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For the 7th Periodic Review of Japan at the UN Human Rights Committee session

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Part 1: Freedom of Expression

Part 2: The Six Digital Laws and the Land Survey Law

NGO COALITION FOR FREE EXPRESSION & OPEN INFORMATION IN JAPAN (NCFOJ)

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List of Acronyms

APPI	Act on the Protection of Personal Information
CARP	Collegiate Association for the Research of Principles
FIRRMA	Foreign Investment Risk Review and Modernization Act
GDPR	General Data Protection Regulation
ICCPR	International Covenant on Civil and Political Rights
LDP	Liberal Democratic Party
LoI	List of Issues
METI	Minister of Economy, Trade and Industry
PPC	Personal Information Protection Commission
SCJ	Science Council of Japan
SLAPP	Strategic Lawsuit Against Public Participation
UC	Unification Church

Introduction

This report is the product of a collaborative effort by the following civic organizations:

1 Women's Active Museum on War and Peace
2 Support Group for the Case of Itabashi High School Graduation Ceremony and “Freedom of Expression”
3 Lawyers’ Association Against the Conspiracy Law
4 People's Association against Criminalization of Conspiracy
5 Greenpeace Japan
6 Japan NGO Action Network for Civic Space (NANCiS)
7 Japan Civil Liberties Union (JCLU)
8 The Organization to Support the Lawsuits for Freedom of Education in Tokyo
9 Action network against the land survey law
10 Society for Abolishing the Family Registration System and Discriminations against Children Born out of Wedlock (AFRDC)
11 Japan International Volunteer Center (JVC)
12 Consumers Union of Japan
13 Japan Mass Media Culture Information Workers' Union Conference (MIC)
14 Group of Protesters Against the Secrets Law and the Anti Conspiracy Law in Aichi, Japan
15 League of Lawyers Against the State Secret Act
16 Media Research Institute
17 Lawyers' Network Against a Digital Surveillance Society
18 Human Rights in Japan project

Part 1: Freedom of Expression

Chapter 1 Exhibition "Non-Freedom of Expression"

In response to the Paragraph 23 of the List of Issues (LoI)

In September 2020, we reported on the concerning suppression of the international art festival, Aichi Triennale 2019's special exhibition "After 'Non-Freedom of Expression?'"[1] Subsequent developments have only exacerbated the situation, as reported below.

1. Recommendations

(1) The State Party should take appropriate measures to prevent unwarranted threats and attacks on cultural and artistic expression.

(2) The State Party and local governments should not unreasonably restrict opportunities for cultural and artistic expression on the grounds that the expressed opinions and views differ from the Government's.

(3) The State Party should ensure its police forces maintain political neutrality in accordance with the Police Act and must not interfere with the expression of critical speech against the Government by force.

2. Reasons for recommendations

Paragraph 23 of LoI

With reference to the previous concluding observations (para. 22), please report on steps taken to clarify the vague and open-ended concept of "public welfare" and to ensure that it does not lead to restrictions on the rights to freedom of thought, conscience and religion or freedom of expression beyond the narrow restrictions permitted in paragraph 3 of articles 18 and 19 of the Covenant.

The "Non-Freedom of Expression Exhibition" aims to ensure opportunities for the public to enjoy works of art that were denied exhibition at public facilities. The exhibition features works on such themes as the Japanese Imperial System, the "comfort women" issue, the nuclear accident, and the U.S. military bases in Okinawa.

The "Non-Freedom of Expression Exhibition in Tokyo" was originally scheduled to open on 25 June, 2021. Immediately after the announcement of the exhibition on 3 June, however, right-wing groups began attacking the private gallery scheduled to host the exhibition through obstructive e-mails, phone calls and street propaganda. In the street protests, more than a dozen people vociferously criticized the contents of the exhibition and the gallery's decision to rent the venue out for the exhibition. When police officers from

[1] NCFOJ, "Ch1 The Deepening Crisis of Freedom of Expression", "Part I. Freedom of Expression, Freedom of the Press and Freedom of Assembly & Right to Know" in "The Joint NGO Report on the International Covenant on Civil & Political Rights (ICCPR) Articles 18, 19 & 21", 30 Sep 2020, pp.5-6.

the local police station arrived at the scene, they were reluctant to respond, only persuading the rightists to stop using microphones. The exhibition's organizing committee had no choice but to try to change the venue, and announced on 24 June that the exhibition would be postponed. The organizing committee chose a public facility as a new venue, and negotiated with the administration several times to secure a permission for its use. has been seeking unsuccessfully to hold the exhibition at a new venue. The "Non-Freedom of Expression Exhibition in Tokyo 2022" was held in Kunitachi Community Arts Center, in the city of Kunitachi, Tokyo, from 2 to 5 April 2022. Many people from the locality participated as volunteers in support of the exhibition. Despite attacks by right-wing groups meant to obstruct the event, the exhibition went on without major disturbances, guarded by the police officers mobilized in a large number.

In Nagoya, the exhibition, organized by another local organizing committee, opened as scheduled on 6 July 2021. On the morning of the third day of the exhibition, however, the municipality suspended use of and temporarily closed the venue after an envelope addressed to the Citizen's Gallery Sakae emitted popping sounds. The organizing committee protested the decision, but the city of Nagoya, the facility manager and the police were insincere in their response. The local organizing committee announced at a press conference that the exhibition would be held from 25 to 28 August 2022 at the same venue.

The "Non-Freedom of Expression KANSAI," an exhibition planned by a local organizing committee in Osaka City, was abruptly cancelled on 25 June, before its opening. The manager of "L Osaka," the venue of the exhibition owned by Osaka Prefecture, rescinded its permission to use the venue, citing the need to ensure safety. The Osaka prefectural government also approved the move. The local organizing committee brought a case before the Osaka District Court to permit use of the facility and to suspend the execution of L Osaka's decision based on the Local Autonomy Act- which stipulates the use of public facilities- and referring to relevant Supreme Court judgments. On July 9, the Osaka District Court ruled that the revocation of permission to use the gallery be suspended. The facility manager immediately appealed to the Osaka High Court. This appeal was promptly dismissed, followed by a further dismissal by the Supreme Court on 16 July. The exhibition was held as scheduled. During the exhibition, right-wing organizations carried out street protests and other acts of sabotage every day. In spite of these actions, a large number of spectators visited the exhibition. The exhibition was held successfully until its last day, thanks to actions undertaken by the organizing committee and citizens' groups to defend the exhibition.

The exhibition in Kyoto took place on 6-7 August 2022 at a public facility within the city. Despite attempts at obstruction, such as a propaganda vehicle, by a right-wing group, the exhibition received large audience without a major incidence. In Kobe, preparation is underway to organize the "Non-Freedom of Exhibition" on 10-11 September 2022.

In both Kyoto and Kobe, the organizing committees only announced the dates of the exhibitions, but not venues, for fear of right-wing groups mobilized to create troubles well before the start of the exhibition.

Only those who booked a ticket were informed of the venue. In principle, it is illegal to obstruct a peaceful exhibition with the use of force or violence. But the Japanese government is taking a rather negligent attitude, without making an adequate effort to stop such acts in line with the law.

Chapter 2 Discrimination based on political opinion and the violation of freedom of expression in relation to the refusal to appoint six candidates for membership of the Science Council of Japan

Prime Minister Yoshihide Suga's refusal to appoint six candidates as members of the Science Council of Japan (SCJ) on October 1, 2020 violated the Science Council of Japan Act and the Constitution of Japan. It was an act that violated the academic freedom guaranteed by Article 23 of the Constitution of Japan. Article 7, Paragraph 2 of the Science Council of Japan Act stipulates that "Members shall be appointed by the Prime Minister based on recommendations according to the provisions stipulated in Article 17", and Article 17 of the Act cites "Scientists with outstanding research or achievements" as the criteria for recommendation. This refusal of appointment also violates the independence of the Council, which is stipulated as "independent" in Article 3 of the Act. Furthermore, Article 2 of the Act explicitly states that the Science Council of Japan is "a representative organ of scientists of Japan both domestically and internationally", and political intervention in the appointment of the Academy is also an illegal act against academic freedom as provided in Article 23 of the Constitution. Since academic freedom is considered to be a category of freedom of expression, it is an act that violates Article 19 of the ICCPR. What is also significant is that the candidates who had made political statements were rejected for appointment. This is a violation of Article 26 of the ICCPR, which prohibits discrimination based on political opinions, and must not be tolerated.

In response to this refusal, the SCJ submitted a "letter of request" to the Prime Minister on October 3, asking for (1) an explanation of the reasons for the refusal and (2) the prompt appointment of the six members. More than a year later, no action has been taken on the letter of request. Meanwhile, the ruling party continues its political intervention to reorganize the Science Council of Japan and is preparing to revise the Science Council of Japan Act.

1. Recommendations

The State Party shall comply with Articles 19 and 26 of the ICCPR, as well as the Science Council of Japan Act and:

(1) Immediately appoint the six member candidates whose appointments were rejected; and
(2) Explain the reason for which of the appointments were rejected. In addition, the independence of the SCJ should be respected, and political intervention must stop.

2. Reasons for recommendations

The SCJ is Japan's national academy, founded in 1949 to reflect on the history of the war, when academic freedom was oppressed through pre-war state control as the country plunged into war. This organization was legally stipulated to be independent from political power, and has made numerous policy proposals

from a scientific standpoint. It has also participated in the activities of the International Academy of Sciences, the representative body of the scientific community, as "the representative organ of the scientists of Japan both domestically and internationally" under the Act. Political intervention in personnel matters of the academy, which represents the scientific community, is an illegal act against Articles 3, 7, and 17 of the Science Council of Japan Act. It is also an act that violates academic freedom under Article 23 of the Japanese Constitution. This is an infringement of Article 19 of the ICCPR, since academic freedom is internationally considered to be included in the category of freedom of expression. The Government of Japan must resolve this non-compliant situation as soon as possible and promptly appoint the six candidates for membership.

Members of the SCJ are appointed by the Prime Minister, who is the head of the Cabinet Office to which the SCJ belongs, but they are selected and recommended by the SCJ. The Science Council of Japan Act clearly states that the "consent" of the SCJ is required for the resignation of a member due to illness or other reasons, and the "consent" of the SCJ is also required for the revocation of the appointment of a member disqualified through such reasons as the discovery of the commission of a crime. Furthermore, the Prime Minister's appointment authority was confirmed in Diet deliberations (1983) through the answer of then-Prime Minister Nakasone that the appointment powers held by the prime minister are "merely formality" and that the Prime Minister has no veto power over the recommendation of the SCJ. This was confirmed by Prime Minister Nakasone at the time. The refusal to appoint, violating these legal and administrative rules, constitutes an abuse of the power of appointment. Furthermore, it has become clear that the refusal of appointment was designed through "secret documents" within the Prime Minister's Office and the Cabinet Office. The Prime Minister must explain how and why he refused appointment.

The refusal to appoint six candidates for membership in the SCJ sent shockwaves throughout Japan. This is because the government had never violated academic freedoms so blatantly in postwar Japan. More than 1,000 academic associations and nearly 500 organizations have issued statements in protest of this unlawful act and the violation of academic freedoms.

The six academics that were refused appointment are researchers in humanities and social sciences (law, political science, history, and religious studies), and had either spoken out against the enactment of the National Security Related Laws or the Act on the Protection of Specially Designated Secrets promoted by the Abe administration. While this has been pointed out from many quarters, Suga has offered no explanation as to how and why the "secret documents" within the Cabinet Office led to the rejection of the appointments and why the six were targeted for rejection. This strongly suggests that the reason for the rejection of appointment was discrimination based on political statements. That constitutes discrimination based on political opinion, which is prohibited by article 26 of the ICCPR. In addition, the Government's failure to be accountable has a chilling effect on the exercise of freedom of expression.

The six academics, with the assistance of more than 1,000 legal professionals, have filed requests for disclosure of administrative and proprietary information and are proceeding with further review procedures.

Prime Minister Suga claims Article 15 of the Constitution (status of civil servants, right to vote, secrecy of voting) as the legal basis for his refusal to appoint. However, Article 15 of the Constitution stipulates the status of public officials and the right to vote. On this basis, the Prime Minister's refusal to appoint a candidate for the SCJ -where such appointment powers have been demonstrated in Diet deliberations to be "merely formality"- lacks legal rationale.

Immediately after the rejection of the appointment, the government's Liberal Democratic Party (LDP) organized a project team within the party to prepare a "proposal" for the reorganization of the SCJ, raising the issue of amending the Science Council of Japan Act, and the Council for Science and Technology Innovation- an organization of the Cabinet Office- is preparing to amend the Act. It is believed that friction with the Ministry of Defense regarding military research, in which the Science Council of Japan has taken a cautious stance, is behind this. Political intervention in the SCJ, which is a national academy, is an act that violates academic freedom under Article 23 of the Japanese Constitution and Article 19 of the ICCPR, and should be stopped immediately. In response to the government's LDP's reform proposal, the SCJ has clearly stated the following requirements for a national academy: "(1) status as an institution representing the country academically, (2) granting of official qualifications for this purpose, (3) having a stable financial base through state expenditure, (4) independence from the government in terms of activities, and (5) autonomy and independence in the selection of its members. The reform of the SCJ should be discussed with respect to the reform plan proposed by the Council, which fulfills these five requirements. Otherwise, it will be a further violation of Article 19 of the ICCPR.

Reference: Science Council of Japan Act (Annex 1)

Chapter 3 Strategic Lawsuit Against Public Participation (SLAPP) instigated by Minister Hiroshige Seko Suppresses Freedom of Expression Concerning Public Figures

On August 30, 2019, Professor Masahiro Nakano of Aoyama Gakuin University was sued by former (then -incumbent) Minister of Economy, Trade and Industry (METI) Hiroshige Seko for defamation. This case deserves attention in connection with the protection of freedom of speech on the Internet.

The claim brought by Seko is as follows. Professor Nakano tweeted an allegation that Minister Seko was involved in the Collegiate Association for the Research of Principles (CARP) or formerly Moonies, a subordinate organization of the Unification Church (UC). Seko claims, however, that this was not true, and the tweet is said to have damaged Minister Seko's reputation.

1. Recommendations

(1) The Committee expresses its concern that the sudden filing of a defamation lawsuit against a private citizen by an incumbent Minister, without a prior negotiation, for publicly criticizing his views on Twitter is a violation of public freedom of expression of the individual concerned.

(2) The State Party should prepare a legal system that clearly prohibits threatening lawsuits (slap lawsuits) by governments, public officials, or major corporations against individuals or groups for their public speech, such as expressing opinions to governments, public officials, or major corporations on matters of public interest, while also giving due consideration to the guarantee of freedom of expression and the right to a judicial review.

2. Reasons for recommendations

(1) Strong Ties Between influential politicians affiliated with the LDP and UC

UC maintains a long-term and close relationship with Japan's ruling LDP. In September 2021, former Prime Minister Shinzo Abe sent a video message to UC affiliate's convention and delivered a congratulatory speech along with former U.S. President Trump.

Despite the Unification Church's beliefs that place the state and family above the individual and disregard the individual's basic human rights, certain influential members of the Liberal Democratic Party, to which Senator Seko belongs, are not affiliated with the Unification Church or its affiliated

(2) Key points of the case

It has been repeatedly pointed out over the years that Seko was involved with UC during his college years. In spite of this, Seko has never publicly denied his relationship with UC via any channel, including on his official Twitter account, which has over 260,000 followers.

Moreover, Seko is known to hold unusual opinions on human rights. He has stated that citizens on social welfare schemes should not be granted "a full range of human rights", a view in which ideological similarities with UC are recognizable.

The two tweets of Professor Nakano's were both of a public nature questioning the political and ideological leanings of the leading politician in the ruling party.

It is inappropriate that Senator Seko, Japan's then-incumbent Minister of Economy, Trade and Industry, suddenly filed a lawsuit against a private citizen, Mr. Nakano, over these two tweets, without any prior request for their deletion.

(3) Freedom of expression concerning public figures should be guaranteed extensively

Professor Nakano has filed a counterclaim against Senator Seko, contending that the lawsuit itself is a SLAPP and unlawful.

Japan does not prohibit SLAPP by statute, nor does it have established judicial precedents in this regard. Citing the European Court of Human Rights' decision by Axel Springer and other relevant cases, Professor Nakano's defense team argues that freedom of expression should be guaranteed extensively with regard to public figures, including Diet members.

Professor Dirk VorHoof states as follows in his 2017 paper titled "Freedom of Expression versus the Right to Privacy and Reputation".

"How to Preserve Public Interest Journalism

91. (omission) A fundamental distinction needs to be made between reporting facts which can contribute to the debate in a democratic society, e.g., in relation to politicians exercising public functions, and reporting details of the private life of individuals not exercising such functions.[2]"

In light of the above, Professor Nakano's defense team argues as follows.

"It is undisputable that Mr. Seko, the plaintiff in this lawsuit, is a "public figure among public figures" when Professor Nakano posted his tweet, given his position as Minister of Economy, Trade and Industry, as well as parliamentarian of the ruling party, and considering that he occupies the position of Secretary General of LDP in the House of Councillors after resigning his ministerial position."

Even if Senator Seko's allegation that these tweets were assumed to be false, the tweets point out that

[2] Von Hannover, "Freedom of Expression versus the Right to Privacy and Reputation", § 63. Standard Verlags GmbH, cited above, § 47.

Senator Seko himself was suspected of having belonged to UC and CARP, which Senator Seko now considers to be “anti-social organizations” (quoted from his complaint), when he was a student many decades ago. It is difficult to imagine that Senator Seko's current social reputation would be diminished by the revelation of such decades-old facts. Rather, Mr. Nakano’s tweets should be rather regarded as critical speech regarding a "public figure among public figures,” questioning the suitability of the Senator Seko as minister or a parliamentarian of the ruling party.

Such critical speech by Mr. Nakano against Senator Seko, a "public figure among public figures," should form part of Senator Seko's social reputation through free discussion. It is difficult to recognize unlawfulness in such act of expression as to render Mr. Nakano liable for damages as a remedy for defamation. Even if Senator Seko's social reputation were to decline as a result of the tweets, the defendant argues that the extent of the decline is not worthy of legal protection.

(4) Conclusion

We, the citizens of Japan, therefore, call on the HRC to caution against the abuse of defamation trials by those in public positions to suppress the expression of citizens, and to make appropriate recommendations on how slap lawsuits should be regulated, which will lead to the guarantee of freedom of expression.

Part 2: The Six Digital Laws and the Land Survey Law

Chapter 1 Six Digital Laws

1. Recommendations

(1) The State Party should take the following measures with regard to the six digital laws enacted on 12 May 2021. The State Party should take the following measures with regard to the six digital laws passed on 12 May 2021.

1) The Basic Act on the Formation of a Digital Society, the Act on the Establishment of the Digital Agency and the Act on the Protection of Personal Information (APPI)

The following amendments to the law shall be made.

① The Basic Act on the Formation of a Digital Society and APPI clearly state the guarantee of the right to control one's own information, which is one of the components of the right to privacy.

② The Act on the Establishment of the Digital Agency gives the Prime Minister and the Minister of Digital Affairs powerful authority unmatched by any other central government agency. If this authority is abused, there is a risk of serious privacy violations to the public. In order to prevent such a danger, the following measures should be put in place.

i Place the Digital Agency in an external bureau of the Cabinet Office rather than the Cabinet.

ii The head of the Digital Agency should be the Minister of Digital Affairs, who is the Minister of State for Special Missions, not the Prime Minister.

iii The provision on the obligation to respect the recommendations of the Minister of Digital Affairs should be deleted.

2) About the Revised APPI

① Revise the Act to strictly limit the cases in which the use or provision of personal information held by administrative organs, etc. for purposes other than for which the information was obtained is permitted, such as by revising the "reasonable grounds" and "special grounds" requirements in Article 69(2)(ii) and (iii) of the amended APPI to stricter provisions. The Act should be amended to strictly limit the cases in which the use or provision of personal information held by administrative organs, etc. for other purposes is permitted.

② With regard to APPI, the organization of the Personal Information Protection Commission (PPC) shall be expanded and strengthened to at least the same extent as that of the Fair Trade Commission, with about 800 staff members at all times and each regional office. In addition, the Commission will have the authority to monitor and supervise administrative organs, etc. of the national government and local governments, etc. (hereinafter referred to as "administrative organs, etc."). In addition, the authority to monitor and supervise administrative organs, etc. of the national government and local governments, etc. (hereinafter referred to as "administrative organs,

etc.") will be drastically expanded.

i The law will be amended to require the preparation and publication of a personal information file register and prior notification to PPC for personal information files pertaining to criminal investigations and the diplomatic defense sector.

ii Amend the law to grant PPC the authority to conduct on-site investigations and orders to each administrative agency, etc.

iii The existing reporting method of PPC's annual report to the Diet should be changed. The operation should be drastically changed so that at least a rigorous investigation is conducted for each administrative agency, etc., and the report is made in detail.

③ In implementing System Standardization, etc., it shall be prohibited to adopt a "centralized management" method in which personal information held by each Administrative Organ, etc. is accumulated in a specific organization and each Administrative Organ, etc. has access to the accumulated personal information. It shall be ensured that a "decentralized management" method be adopted in which each Administrative Organ, etc. manages personal information.

3) Act on Standardization of Local Public Entity Information Systems, etc.

The Act on Standardization of Local Public Entity Information Systems (hereinafter referred to as the "Standardization Act") and the sharing of systems based on the Basic Law on the Formation of a Digital Society, etc. are merely means to improve the operations of local governments and to enhance services for local residents. System standardization should not be a self-serving purpose in and of itself and the protection of privacy must not be compromised as a result of system standardization. Therefore, in promoting system standardization, etc., the law should be amended to ensure that local governments have sufficient discretion in the execution of their duties, and to create a system that does not compromise privacy protection.

(2) The following proper operation of the six digital-related laws should be carried out.

1) Citizens should not be forced to link their savings accounts to their My Numbers

2) The linking of deposit and savings accounts with personal numbers (My Numbers) should be strictly implemented in a way that it is not made compulsory in practice.

(3) In addition to the Personal Information Protection Board, a specialized third-party organization should be created to monitor intelligence agencies.

There is no surveillance system that professionally monitors and supervises the activities of the Cabinet Intelligence and Research Office, the Public Security Intelligence Agency, the Self-Defense Forces Intelligence and Security Force, and the Security and Public Safety Police. The public security police organizations in each prefectural police force are supposed to be monitored and supervised by the national and local public safety committees, but in reality, they do not function. There is no effective monitoring and supervising organization for the organization to be established in relation to the "Law Concerning the Regulation of Transactions Relating to Land and Other Properties Important for

National Security" (hereinafter referred to as the "Land Regulation Law"), which was passed by the Diet in June 2021. The agencies to be established are an agency designed to analyze the personal information of residents and others, which is supposed to be established in the Cabinet Office, and the Cyber Bureau and Cyber Direct Control Unit of the National Police Agency.

The activities of these intelligence agencies will be monitored and supervised by the PPC, but since the Commission has a wide range of supervisory targets in the public and private sectors, it cannot be guaranteed that the Commission alone will provide sufficient monitoring and supervision.

Therefore, in addition to the monitoring and supervision by the Personal Information Protection Board, a separate, independent and specialized third-party organization should be established to check the contents of specified secrets, information collected by the above-mentioned intelligence agencies, and information that the Digital Agency has standardized and the intelligence agencies have consolidated. If it becomes clear that the information is being handled inappropriately, this organization could make recommendations and issue orders to correct the situation.

2. Reasons for recommendation

(1) What are the six digital-related laws?

The six digital-related laws enacted on May 12, 2021 in Japan are: the Basic Act on the Formation of a Digital Society,

- The Act on the Establishment of the Digital Agency,
- The Act on the Improvement of Relevant Laws for the Formation of a Digital Society,
- The Act on the Registration of Savings Accounts for the Prompt and Reliable Payment of Public Benefits,
- The Act on the Management of Savings Accounts by Using Personal Numbers Based on the Intentions of Depositors, and
- The Act on Standardization of Local Government Information Systems.
- The Act on Standardization of Systems for Local Governments is a collective term.

The Cabinet approved the bills on February 9, 2021, and submitted them to the Diet, which passed and enacted them on May 12, 2021.

From the very beginning, there were concerns about the sufficiency of the six digital-related laws in terms of protecting personal privacy and personal information. However, despite the fact that this law is a bundle of 63 revised laws, it was only deliberated for 50-plus hours in both the House of Representatives and the House of Councillors. And with the Corona pandemic making it extremely difficult to hold public rallies, it was difficult for the people to rise against these laws. As a result, the

aforementioned fears were not dispelled. The six digital-related laws have the following problems from the viewpoint of privacy and personal information protection.

(2) Six digital laws roll back individual privacy and personal data protection

The Basic Act on the Formation of a Digital Society (hereinafter referred to as the "Basic Act") aims to realize the sustainable and sound development of Japan's economy and the happiness of its citizens through the formation of a digital society, and clarifies the basic framework for the formation of a digital society. However, the content of the Basic Act emphasizes the convenient and happy lives of the people, and compromises the protection of individual privacy and personal information.

The Basic Law sets forth that the rights and interests of individuals shall not be harmed as a basic principle (Article 10) and the protection of personal information as a basic policy (Article 33). However, they are only abstract principles and policies, and the right to control one's own information is not clearly stated. Moreover, Article 10 is placed alongside and relative to the rights and interests of legal persons, national security, etc. During the deliberations in the Diet, the opposition parties submitted an amendment proposal to specify "the right of self-determination on the handling of information concerning individuals" as the purpose of the law, but the proposal was rejected. The right to control one's own information was not specified in APPI, which was amended by the "Act for Establishment of the Digital Agency" and the "Act for Establishment of Relevant Laws for Formation of a Digital Society" among six digital-related laws.

Since the enactment of APPI and the Act on the Protection of Personal Information of Administrative Organs in Japan in 2003, the right to control one's own information, which is one of the components of the right to privacy, has developed through judicial precedents and academia to the point where it should be recognized. However, the Basic Act cannot be said to recognize the right to the self-control of one’s own information, and is flawed as the institutional vehicle to propel the digitalization of Japanese society.

A legal system that does not recognize the right to control one's own information in this way is contrary to Article 17 of ICCPR.

(3) Act to establish a Digital Agency that gives greater power to the Prime Minister and the Minister in charge of Digital Affairs.

There are major problems with the organization and authority of the Digital Agency. The Act on the Establishment of the Digital Agency establishes the Digital Agency as an organization with strong overall coordination functions (e.g., the authority to make recommendations), and makes it an organization that reports directly to the Cabinet in order to strongly promote the operation of the national information system, the common digital infrastructure for local areas, the personal

identification number (My Number), and data utilization (Article 2). It is headed by the Prime Minister (Article 6). In addition to the Minister of Digital Affairs (Article 8), who has the authority to make recommendations to the heads of the relevant administrative organs, there is also a special position of Digital Auditor. The Minister of Digital Affairs may make recommendations to the heads of relevant administrative organs when s/he finds it particularly necessary, and administrative organs are required to fully respect such recommendations (Article 8, paragraph 5). This is an unusual provision that has precedent only in the Reconstruction Agency, which was a temporary organization established in response to the disaster.

The position of the Digital Agency, its strong authority and the standardization of the information system may lead to the following situations by abusing the provisions of the moderate utilization of retained personal information and the restriction of its provision as described below. In other words, personal information held by administrative agencies and local governments may be transferred to the Digital Agency, the Cabinet Intelligence and Research Office, public security police organizations, information analysis organizations established under the newly established "Act on the Survey and Regulation of the Use of Land around Important Facilities and Remote Islands", and the National Police Agency, which is scheduled to be established in the future. This is a situation in which information is excessively accumulated, centrally managed, and utilized by the cyber direct control team of the National Police Agency's Cyber Bureau.

Once the personal information accumulated in the digital agency is leaked in this way, the impact will be immeasurable.

In addition, the Digital Agency is said to be a so-called agile organization with no bureaus or divisions. This is an extremely unique and opaque structure for an administrative organization. There is even a risk that the personal information it handles will be used and diverted inappropriately without any barriers between departments within the organization.

Such a situation risks leading to a surveillance society and the inhibition of the exercise of freedom of expression guaranteed in Article 19 of ICCPR.

Therefore, the Digital Agency should amend the law to change such an unusual organizational structure. In other words, like the Financial Services Agency and the Consumer Affairs Agency, it should be placed in a bureau outside the Cabinet Office, not in the Cabinet, and the Digital Agency should be headed not by the Prime Minister but by the Minister of Digital Affairs, who is the minister in charge of special missions, and the provision of the obligation to respect the recommendations of the Minister of Digital Affairs, which is not found in other ministries, should be deleted.

3. Regulations against the use or provision of personal information, including sensitive information, for purposes other than those for which it was intended should be made more stringent

1) Problems with the Maintenance Law

The Act on Improvement of Related Laws (hereinafter referred to as the "Improvement Act") is a mechanism to amend 63 related laws and to carry out the improvement at once. In particular, the three laws related to personal information, which cover the private sector, administrative organs, and independent administrative agencies, are integrated into a single law, common rules are set nationwide for local government systems, and separate jurisdictions are unified into the PPC. Furthermore, it is intended to correct the imbalance in the current legislation in the medical and academic fields. In addition, the provision of specified personal information between employers at the time of job change, etc. (partial revision of the Act on the Use of Numbers to Identify Specific Individuals in Administrative Procedures (hereinafter referred to as the "Number Act")), the use of personal numbers in affairs related to national qualifications, etc. and the implementation of information coordination (partial revision of the Number Act and Basic Resident Registration Act (hereinafter referred to as the "Juki Act")), drastic reinforcement of the system for issuing and operating personal number cards under the Local Public Entity Information System Organization Act (hereinafter referred to as the "J-LIS Act") (partial revision of the Number Act and the J-LIS Act) were included. In addition, the Civil Code, the Family Registration Law, the Building Lots and Buildings Transaction Business Law, the Architects and Building Engineers Law, the Labor and Social Insurance Law, and other laws were amended to revise the procedures requiring a seal and delivery of documents, etc., in order to contribute to reducing the burden on citizens and improving convenience.

However, there are many problems in the revised law from the viewpoint of the protection of individual privacy and personal information. In particular, the conditions under which the use and provision of personal information stipulated in Article 8 of the current Act on the Protection of Personal Information of Administrative Organs is permitted are maintained as they are in Article 69 of the revised APPI. In other words, the conditions under which administrative organs may exceptionally use and provide personal information are defined as "reasonable grounds" and "special reasons", which are extremely relaxed and easy to manage arbitrarily. However, in this day and age when the standardization of information and digitalization are strongly promoted, the "reasonable grounds" and "special reasons" specified in this provision should have been revised to be stricter. Even if the provisions of the Act are left unchanged, standardization has increased the risk that the provisions of Article 69 will be abused and that personal information- especially sensitive information- will be unlawfully collected and used for purposes other than those for which it was intended.

To begin with, at the time of the enactment of the Administrative Organs Personal Information Protection Act in 2003, the "Study Group on the Personal Information Protection Legislation of Administrative Organs, etc." presided over by the Parliamentary Vice-Minister for Internal Affairs and

Communications, who proposed the enactment of the Act, produced a report on 19 October 2001 titled "Enhancing and Strengthening the Legislation for the Protection of Personal Information Held by Administrative Organs, etc.-Personal Information Protection in e-Government," which stated that sensitive information was an issue for the future, stating that "it is expected that specialized studies will be conducted in each individual field, while continuing to take into account the opinions and requests of the public. The Committee on the Protection of Personal Information of the House of Representatives and the Committee on the Protection of Personal Information of the House of Councillors also passed similar supplementary resolutions to "urgently consider individual laws for the protection of personal information for which it is particularly necessary to ensure strict implementation of proper handling". However, no such legislative action had been taken.

However, despite the fact that the six digital-related laws provide a mechanism for personal information- including sensitive information- to be centrally managed under the Digital Agency, there has been no specialized examination of the protection of sensitive information in each individual field. If the new law is enforced as it is, there is a strong risk that it will lead to the creation of a surveillance society, and as mentioned above, it will discourage the exercise of freedom of expression as stipulated in Article 19 of ICCPR.

2) The need for the flexible construction of personal data protection ordinances

Personal information protection ordinances in local governments have been constructed by local governments in agreement with their residents prior to the national government. As a result, there are many cases where advanced provisions have preceded the laws established by the national government. Specifically, they require the Personal Information Protection Council to deliberate on the acquisition of sensitive information, recognize the deceased as personal information, and set restrictions on combining information online with external organizations.

Such unique efforts by local governments should be respected in accordance with the main purpose of local autonomy, and demands by the national government to refrain from applying such rules is an infringement of the autonomy of organizations guaranteed by the Constitution. Therefore, when local governments establish personal information protection ordinances, they should be allowed to flexibly take their own personal information protection measures. If such measures are not allowed, it would be contrary to the protection of privacy under Article 17 of ICCPR.

(5) The supervisory authority of the PPC needs to be significantly strengthened

The amendment to the APPI in the Maintenance Law has given the PPC supervisory authority over all administrative agencies. This is a step forward.

However, the supervisory authority of the PPC is limited to the submission of materials and requests

for explanations, on-site investigations, guidance and advice, and recommendations (153-15 Article 6). It cannot be said to be effective as a check-and-balance mechanism on the inappropriate use of personal information by administrative organs. This is different from the APPI, which grants the private sector the authority to enter and inspect books and documents and other objects (Article 143) and the authority to issue orders (Article 14, Article 5), which is different from the public sector. It must be said that the supervisory authority of the PPC over administrative organs is weak.

According to the supplementary resolutions of the Cabinet Committees of the House of Representatives and the House of Councillors, the use of personal information held by administrative organs, etc. for purposes other than those for which it was intended or the provision of such information to third parties shall be subject to strict recognition of "reasonable grounds" and "special grounds," which are the requirements for such use or provision, and the PPC shall monitor the appropriateness of the decisions made by administrative organs, etc.

However, if the authority of the PPC is limited to recommendations, proper supervision is impossible. Guidance and supervision by the PPC would extend to police information, including that of local police forces, and to the overall information collected by various intelligence agencies, such as the Self-Defense Forces' Information Security Forces, the Cabinet Intelligence and Research Office, and the Public Security Intelligence Agency. Therefore, the collection and profiling of personal information conducted in the name of investigating specified harmful activities (espionage, etc.) and conspiracy crimes should be subject to thorough guidance and supervision to prevent unauthorized use or inappropriate use of information for purposes other than those for which it was collected. It is clear that the mere exercise of advisory powers is insufficient for guidance and supervision. Therefore, the PPC should be granted the authority to conduct on-site investigations and issue orders to administrative organs through further amendments to the APPI.

In addition, the APPI exempts from the obligation of prior notification to the PIRC the retention of "personal information files that record matters concerning national security, diplomatic secrets, or other matters of vital interest to the State" and "personal information files that are created or acquired for the purpose of investigating crimes, investigating criminal cases under the provisions of the Act on Investigation of Taxation, or filing or maintaining public prosecutions (Article 74(2)(i) and (ii)) and the obligation to prepare and publish a personal information file register (Article 75, Paragraph 2, Item 1).

On the other hand, looking at the actual situation in developed countries, in Germany, the Data Protection Inspector (Data Protection Commissioner) has strong authority to conduct on-site inspections, check databases once every two years, and demand the deletion of any irregularities.

Government agencies, including such investigative and intelligence agencies, should be subject to regulation through on-site inspections of personal information databases by the PPC. By doing so, the private information of individuals who are subject to surveillance by public authorities should be limited to what is necessary, and a legal system should be established that regulates the legal authority of public authorities to collect, search, analyze, and use private information and how to exercise it.

Furthermore, the existing annual report of the PPC to the Diet is also completely inadequate. In order to confirm whether or not oversight by the Commission is actually functioning, and by extension, whether the privacy of the public and the protection of personal information are being protected, it is necessary to ensure transparency in the use of personal information through the Commission's annual reports. Therefore, the Committee should conduct a rigorous and appropriate investigation of all administrative agencies and report to the Diet in detail on the results and areas for future improvement.

In order to properly exercise the above-mentioned supervisory authority, it is necessary to expand and strengthen the organization of PPC to at least as large as that of the Fair Trade Commission, with about 800 staff members at all times and regional offices. If such improvements are not made, a situation incompatible with Article 17 of ICCPR will arise.

(6) You must not be forced to manage your daily savings account using your personal number.

The six digital-related laws include the Act on Registration, etc. of Savings Accounts for the Prompt and Reliable Payment of Public Benefits, etc. and the Act on Management, etc. of Savings Accounts through the Use of Personal Numbers Based on the Intentions of Depositors.

The two laws mentioned above expand the scope of use of personal numbers in the private sector, which is contrary to the guarantees provided in Article 17 of ICCPR.

While a fundamental review to address these concerns is essential, for the time being at least, we urge the government to ensure that further revisions to the system do not force daily savings accounts to be managed by personal numbers.

(7) To enhance the guarantee of the right to privacy, a monitoring system for intelligence agencies is essential.

To begin with, in promoting the digitization of society, it is essential to introduce a legal system that will ensure the guarantee of the right to privacy, which is increasingly at risk of being infringed by digitization. However, this point has not been taken into consideration at all in the process of enacting digital-related laws. In Japan, technologies for accumulating large amounts of information, such as the Internet, surveillance cameras, and GPS devices, have advanced dramatically, and the My Number (common number) system has been established. The "Act for Partial Revision of the Act on

Punishment of Organized Crimes and Control of Crime Proceeds" (hereinafter referred to as the "Revised Act on Punishment of Organized Crimes") has been enacted, a number of so-called "conspiracy crimes" were newly established. Under this law, concerns have been raised about the strengthening of the surveillance of citizens through the expansion of new investigative methods.

When people feel that they are being monitored, it becomes difficult for them to make autonomous judgments based on their own values and beliefs, to act freely, to collect information, and to express themselves. In other words, the right to privacy realizes personal autonomy in the private sphere, which is essential for respect for the individual, and is an indispensable precondition for the freedom of expression. As such, it is an extremely important fundamental human right that contributes to the maintenance and development of a constitutional democracy.

In particular, the following systems are essential for the activities of the Cabinet Intelligence and Research Office, the Public Security Intelligence Agency, the Self-Defense Forces Intelligence and Security Force, the police (especially the Security and Public Safety Police), the newly established "Act on the Survey and Regulation of the Use of Land around Important Facilities and in Remote Border Islands, etc.", the Cabinet Office's organization for analyzing personal information of residents, etc., and the National Police Agency's Cyber Bureau and Cyber Direct Control Unit. The following system is essential for the activities of the analysis organization of collected personal information of residents, etc., which is supposed to be established in the Cabinet Office, and the cyber bureau and cyber direct control team of the National Police Agency, which are supposed to be newly established in the future. It is a system in which an independent and specialized third party organization, separate from the PPC, has the discretion to check the contents of specified secrets, information collected by intelligence agencies, and information standardized by digital agencies, and recommend or order to correct them.

Article 41 of The EU General Data Protection Regulation (GDPR), which entered into force on 5 May 2016 also requires agencies carrying out investigative, crime prevention and intelligence activities to provide for one or more independent public authorities to monitor compliance with the GDPR, and that these public authorities may designate a data protection authority to be established under the GDPR.

In Japan, many intelligence agencies do not have a system of monitoring by a third party, and even if they do, they are not effective, so they have not reached the international level of privacy protection.

Therefore, in order to realize the protection of privacy according to Article 17 of ICCPR, an effective monitoring and supervision system by an independent and specialized third party, in addition to the PPC, is needed for the activities of the Intelligence Organs. This task should be realized in line with the activities of the Digital Agency.

Chapter 2 Land Survey Law

1. Recommendation

The Land Survey Law violates Article 9 of ICCPR, which prohibits arbitrary detention; Articles 17 and 18 of the Covenant, which guarantee privacy and freedom of thought and conscience; and Article 19 of the Covenant, which guarantees freedom of expression. The Government of Japan shall repeal this law.

2. Reasons for recommendation

(1) Process leading to the passage of the Land Survey Law and the outline of the Law

On 26 March, the Government of Japan approved the "Draft Law Concerning the Survey of the Utilization of Land, etc. in the Vicinity of Important Facilities and on Border Remote Islands, etc. and the Regulation of Their Utilization" (Land Survey Law) at a Cabinet meeting and submitted it to the Diet. This law was passed in the early hours of 16 June, the last day of the Diet, despite opposition from opposition parties such as the Constitutional Democratic Party, the Communist Party, the Social Democratic Party, and Okinawa Wind.

This law was submitted to the Diet as a Cabinet-proposed bill based on the recommendations made by the LDP's "Special Committee on Security and Land Legislation on 10 December, 2020. The government's "Expert Committee on Understanding the Actual State of Land Use" also considered whether to adopt a similar legal system. The report of this meeting pointed out that the acquisition of large tracts of land by foreign capital was occurring, causing anxiety and concern among local residents and the public as a basis for legislation.

Article 5 of the Act states, "The Prime Minister may designate as a watch area an area within a radius of approximately 1,000 meters around the site of an important facility and areas within border remote islands, etc., where it is particularly necessary to prevent the land within the area from being used for acts that interfere with the function of the said important facility or the function of the said border remote island, etc.

Article 6 of the Act stipulates that "the Prime Minister shall conduct a survey on the status of use of land, etc. within the watch area.

Furthermore, Article 7 of the Act stipulates that "the Prime Minister can, when it is necessary for the investigation of the status of use of land, etc., make request to the heads of relevant administrative organs, the heads of relevant local public entities, and other executive organs for information on the users of land, etc., located in the watch area pertaining to the said investigation of the status of use of

land, etc., and other relevant persons, including their names, addresses, and other information specified by Cabinet Order.

2 The heads of the relevant administrative organs and the heads of the relevant local public entities and other executive organs shall, when requested pursuant to the provision of the preceding paragraph, provide the information prescribed in the same paragraph."

Article 8 of the Act stipulates that "The Prime Minister may, when he/she finds it still necessary for the investigation of the status of use of land, etc. as a result of requesting the provision of information prescribed in paragraph 1 of the preceding article, request users of land, etc. in the watch area and other relevant persons to submit reports or materials on the use of said land, etc."

Article 9 of the Act stipulates that "When the Prime Minister finds that a user of land, etc. located within the watch area is using said land, etc. for an act that interferes with the function of facilities of important facilities or the function of remote islands of the border islands, etc., or that there is a clear risk of using said land, etc. for such an act, the Prime Minister may, after hearing the opinion of the Council on Land Use, etc., request the user of said land, etc. not to use said land, etc. for such an act.

2 When a person who has received a recommendation pursuant to the provision of the preceding paragraph fails to take measures pertaining to said recommendation without justifiable grounds, the Prime Minister may order said person to take said measures.

Article 25 of the Act stipulates that "If a person violates an order pursuant to the provisions of Article 9, paragraph 2, the person who committed the violation shall be punished by imprisonment for not more than two years or a fine of not more than two million yen, or both.

In other words, the law stipulates that the purpose is to prevent acts that interfere with the functioning of security-important facilities and remote islands related to national borders. The law designates as "watch zones" approximately one kilometer around facilities that the government deems to be of importance in relation to security, including Self-Defense Forces and U.S. military bases, Coast Guard facilities, and critical infrastructure facilities such as nuclear power plants, as well as remote islands related to national borders.

Personal information will be collected on the owners and renters of land and buildings in these areas, as well as person(s) concerned. The targets can be Japanese or foreigners.

Reports are requested as necessary, and penalties are imposed if they are not complied with. If an act

of obstruction becomes apparent, a recommendation can be made to stop the act, and if this is not complied with, an order with penalties can be issued.

In addition, Article 12 of the law designates the vicinity of particularly important facilities and remote islands as "special watch areas," and Article 13 requires prior notification of the sale and purchase of land or buildings in "special watch areas". Failure to submit such notification is also punishable by imprisonment for not more than six months or a fine of not more than one million yen, according to Article 26 of the law.

According to the Cabinet Secretariat's Office for Preparation of the Enforcement of the Land Survey Law, the law will be enforced by 22 June, 2022, and the basic policy, cabinet order, and ministerial ordinance (cabinet office ordinance) will be decided by 22 September, 2022 (full enforcement). The Council on Land Use will also be established after the enforcement by 22 June, 2022. Cabinet order and ministerial ordinances will be subject to public comment procedures, but the basic policy was initially not subject to public comment, but this policy may be revised by civic movement.

(2) The law has no recognized facts as a basis for legislation.

The government used the fact that there has been a series of acquisitions by foreign capital around the SDF facilities and that local governments have issued written opinions as the basis for the legislation of this law. However, only 16 out of 1,800 municipalities had written opinions, and none from Chitose City and Tsushima City, where the problem was said to have occurred. In addition, at the 2020 Budget Committee meeting, the government responded that no facts (legislative facts) had been uncovered that would indicate that base functions were being impeded by the acquisition of land by foreigners (February 25, 2020, House of Representatives Budget Committee, Subcommittee 8).

At a plenary session of the House of Representatives on 11 May, 2021, after the bill was submitted, the Minister in charge of the Cabinet Office, Mr. Okonogi, refused to answer the question itself, saying that the answer was not appropriate, citing the need to avoid security risks. Even after that, the minister's answer was evasive, saying, "We have to proceed with a thorough investigation of what we don't know, including the sense that we have to look for (legislative) facts" (26 May), and "anxiety is like grasping at a cloud, and the purpose is to investigate first" (15 June).

Thus, the Diet deliberations ended in an abnormal situation where the existence of legislative facts was shrouded in secrecy, and the law was passed.

(3) What was happening in Kure and Hakodate under the Fortress Zone Law?

The Fortress Zone Law (Law No. 105, July 15, 1902), which turned prewar society into a society where people could not speak, and which, together with the Military Secret Protection Law and the National

Defense Security Law, which were abolished by the Allied Forces and the United Nations after Japan's defeat in the WW II war, made photography and sketching in the vicinity of bases subject to severe punishment, was revived. It is a law that has been revived in the modern age by expanding the scope of facilities covered.

In Kure City and Hakodate City, the "Requested Zone Marker" still remains. Under the pre-war Fortified Area Law, when a fortified area was designated, even photography or sketching in civilian life was considered a violation of the law and was subject to detection by the Special High Police (Security Police) and the Military Police.

Compared to the Fortress Zones Law, this law is more broadly regulated in that residents and related parties are surveyed extensively in advance, and the scope of surveillance is expanded to include not only military facilities but also daily infrastructure such as nuclear power plants.

(4) The fact that the requirements leading to penalties are vague and left to the discretion of a Cabinet Order or the Ministerial ordinance violates Article 9 of ICCPR.

The first problem with this law is that the concepts and definitions stipulated in the law are vague and can be interpreted in any way at the discretion of the government. First of all, what constitutes "facilities related to daily life" among the "important facilities," which is a requirement for designating a watch area, is defined by government ordinance, and what constitutes "acts that interfere with the functioning" of "important facilities" is left to the basic policy set by the government. It is said that the basic policy will only give examples of "acts that interfere with the functions" and will not prepare a complete list.

Although the government has repeatedly stated that nuclear power plants are included, the concept can include any other major critical infrastructure such as other type of power plants, information and communication facilities, finance, aviation, railroads, gas, medical care, and water supply.

In addition, what information is to be examined about the subjects of the survey is also delegated to decree. Furthermore, there is no provision for a government ordinance to specify who the "other related parties" are that are to be asked to provide information in the investigation, and what kind of actions are to be referred to as "other necessary measures" in the recommendations and orders, which are left to the decision of the Prime Minister.

Thus, under this law, the requirements for the acts to be punished are not clearly stated in the law. This legislation violates Article 9 of ICCPR, which calls for clarity in requirements for the constitution of penalties.

In a question-and-answer session held by the House of Councillors Cabinet Committee on June 14, Ms. Sachiko Yoshihara, a member of the expert panel recommended by the ruling party and the basis for the legislation, said, "I was keenly aware that there is a risk that various speculations will spread just by reading the draft article. If we don't have a thorough discussion, it will lead to various interpretations by the public," she expressed her concern. However, the bill was not even amended.

(5) Arbitrary and extensive collection and utilization of personal information violates Article 17 of the Covenant, which guarantees the right to privacy.

1) Violation of privacy foreseen by the law

Article 7 of the Act states that personal information will be collected from residents of land and buildings around important facilities, as well as from people who come and go for work or other activities. In order to determine whether a person is likely to act in a way that interferes with the "functioning of the facility," information such as the person's name and address, occupation, daily activities, employment history, activity history, arrests, criminal record, friendships, and ideology and beliefs are required. Just by living within one kilometer around an important facility or coming and going in the area, the Prime Minister will collect this personal information and monitor it.

Article 3 of the law stipulates that "due consideration will be given to the protection of personal information" and "to the minimum extent necessary". However, there is no guarantee that these comforting provisions will be an effective deterrent.

Article 8 of the law obliges "users and other persons concerned" to provide information in order to investigate the use of land and buildings around "important facilities" and on border islands by owners and users. The "persons concerned" will be punished if they do not comply, so they will be forced to provide personal information about their neighbors, acquaintances, and collaborators. This is exactly the kind of provision that forces people to snitch on their neighbors.

2) Yokota Air Base Nighttime (Flight) Injunction Case File (list of plaintiffs in the lawsuit)

Even before the enactment of the Act, the government has been inviting private businesses to submit proposals for the utilization of certain "personal information files" held by ministries and other administrative agencies. The system is based on the amendment of the Personal Information Protection Law for Administrative Organs in 2016, and started in FY 2007. In December 2020, the Ministry of Defense solicited proposals for the use of 15 personal information files related to the trial, including the "Yokota Air Base Nighttime (Flight) Injunction Case File (List of Lawsuit Plaintiffs). These files contain names, addresses, ages, dates of birth, whether or not appeals have been filed, whether or not statements have been submitted, the amount of damages and their breakdown, and are therefore highly confidential documents. Although the documents will be de-identified by the time they are provided, it is feared that if they are cross-checked with other information, individual names

may be identified. In March 2021, the plaintiffs and their lawyers made a request to the Ministry of Defense to immediately remove the documents from the proposed file and not to use the plaintiffs' information for any purpose other than litigation.

On 14 April, 2021, Ms. Tomoko Tamura, a member of the House of Councillors (Japan Communist Party), raised this issue in the deliberation of the bill related to the Digital Agency, saying that providing personal information on the base lawsuit to a private company would jeopardize the protection of the plaintiffs' personal information. At the same time, it is a serious matter that will lead to the discouragement of civic activities, and they demanded that the call for proposals be withdrawn. In response, Prime Minister Suga replied, "We will not hold a request for proposals in 2021," and the request for proposals was withdrawn. It can be said that the result of the request has come to fruition, but it is feared that there may be other similar human rights violations.

Thus, the Land Survey Law is in violation of Article 17 of ICCPR, which guarantees the right to privacy, and Article 18 of ICCPR, which guarantees the freedom of thought and conscience.

(6) The law that enables de facto expropriation of land for military purposes and may also restrict surveillance activities at bases and nuclear power plants violates Article 19 of ICCPR, which guarantees the right to freedom of expression.

1) Expropriation of land for military purposes is now possible

According to Article 11 of the law, the prime minister can request the purchase of land if following the recommendation or order would cause significant hindrance to the use of the land. If the order is not followed, the person will be punished. This is a de facto forced expropriation of land around important facilities.

The Land Expropriation Act does not include military purposes in the scope of land expropriation projects from the perspective of pacifism, based on the reflection of the pre-war military system. A Land Survey Law that restricts private rights out of military necessity is contrary to the pacifism guaranteed by the Preamble and Article 9 of the Constitution. Furthermore, citizens who are subject to restrictions on their rights should be able to appeal against such designations, recommendations and orders, but the law does not provide for such a means of appeal.

2) Danger of restrictions on base surveillance activities

Surveillance activities at bases and nuclear power plants may also be subject to restrictions. In areas with high concentrations of bases, such as Okinawa and Kanagawa, where people suffer from noise and ultra-low altitude flights by U.S. military aircraft and crimes committed by U.S. soldiers on a daily basis, many citizens have long engaged in surveillance of the bases and protests to protect their lives and livelihoods. The same situation exists in the Sakishima Islands, Amami, and Tanegashima, where new

missile bases for the Self-Defense Forces and training grounds for the U.S. military have been and continue to be built.

Thus, despite the fact that bases and nuclear power plants are nuisance facilities that cause damage to people, there is a possibility that unavoidable base surveillance actions to protect their lives and livelihoods will be subject to monitoring.

The government has stated that such surveillance activities will not be subject to regulation. In the recommendations of the government expert panel, there is a statement assuming that base surveillance activities are subject to regulation, and there is no limitation in the text of the law, and such a reply cannot be considered to be an effective deterrent.

3) There are examples where base coverage has been significantly restricted by the revised Drone Regulation Law.

The Drone Regulation Law is another example of a law that initially raised no particular concerns about human rights violations, but which ended up depriving people of their right to know and making people who try to know a target of surveillance as potential criminals.

A series of accidents involving drones (small unmanned aircraft) in urban areas and the discovery that one had crashed on the roof of the Prime Minister's residence led to the "Act on the Prohibition of the Flight of Small Unmanned Aircraft over the National Diet Building, the Prime Minister's Official Residence, Other Important National Facilities, Foreign Diplomatic Missions, and Areas Surrounding Nuclear Power Plants (Drone Regulation Act)" being enacted and implemented in 2016. In the 2019 amendment, "defense facilities" were added to the scope of the law, and the name of the law was changed to "Law Concerning Prohibition of Small Unmanned Aircraft Flights over Areas around Important Facilities". Based on this law, the Minister of Defense has the authority to prohibit flights of small unmanned aircraft over areas surrounding important facilities. Based on this law, the Minister of Defense can designate an area of 300 meters around a "defense facility" as a restricted area. There was a growing concern that this would hide the reality of military facilities such as bases from the eyes of citizens.

The concerns became reality with a government ordinance enacted under the revised Drone Regulation Law, which came into effect in September 2020. For the first time, facilities of the U.S. military in Japan were specifically designated as target facilities. Camp Schwab was also designated as a target, and the adjacent sea area, i.e., the airspace above the new Henoko base construction site, was also designated as a no-fly zone for drones. This effectively banned the use of drones to check and photograph the site of the new Henoko base construction, which is still being opposed by many Okinawan people.

However, NGOs and documentary film production companies, which have been exposing illegal construction work such as red clay spills at the construction sites, have been banned from using drones to film the sites because they "cannot obtain the consent of the U.S. military in Japan., and even when they were finally granted permission more than six months later, they were only allowed to film from a distance, and their activities to learn about the progress of the construction work and monitor the illegal construction work were blocked.

Furthermore, when members of the above-mentioned groups fly drones near Camp Schwab (even though they are not flying in the no-fly zone), police officers rush in to monitor and intervene on a daily basis, severely infringing on free reporting activities and citizens' right to know.

It is feared that these restrictions will become even greater when the Land Survey Law is enacted on top of them.

(7) There is no prohibition on the acquisition of land around the base by foreign capital.
Curiously, although the law bases its enactment on the danger of foreign capital acquiring land around bases, it does not regulate the acquisition of land by foreign capital itself. The government says, "The purpose of the law is to correct or prevent the inappropriate use of land from the perspective of security, and it is not appropriate to discriminate only on the basis of the nationality of the owner of the land. Moreover, if a system is set up that only covers foreign capital, etc., it will also conflict with the GATS rules, which stipulate national treatment and are the international rules on service transactions.

However, according to the government's research, as a similar system overseas, in the United States, the purchase of real estate near military facilities was added to the scope of review under the Foreign Investment Risk Review and Modernization Act (FIRRMA) in February 2020, and the president was given the authority to suspend transactions. In Australia, it is possible to demolish structures in areas designated under the National Defense Act. In addition, under the Foreign Investment in Assets and Business Acquisitions Act, foreigners are subject to a prior approval system when acquiring land rights above a certain amount.

Even if the basis for legislation was valid, the first regulatory method to deal with it would have been sufficient to restrict foreign acquisition of land around the base, as is the case in the United States and Australia.

The Land Survey Law, which targets the entire group of citizens around the bases and nuclear power plants for surveillance and attempts to control their behavior through the threat of punishment, is clearly out of balance with its purpose, making it an abnormal legal system.

(8) Moves to abolish or resist at the local government level have begun.

Opinion letters and resolutions calling for the repeal or revision of the law have been adopted in Chatan Town, Nago City, and Nakagusuku Town in Okinawa Prefecture, and Asahikawa City in Hokkaido. The Chatan Town Assembly (Chairman: Nagahisa Kameya) in Okinawa Prefecture passed a written opinion calling for the abolition of the "Land Survey Law" with a majority of votes (12 in favor, 6 against).

The opinion criticizes the Land Control Law as "a law that allows for the investigation and monitoring of not only residents living near the base, but also users of the land," and expresses a sense of crisis, saying, "It is said that not only Chatan Town but all of Okinawa is a target area for surveillance, and there are concerns that personal information may be obtained, so it cannot be denied that it is a bad law. It also said, "The private and property rights of all residents and prefectural residents living near the base will be threatened, and the burden will only increase, while the people who should be protected will be left behind. In addition, Nago City's resolution states that "the city shall refuse the request for information from the Prime Minister in accordance with Article 22 of the Act" and "when providing personal information of citizens to an external organization, the city shall notify the individual or corporation of the party to whom the information was provided, as well as the information and its purpose.

(9) Conclusion

Therefore, we strongly urge the Human Rights Committee to recommend the government to repeal the Land Survey Law.

Annex 1: Science Council of Japan Act (Law No. 121, 1948)

Preamble

Upon the conviction that science is the foundation of a cultural nation, this law establishes the Science Council of Japan under the consensus of scientists and with the mission of contributing to our country's peaceful reconstruction, the welfare of human society, and the advancement of science in cooperation with the world's scholars.

Article 1

(1) This law establishes the Science Council of Japan and shall be called the Science Council of Japan Act.
(2) The Science Council of Japan stands under the administrative jurisdiction of the Prime Minister.
(3) The expenses of the Science Council of Japan shall be borne by the national treasury.

Article 2

The Science Council of Japan aims to improve and develop science as well as to reflect and permeate science in government, industry, and national life, as a representative organ of scientists of Japan both domestically and internationally.

Article 3

The Science Council of Japan performs the following duties independently.
1. To deliberate on important matters related to science and to endeavor to realize them.
2. To endeavor for the communication between scientific studies and to enhance its effectiveness.

Article 7

(1) The Science Council of Japan shall consist of 210 members of the Science Council of Japan (hereinafter "members").
(2) Members shall be appointed by the Prime Minister based on recommendations according to the provisions stipulated in Article 17.

Article 17

The Science Council of Japan shall select candidate members, according to the regulations for so doing, from among scientists with outstanding research or achievement, and recommend them to the Prime Minister pursuant to the Cabinet Office Order.

Article 26

Should a member engage in inappropriate behavior, the Prime Minister may dismiss said member on application of the Science Council of Japan.

Comment:
As is clear, the Prime Minister can neither select nor dismiss a member without the recommendation or application of the Science Council of Japan. The Prime Minister can have control over the Science Council of Japan only by means of general administrative guidance.

Translation and underline by Kanako Takayama and others