and 19 ICCPR and it plays a role of permitting restrictions on human rights exceeding those permissible under the Covenant by the concept of “public welfare.”

To put it more concretely, the ruling by the Supreme Court disregards the UN Human Rights Committee’s concern, expressed in paragraph 38 of the general comments No.34 on Article 19 of ICCPR, “regarding laws on disrespect for flags and symbols” and its view stated in paragraph 25 that a norm, to be characterized as a “law” may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Thus it concludes that the defendant’s expression of his opinions about the Tokyo Metropolitan Government’s request to teachers to act in a predetermined way to the national flag and the national anthem was a crime, taking no account of the significance of guaranteeing freedom of expression. Consequently, the ruling works as a ground for discretionary restrictions by the public authorities on freedom of expression.

The Japanese government states that the human rights guaranteed by the Constitution and the restrictions on human rights imposed under the Constitution closely resemble those under the Covenant. However, the fact is, as mentioned above, the state power arbitrarily restricts human rights in a wide range of areas. Conditions in this country are worsening exactly as feared in the Human Rights Committee’s concluding observations on the last report by the Japanese Government.

E-3 Conclusion

E-3-(1) Human Rights violations by the 10.23 Directive

The directive and the order of duty based on it violate Articles 18 and 19.

Reasoning 1

The 10.23 Directive is not a law. The ICCPR stipulates in its Articles 18 and 19 that the human rights guaranteed by the Covenant “may be subject only to such limitations as are prescribed by law.” The directive is just a rule within an administrative body based on the curriculum guidelines, which is also merely an announcement based on the Ordinance for Enforcement of the School Education Act.

Reasoning 2

The directive is applied in a manner that infringes human rights. The Human Rights Committee gives observations in General Comment 22 and 34 to the effect that in application of paragraph 3 of Article 18 and paragraph 3 of Article 19, “limitations imposed.... must not be applied in a manner that would vitiate the rights guaranteed in” Articles 18 and 19. The 10.23 directive deprives teachers of their civil and professional freedom, students of their civil freedom, and thus destroys real interactive relationships between teachers and students.

It also violates the rights to freedoms of thoughts, conscience, religious faith and expression of children, persons with disabilities and minorities, and the liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions.

Reasoning 3

The directive is against “the concern regarding laws on disrespect for flags and symbols,” of the Human Rights Committee expressed in para.38 of the General Comment 34, and the concluding observations given in April, 1994 on the periodic report by the government of Zambia.

E-3-(2) Japanese Government’s indifference to the issue.

Various NGOs have repeatedly presented information on the human rights violations through coercion of Hinomaru and Kimigayo by local governments. Nevertheless, the Japanese Government has neither reported it to the Human Rights Committee nor taken any measures to improve the situation. Its attitude to neglect and encourage violations of human rights guaranteed by the Covenant should be improved immediately. (C, E-2)

E-3-(3) Inappropriate interpretation of ICCPR by the courts in Japan

In application of the provisions of the ICCPR, the courts in Japan tend to subordinate them to domestic laws or to misinterpret them. The government should take appropriate measures to help the courts to correctly apply and interpret the Covenant.

F Suggested recommendations for solution

We suggest that Human Rights Committee make the following recommendations to the state party, so that the situations resulting in violations of ICCPR described above be improved in accordance with the covenant.

1. HRC is concerned about the situations arising from the requirement to stand up for Hinomaru and sing “Kimigayao” at entrance and graduation ceremonies in public schools in Tokyo and other prefectures or cities. It goes without saying that the state party itself should not breach the human rights guaranteed by the covenant, and it also owes an obligation to ensure that these rights are protected throughout the country. HRC recommends the state party to take necessary measures to correct the problems of human rights violation caused by the local governments.
2. HRC is concerned with the fact that teachers who did not stand for Hinomaru and sing or accompany on the piano “Kimigayo” for reasons of their thought, conscience, belief or faith, were punished and given other unfair treatments. HRC recommends the state party to ensure that local governments pay due respect to Articles 18 and 19 of the Covenant.
3. HRC expresses its concern that ICCPR and other related documents are not properly interpreted and applied in courts, and recommends the state party to ensure that the covenant be properly interpreted and applied in courts, with special consideration given to General Comments No. 22 and No. 34.
4. HRC requests the state party to take thorough measures on the national as well as local levels, pursuant to para. 38 of General Comment No. 34, to ensure that respect for “the flag” or “the song” must not be forced upon anyone in any way, at an entrance or graduation ceremony at any elementary, junior high, senior high school, or school for special needs education.

Notes

1. Para.214 of the Sixth Periodic Report by the Government of Japan under Articles 40 of the International Covenant on Civil and Political Rights
2. “With regard to the practice of raising the national flag and singing the national anthem at entrance, graduation and other ceremonies “(Directive) “The guideline concerning the raising of the national flag and the singing of the national anthem at entrance, graduation and other ceremonies”<http://yobousoshou.blogspot.jp/2006/02/translation-of-1023-directive-or-1023.html>
3. Table of the punishments given based on the 10.23 Directive
<http://www7a.biglobe.ne.jp/~hishobunshanokai/shobun130426.doc>
4. Table of punishments given nationwide during the past 10 years regarding the treatment of the

national flag and anthem

5. Newspaper article “Seminar for Prevention of Recurrence” (Tokyo Shimbun April 18, 2013)
6. Table of teachers who took sick leave
http://www.shinsyokyoso.org/iinnkai/roan/ryoukyuusuu.xls_
7. Comparative table of disadvantages caused by the punishments such as reprimand or salary cut
8. Newspaper article “Check of the volume of the singing voice” (Asahi Shimbun Tokyo version January 27, 2005)
9. Newspaper article “The 10.23 Directive at schools for special need education” (Tokyo Shimbun October 27, 2008)
10. NGO report by “Itabashi High School Graduation Case and Freedom of Expression”
11. See Article 17- NGO report “Information Gathering by Kanagawa Prefectural Board of Education and Sensitive Terms/provisions”
12. “Ordinance For Raising the National Flag and Singing the National Anthem at Public Facilities of Osaka Prefecture”
13. The stipulation in the Constitution of Empire of Japan
14. The words of Kimigayo translated by D.H. Chamberlain
**A thousand years of happy life be thine! Live on, my Lord, till what are pebbles now,
By age united, to great rocks shall grow, Whose venerable sides the moss doth line.**
15. “Statement on the Supreme Court ruling on the case for revocation of punishments imposed for not standing at the singing of Kimigayo” by the president of Japan Federation of Bar Association (January 19, 2012)
<http://www.nichibenren.or.jp/activity/document/statement/year/2012/120119.html>
16. para.4 of the Sixth Periodic Report by the Government of Japan under Articles 40 of the ICCPR

8. The Issue of Coercion of Reverence to the Flag Hinomaru and the Anthem Kimigayo and Collection of Sensitive Information

(Articles 17, 18 and 19)

A. Points at Issue

1. Attendants at all public schools' entrance and graduation ceremonies all over Japan are having been forced to stand up in reverence to face the national flag (Hinomaru) and to sing the national anthem (Kimigayo) in unison (in violation of Articles 18 and 19).
2. The court, not admitting the names of and the related personal information on those who refused to stand up to be sensitive information (personal information on/related to his/her thought and belief), judged it legal for administrative bodies to collect and store such personal information (in violation of Articles 17,18, and19).

B. Concerns and Recommendations of the Human Rights Committee

No mention has been made on the coercion of reverence to the national flag (Hinomaru) and the national anthem (Kimigayo)

C. The Response of the Japanese Government and its 6th Report

With regard to Article 17, the report implied that with the full implementation of the Personal Information Protection Law in 2005, the social base has been institutionalized for everyone to enjoy the benefits of highly developed IT society without any fear of one's personal information being unjustly collected and utilized.

The government report does not mention anything on its coercion of reverence to the national flag and the national anthem.

D. Our Views

D-1 Information on those who refused to stand-up at Kimigayo singing in-unison has been collected

D-1-a "Hinomaru" and "Kimigayo," the symbols of the War of Aggression have thrived even after the World War II

Together with the obeisance making to Go-shin-ei, the imperial portrait, the singing in-unison of

“Kimigayo” and the putting up of “Hinomaru” had been institutionalized at the core of the school curriculum as a means of nurturing obedience toward the emperor system since the prewar onto wartime days. For example, the 5th term state-approved school textbooks used between 1941 and 1945 explained “Kimigayo” as a song “wishing the emperor’s reign to continue and prosper for thousands of years to come.” This nurturing of children to be the Emperor’s subjects was one of the main engine pillars of our country’s invasion and colonial rule: “Kimigayo” and “Hinomaru” were the very symbols of the war of aggression.

Of the WWII Tripartite Alliance, only Japan has been using the same prewar and war time “Hinomaru” and “Kimigayo” up to now. This may be a proof of the lack of guilt toward the war of aggression, which may also explain for the outrageous comments on “comfort women” made by some Japanese politicians of today.

In 1999 when the National Flag and National Anthem Law (hereafter the Law) was passed, the government stated that no reverence to the flag and the anthem would be forced upon anyone. But the statement was broken immediately and coercion of reverence at once started in public schools.

D-1-b Students’ wishes have been denied/ignored at graduation and entrance ceremonies

The coercion of reverence to the flag and anthem has restricted the way ceremonies are conducted. The popular style created through students & teachers’ discussion of graduates and guardians facing each other without using the stage was prohibited almost with the passing of the Law: attendants were made to be seated to look up to the flag spread in the center of the stage wall, which was the very style observed in the prewar days.

D-1-c Collecting and list making of the names of those who refused to stand up

In Tokyo-neighboring Kanagawa Prefecture, its Board of Education (hereafter The Kanagawa Board) issued a notice asking the principals of prefectural schools to make sure that the attendants stand up in reverence to the flag and the anthem in 2004, a year after the Tokyo Board of Education issued the order of duty on Oct. 23, 2003. The Kanagawa Board started with the collection of the numbers of those teachers and staff who refused to stand up but it soon went on collecting the names of and related information* on those who refused to stand up (hereafter the refusers) in 2006, to make the refusers flinch. Making a list of those refusers makes it easy for the Kanagawa Board to go ahead with punishment whenever it wants to. Since this spring of 2013 the Kanagawa Board has been telling those repeating refusers, “We cannot help considering taking personnel measures,” implying that prejudicial treatment of the repeating refusers is imminent. (*prescribed form is attached on the last page)

D-1-d Any information on the refusers is personal information on/related to their thoughts

and beliefs

Because of the symbolic role “Kimigayo” and “Hinomaru” played in Japan’s war of aggression, as stated afore, not a few Japanese people still refuse to show respect for these symbols. The act of refusing to stand up for the national anthem singing in unison is based on such historical and/or world views that it is obvious that any information on a person’s act of refusing to stand up is personal information related to his/her thought and belief.

D-1-e Even the basic rules of collecting personal information are not followed

The reported refusers have never been asked by their principals if they would agree to let the information on their refusal reported to the Kanagawa Board nor told why their act of refusal needed to be reported to the Kanagawa Board, which are the basic rules/steps to be followed in collecting any personal information. It was only after the refusers demanded information disclosure that they got to know that the information on their not-standing-up had been reported to the Kanagawa Board and stored there. (_____ = rule 1, _____= rule 2)

D-2 Kanagawa Prefectural Personal Information Protection Rules prohibit the collection of information on/related to a person’s thought and belief

Kanagawa Prefecture was the first to promulgate its Personal Information Protection Rules in 1990 based on the 8 principles of the OECD. Its Article 6 prohibits public authorities from accessing information on a person’s thought and belief, strictly conditioning exceptional accesses. Its article by article explanation clearly states: **it is the bitter recognition of our past experience of having controlled not only expressed thoughts but also unexpressed inner thoughts that made us include thought, belief and religion in the inaccessible items.**

D-3 Two advisory bodies told the Kanagawa Board “It’s inappropriate to do ” but it ignored the advice

The collection of the information on the refusers started in 2006. Those refusers whose names had been collected raised complaints to the Personal Information Protection Panel whose function is to investigate administrative complaints and got a response issued on October 24, 2007. The panel told the Kanagawa Board that what it had been doing was an inappropriate collection of information on thought and belief and to stop it.

Then the Kanagawa Board, admitting that the information it would collect was basically a sensitive one on thought and belief, asked a third party advisory/consultative body called Personal Information Protection Council to let the board collect the information as an exceptional case. On Jan.17, 2008 the council issued a response also saying that it’s inappropriate to collect the information on the refusers. The Kanagawa Board, however, decided to ignore it and to keep

collecting without stating any “exceptionally rational reasons” to do so on Feb.4, 2008.

Following are the headlines found in the Kanagawa editions of two major newspapers dated Feb.5, 2008.

- Prefectural Authorities Have Emasculated the Rules of their Own Making (Kanagawa Shinbun)
- “Refusing to Stand up” Issue What is the Advisory Council’s Response for, if not Followed (Yomiuri Shinbun)

On Jan.20, 2010 the Personal Information Protection Panel issued another response saying “No” to the collection of information on the refusers and criticized the Kanagawa Board for having ignored the Council’s advice and for not showing any “exceptionally rational reasons” for going on collecting. The Kanagawa Board again decided not to follow this response on Feb.2, in less than two weeks’ time after the issuance, during which thorough consideration of the response could not have taken place.

D-4 The Court judged the information on the refusers is not personal information on thought and belief

As the Kanagawa Board kept collecting the refusers’ information in spite of the responses from the two prefectural advisory bodies saying “No” to its collection, 27 refusers whose information had been collected took their case to court. But then, the Kanagawa Board began to insist that the information it had collected is no longer personal information on his/her thought and belief but “office information.”

D-4-a A Dangerous Verdict saying that the information on the refusers is not personal information on/related to their thoughts and beliefs so long as the reasons for their refusal are not stated

The first court decision at Yokohama District Court did judge that information on the refusers is information on/related to their thoughts and beliefs. The second court decision at Tokyo High Court overruled the first one saying the refusers’ information **is not** on/related to thoughts and beliefs, for the Kanagawa Board had collected only the facts of some people’s not standing-up and not the reasons for the act. The dangerous ruling implies that if reasons are not asked, not only public workers but also students and guardians at school ceremonies or anyone at any ceremony with the flag and the anthem can legally be reported to the authorities of their refusal to stand up. On April 17, 2013, the Supreme Court dismissed the refusers’ appeal and the High Court ruling was finalized.

The administration didn’t observe the very rules it had promulgated to prohibit the collection of sensitive information while the should-be-checking judiciary automatically accepted the claim by the administration. It shows how low Japan’s sensibility is toward the handling of sensitive information.

D-4-b One of the Drafters of the Kanagawa Prefectural Personal Information Protection

Rules admits the information on the refusers is personal information on/related to their thoughts and beliefs

Mr. Masao Horibe, Honorary Professor of Hitotsubashi University (vice chairperson of Kanagawa Prefectural Personal Information Protection Council) who was involved in the draft making of the Personal Information Protection Rules is quoted as follows in the minutes of a consultative Council session: “These provisions were included in the prefectural rules following the world-wide tendency to provide special protection measures in the handling of sensitive information... In my opinion the inquired case involves information on/related to thought and belief as defined in Article 6.” As opposed to the drafters with their eyes open to the wide world, the government and the judiciary are still too narrow-minded to accept the common sense of the outside world.

D-5 Japan lags behind in its protection of personal information

D-5-a The Personal Information Protection Law at state level with no measures to prohibit the collection of sensitive information

The Personal Information Protection Law at state level is seriously defective, for it doesn't prohibit the collection of sensitive information. This very defect at state level has given room for the administration to coerce the reverence to the flag and the anthem and to collect and store the names of those who refuse the coercion and also for the judiciary to accept/justify these acts of the administration.

D-5-b The Personal Information Protection Law at state level with no provision for powerful independent third party institutions

The Kanagawa Prefectural Personal Information Protection Council the prefecture set up to guarantee impartial-neutrality in the use of its power has 15 knowledgeable members while the Kanagawa Prefectural Personal Information Protection Panel investigating administrative complaints has 5 law specialists. The members of the both are appointed by the Governor. Responses from these bodies are meant to be taken seriously but in reality they are simply ignored as reported above when they are not in line with what the administration wants and the judiciary accepts that. Third party institutions are too powerless to do their jobs as expected. The Personal Information Protection Law at state level doesn't even stipulate the need to set up a third party institution. Japan is far from a safe and enjoyable IT society as its 6th government report implied it to be.

E. Proposals for Problem Solving

- 1 Our proposal pertaining to the coercion of reverence to the flag Hinomaru and the anthem Kimigayo is the same as is stated in the **F Suggested Recommendations for Solution** in the

Tokyo Report.

- 2** The committee show concerns for the on-going collection of the names of and related personal information on those who refused to stand up and recommend the Japanese government to ensure that no one's personal information on/related to his/her thought and belief will be collected and stored.
- 3** The committee show concerns for the lack of measures prohibiting the collection of sensitive information in the Personal Information Protection Law at state level and recommend the Japanese government to revise the Law to include measures to prohibit the collection of sensitive information and to disseminate the importance of proper handling of sensitive information to the judges and administrators through lectures and trainings.
- 4** The committee recommend the Japanese government to set up independent and powerful third party institution(s) at state level to watchdog administrative bodies for the protection of personal information and also to give as much watchdog power to the institutions already set up in local entities for the same purpose.

***The Prescribed Form of the Report-back Paper on the Information on the Refusers the Kanagawa Board asks each school principal to fill in and submit to the Board**

As there was/were teacher(s) /staff who didn't stand up at the anthem singing in unison at our graduation/

commencement ceremony held on _____ date _____, I will submit the following report on the confirmation of facts and on the counsel given thereafter.

_____ date

School Principal_ Kanagawa Prefectural _____ school name _____ High

Official/Position Title•Name (of the refuser) _____

Date and time of the Occurrence _____ year _____ month _____ day _____ hour _____ minute
(roughly) _____

I Details of the instruction/direction and the confirmation of facts

<How the direction(s) was/were given to the whole faculty prior to the ceremony and how the act of not-standing-up was detected during the ceremony>

II Course of counsel thereafter <Details of counsel given (to the refuser) by the principal after the occurrence >

9. In Order to Restore Honor of Red Purge Victims While Alive

(Articles 18, 19, 22 and 26)

A. Points at issue

The Red Purge violates “freedom of thought and conscience”, “freedom of expression”, “freedom of association” and “equality before the law” guaranteed respectively by Articles 18, 19, 22 and 26 of the ICCPR.

The Red Purge under the Military Occupation

Japan was defeated in the World War II in August 1945, and was under military occupation led by General MacArthur, the Supreme Commander for the Allied Powers for six years and 8 months till April 1952. The occupation authorities ordered to call off the general strike planned for February 1, 1947, prohibited strikes by public servants, enacted in June 1949 the Law for Fixed Number of Personnel of Administrative Organization to dismiss about 240,000 public servants, and in September 1950, during the Korean War, made the Japanese Government adopt the decision “Purge of the Communist from Public Offices” in a Cabinet meeting.

Following the Shimoyama incident, the Mitaka incident and the Matsukawa incident, which are known as JNR’s Three Big Mysteries, the publication of the Japanese Communist Party’s newspaper *Akahata* was prohibited, the central committee members of the party were ousted and the Red Purge was enforced.

In August 1950 Yutaka Ohashi was given a disciplinary dismissal by the Minister of the Telecommunication based on Article 78 of the Public Service Act. The dismissal was not based on his wrong doing but as a part of mass purge of communists, their supporters and union activists. At that time he was an executive committee member of Kobe Chuden Branch of Japan Postal Workers’ Union, which belonged to Zenrouren or National Confederation of Trade Unions. He was only 20 years old, but was the head of the household of five members since his father and brother had passed away.

No apology, Compensation or Restoration of Honor for the Red Purge Victims

It is said the number of the victims of the Red Purge amounted more than 30,000 throughout the country. They suffered extreme mental, physical and economic hardships with difficulties finding new jobs, poverty, family breakdown and so on. Some ended up committing suicide. They filed lawsuits, and some local courts gave decisions in favor of them. The Supreme Courts, however, overturned the rulings, stating that “the letter by the Supreme Commander for the Allied Force is a

directive, and has the final authority over domestic state institutions and the citizens of the state. The court is not in the position to examine the effectiveness of the letter.” The victims of the Red Purge have not received any apology or compensation, nor have they restored their honor since they were purged 63 years ago. The three people now fighting by the lawsuit are now in their 80’s and 90’s. They strongly desire to receive apology, compensation and to restore their honor while they are alive.

B. Concern and Recommendations of the Human Rights Committee

Nothing has been mentioned on this problem by the HRC so far, although they submitted an alternative report to the Fifth Periodic Report on ICCPR by the Japanese Government, and sat in the review sessions.

Domestically they filed a request for human rights relief with the Japan Federation of Bar Association, which made a recommendation to the Cabinet of the then Prime Minister Taro Aso stating that “(the Red Purge) was a discriminatory treatment against those with a certain thoughts or beliefs, and violated the freedom of thought and conscience, of expression and of association, which is not permitted under any situation.”

C. The response of the Japanese government and the courts

The Japanese Government has turned down the issue on the ground that “the Red Purge was an “extralegal measure” and is now all settled.” In March 2009, Yoshiaki Kawasaki (96 years old now, workplace at the time of the purge was Asahi Glass Co. Ltd.), Seijiro Yasuhara (92, Kawasaki Steel Corporation) and Yutaka Ohashi (83) filed a lawsuit in Kobe District Court for the state compensation. It ruled that “the Red Purge was “extra constitutional judgment” under the directive of GHO and that “redress is within the discretion of the Diet.” Both Osaka High Court and the Supreme Court turned down the appeal. They took the same attitude as the government. Judicial independence is not maintained in Japan.

D. Opinions

Regarding those who had been purged from public office on the grounds of war responsibilities, the Japanese Government began to remove the punishments in a phased manner before the effectuation of San Francisco Peace Treaty, and by the time the treaty came into effect all those people had recovered their rights or qualifications to retirement allowance, pension and other benefits. They were even allowed to return to the public office.

On the other hand, no remedial measures have been taken for the Red Purge victims, even though the purge itself was against the Potsdam Declaration and infringed the freedom of thought and belief, which the Japanese Constitution guarantees as the most fundamental human rights.

If the Red Purge had been “extralegal measure under military occupation”, it could have been removed and the victims’ honor could have been restored after the peace treaty came into effect. They are the very first people whose human rights should be redressed. The Japanese Government bears grave responsibility for having left the problem unsolved.

E. Proposals for solutions

There is no “wall of time” to redress human rights violations. “Freedom of thought and conscience” should be respected even under occupation, and the victims of its violations should be provided redress.

The three victims are now preparing for an appeal for retrial, but they are very old and have little time left. The Supreme Court should accept the appeal for retrial, open the court and re-examine the case based on the Japanese Constitution.

We request the Committee to recommend to the Japanese Government the redress for the Red purge victims. It also should recommend the state party to ratify the first protocol of the ICCPR and implement the individual communication procedure. If this procedure had been implemented in Japan, we could have solved this problem much earlier. The system is indispensable to promote human rights in Japan, which is regarded as an economic superpower but falls far behind the international standards in the area of human rights.

10. Textbook Authorization that violates Freedom of Expression

(Article 19)

A. Points at Issue

Textbook authorization violates the Article 19 of the International Covenant on Civil and Political Rights.

Up to its fifth periodic reports, the Japanese Government had cited textbook authorization as an example of restrictions on freedom of expression in Japan. However, in its sixth reports, it mentions nothing about textbook authorization, despite the fact that there have been no alterations in the authorizing system. Therefore, We are going to submit reports of the problems concerning textbook authorization to Human Rights Committee on behalf of the Government.

B. Nothing is mentioned in the Consideration of the fifth periodic reports.

C and D. The Government's responses, their problems and our comments

1. The Government explained in the fifth periodic report as follows about textbook authorization

Explanations in the preceding Reports are almost the same.

301. Japan follows the textbook authorization system under the School Education Law for textbooks which serve as the principal teaching materials in courses taught in elementary, junior high and high schools. Under this system the Minister of Education, Culture, Sports, Science and Technology examines textbooks which have been written and edited in the private sector and decides whether they are appropriate as textbooks. Those which are deemed acceptable are to be used as textbooks.
302. The demands to guarantee the right of nationals to receive an education at elementary, junior high and high schools levels are follows:
 - 1) The maintenance and enhancement of education levels nationwide;
 - 2) The guarantee of equal opportunity in education;
 - 3) The maintenance of appropriate educational content; and
 - 4) The guarantee of neutrality in education.
303. The textbook authorization is carried out to meet these requirements. It merely prohibits the publication of textbooks as primary teaching materials if such books contain material which is recognized to be inappropriate. Since the textbook authorization does not interfere in any way

with the publication of books for general use, such restriction on the freedom of expression is within the limits of rationality and necessity. This line of thinking was also apparent in the decision handed down by the Supreme Court on March 16, 1993 and has also been supported in subsequent court decisions.

Explanations above are helpful as far as the elucidation of the system in Paragraph 301 is concerned; otherwise they do not reflect the real situations of school textbooks in Japan. To be sure, a nationwide system to "guarantee the right of nationals to receive an education" is necessary, but the State Party has never given a reasonable explanation as to why it validates the limitation of freedom of speech and expression provided by the Article 19. Neither "the guarantee of equal opportunity in education," "the maintenance of appropriate educational content," or "the guarantee of neutrality in education" cited in Paragraph 302 is a sufficient ground to limit the freedom provided by the same Article. These demands merely reflect the legal fact¹ that the State Party obligates the usage of authorized textbooks in elementary, junior high and high schools. It is this duty of usage that prevents the authorized textbooks from enjoying freedom provided by the Article 19, and they function as a tool to control educational contents in school education.

Paragraph 303 shows that the books which were edited to publish as textbooks may not be used as textbooks. Hence authorization system violates freedom of publication. The periodic reports only cite "the decision handed down by the Supreme Court on March 16, 1993" as the sole ground to limit the Article 19, and they are silent about the fact that the decision has been criticized by influential lawyers and scholars². In this respect, the paragraph does not reflect the correct situations.

According to Article 19 (3) of International Covenant on Civil and Political Rights, freedom of expression is subject to restrictions in some cases, i.e.: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals, but these shall only be such as are provided by law and are necessary. Textbook authorization system in the State Party falls under neither.

2. Examples of the removed descriptions which were made a political issue

Textbook authorization system has eliminated printing opinions in textbooks different from those of the Government's. Here are some examples. These are just a few of such cases.

(1) Descriptions of the Japanese military forces' responsibility for driving residents to commit suicide in 1945 in Okinawa were refused during the examination of a Japanese History textbook

¹ Article 34 of School Education Law.

² Among court decisions, one handed down at Tokyo District Court in 1970 (one by Judge Sugimoto) is known to be particularly persuasive.

for high school level in 2007. This incident made people in Okinawa burn with anger, and a protest rally of more than 100,000 participants was held. Still, the Ministry of Education, Culture, Sports, Science and Technology which governs the textbook authorization has not agreed that the decision was wrong.

- (2) Critical descriptions of Three Mile Island Nuclear Power Plant Accident (in the U.S.) in 1979 in a Geography textbook for junior high school level in 1980 were changed to those stressing safety of nuclear power generation, after the textbook was authorized. Policies stressing safety rather than dangers of nuclear power generation like this have not changed much even after Fukushima Daiichi Accident in 2011.
- (3) Descriptions of the presence of military sexual slavery, or so-called "comfort women," in a Social Studies textbook for junior high school level in 1996 were made to change during the examination. Since then, even today, it is virtually impossible to write about the matter in textbooks.

3. Tendencies to strengthen textbook controls

Currently there is a growing tendency to further deprive textbooks of freedom of expression and speech. Liberal Democratic Party, the political party in power right now, is planning to reinforce textbook controls by authorization, and to enact a law to virtually designate government-designed school textbooks³.

Some textbook authorization experts who are in charge of examination of Social Studies textbooks are long-time believers of historical revisionism. Their perverted historical understandings play a role in regressing descriptions about Japan's assault and harm to other countries during the Second World War. They are scheming to make sure that such facts do not appear in textbooks. One of the former chief textbook authorization experts is now a Vice-President of "Japan Society for History Textbook Reform," an organization of historical revisionists.

E. Suggestions for rectification

Textbook authorization is violation of freedom of expression provided by the Article 19. We strongly request that you recommend abolishing textbook authorization system to the State Party.

³ Liberal Democratic Party, "Textbook Authorization in the future--an interim report of special session discussions" (June 25, 2013)

11. Secure the Right to Organize for Firefighting Personnel as soon as possible

(Article 22)

Firefighters' Network (FFN) was established in 1997, organizing about 1,000 fighters to date. One of its objectives is to secure the right to organize as soon as possible for 156,000 firefighters who have longed for its realization. FFN has visited the ILO headquarters in 1995, 1997 and 2008, requesting the recovery of the right to organize, and also submitted its reports at every opportunity to the Committee and other Human Rights Treaties bodies.

A. Main Point

Regarding Article 22 (1), (2) and (3) of the Committee

Not to secure the right to organize for Japanese firefighters is in violation of Article 22 of the Committee. The Japanese government's view that firefighting personnel belong to a "component of the police" is its convenient interpretation. In other word, it is a deceitful attitude. Not securing the right to organize for the firefighters corresponds to legislative omission in international laws and national laws.

B. Recommendations and Concern of the Committee

No recommendations expressed so far by the Committee.

C. Response of the Japanese government

(1) "Declaration" expressed by the Government at the time of the ratification of International Covenant is in violation of international laws.

The Government has ratified the ILO Convention 87 in 1965. At that time, as the Government ratified it without securing the right to organize for the firefighters, this problem still remains unchanged. Article 9 of the ILO Convention 87 stipulates as follows.

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labor Organization the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

When the Government ratified International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights in 1979, it expressed the following “Declaration.”

Recalling the position taken by the Government of Japan, when ratifying the Convention (No.87) concerning Freedom of Association and Protection of the Right to Organize, that “the police” referred to in article 9 of the said Convention be interpreted to include the fire service of Japan, the Government of Japan declares that “members of the police” referred to in paragraph 2 of article 8 of the International Covenant on Economic Social and Cultural Rights as well as in paragraph 2 of article 22 of the International Covenant on Civil and Political Rights be interpreted to include fire service personnel of Japan.

(2) The 6th periodic report of Japan and its follow-up

The issue of the right to organize for the firefighters is described in the 6th periodic report as follows.

Japan declared in 1978 that the term “police” referred to in article 22, paragraph 2 of the Covenant should be interpreted as including the fire service in Japan. As a solution capable of reaching national consensus on the issues concerning the right to organize of fire defense personnel, the Government introduced a system using the Fire Defense Personnel Committee in 1995. In order to improve the operation of this system, the Ministry of Internal Affairs and Communications (MIC), the Fire and Disaster Management Agency, and the All-Japan Prefectural and Municipal Workers Union (JICHIRO) discussed and agreed to modify this system to establish a Liaison Facilitator system in 2005. Subsequently, Committee on the right to organize of Fire Defense Personnel was set up under MIC in January 2010. Based on opinions from both labour leadership and management representatives and interviews with relevant organizations, the Committee prepared a report in December 2010.

When the Committee on the right to organize of Fire Defense Personnel was held at MIC on 21 May 2010, the president of FFN appealed for the problems of workplaces of the firefighters of the country and also urged the members of this Committee to restore the right to organize as soon as possible.

In 2012, the Government abolished the Fire Defense Personnel Committee and declared them to guarantee the right to organize and the right to collective bargaining. On 15 November 2012, the right to organize was only introduced to the Diet. But, by the **dissolution of the Diet, this Government's bill was not unfortunately examined.**

D. Opinions

1. The Fire Defense Personnel Committee cannot lead to the solution of the right to organize

As the Fire Defense Personnel Committee functions according to Article 17 of the Fire Defense Organization Act, it is quite different from the “employee organization” provided in Article 52 to 56 of the Local Public Service Act. Namely, the establishment of the Fire Defense Personnel Committee does not mean the solution of the right to organize. It is not the place of negotiation between the management and the workers, either.

A few firefighters are demanding the equity commission and the personnel commission of taking effective measures for working conditions because they could not solve the problems of the workplace. If their problems still remain unsolved, they happen to file a lawsuit. Bringing problems to justice is only a part of the problems that are occurring in workplace nationwide.

2. It is not a part of the Local Public Service Reform

The issue on the right to organize for the firefighters is treated as a part of the Local Public Service Reform in Japan. But, it has been highlighted at ILO and UN Human Rights Treaties as the violation of international laws for forty years. Any discussion on the Local Public Service Reform has not unfortunately advanced.

E. Proposals for solution

The issue on the right to organize for the firefighters should be discussed separately from the Local Public Service Reform. It is strongly required to take measures for resolving the international pending issue. The term “fire personnel” should be eliminated from Article 52

(5) of the Local Public Service Act and related laws should be regulated.

FFN urges the Government to abide by the recommendations, which are related with the right to organize for firefighters, of the Committee on Economic, Social and Cultural rights, ILO Committee of Freedom of Association and ILO Committee of Experts on the Application of Conventions and Recommendations, and that the human rights of firefighters be guaranteed to a global standard level.

12. Report on unjust dismissal of 165 workers by JAL

(Articles 22 and 26)

A. Points at issue

Dismissal for the purposes of reorganization done by Japan Airlines (JAL) on December 31 in 2010 is breach of article 22 of the Covenant of Civil and Political Rights (CCPR) and discharge due to records of worker's sick days and /or age is violation of article 26 of CCPR that prohibits any discrimination. Therefore, JWCHR requests improvement of the situation.

(1) The course of the event and state of effort

JAL which was at reconstruction process dismissed 165 workers (81 pilots and 84 flight attendants) on the ground of their record of sick days and ages. This was done while the goal of the number of personnel cut and the profit at that period had been accomplished. An active chairperson of union committee, an executive committee member of Cabin Crew Union (CCU), an active chairperson and vice chairperson of Japan Federation of Aviation of Workers' Union (JFAU) and an chairperson of Air Line Pilots' Association of Japan (ALPA Japan) among pilots as well who were in leadership position in craft organizations in Japan and who were many activists were dismissed.

(2) The Tokyo district court made unjust conclusion and now the case is on trial in the Tokyo High court

148 personnel (76 pilots and 72 flight attendants) fought it over a trial, but in March 2012, the Tokyo district court rendered unjust judgment, turning down any of plaintiffs' argument. Insisting the decision unacceptable, 71 pilots (later 70) and 71 flight attendants appealed to the Tokyo high court respectively. Trial hearing will be held in September 12 for flight attendants and September 26 for pilots in 2013. More than 9 thousands signatures collected from groups and 220 thousands signatures from persons were submitted to the High court for justice. In addition to that, as much as 829 lawyers, the highest number so far, (highest number before was 300) joined as proxies for the plaintiff and sued JAL. It is absolutely big trial.

(3) Request towards ILO Commission on Freedom of Association

On March 23, 2011, CCU together with JAL Flight Crew Union (JFU) that organizes pilot workers made a request for arbitration towards ILO Commission on Freedom of Association on the issue. CCU and JFU claimed that manager's attitude and obstructive behavior against unions'

activities as stated above are offense on unions and they violate article 87 and 98 of ILO Convention.

On June 15, 2012, executive board of ILO announced report including recommendation by ILO Commission of Association on the dispute between JAL and Unions. This was the first recommendation related to violation cases of art. 87 and 98 of ILO Convention in the process of personnel cut for that JFU and CCU had requested. Union team can foresee more recommendation and examination taken as a result of supervise by ILO.

ILO admitted negotiations between two parties, unions and the manager, are indispensable to minimize ill effect on workers in the process of reconstruction of a company. ILO also requested the government of Japan that it informs the process and the situation to ILO for the purpose of proper negotiation and mutual consultation.

(4) Employing large number of new workers while dismissal

While JAL which was at reconstruction process dismissed 84 flight attendants, the company, on the other hand, has employed 1,140 new workers for flight attendants. There is no announcement from JAL that it will reemploy the discharged workers. To the request from the unions to solve the situation between the company and the union, JAL did not change unfaithful attitude, saying that, " it does not comment on the dispute. It is difficult to have a mutual consultation to bring solution by itself."

B. Recommendations and concern of CCPR

Because the dismissal was done in December 2012, 4 years after the fifth review by the Human Rights Committee on CCPR, there is no recommendation and concern from the Committee. The recommendation by ILO is as stated in the above.

C. Reaction of the Government of Japan (GOJ)

The GOJ has done nothing for the dispute. It has not done any actions, too, as to recommendation of ILO.

D and E. Opinions and Suggestions to solve the dispute

The real reason for dismissal is removal of the unions and members of labor unions, which spoke loudly and were united to claim rights we cannot give up as human beings and united to keep them, from the company. The members of the unions accused socially policies of those who were

appealed because they put more priority on enterprise's profit than on safe flights. Under the ostensible reason for reorganization plan, there was unfair labor act structurally incorporated. The root of dismissal in this case lies in that.

Dismissal by JAL is clearly unfair labor act. Discharge both against CCPR's stipulation and Japanese domestic laws should never be let past and allowed. Please make appropriate recommendation for the GOJ to stop it.

The Parallel Report was prepared in cooperation with:

**Japan Association for Social Justice and Human Rights (KYUENKAI),
Japan Lawyers Association for Freedom (JLAF),
Association for the Bereaved Families of Karoshi in Japan,
League Demanding State Compensation for the Victims of the Public Order Maintenance Law,
Organization to Support the Lawsuits for Freedom of Education in Tokyo,
Plaintiff Group and Civil Support Group of the Trial for the Protection of Personal Information on
the Refusal to Stand up for the “Kimigayo,”
Hyogo Group against Red Purge,
Japan Federation of Publishing Workers’ Unions,
Firefighters’ Network (FFN) and
JAL Unfair Dismissal Withdrawal Plaintiffs.**