

**NGO REPORT
FOR THE EXAMINATION OF THE 6th PERIODIC REPORT OF THE
GOVERNMENT OF JAPAN AT THE 111TH SESSION OF
THE HUMAN RIGHTS COMMITTEE**

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**JAPANESE WORKERS' COMMITTEE FOR HUMAN RIGHTS
(JWCHR)**

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The NGO Report was prepared in cooperation with:

- League Demanding State Compensation for the Victims of the Public Order Maintenance Law,
- National Liaison Center against the Red Purge,
- Japan Association for Social Justice and Human Rights (KYUENKAI),
- Organization to Support the Lawsuits for Freedom of Education in Tokyo,
- Kanagawa Group Activating its Personal Information Protection Rules (KAPIP),
- Organization for the Rights of Children with Disabilities, Japan (RCDJ),
- JAL Unfair Dismissal Withdrawal Plaintiffs,
- Firefighters’ Network (FFN),
- Japan Federation of Publishing Workers’ Unions,
- Organization to Support the Nation Compensation Suit of the Fukawa Case

1. Special appeal with a view to realizing apology and compensation to the pre- and mid-war "Victims of the Public Order Maintenance Law" and post-war "Red Purge Victims" (a request, a petition)

Japanese Workers' Committee for Human Rights: NGO in Special Consultative Status with ECOSOC (Board of Executive Secretaries)

The groups of victims of pre- and mid-war "Public Order Maintenance Law" and those of post-war "Red-Purge" which was carried out under the U.S. Forces occupation have demanded for the observance of Article 18 (right to freedom of thought, conscience and religion) of International Covenant on Civil and Political Rights since more than 20 years ago. They submitted reports, heard sessions, made a speech whenever given an opportunity, and requested for recommendations to the Japanese Government at every sitting of the Sub-commission on the Promotion and Protection of Human Rights, and its consideration of Covenants and Conventions on human rights.

However, most regrettably, no mention in concluding observations or no recommendations have ever been made about this problem.

The victims have led life beyond description for nearly 70 years after the war without given any apology or compensation. They are now around 80 or 90 years old, and a lot of them are passing away every day with disappointment in heart. They can't wait any more. They keep tormented by the thought getting stronger by the day, "There should be apology and compensation while we are alive."

Now, the way to war which the Japanese Government is trying to follow is a way to the second "Public Order Maintenance Law and Red Purge," and we cannot allow it to happen. The move to return to Japan at the time of World War II is not an imaginary one, as shown for instance by the Government's attitude to refuse any apology or compensation to "comfort-women" victims. Instead, it is high time that the Government took definite measures to deal with the problems of victims of Public Order Maintenance Law and Red Purge as well as to "comfort women" victims. It is also important in order not to allow suppression of freedom of thought and creed which regrettably continues even today, and to improve conditions for peace, democracy and human rights in Japan.

In the 6th session of your Committee, we request you issue concluding observations and/or recommendations in response to the reports from the "Public Order Maintenance Law" and "Red Purge" victims.

Many counter-reports are submitted from NGOs on the occasion of this session which is to be scheduled to consider the report from the Japanese Government. As stated above, we request that you issue concluding observations and and/or recommendations, which, as usual, will make human-rights level of Japan take a leap and give us Japanese people courage and hope.

2. Relief for Victims of the Public Order Maintenance Law

The relief is the sooner, the better

In the name of the worst law of the century, "Public Order Maintenance Law" enacted in 1925, a great many people who opposed to and resisted the Japanese invasion and colonial rule to foreign countries were assaulted and tormented by government officials, such as the Special Higher Police. Today, we know that 95 or more people, including Takiji Kobayashi, were slaughtered. Hundreds of thousands of people were arrested and thrown into prison, died or were killed in prison, bound and/or tortured. The Public Order Maintenance Law was rampant not only in Japan; it raged still more violently in Korea, a colony of Japan at that time. What was done is a criminal act violating human rights and against humanity by a nation when it was pursuing warfare as a national policy. It is clear that the act infringed articles 7 and 18 of the International Covenant on Civil and Political Rights. As time passes, the number of living victims has decreased, most of them being now around 100 years old. These survivors are waiting eagerly for an immediate apology and compensation. However, the Japanese Government's standpoint is that the incident had happened in prewar days, and that it does not think it should apologize to them as a state, because what had happened was lawful under the contemporary law, however bad the law was.

In order not to let the dark age come again

Right now, the Japanese Government has no intention to apologize or compensate to the victims of the Public Order Maintenance Law; on the contrary, recently the Act on the Protection of Specially Designated Secrets, which is called "a present-day Public Order Maintenance Law" has forcibly been enacted. Promotion of our country toward a war-making nation is under way, with the planned revival of the Public Order Maintenance Law regime, and plans to throw away Article 9 of the peace constitution which launched the peace-loving post-war Japan. Necessity of verification and re-examination of the "Kono Statement" is openly discussed, which was originally made as an apology to people of China and Korea who suffered serious damage and sacrifices. In other words, "the current political power" is trying to bury the golden rule of the post-war politics that we will never repeat the war because of the horrible politics. These trends have the same root as the non-compensation for comfort women and the Public Order Maintenance Law victims. In view of articles 7 and 18 of the Covenant, victims of the Public Order Maintenance Law had their human rights were severely violated by the nation. Even if the incident occurred before the war, the Japanese Government is still responsible for the crime committed. International laws stipulate that there is no suspension of prescription to war crimes and those against humanity. If we can make the Government take on the responsibility and compensate for the victims, it will help stop the way to a war-making nation.

We request proper post-war process from a standpoint of human rights and humanitarian laws

We have fellow feeling with your committee in that you have shown serious concern about the legal responsibility for comfort women problems and the necessity of victim relief in your List of Issues following your concluding observation at the preceding session. The victims of the Public Order Maintenance Law are another unrelieved ones victimized by crimes against human rights and humanity. The Japanese Government insists that it is not appropriate to deal with matters which had happened before the Covenant was ratified; on the other hand, concerning the comfort women

who were victims of human rights abuse in the prewar days, the Government has referred to its "measures" in response to the deliberations and the concluding observation of the 94th session of the Human Rights Committee in 2008. Needless to say, the Government cannot continue ignoring the duty of apology and compensation which should go to the Public Order Maintenance Law victims, just because the incident occurred "before the ratification of the Covenant." Many of the victims were people who had resisted and fought since the time even before the Asia-Pacific war in opposition to the invasion and colonial rule of foreign countries. The Potsdam Declaration states, "the Japanese government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people," and their resistance battles were praised. Together with the early ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, immediate solution of the problem is required from the standpoint of the laws of international human rights and humanity, that is the observance of article 7 and 18 of the Covenant. Let us remember the international human rights law originated from a positive law created based on an international agreement after the mankind had deep reflections and apology on the inhumane acts during the World War II. Therefore, we think that preferential consideration should be given to the human rights relief to the victims oppressed, just because they resisted infringement on human rights during the Asia-Pacific war. Please acknowledge that the Public Order Maintenance Law victims were those whose human rights were violated just like the comfort women and that what was done was against international rights, and please recommend as a committee, that the Japanese Government should perform an immediate apology and compensation to the Public Order Maintenance Law victims. Post-war compensation has been realized one after another in many countries in the world such as Germany and the United States. We hope that your committee will emphasize the principle to punish and atone war crimes and the crimes against humanity based on the international human rights law.

We have come very far - we have appealed ever since the days of Sub-Commission

The League Demanding State Compensation for the Victims of the Public Order Maintenance Law submitted its first report to the Sub-Commission on the Promotion and Protection of Human Rights in 1995. The content of the report was "We would like the commission to recommend to the Japanese government that it should admit the Public Order Maintenance Law was a bad law which abused human rights, and that it should apologize and compensate to the victims just like Western countries did." In 1997, the representatives of the League were given an opportunity to directly appeal to the U.N. Sub-Commission on the Promotion and Protection of Human Rights. Since then, we have taken every chance to publicize our opinions whenever possible—we dispatched representation to Geneva, made a speech at meetings, and submitted parallel reports. However, as yet, no direct comment which referred to the demand to the Japanese Government by the League is not available from your committee. Since the establishment of the League 46 years ago, we have accumulated 8,400,000 petition signatures requesting apology and compensation for the Public Order Maintenance Law victims, and 393 local assemblies have adopted written opinions to that effect. Yet, the present condition is that the Japanese government is ignoring demands from the Japanese people, and the government reports do not mention the need to apology and compensate. We think that the key which realizes an apology and compensation to the Public Order Maintenance Law victims by the Government is whether or not the

international human rights laws are applied in Japan. We request strongly that strict indication concerning the issue of the Public Order Maintenance Law victims should be made in the present examination of the report by the Japanese Government in the light of the international human rights law.

3. Relief for Victims of Red Purge

Restoration of Honor and Compensation for Red Purge Victims While Alive!

A. Points in dispute

The Red Purge was implemented in 1949 and 1950 by the Japanese government supported positively with the financial world under the advice of the U.S. military occupation. The number of estimated 40,000 communists, their supporters and activists of labor unions were dismissed and purged from their workplaces violently by branding them as “subversives” and “obstructing public activity”. It is the largest violation and oppression of human rights in the postwar period. This oppression not only gave the victims direct suffering, but also rendered massive damage to labor movements and democratic movements demanding improvement of the people’s life, independent economic recovery and establishment of democracy. In these days, the violation of human rights such as the illegal dismissal of Japan Airlines workers, lockout-dismissal of IBM, the termination of contracts for non-regular workers and “thought investigation” for city officials enforced by Mayor Tooru Hashimoto in Osaka, is performed openly. It shows that the Red Purge problem is still left unsolved.

The Red Purge is in violation of Article 18 “freedom of thought and conscience”, Article 19 “freedom of expression”, Article 22 “freedom of association” and Article 26 “equality before the law” of the ICCPR.

B. Recommendation and concern of the HRC

They have submitted parallel reports several times for the examination of periodic reports of the Japanese government to the HRC, asking for its recommendation for the solution of the Red Purge problem, but unfortunately any recommendation or concern has not been yet made.

Although the relief for the Red Purge victims was rejected by the court, they filed a request of human rights relief to the Japan Federation of Bar Association (JFBA) and regional bar associations such as Yokohama, Nagasaki, Sendai, Kyoto, Nagano, Tokyo, Gunma, and Sapporo. At present, including two recommendations of the JFBA, the regional bar associations made recommendations to the then Prime Minister, saying that “the Red Purge violates the Constitution of Japan and freedom of thought and belief, equality before the law and freedom of association guaranteed by the Universal Declaration of Human Rights; it cannot be permitted in any situation”, and that “if the measures for the victims had been taken effectively, their honor could have been restored easily after the peace treaty came into force; the government bears a heavy responsibility for having left this problem unsolved.”

Injustice and illegality of the Red Purge becomes majority opinion in the judicial profession.

C. Response of the Japanese government and the court

The government has not responded to the recommendations made by the JFBA and other bar associations, stating that “the Red Purge victims are so aged that the measures for relief should be taken immediately.” In addition, it does not show any post in charge which is responsible for this recommendation. The court in Japan in those days turned down the appeal demanding the withdrawal of dismissal as “the Red Purge was an extra-constitutional measure,” avoiding the decision which should have been based on the Constitution already proclaimed. This

decision remains unchanged even now. The Supreme Court turned down the appeal of the victims on the same reason.

The Supreme Court is authorized to turn down a constitutional decision on the basis of separation of powers for an appeal of the people. According to the documents which were recently made public, it was made clear that the Supreme Court abandoned this position in the Red Purge case and the Sunagawa case. Kotaro Tanaka, the then Chief Judge of the Supreme Court, continued to give decision in line with the intention of the U.S. as the occupation authorities.

D. Opinions

At present, over 60 years passed after the oppression. All the victims are aged of more than 85 years old now. They strongly demand that their request be implemented while they are alive. The recommendation of the JFBA, as mentioned previously, indicates that “if the measures for the victims had been taken effectively, their honor could have been restored easily after the peace treaty came into force; the government bears a heavy responsibility for having left this problem unsolved.” The government, however, has never accepted this recommendation. On the contrary, after the peace treaty was came into effect, the government lifted the exile, which was implemented by the request of the Allied Powers, for those who had been held responsible for the war and removed from public service. At the same time, the government recovered the right and qualification of their pensions and had them returned to public service. “The right of equality before the law” is absolutely left behind. The Japanese government is obliged to obey the ICCPR and the Constitution of Japan.

E. Proposals for Solution

There is no “wall of time” for human rights relief. “Freedom of thought and conscience” should be respected even under the occupation period as mentioned in the recommendation of the JFBA, and the human rights which were violated should be restored.

The victims submit a petition every year as the right to appeal, asking for the establishing the special act for the relief of the Red Purge victims. Unfortunately the reaction of the legislature remains as untrustworthy as that of the government.

The government enacted the Act on Protection of Specified Secrets, which prevents the people’s right from seeing, hearing and speaking and may lead to the way to war. The Red Purge victims are now asking for abandoning this act, opposing the establishment of the act as the victims who suffered the largest violation of human rights in the postwar period. Again, they are the aged. Many of them are passing away while holding the thought of regrets. It exists little time. The way to solution is clearly indicated in the JFBA’s recommendation. We strongly request the Human Rights Committee to recommend the Japanese government to redress the Red Purge victims.

4. Dissemination of the Covenant to Law Enforcement Officials

(1) GOJ responded as follows.

“288. For judges who assume new duties or posts, lectures are provided on international trends and problems, including those concerning the Covenants, various human rights issues of women, children and foreign nationals and related measures. Through such training, efforts are being made to enhance the understanding and awareness of judges on international human rights issues on those occasions.”

According to the document of the Japan Association for Social Justice and Human Rights (Kyuenkai) acquired through the judicial administration document disclosure system, the judges have received lectures or heard speeches by specialists in the manner as described below (the number of such judges are not available).

Fiscal Year	Target Participants	Contents of Lecture	Lecturer	Duration
2009	assistant judges (newly appointed)	International law on human rights and the courts of justice	University Professor	2 hrs
2009	lawyer-turned-judges (accepted from practicing lawyers)	Human rights from the perspectives of UN Agencies	Board member of a body	100 minutes
2009	judges, head of department	International human rights conventions and recent trends	University Professor	2 hrs
2010	assistant judges (newly appointed)	International law on human rights and the court of justice	University Professor	2 hrs
2010	lawyer-turned-judges	Human rights from the perspectives of UN Agencies (1)	Board member of a body	100 minutes
2010	lawyer-turned-judges	Human rights from the perspectives of UN Agencies (2)	Board member of a body	100 minutes
2010	judges, head of departments	International human rights conventions and recent trends	University Professor	2 hrs

2011	assistant judges (newly appointed)	International law on human rights and the court	University Professor	2 hrs
2011	lawyer-turned-judges	Human rights of children and people	Board member of a body	100 minutes
2011	judges, head of departments	International human rights conventions and recent trends	University Professor	2 hrs
2012	assistant judges (newly appointed)	International law on human rights and the court of justice	University Professor	2 hrs
2012	lawyer-turned-judges	Human rights from the perspectives of UN Agencies	Board member of a body	100 minutes
2012	Judges, head of departments	International human rights conventions and recent trends	University Professor	2 hrs

The document says that the judges receive such lectures once when he or she is assigned to be an assistant judge, again 10 years later when he or she is promoted to be a judge and the third lecture is given when she or he is promoted to the head of a department such as civil or criminal. With some differences, an individual judge receives two-hour lectures three times in his or her career of more or less 20 years. We believe that this is absolutely insufficient.

In our experience, we have found that even the experienced judges do not have reasonable understanding of the International Covenant on Civil and Political Rights. For example, with regard to the cases of public servants in alleged violation of National Public Service Act, the Committee made the following observation in 2008 after they examined the 5th report of the Government of Japan.

Yet the Supreme Court ruled in favor of the lower court ruling that door-to-door distribution of political handouts by national public servants are illegal, and at the same time the Supreme Court said that the judgment is not in violation of the International Covenant on Civil and Political Rights.

We refer to the following observation of CCPR.

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

(2) With regard to prosecutors, GOJ responded as follows.

“290. In various types of training for public prosecutors provided depending on their years of service, lectures concerning international treaties relating to human rights, including the Covenant, are provided to disseminate knowledge thereof.”

Again by the document disclosed legally through the system, Kyuenkai found the following facts about the lectures and trainings prosecutors received.

Date	Title of workshop	Contents of lectures	Lecturer	Duration	Expected attendance
2010.7.21	132th general training of prosecutors	IHR* and int'l cooperation for criminal investigation	Staff member of MOJ	1 hr	50
2010.11.25	133th general training of prosecutors	IHR* and int'l cooperation for criminal investigation	Staff member of MOJ	1 hr	50
2010.12.24	2010 prosecutor training	Int'l conventions on human rights	Staff member of MOJ	1 hr	Approx. 70
2011.10.19	134th Prosecutor general training	IHR* and int'l cooperation for criminal investigation	Staff member of MOJ	1 hr	63
2012.3.22	2011 training of new prosecutors	IHR* and int'l cooperation for criminal investigation	Staff member of MOJ	1 hr	Approx.74
2012.6.14	110th Prosecutor special training	IHR* and int'l cooperation	Staff member of MOJ	45 minutes	60

		for criminal investigation			
2012.7.17	135 th General Training of Prosecutors	IHR* and int'l cooperation for criminal investigation	Staff member of MOJ	1 hr.	64
2012.10.2	111 th Special training for Prosecutors	IHR* and int'l cooperation for criminal investigation	Staff member of MOJ	45minuts	58
2012.11.29	136 th General Training of Prosecutors	IHR* and int'l cooperation for criminal investigation	Staff member of MOJ	1 hr.	50
2013.3.27	2012 Training of new prosecutors	IHR* and int'l cooperation for criminal investigation	Staff member of MOJ	1 hr.	Approx.70

*IHR stands for International Human Rights

During the fiscal year of 2012 (March 2012 through April 2013), out of over 2600 public prosecutors including assistant prosecutors, only 302 attended lecture sessions on international human rights covenants, which accounted for less than one eighth. Besides, it is easy to imagine that none of the above 302 would have bothered to take more than one lesson, which means that 302 prosecutors spent about one hour for listening to the lectures. And probably half of the lecture was about international collaboration related to criminal cases. So the time allotted to the International Covenant on Human Rights must have been half an hour or so. And what is more, the lecturers were always staff members of the Ministry of Justice.

Generally speaking, a prosecutor's career last over several decades. Even if he or she fulfilled the obligation to its fullest extent by receiving trainings of introduction course, general training course, and specialized training course, he or she had about three hours lecture in the entire professional life. It should be noted that half of three hours was spent on the matters unrelated to human rights. In view of the important role a prosecutor plays, the training is definitely far from adequate.

(3) With regard to police officers, GOJ responded as follows.

“293 As part of training for police officers who are in charge of duties closely related to human rights such as criminal investigations, Principles of Work Ethics prioritizing respect for human rights have been established and human-rights education has been proactively promoted, while setting up education on work ethics as the centerpiece of police instruction.

Police officers newly recruited are provided with education on respect for human rights and the necessity to give due consideration to victims, mainly female victims of sexual crimes and domestic violence, etc.

294. For police officials engaged in criminal investigations, detention duties and duties to support crime victims, etc., instruction is provided to have them acquire knowledge and skills necessary for performing their duties properly with due consideration to the human rights of suspects, detainees and victims.”

We contacted information-disclosure-division of the National Police Agency, which informed us that the Agency has done nothing to change their usual practice in response to several concluding observations of the Committee. They said that the police have been taking adequate measures in full consideration of human rights even before such concluding observations were issued.

Specifically, they pointed out the production of 206-page handbook for human rights oriented police activities in March 2008 and 82-page supplementary to the first handbook in March 2010. They printed 3200 copies and distributed to all police stations in every prefecture.

However, we are obliged to point out that the strength of police officer is 293,588 in the fiscal 2013 (March 2013 through February 2014) according to 2013 Police White Paper. Besides, they made no request for the recipients to report how they make use of the handbooks.

As a matter of fact we read the guidebook and found that the handbook offers general guidance on how to deal with people for the handicapped, old people and foreigners etc. Under such categories, they only make abstract statements such as the policemen are required to conduct properly with precision, deeper understanding, and more interest in their conditions when they deal with them. We suspect that policemen would not know how to behave on the spot. Although Japanese translation of Universal Declaration of Human Rights is attached as reference, nothing is mentioned about ICCPR or concluding observations. There is no way they can learn the international standards in practice of human rights.

5. Limited Contact for Death-row Inmates

Article 6 and the List of Issues, Para 13(g)

GOJ responded in para 121as follows.

"121.... with regard to meetings between a lawyer and an inmate sentenced to death for whom the commencement of retrial has yet to been rendered, when a request for a meeting without the attendance of an official is filed, a meeting without the attendance of an official is permitted unless there are special circumstances, based on judgment by the warden of the penal institution on a case-by-case basis.”

On December 10th last year, the Supreme Court ruled that confidential meetings for the commencement of retrial should be granted in principle. Immediately after that, the Government issued a circular notice dated December 26th

in the name of Correction Bureau chief directing that it is not proper for an official to be present at the meeting of inmates and lawyers unless there are special circumstances.

Yet the circular notice continues to state as follows. "As for the death row inmates who are in the unusual position, it is considered that they are likely to be swayed by extreme emotional anguish or get agitated easily. Thus, in judging the need for attendance, individual and specific conditions should be carefully taken into consideration."

The statement indicates that private interview without the presence of official is possible at the discretionary power of a penal institution not as the right of inmates. And at the same time, they ignore the lawyers' inalienable right to confidentiality of their meetings.

Incidentally, the issues of confidentiality are not limited to death-row inmates.

43-year-old Daisuke Mori has been serving life in the Chiba prison on the false charge of murder by administering muscle relaxants via intravenous drip. At the outset of preparation for retrial, Mori and his lawyer asked the institution to let them have a confidential meeting, which was rejected. After the lawyer protested, they agreed to let them have private meeting without the presence of official. But they immediately found out that their conversation was to be recorded. So after the second protest from the lawyer, they finally allowed them to have strictly confidential meeting.

It is worthy to note that this particular meeting between the lawyer and Mr. Mori was regarded as one of general meetings which was limited to three per month. In that respect, the lawyer was at disadvantage in securing the strictly confidential meeting. Another case of false charge in Higashi Sumiyoshi had to go through the same conflict with a different Penal institution before the inmate and his lawyer had a confidential meeting. The issue of confidential meeting is common to all inmates.

6. Abusive Use of Substitute Prisons (Daiyo Kangoku)

Article 10 and the List of Issues, para 14:

(1) By referring to the Act on Penal Detention Facilities and Treatment of Inmates and Detainees in 2007 and the Public Prosecutors Office publication of measures to ensure appropriate interrogation, GOJ reports as if there is no more abusive use of substitute prisons. However, the reality is contrary to their claim as we reported in the false charge case of personal computer remote control in 2012. We have three more cases of false charge of sexual molestation.

A. The case of false charge on sexual molestation on the train between Kyoto and Yamashina.

In January of 2011, Mr. Hirokazu Kakigi, a middle school teacher was arrested on the charge of molesting a woman's buttocks and detained in Shichijou Police Station for 29 days. At the interrogation, the police demanded his admission of guilt by the threat of possible re-arrest. He also complained of bedsores as the result of sleeping on very thin mattress in the detention cell.

B. The case of false charge on sexual molestation on the bus in Mitaka City

In December 2011, Mr. Masayoshi Tsuyama who was also a middle school teacher, was arrested on the charge of molesting a high school girl's buttocks in a moving bus and detained for 28 days in Mitaka Police Station.

The Police demanded him to confess the guilt by threatening him with the allegations that there was an eyewitness to his criminal act and that there is a video recording of his act. But these allegations have proven to be untrue. What was recorded was Mr. Tsuyama standing with his left hand hanging on to a strap while he was using a mobile phone with his right hand. There was no way he could use his fingers for any other purposes. Yet even the public prosecutor demanded his confession of guilt with the threat that the suspect would never come out of the police station unless he confesses.

C. The case of false charge of sexual molestation in the Saikyo Line train

In November of 2012, Mr. Takashi Ishida, a self-employed, was arrested on the charge of molesting the thigh of a high school girl and detained in Akabane Police Station for 28 days. Ishida exercised the constitutional right to remain silent. The police tried to unlock the silence by saying, "You must be keeping your mouth shut by consulting the lawyer. But you should know that he is not going to take care of you for the rest of your life. Why don't you open up?" The public prosecutor of the Tokyo District Public Prosecutor's Office said, "You must show the evidence that you did not do it" while he was trying to take the deposition.

(2) Why the false charge of sexual molestation (Chikan) happens so often in Japan?

Let us give you the brief explanation about the circumstances behind many cases of real Chikan and alleged Chikan.

In and around the metropolitan areas in Japan, transportations including trains and buses are extremely crowded with commuters hurrying to their offices, work places and schools. For example, the rate of congestion of the JR Yamanote Line, the loop line railway in the central areas of Tokyo, is 250% to 270% in the morning rush hours while the space per a passenger is only 0.18 square meters during that time zone. (Incidentally the livestock transport train of JR allows the space of 1 square meter per pig, which is 5.5 times larger than human.) It is inevitable in such a situation that passengers' bodies touch each other. Molesters of women in the train and bus are called Chikan, who take advantage of jam condition in Japan.

In more vicious cases, acts defined in the criminal code, such as putting a hand under the underwear and touching the private part, did occur. Yet many touch the female bodies from the outside of clothes, which are still forbidden and punishable by the autonomous nuisance prevention ordinance.

The National Police Agency started "a molester and sex-crimes eradication campaign" from 1996, and it strengthened the activities to expose molesters. The arrest number in the nuisance prevention ordinance was 271 in 1994 which climbed to 4538 in 2001. The sudden surge is attributable to the defective system of criminal justice in Japan such as substitute prisons. That is, in crowded trains or buses, it is possible that innocent man can be mistaken as a molester. Or when his bag hit a woman nearby, this could be mistaken as the criminal act of molesting. So if a woman who thinks she was molested points a finger to a certain man accusing him of a molester, he will be arrested immediately on the spot by private citizens and detained in the police station.

Police usually argue that there should be no mistake about the accusation as the victim herself pointed a finger to him. Officials would not listen to his explanation. Their interrogation focuses on the admission of the guilt. Under the Japanese legal system, the police is allowed to detain the suspect for maximum 23 days. So if the accused denies any wrong doing, he must risk the extended detention for more interrogation. The accused also must face the risks of being fired by their employers as the consequence of prolonged absence. Fearing the ultimate consequence of unemployment, he has no choice but to accept the penalty to pay a fine by information.

In the event that the accused is determined to refuse the allegation and continues to deny the guilt, he will be indicted. Usually at the trial, higher degree of credibility is given to the statement of the victims because the prosecutor has a notion that she must be telling the truth because she came out and spoke in public enduring the terrible shame and embarrassment. In the majority of the cases guilty verdicts have been delivered. Thus, false molester charges have become a big social issue. A movie titled "I still did not do it" has become a big hit in Japan, raising awareness of the false charges. Today almost every male commuter is at the risk of being accused of a molester sometime on the way to the office and home.

We list below the major cases of false molester charge and the length of detention in the past 15 years.

The Seibu Ikebukuro Line incident: 21 days

The JR Sobu Line (Rapid Service) line incident: 28 days

The JR Chuo Line Okita incident: 21 days

The JR Sotobo Line incident: 173 days

The first incident of Seibu Shinjuku Line: 92 days

The third incident of Seibu Shinjuku Line: 106 days

The second incident of Seibu Ikebukuro Line: 34 days

7. The Hakamada Case and Evidence Disclosure

(1) The points of our additional report

On March 27th this year, Iwao Hakamada who was serving the world's longest imprisonment of 48 years received a ruling to grant the commencement of the re-trial at the Shizuoka District Court. Decision was made after the court acknowledged the facts that evidences of murder such as clothing and others had been fabricated by the police. The judge ordered the suspension of execution and discontinuation of the detention. He also said, "It is excruciatingly against justice to continue the detention any further", and Hakamada should be released immediately". Release of the death-row inmate prior to the non-guilty sentence by the retrial is the first of its kind in the history of Japan.

Japanese public are shocked to learn coerced confession of guilt in a substitute prison, fabrication of the evidences by the police, and police cover-up of relevant evidences, which drove an innocent man into the detention of nearly half a century under the fear of execution. They are perceived as a symbol of the defectiveness of the Japanese legal system.

In this connection, we would like to report further on the flawed system of pre-trial discovery which lead to the infringement of "the right to receive the fair open trial by fair judges", by presenting the situation surrounding the past retrials including the Hakamada case.

(2) Cover-Ups of Evidences Exposed by the Decision of the Retrials after the Consideration of the GOJ 5th Report

After the 5th Review of GOJ report of 2008, two of lifetime inmates, Shoji Sakurai and Takao Sugiyama of the Fukawa case, and another lifetime inmate, Govinda Prasad Mainali, convicted of murdering a female employee of the Tokyo Electric Power Company (TEPCO), received the judgment of acquittal in 2011 and 2012.

In the Fukawa case, it was revealed that several important evidences have been withheld over 30 years. Firstly, statement of a witness who saw suspicious individuals other than Sakurai and Sugiyama. Difference between the description in the postmortem certificate and confession, that is, they confessed that they killed by manual strangulation while the certificate noted the cause of death as ligature strangulation. Then hairs left on the crime scene does not match those of the accused and the police had the records in support of Sakurai's alibi.

Similarly in the TEPCO female employee murder case, it has been hidden for 15 years that blood type of saliva found on the breast mass of the victim was type O while that of Mainali is type B. Police arrested Mainali two months after the expert appraisal of type O was written on the certificate two weeks after the crime took place. Also in the case of Hakamada, it has been hidden over 40 years that there is a witness statement in support of his alibi and another statement that trousers Hakamada was supposed to be wearing on the crime scene was too small for him.

However, the Public Prosecutor's Office is reluctant to disclose the evidence in cases before the courts, resisting the institutionalization of the evidence disclosure while we believe that institutionalization of a prior full disclosure of evidence is essential for realization of fair trials.

(3) Cancellation of the Decision to Commence the Retrial by Prosecutor's Appeal and Subsequent delay of Retrial and Relief

In our previous report, we informed the tragic history of Masaru Okunishi (87 year-old) of Nabari poisoned wine case, a death row inmate. In fact, he received the ruling of acquittal three times, firstly the sentence of acquittal at the first trial in 1964, decision of retrial in 2005 and passback of disaffirmance of the decision of retrial in 2010. Fifty years later from the first acquittal, he is still struggling to make his 8th demand for retrial successful from his medical prison, keeping himself alive by oxygen inhalation and intravenous drip after two major attacks.(See our parallel report dated July 20, 2013,page 10 ,II Treatment of Inmates , Sentenced to Death D2 Mr.Masaru Okunishi in the Nabari prison wine case) So even in the case of Hakamada above-mentioned, decision for the commencement of retrial can be revoked by Prosecutor's immediate appeal. We need to be cautious about the situation as there remains a possibility that Hakamada will be detained and executed.

We would like to inform the similar cases in which judgment of acquittal and the decision for re-trial was overturned by the Prosecutor's appeal and inmates have received no relief.

- The case of Nissan Sunny: Yoshiteru Saito (life imprisonment)

Ruling for the commencement of the retrial → the ruling disaffirmed in 1995.

- The Osaki Case: Ayako Haraguchi (penal servitude ten years)

Ruling for the commencement of the retrial in 2002 → The ruling disaffirmed in 2004.

- Higashi-Sumiyoshi case: Keiko Aoki, Boku Tatsuhiro (life imprisonment)

Ruling for the commencement of the retrial in 2012 → Immediately appealed by prosecutor and the case is being reviewed.

- The Fukui case: Shoji Maekawa (seven year imprisonment/, first judgment of acquittal at the first trial followed by the guilty sentence at the second trial.)

Ruling in favor of commencing the retrial in 2011 →The ruling revoked in 2013.

- The Hakamada case: Iwao Hakamada (death penalty)

Ruling in favor of commencing the retrial in 2014 →The ruling being reviewed by the immediate appeal of the prosecutor.

8. Public Welfare Issue

Article 19 and the List of Issues, Para 17,

Under Para 17 of the List of Issues, the Committee requests GOJ to comment on reports that teachers and school personnel have been subjected to sanctions, including salary cuts, suspension and dismissal, for refusing to stand and sing the national anthem at school ceremonies. GOJ considers that they were punished because of the acts are in violation of public welfare.

In this connection, we would like to repeat that application of an ambiguous concept of public welfare is not limited to restriction of the rights of not singing the national anthem. The concept has been used extensively to restrict the freedom of the speech as well as the freedom of political activities for election campaign.

The Committee expressed the concern with those unreasonable restriction in para 26 of CCPR/C/JPN/Co.5 and commented “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.”

Yet five years later, innocent people are arrested, tried and sentenced to be guilty on the ground of public welfare. We strongly condemn that it is in violation of Article 19 and 25. As the Report of GOJ does not reflect the reality, we would like to report the following.

(1) Guilty Sentences on the Ground of Public Welfare

We call your attention to previous statement of GOJ in their 6th report " the concept of public welfare* in the Constitution of Japan is embodied in more concrete terms by precedents for respective rights based on their inherent nature, Under no circumstance, therefore, could the concept of public welfare allow the state power to arbitrarily restrict human rights, (CCPR/C/JPN/6,page 4)

Yet the courts continue to render guilty sentences exceeding the permissible under the Covenant to those who exercised their rights to freedom of speech and expression.

The first is the case of Takao Izutsu, a City Assemblyman. Mr. Izutsu mailed copies of his activity report to his supporters expressing his position that there should be the shift of power to a certain opposition party as a campaign material for the House of Representatives election in 2008, which resulted in his arrest and indictment charged with the violation of the Public Offices Election Law. He received the final sentence of the three-year- suspension-of-civil-rights as well as the fine of 500,000 yen at the appeal court (parallel report of July 20, 2013, page 31, VIII Pre-election campaigning and political activities. Refer to D and case 1)

*The Public Offices Election Law "the Izutsu case" Judgment of the first trial at Kobe District Court dated July 25, 2011). The part of the judgment says as follows:

“Article 21 of the Constitution does not guarantee the unlimited freedom of speech publication and other forms of expression. It should be understood that there should naturally be reasonable restriction to such freedom if the public welfare requires it.

...Article 19 of the Convention stipulates the followings under 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions for the protection of national security or of public order, or of public health or morals.

Thus, the regulation provided by Article 142 of the Public Offices Election Law *should be understood as reasonable and necessary permissible under the Article 19 of the Convention.”

*Articles 142: For election campaigns except for the Lower House Diet member's proportional representation election, post cards, bills and flyers which conform to the standards specified in No.1 through No.3 and No.5 through 7 can be distributed. In this case, the bills not in conformity with the specifications cannot be distributed.

In its 6th Report to the Committee, GOJ states in essence that public welfare encompasses public order.

But the above judgment seems to state the opposite that public order encompasses public welfare.

By applying the concept of public order loosely and emphasizing the importance of public order, it justified the restriction on the freedom of expression.

(2) Regulation of the Public Offices Election Law Restricts Political Activities in Principle

The Public Offices Election Law stipulates that political activities are prohibited in principle during the election campaign periods. The Law prohibits almost all political activities during an election period. In other words, all political activities are basically prohibited with a few exceptions for election campaign during the election period. We quote below is the Article 201.6 of the Law as follows.

The Public Offices Election Law

“Article 201.6 Political parties and other organizations which engage in political activities are not allowed to engage in, among other political activities, such political activities as speech meetings, joint campaign speeches, putting up political posters, signs and distribution of bills and flyers, and use of automobile and loud speakers for campaigning during the period commencing the date of public announcement of the upper house members election

ending the day when election takes place. However, when political parties register the name list of their Upper House members or when such political parties or other political organizations field ten or more candidates throughout Japan, the above restrictions do not apply as long as they engage in the activities provided in the relevant provisions.”

Thus, after prohibiting most of the political activities in the first half of the provision, the Law lifts the ban partially. The Law declares the total ban, then lift the ban partially. For example, Campaigning on the car is prohibited in the following provision.

“Article 141.3 No campaigning is allowed on the cars which are being used for election campaigning provided, however, that such campaigning is allowed on the cars at rest and repeatedly calling candidate's name is allowed from the car as specified in Article 140.2.”

Article 140.2 No calling or shouting name of the candidate is allowed for election campaigning provided, however, that repeatedly calling name is allowed when it is done at the public speech meeting place and if it is done from the campaigning cars between 8:00 AM and 8:00 PM....”

These are obviously self-contradicting and paradoxical statements.

(3) Recent Cases Including the Cases before the Courts

Restriction of political activities by applying the concept of public welfare has continuously suppressed the human rights not only in individual cases but also in a wide range of people's life in Japan.

We call your attention to our previous report on the four cases of crack down related to correspondence and written materials between 2008 and 2010.

Especially, in the Yabu case, the police accused three former high school teachers with the violation of Public Offices Election Law because they sent letters to graduates of the high school during the election of City Assemblymen. Police interviewed many of former students, tailed the former teachers, staked out, summoned them more than 50 times and searched their houses. As of April this year, 18 months later from the poll, the Prefectural Police says, "We may continue investigating until the statute of limitation expires" , a gesture to intimidate citizens with possible arrest. It is unusual that the police conducted such prolonged investigation about the letters and written materials.

According to statistics of the National Police Agency, approximately 50,000 people were arrested on the charge of "the violations of restrictions about literature and images" from 1946 through 2013 in national and local elections. Kyuenkai have supported the suspects in over 150 trials related to Public Offices Election Law so far. Some have not been indicted, but there are many cases in which people were arrested, their houses searched, forcibly taken to the police stations, interviewed, etc. for reasons of legitimate correspondence or door-to-door distribution. Such police activities have intimidating effects on not only those concerned but the countless citizens, making them reluctant to participate in election or politics.

Human Rights and Election, a guidebook issued by the UN Human Rights Center states in paragraph 39 as follows.

“In short, unless all persons feel free to express themselves and are, in fact, able to disseminate, without fear, all legitimate political information into the national dialogue, there can be no guarantee that elections are a true manifestation of the will of the people.”

By this standard, elections in Japan can hardly be a true manifestation of the will of the people because

1. The Public Offices Election Law restricts political activities comprehensively during elections.
2. The judgments with distorted interpretation of international human rights law are accepted unchallenged,
3. As long as 70 years after the WWII, police and prosecutors continue to violate the citizens right to freedom of expression in political activities systematically. As above-mentioned, some people are still under the thread of being arrested, indicating the seriousness of the situation.

(4) Opinions

We request the Committee to make following recommendations.

1. Advise the GOJ not to waste time on the definition of public welfare for a new legislation, but end unreasonable interference with citizens’ political activities and other forms of expression in violation of the Covenant and immediately put the freedom of expression into practice.

9. Act on the Protection of Specially Designated Secret

On December 6, 2013, the Abe Administration enacted a new law called the Act on the Protection of Specially Designated Secret (SDS), which penalize the leakage and acquisition of the information related to national security, international affairs as well as police activities designated secret by the head of an administrative branch by imprisonment of maximum ten years.

Japan has maintained the Peace Constitution for decades after the end of the war in 1945, renouncing the use of armed forces in dealing with disputes, singularly unique phenomena in the world. Yet the Abe Administration has been anxious to make a new legislation which would allow Japan to get involved in armed conflicts, aspiring to build a nation which can fight a war or wars.

For example, the Liberal Democratic Party, the governing party, published their draft for revision of the constitution which would bring about serious changes in the basic principles of the present constitution. At the same time, LDP insisted that the Self Defense Agency should be promoted to the Ministry of Defense and that implementation of the SDS Act is essential for the national security. Furthermore, the party also advocated the lifting of the ban on the right to collective self-defense. .

The gist of the SDS Act is summarized as the principle of national security over people who are to be controlled and monitored, which reminds us of the pre-war days.

Until the last moment when the bill was deliberated at a Special Committee in the National Diet and even after its passage, the majority of the public opinion expresses suspicions and oppositions. The GOJ declares "It's a special

secret.” To this, a question is raised. ”What is a special secret? GOP answered “That is also secret.” There were strong opposition movements of the people every day throughout Japan during the Diet sessions, driving the government party into the corner. Even now, oppositionists are still demanding the abolition of the bill. Increasing number of people are worried and alarmed by the threat to human rights in the society where people have no access to information.

2, the Composition of the SDS Act and Points under Dispute

The law consists of the following elements,

- (1) Head of an administrative branch can designate the specific information related to national security, international affairs, and harmful activities such as "spying" and "terrorism".
- (2) Impose strict controls on the access and dissemination of such information,
- (3) Those who leaked or acquired the secret in a way the control is impaired will face a felony charge.

What matters here is that the specified secret can be determined by the head of an administrative branch at his discretion, without supervision of the National Diet or an independent third party. Public is not supposed to be informed of what is secret.

Public employees and or employees of private contractors who have access to the designated secret are often divided and discriminated in their own organizations. Besides, their privacies are invaded through the so-called "the aptitude evaluation" by their employers. Once certain information is designated as special secret, even the National Diet or the court of justice would have difficulty in acquiring such information. On the other hand, if an administrative branch finds it necessary, the secret would be passed on to other administrative braches, police or a foreign government.

Furthermore, media journalists who gather news, do research as well as activists who engage in' various activities of civil movements are at the risk of being arrested, prosecuted and indicted with the charges of the crimes such as leakage, illegal acquisition of the secret, conspiracy, instigation, and destabilization.

The SDS Act is nothing but a legislation which violates aspiration and principles of the Constitution of Japan. We present our criticism from the viewpoint of Global Principles on National Security and the Right to Information (Tshwane Principles) as follows.

(1) The Range of the Designated Secret is too wide or ambiguous

The SDS Act claims to protect not only security-related information but also information related to international affairs as well as prevention of specific harmful activities including terrorism, covering the wide ranges. Thus the contents tend to be ambiguous and limitless.

The Principle 9 states that public authorities may restrict the public's right of access to information on national security grounds. Yet the Principle 2(b) also states, when public authorities assert other public grounds for restricting access--including international relations, public order, public safety etc. they must at least meet the standards set forth in these Principles.

The SDS Act in Japan does not distinguish information on national security and other public grounds. GOJ can apply as many restrictions on the information as they like for prevention of harmful activities or prevention of terrorism which is not directly related to national security, deviating from the Tshwane Principles.

Tshwane Principles are clear about what should not be withheld as secret. The SDS Act designates huge number of targets for protection while there is no regulations about what kind of information should not be designated as secret. As a consequence, the law is going to protect undefined information indiscriminately as secret with the threat of punishment. And we believe such law is not in conformity with the Tshwane Principles.

(2) Acquisition of Personal Data through Investigation called "aptitude evaluation"

Public employees are not the only people who have access to and deal with the designated secret information. Employees of private contractors which supply military equipment to the Self Defense Forces have also access to such information. So those people are subjected to the aptitude evaluation, another name for investigation of personal data to evaluate them as to whether they are reliable or trustworthy to deal with the confidential information. For aptitude evaluation, personal information is extensively collected including criminal record, drinking habits, credit records, and financial conditions, plus information about their spouses, relatives, friends, acquaintances and more if it is necessary. Targets could be limitless.

Now the issue is who is doing the evaluation work. The Government admitted during the Diet session that the police is cooperating. But the information stored in the police archive is insufficient to cover many aspects of close to 100,000 employees and their spouses, relatives, friends and acquaintances. So new approaches have been taken including surveillance, tailing and stakeout on a large scale.

Principle 10 (E) states that the overall legal framework as well as the procedures to be followed for authorizing surveillance and other related matters should be accessible to the public.

It further states that the public should be fully informed of the fact of any illegal surveillance. Information about such surveillance should be disclosed to the maximum extent without violating the privacy rights...

But the SDS Act does not have any reference to the right of the public to access this kind of information.

The consent of individuals is required for investigation of personal background of public employees and employees of private contractors who have access to specified secret information, but not from spouses, relatives, friends, and acquaintances. Therefore, those individuals' privacy could seriously be infringed in the course of surveillance.

(3) Penalty in violation of Legality Principle

Even in the criminal investigations of the case where the violation of the SDS Act is at issue, judicial process must be followed as usual including the arrest warrant, detention warrant, indictment without knowing which information is designated as secret. Moreover, the trial will proceed from the start to the final judgment during which the defendant and his attorney are not informed of the designated secret. That is, the right of defendant to defend himself or the right of attorney to defend his client are ignored or slighted.

Submitting a designated secret for re-examination at the court is not taken into consideration. Judgment is rendered without the knowledge of what the crime is about, which means that the accused would be punished by the penalty stipulated in the SDS Act for an unknown crime. This undermines the foundation of the fair and reliable legal system.

Principle 28 states that (a) Invocation of national security may not be relied upon to undermine the fundamental right of the public to access judicial processes.

Under the SDS Act in Japan, we fear that it is likely that the courts may not be open to public by the reasons of national security and/or international affairs. When public employees and/or employees of private contractors with access to designated secret reveal the secret, the penalty would be maximum ten years of penal servitude. It should be noted that failed attempts and/or inadvertent accidents are also subject to punishment. Generally speaking, ordinary citizens will be punished by maximum ten years of imprisonment when he or she is convicted of causing harm to the control of designated secret.

An act of soliciting information from those who have access to the secret is also punishable.

Then, questions arise regarding the crimes of conspiracy, instigation and agitation, each of which is punishable by 5 year imprisonment. Even if the other party refuses to comply, those who asked first would be punished as the perpetrator of an independent crime. When the principal criminal act does not exist, how can the prosecutor incriminate him?. Constituent external element of a crime can be ambiguous.

Principle 43 states in summary that prosecution should be considered relating to their unauthorized disclosure of information only when the disclosure should pose a real and identifiable risk of causing significant harm. But there is no provisions comparable to Principle 43 in SDS with the balance of interest in consideration.

Principle 48 states that no person who is not a public servant should be compelled to reveal a confidential source or unpublished materials in an investigation concerning unauthorized disclosure of information to the press or public. But the SDS Act has no such provision of exclusion comparable to Principle 48.

Ambiguity of criminal proceedings without the knowledge of what constitute the secret may lead to an unpredictable situation. When there is no apparent balance between an act of crime and the legality of its punishment, the legal system can erode easily from the foundation.

(4) Negative Effects on the Freedom of Press and Civil Society

Many suspect that information gathering activities of reporters would be subject to criminal investigation although the Government stated otherwise during the Diet session. As the result, the media would apply so-called self-control on the freedom of press, not to mention contacting public personnel who could have access to the secret.

It is worthy to note that GOJ considers that the information concerning nuclear power plants as well as TPP negotiations are included in designated secret. So there is possibility that the police monitor citizens' research activities and/or the meetings for exchange of information on the matters which, they consider, is affecting the safety and everyday life of the citizens. The administration blocks all the access to the issues just by mentioning the words, designated secret. Citizens' rights to know and freedom of speech and expression are jeopardized.

Tshwane Principles protect the citizens in several parts as follows." Everyone has the right to seek, receive, use, and impart information held by or on behalf of public authorities, or to which public authorities are entitled by law to have access."(Principle 1)

"The burden of demonstrating the legitimacy of any restriction rests with the public authority seeking to withhold information."(Principle 4) "(a) A person who is not a public servant may not be sanctioned for the receipt, possession, or disclosure to the public of classified information.(b) A person who is not a public servant may not be subject to charges for conspiracy or other crimes based on the fact of having sought and obtained the information. (Principle 47)

The SDS Act of Japan has very little respect for the people's right of access (the right-to-know) including the right of request for the disclosure of information, which constitute the basis of modern civil society

(6) The SDS Act would eventually lead to secret deliberations at the diet which subsequently erodes its legislative functioning, leading to the ultimate denial of democracy.

Whenever a designated secret needs to be discussed, the entire deliberation will be held behind locked doors. In case a diet member should disclose such information, he or she will be punished by maximum 5 year imprisonment. Those law makers who participate in the secret session are not allowed to take the issue back to their parties to discuss freely with their colleagues. So far Diet is the highest organ of state power, consisting of elected members, representative of all the people under the Constitution. But now, the Diet comes under scrutiny of the administration and bureaucrats as far as designated secret comes into picture. Independence of three branches of power, legislative, administration and judicial has become a mere facade and democratic society will eventually lose momentum.

The SDS Act of Japan stipulates that the Government will set the unified standards concerning the designation, termination and aptitude evaluation. (Article 18, 1) In formulating or revising standards, the Prime Minister must listen to opinion of experts in the relevant field. (Article 18.2)

However, the Council of Expert Advisors to the Prime Minister cannot function as an independent oversight body because it has not rights of access to secret information nor to lift the ban on designated secret.

The Tshwane Principle states that States should establish, if they have not already done so, independent oversight bodies to oversee security sector entities, including their operations, regulations, policies, finances, and administration. (Article 31)

It also emphasize the several important principles, firstly independence and secondly legally guaranteed access to all information. (Principles 6, 31, 32, and 33)

(6) Semi-Permanent Withholding of Information

Under Chapter 2, Article 4 of the SDS Act, a state secret can initially be kept from the public for 5 years, with a possible extension of up to 30 years. Even after three decades, the ban can be maintained indefinitely .with the approval of the cabinet. Since there is no provision on the release of ban, certain information can be kept away from the public at the discretion of an administrative branch arbitrarily.

That is, the public will be kept away semi-permanently from the information that they should know about by such prolonged withholding.

Tshwane Principles state that Information may be withheld for only as long as necessary but not indefinitely, The government should set the maximum period in which information can be withheld and that the presumptive maximum period of classification on national security grounds should be established by law.(Principle 16)

The SDS Act of Japan does not set the maximum period while the extension of the period is possible at the discretion of the cabinet. Fromm the viewpoint of Tshwane Principles, the SDS Act is dangerously defective and insufficient.

10. Forced Worship of “Hinomaru” and “Kimigayo”

Question 17 in the List of Issues

Local governments have been intensifying punishments on teachers and school staff, violating articles 18 and 19 of the International Covenant on Civil and Political Rights

A. Suggested Recommendations

1. The Committee is concerned that teachers and school staff in Tokyo and other prefectures and cities are ordered to stand facing the national flag, sing the national anthem or accompany the song on the piano at entrance and graduation ceremonies, and those who refuse to obey the order have been imposed strict disciplinary actions. (arts. 18 and 19)

The State party should take necessary measures to correct the human rights violations taking place in local autonomous bodies.

2. The Committee is concerned that the related provisions of the Covenant are not applied and interpreted properly by the courts.

The State party should ensure that the provisions of the Covenant are applied and interpreted properly by the courts in accordance with the purports of general comments 22 and 34.

B. Our opinions on Question 17 in the List of Issues

3. Severe Punishments on Teachers and School Staff

Even after we submitted our report to the Committee last July, the disciplinary actions against teachers and school staff (teachers hereafter) have been repeated in Tokyo, and the total number of the teachers who have been imposed reprimand, salary cut and suspension from work amounts to 463 as of May 2014.

In Osaka, since so called “Ordinance for Standing Up for Kimigayo” or “Kimigayo Ordinance” was enacted, 57 teachers have been given reprimand and salary cut as of May 2014. The punishments have been growing more and more serious, and violations of articles 18 and 19 of the Covenant are left unchallenged.

4. In Osaka, threat of dismissal is looming.

In Osaka, “Kimigayo Ordinance” and “Fundamental Ordinance on Public Employees” were enacted in 2011 and enforced in 2012, and the latter states that those who disobey the same order three times could be dismissed. Two teachers have already been given disciplinary actions twice as of May 2014, and since they are expected to disobey for the third time the order which force them to pay respect to the national symbols, they will face the threat of dismissal next March. Serious situations are brought about by the ordinances incompatible with articles 18 and 19 of the Covenant.

5. The Tokyo Board of Education ignores the rulings by the Supreme Court and is repeating the disciplinary actions against teachers.

(1) Cancellation of the disciplinary actions by the Supreme Court

The Supreme Court, in January 2012, ruled that the cumulative punishments by the Tokyo Board of Education were illegal and cancelled a case of salary cut and a case of suspension from work. In September 2013, it again cancelled 30 cases of salary cut and suspension from work imposed on 25 teachers, stating that the above punishments by the Board constitute abuse of discretion. In another ruling, it awarded damages for mental distress caused by suspension from work.

(2) Further punitive actions infringing the rule against double jeopardy

The Tokyo Board of Education, however, newly imposed reprimand on 7 teachers, whose salary cut and suspension from work had been cancelled by the Supreme Court. The further punitive actions for the same case of 8 years ago violate article 39 of the Constitution of Japan, which prohibits double jeopardy, and Criminal Procedure Law based on the same principle. The punishments are illegal because they constitute a “case where the (administrative) disposition has been made beyond the bounds of the (administrative) agency’s discretionary power” stipulated in article 30 of the Administrative Case Litigation Act. It is also incompatible with article 7 -4 of the Covenant.

(3) The Tokyo Board of Education repeats cumulative punishments.

The neglect of the Supreme Court decisions by the Board goes beyond the cases described above in 5(2). It does not reflect on the decisions, which warned its illegality, but misinterpret them, and imposed cumulative punishment of one month salary cut on a teacher who had been repeatedly reprimanded since 2013. It is an excessive punitive action, and violates articles 18, 19, 2 and 26 of the Covenant.

6. Qualitative and quantitative intensification of the coercive nature of “Seminar for Prevention of Recurrence”

“Seminar for Prevention of Recurrence” has been intensified since 2012 school year, and the trainees are strongly urged to give up their beliefs. They are assigned a report in advance of the seminar on “How they felt when they disobeyed the order”, which force them to express their innermost thoughts. During the seminar they are asked such questions as “How one should behave toward the order of duty to stand and sing?”, and required to read their answers aloud. When they finish the seminar, they are required to choose from multiple-choice items such as “I understood that I should obey the principal’s order of duty so that I will never cause trouble concerning duty.”, and place a check mark. In 2013 school year, one teacher was forced to attend the seminar as often as 19 times. The seminar infringes articles 18, 19 and 16 of the Covenant, and is incompatible with the purport of article 14-3(g). It should be abolished immediately.

7. In Osaka, principals watch teachers’ mouths to see whether they are actually singing Kimigayo.

School Superintendent of Osaka Nakahara issued a note to all the 169 prefectural schools in September 2013 and in January 2014, ordering to “check teachers’ standing and singing respectively.” It added that “the principal, the vice principal or chief clerk should do the checking by watching”

Watching individuals’ mouths to see whether they are really singing Kimigayo equals to forcing their mouths open to sing, and clearly violates articles 18 and 19 of the Covenant. The mouth check goes far beyond the “conventional ritual behavior”, the phrase used in the Supreme Court decision, revealing that the order to stand and sing is an outright coercion of paying respect to the “national symbols”, on which the Committee expressed concern in paragraph 38 of the General Comment 34.

8. The final objective of disciplinary actions against teachers is coercion of the national flag and anthem on children.

As described in paragraphs 3 – 7 of this report, coercion of worship of the national symbols and disciplinary actions against teachers have been intensified. Although the formal reason for the disciplinary actions is “disobedience to the order of duty”, the intention of the Board is to impose relentless punishments on teachers who refuse to pay respect to the national symbols. Thus the true objective of the order and the disciplinary actions is to awe them into obedience, and through these obedient teachers to coerce “respect and submission to the national symbols” on the part of children as educational practice. Things are already taking place that infringe article 24 of the Covenant, articles 12, 13, 14 and 28 of the Covenant on the Rights of the Child, , the Convention on the Rights of Persons with Disabilities and International Convention on the Elimination of All Forms of Racial Discrimination. (Please refer to the report we submitted to the Committee in July 2013⁽¹⁾) To prevent violations of the human rights of the child, the Committee should recommend Japanese Government to take measures to promote implementation of article 18 and 19 of the Covenant.

C. Our Opinions on the Replies to the List of Issues by the Japanese Government.

9. The Japanese Government does not report on the actual situations of human rights violations, or on the fact that the Supreme Court fails to make any judgment based on international treaties or conventions, and condones present situations where articles 18 and 19 of the Covenant are being violated.

The report by the government makes no reference to the serious violations of human rights against teachers, children and citizens, which we described about in detail in our report last year ⁽¹⁾.

It also neglects the fact that the Supreme Court decisions of January 2012 and September 2013 did not invoke any international human rights treaty or convention in making judgments, even though the plaintiffs argued that the order of duty and the disciplinary actions violate articles 18 and 19 of the Covenant, articles 12 and 13 of the Convention on the Rights of the Child, 3, 6, 61, 63, 79 and 80 of the ILO/UNESCO Recommendation Concerning the Status of Teachers (1966).

It is stated in paragraph 8 of General Comment 22 that “State Parties’ report should provide .paragraph 9 that “information as to respect for the rights of religious minorities ... is necessary for the Committee to assess the extent to which the rights to freedom of thought, conscience, religion and belief has been implemented by the State Parties.” The Committee also requires the Japanese Government in the List of Issues (November 14, 2013) to “provide information on any court decisions concerning alleged case of discrimination on the ground of ... political, religious or philosophical faiths...., the types of penalties imposed...”

Japanese Government should respect the Covenant and provide necessary information.

Counterarguments against paragraphs 187~190 of the Government’s Reply to Question 17 of LOI

10. para 187

It is against ICCPR articles 18 and 19 to order teachers to stand facing the national flag and sing the national anthem

(1) Graduation and entrance ceremonies constitute part of contents of educational activity, and belong to school curriculum. It is internationally recognized that a curriculum is to be formulated by each school.

According to “the Courses of Study”, the national curriculum guidelines set by the government, graduation and entrance ceremonies are listed as part of “school events” in the field of “special activities”. Further, “the Courses of Study” clearly states that “each school should formulate a proper curriculum”. Therefore, each school is legally authorized to decide how entrance and graduation ceremonies should be performed as part of its curriculum designing.

(2) “The Courses of Study” states that “in entrance and graduation ceremonies, the national flag is to be hoisted, and the national anthem is to be sung”. However, the provisions in “the Courses of Study” should be understood as “broadly outlined standards” as stated in the Supreme Court judgment in 1976, and it is each school that determines the way a ceremony should be conducted, including “standing for the national flag and singing the national anthem”. Therefore, it would be legally impossible for a board of education to issue an official order of duty with regard to contents of the ceremony.

(3) School Education Act enacted in 1947 after World War 2 prescribes that “teachers are to take charge of teaching children”. This provision is a revision of the prewar counterpart in “National School Act”, with the phrase “by order of principal” deleted. The revised provision was based on the nature of teachers’ job as a profession, which was later stipulated in paragraphs 6 and 61 of “Recommendation concerning the Status of Teachers” by ILO/UNESCO in 1966.

(4) In light of the nature of the teaching profession, it generally is not envisaged that a principal should issue an order of duty to teachers concerning contents of teaching. Decisions regarding how entrance and graduation ceremonies should be performed at each school must be made based on sufficient discussions and deliberations among teachers as professionals. If a principal should “give teachers the order to stand and sing the national anthem”, it would not only be an infringement of the teaching profession, but also a violation of the right of teachers and students to freedom of their thought, conscience and religion. Such an order cannot be spared illegality.

(5) The act of standing for the flag and singing the anthem is a matter concerning the right to freedom of thought, conscience and religion of each individual, before his or her duties are questioned. It is acknowledged by the Supreme Court of Japan that forcing an act involving expression of respect for the national flag and anthem amounts to indirect restriction of human rights in the light of article 19 of the Constitution.

(6) Also, by global human rights standard, it should be noted that, according to para 38 of “General Comment 34” by the ICCPR Committee, it would be against ICCPR, article 19, freedoms of opinion and expression to impose punishments on “disrespect for flags and symbols”. That is, the order in this case imposing reprimands on those who refuse to obey clearly violates articles 18 and 19 which ensure the rights to freedom of individual thought, conscience and religion and to freedoms of opinion and expression, because it does not satisfy any provision under para 3 of each article that allows legitimate restriction of the right. Those responsible for Japan’s central educational administration should be strongly criticized for neglecting not only judicial principles of domestic laws on education and human rights, but also international human rights standards.

11. Para 188

The Supreme Court decision (6 June 2011) invoked by the Japanese Government is unconstitutional and incompatible with the Covenant.

(1)The objective and the content of the order of duty has neither necessity nor rationality to restrict freedom of thought and conscience

The Supreme Court, admitting that the order to stand facing the national flag and to sing the anthem constitutes indirect restriction on freedom of thought and conscience, it nonetheless judged the order to be constitutional. It applied “rational basis test” instead of “strict scrutiny standard”, and concluded the order had “necessity and rationality” because it was issued “to ensure the smooth performance of the ceremony in orderly atmosphere suitable for school events with consideration for students.”

However, there has never been a single case of disturbance of the ceremonies or lack of consideration for students by the refusal of standing and singing by the teachers, which the Supreme Court admitted. Restriction on human rights is not essential for the smooth performance of the ceremonies, nor is the order of duty a requisite minimum as a means. It is an excessive restrictive measure, and therefore unconstitutional and incompatible with articles 18 and 19, exceeding the scope of restriction allowed by articles 18-3 and 19-3.

(2)The true objective of the “order of duty”

As the Supreme Court Judge Miyakawa correctly pointed out in his dissenting opinion in the ruling given on June 6th 2011 that “(the order was) not issued with value-neutral intention of ensuring smooth performance of the ceremony, but to coerce teachers an act against their historical views and other beliefs through adverse disposition,” the true intention of the order of duty is to regulate teachers’ thought and conscience and to reveal those who refuse to obey the order based on their beliefs.

The “mouth check” in all the prefectural schools in Osaka, double jeopardy in Tokyo, and issuance of the order of duty only to the individuals likely to disobey (at primary schools and junior high schools in Tokyo) are the proofs of the above intention.

Please refer to D-7 and E-3-(3) of our report submitted in July 2013⁽¹⁾, in which we made detailed arguments that the order of duty and the 10.23 directive as its backbone have no legal basis, and therefore infringe articles 18-3 and 19-3. We also argued in the report that the Supreme Court decisions violate the Covenant.

12. para. 189

There exists no “order of duty” that can demand absolute obedience.

(1) Requisites for “order of duty”

Teachers are required to obey the order of duty based on article 32 of Local Public Service Act, but the order should meet several conditions such as: (a) it should be issued by the immediate superior with authority to command and supervise, and related to the service of the ordered person, (b) the order should be legal. There should be no order demanding absolute obedience, as is clarified in paragraphs 9 and 11 of General Comment 22.

(2)Standing and singing does not constitute the service of teachers.

As the Supreme Court states that “the act of standing and singing is not among the daily tasks such as teaching and desk work” and “includes an aspect of expression of respect,” standing and singing does not constitute the service of teachers, and it is a violation of article 18-1, 2 for principals to take advantage of his status as superior and order teachers to stand and sing.

(3)The order to stand and sing infringes the professional independence of teachers.

Article 1 of the Special Act for Public Education Personnel states that public education personnel perform their service to “serve the whole nation through education” based on “the specialty of the service and responsibility.”

As described in paragraph 10 of this report, teachers' independence from the principal is guaranteed by the School Education Act. ILO/UNESCO Recommendation Concerning the Status of Teachers states that teaching should be regarded as a profession. Thus teaching as a profession and its autonomy is acknowledged both domestically and internationally. Teachers should be guaranteed freedom to decide the way entrance and graduation ceremonies are held based on their professional independence, and such orders of duty as to "force teachers to instill one-sided theory or idea on students" violate their professional independence.

(4) Teachers are under no obligation to obey orders of duty which are illegal, unconstitutional and incompatible with article 18 and 19 of the Covenant.

To coerce an act which has "an aspect of expression of respect to the national flag and anthem" is against article 18-2, which states that "no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." Paragraphs 1, 8 and 9 of General Comment 22 and paragraphs 33, 34 and 38 of General Comment 34 also warns against and expresses concern about such coercion. Teachers are not obliged to obey orders of duty which are unconstitutional and incompatible with the Covenant.

Teachers' standing and singing pressure students to do the same, which is de facto coercion on students. In order to prevent teachers from becoming violators of children's freedom of thought and conscience, it should be acknowledged that they have both the right and the obligation to refuse orders that violate the Covenant. The right is implied in paragraph 11 of General Comment 22.

13. para. 190

Supreme Court ruled the Tokyo Board of Education abused its discretionary power.

(1) Discretionary Power and Judicial Examination

As stated in article 1-3 of the Civil Code that "Abuse of rights is not permitted," and in article 30 of the Administrative Case Litigation Act that "the court may revoke an original administrative disposition made by an administrative agency at its discretion only in cases where the disposition has been made beyond the bounds of the agency's discretionary power or through an abuse of such power," there are limitations to the exercise of the discretionary power.

(2) The Tokyo Board of Education does not "make proper judgment based on their authority and responsibility."

The Tokyo Board of Education, as a body with disciplinary authority, takes disciplinary actions against teachers with the intention of undue control over education and revelation of those who refuse to obey certain orders based on their beliefs, which deviates from the objective of discretionary power given to the Board. The measures taken by the Board also infringe the principle of proportionality, because the disadvantages caused by the disciplinary actions are disproportionately serious compared to the influence of the refusal of standing and singing. The Board as a body with discretionary power does not make proper judgment at all, and is repeating punitive actions against teachers, in violation of the Covenant.

(3) Court warns against the abuse of discretion by the Board.

The Supreme Court acknowledged the abuse of discretion by the Tokyo Board of Education in January 2012 and September 2013, and cancelled salary cut and suspension from work in 32 cases involving 27 teachers.

(4) The Supreme Court requests the Board to be moderate in taking administrative measures.

In the Supreme Court decisions made in May 2011 and thereafter, two judges gave dissenting opinions, and many judges, in their supporting opinions, expressed their concerns about the way the Board administers education. Most recently in September 2013, Judge Onimaru stated in her supporting opinion that "these

disciplinary actions could be deviation from or abuse of discretion, and moderate exercise of disciplinary right would contribute to the improvement of the educational situation.

D Conclusion

14. Disciplinary actions taken by the Tokyo Board of Education for refusal of standing facing Hinomaru, singing Kimigayo or accompanying it with the piano violate articles 18-1, 2, 3 and 4, 19-1, 2 and 3, 2-1, 16, 17, 24 and 26. Teachers refused the order of duty from sincere motives based on their thought, conscience, religious faith, educational belief and the sense of professional responsibility. The State Party is supposed to respect the articles above, and protect teachers' rights. On the contrary, however, the Japanese Government condones the disciplinary actions by the Tokyo Board of Education, causing intensification of coercion and sanction. As a result, teachers are in an extremely difficult situation facing the threat of dismissal and other punishments.

15. The judicial rulings are quite inadequate in the examination of constitutionality and of the scope of discretion, and show no trace of making reference to the Covenant. The rulings justified the order of duty which deprives teachers of the rights to freedom of thought and conscience and to freedom of education, and of economic security. As a result, such violations of human rights have been repeated year after year.

An immediate recommendation is needed in order for the State Party to ensure that the Covenant is applied and appropriately interpreted in courts in the light of paragraphs 1, 2, 3, 4, 5, 6, 8, 9 and 11 of General Comment 22, and paragraphs 33, 34 and 38 of General Comment 34.

16. Coercion of paying respect to the national flag and anthem is likely to be further intensified in Japan. In the present rightward tilt, the description of so-called 'comfort women' has been excluded from textbooks, and schools are forced to use certain kinds of textbooks with nationalistic historical views and one-sided explanations of controversial territorial issues, which could incite exclusive patriotism. Local assemblies and boards of education prohibit the use of a textbook that takes up the issue of coercion of Hinomaru & Kimigayo, and are trying to drive out from school libraries books describing horrors and miseries of war. The article 3-2 of the draft of constitutional amendment of the Liberal Democratic Party stipulates that "Japanese national should respect the national flag and anthem," making the worship of the national symbols an obligation. These tendencies of Japan are incompatible with not only the articles 18 and 19 of the Covenant, but with the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities and International Convention of Elimination of All Forms of Racial Discrimination, and need immediate warnings.

We sincerely request the Committee to make recommendations to the State Party to respect articles 18 and 19 of the Covenant and to take measures to correct the violations of human rights taking place in the country.

Note (1)

7. 'Forced Worship of the National Flag "Hinomaru" and the National Anthem "Kimigayo"' in Parallel Report for the Consideration of the 6th Periodic Report of the Government of Japan Submitted

to the Human Rights Committee---July 20, 2013 Japanese Workers' Committee for Human Rights
<http://jwchr.s59.xrea.com/x/shiryuu/20130720Parallel%20Report%20to%20CCPR.pdf>

11. Act on the Protection of Personal Information Issue

Collecting Names of Non-Standers at Singing in-Unison of “Kimigayo” Is a Violation of Article 17

A .Conclusions and a Proposal

- The Personal Information Protection Law of Japan at its state level, lacking measures to prohibit collecting and keeping sensitive information and to set up an independent watchdog-powered third-party institution, has no brakes on the collection, by administrative authorities, of personal information related to one’s thoughts and beliefs (a violation of Article 17).
- Educational public servants/workers are forced to show respect to the national flag (Hinomaru) and the national anthem (Kimigayo), with those who cannot succumb to the coercion ending up in being punished, to which effect the above said personal information on the non-standers is prerequisite utilized, meaning that without the sensitive information on the non-standers any punishment would be impossible (violations of Articles 17, 18,and 19).
- We ask the committee to make recommendations to improve this kind of human rights deprivational situation.

B. Collecting Personal Information on Non-Standers Is a Violation of Article 17

Our issue, closely related to the Q17 of the List of Issues and the government response to it, is of extreme importance.

To have provisions prohibiting the collection of sensitive information and requiring a third-party watchdog institution to be set up are by now globally acknowledged standard. Collecting and keeping personal information on non-standers violates clauses 1 and 2 of Article 17.

The government response puts much stress on its notion that educational public servants/workers must obey the orders of their superiors and completely ignores the committee’s concerns regarding Article 19, paragraph 38 of general comment 34 “disrespect for flags or symbols.”

In order not to make severe punishments possible, it is of utmost importance to prohibit the collection of sensitive information to start with.

C. Our Views

1. We have been forced to show respect to “Hinomaru & Kimigayo”
 - (1) This collection of personal information related to one’s thoughts and beliefs surfaced itself as a grave issue when school teachers and staff who couldn’t show respect to the flag and the anthem had their names collected and been reprimanded for their acts of refusal.
 - (2) “Hinomaru & Kimigayo” were the very symbols of our country’s past war of invasion victimizing some 20,000,000 abroad and 3,100,000 in Japan. Quite many Japanese, not only school teachers and staff, cannot possibly show respect to the flag and the anthem. To refuse to stand up in reverence for the flag and the anthem is an act

stemming from one's thoughts and beliefs firmly backed up by his or her historic/world view: therefore information on non-standers is personal information related to their thoughts and beliefs.

(3) Paragraph 38 of general comment 34 on Article 19 shows concerns for the punishment incurred by an act of disrespect for flags or symbols, which is 100% applicable to the Japanese situation.

(4) While the Supreme Court judged that the order to make school teachers and staff to stand up is an indirect restriction of Article 19 of the Japanese Constitution, a lower court Tokyo High Court judged that the information on non-standers is not personal information related to their thoughts and beliefs. (We will come back to this later)

(5) In Osaka principals have been asked to report back on paper not only the names of non-standers but also those of non/insufficient-singers by checking the mouth movements of the teachers and staff. The Osaka Board of Education promulgated a rule which stipulates the severe punishment of dismissal for not standing up for three times. The Japanese government has shown no initiative to take any remedial measures against the punishments executed in Tokyo and elsewhere.

2. Educational public servants/workers have no right to control their own information

(1) The way Japanese government and courts think

a. It may be difficult for someone in most of the “democratic” countries to imagine oneself being forced to show respect to one's national flag and national anthem. But in Japan, school teachers and staff are supposed to show the students an exemplary act of standing up and if they refuse to do it, they are punished for disobeying an official order.

b. The Supreme Court, while judging an act of non-standing to be deriving from one's historic/world view and therefore the order to make school teachers and staff stand up to be an “indirect restriction” of their thoughts and beliefs (see the government response to Q17), concluded that the order was constitutional by applying a less strict criterion of “necessity and rationality” of the restriction instead of a “strict test of unconstitutionality.” Because of this, non-standers have been repeatedly reprimanded or even salary-cut and denied the chances of being rehired after retirement, which is quite a damaging treatment meaning a retiree has no source of income before receiving his/her pension.

(2) The court says that personal information on non-standers cannot be personal information related to their thoughts and beliefs unless the reasons for the act of non-standing are mentioned.

a. Even in such prefecture as ours where its Personal Information Protection Rules basically prohibits administrative bodies to collect personal information on one's thoughts and beliefs, the educational board has been collecting the names of the non-standers, ignoring the advice not to collect them from the two prefectural third-party advisory/consultative bodies (Personal Information Protection Panel¹ and Personal Information Protection Council²). That is why the non-standers took their case to court as 25 plaintiffs.

¹ an institution ,upon a submission of a grievance against an administrative body, to investigate the grievance at the request of the administrative body, and give advice to the body regarding the handling of the grievance

2 an institution whose advice is consulted by an administrative body when it wishes to apply the exceptional clause of the Personal Information Protection Rules in executing an administrative action

b. The Tokyo High Court made an outrageous judgment saying that the collected information which had only the names of non-standers without the reasons for their acts cannot be treated as personal information on their thoughts and beliefs. The court went on to say that even if the educational board had known the reasons for their non-standing, only the collection of non-standers' names cannot be treated as personal information on thoughts and beliefs. This High Court decision was made not long after the Supreme Court judged an act of non-standing to be deriving from one's historic/world view. The non-standers' appeal to the Supreme Court was then dismissed and the High Court ruling was finalized (17/4/2013)

c. The act of non-standing is based on one's thoughts and beliefs, a well-known fact with no need to ask the reasons for, as was discussed in the diet session in 1999 when the National Flag and National Anthem Law was about to be passed. The High Court ruling is a decision which permits public authorities to go investigating/censoring people's thoughts and beliefs.

(3) The reality of a non-standing act

“Non-standers” just quietly sit down or remain seated in their seats during the anthem singing without causing any trouble to the ceremony proceeding or to other attendees. But the educational board seems to be determined not to allow a single teacher or staff to disobey the stand-up order and are watching out for/looking for non-standers with frightening tenacity.

(4) The Japanese government says “Sensitive information is not definable”

a. The Personal Information Protection Law of Japan at its state level lacks the provision to prohibit the collection of sensitive information. However to have this provision is a globally acknowledged standard and 60% of the Personal Information Protection Rules at prefectural level in Japan have this provision.

b. The state government does not intend to add the provision. In 2003 when the Law was in the process of being made, the demand by the Japan Lawyers Association and by political parties not in power to add a provision to prohibit collection of sensitive information and another to set up an independent third-party watchdog institution was rejected by the government.

c. When advisory/consultative bodies are not properly functioning even in prefectures where the legal set up is in place as reported above ((2)-a), it is only natural that such human rights violating administrative and judiciary judgments go unchecked at state level where the legal set up for the collection of sensitive information is far from complete/satisfactory.

d. The Japanese government (Dept. of General Affairs), still saying it's difficult to define what sensitive information is, has not tried to include a provision to prohibit its collection and does not have the will to do so even at this moment. You cannot help but deplore the low level of human rights recognition by our government when it made the following excuse for not defining sensitive information: “if administrative bodies are prohibited to collect personal information on people's thoughts and beliefs, there may arise the fear that inviting applications for book reviews or compositions will be impossible, which proves how unrealistic it would be to define sensitive information.”

D. Japan Concentrates the Rights of Controlling Information in Public Authorities

Last year Specified Secrets Protection Law was passed, which will enable the government to designate whatever information they choose as secret, to prohibit people to access these unknown secrets and to punish violators severely. Citizens are restricted in their rights to access government information while the government is unrestricted in gathering information on citizens, esp. sensitive information, as if to say “every and each piece of information belongs to the government.” Even educational public servants/workers should be guaranteed the right to have thoughts and beliefs and to act accordingly. Restricting workers’ right to have thoughts and beliefs in the name of assigned official work, collecting names of those who refuse to obey and punishing some of the refusers is what our government has been doing far down below the global human rights standard. Especially in Japan what stance you take toward the national flag (Hinomaru) and the national anthem (Kimigayo) is a very sensitive issue.

If collection of sensitive information can be restricted to a certain degree, the punishment of the non-standers may possibly be avoided. Therefore we strongly ask the committee to do as follows:

- 1) The Committee would show concerns to the court ruling which judged that information on the non-standers is not sensitive information related to their thoughts and beliefs.
- 2) The Committee would show concerns to the defects of The Personal Information Protection Law of Japan with no provisions to basically prohibit the collection of sensitive information and to require a properly-powered independent third-party watchdog institution to be set up and would recommend the revision of the Law to include these two provisions.

12. Right of the disabled child

Education for Handicapped Children in Tokyo and in Japan is a Violation of Article 24 of the Covenant-- Our comments on Paragraphs 4, 17, 21, and 25 of the List of Issues—

A. Contents of the Recommendations we request

1. Please express concern over the fact that the Japanese Government and the Tokyo Metropolitan Government infringe handicapped children's right to education which caters to each child's needs and is appropriate and provided with rational consideration.
2. Please recommend that the Japanese Government should take measures to rectify the situation where human rights are violated nationally and locally, so that article 24 as well as articles 2 and 16 which are its cornerstones and related article 26 of the Covenant are respected and that handicapped children's rights are duly protected.

B. Our Comments on the List of Issues

3. Paragraph 17 of the List of Issues

While "the Rising-Sun Flag (Hinomaru) and Kimigayo" are forced in schools throughout Japan, and nationalistic education including gender bashing and forcing of usage of certain textbooks is strengthened, the severest violation goes to handicapped children. Your committee's question to the Government is limited to teachers and school personnel, and it does not cover issues of violation of children's freedom of thought and speech. We cannot overlook the children's rights violated in Japan which is stipulated in article 24. Here we intend to report on rights violation at commencements and entrance ceremonies and sex education bashing as two examples of violation. We strongly hope that your committee pay close attention to these matters.

4. Paragraphs 21 and 25 of the List of Issues

The Governments of Japan and Tokyo have suppressed sex education in schools and have deprived children's right and opportunities to learn, especially the right for children to study their own body scientifically, learn human dignity, value, human rights, diversity, etc. in schools for handicapped-children. Moreover, at commencements and entrance ceremonies, the Governments infringe handicapped children's freedom of thought, conscience, and expression of opinions, the right to live healthily and safely, etc., and is violating their phased learning (graduation as its culmination) based on their individual originality and creativity.

These handicapped children's dignity as human beings and their right to live are threatened, and they are discriminated as weak people. It is regrettable that it is not mentioned in paragraphs 21 and 25 of the List of Issues. We request for your committee's citation and recommendations about violation of articles 2, 16, 24, and 26 of this Covenant in relation to handicapped children, of Convention on the Rights of the Child, and of Convention on the Rights of Persons with Disabilities.

5. Paragraph 4 of the List of Issues

The Supreme Court in Japan issued a judgment of plaintiff winning the case of "students' parents and teachers of Nanao Special School vs three Tokyo Assembly members and Tokyo Metropolitan Board of Education" in November 2013. In the suit, the former had complained that the latter interfered with the sex education practiced in the school. The ruling concluded that the assembly members' insult acts should be judged "unjust rule," and that what the school administration did to the teachers was a breach of duty of protecting publicly-hired teachers. Although it was a judgment which secured sex education practices and which should be praised in that respect, we must point out that there is neither a viewpoint of international treaty observance nor its application, and the judgment was far from satisfying*.

C. Facts of violation

6. Backlash to sex education in Japan and Tokyo

In 1996, when it was found out that all the history textbooks used at junior high school contained the description of the existence of the Japanese army "comfort women," gender education bashing was launched together with disputes over the "comfort-women" issue. In May 2002, history textbooks and sex education teaching materials were taken up as a big problem in the Parliament, use of the word "gender" itself was forbidden, and this trend spread all over the country. In Tokyo, a report of sex education practices at 11 elementary, junior high, and special education schools which was published on a research magazine in 2002 was regarded as questionable, and "investigation" by the Metropolitan Board of Education was started. Such a sex education bashing spread wide and far, and became intense all over Japan†.

7. An example: What happened at Tokyo Metropolitan Nanao Special School for Handicapped in 2003.

1) At Tokyo Metropolitan Nanao Special School‡, sexual problems broke out one after another among the children in 1997. Since then, the school has begun systematically to tackle with sex education. On the elementary stage, as part of sex education, the cleanliness of the body including sexual organs and excretion instruction were taught. At junior high school, secondary sex characters were studied in the affirmative, and at high school, the curriculum in which students learn about sexual intercourse, contraception, etc. was made up and practiced. The sex education of Nanao Special School received high evaluation, and it became famous nationwide.

2) At Tokyo Metropolitan Assembly on July 2, 2003, an assembly member Mr. A pointed out as questionable the sex education carried out in Nanao Special School. Mr. Yokoyama, Superintendent of Education, and Governor

* Statement from "Learn about Our Heart and Body Lawsuit" Plaintiffs, Defense Counsel, and All Japan Lawsuit Support Liaison Association about Supreme Court ruling issued on November 28, 2013. http://kokokara.org/pdf/kokokara_news/SEIMEI_2013_1130.pdf

† Yuko HIROSE, "Recent Trends of Criticisms in Japan toward Sex Education in School: Government's Reaction to 'Sex Education Bashing'" (*Social Science Annual Report*, No. 48, 2014) <http://www.senshu-u.ac.jp/~off1009/PDF/nenpo48-8.pdf>

‡ Yuji KODAMA, *Iwanami Booklet No.765 Sex Education Lawsuit: What Nanao Special School Case Has Left*.

Ishihara at that time also agreed with him, and the necessity for investigation and abandonment of teaching-materials was asserted.

3) Two days later, the assembly member Mr. A, accompanied by more than ten persons, such as other assembly members, the personnel of Metropolitan Board of Education and newspaper reporters, inspected and investigated Nanao Special School. He abused teachers in charge of health education, and had them show the sex education teaching materials kept in the nurse's office. He then stripped the lower body of the teaching material doll of its clothes, and took pictures of the doll half-naked. And all the sex education teaching materials were confiscated*.

4) One third of the Nanao teachers were made to transfer to other schools at the end of the fiscal year, and sex education practice there substantially came to an end.

8. On July 14, Tokyo Metropolitan Government created "Committee to investigate management issues of Metropolitan Schools for the Blind, the Deaf and the Handicapped" and set about investigating "unsuitable sex education, etc." at these schools. In September, 116 people, such as principals, teachers, etc. of 28 schools were punished with salary cuts, formal warnings and reprimands. One of them, the former Nanao School Principal was demoted to a general teacher and was suspended from office for a month. Thirteen Nanao School teachers punished with reprimands were also included.

9. The investigation resulted in seizure of sex education teaching materials from all the schools for the handicapped in Tokyo. Concrete visual teaching materials, such as dolls, picture books and images describing sexual organs, sexual intercourse, pregnancy, and childbirth, were forbidden in schools.

10. Thirty-one parents and teachers of Metropolitan Nanao Special School won the suit (see paragraph 4 above). The court ruled that the educational practices of Nanao School did not deviate from the government curriculum guidelines, or disregard children's developmental stages. Nevertheless, Tokyo Metropolitan Government did not return all the confiscated sex education teaching materials. Moreover, "Guide of Sex Education" published by the Metropolitan Board of Education still indicates sex education practices of Nanao School as an unsuitable example. In schools for handicapped children, sex education does not exist even now.

11. Violation of handicapped children's rights in the case of "Hinomaru and Kimigayo" issues

Till then, because a commencement had been a day of congratulations as a culmination of study and learning, and an entrance ceremony had been also a day of congratulations when new children were welcomed, originality and creativity have been played out into ceremonies at each school according to children's needs. However, on October 23, 2003, Tokyo Metropolitan Board of Education issued the command to change the style of ceremonies (commencements and graduation) into a uniform one†. This led to infringe children's right of opinion manifestation, and their freedom of thought, conscience and religion. Especially in schools for handicapped children, such education

* "Learn about Our Heart and Body" Lawsuit Support Website <http://kokokara.org/>

† "Concerning the implementation of national flag hoisting and singing of national anthem at entrance and graduation ceremonies, etc." "Implementation Guidelines concerning the national flag hoisting and singing of national anthem at entrance and graduation ceremonies, etc." <http://yobousoshou.blogspot.jp/2006/02/translation-of-1023-directive-or-1023.htm>

does not suit a child's actual condition or needs. And since 2003, infringement of rights and freedom has been strengthened and is becoming commonplace. We could cite the facts* endlessly, but here we will point out just a few.

12. Violation of right to live healthily

In order to force teachers to stand up during the singing of "Kimigayo," the school management forbids their providing urgent support to a child even if the child has a problem breathing or about posture, etc. Children's right to live safely and healthily is jeopardized†.

13. Violation of freedom of thought and freedom of conscience

It infringes children's freedom of thought and conscience and right of opinion manifestation to touch a sitting child's body at the time of singing of "Kimigayo" and made the child stand up compulsorily, or to investigate at the homes of the children who said they wouldn't stand up‡.

14. Violation of right to move freely

At a commencement of a school for handicapped children, there used to be various efforts accumulated to cater to each child's actual conditions. Using not an uplifted stage but a flat hall, parents and students remaining in school surrounded the graduates and celebrated their graduation§. However, only solemnity as a ceremony is allowed now and the receipt of a diploma is accepted only on the platform. As a result, some students could not go up on the platform, and it became impossible for others to operate a wheelchair to receive the diploma by himself because it was deemed dangerous.

15. Violation of children's right to participate in and create ceremonies on their own initiative

By orders, graduation ceremonies were changed into those consisting mainly of hoisting of the national flag and singing of the national anthem. The ornament of the handiwork which was expression of the children's activities was removed, and the opportunity of the communication between the graduates and remaining students was also restricted. As a result, the ceremony became an inscrutable space especially for children with intellectual disability, and it was a painful experience forced upon the children until it was over.

When the students' parents sent their opinions about these ceremonies, neither the principal nor the Metropolitan Board of Education considered them in any way.

D. Our opinions

<Rights to grow up healthily and freely>

* Parallel Report for the Consideration of the 6th Periodic Report of the Government of Japan Submitted to the Human Rights Committee <Japanese Workers Committee for Human Rights(JWCHR), JULY 20, 2013> <http://jwchr.s59.xrea.com/x/shiryou/20130720Parallel%20Report%20to%20CCPR.pdf>

† Ibid., p. 61.

‡ Ibid., p. 60.

§ Ibid., p. 61.

16. It must be a top priority that children maintain their health at the best. Based on the children's self-determination, not being taught by commands, children should be secured of their right to have a kind of education which encourages and supports their independent and spontaneous growth.

17. However, the Governments of Japan and Tokyo disregard both articles 2, 16, 24 and 26 of the Covenant, and paragraph 3 of the general opinion 17. They carry out and are performing the serious infringement acts which violate article 23 of Convention on the Rights of the Child, and articles 10, 24 and 25 of Convention on the Rights of the Person with Disabilities. In this way, handicapped children's right to live is threatened.

<"Never decide our matters without consulting us">

18. Regardless of disability or its degree, children are supposed to be made sure of freedom of thought and conscience, right of opinion manifestation, right to self-determination, freedom of making the best communication with other children, and right to demand for educational contents of their wishes. They are guaranteed to exercise their rights with the help from parents or legal guardians, depending on their developmental age.

19. For children, learning their own bodies gives rise to a power to affirm the self, and it leads to learning of dignity and value as human beings. Even if learners have handicaps, their right to study scientifically the structure of sexual organs, sexual intercourse, pregnancy, and childbirth must be ensured.

20. For a child who lives on a wheelchair, it is a means indispensable to move around and is part of the child's body indispensable to self-determination, self-manifestation, and self-actualization. Naturally, operating the wheelchair and moving freely must be ensured.

21. However, the national and metropolitan governments have not respected articles 2, 16 and 24 of the Covenant, but infringed articles 23, 28 and 29 of Convention of the Rights of the Child, articles 1, 3 (h), 10, 20, 24 and 25 of the Convention on the Rights of Persons with Disabilities, and have violated handicapped children's autonomy, independence, and dignity.

<Individuals are not handicapped -- Society is>

22. As stated in paragraph 1 of the General Comment 17 and paragraph 8 of the General Comment 18, children have rights to receive all the improved education including easy-to-understand educational contents which are taught attentively, and those adapted to actual condition of each disability.

23. However, Tokyo Metropolitan Government and the national government do not allow the sex education, or commencements or entrance ceremonies which have been designed and practiced in school for handicapped children. For this reason, the children are made to be faced with many "handicaps."

<Respect for articles 2, 3, 6, and 26 of Declaration of Human Rights and for articles 2, 16, 24, and 26 of this Covenant>

24. Japanese Government's reply to List of Issues to Human Rights Committee

Although paragraph 20 of the Japanese Government's reply states "citizens shall all be given equal opportunities to receive education according to their abilities, and shall not be subject to discrimination in education," in reality, what we see here is forced education that disregards handicapped children's needs.

25. In paragraphs 83-87 of the Japanese Government's reply, it reports how human rights education is domestically enhanced and accomplished, just the opposite is taking place; the Japanese Government and Tokyo Metropolitan Government are destroying the type of education which has been respectful of human rights.

26. If we take into account paragraph 1 of the General Comment 3, the Governments must immediately take necessary measures to correct ongoing violations of the human rights of handicapped children in their jurisdictions.

13. Unjust Dismissal of JAL Workers

Report Regarding the Trial of the 165 People Dismissed by JAL

1. Introduction

In January, 2010, JAL (Japan Airlines) went bankrupt with enormous debt, caused by past irresponsible management failed aviation policies. The Japanese government chose corporate reorganization processes that would restore JAL ensuring a transportation system for its citizens. Because of this, JAL's flights were able to continue operating.

Meanwhile, a mere 9 months after the corporate reorganization processes started, 165 people, including pilots and cabin crew were dismissed through the reorganization, without any measures being taken to avoid dismissal.

148 of the people who were dismissed filed for unfair dismissal at the Tokyo District Court. The ruling handed down after one year and two months was one that allowed the dismissals through reorganization.

Such unjust dismissals as carried out by JAL, and the ruling which allowed them, are in violation of Article 22 of the International Covenant on Civil and Political Rights. Furthermore, dismissals which use age and sick leave records as reasons are a violation of Article 26 'Prohibition on Discrimination' of the International Covenant on Civil and Political Rights. A great many voices of criticism were raised against the Tokyo District Court's ruling within Japan, from labor unions, lawyers, and researchers.

A trial is currently underway at the Tokyo High Court, and a ruling will be handed down in June of 2014. This report explains the unfair ruling by the Tokyo District Court.

2. Summary of the Tokyo District Court Trial

On January 19th, 2011, 148 of the pilots and cabin crew who were dismissed through the reorganization formed a plaintiff group, and began a trial for repeal of dismissal at the Tokyo District Court.

The hearing for this trial moved swiftly, as the trial for the pilots and the trial for the cabin crew were held simultaneously. As a result, the district court's ruling was handed down one year and two months after the case was presented. It could be argued that the speed of its progression was exceptionally fast, even with trials in recent years.

3. Ruling Points

The ruling by the Tokyo District Court was an unjust message which validated the dismissals for both the pilot trial and the cabin crew trial. Neither ruling negated the four requirements for dismissal through reorganization and so drastically relaxed those requirements themselves.

The fact that these identical rulings were handed down cannot be considered without there being prior fixing. And that very fact gives rise to suspicions about whether the independence of judges as determined in the constitution has endured or not.

- Requirement #1: was there necessity for dismissal?

On December 31st, when the dismissals through reorganization were carried out, JAL had operating profits exceeding 140 billion yen. Furthermore, of the 1,500 people in their personnel reduction plan, in actuality more than 1,700 people had put in for voluntary retirement, so there was no rationale for dismissal through reorganization. In addition, the chief executive officer from that period had denied the necessity, testifying in the Tokyo District Court that "from a managerial perspective there was no need for the dismissals".

- Requirement #2: were efforts exhausted to avoid dismissal?

In the ruling, the repeated requests for voluntary retirement, the retirement lump sum bonuses, and the high severance pay for older laborers, were assessed as being suitable. However, the actual extent of damage suffered by the people who were dismissed was not taken into account.

Furthermore, in spite of the fact that JAL did not carry out any work-sharing, temporary layoffs, transfers or temporary assignments as suggested by the unions to avoid dismissals, JAL's claims that this would not in actuality decrease the number of people were accepted, stripping requirement #2 of all its meaning.

- Requirement #3: were personnel selection standards reasonable?

With the ruling on reasonable personnel selection standards for both trials, the 'standards for dismissal of those on sick leave or leave of absence' and the 'standards for dismissal of older persons' were both made to be objective standards with no room for arbitrariness by the employer. And in regards to the influence on safe operating, even the thoughtlessness towards safety was revealed, with "there is a leap of logic in treating this as an obstacle to safe operating".

- Requirement #4: were there 'reasonable procedures'?

For both rulings, only the frequency with which discussion with labor occurred was focused on, and our claim of how lacking these details were as discussions was rejected.

4. Conclusion

A trial which seeks repeal of the unfair dismissal through reorganization carried out by JAL is being held at the Tokyo High Court. The ruling for this trial will be handed down in June of 2014.

In the appeal trial, the discriminatory, unfair labor practices carried out by JAL were demonstrated, as well as the fact that the four requirements for dismissal through reorganization have been rigidly applied. Labor trials in recent years in Japan continue to have unfair rulings which dispossess laborer's rights.

Yet even in such severe circumstances, there are many people supporting these struggles surrounding trials, both inside and outside the country. The dismissals performed by JAL clearly violate the International Covenant on Civil and Political Rights, and a speedy remedy is sought.

14. Right to Organize for Firefighting Personnel

(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

When ratifying the "International Covenant on Civil and Political Rights" and the "International Covenant on Economic, Social and Cultural Rights" in 1979, the government of Japan notified the UN that it confirmed the fact that it had declared that "members of the police" referred to in articles of both covenants shall be interpreted to include fire service personnel of Japan. The government would not take back this declaration of the interpretation contrary to the fact.

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 labor leadership and management representatives and interviews with relevant organizations, the Committee prepared a report in December 2010.

In September 2012, the government of Japan set up an advisory body, the “Panel on an Autonomous Labor-management Relationship System for local government servants”. One month later, the advisory panel made a proposal, in its report, to grant the rights to organize as well as to conclude collective agreements to fire service personnel. The following month, the government submitted a bill on “Autonomous Labor-management Relationship System for local government servants” on 15 November. However, the ruling Democratic Party of Japan dissolved the Diet soon after that, so the bill was scrapped.

The Abe administration, which was formed after the Liberal and Democratic Party won the general election of December 2012, perpetuates negative attitude about restoring the right to organize to fire service personnel. This change of circumstances requires us to step up our campaign much further.

D. Opinions

The guarantee of the right to organize to fire service personnel will enable them, as firefighting experts, to help citizens become aware of the challenges that firefighting in Japan is faced with, such as the integration of municipal fire headquarters, the improvement of emergency medical system and the development of firefighting capability. These efforts will make it easier to find the way of dealing with these challenges.

The government of Japan should notify the ILO that “the police” referred to in Article 9 of the ILO 87 Convention shall not include fire service personnel in Japan. At the same time, it has to delete “fire service personnel” from Paragraph 5, Article 52 of the Local Public Service Act by revising the law, which prohibits police and fire service personnel from forming their own union and joining any union. Another step that the government is required to take is to retract its declaration, which was made when Japan ratified the International Covenants on Human Rights in 1975, that the “members of the police” shall be interpreted to include fire service personnel of Japan.

Granting the right to organize to firefighters will lay the foundation for having them freely proposing and discussing various opinions about existing problems or improvements in carrying out their responsibility for “reducing the damage arising from fires or disasters, and properly transporting a person suffering an injury or a disease by fires or disasters”. This change will contribute to the development of firefighting capability.

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.

15. Textbook Authorization System

Problems of the Replies of the Government of Japan to Question 22 of the List of Issues

Question 22 requested the Government of Japan to provide information on whether the State Party:

1. considered acknowledging any legal responsibility for the abuses against victims of the military's sexual slavery practices during the Second World War, the so-called "comfort women" system;
2. intended to take legislative and administrative measures to provide victims with full and effective redress;
3. to investigate the facts and prosecute perpetrators;
4. to educate the general public about the issue and;
5. to take measures against recent attempts to deny the facts by Government authorities and public figures.

The replies of the Government of Japan indicated on paragraphs 232 to 236 simply repeated what the State party had stated in the previous report (CCPR/C/JPN/5) regarding above-mentioned (1) to (3), which showed the GOJ had made no progressive measures on the sexual slavery issue during the Second World War. In order to inform the Human Rights Committee of the actual situation on the GOJ's measures, this report will make critical considerations on the GOJ's replies.

First of all, the contents of paras 233 and 234 are against facts. What para 233 indicates is the statement announced by then-Chief Cabinet Secretary Kohno Yohei in 1993, known as "the Kohno Statement", which admitted the fact that the Japanese Imperial army had forced many women into sexual slavery and apologized to the victims. Prime Minister Abe Shinzo expressed that his cabinet would reexamine and verify the Kohno Statement. After the Japanese neighbouring countries and the international community criticized Abe's plan, however, he took back his words, saying, "I will not look over the comfort women issue again but verify it", as the GOJ insisted. Although para 234 says, "Prime Minister Abe, in the same manner as the Prime Ministers who proceeded him, is deeply pained to think of the comfort women who experienced immeasurable pain and suffering beyond description.", he is, as a matter of fact, is one of the main members who are involved in the "attempts to deny the facts by Government authorities and public figures".**

We would like to inform you of above-mentioned No.4. In all elementary, junior high, and senior high schools in Japan, whether they are run by the state, the public sector, or the private sector, teachers are obliged to use state-authorized textbooks by the School Education Law (article 34). We emphasize that the textbook authorization

* * The facts that prove our allegation are as follows:

Prime Minister Abe:

1) replied to the question by an opponent diet member in 16 March 2007 when he was Prime Minister for the first time that no descriptions were found in the materials that implied any direct involvement of the Japanese Army in the documents the Government found;

2) used political pressure and forced the Japan Broadcasting Corporation, or NHK in Japanese, to change the contents of the programme on the International War Criminal Tribunal in Tokyo in 1995. The comments of a university professor who was known as a historical revisionist were aired in the programme;

3) was and still is a leading member of several historical revisionist groups.

system breaches upon article 19 of the Covenant. The GOV admitted this fact in its third through fifth periodical reports. In its sixth report, however, there is no reference to the textbook authorization system, though the system has not changed or even worsened and therefore the violation of article 19 has still continued.

The revised textbook authorization standards applied to the history textbooks came into effect on 17 January 2014 which obliged the authors and the publishers to describe the controversial events such as the territory issues as the GOV alleges, which is what Japanese historical revisionists have demanded. For instance, the Japanese Society for History Textbook Reform, a representative revisionist group, adopted a resolution in its annual assembly on 15 July 2013 which blamed the textbook system, alleging there were still textbooks that referred to the “comfort women issue” which constituted extreme masochistic view of history. The revised textbook authorization standards reflect this allegation, stipulating that “the discretions shall obey the Government views if there exist unified views of the Government indicated by the decisions of the cabinet or there are decisions of the Supreme Court. In the session of the Committee on Education, Culture and Technology in the House of Representatives, Minister Shimomura Hakubun said that the Kohno Statement was not included in the Government’s unified view because it had not been decided by the cabinet. Though he withdrew this remark after he was criticized, this is a confession of the GOJ’s real intention. The GOJ’s replies do not refer to these facts.

On the basis of the abovementioned facts, we, Japanese Workers’ Committee for Human Rights, request the distinguished members of the Human Rights Committee to:

Point out in the concluding observations that the GOJ has not made any positive measures for the solution of the “comfort women” issue as well as the recent attempts to deny the facts by Government authorities and public figures;

Educate the general public about the issue;

Show concern for the attempts by historical revisionists to fulfil their demand on history textbooks with the aid of Government authorities and public figures and;

Recommend the State Party to take measures to solve the “comfort women” issue.

16. National State Compensation Suit of the Fukawa Case

Trial having no right to let the public prosecutor disclose all evidence violates the right to have a fair tribunal and is also against Article 14 of the ICCPR.

Two young men who had been sentenced to life imprisonment by the charge of murder-robbery and detained for 29 years by the false-charge called Fukawa case, were found innocent in 2011 following the request of a retrial after parole. They were acquitted in consequence of the disclosure of a part of the evidence which was due to persistent efforts of the defense.

Shoji Sakurai, one of the ex-defendants, brought a state compensation suit, asking for the responsibility of the state and the prefecture, but the court has no intention to disclose any necessary evidence at the trial. In the Hakamada case whose retrial was granted in March, all evidence had not been disclosed for a long time. But he was proved innocent after 600 elements of the evidence were disclosed in recent years.

It is said that evidence disclosure was carried out by the introduction of the pretrial conference procedure of lay judge trial. However, its extent is limited and evidence is not yet fully disclosed for the cases of retrial and state compensation suit.

By reason of that the criminal proceeding in Japan is based on the adversary system, and that the prosecution represents just one party's position, it says that the prosecution has no obligation to give all evidence in the court. The prosecution provides limited evidence which it needs to prove one's guilt, and then the judge hands down a decision by perspective of produced evidence. Once the prosecution considers a suspect to be a criminal, it has tendency to prepare any evidence in order to prove his/her guilt whatever truth is. It is pointed out that the evidence of the Hakamada case was fabricated.

In Japan, even if evidence which could lead to innocence of an accused is hidden, its responsibility may not be pursued.

Accordingly, the trial proceeded by the hidden evidence which is favor for an accused, is equal to having a judge give defective decision and it is not a fair trial. The right to have a fair tribunal of the people is violated.